



THE TAX INSTITUTE

10 April 2017

Mr Mark Fitt
Committee Secretary
Senate Standing Committee on Economics
PO Box 6100
Parliament House
CANBERRA ACT 2600

By email: economics.sen@aph.gov.au

Dear Mr Fitt,

Inquiry into Treasury Laws Amendment (GST Low Value Goods) Bill 2017

The Tax Institute welcomes the opportunity to make a submission to the Senate Standing Committee on Economics (**Committee**) in relation to the *Treasury Laws Amendment (GST Low Value Goods) Bill 2017 (Bill)*.

Recommendation

The Tax Institute recommends the Committee bear in mind the difficulty in enforcing the provisions contained in the Bill in the absence of the ability to stop goods at the border when considering whether to recommend the Bill be passed or amended to account for these difficulties. We also recommend the Bill be amended to include transitional rules allowing the Australian Taxation Office to ameliorate the compliance difficulties for overseas suppliers in the circumstances where there is very little lead time before the Bill, if successfully enacted, comes into force.

Discussion

1. Difficulties in enforcement of the measure

The Tax Institute appreciates that the policy measure behind the Bill is to ensure low value goods imported into Australia by consumers are captured within the Australian GST net so as to level the playing field with local suppliers who are required to charge GST.

However, The Tax Institute has reservations regarding the ability of the relevant Australian authorities (namely the Australian Taxation Office (**ATO**) and the Department of Immigration and Border Protection) to effectively enforce the proposed legislative

changes. We are concerned that the proposed amendments are a 'one size fits all' approach and do not provide sufficient powers of enforcement of the law, nor sufficient 'encouragement' to the range of overseas suppliers (from large to small) to adhere to the proposed legislative changes, either due to a lack of awareness or by deliberate intent.

While we acknowledge the existence of the proposed limited registration option for overseas suppliers (under Division 146 of the Bill), we expect that most overseas suppliers will likely want to register under the ordinary rules in case they wish to claim input tax credits. The current process for non-residents that seek to register for GST can be extremely time consuming and represents a significant hurdle for non-residents that wish to comply with the proposed measures. This process is further complicated if the non-resident operates through an entity that is an entity other than one traditionally seen in Australia, such as an overseas company, trust, or partnership for example. It also remains to be seen whether and to what extent the limited registration option reduces these hurdles.

Further, the new provisions are also technically complex and difficult for overseas suppliers to understand. For example, the imposition of GST on low value imported goods is not via the general "*connected with the indirect tax zone*" rules in section 9-25 of the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (**GST Act**) but rather via the special rules in Division 84.

The Tax Institute believes that in the absence of a concerted education / advertising approach to overseas suppliers, the complex rules combined with the difficulties in the ATO enforcing the proposed measures and the difficulties for non-residents registering for GST will lead to a very low compliance rate with the new measures. This is further complicated, perhaps exponentially, by the increasingly broad and diverse range of overseas suppliers that are supplying low value goods and services into the indirect tax zone. This will only increase as the digital economy grows. The extent of any advertising campaign will need to be potentially limitless to reach all possible overseas suppliers who will need to comply with the amended laws.

That said, we do recognise that larger, better known overseas suppliers with worldwide reputations may apply the resources to become acquainted with and voluntarily comply with the new measure and would like to believe that many suppliers would like to comply with the measure in good faith.

It is important that the measures operate effectively in the majority of cases of low value imports. However, we remain concerned this does not seem to be the case. It is unlikely, in the absence of education and effective enforcement and given the other factors mentioned above, that there will be high levels of voluntary compliance from other overseas suppliers.

There are also broader ramifications than just the compliance aspects. There is a potential risk that consumers may seek to take advantage of supplies from those overseas suppliers, based solely on cost, who are non-compliant and therefore there is

the potential for an increase in the import of goods that do not meet the stringent controls, in terms of safety, customer services standards, ethical sourcing and so forth which are a key element of Australian consumer protection.

It is our view that, in order to enforce the proposed legislation, it would be appropriate to put in place measures to identify and tax supplies from non-conforming overseas businesses at the point of import. To not do so would significantly undermine the integrity of the proposed system.

Although we recognise that any measure to tax at the point of import would likely slow down the processing of low value parcels at the border, cause delays in delivery times and potentially be costly, we would view this approach as the only viable enforcement approach. Alternatively, in practice, this could operate as Customs stopping and reviewing a sample of parcels, rather than every parcel imported into Australia (much as the ATO selects a sample of individual income tax returns to audit every year).

