



Committee Secretary
Economics Legislation Committee
Department of the Senate
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10 April 2017

Dear Committee Secretary

Re: Treasury Laws Amendment (GST Low Value Goods) Bill 2017

About eBay

eBay is an online third party marketplace. It allows sellers to put their products for sale online and on a mobile platform reaching a worldwide audience of buyers. More than 167 million¹ people around the world shop on eBay in a trusted environment.

eBay is a consumer champion, providing a trusted online and mobile shopping environment, including world-class consumer protection, money back guarantee, seller feedback and access for rural and regional consumers with the opportunity to buy goods they are not able to source locally.

Our platform is also particularly beneficial for small businesses because we provide a highly affordable, easily accessible, risk-free, fast gateway to global sales. Exporters grow faster, are less likely to go out of business, and twice as likely to outperform their domestic market when selling on eBay.

Some 30,000 small to medium sized Australian businesses operate on eBay every day. It gives them a world of opportunity to sell their products locally as well as to established and emerging markets abroad.

Currently, fewer than 5% of Australian businesses export, compared with 28% in the UK, 16% in Germany, 15% in France and 4% in the US. In contrast, approximately 75% of Australian businesses selling on eBay export to overseas markets. For nearly a quarter of regional businesses this represents more than 40% of their sales.

eBay's presence in the market is a benefit for the Australian economy, encouraging exports, innovation, resilience and growth. Refer to **Appendix A**, which is a new Deloitte Access Economics paper commissioned by eBay in 2017 on the benefits of platforms to small business and the Australian economy.

Major retailers like Myer, Target and The Good Guys use eBay, alongside mum and dad entrepreneurs, medium and microbusinesses who all compete worldwide. These Australian sellers charge and remit GST on their Australian sales just like any other Australian business, whether they are online, on the main/high street, or both. These same Australian sellers benefit from low value thresholds abroad when they export.

¹ <https://www.ebayinc.com/stories/press-room/#assets-fact-sheets-infographics>



Last but not least, eBay cooperates pro-actively with a host of Australian authorities, including but not limited to the ACCC and law enforcement, in the fight against online fraud and other illegal activities, thus contributing to a safe trading environment online.

Treasury Laws Amendment (GST Low Value Goods) Bill 2017 is counterproductive

The proposed legislation is complex, inconsistent, unworkable and will harm Australian consumers in many ways. It is open to abuse by foreign companies, it exposes Australians to the risk of double taxation, it will reduce price competition and choice for all Australians who shop online, and it will drive online trade away from trusted, cooperating online marketplaces to the dark parts of Internet.

THE BILL IS BASED ON FIVE SIGNIFICANT MISCONCEPTIONS:

Misconception 1: **This Bill will generate significant GST income** – On the contrary, the way this Bill is drafted will drive overseas sellers off the kind of cooperative large-scale, Australia-based marketplace platforms onto the opaque parts of the Internet and search engines, where compliance will be almost impossible to enforce.

Misconception 2: **Online marketplaces are sellers and equipped to handle the complexity of GST collection on international cross border sales** – This is wrong and completely ignores the way third party online marketplaces function. Compliance with GST collection and remittance rules will require a very significant investment of human and financial resources in product development and administration.

Misconception 3: **Online marketplaces will comply** – Considering the likely disproportionate costs of compliance most marketplaces are in fact expected to at least require an extended period to develop the necessary systems in order to be able to comply, which will span over several years. However, a far more likely scenario is that the costs of compliance for one single country will outway any possible benefits for these internationally operating marketplaces and it will, therefore, be less harmful to block imports altogether.

Misconception 4: **Small overseas sellers will continue selling via online marketplaces, even though they will immediately lose the benefit of the AU\$75,000 threshold if they do so** – The effect of the Bill is that overseas sellers selling via marketplaces will be discriminated compared to those who sell directly to Australian consumers, because they will not be able to benefit from the AU\$75,000 threshold. Beside the fact that this represents a completely unwarranted discrimination, if online marketplaces were to be forced to comply, these sellers will have no incentive whatsoever to continue using these marketplaces. Instead they will massively turn to other channels to serve Australian consumers (see above under Misconception 1) and will thus be largely beyond reach of the Australian tax authorities.

Misconception 5: **This GST regime will be enforceable** – In light of the points made above, the likelihood of ‘easy’ enforcement via marketplaces is extremely slim. This brings us to the individual overseas seller. The legislation asks of these foreign businesses to keep a rolling calculation of their sales to Australian buyers, and if those sales exceed AUD\$75,000 per annum, to then register with a foreign taxation authority. They are asked to discern if their buyers are Australian, and charge them ten per cent more, but only when the value of the transaction is below AUD\$1,000. The legislation relies on foreign businesses investing in systems to enable them to levy taxes, in specific circumstances, and voluntarily send money to a foreign government when there is no effective way to force them to do so.



Third party marketplaces – like eBay – are not sellers

The drafters of the legislation appear to have recognised that the above proposal would be largely ineffective in raising tax and so propose a different solution for online marketplace sales.

