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Exposure Draft Legislation

Reference is made to the discussions between representatives of the Australian Taxation Office (ATO), Treasury, the Department of Immigration and Border Protection (DIBP) and the Customs Brokers and Forwarders Council of Australia Inc. (CBFCA) on 24 November 2016 to discuss the *Exposure Draft Legislation (Exposure Draft)* to give effect to taxation arrangements related to goods and services tax (GST) on certain supplies of low value goods purchased by consumers and imported into Australia.

The CBFCA had (prior to the meeting) the opportunity to review the *Exposure Draft* and during the teleconference, noted the commentary from the ATO representatives as to the rationale for the discussion. The CBFCA is aware that other entities and industry associations, in particular its sister Association the Australian Federation of International Forwarders Ltd (AFIF), have had similar discussions with regulatory representatives. The CBFCA, in its discussion with AFIF, noted the similarity in each party's commentary on the *Exposure Draft*. Of particular concern to the CBFCA is the lateness of inclusion of industry in the process where the CBFCA was able to provide informed comment as to what is proposed. It should be noted that the CBFCA, since the making of its Submission to the Enquiry in December 2013, has not been engaged in any discussions with any regulatory agency on any issues leading up to the *Exposure Draft*. The CBFCA is therefore not aware of any empirical data underpinning the proposed methodology(ies) or as to how the *vendor model* will meet the reality test.

The CBFCA would therefore seek to address with the regulatory representatives the data as referenced during the discussion as to the noted vendors (referenced 500 key players) as well as to how the existing GST leakage amount (\$300 million referenced) had been determined. In essence, there were significant shortcomings as to information on many of the issues on which the CBFCA was trying to provide objective comment.

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The CBFCA was also aware that the work in 2005, by the then Australian Customs Service (noted in documentation that had been published as result of a Freedom of Information request on the High Volume Low Value issue) was, in the CBFCA's opinion, flawed.

The CBFCA raised, but did not necessarily receive any informed response in the meeting, issues relating to:

- Segmented vendor markets noting the vendor(s) operating within those markets
- Competitive neutrality between entities operating as 'goods forwarders'
- Determination as to how the average customs value was determined in relation to the thirty four (34) million transactions and as to whether that determination included Australia Post express mail service (EMS) consignments
- The average valuation determination being verified, not from the Consignment Note but more so as to the price paid by way of contract (invoice) between the buyer and the seller, noting in particular the preponderance of Consignment Notes do not necessarily provide for the appropriate customs value, correct description of goods and other key aspects
- The focus of the discussion on GST and tax anti-avoidance provision with little (if any) reference as to the dual requirement of the DIBP (and ATO) as to, *inter alia*:
 - False statements
 - Import prohibitions and restrictions
 - Community protection requirements
 - Strict liability offences
 - Reporting criteria based upon individual licensed customs broker conditions
 - Deemed "owner" of the goods under Section 4 of the Customs Act
 - Reporting requirements
- Methodology of reporting and clearance of goods under the \$1000 customs value threshold and, in particular, the liability of 'goods forwarders' where the vendor is not registered or other issues relating to the carriage of those goods which create a liability for that 'goods forwarder'
- Cost recovery, noting the cross subsidization to the existing Import Processing Charge and methodology to correct same.

While the CBFCA notes that, in the main, the impact of the *Exposure Draft* will impact on those entities which are closely linked in to the carriage of e-commerce generated consignments (whether that be a postal authority or an international express carrier) CBFCA members do have clients that operate in the proposed new environment. It is imperative therefore for the CBFCA be able to provide direction to its members so that the process does not conflict with other requirements in terms of regulatory compliance, and that equity exists in tax treatment in relation to those who participate in the business to e-commerce.

The CBFCA in its discussions and oversight of the *Exposure Draft* see some significant problems in what is hoped to be achieved and notes sellers in an e-commerce arrangement will seek to ensure the most cost-effective and cost-efficient way of the continuation of the distribution of their products.

As to the comment in relation to the Organisation for Economic Co-operation and Development (OECD) and its meeting with representatives of the World Customs Organisation (WCO) and the Global Express Alliance it should be noted, and the CBFCA as a member through the International Federation of Freight Forwarders Association (FIATA) is privy, through the WCO Private Sector Consultative Group, to work being undertaken by the WCO Working Group on E-commerce which met on 21 September 2016. The CBFCA, through those reports, does not have the same level of confidence as put forward in the meeting that the issue is understood.

From a consultative point of view, the CBFCA would have expected that it, and associations such as AFIF, would have had early engagement in discussions with the respective regulatory agencies as to the *vendor model* and/or other ways and means to ensure collection of GST related to e-commerce sales imported into Australia.

Should you wish to further address these issues, please do not hesitate to contact me.

Yours faithfully

A handwritten signature in dark ink, appearing to read 'S. Morris', with a stylized flourish above the name.

Stephen J Morris
Executive Director

CC: AFIF