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GST & cross border supplies – Levelling the playing field?

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1 Introduction

The last two years have seen the biggest changes to the application of GST to cross border supplies since the GST commenced on 1 July 2000.

These changes have involved a myriad of amendments to various sections of the *A New Tax System (Goods and Services Tax) Act 1999* (the **GST Act**) – changing both the basic rules and special rules – but have essentially been in line with one of two main themes:

- Extending GST liability to cross border supplies of goods and services to Australian, non-business consumers – B2C: where there is net GST revenue; or
- Limiting the application of GST on supplies to non-resident businesses or from non-resident businesses to Australian business consumers – B2B: where there is (usually) no net GST revenue.

The extension of GST to cross border supplies to "Australian consumers" has been considered necessary to deal with the ever changing commercial and technological landscape that has brought us online shopping and digital content. Retailers had been calling for "a levelling of the playing field" and Treasury have been wanting to reduce "the tax gap" – the amount of consumption expenditure that is not subject to GST. We have therefore ended up with the 'Netflix tax' for 'imported' services which commenced on 1 July 2017 and 'Gerry's tax' – extending GST to low value imported goods – due to commence in less than five weeks' time (1 July 2018).

The B2B cross border changes went the opposite way - removing GST liability on certain cross border, business-to-business supplies – supplies to "Australian-based business recipients". These changes, most of which commenced on 1 October 2016, were aimed at ensuring non-residents were not caught in the GST regime where the GST on supplies by them or to them would be revenue neutral (or, if not revenue neutral, could be "reverse charged" by Australian business).

Despite such laudable aims, and most changes being very welcome, there has been some controversy in these changes and the practical application of particular measures. In this paper we explore the changes to the rules relating to the application of GST to cross border supplies, and highlight some of the impacts, issues and practical solutions.

2 Overview of the changes

We summarise below the changes to the GST legislation regarding GST and cross border supplies, including what sections of the GST Act were (or will be) impacted, and when the relevant change has or will take effect.

Relevant change	Sections affected	Commencement date	Comments
New 'GST PE' test	New 9-27	1 Oct 2016	See Section 4
'Disconnecting' certain supplies by non-residents	New 9-26	1 Oct 2016	See Section 5
Extending GST-free services exemption	Amending 38-190(3)	1 Oct 2016	See Section 6
Extending GST liability to imported services & digital products	Amending 9-25 and 84	1 July 2017	Netflix tax – Section 7
Extending GST liability to low value imported goods	Amending 84	1 July 2018	Gerry's tax – Section 8
Extending GST to offshore sellers of hotel accommodation	Likely amending 188	1 July 2019	2018 Budget Overview (no detail)
Estimating transport & insurance costs for customs value	New 13-20(4) and (5)	1 Oct 2016	Section 9.1
GST-free treatment of repairs of goods under warranty	New 38-191	1 Oct 2016	section 9.2
Removal of registration requirement for non-residents making only GST-free supplies	Amending 188	1 Oct 2016	Section 9.3

3 History & background

To be subject to GST supplies must be "connected with the indirect tax zone" (previously "connected with Australia" and, given it is an eminently more sensible description, so used hereafter unless quoting legislation). These "connected rules", contained in section 9-25 of the GST Act, historically were broad ranging and brought non-residents into the Australian GST net by causing them to be required to register for GST or making them want to register in order to claim input tax credits for GST they were charged, even where there was little or no overall net GST to be paid.

These issues had been formally identified in consultations that resulted in the Board of Taxation's 2010 Report[1] and in December 2013 the Government announced that it would proceed with a number of recommendations from the Board of Taxation's Report:

- limiting the scope of the "connected with Australia" provisions for certain supplies by non-residents where the supplies are made to entities with a business presence in Australia that are registered for GST (Recommendations 1 and 2, although the scope of Recommendation 2 was narrowed in the 2012-13 Budget announcements);
- limiting the scope of the "connected with Australia" provisions for certain supplies between non-residents of goods that are not acquired for the purpose of an Australian enterprise (Recommendation 3);
- allowing supplies made to a non-resident but provided to registered businesses (or to their employees or office holders) in Australia to be GST free (Recommendation 5);
- allowing supplies of warranty services made to non-residents but provided to Australian warranty holders to be GST free (Recommendation 6);
- removing the requirement for non-residents to register if they only make GST free supplies (Recommendation 9); and
- introducing an alternative option for calculating transport and insurance costs included in the value of taxable importations (Recommendation 12)

