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GST on low-value imported goods
C/- Deputy Commissioner Policy and Strategy
Inland Revenue
Via email (policy.webmaster@ird.govt.nz)

5 July 2018

Dear Sir/Madam

KPMG Submission: GST on low-value imported goods: An offshore supplier registration system

We are pleased to provide our submission on the *GST on low-value imported goods: An offshore supplier registration system (A government discussion document).*

Our submission and the current consultation requires some context.

GST policy and its interaction with trade

From a GST policy perspective, it is clear that goods acquired from offshore should be subject to GST if the goods would be subject to GST if acquired in New Zealand. However, that relatively straight-forward policy position is much harder to put into practice. There is also a risk that implementation of the policy will affect consumer choice and trade.

The *South Dakota v Wayfair, INC., Et Al (585 U.S. (2018))* ("*Wayfair*") decision of the United States Supreme Court illustrates both positions.

The majority, albeit in the context of state level taxes (which are not full value added taxes), saw that the lack of taxation of cross-(state) border sales as a significant problem for taxation by US states and local authorities. It allowed, in their view, consumers to avoid the tax properly payable on their consumption. It created, in their view, unfair competition. However, the majority also recognised that the taxation of cross-border sales required an appropriate set of rules so as not to unduly hamper cross-border sales.

The minority saw the potential to disrupt the current commercial arrangements, which had grown in the context of their current rules, as a significant problem to deciding in favour of South Dakota's rules. (This, in the specific United States constitutional context, led to their view that *Wayfair* should succeed.)

When we have debated the New Zealand policy proposal within KPMG, the same two broad points are made:

1 Not taxing cross-border sales is an increasingly significant gap in taxing New Zealand consumption.

2 The imposition of the tax runs the risk that cross-border sales will not occur. The driver for cross-border sales is the variety and choice available. The relative cost differential is less of a driver with GST accounting for some of the difference. The real concern is that the goods will be simply unavailable if foreign suppliers cease to trade with New Zealand consumers. (We have seen examples of foreign suppliers ceasing to supply to Australia as the result of Australia's rules.)

Further, implementing the proposal is unlikely to be as straight-forward as assumed. This is particularly the case for deemed suppliers whose existing systems and contracts may not readily deal with the requirements to comply with the GST.

Submission

On balance, we consider it is now appropriate to apply GST to cross-border sales. However, it is important that the GST is implemented in as efficient a way as possible. Government needs to recognise that the proposal will disrupt commercial arrangements and that it is necessary for the administration of the system to be as light touch as possible. At the border compliance, particularly, needs to have a mind-set change so that goods from compliant suppliers are efficiently cleared.

Foreign Supplier Model

The starting point in *Wayfair* is that the tax is a tax on the consumer of the goods. However, collection and enforcement problems mean that the collection is imposed on the supplier. That is also the position for the document's proposal – in particular, that technology limitations mean that the supplier should charge and collect the GST.

However, the proposal is not limited to a supplier model. Both electronic marketplaces ("EMPs") and re-deliverers are also required to register. The first extends the GST to goods supplied that would not be taxable if acquired in New Zealand. Individual businesses are not able to use the threshold and consumer to consumer ("C2C") supplies are within the net. The re-deliverer registration requirement is a consumer collection model (albeit a before the border model).

This hybrid model suggests that the limitations may be overstated. Further, the model means that there is a difference between the (theoretical) incidence of the tax (on the consumer) and the legal liability (on the supplier/deemed supplier).

The proposed model is a mix of compromise and opportunism to raise as much revenue as possible.

Submission

It is important that there is on-going attention paid to the regime to make changes to reduce the costs as quickly as changes to Customs and postal processes allow.

Summary of submissions

Our further detailed submissions are in the Appendix. We summarise below our submission points.

— To reduce compliance costs for offshore businesses required to register and account for GST under the proposed rules, we recommend that:

- New Zealand's rules for GST on low-value imported goods should be aligned with Australia's to the extent Australia's rules are workable. Problems arising from those rules should be dealt with and not repeated in New Zealand's rules.
- Registrants should be given the option to charge GST on all their low-value imported goods sales, so that they do not have to verify which sales are made to GST registered businesses.
- A searchable public register of GST registered businesses is made available to allow registrants to determine whether they are making supplies to GST registered businesses.

— The rules should include provisions to ensure that consumer-to-consumer sales of low-value imported goods made through an electronic marketplace ("EMP") are not subject to GST.

— The threshold for the low-value goods should be determined with reference to the Customs value of the goods and the GST value of the goods should include delivery charges.

