

GST on low value imported goods: an offshore supplier registration system

CA ANZ Submission, June 2018

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Cover letter

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29 June 2018

Cath Atkins
Deputy Commissioner, Policy and Strategy
Inland Revenue
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Dear Cath

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

Thank you for the opportunity to comment on the Discussion Document “*GST on low-value imported goods: An offshore supplier registration system*” and provide feedback. We have also had the benefit of discussing the proposal with officials to feed in our thoughts at a concept stage and appreciate the time and effort made by officials to engage with us.

Overall we believe the proposals are sensible, timely and appropriate. A fundamental principle of GST is that it should tax the consumer at the place of consumption, in the simplest and easiest way possible. A summary of our submissions is set out at the end of this document and our detailed submissions are in chapters 3, 4 and 5.

In our view the proposed rules should be seen as an interim step to an eventual technological solution. We assume that, in time, technology will have advanced sufficiently for Governments to receive information about the nature and value of goods in a timely manner and to be able to deal with the tax aspects in an easy and low cost way. We urge officials to continue to investigate and develop technology solutions that will reduce compliance costs for businesses, Government and consumers.

In addition, we strongly believe that the proposals point to the need for a publicly searchable register of New Zealand businesses and their GST status. This would provide independent comfort to offshore suppliers looking for reassurance that their customer is GST registered. A searchable register would also be invaluable to New Zealand businesses and to Customs for compliance checks. The Ministry of Business, Innovation and Employment (MBIE) provides a searchable register for the NZBN, but this register does not include GST registration status. In our view, that register should include GST registration status, or a separate register should be introduced by Inland Revenue that provides information on a business’s GST registration. We

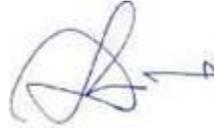
would not anticipate privacy issues given that all GST registered taxpayers are required to advise their customers that they are GST registered by issuing a Tax Invoice.

We would be happy to discuss our submission with you. Please contact s9(2)(a)

Yours sincerely



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Paul Dunne, FCA
Chair, CA ANZ Tax Advisory Group

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General comments

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General comments

Thank you for the opportunity to comment on the Discussion Document and provide feedback. We have also had the benefit of discussing the proposal with officials at a concept stage and appreciate the time and effort made by officials to engage with us.

Overall we support the proposal to introduce the measures outlined in the Discussion Document as an interim measure. We assume that, in time, technology will have advanced sufficiently for governments to receive information about the nature and value of goods in a timely manner and be able to deal with the tax aspects in a simple and low cost manner, as well as provide a more comprehensive collection of the consumption tax.

The Tax Working Group's conclusion was that these proposals should proceed because practical concerns meant that the alternative options (either taxing between the point of sale and delivery, or after delivery) were not feasible in the short term. Governments should continue to investigate advances in technology so that when the practical concerns of the alternative collection options have been addressed then Government can introduce the alternatives. The "expanded vendor" registration model is not a perfect solution. The model will result in some goods not being subject to GST – such as when the goods have a value of less than \$400 and the vendor is not GST registered (even if they should be). Thus, the proposals still leave a significant hole in the collection of GST on imported goods.

Notwithstanding the above, in our view, the "expanded vendor" collection model currently has the greatest potential to provide an efficient and effective solution to the issue of taxation of low-value imported goods. We support the proposal as an interim step for a vendor model that also leverages the scale, aggregating and centralising power of electronic distribution platforms and intermediaries in the supply chain where appropriate. We acknowledge that expansion to include further entities will include some complexity and we discuss this further in chapter 3 of our submission.

The measures proposed will have the effect of aligning the rules for goods with the rules for services, already introduced. (Although we note that this is not the case if the goods are consumer-to-consumer supplies).

Moreover, the proposed measures are very similar to those introduced in Australia and are also broadly similar to the model used in the EU. This will promote ease of business for multinationals who are looking to register in many countries at once. The Australian rules have only just come into effect and New Zealand should be looking to Australia to see where their measures have been effective and where we should look to modify our proposals to deal with issues encountered.

