Chapter 1
Introduction

1.1 On 23 March 2017, the Senate referred the provisions of the Treasury Laws Amendment (GST Low Value Goods) Bill 2017 (the bill) to the Economics Legislation Committee for inquiry and report by 9 May 2017.[1]

Conduct of the inquiry

1.2 The committee advertised the inquiry on its website. It also wrote to relevant stakeholders and interested parties inviting submissions by 10 April 2017. The committee received 34 submissions, which are listed at Appendix 1.

1.3 The committee held a public hearing in Melbourne on 21 April 2017. The names of witnesses who appeared at the hearing are at Appendix 2.

1.4 The committee thanks all individuals and organisations that contributed to the inquiry.

1.5 Hansard references throughout this document relate to the Proof Hansard. Please note that page numbering may differ between the proof and final Hansard.

Overview of the bill

1.6 At present, goods with a value of less than $1000 are exempted from Goods and Services Tax (GST), when imported directly by consumers into Australia. The bill seeks to apply GST to those goods, with effect from 1 July 2017. This would, on the face of it, bring their tax treatment into line with goods supplied locally.

1.7 The bill applies GST by requiring the suppliers of those goods, including vendors, freight forwarders and electronic distribution platforms, to register for GST, and to remit the appropriate tax to the Australian Taxation Office (ATO).

1.8 The measure was announced in the 2016–17 Budget. It is a complementary measure to the extension of GST to digital products and other imported services, which was announced in the 2015–16 Budget and which will commence on 1 July 2017.[2]

Financial impact

1.9 The measure enacted by the bill is estimated to result in an increase in GST revenue over the forward estimates of $300 million.[3]

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1 *Journals of the Senate No. 34*, 23 March 2017, p. 1148.

2 *Tax and Superannuation Laws Amendment (2016 Measures No. 1) Act 2016*, received royal assent 10 May 2016.

3 Explanatory Memorandum, p. 3.

Background and consultation

1.10 The low value threshold, set in 1985 at $1000 and not indexed, is prescribed under the *Customs Act 1901*.[4] It sets a level below which imported goods (with some exceptions such as alcohol and tobacco) are exempt from a number of processing and tax requirements, including GST.

1.11 This creates a price advantage for goods imported directly from overseas retailers over goods supplied locally, since the locally supplied goods incur the GST.

1.12 With the advent of online shopping, many local bricks-and-mortar retailers faced a new competitive threat. Meanwhile, online shopping made purchasing from overseas through sites like Amazon.com much easier, so consumers began importing more goods directly. This led retailers to claim that the failure to levy GST on low value imports was putting them at a significant competitive disadvantage. For example, the National Retail Association's submission to the 2013 National Commission of Audit was entitled *Protecting the Integrity of the GST System*, and dealt almost exclusively with this issue.[5]

1.13 The following figures are not authoritative. They are included merely to give an indication of the order of magnitude of the changes involved.

1.14 While precise data is not available, Australian Bureau of Statistics (ABS) figures suggest that retail sales have increased by about 11 per cent since 2014.[6] Online sales appear to have increased by nearly 40 per cent since 2014.[7] They now represent approximately 7 per cent of retail sales; but the rate of increase appears to be slowing.[8] The Australian Bureau of Statistics increased its 'low value threshold adjustment' (by which it adjusts its estimate of total imports for the national accounts) by 13 per cent between 2013–14 and 2015–16.[9] It is now $7.6 billion, compared with a total value of annual retail sales of about $300 billion.

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4 Customs By-Law No. 1305011, Schedule 4, Item 26.

5 National Retail Association, *Protecting the Integrity of the GST System: submission to the National Commission of Audit*, November 2013, http://www.ncoa.gov.au/docs/submission-national-retail-association.pdf (accessed 5 April 2017).

6 Calculated from February figures for 2014 and 2017 in Australian Bureau of Statistics (ABS), *Retail Trade, Australia, February 2017*, cat no.8501.0.

7 Calculated from National Australia Bank (NAB), *NAB Online Retail Sales Index*, Monthly Report, January 2017, http://business.nab.com.au/wp-content/uploads/2017/03/norsi-february-2017.pdf (accessed 5 April 2017) and NAB figure for 2014 quoted in T Dale, *Online shopping and potential changes to the low value threshold: costs and benefits for government, consumers and retailers*, Parliamentary Library, 27 October 2014.

