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

c/- Cath Atkins,

Deputy Commissioner Policy and Strategy

Inland Revenue Department

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WELLINGTON 6140

Sent via email: policy.webmaster@ird.govt.nz

Dear Cath

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

Introduction

Deloitte is writing to provide comment on the discussion document *GST on low-value imported goods: An offshore supplier registration system* ("the discussion document"). Deloitte welcomes the opportunity to submit on the proposed design of an offshore supplier registration system to collect GST on low-value goods supplied to New Zealand customers and appreciates the numerous discussions with officials that we have had as part of this submission process.

We acknowledge that due to the changing nature of the way New Zealand consumers are purchasing goods, the Government has made the decision to amend the GST legislation to increase the number of suppliers who are subject to New Zealand GST.

Following the consideration of three different options for collecting GST on low value imported goods, the Government has decided to seek public comment on a model that collects GST at the point of sale ("offshore supplier registration").

Summary of submissions

Our submission points will cover the following issues:

1. We support the proposed change from a 'de minimis' threshold applied by the New Zealand Customs Service ("Customs") to a consignment value.
2. We submit that offshore suppliers applying the \$400 value threshold should test the threshold using the 'customs' value.
3. We encourage Officials to consider the rationale for changing the taxing point to the point of sale in light of the nature and range of legal relationships existing at the point of sale - GST liability generally should follow legal ownership unless there are very strong reasons to change this.

4. We support the implementation of an exception similar to the 'reasonable belief' exception in Australia, as described in paragraphs [3.20] and [3.21] of the discussion paper.
5. Reducing legislative complexity by not excluding supplies made to businesses could significantly reduce offshore suppliers' compliance costs and should be considered.
6. We recommend a two-tiered approach where Inland Revenue allows 'Approved Marketplaces' to only provide information on suppliers and supplies made into New Zealand, with no liability to collect GST. This rebuttable presumption model would push the GST liability to the underlying legal supplier of the goods, unless that underlying supplier fails to comply with the New Zealand GST rules, in which case the responsibility for the GST on future sales would fall back on the marketplace following notification by Inland Revenue.
7. We support the proposed concession to allow Marketplaces' to act 'as agent' for underlying suppliers upon mutual agreement.
8. A lower registration threshold (i.e. \$30,000) for offshore suppliers may counter-balance any concerns that putting liability on the underlying supplier will result in a lower level of compliance.
9. While not a revenue issue, we note that the paper does not contain detailed guidance on how, in practice, Customs processing of goods will occur to minimise delays.
10. We recommend that Officials review the proposed application date with Marketplaces and offshore suppliers to confirm that it will provide sufficient time for the development of required business systems and operating procedures required by the proposed changes.
11. We recommend that Officials seek further information and data from Marketplaces to support the policy rationale with clear evidence-based thinking.

We have set out our submissions in more detail below.

Yours sincerely

Allan Bullot
Partner
for Deloitte Limited (*as trustee for the Deloitte Trading Trust*)

If you have any queries about this submission, or for more information, please contact Allan Bullot at
s9(2)(a)

The scope of the proposed offshore supplier registration rules

Definition of 'low-value goods'¹

1. We support the proposed change from a 'de minimis' threshold applied by the New Zealand Customs Service ("Customs") to a consignment value. This will treat all parcels of the same value in the same way regardless of the contents of the parcel.²
2. We submit that offshore suppliers applying the \$400 value threshold should test the threshold using the 'customs' value instead of the 'total amount paid by the consumer less GST' - i.e. that the cost of freight should not factor into whether a good is considered 'low value'.
 - 2.1. This approach is the most simple and will therefore be the easiest to implement with offshore suppliers. It is also more consistent with the underlying principles of the proposed changes – i.e. to balance additional tax revenue against the compliance cost borne by taxpayers and government agencies.
 - 2.2. We note that this approach is also consistent with the existing definitions used by Customs and therefore may make implementation more efficient.
 - 2.3. To the extent that "value substitution" between the value of the low value good and the transportation charges is seen to occur, we submit that the anti-avoidance provisions could apply, but we would expect that such situations are unlikely to occur in practice with any great frequency.

Taxing at point of sale

3. We understand the policy rationale behind changing the taxing point to the point of sale.
4. We encourage Officials to consider this policy rationale in light of the nature and range of legal relationships existing at the point of sale, recognising that there is a diversity of transaction-types that result in goods being imported and consumed in New Zealand. We consider that GST liability should generally follow legal ownership, but we acknowledge Officials may consider some situations exist where this cannot apply.