— Consideration should be given as to whether the threshold can be increased from the proposed NZ$400 to NZ$1,000.

— Customs and Inland Revenue need to have an efficient clearance and audit process to ensure double taxation does not arise. In particular, processes should be established so that it is reasonable to rely on audit rather than at the border clearance processes.

— The time limit for making output tax adjustments for refunds given by offshore suppliers should not be limited to two years.

— The rules should provide practically achievable criteria for EMPs to apply for an exemption from the rules so that the primary obligation to return the GST on the sale of low-value imported goods is on the actual supplier. The overriding of commercial arrangements and the cost of implementation should be dealt with by the proposal.

— The rules should state the time of supply for vouchers issued by EMPs is at the time of redemption as opposed to issuance.

— The rules should confirm that offshore suppliers only take into account direct sales when determining whether the offshore supplier has exceeded the NZ$60,000 registration threshold. Officials should also consider a simplified set of threshold rules being applied.

— Non-resident suppliers required to charge GST under these (or the remote services) rules, should be entitled to recover input tax on acquisitions for their non-New Zealand activity and supplies.

— The application of New Zealand consumer law to GST pricing of foreign suppliers should be considered and if necessary, it should be confirmed that GST exclusive quoting but GST pricing at the checkout is allowed.

Further information

Should you wish to discuss further with us any aspect of our submissions or require any further information, please contact us.

Yours sincerely

Peter Scott
Partner

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Partner

Appendix: Submission on GST on low-value imported goods: An offshore supplier registration system (A government discussion document)

General design comments

Extended offshore supplier registration model

The discussion document notes that three options were considered for the collection of GST on low-value goods being:

1 **At the point of sale** where the offshore supplier will be required to register for GST and collect GST on their sales.

2 **Between the point of sale and delivery** where the courier companies and New Zealand Post would collect the GST on low-value goods sales.

3 **After the delivery of the goods** where the recipient of the goods would pay the GST after their delivery.

The discussion document recommends an offshore supplier registration model (under the first option) at present as there are practical concerns for the latter two options that make them infeasible in the short to medium term.

We note that the model outlined in the discussion document is not a pure offshore supplier registration model due to the extension of the GST registration requirement to include EMPs and re-deliverers. These are not the supplier of the goods. This presents some policy and practical challenges that need to be carefully considered in the design of the proposed rules. Further, particularly for EMPs, existing business models and contractual arrangements will not easily accommodate the proposals. We note below particular submissions that may allow more appropriate outcomes.

Alignment with Australian rules

GST applies to low-value goods imported into Australia from 1 July 2018. The proposed rules for charging GST on low-value goods imported into New Zealand are largely similar to the Australian model.

Given Australia and New Zealand's close relationship and geographic proximity, there will be many offshore suppliers, EMPs and re-deliverers that will be selling/shipping low-value goods to both countries. We would encourage officials that, to the extent possible, New Zealand's rules should be aligned with Australia's. This will help minimise the compliance cost for offshore businesses that need to comply with both countries' low-value goods rules.

However, equally, attention should also be paid to practical and technical problems with the Australian rules. Our feedback is that the rules are not always as easily implemented as the model would suggest. New Zealand has time available to work with suppliers to consider the rules and to find solutions.

Consumer to consumer (C2C sales)

From a policy perspective, so that New Zealand and foreign sourced goods have the same treatment, the proposed rules should not apply to sale of goods that would not be subject to GST if supplied in New Zealand.

The proposals may overreach where the goods are being sold by a private seller, i.e. C2C sales through an electronic marketplace.

The proposed rules should ensure that C2C sales are not subject to GST where they are sold through an electronic marketplace. Some suggestions on how this can be achieved are:

— Exclude from the EMP rules, platforms that mainly only provide a service to list goods for sale. This will ensure that C2C sales would not be subject to GST. The offshore private seller would not have an obligation to charge GST under the proposed rules. On the other hand, offshore businesses that use the listing platform to sell their goods would still have the requirement to register for and charge GST on their low value goods sales.

— If this exclusion is not workable, then we would recommend that EMPs are given the option not to charge GST on the sale of goods made through their platforms where they reasonably expect that the seller is not carrying on a taxable activity, e.g. EMPs would require their customers to confirm whether they are a business or private seller when on-boarding users onto their platform.

Valuation

We believe that two separate issues need to be considered:

1 what value of the goods should be used for determining whether the goods are below the threshold for GST to apply

2 whether, if a good is subject to the low-value goods regime, the costs of delivery and insurance to the end customer should be included in the taxable value of the goods.

