

Submission to Treasury

Prepared for: Christopher Lyons, Treasury

Prepared by: Amazon

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Confidential

GST on Low Value Imports

Dear Chris

Thank you for the opportunity to provide further information regarding the Commonwealth Government of Australia's (**Government**) Exposure Draft regarding the imposition of the Goods and Services Tax (**GST**) on Low Value Imports (**New GST Legislation**). It is greatly appreciated.

This information is provided on a confidential basis.

The information in this document focusses on the timing and implementation issues impacting non-resident vendor compliance with the New GST Legislation.

We limit our comments to the effective date of the new rules, but we are happy to address, if you are interested, why we think the tax itself is unadvisable. The application of the GST to low value sales and retailers located outside of Australia is unprecedented and it will be challenging for most retailers to comply. Regarding the effective date, respectfully, we believe the current short amount of lead time renders it unreasonable to expect that non-resident vendors will be able to comply with the set of proposed rules that are complex in nature and require significant business and technical changes. This submission focuses on the systems and technological challenges required for any business to have a successful implementation, and not necessarily with respect to Amazon in particular.

We note that the current lead times will in fact preclude any sort of level playing field for Australian and foreign retailers selling goods to Australian consumers. In fact, due to the short lead time, only a small percentage of non-resident vendors will be able to comply with the New GST Legislation and will be competitively disadvantaged. Additional lead time is required to ensure the Australian Treasury ("**Treasury**") and Australian Tax Office ("**ATO**") have addressed the concerns that the draft legislation and implementation date will unfairly limit non-resident vendors selling goods to Australian consumers.

Furthermore, we have concerns with regard to the administration of the New GST Legislation, particularly regarding its enforcement by the ATO. The current proposed measures for ensuring compliance and enforcement of non-compliance do not provide a high degree of assurance that they will support the integrity of the New GST Legislation. Amazon agrees with comments made by the Tax Institute of Australia in its submission dated 1 December 2016 regarding the proposed changes that question the ability of the ATO to enforce the proposed measures. We believe this may result in very low compliance and will see consumers purchase goods from non-resident vendors that do not comply, distorting competition.

With any extraterritorial tax regime, it is imperative that the system addresses key principles such as those endorsed as part of the Ottawa Taxation Framework Conditions, and as part of BEPS Action Item 1 addressing the challenges of tax and the digital economy. One of the key factors that the BEPS Action Item 1 noted was that any new tax obligations should be efficient and minimise the cost to the taxpayer. We do not believe that the New GST Legislation satisfies these aspirations.

Again, should changes to the low value import rules be implemented on 1 July 2017, the conditions of neutrality, efficiency, and effectiveness and fairness will not be achieved. Important implications include:

- 1 Impacted non-resident vendors may consider stopping shipments to Australian consumers due to an inability to be compliant. In that event, those foreign goods may cease to be available to consumers at competitive prices or may not be available at all.
- 2 Non-resident vendors will incur excessive resources and costs in trying to implement the changes in such a short time frame.
- 3 No clear guidance exists on how the changes will be applied in a uniform manner to all non-resident vendor shipments to Australian consumers.
- 4 No clear guidance exists on how any non-compliance will be identified and addressed so as to ensure there is a “level playing field”.

As Australia will be the first country in the world to introduce a GST on low value imports with a vendor registration model, it is imperative that any changes maintain the principles and conditions outlined above and endorsed as part of BEPS Action Item 1.

As outlined in our submission, the process for non-resident vendors to achieve compliance will require a number of significant system changes across the vendor operating platform. Our best estimate at this stage for non-resident vendors to comply is a total lead time of up to 24 months to implement the proposed changes. Coordinating all the inputs from various business teams is a challenging task. Although the former Treasurer announced the policy proposal on 21 August 2015, businesses were not able to begin to assess implementation plans until the release of the Exposure Draft on 4 November 2016. The Exposure draft provided a reasonably comprehensive package of proposed legislative changes allowing non-resident vendors the opportunity to review and assess the impact on their business.

We hope this submission will help the Government understand the need for an extended implementation timeframe required for all impacted non-resident vendors. This submission explains the system changes required in order to achieve compliance.

It is our belief that our submission document will demonstrate the need for an implementation period with a deferred start date that is not before July 2018.

Please contact to discuss any aspects of this submission

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Previous engagement between Amazon and Government

- 1 Amazon, Treasury and the ATO met in December 2015 to discuss preliminary issues with the New GST Legislation with respect to design, implementation, compliance and enforcement.
- 2 Amazon and the Treasury talked again by phone on 28 September 2016 to re-establish communications on this topic. Amazon provided further information about the complexities involved in ensuring compliance from a systems perspective in time for an effective date of 1 July 2017. Parties agreed to follow up with further explanation.
- 3 Amazon, Treasury, the ATO and Immigration and Border Control talked by phone on 29 November 2016 to discuss the Exposure Draft on the New GST Legislation and specific questions regarding features of the New GST Legislation. Amazon agreed to provide a submission to the Government which addressed the difficulties non-resident vendors will face trying to comply with the New GST Legislation and indicate a timeframe when implementation by non-resident vendors of various system changes might be feasible.

