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Distinguished Members of the Productivity Commission,

**Re: Submission in relation to the Discussion Paper “Collection Models for GST on Low Value Imported Goods” (July 2017)**

It is my honour to make the present submission, in my capacity as Professor in International and European Taxation whose main area of research is concerned with the modernisation of value-added-tax systems in the context of the Digital Economy.

Before commenting on the legislated model (Section 2) and the hybrid model put forward by the Low Value Parcel Processing Task Force (Section 3), I would like to make some observations regarding the “high-level survey of possible models” carried out by the Low Value Parcel Processing Task Force (Section 1).

I thank you for considering this submission and remain at your disposal for any further information you may wish to receive in relation thereto.

**1. High-level survey of possible models**

**1.1. Preliminary observations**

The “high-level survey of possible collection models” (p. 7-15 of the Discussion Paper) is based on a 2012 report by the Low Value Parcel Processing Task Force. While recognising the thorough work achieved by the Low Value Parcel Processing Task Force, it should be acknowledged that a lot of things have changed in 5 years and that technologies are now available that should lead us to reconsider some conclusions that could have been drawn in the past.

**1.2. The financial intermediary model**

On the possibility to rely on financial intermediaries such as banks, credit card companies or entities such as PayPal to assume the liability for remitting the GST on low value imports from online sales based on information supplied by the vendor, the Discussion Paper concludes that *“at present, financial intermediaries are not well placed to play a role in the collection of GST on imports of low value goods. They do not collect the relevant information for the assessment and payment of the GST and do not have systems to support the remittance of the tax in the jurisdictions of importation”*.

As the relevant criteria to assess GST are the amount and place of residence of the customer (both elements that financial intermediaries have at hand), and given the amount paid by the

customer is the most reliable data that the tax administration may hope to obtain with respect to the value of a transaction, this conclusion is perhaps a bit hasty.

As to the point made that financial intermediaries would not have the system to support the remittance of the tax, a first comment is that this argument may also apply to businesses, in particular to micro, small and medium size enterprises (“MSMEs”). A second comment is that financial intermediaries already collect stamp duties and other withholding taxes.

Major positive aspects of a financial intermediary model include, first, the fact that the tax collector has no incentive to not collect the GST (in contrast with vendors whose prices are higher and therefore less competitive when including taxes). Second, under this model the tax collector is located in the jurisdiction having the taxing rights (hence within jurisdictional reach).

Please also note that several countries have recently implemented (or are on the verge of adopting) “split payment” legislations (Italy, Romania, Poland, Costa Rica) and that the UK launched a call for evidence regarding split payment (in the context of B2C e-commerce transactions).

### **1.3. The purchaser model**

On the possibility to require the collection of GST directly from the consumer, the Discussion Paper concludes that *“A model relying on the purchaser to self-assess and pay the GST on imports of low value goods is very difficult to monitor, much less enforce. It is therefore not likely to provide a sufficiently robust solution for the collection of GST on the imports of low value goods”*.

Once again, I would suggest that this conclusion is a bit hasty.

The main reasons why customer collection is usually sidestepped include the fact that final consumers neither have the skills to voluntarily proceed to the remittance of the tax, nor any incentive to do so in view of the fact that the tax administration has limited means to track taxable supplies. Moreover, the need to audit millions of taxpayers is also a major obstacle.

However, if the traceability of taxable supplies can be ensured with the help of new technologies, a shift towards a customer collection model may be very attractive for governments. The two main reasons are, first, that enforcement would be greatly facilitated because the GST due would in principle no longer leave the territory of the taxing State (the tax collectors would be within jurisdictional reach, can be audited and forced to comply), reducing or even suppressing the need for international cooperation (while, under a vendor collection model for example, the GST paid by the customer to the foreign supplier first leaves the territory of the taxing State, and is then supposed to be remitted to the taxing state by the foreign supplier, but without certainty that this will be done and with mutual assistance as the only means to ensure enforcement). Second, because appropriate processes and big data technology have the potential to enable the tax administration to identify when a GST is due, and to ensure its collection without having to stop parcels at the border or delay their

delivery. Efficiency could likewise be maximized because audit procedures could be streamlined on the basis of automatically generated data and because compliance obligations for suppliers could be largely reduced, which would finally allow MSMEs to compete on an equal footing with multinationals (compliance obligations on the customer side could also be simplified as much as possible). In addition, risks of double taxation or unintended non-taxation in the case of supplies made via platforms would also be removed.