We consider the second issue first.

Including international freight and insurance in the value of the goods

We agree that delivery charges (i.e. international freight and insurance) for low-value goods should be included in the value of the goods for GST charging purposes.

Simply, the value of the consumption in New Zealand includes the price of the goods plus the cost of getting the goods to New Zealand. Therefore, it is logical that those costs are included in the value of the goods. This is consistent with the current valuation rules in section 12 of the GST Act.

This is also consistent with the stated policy objective of applying GST on low-value imported goods in order to level the playing field with local suppliers. For local suppliers, their cost of making the goods available to their customers includes the cost of delivery of the goods into their shops, and these delivery costs are then recovered in the price for which they sell their goods. Accordingly, not including delivery charges for low-value imported goods would not put the local suppliers in a level playing field.

Value for determining whether goods are low-value goods

Officials are considering two valuation options in determining whether goods are low-value goods, being:

1 the Customs value of the goods

2 the GST value of goods (i.e. the customs value plus delivery charges – see above).

Our preference would be for the threshold to be based on the Customs value of the goods because:

— From the offshore supplier/EMP re-deliverer's perspective, it would be easier for them to set-up their systems to add GST where the value/price of the goods is below the low-value goods threshold. This is because, typically, delivery charges are not known until the customer proceeds to 'check-out' the goods, so whether GST applies or not would be

determined only at the end. Including the delivery charges can then be accommodated by adding GST to the delivery charge at the end of the process.

— From a customer experience perspective, it would also be preferable that the prices quoted by the offshore supplier (for example in the supplier's website) includes all applicable taxes, e.g. customers may not be happy to see a price of NZ$370 for example, and then find out when they proceed to the check out that they need to pay an additional 15% on top of the price quoted as the delivery charges exceeded NZ$30.

— Australia's low-value goods threshold is based on the Customs value of the goods. Aligning the New Zealand threshold valuation method with that of Australia's will help minimise the compliance cost for offshore businesses that need to comply with the rules in both countries.

Threshold value

The discussion document proposes a NZ$400 threshold in order for GST to apply on low-value imported goods.

We recommend officials consider whether this threshold can be increased. If this is an option, then we would recommend a threshold value of NZ$1,000.

The practical benefits of increasing the low-value goods threshold are:

— Given that Australia's low-value goods threshold is set at AU$1,000, increasing the New Zealand threshold to NZ$1,000 will further align the rules between the two countries.

— A higher threshold will reduce cases where a single consignment has multiple low value goods that exceed the threshold and the practical issues associated with that issue.

We note that the Customs *de minimus* value will need to be aligned with the threshold to ensure there is no double-taxation of the imported goods.

Supplies of multiple low value goods

Double taxation

As noted in the discussion document, there is a potential for double taxation where a single consignment includes multiple goods that individually are below the low-value goods threshold, but in aggregate, exceed the threshold. In this case, the offshore supplier (assuming they are required to register for GST) would have charged GST on the individual items sold under the proposed rules; however, as the consignment value is above the customs *de minimus* value, NZ Customs will also seek to collect GST at the border, when these goods are imported.

In order to prevent double taxation, it is proposed that the consumer would need to provide Customs with appropriate evidence of the GST payment so that GST will not be collected again at the border. While we agree that this is an option, we would urge officials to consider more efficient procedures for providing evidence to Customs that GST has already been paid at the point of sale.

Requiring customers to produce the evidence that GST has been paid on the imported goods creates a delay in the movement of goods at the border (as the goods will not be cleared until the customer has provided the evidence required). This raises the concern that implementing the GST on low value goods will unduly interfere with trade.

Further, this adds administrative costs to Customs in contacting the customer and processing the evidence provided. A trade-off for GST being applied on low value goods is that duty and cost recovery charges will not apply. We assume that will be the case for consignments of low value goods otherwise consumers will pay GST and customs cost recovery charges and duty. The costs would not therefore be recovered by Customs.

We recommend officials consider Customs:

- Develop an Approved Supplier regime for registered suppliers/EMPs/re-deliverers. Consumers of goods supplied by Approved Suppliers would not be required to separately prove GST payment. Instead, Approved Suppliers would be subject to post-importation audit activity by Customs and Inland Revenue, and/or
- Provide documentation guidelines that would allow a supplier to show that GST has been charged. We would expect over time suppliers would comply with these requirements if it made the customer experience easier.