System changes: overview

Non-resident vendors will need to implement a series of system changes which we estimate could take up to 24 months to develop and ensure compliance with the New GST Legislation.

- 4 Australia will be the first country in the world to introduce GST on low value imports with a vendor registration model.
- 5 The paragraphs below explain the kind of system changes non-resident vendors will need to implement and the timeframe needed to complete each system change. These changes are mainly technical in nature and will require the dedicated involvement and cooperation of a number of systems teams. The release of the Exposure Draft legislation provided limited time for non-resident vendors to assess the precise proposed design features and start to plan the changes which would be required to adapt current systems and processes to be compliant with the New GST Legislation. Project teams will need to be assembled from the various technical and operational teams to design, test and implement the required changes. Input from the various teams is critical to the success of implementing any project of this size, scope and magnitude.
- 6 The changes for the New GST Legislation will require a dedicated team of personnel as well as ad hoc support from personnel in other businesses and cross functional teams for the implementation to be successful. Based on current information, we estimate that the project will require core project teams of 6-8 personnel for each business line impacted.
- 7 As an indication of some of the types of system changes required, the sections below elaborate on the challenges arising from the particular design features of the New GST Legislation. Estimated timeframes are indicated for implementing changes of a similar nature (non-resident digital services regimes) in previous systems. Although the timeframes for certain tasks are estimated to be a matter of months, some tasks will need to be undertaken sequentially rather than in parallel.

**System change:
streamlining
systems
changes across
multiple
websites**

- 8 Large marketplace providers and vendors operate multiple websites (separate business lines) targeting Australia and non-Australian markets. These marketplaces are typically operated by different legal entities.
- 9 At present, the various websites from which Australian consumers purchase goods to be shipped to Australia do not have the systems, functionality or processes required by rules dictating a foreign retailer must register for taxes for sales below a customs value of AUD \$1,000.
- 10 The “electronic distribution platform” rules will require impacted non-resident vendors to implement similar, but not identical functionality and processes in relation to third party sales, which creates additional complexity.
- 11 In addition, the “electronic distribution platform” rules will require non-resident vendors to identify goods sold by third party vendors, including a single customer transaction with multiple vendors, and to have the necessary functionality and processes to apply the low value threshold rules throughout their systems. This will require significant implementation of rule sets and will create additional complexity.
- 12 Additionally, the requirements to distinguish transactions between businesses and consumers will require further development work. For example, current systems do not collect the necessary data to enable tax calculation logic, tax accounting records for compliance, and the ability to collect and validate tax registrations from customers. As a reference, non-resident digital supply rule changes required a six month or more effort by multiple teams and persons to allow for the systems to be compliant. The implementation of rules impacting the cross border sale of goods is not something non-resident vendors have experienced and as a result more time is required to ensure changes are done correctly and in a manner that ensures compliance with new GST legislation.

**System change:
reporting
requirements**

- 13 Non-resident vendors today do not have systems set up to report low value import sales to Australia so there would be a need to develop data warehouse tables and reporting infrastructure. Businesses will be required to develop and apply individual rule sets for Australia which involve cross border transaction in goods being taxed differently than in any other jurisdictions and at the same time provide a seamless customer experience.
- 14 Similar systems changes in other contexts have required four months or more of effort.

**System change:
import fee and
deposit
calculation
modifications**

- 15 The New GST Legislation will require non-resident vendors to determine whether a sale is over or under the AUD \$1,000 threshold as goods with a value over AUD \$1,000 will continue to be cleared through Australian customs with appropriate taxes paid. This distinction will require monitoring and complicated implementation for non-resident vendors.

- 16 We are not aware of any tax software systems that currently distinguish between goods shipped to customers in Australia with a customs value of over or under AUD \$1,000.
- 17 Existing systems will require reengineering to ensure non-resident vendors are able to support two different import processes when goods are shipped to Australia. We would need to determine that low value imports to consumers are captured and processed separately under the new definition, and continue to ensure the sale of goods to business customers and those goods with a customs value over AUD \$1,000 are processed correctly. Such changes will require parallel changes in accounting systems.
- 18 Each of these changes will require extensive beta testing and must be completed via a phased implementation. This takes a significant period of time to complete. Similar systems integrations in other contexts have required four months or more of effort.

**System change:
distinguishing
between B2B
and B2C sales**

- 19 The New GST Legislation will impose GST only on sales to an Australian consumer. Currently systems do not distinguish between customers who may be consumers or businesses.
- 20 Non-resident vendors will be required to differentiate for consumers and business in areas such as product detail pages, order summaries, checkout pages and post order pages on their websites.
- 21 Non-resident vendors will have to build new systems for customer type to be conveyed throughout the various pages, then develop a new web service to create, update and read data from the new database. Each individual website will be required to design and develop the necessary application program interfaces to support low latency read requirements, including websites not specifically targeting the Australian market.
- 22 In addition, collecting Australian Business Numbers (**ABN**) to differentiate whether a customer is a business or consumer would add a step to the process which creates friction for the customer. Non-resident vendors will have to work with multiple internal engineering teams to design a new business customer experience and to design new pages and widgets as appropriate for each customer type, including product detail pages, checkout pages, and order summaries.
- 23 Similar systems changes in this area have required nine months or more of effort.

