

22 September 2021

Board of Taxation Secretariat
The Treasury
Langton Crescent
Parkes ACT 2600

By email: LVIG@taxboard.gov.au

Attention: Dr Julianne Jaques QC and Ms Tanya Titman (Lead Reviewers - Board of Taxation)

Dear Julianne and Tanya

Review of GST on Low Value Imported Goods

Chartered Accountants Australia and New Zealand (CA ANZ) welcomes the opportunity to provide our submission to the Board of Taxation (BoT) on its [Review of GST on the Low Value Imported Goods measure](#) (the Review), announced by the government in July 2021. CA ANZ equally welcomes the Review itself.

CA ANZ's Indirect Tax Committee appreciated the opportunity to provide our verbal comments to the BoT in a video conference consultation meeting on Monday 13 September 2021, and our comments in this submission are consistent with and further to the matters covered in that meeting.

Background to the Review

Since 1 July 2018, Goods and Services Tax (GST) has applied to Low Value Imported Goods (LVIG) based on a [vendor collection model](#). This model requires suppliers, online platforms and redeliverers with an Australian GST turnover of \$75,000 or more to register, collect and remit GST to the Australian Taxation Office (ATO). Suppliers can also access the [simplified GST registration and reporting system](#). The new LVIG measure was designed to complement and dove-tail with the existing arrangements to collect GST on imported goods with a value over \$1,000 at the border.

The Government announced in the 2017/18 Budget that the LVIG measure would be reviewed after two years to ensure they were operating as intended and to consider any international developments.

The [Terms of Reference](#) for the Review include:

1. Assess the effectiveness of the LVIG regime to efficiently collect GST with reference to the policy intent of the law that low value goods imported by consumers face the same tax regime as goods that are sourced domestically. In doing so, the review will:
 - 1.1 assess the effectiveness of the administration of the measure;
 - 1.2 assess industry compliance with the LVIG rules;
 - 1.3 undertake a targeted external consultation process, working closely and collaboratively with the Treasury, Australian Taxation Office, and Australian Border Force;
 - 1.4 examine the issues identified in the consultation process; and
 - 1.5 provide any observations, findings, and appropriate recommendations for improvements and certainty to the ongoing operation of the LVIG regime.
2. Report on and assess any relevant international developments and experiences regarding the collection of GST and other consumption taxes on LVIG.

Executive summary

- CA ANZ, through our Indirect Tax Committee, worked closely with Treasury and ATO officials in a collaborative process during the development phase of the new LVIG measure to co-design and co-develop a measure that would be as workable and effective as possible.
- In our submission to the Productivity Commission in 2017, we supported the legislated vendor collection model for LVIG, and based on our assessment of its performance over the past three years since implementation, we continue to support the vendor collection model.
- CA ANZ believes that the LVIG measure has been broadly effective especially with larger entities, recognising that it is an impossible task to reach every non-resident entity supplying goods to Australia.
- The compliance burden has not been unduly onerous for most entities, especially given the simplified registration option. The requirement for Electronic Distribution Platforms (EDPs) to account for supplies made through their platforms has also removed the compliance obligations from small suppliers.
- The vendor collection model has worked well judged by reference to the criteria used by the Productivity Commission:
 - tax neutrality between foreign and domestic suppliers;
 - GST revenues;
 - administrative and compliance costs; and
 - impacts on consumers and business.
- That said, there is an issue about how to bring further non-resident entities into the LVIG regime, especially if they only become recently aware of their obligations – the evident problem being an unanticipated retrospective tax liability from 1 July 2018. We suggest the BoT and government may wish to consider a two-year amendment period (compare ITAA1936 s170(1)), rather than the current four-year period, absent deliberate fraud or evasion.
- The cross-border flow of goods and services is in a state of flux – affected by COVID-19, technological advances, and changed business models (such as fintech). The global response by governments and revenue authorities is also in a state of flux. We would respectfully suggest the BoT conduct a further review of GST on imported goods and services in 3 to 5 years.

This review should also cover mechanisms and technology solutions that may enhance compliance (for example block-chain administration and/or enhanced administrative obligations on the EDPs who facilitate such commerce.

CA ANZ's detailed submission is contained in **Appendix A** to this covering letter.

We trust that the feedback and recommendations provided in our submission are of assistance to the BoT in its Review of the GST on Low Value Imported Goods.

CA ANZ has no objection to this submission being published.

We are available to discuss any aspects of the submission. If you have any questions or would like to clarify any matter, please contact Donna Bagnall on (02) 9290 5761 or by email at donna.bagnall@charteredaccountantsanz.com in the first instance.

Yours sincerely



Michael Croker
Australian Tax Leader

Appendix A

Detailed submission

Background to the LVIG measure implementation

CA ANZ would like to begin our submission by making some initial comments by way of background to place the Review in the context of the history of the government's implementation of the LVIG measure, including the process and principles used to assess and evaluate the alternative options for the collection models that could be adopted.

These background considerations are relevant and helpful as the Review's Terms of Reference are directed at assessing the effectiveness of the LVIG measure to "efficiently collect GST with reference to the policy intent of the law that low value goods imported by consumers face the same tax regime as goods that are sourced domestically."

