



08 April 2017

Committee Secretary  
Senate Economics Legislation Committee  
PO Box 6100  
Parliament House  
Canberra ACT 2600

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

### **CAPEC Submission**

The Conference of Asia Pacific Express Carriers (Australia) Limited (“CAPEC”) is an industry association representing the interests of the world’s leading integrated air express parcel delivery companies. Its members are DHL, FedEx, TNT and UPS.

CAPEC has been invited to lodge a submission to the Senate Economics Legislation Committee in respect to the Inquiry into the *Treasury Laws Amendment (GST Low Value Goods) Bill 2017* (“**Inquiry**”).

#### **Executive Summary**

The issue of Australia’s Low Value *de minimus* threshold is one that CAPEC members have been closely involved with since, at least, the alignment of the air cargo and postal services in October 2005.

More recently, CAPEC has worked extensively with a number of different government-appointed parties in examining the ongoing viability of the A\$1,000 Goods and Services Tax (“**GST**”)-free threshold. Those parties have included:

- Board of Taxation Review (2009)
- Productivity Commission (*Inquiry into the Future of the Australian Retail Industry* 2011)
- Low Value Parcel Processing Taskforce (2012)
- Interdepartmental Committee – Low Value Threshold Project (2013)
- Treasury Steering Committee on Vendor Collect Model (2015 - present)

In considering the GST-free threshold, each of these parties reached the same conclusion with regard to the cost of GST collection at the border (upon arrival). That is, that the cost of collection would exceed any GST revenue gained, resulting in a net welfare cost.

The *Treasury Laws Amendment (GST Low Value Goods) Bill 2017* (“**Bill**”) proposes to amend the *A New Tax System (Goods and Services Tax) Act 1999* to ensure that GST is payable on certain supplies of low value goods that are purchased by consumers and imported into Australia. The proposed changes are predicated on a Vendor Collect Model (“**VCM**”), i.e. where the overseas supplier collects GST at the point of sale and remits this GST component to the Australian Taxation Office (“**ATO**”) directly.

CAPEC supports the Bill, in so far as it endorses a fairer tax system through a VCM. However, CAPEC does **NOT** support the obligation proposed by the current draft Bill which requires additional vendor registration information to be captured and reported by CAPEC members.

It is CAPEC’s firm view that the information flow should be between the overseas vendor and the ATO directly.



Accordingly, CAPEC requests that the draft Bill be amended so as to reflect such an information flow.

CAPEC members are prepared to work with Treasury to ensure that the draft Bill achieves both the Government's intended policy objectives and also ensures the ongoing competitive viability of CAPEC members and the services they provide.

### **Disparity with Australia Post**

During its discussions with Treasury, CAPEC has been informed that Australia Post will be exempt from the requirement in the draft Bill to report the Vendor Registration Number ("VRN") and Australian Business Number ("ABN") on low value imported goods.

Australia Post has gone on record declaring that it competes directly with CAPEC members and the air express industry more broadly.<sup>1</sup> Adding cost to CAPEC members' operating models through increased regulatory burden will give an additional unfair advantage to Australia Post, to the detriment of CAPEC members' ability to compete against Australia Post. Further, CAPEC members are concerned that the lack of commensurate regulatory burden in the postal model (i.e. sending products via Australia Post) may lead to overseas vendors choosing the postal stream to bypass VRN/ABN reporting and other regulatory reporting requirements; which in turn may lead to a reduced recovery of GST.

Increasing amounts of low value 'Business to Consumer' ("B2C") goods are imported into Australia via the postal stream. If, as the Bill requires, the VRN is collected from the air express industry alone, it is likely to lead to a flawed data set, covering a diminishing number of imports. Analytics based on the data will therefore likely be inaccurate and of little use when auditing the compliance activity of offshore vendors.

Therefore, the absence of any requirement for Australia Post to report the VRN provides:

- a competitive advantage to Australia Post, who will not be subject to the same regulatory requirements (and resulting cost consequences) as CAPEC members;
- a pathway for uncooperative vendors to access the Australian market place; and
- a deficient data set for the ATO.

### **Competitive Neutrality**

The legislation proposed by Treasury is also contrary to the Competitive Principles Agreement ("CPA") entered into by the Council of Australian Governments ("COAG") in 1995,<sup>2</sup> which addresses competitive neutrality across Australia. Two key elements of the CPA are:

- (1) "Government businesses should not enjoy any net competitive advantage simply as a result of their public sector ownership"; and
- (2) Governments are to ensure that they impose the same obligations on government business enterprises as they would on privately owned enterprises, with regulatory requirements and fees being listed as specific examples.