**System change:
tax engine
calculation
modifications**

- 24 Changes would be required for product classifications and currency conversion to test the AUD \$1,000 threshold at the appropriate time.
- 25 The New GST Legislation will require non-resident vendors to classify goods as being subject to GST (i.e. taxable) or GST free for taxation purposes.

- 26 This will require tax calculations on some but not all products sold to Australian customers. Distinguishing taxable and non-taxable products requires non-resident vendors to review its vast product catalogue and assign a product tax code to each product and in the case of marketplace vendors, review the product catalogues of each of the vendors listing on the marketplace and assign product tax codes to those vendor products.
- 27 Additional work will be needed to ensure prices are converted to AUD and check against the threshold before implementing the need to calculate GST at an item level.
- 28 Coding for these changes may be manual and require upgrades to databases. Similar systems integrations in other contexts have required well over one hundred weeks of developer time.

**System change:
reconciling
carrier charges**

- 29 To ensure that carriers (e.g. freight forwarders) do not apply the existing import processes to shipments subject to the new rules, logic must be incorporated into the system to ensure customers are not double-charged tax. Similar systems integrations in other contexts have required four months or more of effort.

**System change:
third party
marketplace
vendors**

- 30 Non-resident vendors will now have to calculate taxes for goods where the third party vendors are the seller of record.
- 31 Each of the changes required by the New GST Legislation also would be required to be made separately in different systems for marketplace vendors.
- 32 These changes would be even more complex as many third party marketplaces do not have this same detail on the products being sold in the marketplace and currently do not support tax calculations for any products sold by third party vendors.
- 33 Similar systems changes in other contexts in this area have required three months or more of system development.

**System change:
customer
facing systems
and customer
experience**

- 34 Customer returns and replacement systems will have to be reengineered to accommodate the changes.
- 35 Similar systems integrations in other contexts in this area have required twelve months or more of system development effort.

**System change:
GST inclusive
pricing**

- 36 Implementing GST inclusive pricing displays cannot currently be accommodated within current non-resident vendor systems. It will be problematic from a systems perspective and requires additional time to investigate whether a solution is possible. This will require significant system changes given that the website now shows universal (e.g. non-inclusive) prices.

- 37 Showing GST inclusive pricing will impact multiple systems including but not limited to search and product detail pages. In order to enable new features to ensure tax calculation displays, the existing design of these pages and supporting logic systems will require redesign.
- 38 Similar systems changes in other contexts have required six months or more of effort.

Compliance and enforcement

- 39 On 29 November 2016, the ATO representatives explained some of the measures which they proposed to support compliance by non-resident vendors under the New GST Legislation. These measures included:
 - (a) promotional and educational campaigns;
 - (b) data collection and matching to identify non-compliance over a period;
 - (c) cooperation with revenue offices in other countries, including under treaties and mutual assistance arrangements; and
 - (d) channels for businesses to alert the ATO to possible non-compliance of a particular non-resident vendor.
- 40 Notwithstanding the intentions noted above, Amazon considers that these actions will be inadequate to identify non-compliance and enforce obligations against non-compliant non-resident vendors or marketplaces. Action under which the ATO directly could secure and enforce compliance from a non-resident vendor that does not register for GST or fails to remit GST on sales which are taxable under the New GST Legislation appears not to exist. Amazon considers this to be a fundamental problem with the new rules and not in line with the OECD principles contained in BEPS Action Item 1. In addition, this lack of compliance enforcement, creates a critical competitive issue for compliant non-resident vendors.
- 41 The risk of a dual market being created in which compliant non-resident vendors collect and remit GST and non-compliant non-resident vendors who do not collect and/or do not remit GST is real. With the benefit of more time, the Government including the Treasury and the ATO would be able to work with non-resident vendors and marketplace operators on identifying and implementing measures which would have a greater prospect of securing compliance from all affected non-resident vendors.

Recommendations

- 42 As Australia will be the first country in the world to introduce a GST on low value imports with a vendor registration model, it is imperative that any changes allow for non-resident vendors and marketplaces to implement the rules appropriately and for the authorities to be able to enforce the rules consistently on all impacted parties.
- 43 Therefore our recommendation would be to defer the implementation of these rules until a date no earlier than 1 July 2018.
- 44 This will provide further time for non-resident vendors and marketplaces impacted by the New GST Legislation to undertake necessary implementation steps needed to adhere to the new rules.

- 45 Although we limit our recommendations to effective date issues assuming the tax will go into effect (which we encourage the Government to revisit as currently contemplated), we are interested in suggesting further discussions with the Australian authorities regarding the development of measures to provide for compliance and enforcement that would give greater support to the integrity of the New GST Legislation.