Treasury Laws Amendment (GST Low Value Goods) Bill 2017

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Date introduced: 16 February 2017
House: House of Representatives
Portfolio: Treasury

Commencement: The Bill will commence on the first 1 January, 1 April, 1 July or 1 October to occur after the day the Act receives Royal Assent.

Item 65 of Schedule 1 to the Bill provides, in essence, that the amendments will generally apply to supplies where the invoice is issued or payment is received on or after 1 July 2017.

Links: The links to the Bill, its Explanatory Memorandum and second reading speech can be found on the Bill's homepage, or through the Australian Parliament website.

When Bills have been passed and have received Royal Assent, they become Acts, which can be found at the Federal Register of Legislation website.

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Purpose of the Bill

The purpose of the Treasury Laws Amendment (GST Low Value Goods) Bill 2017 (the Bill) is to:

- amend the A New Tax System (Goods and Services Tax) Act 1999 (GST Act) to ensure that goods and services tax (GST) is payable on certain supplies of low value goods that are purchased by consumers and imported into Australia from 1 July 2017, effectively extending the application of GST to those goods
- amend the Taxation Administration Act 1953 (TAA) to extend the administrative penalties for failing to provide information and notices as required, and making false or misleading statements, to situations associated with the amendments made by the Bill to the GST Act.

Background

Introduction

The GST regime commenced on 1 July 2000 following the enactment of the GST Act. GST applies to most goods and services, although there are exceptions, including those related to food and health. GST is imposed at the rate of 10 per cent on the final selling price and is included in the price paid by the purchaser to a supplier registered for GST. Suppliers are usually entitled to a credit, called an input tax credit, for the GST included in goods and services they purchase in the course of running their business. In this way, GST is effectively levied only on the final consumer of goods and services subject to GST.

Since the introduction of the GST, the digital economy has grown significantly. As part of this expansion, more Australian consumers are obtaining goods and services from overseas businesses. This includes standard consumer goods such as clothing and newer services such as digital streaming services. Differences in the GST treatment of imported goods and services, and those provided within Australia, have led to integrity and equity concerns.

The Government responded to these concerns through the Tax and Superannuation Laws Amendment (2016 Measures No. 1) Act 2016 (the 2016 Act), which introduced measures to apply GST to digital products and services imported by Australian consumers. The 2016 Act aimed to ensure that Australian businesses selling digital products and services were not disadvantaged relative to overseas businesses that sell equivalent products in Australia.

For more information on the 2016 Act, please refer to the Bills Digest for the originating Bill.

In a similar vein, the current Bill proposes to amend the GST Act to provide that GST is payable on certain supplies of low value goods that are purchased by consumers and imported into Australia from 1 July 2017. The Government considers that Australian businesses, especially small retailers, are ‘unfairly disadvantaged’ by the current GST exemption for low value imported goods valued at $1,000 or less.

This measure was announced in the 2016–2017 Federal Budget handed down on 3 May 2016, and the Bill introduced into Parliament on 16 February 2017.

Preceding the introduction of the Bill, the Government released exposure draft legislation and associated explanatory material on 4 November 2016, and invited submissions from interested parties by 2 December 2016. The submissions have not been made available.

2. The digital economy has been defined as ‘The global network of economic and social activities that are enabled by information and communications technologies, such as the internet, mobile and sensor networks’: Department of Broadband, Communications and the Digital Economy, Australia’s digital economy: future directions: final report, Canberra, 2009, p. 2.
The Intergovernmental Agreement on Federal Financial Relations requires that any change to the base or rate of GST can only be made by unanimous agreement of the states and territories. At the Council of Australian Governments (COAG) Australian Leaders Retreat on 22 July 2015, agreement was given to broaden the GST to cover overseas online transactions of physical goods under $1,000. Announcing the release of the exposure draft legislation on 4 November 2016, the Treasurer stated that the Council on Federal Financial Relations had provided in-principle agreement to this change on 21 August 2015.

Current and proposed approaches

Current arrangements
Under the current law, GST generally applies to supplies of goods within Australia regardless of the value of the goods. Goods that are imported into the indirect tax zone by the supplier are also generally subject to GST. (As set out in the Explanatory Memorandum, the indirect tax zone, or ITZ, is ‘broadly, Australia, excluding those geographic areas where the GST does not apply, such as the external Territories’). However, a $1,000 low value threshold exemption applies, so that GST is not payable on imported goods that are valued at less than this amount.