Then on Budget night in 2015, the Government announced its first measure seeking to bring previously unconnected supplies into the Australian GST net:

> "Improving the tax system by ensuring the GST applies to digital products and services imported by Australian consumers will help level the playing field between domestic and international suppliers and ensure that all suppliers pay a fair share of tax."[2]

While that Bill did not pass in that year, it was revived following the 2016 Budget, which also introduced the application of GST to low value imported goods:

[1] Application of GST to Cross-Border Transactions – The Board of Taxation (2010).
[2] Budget 2015 Overview - Closing the digital tax loophole

> "low value goods imported by consumers will face the same tax regime as goods that are sourced domestically"[3]

Following consultation, the first round of legislative changes reducing the excessive burden on non-residents, while maintaining the integrity of the tax base, was contained in Schedules 1 and 2 of *Tax and Superannuation Laws Amendment (2016 Measures No. 1) Act 2016*[4].

[3] Budget Paper No. 2 2016-17

[4] No. 52, 2016

4 New 'GST PE' test

4.1 Why change?

The previous test for "carrying on an enterprise in Australia" – now repealed section 9-25(6) - was based on the income tax definition of "permanent establishment" in section 6(1) of the 1936 Act subject to some modifications. However, the actual income tax 'PE' test for most non-residents turned on the relevant double tax treaty and not this definition. The current test – in new section 9-27 – is more consistent with Australia's modern treaty practices and (good news) is a much clearer test.

4.2 The new (better) test

The new 'GST PE' test is set out in section 9-27 as follows:

9-27 When enterprises are "carried on in the indirect tax zone"

(1) An *'enterprise of an entity is carried on in the indirect tax zone if:

(a) the enterprise is *carried on by one or more individuals covered by subsection (3) who 'are in the indirect tax zone; and

(b) any of the following applies:

(i) the enterprise is carried on through a fixed place in the indirect tax zone;

(ii) the enterprise has been carried on through one or more places in the indirect tax zone for more than 183 days in a 12 month period;

(iii) the entity intends to carry on the enterprise through one or more places in the indirect tax zone for more than 183 days in a 12 month period.

(2) …

(3) This subsection covers the following individuals:

(a) if the entity is an individual – that individual;

(b) an employee or *officer of the entity;

(c) an individual who is, or is employed by, an agent of the entity that:

(i) has, and habitually exercises, authority to conclude contracts on behalf of the entity; and

(ii) is not a broker, general commission agent or other agent of independent status that is acting in the ordinary course of the agent's business as such an agent.

4.3 Practical application

The 'GST PE' test is used in a variety of sections in the GST Act, but as the Commissioner explains in *LCR 2016/1: 'GST and carrying on an enterprise in the indirect tax zone (Australia)'*:

Applying the test in section 9-27 to a non-resident, has two main outcomes:

- where the non-resident entity has a GST enterprise presence, the entity will be treated in the same way as a domestic entity, and
- where they do not have a GST enterprise presence, then a non-resident will generally only be subject to GST on supplies to unregistered entities in Australia[5].

Essentially the new 'GST PE' test turns on two issues:

1. whether there is a relevant individual (i.e. per the 9-27(3) list) in Australia; and if so
2. whether the related enterprise is carried on through a fixed place or through a non-fixed place for more than 183 days in a 12 month period (actual or intended).

There is much more certainty regarding these requirements – the concept of individuals being in Australia is very easily determined and the concept of 'fixed place' is based on established 'permanent establishment' principles.

Perhaps the uncertainty that remains regards the "intention" limb of section 9-27(1)(b)(iii) – as the intention to carry on an enterprise in Australia for more than 183 days in a year is sufficient. How do you determine such intention?

The ATO would consider objective documents (such as supply contract terms, employment terms, lease terms and business plans) in order to determine how long an enterprise was intended to be carried on. Interestingly, the ATO also accepts a change in intention will impact the application of the test – which may change the GST treatment of the entity's supplies (refer LCR 2016/1 at paragraphs 65-68).

[5] Essentially an "Australian consumer" - which includes individuals that do not carry on an enterprise, as well as enterprises that are unregistered for GST.

5 'Disconnected' supplies

5.1 Disconnections

To reduce the incidence of non-residents being required to register for GST where no net GST revenue is at stake, some specific carve outs to the "connected with Australia" test were put in place with the introduction of section 9-26. That is, such supplies are now "disconnected from Australia".