If goods are not stopped at the border, there would be a presumption that the overseas supplier has complied with the relevant GST requirements. However, it is our understanding that the information currently required to be provided on an international mail declaration would provide no indication as to whether GST had been charged and accounted for by the offshore supplier.

While goods forwarders will be required to collect additional data from the overseas supplier to be included in the relevant import declarations to be made in relation to low value goods delivered to Australia¹, it is unclear how similar information will be collected for low value goods that arrive in Australia via international surface mail. If the mail delivery entities, which simply facilitate the delivery of surface mail, are not required to collect such information, a significant number of low value goods are likely to enter Australia without the same 'checks and balances' in place to ensure the relevant GST liability has been met. We consider that some kind of mechanism to check on low value goods being brought into Australia via the international mail system, or at least a 'spot check' system, could be considered to address this.

We understand from our previous discussions with Treasury, the ATO and the Department of Immigration and Border Protection that some advertising overseas will be undertaken to inform overseas suppliers about the change to the Australian GST laws and how they will be affected. The intention is to get overseas suppliers that are affected by this measure into the system in the first year or two without having to utilise formal compliance action. Treasury advised that there is no intention to stop goods at the border where an overseas supplier has not complied with this measure, given that one of the principles applicable to this measure is that '[low value] goods would not be stopped at the border²'.

¹ Refer to p3 of the 'Question and Answer' document issued by Treasury in November 2016 (<http://www.treasury.gov.au/ConsultationsandReviews/Consultations/2016/Applying-GST-to-low-value-goods-imported-by-consumers>) at the question 'I operate an international air cargo company and deliver parcels to Australia. What does this change mean for me?'

² Media release of former Treasurer the Hon Joe Hockey MP 'Statement: Council on Federal Financial

We also understand from these discussions that it is intended that the law be designed to not draw small businesses into the net unnecessarily and that the business would need to be of reasonable size before catching the attention of the ATO for non-compliance. However, this is not evident on the face of the Bill. In our view, this adds to our concern around how the measure will be enforced and that compliance with the measure will rely on the goodwill of overseas suppliers.

We support the intention for a post-implementation review of the measure to be carried out after two years³ to ensure that the measure, once implemented, is both working and being administered effectively.

2. Limited implementation period

It is intended that this measure apply to tax periods starting on or after 1 July 2017. Given the Bill is currently sitting before Parliament and is unlikely to pass until sometime in May 2017 (or possibly later) in the Winter sitting period, there is very little time for overseas suppliers, particularly the larger ones, to get systems in place in time to accommodate this law change after it becomes law. In contrast, overseas suppliers had 14 months to implement the changes associated with applying GST to digital supplies from overseas (this legislation passed in May 2016 with a start date of 1 July 2017).

It is important not to underestimate the resources required for overseas suppliers to implement the new rules. For large suppliers, the exercise is similar to when Australian businesses were required to implement GST in 2000 (for which the implementation period was approximately 18 months). We note that the issues that arise (and the systems required to deal with these issues) are significantly more complex than for suppliers seeking to comply with the amendments to tax digital supplies. Some examples of these issues include:

- Sales of GST-free goods (such as GST-free medical aids and appliances);
- GST treatment of delivery services (and other mixed and composite supply issues);
- returns policies (particularly for electronic distribution platform providers where the goods are generally returned direct to the supplier);
- goods that are sold under the Tourist Refund Scheme;
- compliance with the GST component pricing and other rules in the Australian Consumer Law (discussed below); and
- sales of second hand goods.

Given the difficulties the ATO is likely to have in enforcing the new rules, it will require significant goodwill from overseas suppliers for them to voluntarily comply with the new

Relations Tax Reform Workshop' (21 August 2015)

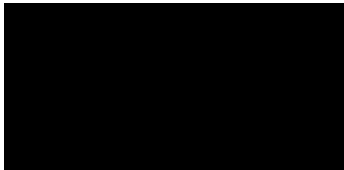
³ Per the 2016-17 Federal Budget measure 'Applying GST to Low Value Goods Imported by Consumers' Budget Paper No. 2 p19.

rules. The short timeframe in which to implement these new rules is not only unrealistic, but also likely to largely remove the goodwill of overseas suppliers that might otherwise be relied on for overseas suppliers to comply.

We acknowledge that the States have agreed to the 1 July 2017 start date for this measure. If it is not feasible to defer the start date, we suggest that the Bill be amended to include transitional rules allowing the ATO to ameliorate the compliance difficulties for overseas suppliers (say by legislative determination).

If you would like to discuss any of the above, please contact either myself or Tax Counsel, [REDACTED]

Yours sincerely

A large black rectangular redaction box covering the signature area.

Matthew Pawson
President