The legislation potentially deems eBay to be a “seller” and an “*electronic distribution platform*”. eBay is neither.

This is a fundamental misunderstanding of the marketplace: eBay is not a seller. eBay does not own the goods, does not handle payments and it does not distribute anything. eBay is a third party online marketplace that simply connects buyers and sellers. Perhaps there is confusion with other online marketplace style business models. However, in those cases the online ‘marketplace’ is actually the real seller. Indeed, such first party ‘marketplaces’ are no different to a retail shop, they hold and ship the goods, have large warehouses with stock and they handle the payments. eBay does none of this.

In fact a report by Deloitte Access Economics in 2017 found that: *“for this proposed regulation to be effective, it must be appropriately targeted. For example, if platforms do not hold or process the goods or services, or process transactions, they may be unable to collect this GST on behalf of the government under their current business model. Such responsibilities may limit the business’ effectiveness” (refer Appendix A).*

In reality, buyers use the eBay search engine to find goods and choose which seller to transact with. Buyers and sellers communicate directly with each other and often negotiate prices between themselves. Deeming eBay to be a seller is a fiction designed by the Government to give the impression of raising revenue.

Haste

The legislation has been copied from the intangible goods legislation (“Netflix tax”) and hastily modified. The distribution of software or an application by its owner or licensed distributor is quite different to the purchase of a physical good in another country and the incompatibilities should have become increasingly apparent to those drafting the Bill.

The legislation emerged just a month before it was introduced to the parliament. Submissions from eBay and other stakeholders resulting from a 2016 Treasury consultation appear to have been completely ignored and were not made public. Presumably there was little support from stakeholders with an understanding of the implications.

If the legislation is passed, businesses will be required to design, test and implement substantial, far-reaching changes to global business models to accommodate Australia’s demands in a matter of weeks, with no Treasury or Australian Tax Office guidance material to resolve important questions. Besides the vastly underestimated complexity of the task, the proposed 1 July 2017 commencement date is completely unrealistic for business, and for government itself.

The business portal of the Australian Tax Office website appears not to be configured to assist any foreign business eager to register and comply.

Complexity

The legislation would introduce separate categories and treatment of taxable goods, and foreign



businesses would be expected to learn the rate, thresholds and exemptions of another nation's tax authority. This seems unlikely.

For goods over AUD\$1,000 the system would not apply. These goods will be untaxed at the point of sale and Customs will intercept them when, or if, they are detected.

The current system for high value goods is porous and only a small minority of parcels are stopped. If government is choosing to keep these demonstrably weak arrangements in place, the conclusion must be drawn that government lacks any confidence in the proposed new regime for goods valued below AUD\$1,000.

Not only are there two systems, the legislation is at best unclear on disaggregation. Separate goods in one box would appear to attract both tax treatments. The higher value good would enter Australia untaxed, while the low value good should have been taxed at point of sale. Multiple goods in the one parcel where the total value exceeds AUD\$1,000 may be treated as individual goods below AUD\$1,000 because of the disaggregation arrangements. This element of the Bill was changed following consultation, but there is presently no guidance material on this or any other question, including foreign currency conversions.

The liability for the tax also varies depending on logistics arrangements. Postal companies are not liable unless the parcel comes via a re-packaging business. Australia's government-owned postal company, Australia Post/Startrack, is exempt except on parcels which have come via its own repackaging business in Oregon. It is unclear how double taxation will be resolved, if goods taxed at point of sale are sent via a repackaging business.

Foreign businesses with Australian sales below AUD\$75,000 per year are not required to levy tax, unless those small businesses use eBay to advertise. If they sell via eBay, they will be required to levy tax from their first dollar, because eBay is deemed to be the seller. Businesses and buyers would have a strong incentive not to use the Australian platform when this tax is so simply avoided by selling via a dot.com which chooses not to comply, or has a turnover below AUD\$75,000.

Australian competition law requires prices to be displayed as a single figure, including all taxes. This would require (as yet undesigned) system changes for eBay for the Australian market only. It is unlikely eBay auction listings would ever be able to accommodate this requirement.

Consumer Views – Australians do not support the Bill

One in two Australians connect with sellers via eBay's marketplace. As such, as part of our due diligence on the Bill and its unintended consequences, eBay commissioned JWS Research to conduct quantitative research² of Australians regarding the GST Low Value Goods Bill from 30 March-5 April 2017.

AUSTRALIANS DO NOT SUPPORT THE BILL

In summary the top 3 most compelling arguments amongst the total sample are (each with majority agreement):

- ✓ **eBay does not own, hold, sell or supply goods itself;**
- ✓ **eBay's current business model does not support collection of GST; and**

² Method: Online survey. Field dates: 30th March – 5th April 2017. Sample: n=1,000 from 5% Marginal Federal seats and residents of the Federal seats of Cook, Higgins and McMahon.



✓ **There is currently no practical way to enforce overseas businesses to abide by Australia's GST laws.**

Australians were asked to indicate their level of agreement or disagreement with some of the various reasons why eBay does not support the proposed Bill.