Broadly the carve-outs exclude the following supplies from being "connected with Australia" when supplied by a non-resident who is not carrying on an enterprise in Australia (i.e. has no GST PE, as discussed in Section 4):

- Inbound intangible supplies to "Australian-based business recipients";
- Supplies of intangibles between non-residents where the recipient acquires the thing solely for the purpose of an enterprise carried on outside Australia;
- Supplies between non-residents of leased goods; and
- Subsequent leasing of any goods transferred.

These rules were the first to introduce the concept of "Australian-based business recipients", which is defined as:

> (2) An entity is an **Australian-based business recipient** of a supply made to the entity if:
>
> (a) the entity is *registered; and
>
> (b) an *enterprise of the entity is *carried on in the indirect tax zone; and
>
> (c) the entity's acquisition of the thing supplied is not solely of a private or domestic nature.
>
> Note: If a supply is not connected with the indirect tax zone, the Australian-based business recipient may be subject to a reverse charge: see Subdivision 84-A.

We note that there were some 'reverse grandfathering' rules that apply to this measure – requiring supplies to remain connected (and therefore taxable) if they are made under a contract entered into prior to 1 July 2016, for a fixed GST-inclusive price where there has been no review opportunity. Review opportunity is defined in section 13 of the *A New Tax System (Goods and Services Tax Transition) Act 1999.* If such an agreement is in place the parties can agree for the reverse grandfathering not to apply, if they do so in writing. This would then put the onus upon the recipient to operate the reverse charge if applicable.[6]

[6] Act 52 of 2016, Sch 2 item 27

5.2 Supplies of goods installed or assembled in Australia

Previously supplies of goods that were installed or assembled in Australia were treated as being one supply. If title to the goods passed while in Australia then the non-resident supplier would generally have been required to register for and account for GST. Changes to the scope of "connected with Australia" were affected by the insertion of 9-25(6).

Section 9-25(6) allows for the supply of goods and supply of installation/assembly to be treated as two separate supplies for GST purposes. This means that the recipient may be the importer of the goods even where title transfers after the goods have reached Australia and the supplies of the installation/assembly services can be treated as supplies of intangibles by non-residents and may be 'disconnected' (see above).

5.3 The flipside – wider reverse charge

Of course, all of this 'disconnecting' of supplies by non-residents to 'Australian-based business' recipients should be GST neutral – unless the recipient is not entitled to a full input tax credit.

In such cases however, the non-resident's supply now being "disconnected" means such a recipient would have a reverse charge liability under Division 84.

When introducing the cross-border measures in the *2016 Measures No. 1 Act*, the Government also 'beefed up' the Division 84 reverse charge rules in order to ensure there was no leakage from these measures. In particular, Division 84 was amended by:

Section	Impact
84-5(1)(c)	Extending the list of applicable supplies that may be reverse charged to include all intangibles where the recipient is not entitled to full input tax credits, and also low value imported goods not acquired for a creditable purpose where GST had not been applied by the supplier as the recipient had an ABN.
84-13(1)	Deeming a 100% 'extent of consideration' for a reverse charged acquisition from an associate for no consideration.
84-20	Adding market value rules for reverse charge acquisitions from an associate.
84-25	Adding an attribution (timing) rule for reverse charged acquisitions from associates without consideration.
84-30	Deals with how to make adjustments under Division 129.

5.4 Double tax!

Despite the 'disconnected' amendments being all about removing non-residents from the GST regime, for some non-residents that are already registered and remitting GST it is easier to just keep doing so (and we note the 'reverse grandfathering' had such an effect). Further, some ***recipients*** insisted the non-resident suppliers keep charging GST, because the recipients were not set up to identify reverse charge liabilities where necessary. Volunteering to keep paying GST, even when not liable….where is the harm in that? (And Division 142 treats it as actually payable in hindsight.)

Unfortunately, however, such noble behaviour in the financial services sector gives rise to the risk of double GST for any recipient required to reverse charge.

That is, when asked to confirm that a recipient would not be required to reverse charge GST under Division 84 where the supplier has (incorrectly) treated a disconnected supply as taxable, the ATO confirmed the opposite – the recipient remains liable for reversed charged GST even though Division 142 means the GST incorrectly charged by the supplier is treated as payable. Double GST and double credit denial. Ouch!