At the moment there is little experience with customer collection. However, in view of available technologies (to maximise efficiency and effectiveness), this is in my opinion an avenue that should be further investigated. Please note that Estonia has for a couple of months been running a pilot of a VAT customer collection model for e-commerce transactions. Do not hesitate to contact me for further information regarding this pilot and interim results.

## **2. The legislated model**

Under the legislated model, GST on imported goods with a value of \$1000 or less will be collected by large vendors (with turnover exceeding \$75 000) and electronic distribution platforms (EDPs). For that purpose, they will have to register to the ATO and make periodical returns.

Such a vendor collection model is applied since 2003 for non-EU suppliers of broadcasting, telecommunication and electronic services to EU private customers, albeit without registration threshold (the so-called “MOSS”). EDPs are now also required to register and collect the VAT on these supplies (since 2015).

What the EU experience shows is that a major weakness of an offshore vendor collection model is the low level of compliance. As a matter of fact, more than 15 years after its implementation, less than 2 000 non-EU businesses have registered to the MOSS (given, according to ALEXA, in 2014 there were 1.7 million commercial websites, this is not exactly what one would classify as a success). In spite of the fact that the EU Commission is expressing great satisfaction towards this system, and proposes to extend it to imports of low value goods in the future, these figures show that imposing registration obligations on offshore businesses proves extremely difficult.<sup>1</sup> The reason is that in a cross-border situation, the tax collectors are, under this model, located out of jurisdictional reach of the taxing State and therefore can neither be audited nor forced to comply (so what is their incentive to comply?).

Fact is that vendor registration remains a voluntary process and that in the absence of efficient means to monitor and enforce compliance, this model will always represent a sort of “good enough” approach (some revenue will accrue to the jurisdictions implementing such system, but it will be difficult if not impossible to measure the uncollected revenue).

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<sup>1</sup> In contrast, more than 12.000 EU businesses have registered in less than 2 years to the EU version of the MOSS, simply because cooperation between the EU Member States is expected to be higher. This having been said, it may be argued that 12.000 registrations is still probably too low as compared to the number of EU businesses that actually provide telecommunication, broadcasting and electronic services to EU consumers.

Large offshore vendors and EDPs can be expected to register for reputational reasons. This having been said, even if registered, the question remains to what extent the declarations made by EDPs will be accurate and to what extent it will be possible for the ATO to monitor them. In the end, the system will again largely be “voluntary” (“declare what you want, we cannot check it anyway”). A UK government auditor report recently concluded that up to 1 billion pounds a year in VAT were foregone because of fraud or error by sellers using online marketplaces eBay and Amazon. The key question is to what extent will Australia be able to cooperate with all other States where offshore vendors are established in order to obtain reliable information regarding sales made to Australian customers AND obtain assistance in the recovery of GST.

The only possibility for the ATO to monitor compliance would be to track incoming parcels in order to make sure that a declaration is subsequently made in relation to each of those supplied by either a large company or through an EDP. Please keep in mind that even considering that confirming vendor registration at the time of import would be possible (via a barcode system for example), the ATO should then also be able to verify that the declarations made (at the end of the taxable period, thus after the goods have been delivered to the customer) are correct (in other words: being registered is not enough – what matters is that the correct declaration and payment is eventually made!). The ATO would probably be inclined to trust that the EDPs that currently are on the market would make correct declarations. However, please keep in mind that once the legislation is adopted it should apply to all EDPs (current and future ones) and that not all of them will be trustworthy. Honest EDPs may then in the future also suffer from unfair competition from dishonest EDPs.

In fact, in order to ensure compliance to a reasonable extent, the ATO should be able to identify the supplier and to cross check the declarations made by the supplier with other data. The issue of returned goods should also be tackled because a large proportion of online purchases are being returned (without leaving the country) with no GST declared as a consequence (rightly so, but the problem is to tackle abuses).

