



**Australian Government**

**The Board of Taxation**

# REVIEW OF GST ON LOW VALUE IMPORTED GOODS

the **board** of **taxation**  
[www.taxboard.gov.au](http://www.taxboard.gov.au)

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# FOREWORD

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The Board of Taxation (the Board) is pleased to submit this report to the Assistant Treasurer following its review of the effectiveness of the low value imported goods (LVIG) regime introduced in 2018.

The Board appointed a Working Group to conduct the review that included Board members Dr Julianne Jaques QC, Ms Tanya Titman and Ms Andrea Laing, and Board Chair Ms Rosheen Garnon. The review was chaired by Dr Jaques. The review attracted interest from domestic and foreign retailers, electronic distribution platforms, tax professionals and specialists in international trade, customs, freight forwarding and logistics. The Board conducted virtual roundtable consultations with over thirty industry stakeholders throughout Australia and collected further feedback from private interviews. The Board issued a Consultation Guide and received eight written submissions.

The Board was grateful for the assistance of revenue officials representing New Zealand, the United Kingdom and the European Union.

The Board would like to thank all those who contributed to the consultation process and responded to the consultation paper. The Board would also like thank representatives of the Australian Taxation Office (ATO), The Treasury, and Australian Border Force (ABF) for their invaluable assistance and contributions to the review.

The ex-officio members of the Board — the Secretary to the Treasury, Dr Steven Kennedy PSM, the Commissioner of Taxation, Mr Chris Jordan AO, and the First Parliamentary Counsel, Ms Meredith Leigh — have reserved their final views on the observations and recommendations made in this report for advice to Government.



Rosheen Garnon  
Chair of the Board



Dr Julianne Jaques QC  
Chair of the Working Group

# Report at a glance

## The LVIG Regime

### Key features

See Chapter 2.

- Efficient 'vendor collection' approach.
- Extension to the domestic 'supplier' rules administered by the ATO instead of the 'taxable importation' rules administered by Customs.
- Achieves efficiency by shifting the tax burden to online marketplaces known as 'electronic distribution platforms' (EDPs).

### Operates in an environment with...

- Exponential growth in online shopping for imported goods.
- Concerns that domestic retailers are at a tax disadvantage to their foreign competitors.
- Affected businesses typically operate offshore, putting them outside the reach of traditional enforcement measures

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## Observations

- Positive feedback from stakeholders
- Significantly exceeding revenue estimates
- Successful education strategies
- Helped to level the playing field for domestic retailers



## International Reflections

- Australia was seen as a leader in implementing the LVIG regime – the rest of world and OECD have largely followed the Australian model of imposing tax at the vendor level.
- Features of other overseas models have been considered unsuitable in the Australian context.

Continued over page

## Assessment



### Compliance & administrative costs

See Chapter 3

Achieves reasonable costs via:

- Simplified registration and reporting.
- Shifting the burden of tax collection from many smaller sellers to better resourced electronic distribution platforms.

A vendor registration model with reasonably low administrative burdens on the ATO and ABF.



### Industry compliance

See Chapter 4

For the first two years, the regime generated revenue of A\$760 million against the official forecast of A\$170 million.

High degree of confidence that large retailers and EDPs are meeting their obligations.

- However, there is evidence of a potential “tax gap” around smaller suppliers and compliant taxpayers want more visible compliance activities.
- Imposition of GST on EDPs in particular is highly efficient, capturing a significant portion of the GST on LVIG.



### Future direction

See Chapter 5

Online commerce is a dynamic, rapidly evolving area and the impacts of COVID-19 on consumer spending habits are not yet fully understood.

- As the market and technology evolve, consideration could be given to using other e-commerce platforms to collect GST to ensure the system remains sustainable.

## Findings & recommendations

- Access to simplified registration
- Single registration for a series of entities
- Searchable register
- The appropriateness of the turnover threshold
- Same treatment for business-to-business supplies
- Suggested simpler method of dealing with GST incorrectly charged
- Suggested option for remitting GST on certain high value supplies
- Drop shipping arrangements
- Definition of EDPs
- Redeliverers

- Compliance levels among merchants
- Late registration
- Deliberate non-compliance

- Future developments in e-commerce platforms

# EXECUTIVE SUMMARY

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The LVIG regime comprises reforms to the GST law, enacted with effect from 1 July 2018, to impose GST on goods imported directly by consumers costing \$1000 or less imported in the course of a supply to consumers. The LVIG regime uses a ‘vendor collection’ or ‘vendor registration’ model which imposes the obligation to collect and remit GST on the supplier at the point of sale, rather than the point of import. GST continues to be payable at the point of import on goods costing more than \$1,000.

The LVIG regime was the second phase of one of the most important reforms to the Australian GST system since its commencement in 2000, the first being the implementation of the regime for imposing GST on imported services and digital products.