The similarity with overseas jurisdictions will also be invaluable as technology develops further and a wider range of measures become available to collect tax on cross-border sales of goods. We believe the measures outlined in the Discussion Document will eventually be superseded by a technology solution, likely involving international co-operation. Therefore, it is imperative that New Zealand develop a new regime that takes international norms into account as much as is

possible while constructing a system that is appropriate for our economy and business environment. We believe that the proposals as outlined strike an appropriate balance between these two considerations.

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Offshore supplier registration: scope of the rules

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Offshore supplier registration: scope of the rules

Goods included and excluded

Exclusions of certain goods from the proposed regime

We agree with the proposal to exclude certain goods from the proposed rules.

It is consistent with GST policy to continue to treat fine metal as exempt from GST and thus not subject to the proposed rules, although we agree with the comments in the Discussion Document that it is unlikely that many will seek to import fine metal with a value below the threshold of \$400.

In addition, we agree with the proposal to exclude alcohol and tobacco products from the proposed rules. These products have their own regime and are subject to additional taxes for public health reasons. It would not be sensible to include these products within what is intended to be a simplified regime. In addition, we note that this is in line with the rules in Australia.

Supplies of multiple low-value goods

We agree with the proposal to treat a consignment of goods that is above the threshold as being subject to the current rules and taxed at the border. This rule is consistent with current practice and is sensible where the supplier is aware of the total value of the goods supplied. In addition this approach is consistent with the rules to be implemented in Australia.

Preventing double taxation

We agree that double taxation needs to be prevented. However, significant work needs to be done to ensure that an efficient process is applied. The current proposal is to allow a consumer to contact Customs with evidence that GST has already been paid on the goods. Officials will need to give thought to how to make this process as streamlined as possible. The proposal in the Discussion Document sounds time consuming and bureaucratic.

One suggestion would be to include a prior notification procedure. The vendor could notify Customs that they are sending goods where GST has already been charged. Customs needs to develop trusted vendor or documentation protocols which allow easy Customs clearance so that the focus is on audit activity rather than clearance at the border.

Another option would be to allow consumers to notify Customs prior to their goods coming into the country that they are expecting a shipment of goods with GST paid. This procedure would also allow Customs to check when the goods arrive and allow the consumer to receive goods in a timely manner.

Ultimately we expect that a technology solution is needed but understand that this may not be possible in the short-to-medium term. Therefore, we recommend that officials consider one of the options above.

“Reasonable belief” exemption

The Discussion Document asks for feedback on whether New Zealand should adopt Australia’s “reasonable belief” exception. The exception “means that if the supplier reasonably believes that the multiple goods will be grouped together and shipped in one consignment, GST can be charged at the border instead of by the offshore supplier” (paragraph 3.20). Feedback from our members in public practice suggests that this would be useful for their clients.

Option to tax

If a “reasonable belief” exemption is not adopted, it would be of use to offshore suppliers to have an “option to tax” – that is, if the supplier is not sure whether the goods will be shipped in one consignment or not, they could have an option to charge GST. If it is subsequently discovered that the goods are shipped in a larger consignment and GST is charged at the border, the consumer could use the process proposed at paragraph 3.17 to prevent double taxation.

Returns and refunds

We support the proposal in paragraph 3.23 of the Discussion Document. The proposed rule is that, when an offshore supplier issues a refund, they would be able to adjust their output tax in a subsequent GST return. There would be a time limit for the adjustment based on the input tax rules.

This rule is necessary as most offshore suppliers will be using simplified (pay-only) GST returns and are not able to claim input tax credits.

Supplies to consumers and GST-registered businesses

We support the proposal to include only supplies to consumers within the scope of the new rules.

We also support the proposal to allow an offshore supplier to zero rate the supply to a New Zealand registered person.

We discuss both of these in more detail below.