The Review also seeks to assess international developments and experiences since the implementation in 2018.

CA ANZ involvement

A brief summary of CA ANZ's involvement in the design and implementation of the LVIG measure is:

- CA ANZ's Chair of the Indirect Tax Committee, Kevin O'Rourke participated in GST Stewardship Group discussions, including a day offsite with the ATO to workshop models before drafting instructions were prepared;
- CA ANZ Indirect Tax Committee representatives (including Kevin O'Rourke, Deborah Jenkins and Donna Bagnall) met with Treasury for a half-day in Canberra to discuss the Exposure Draft legislation in detail;
- CA ANZ's Indirect Tax Committee provided confidential comments on various iterations of the Exposure Draft legislation, including recommendations on how to design the Electronic Distribution Platform (EDP) rules in the most effective and workable way;
- CA ANZ Tax Leader Australia, Michael Croker, appeared before the Senate Economics Legislation Committee in support of the Bill;
- CA ANZ made a submission to the Productivity Commission on the preferred collection model, being the 'expanded vendor collection' model (suppliers, platforms and redeliverers); and
- In short, CA ANZ has:
 - supported the overall measure
 - supported a vendor collection model
 - supported taxation of EDPs.

Submission to the Productivity Commission

In CA ANZ's submission to the Productivity Commission (PC) dated 30 August 2017, we supported the legislated vendor collection model for GST on LVIG for the following broad reasons:

1. The vendor collection model, which involves the supplier (or intermediary as deemed supplier) being required to register for GST and charge and remit GST, is *consistent with and well-integrated with*:
 - (i) the legislative and administrative scheme of the GST in which both resident and non-resident suppliers can be required to register for GST under the standard rules (subject to the business to business (B2B) supply rules that allow non-residents not to be drawn in unnecessarily); and
 - (ii) the vendor collection model adopted for GST on imported services/intangibles by Australian consumers - the other recently legislated category of cross-border supplies at the time, i.e. digital products and other intangible things - which was introduced from 1 July 2017.
2. In terms of the Electronic Distribution Platform (EDP) rules:
 - (i) In the domestic context, it is common for non-supplier intermediaries to be deemed liable to account for the GST on taxable supplies under various rules on tax and economic efficiency grounds, as well as for simplicity or assurance regarding compliance. These include the Division 57 resident agent rules, incapacitated entity rules, the grouping rules, the joint venture registration rules, and the reverse charge for precious metals.
 - (ii) In line with global tax policy trends, the EDP rules in the vendor collection model leverage the scale, aggregating, and centralising power of EDPs and intermediaries in the supply chain, and the data already available to them. As such, this approach has the greatest potential to provide an efficient and effective solution and should also allow small and medium sized businesses to comply more easily.
3. Having regard to all of the Productivity Commission's considerations concerning (i) tax neutrality between domestic and foreign suppliers, (ii) GST policy objectives to tax final private consumption, and the integrity of the GST revenue base, (iii) the relative administrative and compliance costs and burdens, and (iv) the potential impacts on Australian consumers and businesses, overall and on balance, we considered that the vendor model legislated delivers the most appropriate model for collection of GST on LVIG.

Consultation Questions and Responses

We now outline CA ANZ's responses to each of the BoT's Consultation Questions:

Your business

1. We are interested in hearing a little about your business (including type of business, platform etc) and your experience with the LVIG regime including the nature of your interactions with the ATO and ABF?

Response

Not applicable.

Awareness of the LVIG regime

2. Have measures adopted to make foreign suppliers of goods aware of their obligations under the LVIG regime been effective?

Response

- The measures have been broadly effective, especially with larger entities, but it is an impossible task to reach every non-resident entity supplying goods to Australia.
- \$357m revenue in FY19 (against \$100m forecast revenue) and \$385m in FY20 (against \$130m forecast revenue) – refer GST Administration Annual Performance Report 2019-2020; and EM to LVIG Bill.
- The Commissioner has been effective in using multiple data sources to identify relevant entities. However, the initial contacts have been less effective (using generic mailboxes, for example).
- The initial education campaign was very good but has now lost momentum, with COVID-19 restrictions playing a part. However, there is the possibility to use existing relationships and technology more effectively in delivering seminars and information.

Ease of compliance

3. Please provide insights on the compliance burden associated with the LVIG regime in relation to the following activities:

- a. determining whether an entity is subject to LVIG obligations
- b. the registration process
- c. managing payments and refunds
- d. notification and record-keeping requirements
- e. lodgement of returns
- f. obtaining assistance to comply with LVIG obligations

Response

- The compliance burden has not been unduly onerous for most entities, especially given the simplified registration option. Not every jurisdiction can say this – we understand the UK to be especially problematic.
- The requirement for EDPs to account for supplies made through their platforms has also removed compliance obligations from many small suppliers.
- However, the registration threshold is relatively low in the context of non-resident suppliers:
 - AUD \$75K has been in place since 1 July 2007
 - Thus, the \$7.5K GST is easily matched by compliance costs.
 - In reality, there is no offsetting benefit from ITCs.
 - There is a good case to increase substantially the registration threshold for non-resident suppliers to reduce compliance costs (AUD \$500K would not be out of place).
- The provisions are complex and challenging for 'redeliverers' (see s 84-77(3) and (4)):
 - Comparable rules do not exist in the UK or EU (but do exist in NZ).