Proposed arrangements
Under the proposed amendments, imported goods with a customs value of $1,000 or less will have GST collected at the point of sale, using what is referred to as a vendor registration model. Under this model, overseas vendors that have an Australian turnover of $75,000 or more will be required to register for, collect and remit GST on low value goods supplied to consumers in Australia.

The Bill recognises certain types of business arrangements that have arisen to facilitate internet-driven commerce. These arrangements include electronic distribution platforms and redeliverers. Broadly, an electronic distribution platform (EDP) is a service delivered by electronic communication (including a website or an internet portal) that allows sellers to make supplies available to end-users. Examples of EDPs include eBay and Etsy. A redeliverer is, broadly, a business that has an arrangement with the intended recipient of the goods to assist with the delivery of foreign goods. Redeliverers may be used, for example, if a foreign store does not deliver to Australia. As set out in the Explanatory Memorandum:

... redeliverers can make or help arrange the initial purchase (including by acting as a personal shopper), provide a mailing address for delivery in the relevant jurisdiction, make arrangements for any required storage and deliver the goods or arrange for their delivery to the consumer.

As explored under ‘Position of major interest groups’ below, some stakeholders consider that the vendor registration model is not optimal and have proposed a logistics model instead. Under the logistics model, GST would be collected by logistics companies on all parcels that they deliver. It is these companies that would be responsible for the collection and remittance of the GST, being those responsible for and able to physically
monitor the movement of goods. According to KPMG, ‘it is very likely that the collection rate under a Logistics Model will be higher than under a hybrid Vendor Model’.  

**Rulings and guidelines**

On 24 February 2017, the ATO released a draft Law Companion Guideline LCG 2017/D2 to describe how the Commissioner will apply the law in the Bill when it comes into effect.  

The draft guideline discusses when a supply of low value goods will be connected with the indirect tax zone (ITZ) because of the proposed amendments.  

The draft guideline also discusses:

- how to calculate the GST payable on a supply of low value goods
- the rules to prevent double taxation of goods, and to correct errors or deal with changes in the GST treatment of a supply
- how the rules interact with other rules under which supplies are connected with the ITZ.  

These issues are discussed in more detail in the ‘Key issues and provisions’ section of this Digest.

**Committee consideration**

**Senate Standing Committees on Economics**

The Bill was referred to the Senate Economics Legislation Committee on 23 March 2017 for inquiry. Details of the inquiry and the report, which was tabled on 9 May 2017, can be found on the inquiry home page.  

The Committee received 34 submissions, some of which are explored in the section below entitled ‘Position of major interest groups’. Online access to all submissions can be found on the inquiry submissions page.

The Committee recommended that the Bill be passed, but that the implementation date be delayed to 1 July 2018.

The Committee also urged the Government to note the concerns raised in paragraph 2.78 of the report, which relates to the GST collection model proposed. Paragraph 2.78 reads as follows:

> While alternative models have been suggested, the Committee does not have sufficient information before it to form the view that any of these models is preferable to the one envisaged in the Bill. It also notes the OECD’s work in the area and that the OECD analysis, while not arriving at a specific recommendation, is consistent with the proposed model. The Committee suggests that Treasury better articulate the rationale for its chosen model.

Labor Senators issued a Dissenting report and made a number of recommendations, including that the Senate should not pass the Bill. Whilst they agree in principle with collecting GST on low value imports, they do not believe the GST collection model proposed in the Bill is workable. Labor Senators recommended that the Government:

> … complete a full review within one year, with engagement from all stakeholders. The review should include an analysis and comparison of alternative implementation models.

Labor recommended that any revised legislation should have a start date of 1 July 2018.

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23. Ibid.
27. Ibid., p. 23.
28. Ibid.
29. Ibid.
Senator Nick Xenophon made some additional comments, mainly relating to the GST collection model to be used. His team believes that the logistics model (explained above) would be more likely to level the playing field between Australian and overseas retailers and improve the position of small business in Australia. The Nick Xenophon Team reserves its final position so that it can undertake further consultation with stakeholders. If the Senate decides to pass this Bill, the Nick Xenophon Team agrees with the recommendation that it be implemented from 1 July 2018.