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<sup>1</sup> Australia Post 2016 Remuneration Report - [http://auspost.com.au/annualreport2016/resources/docs/auspost\\_remuneration\\_report.pdf](http://auspost.com.au/annualreport2016/resources/docs/auspost_remuneration_report.pdf)

*"During the past decade, whilst undertaking the transformation, Australia Post has contributed \$4.83 billion to Commonwealth revenues. The company now competes in the global parcels and logistics industry with the likes of DHL, Toll/ Japan Post and FedEx, and with large eCommerce and digital services providers like Amazon, Uber and Google."*

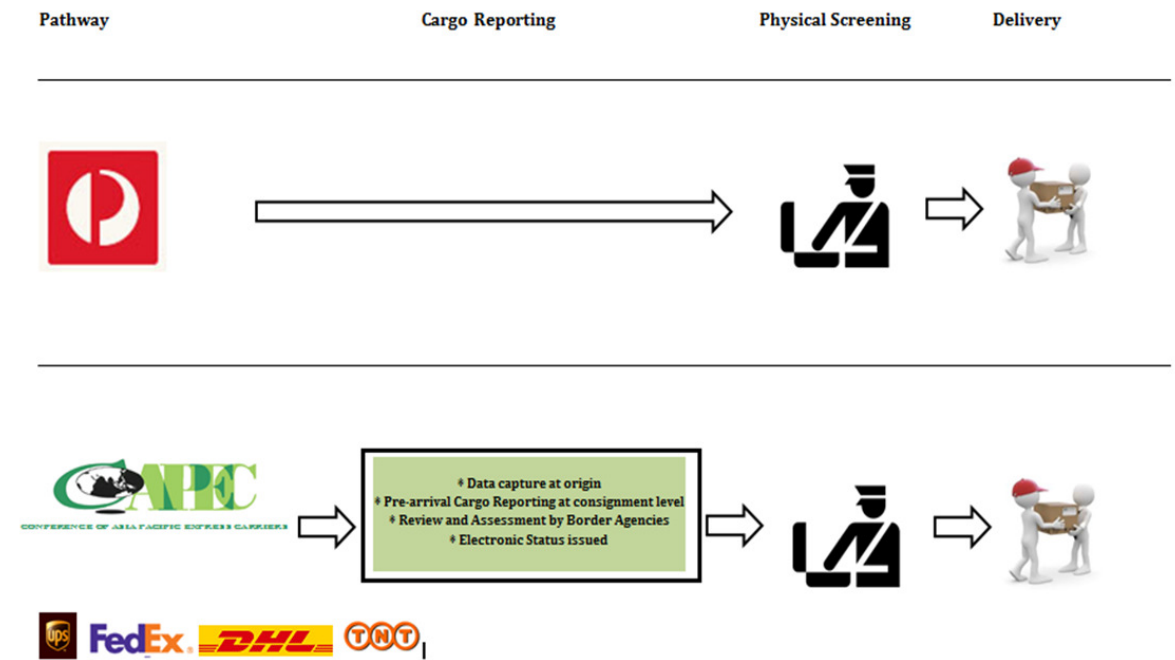
<sup>2</sup> Competition Principles Agreement, 11 April 1995 - <http://www.pc.gov.au/inquiries/completed/access/files/ncpagreement.pdf>



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Australia Post already experiences a significant competitive advantage over CAPEC members by its use of the postal stream for imported parcels. Parcels brought to Australia by CAPEC members through the parcel stream are subject to additional cargo reporting requirements than if the same parcel was brought into Australia via the postal stream. The more stringent reporting requirements imposed on CAPEC members result in slower parcel clearance times and increased costs arising to CAPEC members when compared to parcels brought into Australia by Australia Post via the postal stream.

The below diagram broadly outlines the different arrangements that currently exist in respect of importing Low Value goods into Australia through the Postal and Air Express pathways.



If CAPEC members are required to report VRNs as outlined in the draft Bill, two consequences are likely. *First*, Australian consumers will experience further processing delays in border clearance through the parcel stream, along with the attendant additional costs. *Secondly*, and consequently, the competitive advantage already enjoyed by Australia Post will be further exacerbated at the expense of both Australian consumers and CAPEC members.

CAPEC is preparing separate submissions to both the Australian Government Competitive Neutrality Complaints Office (“AGCNCO”) and the Australian Competition and Consumer Commission (“ACCC”) which it hopes will assist to resolve the above-mentioned disparities.

Furthermore, the increased regulatory burden imposed on CAPEC members, and other air express parcel delivery companies, is inconsistent with the Commonwealth Government’s aim of improving productivity and efficiency of the Australian economy.



