

What does GST on import of low value imported goods mean for businesses?

By Toby Blyth

Prior investigations by the Productivity Commission suggested that levying consumption tax at the border on imports would cost approximately \$60.00 per import in terms of customs time and other expenses. Mathematically, that would mean collecting GST in the traditional UK way (for example, the customs service levies the consumption tax from the ultimate consumer before release of the goods - the "ransom" method), which would not be economically justifiable for any imports below \$600.

The new legislative scheme avoids that problem (and the politically unpalatable outcome of the "Government" writing to voters to levy a tax every time they receive an import) by obliging the overseas supplier to levy, collect and remit the consumption tax.

Under the new legislative changes, supplies of goods valued at \$1,000 *or less* will now be connected with the ITZ (Indirect Tax Zone) ie, Australia), if the goods are, broadly, purchased by consumers and are brought to Australia with the assistance of the supplier, ie LVIGs.

Previously these supplies were not subject to GST. However, by expanding the circumstances in which supplies of goods are connected with the ITZ, such supplies will now fall within the GST net.

To give this obligation effect, the GST collection framework is changed to include:

- treating the operator of an electronic distribution platform as the supplier of LVIGs 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, and
- treating re-deliverers as the supplier of LVIGs if the goods are delivered outside the ITZ as part of the supply and the re-deliverer assists with their delivery into the ITZ as part of, broadly, a shopping or mailbox service that is provided under arrangement with the consumer

The new legislation has had some ramifications already as Amazon has decided not to permit any of its overseas organisations to export goods to Australia, leaving only Amazon's Australian entity able to send goods to Australia.

No change to imports over \$1,000

From 1 July 2018, Australian GST will apply to the supply of LVIGs to consumers into Australia.

There will be no changes to:

- the \$1,000 threshold for reporting and collection of duties and taxes at the border
- existing processes to collect GST on imports above \$1,000 at the border
- the flow of goods across borders, and
- current import requirements for tobacco products or alcoholic beverages

Offshore supplies - the LVIG regime

Offshore supplies that are taxable supplies include:

- (a) Intangible supply (anything other than good or real property)
 - (i) general
 - (ii) right or option
 - (iii) supplier believed recipient was not a consumer
- (b) Low value goods
 - (i) general
 - (ii) supplier believed recipient was not a consumer

A supply of low value goods is an offshore supply of low value goods if:

- (a) supply involves goods being brought to the ITZ, and
- (b) supplier delivers goods into the ITZ or procures, arranges or facilitates delivery of goods into the ITZ

LVIGs

LVIGs are goods that are imported into Australia and have a customs value of \$1,000 or less, determined at the time the price for the goods is agreed. However, it excludes alcoholic beverage or tobacco, or tobacco products.

LVIGs are taxed at 10% of GST-exclusive price of the goods sold (including costs such as shipping and insurance).

Where multiple LVIGs are shipped in a single consignment with a combined value over \$1000, GST will be payable on the importation of the consignment by the importer and not on the sale of the individual LVIGs.

If the customer reasonably believes that LVIGs will be shipped in a consignment with a value over \$1,000, the consumer will not be required to remit GST on the supply of the goods, and the consignment will be taxed at the border by [Australian Customs](#).

What GST on LVIGs means for businesses

Businesses that meet the registration threshold of \$75,000 within a 12 month period will need to:

- register for GST
- charge GST on sales of LVIGs (unless the supply is GST-free or exempt)
- lodge Business Activity Statement with the Australian Taxation Office (ATO)

These businesses may be merchants who sell, electronic distribution platform operators, online market places or re-deliverers.

For goods imported in a consignment over \$1,000, any GST, customs duty and clearance charges will be charged at the border under existing processes.

GST is applicable on LVIGs sold to Australian consumers (B2C customers). A customer can only be treated as a B2B customer where it collects the customer's ABN and a declaration confirming that the customer is registered for GST. In all other cases, a business should treat its customer as end consumer (B2C).

How to prevent double taxation

If GST has already been charged on the sale of LVIGs, then to prevent the consignment being taxed again at the border, an appropriate declaration needs to be given to Australian Customs to prevent double taxation.

New GST Exemption Codes have been introduced to facilitate this process, and businesses will need to ensure that their import documentation is completed correctly.

If an appropriate declaration is not provided to Australian Customs and the LVIGs are taxed twice, there is provision for the seller/online marketplace/re-deliverer in certain circumstances to seek a refund of the GST paid.

The ATO has recently announced draft legislation to extend the obligation to remit GST to offshore sellers of hotel accommodation in Australia (they are currently

exempt from including sales of hotel accommodation in their GST turnover). The closing date for submissions is 9 August 2018.

Does Australia have the power to compel overseas entities to pay and remit GST?

At common law, a nation has full power (subject to any constitutional restrictions) to levy tax.

Classically, nations levy tax on a *citizenship* basis (eg, the US, where its citizens are taxed anywhere in the world) or a *residence* basis (eg, Australia). As to companies, Australia uses the place of incorporation, place of central management and control, and controlling shareholders tests.

Despite the fact that a nation has jurisdiction to tax anything, anywhere, pursuant to the doctrine of national sovereignty in private international law, another state will not take notice of or enforce the taxation laws of a country (on the basis that they are penal and not contractual): *Jamieson v Commissioner for Internal Revenue* [2007] NSWSC 324; *Government of India v Taylor* [1955] AC 491. Nor can a state *require* overseas entities to comply with information notices sent by its taxing authorities: *Jimenez, R (on the application of) v The First Tier Tribunal (Tax Chamber) & Ors* [2017] EWHC 2585 (Admin); although cooperation clauses in double taxation agreements may create a mechanism.

The short answer is that Australia does not have the *power* to execute judgment against an overseas entity for outstanding GST.

Practically, however, any asset owned by that entity within Australia would be available for execution. We assume that this is why Amazon has chosen not to permit its overseas entities to export to Australia, as Amazon's Australian subsidiary's assets could be the subject of enforcement action against Amazon generally if Amazon USA continued to supply to Australia but failed to remit GST on those supplies.

This would change where the relevant Double Tax Agreement contains provisions that allow co-operation between respective tax authorities to "preserve and collect" overseas taxation.

Conclusion

Empirically, it appears that very few foreign retailers have changed the way they do business in Australia to date (other than Amazon). Even though foreign retailers are

now liable to remit GST on the supplies they make to Australian customers, they do not seem to on-charge the GST to its customers.

Treasury estimated to the Productivity Commission that GST leakage from LVIGs was \$400 million. Assuming that any of this is remitted to the Government, the sums involved will be relatively meaningless given the size of the budget and Australia's economy.

On the basis that foreign retailers are not paying GST to the ATO with respect to their supplies of LVIGs to Australian consumers, it is questionable whether the new laws actually achieve what they were intended to do.

Australian commercial importers are likely caught by the \$1,000 border threshold in any event, and avoidance via structuring is already not permitted.

However, the US Supreme Court recently held that states in the US can charge consumption tax on outside suppliers who have only a digital presence in the state.

It is possible that the OECD may take up the issue of consumptions taxes over the internet generally, or states may otherwise bilaterally come to agreements.

Australian exporters should monitor the issue.