Identification of New Zealand consumers

It is proposed that a supply will be treated as being made to a New Zealand consumer if there is a New Zealand delivery address. This is appropriate as it is highly likely that the consumption of

the goods will be in New Zealand. In addition, this is a straightforward test and thus has low compliance costs for suppliers.

Supplies to businesses excluded

We support the proposal to exclude supplies to New Zealand GST-registered businesses. There is currently no revenue leakage provided the business is fully taxable and therefore we do not believe that there is a need to include these supplies within the scope of the regime.

There will be an increase in compliance costs for some overseas suppliers, who will need processes in place to identify business suppliers.

However, the exclusion of supplies to GST registered recipients from the rules places an incentive on the recipient to inform the supplier of their registration status. This is because, if the business is inadvertently charged GST, the New Zealand business will need to obtain a Tax Invoice from the supplier. The Tax Invoice will need to comply with the requirements in section 24 of the GST Act. Obtaining a Tax Invoice is likely to be difficult and the process time consuming. It will be simpler for the New Zealand business recipient to simply supply its IRD number to the overseas vendor. This incentive to provide an IRD number increases the likelihood that the GST charge is accurate.

The introduction of these proposals should also give Government an opportunity to review the requirements in section 24 and consider whether the advances in technology mean that certain fields are no longer necessary. In addition, we suggest that the threshold for the simplified tax invoice be raised.

We agree with the comments in the Discussion Document that the proposed exclusion may mean some offshore suppliers are outside the regime entirely (i.e. those which supply only to GST registered businesses), which we agree is desirable.

Rules for identifying business-to-business supplies

We agree with the proposed rules for identifying business-to-business suppliers. In particular, we support the proposal to allow the recipient to use the New Zealand Business Number (NZBN). The MBIE website has a searchable register which allows anyone to confirm independently that the NZBN is correct.

Officials should consider extending the publication function. It is our view that Government should provide a searchable register that shows a business's name, GST registration status and IRD number (if GST registered). If there are concerns with making a registered person's IRD number publicly available, Government should consider using the NZBN for GST purposes.

Our members have a strong desire for an independent process that would enable them to verify another business's GST registration status. This function is available in Australia and generally works well. The argument is even stronger for offshore suppliers. Offshore businesses that

supply goods and services online will generally have less direct interaction with their customers compared to those who sell domestically. In the case of suspected fraud, it would be most helpful if the supplier could search a register to check if a business was legitimate and was in fact GST registered.

Ability to zero-rate business-to-business supplies

We support the proposal to allow an offshore supplier to zero rate the supply to a New Zealand registered person. It will allow an offshore supplier to claim input tax if they have incurred costs in New Zealand which were subject to GST.

Allowing an option to zero rate is also consistent with the rules in section 8 of the GST Act, which essentially allow an overseas supplier making supplies to New Zealand GST registered recipients to opt into New Zealand's registration system.

The proposed rule is also consistent with the rule for offshore suppliers of services.

Reverse charge for GST registered businesses

We agree with the proposal to require a New Zealand registered recipient to return GST where the goods will also be used for exempt or private purposes.

We question whether this should be more accurately characterised as a change of use adjustment. We assume that a change of use adjustment would be more accurate and more similar to domestic purchases.

We still see a place for a reverse charge where the goods will be used wholly for non-taxable purposes and the purchaser has incorrectly provided an IRD number and is not actually GST registered, or has incorrectly claimed that the goods will be used for business purposes.

New Zealand businesses being inadvertently charged GST

The easiest and most painless way for a New Zealand business to recover inadvertently charged GST is to claim the GST as input tax in its next GST return.

The proposal in the Discussion Document is to allow a New Zealand business to claim the GST in its return, provided the recipient is able to obtain a full Tax Invoice from the supplier. We believe this is a good intermediate step between allowing an input tax claim (low compliance cost) and requiring the business to obtain a refund from the supplier (generally higher in compliance cost). We recognise that officials will see a possible revenue risk in allowing an input claim without evidence that the supplier has paid the corresponding output tax and thus we support the proposals as drafted.