Position of major interest groups
As set out above, 34 submissions were made to the Senate Economics Legislation Committee. Some of these submissions are discussed below.

Amazon
Amazon made a comprehensive submission to the Committee in which it made the following points:

• Amazon supports the reduction of the GST threshold on low value imported goods to zero, thereby subjecting those goods to GST and providing a level playing field

• Amazon does not support the proposed collection model and recommends the Logistics Model be considered instead. Amazon believes that the Logistics Model would leverage the existing capabilities of Australian-based logistics providers such as Australia Post, express carriers and freight forwarders, to collect and remit GST on low value imported goods

• Amazon believes the Bill fails to level the playing field between Australian businesses and offshore suppliers as it imposes an administrative burden on sellers and electronic distribution platforms which will create an inherent disincentive for them to comply. It is estimated that there are approximately 1,100 foreign low value imported goods suppliers that would have to register for GST under the Bill in any given week. The model to be implemented by the Bill does not provide for efficient mechanisms to detect failure to register by these offshore suppliers, who operate in multiple overseas jurisdictions. In addition, there are significant questions around enforceability. This will inevitably result in a large proportion of vendors either failing or choosing not to register, and large volumes of low value imported goods entering Australia without being subject to GST

• Amazon believes the Bill introduces market distortions and disincentives, ultimately harming consumers. It argues that the Bill will create rather than remove distortions in pricing due to its lack of efficient mechanisms to require registration of vendors, detect non-compliance and ensure collection of GST on goods as they enter Australia. While compliant sellers and electronic distribution platforms will charge GST, noncompliant sellers and electronic distribution platforms will be able to ship parcels to Australia at prices that appear more attractive to the consumer, with low risk of detection. Amazon argues that this incentivises consumers to buy from less reputable overseas vendors, at increased risk

• Amazon states that the model to be implemented by the Bill is ill considered and untested. When the Australian Government’s Low Value Parcel Processing Taskforce (Taskforce) considered GST collection models in detail in 2012, it opted for the Logistics Model. Amazon states that this is consistent with the OECD’s 2015 test card of collection models, which identified the Logistics Model as the strongest of all the potential approaches. Amazon recommends that this model be considered for implementation, rather than the model proposed in the Bill

30. Ibid.
31. Ibid., p. 25.
32. Ibid., p. 28.
33. Discussed in the ‘Background – Current and proposed approaches’ section.
35. Ibid.
• Amazon is not certain that courts in foreign jurisdictions would recognise and enforce an Australian judgment for failure to remit GST under the new law. 36

In short, Amazon recommends that the Bill should not be passed. 37

**ASOS**

According to its website, ASOS is a global fashion destination that sells over ‘80,000 branded and own-brand products through localised mobile and web experiences, delivering from [our] fulfilment centres in the UK, US, Europe and China to almost every country in the world’. 38

ASOS’s concerns with the Bill include:

• complexity and uncertainty leading to compliance difficulties, which could have a negative impact on both the success of the legislation and the Australian consumer

• that there should be a level playing field for all retailers so that this legislation does not just impact those with a high profile

• too little time between the finalisation of the legislation and the proposed commencement date. The start date does not take into account the significant changes to business processes and systems that will be required and

• that it may lead to various other impracticalities and unfairness depending on the circumstances. 39

**Australia Post**

Australia Post supports the vendor registration model (VRM) as proposed in the Bill, which it believes would place relatively less burden on its infrastructure, processing times and costs of doing business compared to the ‘Transporter Model’ promoted by a number of large international e-commerce platform operators. 40

Under the Transporter Model, Australia Post would be required to physically collect GST at the border. As a result, additional resourcing, administration, new infrastructure and systems would be required to be put in place, which Australia Post claims would cost it approximately $900 million per annum. In fact, it claims that any proposal involving a model that requires the collection of GST at the border is likely to render the Australia Post mail and parcels business unviable. 41

Australia Post advocates a delayed implementation date of 1 July 2018 for the amendments contained in the Bill. 42

**Australian Retailers Association**

The Australian Retailers Association (ARA) expressed its broad support for the policy measure introduced by the Bill and views the vendor registration model (VRM) as having advantages over other GST collection models with respect to low value imported goods. 43