The significance of ensuring Australia has a workable and efficient regime for imposing GST on low value imported goods has increased in recent years. Australians have been recorded as spending A\$49.7 billion on online retail goods representing 20.1 per cent growth in the 12-month period leading up to June 2021 (impacted by the COVID-19 pandemic). This is approximately 13.6 per cent of total retail trade.<sup>1</sup>

The principle underlying the GST on LVIG reforms has always been clear. In order to allow Australian businesses to operate on a level playing field with the overseas competitors, imports should receive the same tax treatment as domestic supplies. However, when the GST was introduced on 1 July 2000, the challenge of developing an efficient, fair, and comprehensive way of collecting GST on low value imported goods was a significant obstacle. The prevailing view at the time was that the costs of collecting GST on low value imported goods would greatly outweigh any benefits in terms of competitive neutrality or increased revenues.

The LVIG regime introduced in 2018 sought to overcome these obstacles and achieve efficiency in the following two important ways:

- First, the LVIG regime places the responsibility for collecting and paying GST on the supplier of the goods (provided they meet a registration threshold). This relieves the customs agency of the administrative burden of collecting GST as low value goods cross the border; and
- Secondly, for the large volume of trade in low value imported goods that is conducted through large electronic platforms or marketplaces, the LVIG regime shifts the burden of collecting the tax to the platform operator rather than the merchant. This means that a very high proportion of the tax is collected by a few very large, sophisticated businesses

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<sup>1</sup> NAB Group Economics, NAB Online Retail Sales Index July 2021, <https://business.nab.com.au/wp-content/uploads/2021/08/NAB-Online-Retail-Sales-Index-JUL21.pdf>

with the capacity and scale to build efficient systems to meet the requirements of the regime as part of their service offering to their clients.

The decision to implement a ‘vendor registration’ model for taxing low value imported goods was the subject of some questioning prior to its implementation: one concern was that some platforms and retailers would exit the Australian market rather than meet the obligations under the proposed laws. This concern has not eventuated.

Another concern prior to implementation was that the regime was perceived to be overly reliant on voluntary participation and ‘light touch’ compliance measures, given that many of the affected eligible businesses are non-residents of Australia and therefore outside the reach of many traditional enforcement mechanisms. The Board found that the public international education campaign conducted by the ATO was effective to assist suppliers to understand the regime and ameliorate this concern.

Before the introduction of the LVIG regime, it was noted that Australia was exposing itself to a ‘first mover risk’,<sup>2</sup> forgoing the opportunity to learn from the experiences of other countries. While our international consultation indicated some differences with subsequent regimes introduced around the world that are canvassed in this report, these differences are not concerned with the substantive operation of Australia’s LVIG regime. Overwhelmingly, the view of stakeholders was that the Australian regime compares favourably with international equivalents and that many aspects of Australia’s implementation of the regime – notably the public education campaign – represents world’s best practice. More importantly, the LVIG regime provided a stable, workable system that other countries were able to adapt to their circumstances. The taxation of low value imported goods is now a global phenomenon and the Australian regulators should be commended for their role in spearheading an approach that has led to a co-ordinated, international response.

There was no prevailing issue of concern raised during the Board’s consultations with stakeholders, with most issues being raised in only one forum. Ultimately the Board has concluded that no legislative change is required at this stage to deal with any issue raised. This is because the issues raised can either be dealt with by administrative measures – largely further ATO guidelines as and when required – or because any proposed compensatory measures give rise to potential integrity or complexity concerns which are out of proportion to the issue sought to be addressed. The Board was mindful to avoid recommending legislative change that would add complexity to the regime in circumstances where the evidence supports a conclusion that the regime is working well, where the advocacy for change was not wide-ranging and was not consistent amongst stakeholders, and where the case for change was not compelling.

However, the Board notes that new business models in e-commerce are constantly evolving, while at the same time the COVID-19 pandemic has greatly expanded the use of online business-to-consumer (B2C) transactions. In this environment, the Board suggests that, while outside the

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<sup>2</sup> Productivity Commission, *Collection Models for GST on Low Value Imported Goods: Productivity Inquiry Report*, 2017, page 54.

scope of the Board's post-implementation review, in the future the Government could consider whether e-commerce platforms not currently in scope of the law should play a greater role in the collection of GST on low value imported goods, whether as a legislated source of information or as a legislated GST collection point

## Overview of Findings and Recommendations

1.1 Following its consultation process, the Board has found:

- (a) The LVIG regime has been a success in terms of revenue collections which have significantly exceeded original estimates.<sup>3</sup>

|  | 2018-19 | 2019-20 | 2020-21          |
|--|---------|---------|------------------|
| GST on Low Value Imported Goods                                  | A\$m    | A\$m    | A\$m             |
| GST revenue estimates, <i>Budget 2016-17 &amp; MYEFO 2017-18</i> | 70      | 100     | 130              |
| Net GST revenue as of 20 April 2021                              | 360     | 400     | N/A <sup>4</sup> |

