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Australian Government  
Productivity Commission

### **Submission on Collection Models for GST on Low Value Imported Goods**

Thank you for the opportunity to provide a submission in relation to the review being conducted by the Productivity Commission into the Collection Models for GST on low value goods.

Our current submission focusses on the scope of the inquiry to be undertaken by the Commission. That is, our view on the effectiveness of the legislative amendments and whether models for collecting GST on supplies of low value imports other than those contained within the amendments may be preferable.

We have previously provided a submission to Treasury on what was then the draft legislation on GST and low value goods and also provided a comments to the Australian Taxation Office (ATO) on the Draft Law Companion Guideline LCG 2017/D4.

We can provide copies of our submissions if required although we would note that these comments do not appear to have had any impact on these matters. We note, however, that LGC 2017/D4 remains in draft form.

As was detailed at some length in our original submission to Treasury on the draft legislation, we very much welcomed the approach of the Commissioner to encompass the Electronic Distribution Platform operators (EDPs) in the mechanism for seeking to collect the appropriate amount of GST on low value imports. This was, in our view, one of the saving graces of the proposed legislation.

The most preferable model, however, is a model for collection of GST at importation. This is the only model in which the Australian Government will have adequate power to actually enforce the law and take immediate remedial action to ensure that non-compliance with the law does not yield any benefit. Any other model opens up significant, and obvious areas which will be exploited by foreign retailers. No legislator, or adviser, should operate under any illusion that the enforcement regime as proposed will be in any way effective. It won't be. It will certainly lead to massive widespread under-declarations, non-compliance, and fraud by overseas vendors who will avoid charging and remitting GST en masse, with absolutely

no power of the Australian Government to take any enforcement action or even audit non-compliance.

## **The EDP Approach**

In relation to this current submission, our view would remain that in an overall context, the EDP approach should be a primary focus.

This approach is eminently preferable to a vendor collection model (as proposed by various EDPs themselves) as the vendor model opens up vastly more capacity for non-compliance by foreign vendors.

In particular, the vendor collection model is an unenforceable law that will lead to widespread non-compliance and an unfair advantage to the businesses that do not comply, and will leave no “neck to strangle” for the Australian Government to ensure any level of compliance. This will include the trade that these overseas vendors presently carry out via the EDPs like eBay and Amazon, as the EDPs will be within their rights to be wilfully blind to any non-compliance of GST remittance by participating overseas vendors.

At least if EDPs are liable for the accuracy of declarations of the overseas vendors trading through the EDP, then the Australian Government will have the power to audit and compel compliance from the EDP itself. The EDPs all have a presence in Australia, and therefore provide the Australian Government with the power of enforcement. This means that, at a minimum, all trade conducted via an EDP ought to be compliant with the new GST regime.

However, any of the millions of transactions that occur outside of an EDP, via direct online retail websites of overseas vendors, will still certainly reflect massive non-compliance. Any of the millions of Australian consumers who have purchased goods online from overseas vendors will be aware that in many cases the overseas vendors simply declare the value of the goods to be an insignificant sum (say \$20). This is the case notwithstanding that the Australian consumer may well have paid a significantly higher price. Any inaccurate or fraudulent declaration by the overseas vendor of the declared value of the goods will result in a reduced GST collection on the part of the ATO, even in circumstances where the freight forwarder has the imputed GST payment obligation.

It remains entirely unclear how and whether the ATO will be able to police the clear and obvious certainty that thousands of overseas vendors will under-declare the value of the goods they sell into Australia when sold outside of an EDP. One can only anticipate that the

practice of deliberately under-declaring values will significantly increase with the introduction of legislation to subject low value imports to GST.

Of course, a saving grace of the EDP model is the fact that EDPs presently represent a high percentage of total sales by foreign vendors into Australia.

In an Australian regime where trade via EDPs is subject to compliance with the Australian GST regime, while trade outside of EDPs is essentially impossible to police, one can imagine that prices on direct online foreign retail websites will generally become lower than via EDPs (as they will avoid charging GST), and trade online by Australians will undergo a shift from EDPs to direct website purchasing. This will mean that, over time, more of the foreign online retail trade will be impossible for the Australian Government to enforce, as it will be outside of the EDPs.

In the event that the proposed law is not enforceable, with inadequate penalties to ensure that all those intended to be affected comply, with respect, we submit that the Commission should be advising the Government in the strongest possible terms that the legislation will be discriminatory and ineffective. That is, in the absence of an ability to appropriately police or enforce the obligation to accurately declare the value of goods shipped into Australia by overseas vendors, the proposed legislation will simply benefit those businesses willing to under-declare the value of goods, while harming vendors that make accurate declarations.

This non-compliance also gives rise to a number of significant additional risks in relation to consumer safety on defective goods and consumer rights in relation to non-compliant overseas vendors. This point, we are aware, was emphasised in a significant number (including our own) of submissions on the proposed legislation.

