What the GST means for telecoms

Paper trails and cost savings are just two of the consequences of the implementation of the GST on the telecommunications industry

A broad-based indirect tax on every transaction of the telecommunications industry will be imposed for the first time in Australia by the *A New Tax System (Goods and Services) Tax Act 1999*.

Hence, service providers will have to review every transaction with both suppliers and customers to ensure the correct treatment of the GST on the transaction. This complements the already highly regulated telecommunications industry which reports to the Australian Consumer and Competition Commission (ACCC) and the Australian Communications Authority.

But the major impacts of the GST on the telecommunications industry concern:

- capital infrastructure projects;
- systems changes;
- recipient created invoices and adjustments;
- supplies that cover the transitional period;
- product definitions; and
- prepaid products.

Capital infrastructure projects

The telecommunications industry is one which is characterised by the procurement of high cost capital infrastructure which is used by telecommunications companies to provide services.

An effective rate of sales tax of between 8% and 22% is currently embedded in purchases of infrastructure goods. Generally, these involve the purchase of installation supplies, software and goods.

Under a GST regime this sales tax component will disappear. So it is important that telcos initiate and instigate a "just in time" inventory system to ensure that these savings are achieved.

Infrastructure projects have a long lead-time and supplies are often purchased from overseas. This requires careful planning to ensure that sales tax savings are realised and passed on to the final consumer.

Systems changes

Telcos often supply a mix of products, for example, local telephony, long distance telephony, international telephony, mobile phone services, Internet and cable television. Supplies are made to consumers and business and small office home office (SOHO) customers which may involve different billing systems.

An important aspect of the implementation of the GST is to make all billing systems GST compliant to ensure only the correct amount of GST is collected from customers and remitted to the Australian Taxation Office (ATO). It is also important to capture the input tax credit. This too necessitates changes.

Invoicing

Telcos, unlike other suppliers and purchasers, are involved in a series of transactions, for example, commissions which may be supplies from other persons to the telcos, post-invoice discounts, vouchers, refunds for outage and discounts payable to third parties.

Under the GST it will be necessary to create a tax invoice for every taxable supply to business. In the past, the telcos have operated on a netting off basis where only the net amount is payable to the creditor. Under a GST regime, the various supplies from different parties will separately require a tax invoice thereby creating a separate liability for each supplier.

In addition, the legislation has no provision for electronic invoices. This will create a large paper trail in an industry which operates in a paperless environment.

The transition

Many telcos are now signing up customers for periods of 12, 18 or 24 months. These supplies involve the supply of goods and services. Invariably, the telco will pay sales tax on goods which are going to be used over the period of the contract which spans the GST implementation date. In addition, GST will be payable on monthly service charges and call charges.

This is a case of the ATO double dipping - it is getting the full amount of sales tax on a handset and the full amount of GST on service plans which may contain a component for the recovery of a subsidised handset price.

Long-term contracts

For agreements that will span July 1, 2000, or are entered into after that date, it is important to note that:

- supplies made under an arrangement that spans July 1, 2000 may be subject to GST, provided the supply is not input taxed or GST-free;
- there is no right conferred upon a supplier by the GST legislation to increase an agreed fixed contract price by reference to the supplier's GST liability.

Accordingly, if no right to vary the contract price to allow for GST arises under the contract, the supplier must account for GST on any taxable supplies out of the existing contract price. For this reason, it is critical that an effective GST escalation clause is inserted in all supply contracts.

Further, where telcos enter into procurement contracts - contracts for the acquisition of goods or services - it will be equally important that they ensure that any GST clauses in those contracts take into account the net effect of the indirect tax reform. That is, that the GST clauses allow for the amount of consideration to be reduced to take into account the abolition of any state or federal taxes and any consequent reductions in industry costs.

The GST legislation does provide special transitional rules that will, in certain limited circumstances, deem supplies to be GST-free for a fixed period of time if there is no opportunity for the supplier to change the consideration on account of the imposition of GST or to conduct a general review of the consideration. But suppliers should exercise caution before treating any post June 30, 2000 supplies as GST-free pursuant to the special transitional rules.

ACCC issues

The ACCC will focus on changes in prices resulting from the tax changes during the GST transition period. It is expected that there will be changes in prices but suppliers must be able to justify any increases (and in some cases a failure to adequately decrease prices). Changes in prices must reflect the net effect of the tax changes introduced by the GST Act.

Specific ammendments to the *Trade Practices Act* commenced operation on July 9, 1999. In light of these ammendments, the ACCC issued guidelines on July 13, 1999 to explain the application of the new provisions. If a corporation is found guilty of price exploitation, the penalties can be as high as $10 million. Additionally, the ACCC has power to require the overpaid price to be refunded where practicable.

Generally, price changes in respect of cost changes resulting from the indirect tax reform process should only occur when the cost changes have actually occurred. That is, prices should reflect only actual, not anticipated, price increases although it should be noted that the ACCC has acknowledged that this general rule may need to be qualified in some special cases. This may occur where telcos enter into long-term supply contract and there are reasonable grounds to expect that price increases will occur during the course of the agreement.

Product classification

The GST Act provides GST-free status for supplies to recipients who are not in Australia when the thing supplied is done and where the effective use or enjoyment is overseas.

Telcos provide many supplies to recipients when they are overseas, for example, Internet roaming, mobile roaming and supplies to business customers overseas. In the absence of rulings there is a degree of uncertainty about the classification of the many products supplied.

Prepaid products

Many prepaid products such as mobile cards and phone cards will be sold before the implementation of GST. Due to the GST transitional rules, the value of supplies to be made after July 1, 2000 will be subject to GST. As a consequence, telcos will be required to account for GST on one-eleventh of the unused call value, and it will be virtually impossible to recover that charge from the customer.

Pricing

Many products from telcos such as mobile phones are pitched at entry points like $10, $20 and $30. Under a GST regime, these price points could be expected to increase by up to 10%.

The ACCC has said that there is an obligation on the telcos to advise customers signing up today that the price of some monthly service plans may increase from July 1, 2000 due to the implementation of the GST.

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