Taxpayers have been given until 1 October 2018 to stop paying/charging GST on such disconnected supplies.

6 Wider GST-free services exemption

6.1 'Provided to' ABBR okay

Previously, where a supply was ***made to*** a non-resident but also ***provided to*** an entity that was in Australia the non-resident would end up incurring GST on the acquisition due to an exception to the GST-free services exemption in section 38-190(3). This would then generally require the non-resident to register for GST in Australia in order to claim the input tax credit.

The new rule introduced in section 38-190(3) makes supplies to the non-resident provided to an entity in Australia still GST-free where the 'providee' satisfies certain conditions. This change removes the necessity for non-residents to register solely to claim input tax credits on supplies made to them that would usually be revenue neutral anyway.

Subsection 38-190(3) now includes sub-section (c) as follows:

> (3) Without limiting subsection (2) or (2A), a supply covered by item 2 in that table is not GST-free if:
>
> (a) it is a supply under an agreement entered into, whether directly or indirectly, with a *non-resident; and
>
> (b) the supply is provided, or the agreement requires it to be provided, to another entity in the indirect tax zone; and
>
> (c) for a supply other than an *input taxed supply - none of the following applies:
>
> (i) the other entity would be an *Australian-based business recipient of the supply, if the supply had been made to it;
>
> (ii) the other entity is an individual who is provided with the supply as an employee or *officer of an entity that would be an Australian-based business recipient of the supply, if the supply had been made to it; or
>
> (iii) the other entity is an individual who is provided with the supply as an employee or officer of the *recipient, and the recipient's acquisition of the thing is solely for a *creditable purpose and is not a *non-deductible expense.

6.2 Reverse charge?

The extensions to the compulsory reverse charge mechanism in Division 84 – as set out in Section 5.3 above – were also aimed at ensuring there was no revenue leakage from the wider Section 38-190(1) Item 2 exemption.

That is, whilst GST is no longer charged to the non-resident recipient for a supply of services provided to its Australian subsidiary, in theory that Australian subsidiary will have a reverse charge GST liability if it acquired the services not for a fully creditable purpose. The extension of Division 84 to

acquisitions from associates for no consideration, or inadequate consideration, is aimed at ensuring such GST leakage is paid by the Australian subsidiary[7].

However, and as challenged by other notable commentators, is there always necessarily a "supply" by the non-resident to the Australian subsidiary in such circumstances?

[7] Refer paragraph 2.159 of the EM to the 2016 Measures No.1 Act.

7 The 'Netflix tax' – extending GST to imported digital products & services

7.1 The unlevel virtual field

The original GST Act had the very simple test for whether "services" were subject to GST ("services, in this regard, including anything other than goods or real property). If the services were "a thing done in Australia" or "made through an enterprise in Australia", then the services, rights or other intangibles were "connected with Australia". But that's so last century.

Most international providers of digital content, including software, streaming services and subscription services, provided their services from offshore servers and under offshore contracts, even if there were marketing staff or campaigns in Australia, so were not subject to GST. With the massive growth in digital content and consumers downloading more than ever, Australian suppliers were unhappy with the unlevel playing field and the Government realised they were missing out on GST revenues.

Stan and Foxtel had to charge GST, but Netflix and Apple iTunes did not! Something had to change.

7.2 The GST amendments

The introduction of the new rules which took effect from1 July 2017, established a responsibility for overseas suppliers of services/intangibles to establish who their customers in Australia are and account for GST on supplies to them where necessary. This widening of the scope of GST, bringing additional transactions within the scope of GST was effected through changes to the rules dealing with "connected with Australia" by adding new sub-section 9-25(5)(d) and 9-25(7).

Supplies of anything else

(5) A supply of anything other than goods or *real property is connected with the indirect tax zone if:

(a) the thing is done in the indirect tax zone; or

(b) the supplier makes the supply through an *enterprise that the supplier carries on in the indirect tax zone; or

(c) ….

(d) the *'recipient of the supply is an *Australian consumer.

Meaning of "Australian consumer"

(7) An entity is an Australian consumer of a supply made to the entity if:

(a) the entity is an *Australian resident (other than an entity that is an Australian resident solely because the definition of Australia in the *ITAA 1997 includes the external Territories); and

(b) the entity:

(i) is not *registered; or

(ii) if the entity is registered-the entity does not acquire the thing supplied solely or partly for the purpose of an *enterprise that the entity *carries on.