- (b) Feedback provided by stakeholders during the consultation process was generally positive.
- (c) The successful take-up of the LVIG regime by stakeholders was greatly assisted by the Commissioner's education programme in the lead-up to commencement of the LVIG regime.
- (d) The LVIG regime is consistent with recommendations made by the Organisation for Economic Co-operation and Development (OECD) in relation to the collection of value-added taxes (VAT) on low value imported goods.
- (e) The Australian regime served as a useful template that other countries have drawn on when developing similar regimes for taxing low value imported goods.
- (f) A key driver to implement the LVIG regime was concerns raised by domestic retailers with respect to competitive neutrality and ensuring that foreign retailers did not have an unfair advantage. The feedback provided by stakeholders to the Board suggests these concerns have been significantly reduced or eliminated.

1.2 There was no prevailing issue of concern raised during the consultation process, and most issues were raised in consultations only once. Following the feedback received, the Board considers the relatively more significant issues to be:

- (a) Operators of electronic distribution platforms (EDPs) or online marketplaces indicated that there is a lack of competitive neutrality between themselves and other types of e-commerce platforms. While there are currently only a small

<sup>3</sup> Data sourced from the ATO GST and other taxes detailed tables. Table 1. Selected GST, WET and LCT items, 2001–02 to 2019–20 financial years, Table 1. / The Commonwealth of Australia, *Budget Measures Budget Paper No. 2, 2016-17*, 2016, table 2

<sup>4</sup> 2020-21 data not available when report was finalised.

number of large EDPs, this issue may gain more significance in the future with new entrants and potential new business models further blurring the line between marketplaces and other e-commerce platforms. The Board has recommended that this issue be monitored and reviewed in the future with a view to considering whether an efficient and appropriate method to collect GST on low value imported goods in the future may be to impose the liability on these other e-commerce platforms.

- (b) Redeliverers claimed that they carry a greater compliance burden from the LVIG regime than other impacted suppliers. The Board concluded that this issue was best dealt with administratively with further guidance.
- (c) Some advisers queried the potential 'GST gap' from merchants in the LVIG regime (that is, those not supplying through an EDP), whether it would be possible to estimate this 'LVIG GST gap', and whether it was appropriate for more compliance activity, or more visual compliance activity, to occur in this area. The ATO has advised the Board, however, that their compliance activity suggests that, the LVIG GST gap is not at this stage significant and that on light of data gaps and information limitations, it is not currently practically feasible to specifically and accurately quantify the component of the GST gap for suppliers under the LVIG.

- 1.3 In conclusion, the Board considers that the LVIG regime is operating reasonably with those suppliers most affected having a good understanding of their obligations, and that at this stage any issues with the regime are best dealt with via administrative measures rather than legislative change.
- 1.4 However, the Board recommends that emerging business models be monitored and in particular that consideration be given in the future to whether the regime should be extended to impose a GST liability on providers of other types of e-commerce platforms in a similar way to which a GST obligation is imposed on EDPs.
- 1.5 The Board's recommendations in relation to particular issues, and reasons for recommending no change in relation to others, are summarised in the following paragraphs.

## ***Recommended for administrative measures***

### ***1. Definition of electronic distribution platforms***

The ATO advised that a significant proportion of low value imported good transactions on which GST is paid occur through a small number of large EDPs. Some of these EDPs contended that the definition of an EDP is unclear, and that other platforms which they view as not significantly different are treated differently as no GST liability is payable on their LVIG transactions. It was suggested that either the definition of EDP is unclear, or it is not being properly understood and implemented by all entities to which it applies.

New business models are evolving and the ATO guidance provides two distinct examples of what is and is not a marketplace, however there are some service providers which offer varying services including the build of a platform to facilitate sales and do not fall into the definition of an EDP. The ATO's guidance has proven helpful but will need to keep pace with the evolving e-commerce landscape.

#### **RECOMMENDATION**

The Board recommends that the ATO continue to monitor developments in technology and business models with a view to ensuring that guidance material remains fit for purpose.

Also see 14 below.

### ***2. Drop shipping arrangements***

Drop shipping is the process where an entity (the first entity) sells goods that it does not own at the time of sale and then facilitates another offshore entity (the second entity) to deliver the good directly to the customer in Australia. Only the second entity directly handles the product. There are a number of variables in the arrangements, including whether the first entity is offshore or onshore, and the location of the goods. The GST implications may differ according to these variables.

Entities engaged in drop shipping did not raise any concerns with the Board.