8 NAB, *NAB Online Retail Sales Index*, Monthly Report, January 2017.

9 Calculated from the Financial Year Situation section of the Analysis and Comments in ABS, *Balance of Payments and International Investment Position, June 2016*, cat no. 5302.0 and ABS, *International Trade in Goods and Services, Australia, 2014, Technical Note: Low Value Threshold UPDATE*, cat. no. 5368.0.

1.15 Thus, while online sales overall have increased rapidly, the proportion that are low value imports is actually modest. However, it is plausible that low value imports will continue to increase, especially as the rate of increase in the last few years was probably dampened by the depreciation of the Australian dollar.

1.16 The need to protect the GST base and the desirability of a level playing field for Australian based retailers have established a case for extending GST to low value imports.

1.17 Australia's threshold of $1000 is relatively high: thresholds for GST or value-added tax (VAT) in similar countries are C$20 for personal imports and C$60 for gifts in Canada, £15 for personal imports and £39 for gifts in the United Kingdom, and NZ$60 in New Zealand. The United States threshold appears to be US$800 for customs duty; note that consumption taxes are more complex, as they are levied by individual states.[10]

1.18 Other countries are looking at the treatment of low value items. The OECD, after many years of work, published *International VAT/GST Guidelines* which dealt with the issue in November 2015.[11] Since then:

> Most OECD countries have implemented or announced measures to collect the VAT on the ever-rising volume of online sales by offshore sellers in line with the International VAT/GST Guidelines and the [OECD Base Erosion and Profit Shifting] Action 1 Report on Addressing the Tax Challenges of the Digital Economy.[12]

1.19 There have been several analyses of the issue in Australia. The Productivity Commission (PC) examined it in its report on the retail industry in 2011. It noted that there were advantages of tax neutrality in collecting GST and any relevant duty on all imports. It looked at various changes to the low value threshold including complete abolition of it. Its discussion envisaged that collection of the GST on low value imports would involve separate handling of each parcel. The PC concluded that the advantages of tax neutrality and any increase in revenue would be far outweighed by

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10 Canada Border Services Agency, *Determining duty and taxes owed*, http://www.cbsa-asfc.gc.ca/import/courier/menu-eng.html; UK Government, *Tax and customs for goods sent from abroad*, https://www.gov.uk/goods-sent-from-abroad/tax-and-duty; New Zealand Customs Service, *Internet Shopping*, http://www.customs.govt.nz/features/internetshopping/Pages/default.aspx ; US Customs and Border Protection, *Internet purchases: your responsibility and liability* https://www.cbp.gov/trade/basic-import-export/internet-purchases (all accessed 27 April 2017).

11 Organisation for Economic Co-operation and Development (OECD), *International VAT/GST Guidelines*, November 2015, http://www.oecd-ilibrary.org/docserver/download/2317031e.pdf?expires=1493269825&id=id&accname=guest&checksum=A843BC3ED207E0B04FA9551AE4D3F54B (accessed 27 April 2017).

12 OECD, *Consumption Tax Trends 2016*, p. 12, http://www.oecd-ilibrary.org/docserver/download/2316351e.pdf?expires=1493265901&id=id&accname=ocid194681&checksum=290E38723DC70AF5407030E359C164B1 (accessed 27 April 2017).

the costs of collection. It suggested that further examination of the handling of parcels was needed before a solution could be found.[13]

1.20 In response to the PC, the Government established the Low Value Parcel Processing Taskforce. It recommended, among other things, that there no longer be a single threshold for customs and GST; that the GST threshold be lowered (but the Taskforce did not recommend a specific value); and that simplified collection methods, not including transport costs, be devised. It also recommended (Recommendation 4.3):

> To streamline revenue collection, legislative arrangements could be amended to enable and encourage appropriately regulated overseas suppliers to collect GST from purchasers of low value goods at the time of purchase.[14]

1.21 The Taskforce envisaged a gradual introduction of any changes. It saw the possibilities of using electronic data provided by suppliers, but still appeared to be thinking in terms of individual parcels.

1.22 In the 2015–16 Budget, the Government announced a measure to collect GST on cross-border supplies of digital products and services. Legislation has been passed and the change will take effect from 1 July 2017.