The ARA’s main concern relates to how the new laws will be implemented and enforced. It also expressed concern about the limited period of time for implementation of the measure. 44


37. Ibid., p. 6.


41. Ibid., pp. 2–3.

42. Ibid., p. 3.


44. Ibid., p. 6.
Conference of Asia Pacific Express Carriers

The Conference of Asia Pacific Express Carriers (Australia) Limited (CAPEC) is an industry association representing the interests of four integrated air express parcel delivery companies, namely DHL Express, Federal Express, TNT, and UPS. CAPEC supports the vendor registration model (VRM) whereby the overseas supplier collects GST at the point of sale, which is then remitted to the ATO directly.

However, it does not support the obligation proposed by the current Bill, which requires additional vendor registration information to be captured and reported by CAPEC members. CAPEC’s view is that the information flow should be between the overseas vendor and the ATO directly.

CAPEC’s concerns include:

- a disparity of treatment between CAPEC members and Australia Post, whereby Australia Post is not subject to the same regulatory burden and will thereby gain a competitive advantage. Furthermore, it contends that such an advantage is contrary to the Competition Principles Agreement (CPA) entered into by the Council of Australian Governments (COAG) in 1995, which addresses competitive neutrality across Australia with respect to government business enterprises. CAPEC is also concerned that an increasing amount of low value goods will enter the ITZ via the postal stream without having been subject to GST as overseas vendors may choose the postal stream to bypass vendor registration number (VRN) and other regulatory reporting requirements.

- the requirement for CAPEC members to capture the VRN at the Air Cargo Report Self Assessed Clearance (ACR-SAC) level is highly problematic in terms of its practical application. CAPEC states that the required IT system changes will ‘take several years to complete and come at a significant cost’. CAPEC argues that, given that its members will not be involved in the collection of GST revenue, the requirement to capture and report VRNs is superfluous and highly inefficient. As an alternative, CAPEC suggests that either vendors collect and report the required data or the existing data provided by the ACR-SAC be used.

- the limited period of time for implementation of the measure.

DHL Express

DHL Express (Australia) Pty Ltd (DHL) is a member of CAPEC and its submission substantially reflects that of CAPEC.

eBay

eBay Australia and New Zealand (eBay) considers that the proposed legislation is complex, inconsistent, and unworkable. More particularly, eBay’s concerns include:

- that tax liability varies depending upon the goods’ value; seller turnover; whether the sale is via an e-commerce platform or direct sale; or delivered by way of a courier, postal company or re-packaging business.

- the Bill seeks to utilise, in a modified form, legislation designed for overseas supplies of intangible property. eBay considers that 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 applying rules designed for intangible property is incompatible with tangible property.


47. Conference of Asia Pacific Express Carriers (Australia) Limited, Submission to Senate Economics Legislation Committee, op. cit., p. 4.

48. Ibid., p. 7.


51. The legislation to which eBay is referring is the Tax and Superannuation Laws Amendment (2016 Measures No. 1) Act 2016, which is discussed in the ‘Background’ section of this Digest.
that the legislation introduces separate categories and treatment of taxable goods, and foreign businesses
would be expected to learn the rate, thresholds and exemptions of another country, which eBay thinks is
unlikely
that there are two systems running in tandem. 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
that the legislation is unclear on disaggregation. Separate goods in one box or parcel 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 the point of sale
that the liability for the tax varies depending on logistics arrangements. Postal companies are not liable
unless the parcel comes via a re-packaging business.

Other concerns include:
that small overseas sellers will not continue selling via online marketplaces, because they will lose the benefit
of the AUD$75,000 threshold
that the new regime will not likely be enforceable. The Bill seeks to require 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
that the complexity of the task of implementing the measures introduced by the Bill has been vastly
underestimated and the proposed 1 July 2017 commencement date is completely unrealistic for business,
and even for the Government itself.
eBay suggests an alternative approach utilising a Logistics Model as follows:
all parcels ordinarily arrive at a small number of Customs points, via a small number of international logistics
companies, one of which is the government-owned Australia Post. 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. eBay consider such a
model to be practical and enforceable, capable of raising genuine revenue and fair. eBay also considers that,
unlike other proposals, this would level the playing field.