- From a policy point of view, it makes sense to have redeliverers in the base, but compliance is difficult.
- An increased registration threshold for non-resident suppliers would go some way to removing the problem for redeliverers with lower sales into Australia.

Interaction with importation rules

4. Do the LVIG rules interact well with the taxable importation rules for higher value goods? What issues arise and how are they managed?

Response

- There are inevitable questions about whether the relevant supply is the ‘basket’ of goods or each of the goods themselves.
- The policy choice was canvassed in the EM at Example 1.3.
- NZ has approached this issue by using the expression ‘consignment’ of goods, an expression much more familiar to freight forwarders and others.
- There is no easy answer but it might be worthwhile liaising with NZ authorities to see how this has worked in practice.

Compliance

5. What insights do you have on overall level of compliance with the LVIG regime?

6. What do you regard as the main reasons for non-compliance?

7. How could compliance levels be improved?

Response

- We simply don’t know the level of compliance with the LVIG regime, especially for those jurisdictions largely beyond the reach of the Commissioner.
- There is an issue about how to bring further non-resident entities into the LVIG regime, especially if they only become recently aware of their obligations – the evident problem being an unanticipated retrospective tax liability from 1 July 2018.
- There are competing policy tensions:
 - Ensuring competitive neutrality with Australian retailers
 - Ensuring fairness to those non-residents who did register
 - However, also ensuring that non-residents are not unduly punished for ignorance of a world-first regime
 - Fostering willing compliance with the Australian tax regime.
- Noting these competing policy tensions, our first preference would be to consider a two-year amendment period (compare ITAA1936 s170(1)), rather than the current four-year period, absent deliberate fraud or evasion.
- Our second preference would be to limit the two-year amendment period to those small business entities with less than \$10m turnover (compare ITAA1997 s328-110).

- Finally, and as a separate point, the Commissioner will currently not permit such entities to use simplified GST registration. This is because, when the Commissioner is required to register an entity, he must do so under subsection 25-5(2) of the GST Act, which will register the entity for standard GST registration. At that time, no election for limited registration will have been made by the non-resident entity under Division 146. We recommend this be changed.

International impacts

8. What lessons can Australia draw from the implementation of low value GST or VAT regimes in other countries such as New Zealand, Norway, the United Kingdom, the European Union countries and Singapore?

Response

- Apart from what has been discussed above, the regimes are broadly similar and, while differences exist, there is nothing in those differences which suggest that Australia needs to make changes to the current regime.

9. How well does the LVIG regime interact with VAT or GST obligations imposed by other jurisdictions? Do issues of double taxation arise and how are they resolved?

Response

- We are not aware of issues of double taxation given the application of the 'destination' principle to GST/VAT regimes.
- Some jurisdictions (notably China) choose to impose a separate tax on exported goods but that is not double taxation as such.

Achievement of Purpose

10. Overall, how effective is LVIG regime on delivering on its intended purpose? What is working well? Are there aspects of the regime that could be improved?

Response

- Noting that it is impossible to reach every non-resident entity, the LVIG regime has been broadly effective in delivering on its intended purpose, and better than some commentators had expected
- The vendor collection model has worked well judged by reference to the criteria used by the Productivity Commission:
 - tax neutrality between foreign and domestic suppliers;
 - GST revenues;
 - administrative and compliance costs; and
 - impacts on consumers and business.

The cross-border flow of goods and services is in a state of flux – affected by COVID-19, technological advances, changed business models (such as fintech). The global response by governments and revenue authorities is also in a state of flux. We would respectfully suggest the BoT conduct a further review of GST and imported goods and services in 3 to 5 years. This review should also cover mechanisms and technology solutions that may enhance compliance (for example block-chain administration and/or enhanced administrative obligations on the EDPs who facilitate such commerce.

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Around the world, Chartered Accountants are known for their integrity, financial skills, adaptability and the rigour of their professional education and training.

CA ANZ promotes the Chartered Accountant (CA) designation and high ethical standards, delivers world-class services and life-long education to members and advocates for the public good. We protect the reputation of the designation by ensuring members continue to comply with a code of ethics, backed by a robust discipline process. We also monitor Chartered Accountants who offer services directly to the public.

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We actively engage with governments, regulators and standard-setters on behalf of members and the profession to advocate in the public interest. Our thought leadership promotes prosperity in Australia and New Zealand.

Our support of the profession extends to affiliations with international accounting organisations.

We are a member of the International Federation of Accountants and are connected globally through Chartered Accountants Worldwide and the Global Accounting Alliance. Chartered Accountants Worldwide brings together members of 13 chartered accounting institutes to create a community of more than 1.8 million Chartered Accountants and students in more than 190 countries. CA ANZ is a founding member of the Global Accounting Alliance which is made up of 10 leading accounting bodies that together promote quality services, share information and collaborate on important international issues.

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