1.23 A Commonwealth-State Leaders Retreat agreed in July 2015 to extend the GST to cross-border supplies of low value goods. The Commonwealth put forward its proposed way of doing this:

> At the meeting the Commonwealth Treasurer put forward a proposal that relies on a vendor registration model as a method of collecting the GST for the states and territories. As goods would not be stopped at the border, administering a vendor registration model would have a relatively low cost.
>
> The Commonwealth also recommended that the existing threshold for the GST liability be reduced to zero, in line with the GST collection for other products and services. The states and territories have unanimously agreed to this in principle.[15]

1.24 In November 2016, the Government released an exposure draft, explanatory memorandum and further information for the proposed legislation.[16] The responses to the consultation documents have not been published.

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13 Productivity Commission, *Economic structure and performance of the Australian retail industry*, Canberra, 2011, pp. xxxiii–xxxviii.

14 Low Value Parcel Processing Taskforce *Final Report*, The Treasury, Canberra, 6 September 2012, pp. 14–19.

15 J B Hockey (Treasurer), *Statement: Council on Federal Financial Relations Tax Reform Workshop*, media release, 21 August 2015, http://jbh.ministers.treasury.gov.au/media-release/075-2015/ (accessed 7 April 2017).

16 Available at The Treasury, *Applying GST to low value goods imported by consumers*, 4 November 2016, https://treasury.gov.au/ConsultationsandReviews/Consultations/2016/Applying-GST-to-low-value-goods-imported-by-consumers (accessed 7 April 2017).

1.25 Several submitters and witnesses to the inquiry have complained that consultation has been inadequate. Some have asserted that they were not aware of the specific model that the Government was adopting until the publication of the exposure draft in November 2016. This statement by Ms Kristen Foster of eBay is more or less typical:

> We have been watching and monitoring this issue since the COAG decision of 2015… [It] was based on a low value threshold and moving it to zero. It did not come up with a policy option of an electronic distribution platform model or a collection model whereby marketplaces would need to collect. The vendor registration model was announced in the federal budget last year in a couple of sentences. When we read that we thought: 'vendor, seller; not eBay'. When we saw the draft bill at the end of last year we saw that there were electronic distribution platforms included in that, so we had a few questions around that.
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> To be very honest and very frank with the committee, the first we actually saw of the final bill was when it was introduced into the House of Representatives.[17]

1.26 The bill simplifies some of the issues by requiring suppliers, rather than customers, to be responsible for the GST, as foreshadowed by the Treasurer. Suppliers with sales into Australia of over $75,000 will be required to register for GST and remit the tax to the Australian Taxation Office. In many cases the suppliers are not the vendors; rather, they are parcel delivery companies or electronic trading platforms.

1.27 Unusually, the bill and explanatory memorandum are not accompanied by a Regulation Impact Statement. An official of the Department of the Treasury conceded that it had been found to be a breach of the Office of Best Practice Regulation's guidelines. She explained that there had been a great deal of preliminary work on the issue.[18] Another witness, however, pointed out that most of that work had concluded that the measure was not worth pursuing.[19]

Content of the bill

1.28 The *A New Tax System (Goods and Services Tax) Act 1999* defines as taxable supplies goods which are 'connected to the indirect tax zone (ITZ)' (which roughly means Australia, excluding the external territories). At present, goods which are purchased overseas by an Australian consumer are not 'connected to the ITZ'.

1.29 At present, goods with a value at the time of purchase which is below the low value threshold defined in the Customs Act are specified as non-taxable.

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17 Ms Kristen Foster, Director, Government Relations, Australia, New Zealand, Japan and South East Asia, eBay, *Committee Hansard*, 21 April 2017, p. 25.

18 Mrs Marisa Purvis-Smith, Division Head, Individuals and Indirect Tax Division, The Treasury, *Committee Hansard*, 21 April 2017, pp. 5–6.

19 Ms Erin Turner, Acting Director, Content, Campaigns and Communications, Choice, *Committee Hansard*, 21 April 2017, p. 30.