Tariffs and cost recovery charges

We agree with the statement in the Discussion Document that Customs collecting tariffs and cost recovery charges on goods valued at or below \$400 would undermine the efficiency of the proposed system (paragraph 3.45). We strongly support the proposal to remove the tariffs and cost recovery charges on low-value goods for the reasons outlined in paragraph 3.46 of the Discussion Document.

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Registration requirements and return filing

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Registration requirements and return filing

Registration threshold for offshore suppliers - \$60,000

We agree with the threshold of \$60,000 of New Zealand supplies. This will be easily understood because New Zealand currently has a registration threshold of \$60,000. We believe having a common registration threshold that is easily understood will make it more likely that offshore suppliers will comply.

Moreover, there has been comment in the New Zealand media about the role of the proposals in “levelling the playing field” for New Zealand retailers. Requiring the same dollar value registration threshold will enhance the credibility of the proposals as establishing a level playing field.

In reality, the threshold applies only to supplies made to consumers in New Zealand, whereas a domestic supplier must take into account total worldwide supplies, to both businesses and consumers, so domestic and offshore suppliers do not in fact have the same registration threshold. Nevertheless we agree that the New Zealand Government should be careful not to impose a barrier to trade and thus should not look to impose a compliance burden on an offshore supplier unless it will result in a revenue benefit.

We note that where a non-resident vendor exceeds the \$60,000 threshold it is unlikely that they will automatically register for GST in New Zealand. Rather, it is likely that only those vendors who have material supplies of goods into New Zealand will register. This is an inherent issue with the vendor registration model. While it is addressed partly by the proposed “marketplace” rules, they do not provide a full solution, hence our comments above that these proposals should be seen as only an interim step.

Special rules for marketplaces and re-deliverers

Marketplaces

The Discussion Document proposes that a marketplace be required to register when:

- customers would normally consider the marketplace to be the supplier; and
- this is reflected in the contractual arrangements.

Paragraph 4.10 of the Discussion Document suggests three criteria for determining when the marketplace be required to register (i.e. when the two criteria above are met). They are when the marketplace:

- authorises the charge to the customer;
- authorises deliver of the goods to the customer; or
- sets any of the terms and conditions of the transaction.

These criteria are very similar to those in the Australian rules.

By way of background, many popular New Zealand sites are more akin to online classifieds. Australian officials consider online classifieds to be outside the scope of the “marketplace” rules and we agree with this treatment.

One of New Zealand’s most popular e-commerce sites is a listing platform, allowing vendors to advertise and sell their goods. Offshore vendors may also use the platform to list their goods. Goods purchased on the platform are not purchased from the platform itself, or from a related company. The platform supplies the vendor with the means to list the goods and charges a listing fee (either before or after sale). The platform is similar to a mall operator such as Westfield, in that it provides a shop front for retailers and charges a fee to the retailers, but is not responsible for, or involved in, the sales to the consumers. Taking this example, we assume that these platforms would qualify as online classifieds and would not meet the definition of a “marketplace”.

At the other end of the spectrum are sites such which allow consumers to purchase through a range of channels. They supply goods directly to New Zealand consumers but also hosts other suppliers on its website. The other suppliers also sell the goods directly to consumers. Some of the other suppliers are part of the same group of companies. Others are independent retailers.

Taking this example, we assume that such a overseas platform would qualify as a “marketplace”. The definition will need to make clear for which supplies:

- The offshore platform is the seller in its own right;
- The offshore platform must return GST as a “marketplace”; and
- The offshore platform does not need to return GST because the seller is registered separately for New Zealand GST and is required to charge New Zealand GST on the sale.

A practical concern is that it is not always clear to consumers whether they are making a payment to the platform or the underlying supplier. Therefore, in our view, the criteria should not require customer knowledge of the contractual arrangements.

We understand that the criteria in paragraph 4.10 are very similar to those used in Australia. However, from discussions with our members it would seem that the Australian rules do not always allow the parties to distinguish between each of the scenarios easily.