In particular, amendments to 9-25(5) extends the inclusion of connected to Australia to supplies of anything (other than goods or real property) to include supplies made to an Australian consumer. The new 9-25(7) then defines the meaning of "Australian consumer". This definition seeks to identify consumers, or end purchasers, for whom the GST charged would be net revenue to the Government. The definition captures "Australian residents" (as defined for income tax purposes but excluding residents that are included solely because the definition of Australia in the ITAA 1997 includes the external Territories) where the Australian resident is either not registered for GST or, if registered is acquiring the services/intangibles other than for the purpose of carrying on its enterprise.

Essentially, this means that the GST now applies where overseas suppliers provide services/intangibles to Australian residents who are not registered for GST or who are registered but not acquiring the service/intangible for the purpose of their business.

Recipients of services who are registered for GST and acquire the services/intangibles for at least a partly business purpose will not fall within the scope, although they should have to recognise a compulsory reverse charge liability under section 84 if they would not have a full entitlement to input tax credits.

7.3 Simplified GST registration for non-resident businesses

It all very well (attempting to) impose GST liabilities on non-resident suppliers – but you have to register them.

As many of us know, it can be difficult and time consuming for non-resident businesses to register for GST. The identification criteria can be particularly onerous with directors being required to have their passports or other official identity documents authenticated at an Australian Embassy. To facilitate compliance by non-resident businesses, and because many of them will not have any input tax credits to claim, the ATO introduced a new simplified GST registration on 26 June 2017, just before the "Netflix tax" took effect so that non-resident businesses can now register for GST (and pay their liabilities) without going through the formal identification processes usually required for GST registration.

However, the new simplified registration comes with some restrictions:

- It does not give the non-resident business an ABN, instead an ATO reference number is allocated to the business; and
- The non-resident business cannot claim input tax credits.

8 Gerry's tax – Extending GST to low value imported goods

8.1 Gerry's complaint

Australian retailers, very publically lead by Gerry Harvey of Harvey Norman[8], have for years complained that the $1,000 threshold under which goods imported into Australia are not subject to GST on importation is far too low[9] and created "an unlevel playing field" – shoppers could buy goods on-line from overseas and not pay any GST. And Australian's love their on-line shopping – so Treasury could also see the potentially large, and growing, hole in the consumption-tax base.

However, Government reviews consistently found that the cost for Customs of having to collect GST at the time of importation for goods under $1,000 would outweigh the revenue collected[10] (and annoy purchasers [read: voters] whose deliveries would be delayed) … so the Government decided not to have Customs collect the GST, and introduced a "vendor registration" model for "low value imported goods" (**LVIG**) in *Treasury Laws Amendment (GST Law Value Goods) Act 2017*. The measure was originally supposed to start from 1 July 2017 but the Senate Committee found that due process has not been followed, and demanded a delay in the start date (to 1 July 2018) and a review by the Productivity Commission.

8.2 The GST amendments

The primary aim of the LVIG Amendment is to extend the meaning of a "taxable supply" for Australian GST purposes to an "offshore supply of low value goods", so as to make *supplies* (not importations!) of such goods subject to GST from 1 July 2018.

The LVIG Amendment inserts Subdivision 84-C into the GST Act, which deals with matters including the definition of an 'offshore supply of low value goods', which entity is liable for GST on such a supply, and the necessary exceptions to prevent double taxation under the existing taxable importation regime for goods over AUD$ 1,000.

These legislative changes mean that, similarly to the "Netflix tax", offshore suppliers of the goods will be required to register for Australian GST if their sales of LVIG exceed the registration threshold (i.e. more than $75,000 per annum). Further, new sections 84-77 to 84-81 is aimed at requiring offshore

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[8] "Mr Harvey said local retailers were at an ''unfair disadvantage'' in competing against goods bought from overseas." - https://www.smh.com.au/business/gerry-harvey-calls-for-gst-on-online-purchases-20101123-1850x.html
"I can't understand why anyone would think that it was morally OK to dodge GST by buying stuff overseas – that that was fine" - http://www.afr.com/news/politics/gerry-harvey-accuses-australia-post-of-aiding-gst-avoidance-20141111-11koxq
"All we have to do is get onto the top retailers overseas and get them to put the GST on [purchases] and they will then remit it to the government," - http://www.afr.com/business/retail/gerry-harvey-urges-gst-on-20-imports-20150722-gii0e3

[9] Similar thresholds in other jurisdictions are £39 for gifts and £15 for other goods (UK), CHF 62.50 (for standard rated items) (AUD 83) and CHF 200 (for reduced rate items) (Switzerland)

[10] 2011 Productivity Commission Report

operators of electronic distribution platforms (such as Amazon and eBay) to collect and remit GST on all supplies of 'low value goods' made through them to consumers in Australia, rather than the actual vendor.