FedEx Express
FedEx Express (Australia) Pty Ltd (FedEx) is a member of the Conference of Asia Pacific Express Carriers
(Australia) Limited (CAPEC) and its submission substantially reflects that of CAPEC, discussed above.

LVIG Industry Group Secretariat (Alibaba, eBay and Etsy)
The LVIG Industry Group Secretariat (LVIG) is an industry group comprising the Alibaba Group, eBay Inc. and
Etsy.
LVIG’s concerns include:
ineffective compliance and enforcement capability

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52. Ibid., pp. 2–4.
53. Ibid., pp. 2–3.
54. Ibid., p. 6.
that small businesses operating through third party electronic distribution platforms (EDP) would be put at a disadvantage compared to larger businesses as the GST turnover threshold is determined at the EDP level rather than on the individual seller’s turnover.

LVIG also opposes the vendor registration model, suggesting the Logistics Model would be more appropriate.57

**Retail Council**

The Retail Council supports the Bill, satisfied that it gives effect to the Council’s long-running advocacy for the GST to apply to low value imported goods purchased by Australian consumers.58

**Shopping Centre Council of Australia**

The Shopping Centre Council of Australia supports the policy measure and the Bill in general, including the 1 July 2017 commencement date.59

**The American Chamber of Commerce in Australia**

The American Chamber of Commerce in Australia opposes the Bill, considering it to be ‘anti-consumer and anti-free trade in nature’.60 Its concerns include:

- difficulties in the effective enforcement of the measure and
- the limited period of time for implementation of the measure.61

**The Tax Institute**

Central to the concerns of The Tax Institute (TTI) are:

- difficulties in the effective enforcement of the measure
- the limited period of time for implementation of the measure.62

**Enforcement difficulties**

TTI is concerned that the amendments do not provide sufficient powers of enforcement of the law, nor sufficiently address voluntary compliance by the range of overseas suppliers, either due to a lack of awareness or by deliberate intent.

Contributing factors that may lead to low compliance rates include:

- the limited registration option may not be preferred by overseas entities as they will not be able to access input tax credits under that option. This may result in overseas entities seeking to register under the ‘ordinary rules’, which TTI considers to be extremely time consuming, complicated by the possibility of entities of types unfamiliar to Australia seeking to register
- the new provisions are technically complex
- TTI is of the view that in the absence of education and effective enforcement, and given the other factors mentioned above, that it is unlikely there will be high levels of voluntary compliance from all but the larger and better known overseas suppliers with worldwide reputations.63

**Limited implementation period**

TTI believes that there is very little time for overseas suppliers, particularly the larger ones, to get systems in place in time to accommodate the new changes after they become law.

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57. Ibid., p. 3.
61. Ibid.
63. Ibid., pp. 2–3.
TTI also considers that the short timeframe in which to implement the new rules is not only unrealistic, but also likely to largely remove the goodwill of overseas suppliers that might otherwise be relied on for voluntary compliance.64

Principal objections to the Bill

In the TaxVine member newsletter of 21 April 2017,65 TTI stated that the main thrust of the position it proposed to advocate at the Senate Economics Legislation Committee hearing on 21 April 2017 was as follows:

- ‘the time frame to introduction is way too short and the start date should be delayed to 1 January 2018’
- ‘compliance is going to be a big issue with smaller offshore suppliers being unlikely to comply’ and
- ‘the position of electronic distribution platforms such as eBay and Amazon will be untenable if the Bill goes through as currently drafted.’66

With respect to the last point TTI says:

Essentially where an electronic distribution platform is used, the proposal is to shift the liability to the GST away from the vendor of the underlying product to the EDP. This means that the EDP will be liable for GST of 1/11th of the amount paid to the vendor if no GST had been paid at the time of the transaction. This is an absurd result for the likes of eBay and Amazon who will be liable for tax on monies they never received.67

TNT Australia

TNT Australia Pty Ltd is a subsidiary of FedEx Corporation and a member of the Conference of Asia Pacific Express Carriers (CAPEC), and its submission substantially reflects that of CAPEC, discussed above.68

UPS

UPS Pty Ltd is a member of Conference of Asia Pacific Express Carriers (Australia) Limited (CAPEC) and its submission substantially reflects that of CAPEC, discussed above.69

Summary

Not surprisingly, stakeholders have generally approached the Bill’s efficacy from their own particular perspective. Australian retailers favour the Bill, overseas sellers and electronic distribution platform operators oppose the Bill and international express couriers object to additional information capture and reporting requirements. The views of The Tax Institute, on the other hand, appear to be more impartial.