One example is the criterion relating to authorisation of payment. We understand that some suppliers of online classifieds provide a service whereby the platform may hold the payment until the goods are received. This service provides protection for supplier and recipient. However, we do not believe that offering this service makes the platform the supplier. Accordingly, in that situation, the platform should not be required to remit the GST on the goods supplied. We request specific clarification on this point and to have further consultation if a different view is proposed.

The Discussion Document states (at paragraph 4.12) that underlying suppliers would still be required to register for supplies made to New Zealand residents not connected with the marketplace. A key question is whether the overseas supplier would need to take into account supplies made through the marketplace or whether the registration requirement would exist only where the supplies made outside the marketplace exceed the registration threshold. We assume that supplies through a marketplace are excluded when determining whether the threshold is met for direct supplies but believe this must be specifically clarified.

In addition, it will be crucial to know when a supply is considered to be “through the marketplace” and when it is not.

The Discussion Document states (paragraph 4.13) that “the compliance costs for these smaller suppliers fall away when the requirement to register and return GST is shifted to the marketplace”. We would like to know whether Government has evidence of this. The marketplace rules remove registration, GST return and payment from the supplier. However, there will be other compliance costs between the marketplace and the supplier (e.g. complex reimbursement arrangements) which would mean that the overall compliance costs for the supplier have not reduced overall.

Re-deliverers

We agree that it is sensible to require a re-deliverer to register for and charge New Zealand GST where the original supplier has no knowledge that the goods are to be shipped to New Zealand. We understand that most re-deliverers require the consumer to provide information about the type and value of the goods to be shipped. We assume that re-deliverers will be able to alter their systems to charge GST to the consumer in addition to their current costs. However, we recommend that officials check with re-deliverers to ensure that this is workable.

(We note that the inclusion of re-deliverers in the model means that there is a consumer GST model being applied – although aggregated to a re-deliverer – and wonder whether this suggests that a consumer model is achievable).

We support the proposal that freight forwarders and courier companies, who are simply carrying out a delivery function, not be caught by the rules for re-deliverers. However, the rules will need to provide a clear distinction between a re-deliverer as described in the proposals, and a simple freight forwarder.

Moreover, the rules should provide a distinction between a re-deliverer and a finance-type company such as lay-buy or afterpay. We understand that these companies may pay the merchant directly for the goods and arrange for the merchant to ship the goods to New Zealand. Thus the payment company would meet the second of the criteria listed at paragraph 4.19 because it is purchasing the goods on behalf of the consumer.

In our view, it would be more logical for the retailer to return the GST in that situation rather than the payment company. We assume from the comments in paragraph 4.11 of the Discussion

Document that officials are aware of this issue and intend that the rules will be drafted so that it is the retailer who accounts for GST rather than the payment company. We mention the issue here because there is a risk that a payment company could fall out of the “marketplace” rules yet be required to account for GST as a “re-deliverer” and we do not believe this would be a desirable result.

Simplified registration system

We agree with the proposal to allow overseas suppliers of goods to use the simplified registration system already in place. We understand from our members that this system is working well (although we note that our members have said that their clients generally find the New Zealand GST registration process to be straightforward by comparison with other countries).

Consequence for non-residents registered to claim input tax

At present, non-residents are able to claim New Zealand GST input tax on costs incurred in making their overseas supplies. However, a condition of a non-resident being able to claim GST for their overseas supplies is that the non-resident does not make taxable supplies in New Zealand.

If these non-residents are subject to the non-resident supplier rules, the GST refund rules would need to be modified to allow GST to be claimed for expenses relating to their overseas supplies.

Filing periods

We strongly support the proposal to allow offshore suppliers to file quarterly returns. This is consistent with the EU filing requirements. Thus it will reduce compliance costs for large international organisations who file indirect tax returns across the world.

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Enforcement, compliance and penalties

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Enforcement, compliance and penalties

We agree with the comments in the Discussion Document that ensuring that the rules are workable and easy to comply with will be the best way to ensure voluntary compliance.