## **Postal System**

While we understand that it is currently intended that freight forwarders will have an imputed GST obligation in respect of parcels they deliver on behalf of overseas vendors into Australia, we believe this does not resolve the risk of non-compliance for two key reasons. The first reason was mentioned earlier – because overseas vendors may simply under-declare the value of the consumer goods they ship into Australia without risk of any penalty, or stoppage of the goods. The second key reason is that we understand that the international mail system is exempt from the imputed GST liability. In other words, goods sent through the postal system will not be caught.

It is estimated that 50% of low value imports are made via international mail<sup>1</sup>. Mail systems are used today for much more than letter delivery. For instance, most products sold on the Aliexpress EDP are delivered via the mail system.

If there is no capacity for enforcement of the proposed changes in respect of packages shipped via the mail, then the obvious corollary will be that foreign shippers will simply ship goods via the mail, rather than freight forwarders, thereby avoiding GST. The mail system already accounts for millions of goods shipped to Australia from overseas. Any arrangement imposed by the Government must impose obligations for GST collection on postal systems, in the same way as they do on freight forwarders.

### **Collection at Import**

We recognise that any taxation-at-import measure may slow down the processing of low-value parcels at the border, and present added administrative costs. However, given that the ATO does not have any significant enforcement power overseas (even when treaties and other agreements are taken into account), we regard this approach as the only viable alternative.

The Collection at Import model is the only model that allows the Australian Government proper power of enforcement and audit.

The Collection at Import model is the only model that allows the Government to require the sender of goods to provide evidence of the amount actually paid by the customer for the goods (as opposed to simply declaring a value at their discretion), prior to releasing the goods from Customs. This can be achieved by ensuring that Customs spot-checks random shipments from foreign shippers to Australian recipients, and demands proof of the declared value of the goods (in the form of a payment receipt from the customer to the vendor in respect of the relevant goods) prior to releasing the goods from Customs into Australia. In circumstances where a sender of goods is found to have significantly under-declared the value of goods shipped into Australia on repeat occasions, the Government should ensure that Customs is empowered and obliged to suspend further release of goods into Australia until the correct GST obligation is paid.

This approach may, give rise to costs which would (without wishing to pre-empt the findings

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<sup>1</sup> Part 2, International Challenges – The economic impacts of changing arrangements for the importation of low value products – Centre FOR INTERNATIONAL ECONOMICS

of the Commission) exceed the amounts collected. It is nevertheless in line with the approach adopted in certain European Value added Tax jurisdictions and has a proven track record.

## **Conclusion**

It is for the above reasons that we provide the view that the approach to be adopted should be based upon the collection at import model. If this is not seen as viable due to the cost of enforcement to the Government, and the Government continues to elect to implement a discriminatory and ineffective law, then the EDP model which would capture the majority of imports without the adverse costs to the Government of the collection at import model, but also must be accompanied by an imposition of imputed GST liability on the postal system (in addition to freight forwarders).

The EDPs have access to all of the relevant information required to ensure that the appropriate amount of GST is collected on relevant transactions.

The information they are provided with by the parties to the transaction include (but are not limited to):

- the value of the transaction
- the nature of the goods (and consequently the GST classification)
- the supplier and supplier location and point of origin of the goods
- the customer and customer location.

As such they are an entity in possession of all of the required information to ensure that overseas vendors have to declare the correct transaction values and account, through the EDP, for the correct amount of GST.

In addition to the above the EDPs already have billing arrangements in place with their participating overseas vendors, and are therefore able to ensure that the relevant vendors are charged for any GST liability associated with a sale made by that vendor through the EDP.

There are a number of other examples of where EDPs are already required to comply with Australian laws in respect of goods shipped into Australia by their participating overseas vendors. These include electrical compliance standards, and other consumer laws. It is not true, and ought not be true, that EDPs are immune from any Australian laws applying to vendors of goods into Australia. EDPs facilitate the vendors, promote the vendors to

Australian customers, and directly benefit from the sale by virtue of fees and commissions associated with the sales to Australian customers by overseas vendors.

We recognise that EDPs will seek to avoid the burden of needing to make any declarations themselves, partly to avoid any compliance costs (which will ultimately be borne by the overseas vendors), and partly so as to benefit from any under-declarations or total non-compliance made by overseas vendors selling through an EDP. If an overseas vendor who participates in an EDP is able to avoid compliance with Australian laws, it ultimately means that they can promote retail prices that don't include GST via the EDP, and therefore the EDP will benefit from the trade at the lower retail price point (which doesn't include the GST).

EDPs benefit greatly from cross-border sales, and have all details relating to each transaction. As such, in the absence of a Collection at Import model, EDPs should have imputed liability not only for the GST but, as a policy and practical matter, they should also be accountable for any avoidance of GST. A number of these businesses have threatened to exit the Australian market as a consequence of the GST reforms, but given the profits currently made from sales within Australia this is likely in our view to be an empty threat.

If the Productivity Commission supports a vendor collection model in which EDPs have no liability to ensure compliance of their participating vendors, and/or if the Commission supports an exemption for the postal system from imputed GST liability for foreign shippers, then the Commission must highlight the obvious, evident, and certain corollary that there will be widespread non-compliance by foreign vendors, with no penalties, and that any compliant businesses will suffer discrimination due to compliance with the law.