Importantly, Australians understand the problems created by asking an online marketplace like eBay to collect given they do not hold the goods. 59% agree that a reason to not support the Bill is because *"it's unreasonable because eBay does not own, hold, sell or supply goods, rather it provides a marketplace for these transactions to occur"* (only 10% disagree with this statement). 57% agree that *"eBay's current business model does not support collection of GST. Designing a new eBay interface for Australia would be costly, and would make eBay uncompetitive for online buyers and sellers"* and only 9% disagree with this reason.

On enforcement, 53% of Australians agree with the reason that there's currently no practical way of forcing overseas businesses to abide by Australia's GST laws and only 9% disagree with this.

In terms of choice of products being available online, 50% of Australians agree there will be less choice for consumers (if the Bill is passed and the threshold is removed) and only 10% disagree with this.

Overall, on the issue of whether Australia should move to a zero threshold (which is at odds for example with the United States' de minimis move in 2016 from US\$200 to US\$800), 43% of Australians do not support removing the threshold, and only 27% support it.

Australians understand the reality that a move to a zero threshold would increase prices, with 56% not willing to pay 10% on overseas online purchases valued below \$1,000 (only 21% are willing).

In relation to going back to the drawing board on the issue of collection, 52% of Australians support the Government formally reviewing any proposed collection method that requires online marketplaces such as eBay to collect GST from buyers (only 12% oppose) and coupled with this 51% support the Government revisiting the threshold level (only 15% oppose).

Solutions

1. Regrettably, the Government's legislation may force eBay to prevent Australians from buying from foreign sellers. No tax would be paid to Australia and none would be owed. It would raise no revenue, deny Australians access to choice and lessen price competition. This solution would not even represent a win for bricks and mortar retailers, because Australians would still find ways to buy online. They would do so direct via dot.coms without paying GST and they would lose the confidence they current enjoy buying from eBay with the advantage of its trusted seller ratings. This appears to be the most likely outcome at present.
2. The United Kingdom has introduced a system applying to goods already located in a UK warehouse at the time of sale. Unlike the Australian proposals, Her Majesty's Revenue and Customs recognises its jurisdiction is limited to domestic sales and it reasonably deems a transaction made when the good was already located in the UK to be a domestic transaction. If a seller on a platform is not remitting VAT, the authorities warn the platform. If the platform does not remove the seller within 30 days, the platform becomes liable for the VAT. It is likely that the seller will choose to remain on the platform and will begin remitting tax.



3. Under the current Australian proposal, tax liability changes depending on goods value; seller turnover; platform or direct sale; courier, postal company or re-packaging business. A simpler alternative for an island nation is to work with the logistics companies. All parcels arrive at a small number of Customs points, via a small number of international logistics companies, one of which is government-owned. These companies can require buyers to declare whether a good is new and to nominate a value of the good as part of the pricing of parcel delivery to Australia. This system does not require parcels to be stopped, other than for routine auditing. It captures all goods, regardless of whether they were purchased via a platform or from a dot.com. It is practical and enforceable, raises genuine revenue and is fair. Unlike other proposals, this does level the playing field.
4. If the Bill is not withdrawn, then significant amendments will be required to even contemplate third party online marketplaces somehow collecting GST given their current business models do not support it.

Conclusion

The Treasury Laws Amendment (GST Low Value Goods) Bill 2017 has been hastily introduced and is unworkable. Indeed no other country is progressing down the path of an electronic distribution platform collection model. Australia is introducing a unilateral law that is currently not in place anywhere else in the world. This law will predominantly affect internationally operating online platforms.

In order to be truly effective, any rules concerning cross border GST should be developed, agreed and adopted in close coordination by all relevant trading partners. Australia is part of the G20 and OECD, the latter of which is currently working on this very issue. Australia should, instead of unilaterally adopting an unworkable, disconnected piece of legislation, rather contribute to the development of a carefully drafted, well-founded and enforceable multilateral arrangement on cross border sales taxation issues.

It should also be noted that the OECD, of which Australia is a member state, is currently reviewing the cross border GST matter with the aim of developing an internationally applicable, common, workable solution – as opposed to a patchwork of uncoordinated and counterproductive national regulations. Therefore, it should be obvious that Australia has a duty towards its consumers and tens of thousands of exporting small and medium-sized businesses to focus its regulatory endeavours on an international solution at OECD level rather than an unworkable national proposition, which will largely miss its objectives.

In conclusion, as the Bill stands, Australian consumers would be asked to pay an extra 10 per cent to foreign businesses with no guarantee the money will ever be remitted to an Australian tax authority. The measure would not raise significant revenue, would reduce the competitiveness of any Australian platform, and would reduce choice and price competition for Australian consumers.

The Bill must be withdrawn.

eBay looks forward to constructive dialogue with the Committee and appearing as a witness at the hearings on 21 April 2017.

Please do not hesitate to reach out to Ms Kristen Foster, Director Government Relations, Australia,



New Zealand, Japan and South East Asia if the Senate Committee has further questions relating to eBay's submission ([REDACTED] Thank you in advance for consideration of eBay's concerns.

Yours sincerely

Jooman Park
Vice President & Managing Director, eBay Australia and New Zealand