If measures such as these are implemented, enforcement of the proposed rules should be easier. Complying suppliers will be more visible so that audit checks are simpler. Potentially non-complying suppliers will also be more visible.

We have made two assumptions:

1 Information will be exchanged between Customs and Inland Revenue under the Customs and Excise Act 2018.

2 The proposals' references to the consumer proving GST has been paid is intended to be a reference to GST has been charged. A consumer is unlikely to ever be in a position to prove that GST has been paid by the supplier.

Reasonable belief

Australia has a reasonable belief test for whether goods will be part of a consignment or not and therefore whether the threshold is breached or not. If New Zealand has an equivalent rule, the reasonable belief exclusion should be optional. This would allow:

- GST to be applied automatically to goods that are below the threshold. This is likely to be attractive if Customs processes for confirming that GST has been charged are efficient and not intrusive.
- Suppliers, who are uncertain whether goods are part of a single consignment or not, to charge GST without any concern that it may have been incorrectly charged.

Option to charge GST on B2B sales

It is proposed that only sales of low-value imported goods to non-GST registered recipients (B2C sales) will be subject to GST under the proposed rules. However, there will be an option to zero-rate sales to GST registered recipients (B2B sales).

The proposed rules will require the offshore supplier, EMP or re-deliverer to differentiate between B2C sales that are subject to the proposed rules and B2B sales that are not. This creates a compliance burden as procedures/systems to verify whether the recipient of the goods is GST registered will be required.

In order to ease the compliance burden for registrants, we recommend they are also given the option to charge GST on all their low-value imported goods sales, i.e. not to differentiate between B2C and B2B sales. We emphasise that this should be an option and not the default rule as not all registrants may want to charge GST on all their sales. Registrants that already have their systems set-up to differentiate between B2B and B2C sales will want to have the option to continue to treat B2B sales as not subject to GST or zero-rated.

Public register of GST registered businesses

As noted above, the requirement to differentiate between B2B and B2C sales under the proposed rules is a compliance burden for the registrant.

In order to ease this burden, we would also recommend that a searchable public register of GST registered businesses is made available. This would provide registrants with an easy and cost-effective method for checking whether the recipient is GST registered. This would have the additional benefit for a range of other situations under current GST legislation where confirmation of the GST status of a supplier or recipient is needed to determine the correct GST treatment (for example, zero-rating of land transactions; insurance claims paid by insurers; claiming of second-hand goods credits).

Refunds/returns

Where an offshore supplier provides a refund to the customer for goods returned by the customer, it is proposed that the supplier will be able to adjust its output tax for the GST refunded. However, it is noted in the discussion document that the time limit for making the output tax adjustment would be two years, as required under section 20 of the GST Act 1985. We do not agree that the two year time limit applies to a domestic supply. The two year time limit only applies to unclaimed GST input tax. It does not apply to output tax adjustments (for example, via credit note). A two year limit should not apply to offshore suppliers.

If there is an option to charge GST on B2B sales, we would expect the recipient's input tax claim would automatically be adjusted via the credit note rules. We recommend that is confirmed.

Requirement for EMP to register and return GST on low-value imported goods

Under the proposed rules, EMPs will be required to register for and return GST on low-value imported goods sold through their platform where customers would normally consider the EMP to be the supplier and this is reflected in the contractual arrangements between the parties.

Policy and practical considerations

We note that this proposal is contrary to the scheme of the rules that apply to domestic suppliers. This is a significant departure from the policy of the domestic rules. Even an agent for a supplier is not the supplier for GST purposes unless specific rules are followed and the parties agree.

The proposal is justified on revenue and compliance grounds. The proposal will capture more supplies with fewer registered persons.

Officials should be aware that the:

— Proposal comes at a cost to EMPs. Implementing the rules when the EMP is not the actual supplier is not necessarily straight-forward or cheap.

— Goods are likely to be less tied to a platform than remote services. Suppliers have direct distribution channel options that may not be the case for remote services. The differences in thresholds may therefore encourage suppliers to direct rather than EMP channels. This would mean that the same economic transaction has different GST results.

— Proposal is likely to require that commercial arrangements will need to be renegotiated. We have not analysed the position in any detail but we would not expect section 78 to facilitate amendments to existing contracts between suppliers and EMPs. (These contracts are unlikely to have New Zealand as the governing law. We have not researched whether section 78 can have extra-territorial reach. However, even if it can, commercial renegotiations would still likely be required.)

— Proposal may mean that consumer to consumer transactions are included when they would not be if the supply was a domestic supply.