### **Vendor Registration Number (“VRN”) – practical problems**

The requirement in the draft Bill for CAPEC members to capture the VRN at the Air Cargo Report Self Assessed Clearance (“ACR-SAC”) level is also highly problematic in terms of its practical application. This is due to a number of factors including variances such as; shippers’ ordering systems and CAPEC member reporting platforms, processes having to be significantly modified to ensure compatibility and compliance, and education and cultural differences with shippers in the 220 countries that CAPEC members operate. This will add both complexity and cost to the border clearance process and not comply with the efficient and effective models that the OECD and G20 working groups advocate for.

The VRN requirement will result in substantial changes to CAPEC members’ worldwide ICT systems. This would take *several years* to complete and come at a significant cost. Other considerations include:

- Members’ IT systems bridge over 200 countries and territories;
- Adding extra fields and logic for the requirements on one country only is problematic given the global nature of CAPEC members’ businesses and systems; and
- CAPEC members will not be involved in the collection of this GST revenue, so the requirement to capture and report VRNs is a superfluous and highly inefficient one.

CAPEC members are concerned that the ATO and Treasury may have an oversimplified view in terms of what lead time, cost and impact these IT systems changes represent.

### **Alternate VRN Collection and Reporting Models**

CAPEC understands that the collection and reporting of the VRN data to the ATO is an important element of the draft Bill. However, its members are of the view that there are more efficient ways of achieving this outcome that will result in a *complete* data set, i.e. not just from one industry sector (Air Express). These constructive alternate options can be summarized as follows:

#### **1. Vendor Self-Collection and Audit**

Upon registration, the overseas vendor agrees to provide periodic reporting to the ATO on what it ships to Australia and what GST it collects. Note: Treasury officials have indicated a desire to minimize the reporting requirements for registered vendors; however CAPEC members understand that this information would be readily available to the vendors through running a cursory ‘value’ + ‘trade lane’ query at the end of each period. The added advantage of this model is that it would capture goods being shipped via all pathways, including the postal stream.

#### **2. Use of Existing Data**

The existing process for reporting low value shipments in the Integrated Cargo System (“ICS”) in any event, i.e. via an ACR-SAC should provide sufficient detail for the ATO to undertake its compliance monitoring. Note: To counter the challenge of multiple entity names being used, the vendor would agree to apply a mutually agreed naming convention at time of registration which the Department of Immigration and Border Protection (“DIBP”), who could then report as needed to the ATO through the ICS.

In support of this option, provided below is a screen shot of the ACR-SAC taken from the ICS, which demonstrates the information currently provided to the Department of Immigration and Border Protection by CAPEC members for all Low Value consignments entering Australia:



Screen shot of the ACR-SAC taken from the ICS

Information **currently provided** to the Department of Immigration and Border Protection  
by CAPEC members for **all** Low Value Consignments entering Australia

CS XT\_PROD HELP **Air Cargo Report View** [View EDI Details](#) Version

<b>Master</b> Air Waybill No 61839179722	<b>Sub-Master</b>	<b>House</b> 8917606132
<b>Consignment Reference</b> Flight No SQ223	<b>Discharge Destination</b> Port Code AUPER AUPER	<b>Arrival Date</b> 07 MAR 2017
<b>Original Loading Port Code</b> HKHKG	<b>Waybill Origin Port Code</b> HKHKG	<b>First Australian Port Code</b>
<b>Reported By</b> 62001112929 DHL EXPRESS (AUSTRALIA)	<b>Responsible Party</b> 62001112929 DHL EXPRESS (AUSTRALIA)	<b>Waybill Origin Port Code</b> HKHKG
<b>Consignee</b> NATALIE OBRIEN 14 LASCELLES PARADE GOOSEBERRY HILL	<b>Consignor</b> MOTION GLOBAL LIMITED 1 F CHEUNG HING INDUSTRIAL BUILDING 12P SMITHEFIELD ROAD	<b>Unique Consignment Ref No</b> 8917606132
<b>Notify Party</b>	<b>Special Reporter No</b>	<b>Transshipment No</b>
<b>Overseas Routing Port Code(s)</b>	<b>Goods Description</b> EYEWEAR	<b>Quantity</b> <b>Unit</b>
<b>No Of Packages</b> 1	<b>Gross Weight</b> 1.3	KG
<b>Consolidated Cargo Status</b> HELD	<b>Declared Value of Goods</b> 275.80	<b>Declared Value of Goods Currency Code</b> AUD
<b>Freight Forwarder Indicator</b> NO	<b>Reportable Documents Indicator</b> NO	<b>Freight Method Of Payment</b> PO
<b>Personal Effects Indicator</b> NO	<b>Transit Indicator</b> NO	<b>Self Assessed Clearance Declaration</b> YES
		<b>Part Shipment Indicator</b> NO
		<b>Created Part Indicator</b> NO

[Event History](#) [Status](#)

Prev Report Next Amend Withdraw

This clearly shows the information that is already reported by CAPEC members on all Low Value consignments. The data fields captured include, but are not limited to:

- Full name and street address of the overseas vendor
- Full name and street address of the consignee/importer
- Pieces / Weight / Currency
- Country of Origin
- Commodity
- Declared Value



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### Suggested legislative amendments to the Bill

[The yellow highlighted language inserted below indicates CAPEC's proposed replacement for the existing language shown in strikethrough.]