Relatively common concerns are:

- the short timeframe for implementing the measures contained in the Bill
- the complexity of the legislation, including the obligations imposed on those affected and
- questions around the Bill’s effective enforceability, voluntary or otherwise.

Financial implications

The Financial Impact Statement in the Explanatory Memorandum to the Bill states that the measure introduced by the Bill is estimated to result in a gain to GST revenue of $300 million over the period to 2019–20.70

64. Ibid., pp. 4–5.
66. Ibid. ‘Electronic distribution platforms’ (EDPs) are explained under ‘Current and proposed approaches’ in the ‘Background’ section of this Digest.
67. Ibid.
Statement of Compatibility with Human Rights
As required under Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011 (Cth), the Government has assessed the Bill’s compatibility with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of that Act. The Government considers that the Bill is compatible.\textsuperscript{71}

Parliamentary Joint Committee on Human Rights
The Parliamentary Joint Committee on Human Rights considers that the Bill does not raise human rights concerns.\textsuperscript{72}

Key provisions
Amendments to the A New Tax System (Goods and Services Tax) Act 1999
The Explanatory Memorandum to the Bill provides a detailed explanation of the Bill’s provisions.\textsuperscript{73} A summary of the changes is provided here.

As explained briefly in the ‘Background’ section of this Digest, currently GST generally applies to:

• supplies of goods within Australia regardless of the value of the goods
• goods that are imported into the indirect tax zone (ITZ) by the supplier and are valued above the $1,000 low value threshold exemption.\textsuperscript{74}

Under the amendments proposed by the Bill, imported goods with a customs value of $1,000 or less will have GST collected at the point of sale, using what is referred to as a vendor registration model.\textsuperscript{75} Under this model, overseas vendors that have an Australian turnover of $75,000 or more will be required to register for, collect and remit GST on low value goods supplied to consumers in Australia.\textsuperscript{76}

This GST treatment is achieved by providing that a ‘supply’\textsuperscript{77} of ‘goods’\textsuperscript{78} will be ‘connected with the ITZ’,\textsuperscript{79} (broadly Australia excluding the external territories), if:

• the supply is an ‘offshore supply of low value goods’ and
• the recipient acquires the supply as a ‘consumer’.\textsuperscript{80}

However, the supply will not be connected with the ITZ if, at the time the ‘consideration’\textsuperscript{81} (broadly the agreed price) for the supply is set, the supplier (or the entity that is treated as being the supplier for the purposes of the GST law), after taking reasonable steps, reasonably believes the goods will be imported as a ‘taxable importation’.\textsuperscript{82}

\textsuperscript{71} Ibid., pp. 48–49.
\textsuperscript{73} \textit{Explanatory Memorandum}, Treasury Laws Amendment (GST Low Value Goods) Bill 2017, op. cit.
\textsuperscript{74} Section 7-1 and subsection 9-25(3); definitions of import and indirect tax zone in section 195-1 of the GST Act. As discussed above, the indirect tax zone (ITZ) is, broadly, Australia, excluding the areas where GST does not apply, such as the external territories.
\textsuperscript{75} Sections 23-5, GST Act.
\textsuperscript{77} Supply has the meaning given by section 9-10, GST Act [Section 195-1, GST Act].
\textsuperscript{78} Goods means any form of tangible personal property [Section 195-1, GST Act].
\textsuperscript{79} Connected with the indirect tax zone, in relation to a supply, has the meaning given by sections 9-25, 85-5 and 126-27 of the GST Act, and proposed section 84-75, at Item 38 of the Bill. Indirect tax zone means ‘Australia’ (as defined at section 960-1 of the Income Tax Assessment Act 1997), but does not include any of the following:
(a) the external Territories;
(b) an offshore area for the purpose of the Offshore Petroleum and Greenhouse Gas Storage Act 2006;
(c) the Joint Petroleum Development Area (within the meaning of the Petroleum (Timor Sea Treaty) Act 2003);
other than an installation (within the meaning of the Customs Act 1901) that is deemed by section 5C of the Customs Act 1901 to be part of Australia and that is located in an offshore area or the Joint Petroleum Development Area. [Section 195-1, GST Act].
\textsuperscript{80} See below for explanations of these terms.
\textsuperscript{81} Consideration, for a supply or acquisition, means any consideration (including payment), within the meaning given by sections 9-15 and 9-17 of the GST Act, in connection with the supply or acquisition [section 195-1, GST Act].
\textsuperscript{82} Taxable importation has the meaning given by subsections 13-5(1) and 114-5(1), GST Act [Section 195-1, GST Act]; CCH, ‘Australian GST guide commentary’, op. cit., paragraph 100-036.
A supply of goods is an **offshore supply of low value goods** if the goods are brought into the ITZ with the assistance of the supplier (or an entity treated as being the supplier)\(^{83}\) and the ‘customs value’\(^{84}\) of the goods, at the time when the consideration for the supply was first agreed, would have been $1,000 or less had they been exported at that time.\(^{85}\) However, supplies of tobacco, tobacco products or alcoholic beverages are never supplies of low value goods.\(^{86}\) These goods are always taxable importations under the existing rules, so GST will be collected through customs processes.\(^{87}\)