— Resident EMPs, which may have resident and non-resident suppliers, have a particular problem as domestic suppliers are deemed to sell through the EMP as well.

We recommend that, if the EMP proposal proceeds, these particular issues are dealt with.

Ability for supplier to be responsible

It is proposed that the remote services rules of when an EMP will be required to register will be applied for low-value imported goods, i.e. an EMP will be required to charge GST unless all the following criteria are met the:

1 documentation provided to the recipient identifies the supply as made by the underlying supplier and not the EMP

2 underlying supplier and the EMP have agreed that the supplier is liable for the payment of the GST

3 EMP does not authorise either the charge or the delivery to the recipient, nor set the terms and conditions under which the supply is made.

In respect of the second criteria above, we understand that if a supplier is not required to register, as it does not meet the NZ$60,000 registration threshold, the criteria can still be satisfied. In other words, if the supplier agrees to meet their GST obligations, that is satisfied if they are below the threshold and not required to register for GST and charge GST.

We also note that based on our discussions with various EMPs, it is highly unlikely that the EMPs will be able to satisfy especially the third criteria in practice. This is a concern as in some cases it would not be reasonable for the EMP to have the primary responsibility for returning the GST, e.g. if the payment is received directly by the supplier. The EMP proposal is also contrary to a supplier model of responsibility for charging and collecting GST.

To mitigate those concerns, it is also proposed that EMPs will be allowed to not be treated as the supplier, at the Commissioner's discretion, where the EMP has a 'compelling case' that it cannot be reasonably expected to be able to comply with its obligations. While we support consideration of this option, we would encourage officials to:

— set the criteria for what a 'compelling case' would be at a practically achievable level; and

— consider whether this option can be more widely applied, given the EMP rules do not sit easily with domestic policy.

Vouchers issued by EMPs

Some EMPs issue gift cards/vouchers that can be used to purchase goods in the EMP's platform.

The vouchers may be used to:

— Purchase goods that are not consumed in New Zealand, for example, if goods are purchased using a voucher but are not shipped to New Zealand. No GST should apply.

— Purchase goods that are above the threshold so that there will be double taxation if GST is charged on issue.

Further the vouchers may be in denominations that are more or less than the threshold but may be used for low value goods or not.

We recommend that a specific time of supply rule is included in the rules for vouchers issued by offshore EMPs, so that the time of supply for these vouchers is only on redemption of the vouchers. This will ensure that GST will only apply where these vouchers are used to purchase low-value imported goods into New Zealand.

Registration threshold

The proposed rules require an offshore supplier to register for and charge GST on low-value imported goods where its supplies exceed NZ$60,000. However, it is not clear from the discussion document, whether the NZ$60,000 threshold for an offshore supplier will only include its direct sales to New Zealand customers, or whether they include both direct sales and sales made through an EMP. We understand that the threshold is to be applied only to direct sales. This should be clear in the proposed rules.

The registration threshold rules have look back and look forward rules. With exchange rate as well as demand volatility, it is likely that foreign suppliers will move above and below the threshold. Theoretically, and consistent with domestic suppliers, this would make them liable to register and provide them with an option to deregister.

Consideration should be given to whether the threshold tests can be amended for offshore suppliers so that they can practically be applied. As an example, the test could be applied annually based on the supplier's financial balance date rather than on a rolling 12 month basis.

Section 54B Non-resident supplier registration

Non-residents are able to register and recover input tax for supplies acquired for a taxable activity that does not involve New Zealand taxable supplies. This rule is consistent with the policy that GST is a tax on personal consumption and is not a tax on business.

The rules currently prevent a non-resident from using these rules if they make any New Zealand taxable supplies.

In our view, they should still be able to claim input tax for acquisitions which relate to supplies outside the scope of New Zealand's GST. A consequential change to section 54B is required to allow this to occur.

GST inclusive pricing

New Zealand consumers are used to transacting on a GST inclusive basis. If that is not the case, suppliers are careful, as a result of New Zealand consumer law, to make it clear that the quoted price does not include GST (i.e. GST will be added to determine the total consideration.)

Offshore suppliers are unlikely to be transacting on the same basis. This is particularly the case where the supplier sells to multiple jurisdictions with different tax rules. As the application of a particular rule is not known with certainty until the goods are ordered, tax is often added at the check-out. We would expect foreign suppliers to want to continue with their current processes.

Whether and how New Zealand consumer law applies to imported low-value goods needs to be considered. The current and desired position should be confirmed and consulted on by Officials.