8.3 The controversies and practical issues

The LVIG Amendment was controversial before it was even drafted, given the numerous reviews to determine whether the revenue would outweigh the costs, and was referred to the Productivity Commission post legislation but pre-commencement to determine whether "the legislated model is the best available collection model to extend the GST to" LVIG.

The Productivity Commission found[11]:

- "the revenue collected is likely to be modest", with the Government forecasting only 25% of the estimated GST at stake being collected in the first three years[12];
- foreign suppliers will incur significant compliance costs – expect prices to rise 14% (the 10% GST plus 4% for compliance costs)[13];
- Australia being the first jurisdiction to implement a vendor-registration model that covers 'electronic distribution platforms' may encounter some trade disputes and enforcement problems[14]; but
- "Given the decision to collect GST on low value imported goods and the current limitations of alternatives, the legislated model is the most feasible at this time"[15].

Controversies aside, the practical issues for non-resident vendors (and EDPs and redeliverers) caught up in this about-to-commence regime will be myriad, including:

1. Working out whether "a supply" (which may be multiple goods) has a "customs value" under $1,000 AUD (based on the price and exchange rate when the price is first agreed) or whether the vendor has a reasonable belief based on reasonable steps it will be over $1,000. This is important because if the goods value is over $1,000, then the vendor is not liable for GST on the sale, but the importer is liable for GST on importation.
2. Finding out (and keeping records) of whether the Australian purchaser is a "consumer" or taking reasonable steps and having a reasonable belief that they are not a consumer.
3. Overseas businesses will be required to track their turnover for sales of goods under $1,000 being made to Australian consumers.
4. Where an overseas supplier sells good through and EDP and directly, they may be subject to GST through the EDP but not if sold directly from the supplier (if the supplier is

[11] 'Collection Models for GST on Law Value Imported Goods Productivity Commission, No 86, 31 October 2017
[12] Pages 3, 6 and 13
[13] Pages 13, 37-38, 56-57, and 59-60
[14] Pages 7, 27, 35-36, 39-40, 44-50, and 63-65
[15] Page 13

below the threshold). It is not clear whether the sales where the GST is accounted for through the EDP also count towards the GST registration threshold for the individual business.

5. EDPs will have issues trying to establish whether they or the suppliers using their website to make sales will be responsible for the GST (and, if so, how to collect and pay the GST).

6. Small overseas suppliers who would not be liable to register for GST will be at a disadvantage when compared to a similar Australian-based business if each uses an EDP to sell their goods.

And then there is the practical issue for the ATO… how to collect GST from entities that are not in the jurisdiction.

9 Other 'GST cross border' changes

9.1 Estimating international transport and insurance costs for customs value

Another simplification measure for cross-border GST was also legislated in 2016 - allowing certain importers of goods to estimate the value of the international transport and insurance of goods being brought to Australia at 10% of the customs value for the purposes of determining the value for taxable importations. Industry bodies had requested this simplification to reduce the compliance cost of having to find actual amounts in each instance following the changes to section 38-355 regarding the GST-free treatment of international transport of goods.

9.2 GST-free treatment for repairs of goods under warranty

The cross-border amendments also extended GST-free treatment to the supply of repairs (etc.) under warranty to a non-resident recipient (i.e. the manufacturer) as well as related goods.

New section 38-191 allows repairs of goods under warranty to be GST-free where the payment for the warranty was included in the price for the goods when provided by a non-resident not carrying on an enterprise in Australia.

9.3 Removal of registration requirements for non-residents making only GST-free supplies

Previously non-residents would have been required to register for GST on the basis of the GST-free supplies they made where the value of those supplies exceeded the $75,000 per annum registration threshold. That is, even when such non-residents would never pay GST, as all their supplies would be GST-free, they were still "required to be registered" under the GST Act.

The insertion of section 188-15(3)(d) means that GST-free supplies made by non-residents that do not make the supply through an enterprise carried on in Australia (i.e. not through a 'GST PE') can be disregarded when calculating the GST turnover for registration threshold purposes.

Common sense.