**84-93 Suppliers of offshore supplies of low value goods to ensure tax information is included in ~~customs documents~~ < a periodic return lodged by the registered vendor to the ATO containing particulars of the GST collected.>**

(1) If:

(a) you make an \*offshore supply of low value goods; and

(b) you are \*registered, or \*required to be registered;

you must ensure that the information set out in subsection (2) is included in one or more of the documents referred to in subsection (3) (regardless of whether or not the supply is \*connected with the indirect tax zone).

Note: If you do not ensure the information is included, you are liable to an administrative penalty under section 288-46 in Schedule 1 to the *Taxation Administration Act 1953*.

(2) For the purposes of subsection (1), the information is as follows:

(a) your registration number;

(b) if the \*recipient's \*ABN has been disclosed to you—that ABN;

(c) the extent (if any) to which you are treating the supply as a \*taxable supply.

(3) For the purposes of subsection (1), the documents are as follows:

~~(a) an import declaration (within the meaning of the *Customs Act 1901*);~~

~~(b) an import declaration advice (within the meaning of that Act);~~

~~(c) a self-assessed clearance declaration (within the meaning of that Act);~~

~~(d) a self-assessed clearance declaration advice (within the meaning of that Act);~~

~~(e) a document of a kind specified in an instrument made under subsection (4).~~

**< (a) a periodic return lodged by the registered vendor to the ATO, the particulars of which to be agreed upon at the time of vendor registration.>**

(4) The Commissioner may, by legislative instrument, make a determination specifying kinds of documents for the purposes of paragraph (3)(e).

**288-46 Penalty for failing to ensure tax information about supplies of low value goods is included in ~~customs documents~~ < a periodic return lodged by the registered vendor to the ATO containing particulars of the GST collected.>**

You are liable to an administrative penalty of 20 penalty units if:

(a) you are required by section 84-93 of the \*GST Act to ensure that the information set out in subsection 84-93(2) of that Act is included in one or more of the documents referred to in subsection 84-93(3) of that Act; but

(b) you fail to take reasonable steps to do so.



### **Timing**

If the above-mentioned amendments to the Bill are *not* made, the 01 July 2017 go-live date for the legislation is overly ambitious and should immediately be deferred to a later, more workable date. CAPEC members contend that having less than three months to implement any changes is an unreasonably tight timeframe.

For policy reform this important and wide-ranging in nature, it is appropriate that a longer timeframe is granted.

### **Conclusion**

The VCM is acknowledged by CAPEC members as the most sensible approach to achieving a fairer tax system. CAPEC members commend the decision of Treasury to avoid a model whereby GST is collected upon arrival at the border. This is consistent with both the report that CAPEC members submitted to Treasury in February 2016 and the Productivity Commission's findings vis-à-vis avoiding a solution that would create a net welfare cost.

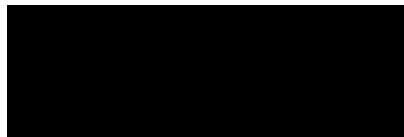
The exemption of Australia Post from the VRN reporting requirement is untenable. CAPEC members contend that any such exemption would be anti-competitive in nature as, among other things, it will affect further the ability of CAPEC members to compete against Australia Post. As discussed above, CAPEC intends to pursue this broader issue further through the AGCNCO and ACCC.

CAPEC members are concerned, however, that the model in its proposed form will lead to increased regulatory burden and resulting cost to the industry and the air express supply chain, primarily through the collection of the VRN and the intention to have this data included in the ACR-SAC (or not, as the case may be).

CAPEC members therefore support the Bill on the proviso that appropriate amendments are made that remove the additional data (VRN) reporting requirements on CAPEC members. This will ensure that GST is collected and remitted to the ATO more efficiently while creating a more level playing field between CAPEC members and Australia Post.

CAPEC would like to thank the Committee for the opportunity to contribute to the Inquiry and looks forward to ongoing consultation, including participating in any hearings to answer questions on this important piece of legislation.

Yours sincerely



Kim Garner | Chairman of the Board of Directors  
Conference of Asia Pacific Express Carriers Australia Limited