Measures to bolster compliance

We strongly support the proposal to explore joint compliance initiatives with other jurisdictions in the future. In particular, we believe that a joint GST registration system with Australia would likely result in additional Government revenue from businesses that would not otherwise be required to register.

The first steps will be to investigate technology that will allow this. Officials should continue to investigate ways in which this could occur including the technology used in other jurisdictions.

Penalties for false representations by consumers

We believe it is appropriate to extend existing penalties and interest rules to offshore suppliers.

The Discussion Document proposes to require a person to register and pay the GST that should have been returned where as a consumer they have made false representations that they are in business to evade the GST impost. The Discussion Document gives very little detail on this proposal except to say that it would apply in exceptional cases. The spirit of the rule sounds sensible. However, the detail will be important. Without further information we are unable to provide additional comment.

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Summary of submissions

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Summary of submissions

General Comments

- Overall, we believe the proposals are sensible, appropriate and timely.
- The proposals should be unnecessary once sufficient technology is available to allow New Zealand Customs to tax at source.
- We continue to believe that Government should publish a publicly available list of those registered for GST with either their IRD number or NZBN.
- We support the proposal to change the basis of the de minimis to the value of the goods imported. This will be more workable for suppliers. We believe the \$400 threshold is sensible and appropriate.

Offshore supplier registration: scope of the rules

Goods included and excluded

- We agree with the decision to exempt fine metal, alcohol and tobacco from the proposed rules.
- We agree with the proposal to treat consignments of goods where the total value is above the threshold as subject to tax at point of sale.
- A procedure should be put in place to allow the person to contact Customs in advance to advise that GST has already been charged.
- New Zealand should adopt a “reasonable belief” exemption
- If a “reasonable belief” exemption is not adopted, the rules should allow an “option to tax” where there is reasonable belief that the goods will not be grouped together, or where the vendor is unable to ascertain whether goods will be grouped together.

Returns and refunds

- We support the proposal to allow an offshore supplier who issues a refund to adjust their output tax in a subsequent GST return.

Supplies to consumers and GST-registered businesses

- We agree that a New Zealand delivery address would be adequate evidence that the goods are likely to be consumed in New Zealand.

- We agree with the proposal to exclude supplies to New Zealand businesses. This is consistent with the rules for services.
- We agree with the proposals for identifying New Zealand businesses and, in particular, the proposal to allow the use of the NZBN.
- We strongly believe that officials should consider a public, searchable register of a business's GST status.
- We agree with the proposal to allow an offshore supplier to zero rate business-to-business supplies.
- We agree with the concept of requiring a New Zealand business to return GST if the goods are purchased partly for private or exempt purposes. We question whether this would be better achieved through the change of use rules.
- We agree with the proposal to allow a New Zealand businesses inadvertently charged GST to obtain a Tax Invoice from the supplier and return GST in its GST return.

Tariffs and cost recovery charges

- We agree with the decision to remove tariffs and cost recovery charges on imported goods below the threshold.

Registration requirements and return filing

Registration threshold

- The threshold of \$60,000 is sensible and logical. Making the threshold at the same level as for domestic sellers of goods should assist to "level the playing field" with domestic sellers.

Special rules for marketplaces and re-deliverers

- The rules will need to be clear about what is considered a "marketplace" and subject to the marketplace rules. In particular, online classifieds should not be a "marketplace" and should not be subject to the marketplace rules. New Zealand should not simply adopt Australia's rules.
- The rules will also need to be clear about which supplies are included in the registration threshold – particularly where an offshore merchant makes supplies in its own right and through a marketplace.

Simplified registration system

- We agree with the proposal to include overseas suppliers of goods within the simplified registration system and to allow quarterly filing.

Enforcement, compliance and penalties

- We strongly support the proposal to explore joint compliance initiatives with other jurisdictions in the future.
- We believe it is appropriate to extend the existing interest and penalties rules to offshore suppliers.

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