¹ See paragraphs [3.3] and [3.6] in the discussion document.

² Currently, when goods are imported, Customs collects GST. Customs applies a 'de minimis' threshold of \$60 (GST and tariff duty) in order to balance collection costs with potential tax revenue collected. Due to the 'de minimis' threshold including tariff duty (which applies at different rates to different goods), parcels of equal value may have differing GST treatment depending on whether the goods are subject to tariff duty.

Supplies of multiple low-value goods³

5. We understand the policy rationale behind Officials' proposed treatment of supplies of multiple low-value goods.
6. We support a mechanism to enable Customs to verify GST paid or partially paid on a consignment of multiple low-value goods, or a mixed consignment, in order to prevent double taxation.⁴
7. We also support the implementation of an exception similar to the 'reasonable belief' exception in Australia, as described in paragraphs [3.20] and [3.21] of the discussion paper.
 - 7.1. A 'reasonable belief' exception will minimise instances of double taxation as all consignments / packages entering New Zealand worth greater than \$400 will be taxed by Customs, unless the offshore supplier attaches a notice of the GST already collected at the point of sale.
 - 7.2. This pragmatic approach will simplify the compliance burden on offshore suppliers as there will be a clear line in the sand – i.e. offshore suppliers are responsible for collecting GST on any transactions where the good, or the total package of goods consigned, is less than \$400 based on 'customs value'.
 - 7.3. This approach will also simplify the test of whether offshore suppliers must register under the proposed rules.
8. We understand consideration is being given to increasing the low value amount from \$400 to \$1,000. We support this review and note that a review of the data is likely to indicate that increasing the low value amount to \$1,000 is likely to remove many of the practical issues associated with multiple supplies and consignments for most sales to New Zealand consumers.

Consumers versus GST-registered businesses

9. We understand the underlying policy rationale for making an exception for offshore supplies to GST-registered businesses in New Zealand. We have been advised by a number of non-resident suppliers that they would actually prefer to not have to make any distinction by excluding supplies made to businesses, as they consider that this could significantly reduce offshore suppliers' compliance costs.
10. We note we do not consider the potential missing trader fraud risk is as significant an issue for low value goods when compared to the remote services situations. By the very nature of the goods in question being "low value" the fiscal risk is reduced compared to remote services that could be for any value.

³ See paragraphs [3.2] to [3.19] in the discussion document.

⁴ See paragraphs [3.16] to [3.18].

11. If offshore suppliers are allowed to charge GST on supplies to businesses, there would need to be a process of issuing GST Tax Invoices to allow for recovery by the New Zealand GST registered customers.

Registration requirements and returns filing

Non-resident digital marketplaces – approved marketplace options

12. Under the proposed changes non-resident digital marketplaces will be deemed to be the supplier of goods, and, if the registration criteria are met, be required to collect and return GST on the aggregated supplies made via the digital marketplace (by all suppliers).
13. We suggest strong consideration is given to a model of taxing non-resident suppliers (and deemed suppliers) of low value goods with a two stage process. This could involve a rebuttable presumption that the operator of a digital marketplace is required to collect GST on all their suppliers of low value goods to New Zealand. The presumption could be rebutted provided that the operator of the digital marketplace satisfied certain tests and obligations, primarily around the supply of information on the level of sales of low value goods to New Zealand by the underlying legal supplier of the goods. In that case the obligation (if any) to collect and remit the GST on low value goods sales would fall upon the underlying legal supplier.
14. To the extent that an approved digital marketplace is subsequently notified by Inland Revenue that one of their suppliers of low value goods to New Zealand is not correctly meeting their New Zealand GST obligations, we suggest that the following options would exist;
 - 14.1. The digital marketplace could use commercial pressure to encourage the non-resident supplier to comply with the New Zealand GST rules within a set time frame, if this did not occur then,
 - 14.2. The digital marketplace could either refuse to sell that non-resident supplier's low value goods to New Zealand customers, or
 - 14.3. have the rebuttable GST collection presumption reinstated on the digital marketplace in respect of that supplier; i.e. the digital marketplace would need to collect GST on the sales of that non-compliant non-resident supplier's sales of low value goods through the digital marketplace to New Zealand customers for all future sales.
15. We submit that this rebuttable presumption approach, while increasing the overall complexity of the regime somewhat, would be a better approach in the long run to obtain a balance between collecting the appropriate amount of GST on low value goods in a difficult environment while preserving the principled basis of the New Zealand GST system.
16. We accept that Inland Revenue would potentially be required to create a greater number of GST registrations for non-resident suppliers under this rebuttable presumption approach. However our discussions with various parties have indicated that the number of underlying suppliers of goods may not be unmanageable. We understand that the "80/20" rule may apply here. The work Inland Revenue is doing

to check this issue with various marketplaces is to be commended and should continue.