1.30 The bill does not change the low value threshold specified in the Customs Act.

1.31 The bill works by defining these goods that were previously excluded (that is, goods supplied direct to consumers from offshore and valued at $1000 or less) as supplies of goods 'connected with the ITZ' (and therefore subject to GST) if they are brought to the ITZ with the assistance of the supplier.[20]

1.32 The bill further defines 'redeliverers' as suppliers. They include entities which provide offshore mail or shopping services in relation to the goods, take delivery or arrange the delivery outside the ITZ, and assist the recipient to bring the goods to the ITZ. The operator of an electronic distribution platform through which a supply is made is also a supplier.[21]

1.33 An entity is treated as a supplier only if it has some involvement in the delivery of the goods, as part of making the supply. This is intended to ensure that the entity is liable only when it has knowledge and involvement that make it appropriate.[22]

1.34 Suppliers who supply goods in the ITZ valued at more than $75,000 (or $150,000 for non-profit entities), which is the same as the Australian threshold, are liable to register for GST.

1.35 Goods purchased overseas and brought to Australia by the consumer are not to be taxed. But goods purchased overseas where the vendor arranges for them to be delivered to Australia will be taxed.[23]

1.36 Because of the way the change is to be made, low value goods will still be treated differently from goods whose value is above the threshold.

1.37 The bill makes provision for valuations in the light of changing exchange rates and bundling of goods of various values. These are described in detail in the Explanatory Memorandum.[24]

1.38 The new rules apply only to delivery of goods to consumers. Supplies to businesses are unaffected. Suppliers (including redeliverers) are expected to collect the ABN of a recipient that is claiming to be a business.[25] There is a protection for a supplier who, after seeking information, believes that the goods are a taxable importation, that is, they are not covered by the current bill. There are also further mechanisms to prevent double taxation.[26]

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20 Explanatory Memorandum, pp. 5, 7.

21 Explanatory Memorandum, pp. 9, 10.

22 Explanatory Memorandum, p. 13.

23 Explanatory Memorandum, p. 15.

24 Explanatory Memorandum, pp. 16–19.

25 Explanatory Memorandum, pp. 19–23.

26 Explanatory Memorandum, pp. 23–28.

1.39 Redeliverers become liable for the GST because they assist in delivery of the goods into the ITZ. This broadens the application of the GST, by catching entities who are not vendors. How the order is made—online, or in person overseas—is not relevant.[27]

1.40 The logic is that an overseas supplier may deliver goods outside the ITZ to an entity which will assist in their delivery to Australia. In this case the supplier has no connection with Australia and it would not be reasonable to apply GST to the supplier. Rather, the redeliverer who provides offshore mail or shopping services and assists in arranging delivery of the goods will be connected with the ITZ and liable for GST (if their supplies into Australia exceed the $75,000 threshold).[28]

1.41 To avoid paying GST on goods which have already been taxed, the redeliverer will be required to supply the ABN or vendor registration number of the supplier.[29]

1.42 A supplier delivering goods to an entity that is registered for the GST will not charge GST. However, the goods could be for consumption rather than for use in the business that is registered for GST. In that case, the recipient of the goods is liable for GST, which is 'reverse charged'.[30]

1.43 Electronic distribution platforms such as Ebay were brought into the GST system when it was applied to digital services. This bill shifts liability for GST from individual suppliers to the operators of the platform, because:

> The operators of electronic distribution platforms are better placed to comply with GST obligations because they are generally larger and better resourced entities than individual suppliers.[31]

1.44 The electronic distribution platform may be liable even though the actual supplier delivers the goods to Australia.[32]

1.45 There are simplified registration arrangements available to entities with no or limited presence in Australia. Again, this is similar to the arrangements for provision of digital products.[33]

1.46 Previously, international transport services were GST free on the basis that the cost of the transport would be included in the value of the goods for purposes of GST.

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27 Explanatory Memorandum, pp. 14–15.

28 Explanatory Memorandum, pp. 28–31.

29 Explanatory Memorandum, p. 26.

30 Explanatory Memorandum, pp. 34–36.

31 Explanatory Memorandum, p. 36.

32 Explanatory Memorandum, p. 37, para 1.127.

33 Explanatory Memorandum, p. 40.

Where goods were of low value, transport costs were thus not taxed. Schedule 1 to the bill extends GST to transport services in relation to low value items.[34]

34 Explanatory Memorandum, pp. 46–47.