A **consumer**\(^{88}\) refers to a recipient of a supply that is not registered for GST or, if registered for GST, does not acquire the goods solely or partly for the purposes of a business that the recipient carries on in the ITZ.\(^{89}\)

Broadly, the proposed amendments will:

- make supplies of goods valued at $1,000 or less at the time of supply connected with the ITZ if the goods are, broadly, purchased by consumers and are brought to the ITZ with the assistance of the supplier\(^{90}\)
- treat the operator of an ‘electronic distribution platform’ (EDP)\(^{91}\) as the supplier of low value goods if the goods are purchased through the platform by consumers and brought to the ITZ with the assistance of either the supplier or the operator\(^{92}\)
- treat ‘redeliverers’\(^{93}\) as the suppliers of low value goods if the goods are delivered outside the ITZ as part of the supply and the redeliverer assists with their delivery into the ITZ as part of, broadly, a shopping or mailbox service that it provides under an arrangement with the consumer\(^{94}\)
- allow non-resident suppliers of low value goods that are connected with the ITZ only because of these amendments to elect to be ‘limited registration entities’.\(^{95}\) A limited registration entity is able to access simplified registration and reporting requirements, but its acquisitions are never ‘creditable acquisitions’ [which means that input tax credits are not available] and it cannot obtain an Australian Business Number (ABN)\(^{96}\)
- prevent double taxation by making importations of goods non-taxable importations if the supply of the goods is a taxable supply only as a result of these amendments and the importer notifies the Comptroller-General of Customs, by the time the importation would have been subject to GST,\(^{97}\) that the supply was a taxable supply.\(^{98}\)

**Amendments to the Taxation Administration Act 1953**

Section 284-75 of the **Taxation Administration Act 1953** (TAA) sets out administrative penalties for providing false or misleading information under taxation law.\(^{99}\) **Items 61 and 62** of the Bill amend section 284-75 to extend this penalty to situations where a false or misleading statement is made in relation to whether or not a supply is connected with the ITZ because it is a supply of low value goods.