17. This rebuttable presumption approach (allowing sales through Approved Marketplaces to initially look to the underlying legal supplier of the goods) will be technologically independent to method of selling the goods through the digital marketplace. When the GST taxing point is on the underlying legal supplier, then the method in which they make the sale of the low value goods via digital channels to the New Zealand customers is irrelevant. If the explosive growth of online sales of goods has taught us anything, it is that we cannot predict all the ways that goods will be sold to consumers. New and innovated distribution methods for low value goods are being developed all the time and there is a real risk that any legislative regime that is created in reference to a particular model of distribution runs the risk of becoming out of date very quickly. We do however always know that regardless of the distribution method being used, there will always be an entity that is the legal supplier of the low value good to the New Zealand customer, hence our preference on the underlying legal supplier of the goods.
18. Due to the selling technology indifference, the rebuttable presumption model will also not create any commercial pressures for digital marketplaces to adopt any particular method of operating such that they fall on one side or the other of any GST dividing line. We submit that it is desirable for tax legislation to have as little impact on the design of commercial operations as possible.
19. If the rebuttable presumption model was adopted, we consider it would be open to Inland Revenue to draft the definition of a "marketplace" in a broad manner.
20. We consider that the initial proposal for a "one size fits all" approach is problematic because digital marketplaces for goods display some unique characteristics, which require consideration in contrast to remote services.
 - 20.1. Goods Marketplaces are less aggregated than similar platforms for offshore services. The disaggregation means that there are multiple business models being employed by goods Marketplaces which will be affected differently by the proposed changes – no 'one-size-fits-all' approach will work for Marketplaces.
 - 20.2. In our experience, digital marketplaces for services tend to be more direct with fewer distinct operating / business models applied. In contrast, there are a variety of business models currently employed by offshore suppliers selling goods for New Zealand consumption. For example, we are aware of Marketplaces that use the following models:
 - 20.2.1. Direct selling / Out and out – i.e. selling as the principal, where legal ownership is with owner of the Marketplace;
 - 20.2.2. Selling on behalf – where the Marketplace takes on some level of risk for the goods, advertises and facilitates payment;
 - 20.2.3. Advertising and payment services;

- 20.2.4. Advertising-only services – i.e. no facilitation of payment, akin to the 'classifieds' section of a local newspaper; and
 - 20.2.5. Offering a mixture of two or more of the above.
 - 20.2.6. We also acknowledge that the future will result in a range of new and, possibly, unexpected business models we cannot currently conceive. We suggest that any new rules for GST on low value goods should be as independent as possible of the actual manner of selling the low value goods to allow for the future (currently unknown) developments in this area that are likely to occur.
- 20.3. We note further that within each of the above general categories are a spectrum of systems that will be affected differently by the proposed changes. For instance, while some platforms control the payment process and handle the flow of funds between consumer and underlying supplier, other platforms may facilitate payment without actually receiving or controlling any funds. It is particularly problematic to impose collection obligations on Marketplaces that do not have a part in the actual main cash flows from transactions.
- 20.4. Further, and perhaps most fundamentally, many Marketplaces do not take legal title over the goods sold through their platforms. To de-couple tax obligations from legal ownership of the goods is to separate the compliance burden from the recipient of (or creator of) value of the actual goods. Therefore we think low value goods are an appropriate situation, where provided certain conditions are satisfied, to allow the burden of GST compliance to remain the underlying legal supplier of the low value goods.
21. Taking these issues together, we recommend a two-tiered approach rebuttable presumption approach, where Inland Revenue requires 'Approved Marketplaces' to only provide information on suppliers and supplies made into New Zealand, with no liability to collect GST. In other words, all Marketplaces that meet the approval criteria are not required to collect GST on behalf of the underlying suppliers, but are required to provide the information necessary for Officials to be certain that offshore suppliers are correctly returning GST on imported low-value goods; and to enable Officials to identify and contact taxpayers with supplies that will exceed \$60,000 [or such lower amount as is determined to be appropriate].
- 21.1. We imagine that 'Approved Marketplaces' would have to satisfy Officials' that they are able to report accurately on low-value imports through their platform to New Zealand with sufficient detail to simplify compliance procedures by Officials, and Officials would have to be comfortable in outsourcing this data-driven aspect of compliance.
 - 21.2. Creating an 'Approved Marketplaces' exemption would ensure that different business models operate in a similar competitive environment, and would ensure that liability for GST sits with the entity that has legal title of the goods at the point of sale, i.e. that the one receiving the funds for transferring legal title is the one collecting GST.