### **3. The Model put forward by the Task Force**

Under the model put forward by the Low Value Parcel Processing Taskforce, customs authorities would be responsible for determining the GST liability due on low value parcels, but the goods are then released to the transporter who is responsible for collecting and remitting the GST.

A similar model is currently applied in several Member States of the EU where the EU the customs authorities have to assess the VAT due on goods above a value of EUR 22 (goods declared as being of a value lower than EUR 22 are exempt, irrespective of the vendor’s turnover). Postal operators and express carriers are then required to collect the VAT upon delivery. This procedure has proven largely inefficient (administrative costs) and ineffective (A study by Copenhagen Economics found that 65% of consignments from non-EU vendors

through the postal channels were non-compliant). The question is whether the model put forward by the Task Force would be a better option?

Under this proposal, customs authorities would have to assess the GST due on all parcels sold via platforms or by suppliers with a turnover exceeding \$ 75 000. In view of the increasing number of parcels imported daily in Australia, this is likely to require massive resources (because even if the process is being automated, customs authorities will have to monitor value declarations made by the offshore vendors, on which they will base their assessment, which is a very costly process and proves not sufficiently robust against fraud cf. the EU situation). At the moment, a recovery charge is collected on high value import (min \$ 50). It seems difficult to consider levying similar charge on low value goods.

The Low Value Parcel Processing Task Force then suggests adopting a registration system for trusted vendors in order to limit the number of parcels to be handled by the customs authorities. In addition to my comment above regarding the level of trust than can be placed on offshore EDPs (including future ones) and the fact that a vendor collection system in the end remains a voluntary compliance scheme since the tax collector is beyond jurisdictional reach of the taxing State, the question here arises why would any offshore vendor register if a customs procedure is available? Even if simplified, registering and remitting GST will come at a cost that the retailers may not be willing to bear.

If the EDPs do not register, then it will be extremely difficult to police the \$75 000 threshold (it is not possible to distinguish parcels supplied by an offshore business directly to the customer and parcels sold by the same vendor via a platform). Even if it may be argued that a model under which GST is collected by the vendor is more “customer friendly” than a customs procedure under which GST is to be paid upon delivery, what is even more customer friendly is a large supplier or a small supplier selling through an EDP who claims to fall under the \$75 000 threshold exemption and who, as a consequence, is able to sell GST free.

#### **4. Conclusions**

In my opinion, the options currently on the table (legislated model and model put forward by the Low Value Parcel Processing Task Force) are not ambitious enough. I am not arguing that no GST will be collected under one or the other. What I am arguing is that the GST gap (difference between due revenue and revenue actually collected) will be significant and impossible to monitor.

I also believe that each of the proposed options will have detrimental effects, either on offshore vendors and EDP or on transporters, and that a non-watertight system will, in the end, still not offer the level playing field that domestic businesses are asking for.

In my view the solution lies in a more efficient use of technologies. Reliable data including payment data should be available and GST collection and payment should be connected to the purchase and/or the customs import declaration to ensure correct and full payment. The

compliance burden and cost on all parties (vendors, customs, transporters and customers) could then be minimised.

The Discussion paper mentions that: *“Unless compelling evidence favouring other models or approaches is forthcoming in submissions and/or at hearings, the Commission intends to focus in its final report on the model proposed by the Parcel Processing Taskforce, together with the legislated model, and any workable proposals to improve these models”*. In view of the substantial issues and uncertainties left open under these respective models, I would kindly suggest the Commission to further investigate alternative solutions. There is no doubt that the complexities surrounding registration, logistics, collection and fight against fraud can be better addressed with technology and digital data collection than with unwieldy rules and a voluntary compliance approach (which has already proved to be largely ineffective and inefficient).

Please note that I am currently running a research/innovation project on alternative collection models for VAT/GST. Many stakeholders are involved (IT experts and developers, customs and trade facilitation specialists, retailers and transporters, tax administrations etc.). Our objective is to take advantage of all available technologies and to consider all disruptive business models in order to build up new – and future proof – solutions for GST/VAT collection that would not rely on voluntary compliance or burdensome procedures for businesses and/or transporters. Although this is work in progress, significant progress has already been achieved. Please do not hesitate to contact me, would you have any questions or queries in respect with this project.

I thank you for your time and consideration.

With my best regards,

Prof. Dr. Marie Lamensch