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83. Proposed section 84-77 of the GST Act, at Item 38 of the Bill.
84. Customs value, in relation to goods, means the customs value of the goods for the purposes of Division 2 of Part VIII of the Customs Act 1901 [section 195-1, GST Act].
85. Proposed paragraph 84-79(3)(a) and proposed subsection 84-79(4) of the GST Act, at Item 38 of the Bill.
86. Proposed paragraph 84-79(3)(b), at Item 38 of the Bill; CCH, Australian GST Guide Commentary, op. cit., paragraph 100-046.
88. Consumer has the meaning given by proposed subsection 84-75(2) at Item 38 of the Bill.
89. CCH, Australian GST guide commentary, op. cit., paragraph 100-046.
90. Proposed section 84-75 of the GST Act, at Item 38 of the Bill.
91. Electronic distribution platform has the meaning given by section 84-70 of the GST Act. EDPs are explained under ‘Current and proposed approaches’ in the ‘Background’ section of this Digest.
92. Proposed subsections 84-77(2) and 84-81(3) of the GST Act, at Item 38 of the Bill.
93. Redeliverer, of a ‘supply of low value goods’, has the meaning given by proposed subsection 84-77(4) of the GST Act, at Item 38 of the Bill. Further information on redeliverers is set out under ‘Current and proposed approaches’ in the ‘Background’ section of this Digest.
94. Proposed subsections 84-77(3), 84-77(4) and 84-81(4) to (6), at Item 38 of the Bill.
95. Proposed section 146-5 of the GST Act, at Item 49 of the Bill; limited registration entity has the meaning given by section 84-140 of the GST Act [Section 195-1, GST Act].
96. Proposed Division 146 of the GST Act, at Item 49 of the Bill.
97. Proposed section 42-15 of the GST Act, at Item 19 of the Bill.
Section 288-45 of the TAA provides an administrative penalty for failure to provide invoices or notices required under taxation law. Item 63 amends this section to apply the administrative penalty to suppliers who do not provide recipients with notice, in the approved from, of the GST payable on a supply of low value goods, as required by proposed section 84-89 of the GST Act, at item 38 of the Bill.

Item 64 inserts proposed section 288-46 into the TAA, to penalise offshore suppliers of low value goods who do not provide the information required under proposed section 84-93 of the GST Act, at item 38 of the Bill. (The required information is the supplier’s registration number, the recipient’s ABN (if relevant) and the extent to which the supply is being treated as taxable.)

Transitional provisions

Item 66 of Schedule 1 to the Bill is a transitional provision providing that an election to be a limited registration entity made under former subsection 84-140(2) of the GST Act will continue to be effective for the purposes of proposed subsection 146-5(2), inserted by item 49 of the Bill. Section 84-140 will be repealed by item 42 of Schedule 1 to the Bill.

Commencement of amendments

Clause 2 of the Bill provides that the Bill will commence on the first 1 January, 1 April, 1 July or 1 October to occur after the day the Act receives Royal Assent.

Item 65 of Schedule 1 to the Bill provides, in essence, that the amendments will generally apply to supplies where the invoice is issued or payment is received after 1 July 2017, and will not apply to supplies relating to earlier tax periods, even if the goods do not reach the recipient until a later date.\(^{100}\)

Key issues

Submissions to the Senate Economics Legislation Committee identified the following areas of concern for stakeholders:

- the short time period in which the Bill is to take effect has received substantial criticism.\(^{101}\) This concern was accepted by the Committee, which recommended a delayed implementation date of 1 July 2018\(^ {102}\)
- the new provisions in combination with the existing legislation introduce a certain amount of complexity for those affected, which may impact negatively on voluntary compliance\(^ {103}\)
- jurisdictional issues may arise in attempting to impose obligations on non-residents in a foreign country, leading to difficulties with enforcement with could undermine the purpose of the Bill\(^ {104}\) and
- the vendor registration model proposed in the Bill is criticised by stakeholders, some of whom have recommended that a logistics model be applied instead.\(^ {105}\)

\(^{100}\) See, for example the \textit{Submissions} to the Senate Economics Legislation Committee \textit{Inquiry into Treasury Laws Amendment (GST Low Value Goods) Bill 2017 [Provisions]} by ASOS, Australia Post, the Australian Retailers Association, CAPEC, eBay, the American Chamber of Commerce in Australia and The Tax Institute. For more information, see the ‘Position of major interest groups’ section of this Digest.

\(^{101}\) See, for example the \textit{Submissions} to the Senate Economics Legislation Committee \textit{Inquiry into Treasury Laws Amendment (GST Low Value Goods) Bill 2017 [Provisions]} by ASOS, Australia Post, the Australian Retailers Association, CAPEC, eBay, the American Chamber of Commerce in Australia and The Tax Institute. For a brief explanation of these models, see ‘Current and proposed approaches’ in the ‘Background’ section of this Digest.

\(^{103}\) See \textit{Submissions} to the Committee by, for example, Amazon, ASOS, eBay, the LVIG Industry Group and The Tax Institute.

\(^{104}\) See \textit{Submissions} to the Committee by, for example, Amazon, eBay, the LVIG Industry Group and The Tax Institute.

\(^{105}\) See \textit{Submissions} to the Committee by, for example, Amazon, eBay, the LVIG Industry Group and The Tax Institute.