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* Associated Firm

** In cooperation with
Trench, Rossi e Watanabe
Advogados

5 December 2016

Chris Lyon
Treasury
The Treasury
Langton Crescent
Parkes ACT 2600
Australia**Attention:** Chris Lyon

Dear Chris,

Submission on Treasury Laws Amendment (2017 Measures No. 1) Bill 2017

We thank you for the opportunity to make submissions on the exposure draft legislation and draft explanatory material for the proposed "*Treasury Laws Amendment (2017 Measures No. 1) Bill 2017: Low value import goods*" (**Exposure Draft**).

We comment as follows on some of the key issues.

1. Vendor registration model

We understand that "Australia will be the first country to apply GST to the importation of low value goods using a vendor collection model"¹.

Implementing and relying on a vendor registration model brings with it the risk that offshore vendors will not comply and there is lack of clarity as to how the rules can be or will be enforced. This risk will be amplified by any difficult or burdensome GST registration / reporting process for offshore vendors.

As there has not been a similar regime implemented in another jurisdiction, there is no precedent example as to how such a regime has been taken up (nor not adopted) by vendors.

In the OECD's report on Addressing the Tax Challenges of the Digital Economy (2014 Deliverable) acknowledges that "enforceability is important because a tax system that is difficult to enforce is unlikely to be either equitable or neutral, and may undermine the public perceptions of the fairness of the whole system in the long term.....evaluation of potential options must also keep in mind the need to avoid

¹ The Hon Scott Morrison MP, "Exposure Draft: GST on low value imported goods" (Media Release, 4 November 2016).

creating new risks of double taxation or new opportunities to artificially avoid taxation."²

Non-compliance by vendors will undermine the intention of the new law and will disadvantage compliant vendors. In this respect, consumers may be incentivised to purchase the goods from vendors not charging GST. Managing the risk of non-compliance is therefore of paramount importance.

Recommendation

The risk of non-compliance should be addressed and appropriately managed by adequate education and awareness.

Additionally, the design of the GST registration and compliance regime needs to have adequate consultation with industry at large (rather than a select group). To date, there has not been an open or public consultation for the vendor registration and compliance system applicable to the intangible supplies regime (applying from 1 July 2017). We respectfully recommend there should be an open consultation on the design of a simplified compliance and registration regime.

2. Distinguishing between business-to-business and business-to-consumer supplies

The Exposure Draft Explanatory Memorandum notes that consistent with the law in relation to supplies of things other than goods or real property to Australian consumers, businesses can confirm that an entity is not a consumer in relation to a supply by requesting that GST registered businesses provide their Australian Business Number (ABN) and declare that they do not acquire the goods solely or partly for the purposes of an enterprise they carry on in the indirect tax zone (ITZ). It is unclear to date from any guidance published by the Australian Taxation Office or Treasury whether the offshore vendor is required to validate the ABN.

Recommendation

It should be clarified in the Explanatory Memorandum that in no circumstances does the law anticipate a supplier is required to validate the ABN. The supplier should be able to rely on the information provided by the customer.

3. Reasonable belief

The rules taxing the supply of low value goods do not apply relevantly where the supplier "reasonably believed" at the time of supply that the goods would be imported as a "taxable importation."³

Whether there is a taxable importation or not depends on making a determination as to how the goods will be treated under the *Customs Tariff Act 1995* (Cth). Not every supplier will have the means of doing so. For example, if a determination of whether the goods are of low value needs to be made, the customs value will need to be

² OECD Report on Action 1 at Section 8.3.4.

³ Section 84-45(2) of the Exposure Draft.

ascertained. The customs value is made up of a variety of components, all of which are not known by the supplier (for example, the operator of an electronic distribution platform). Unless the supplier is the importer, it may not be able to make the relevant determination. For example it will need to know relevant freight and insurance costs. What comprises a “reasonable” belief therefore requires further consideration.

Recommendation

Obtaining a declaration from the buyer that the importation of the goods will not be a taxable importation should be sufficient to satisfy the relevant requirements absent the supplier holding clear evidence to the contrary.

4. Transitional rules

There is uncertainty as to the GST outcomes where an order for the supply of goods is placed before 1 July 2017 and delivery of the goods occurs after that date. The supplier will not always be able to know with certainty when delivery, for example the goods being brought into the indirect tax zone will occur. The rules applying to low value goods are to apply in working out net amounts for tax periods starting on or after 1 July 2017. The transitional rule does not indicate with clarity how supplies of goods ordered before 1 July 2017 should be treated where delivery occurs after that date. Tracking delivery dates may not always be easily done.

Recommendation

Transitional relief should be allowed for goods ordered before 1 July 2017 so that a supplier is not left in a position of having to guess whether the supply is taxable or not.

We would welcome the opportunity to meet with Treasury to discuss our recommendations and are prepared to provide additional input as needed.

Please contact us for clarification or any further information.

Yours faithfully,



Amrit MacIntyre
Partner



Simone Bridges
Senior Associate