- 21.3. 'Approved Marketplaces' would still be required to register for GST if its direct sales into New Zealand breach the registration threshold.
 - 21.4. To the extent that the 'Approved Marketplace' has a supplier that does not comply with their New Zealand GST obligations, then following notification by Inland Revenue of the defaults, any future sales of low value goods to New Zealand customers via the 'Approved Marketplace' would require the 'Approved Marketplace' to collect GST as if they were legally sales of the marketplace.
22. We consider that this approach will be more effective because:
- 22.1. It balances the needs of Inland Revenue to collect GST on low value goods in a cost effective manner against the need to only impose GST on parties that are not the underlying legal suppliers of goods if absolutely necessary.
 - 22.2. The reporting by 'Approved Marketplaces' will strongly incentivise underlying supplier compliance;
 - 22.3. This lower burden on Marketplaces, provided they meet the criteria, will ensure that Marketplaces continue to find it easy to do business in / with New Zealand;
 - 22.4. It removes GST considerations from decision-making on the best business model, recognising that digital industry depends on the certainty and simplicity of the regulatory environment;
 - 22.5. It will balance the overall compliance cost of administering the system versus the potential tax revenues collected. As we understand the vast amount of GST is going to come from a relatively small number of larger offshore suppliers of the legal title to the low value goods; and
 - 22.6. Recognises that digital marketplaces are a complex and dynamic environment that requires a flexible policy approach to future-proof the GST Act.
23. We also support the proposed concession to allow Marketplaces' to act 'as agent' for underlying suppliers upon mutual agreement.

A lower registration threshold?

24. Recognising that our proposed approach requires a concessionary stance by Officials, we submit that a lower registration threshold for offshore suppliers may counter-balance any concerns that putting liability on the underlying supplier will result in a lower level of compliance.
25. We consider that an appropriate threshold may be \$30,000, though we note that this should be tested with real marketplace information from digital marketplaces to ensure that the right balance is struck between compliance costs on offshore suppliers, compliance costs for Inland Revenue and expected tax revenues.

Re-deliverers

26. We submit that it should be made clear that while re-delivers will be required to collect and return GST on the value of the goods being re-delivered to New Zealand, any actual charges by the re-delivery for their services should be GST zero rated when provided by a New Zealand resident, and outside scope when provided by a non-resident.
27. We do not consider that there is any real risk in a practical sense of any form of 'value substitution' occurring when an unrelated re-deliver is providing re-delivery services. The non-resident supplier that is delivering goods to a non-New Zealand re-deliver address will generally have no knowledge that the goods will ultimately be sent to New Zealand. Therefore there will be no ability at all for value to be transferred from the goods to the transportation costs such that GST is avoided.

Other submission points

Process for goods imported

28. While not a revenue issue, we note that the paper does not contain detailed guidance on how, in practice, Customs processing of goods will occur to minimise delays. While this is a systems issue for the New Zealand Customs Service, it is directly tied to the proposals contained in the discussion document.

Application date

29. We recommend that Officials review the proposed application date with Marketplaces and offshore suppliers to confirm that it will provide sufficient time for the development of required business systems and operating procedures required by the proposed changes.

Data-driven approach

30. We recommend that Officials seek further information and data from Marketplaces to support the policy rationale with clear evidence-based thinking. Understanding the structure of the digital market, i.e. how many suppliers supply more than \$30,000 or \$60,000 annually into New Zealand, or what types of business models Marketplaces are applying, etc., for low-value goods will clarify the policy choices.

Concluding statement

Thank you again for the opportunity to comment on these proposals and for taking the time to consider our submission. We would welcome the opportunity to discuss these further in person.