#### **RECOMMENDATION**

While there is limited guidance in relation to this issue, there are no indications that parties to drop shipping arrangements are having difficulty with the regime. If it becomes apparent that clarification is required, the Board recommends that the ATO consider providing additional administrative guidance.

### 3. *Redeliverers*

The Board acknowledges that redeliverers are a unique and complex aspect of the LVIG regime. Many of the challenges and complexities faced by redeliverers arise because the redeliverer is not a party to the original contract between the vendor and the customer and may have limited visibility over that transaction.

A limited number of redeliverers engaged in the consultation process. Some stakeholders suggested redeliverers be either relieved from the responsibility to collect GST or that smaller scale redeliverers should be removed from the LVIG regime by increasing the turnover threshold for them.

#### **RECOMMENDATION**

The Board considers that providing any exemption for redeliverers would create integrity concerns for other entities in the regime. At this stage there is no apparent lack of understanding amongst redeliverers as to their responsibilities. The Board recommends the ATO monitor this issue and provide further administrative guidance if required.

### 4. *Compliance levels among merchants*

The policy intent of imposing GST on low value imported goods is to level the playing field. This includes ensuring that all businesses who meet the registration threshold are compliant.

There is a high degree of confidence that larger retailers and EDPs are complying with their obligations under the LVIG regime. However, some stakeholders believe the position regarding smaller businesses is far less certain and compliance levels among this group may be low. There was a strong appetite among stakeholder groups for more and better data to allow overall levels of compliance with the regime by this group to be properly assessed.

The ATO recognised that there is no definitive measure of the size of non-compliance or 'GST gap' in relation to low value imported goods. However, they advised that they do not have any sense from their compliance measures that there is significant non-compliance with the LVIG regime at this stage.

The ATO advised that they take the following measures to ensure compliance by direct merchants with the LVIG regime:

- Monitoring of overseas financial movements;
- The ATO's 'Mystery Shopping program' (anonymised purchases by the ATO from merchants of low value goods);
- Analysis of datasets relating to websites visited by consumers in Australia;

- Exchanges of information with other jurisdictions, including requests for information on particular businesses;
- Awareness and education campaigns; and
- Review and audit activities.

The ATO has advised that specifically and accurately quantifying the component of the GST gap for direct merchants under the LVIG is not practically feasible in light of data gaps and information limitations.

## RECOMMENDATION

The Board recommends that the ATO continue to monitor this area and investigate the tax gap if concerns in this regard were to increase and it becomes feasible to access the required data. The ATO should also continue to adapt its compliance measures to ensure ongoing levels of compliance with the LVIG regime by direct offshore suppliers.

### ***Issues considered with no change recommended at this stage***

#### ***5. The appropriateness of the turnover threshold***

Some stakeholders have suggested the A\$75,000 GST registration threshold is relatively low in the context of offshore suppliers and have queried whether the threshold should be increased substantially. A threshold amount of A\$500,000 has been suggested.

In contrast, there have been suggestions that reducing the threshold to zero may also be appropriate. The United Kingdom, for example, operates its LVIG system without a registration threshold for offshore suppliers, requiring them to register immediately. Interestingly, their domestic regime does set a threshold for registration at GBP85,000.

Other jurisdictions, including New Zealand and Norway, have adopted registration threshold rules that are similar to Australia's base rules. Singapore proposes to extend their registration threshold test further with the inclusion of a global turnover test of S\$1,000,000, in addition to their existing annual turnover threshold of S\$100,000 of annual sales of digital and non-digital services to customers in Singapore.

Overall, the Board heard that Australia's registration threshold reduces the burden on business, making it easier to comply. Stakeholders also said that the registration threshold makes Australia a 'friendlier' country to which to export. The Board also notes that the level of Australia's threshold reflects the threshold for registration for GST in Australia.

## OBSERVATION

The Board does not consider adjusting the threshold for offshore suppliers would benefit the LVIG regime, but rather would distort the competitive neutrality intended by broadly aligning the thresholds for domestic and offshore businesses.

### 6. *Access to simplified registration*

Under the current law, an unregistered business that is registered involuntarily cannot use the simplified registration method for past periods. It was suggested in one workshop that the requirement to use full registration can involve an onerous compliance burden.

The ATO has advised that where an entity voluntarily enters the regime and discloses a liability for earlier periods, that entity can use the simplified registration method including for prior periods.

The ATO advised that at any time after a business has registered with a standard registration, it may elect to change to a simplified registration for future periods. This includes those businesses that have been compulsorily registered for past periods. The ATO has further advised that only one entity has raised this issue with the ATO and sought to access the simplified registration system for past periods, after being issued with an assessment by the Commissioner and compulsorily registered.

## OBSERVATION

This issue was not the subject of any substantive submissions and the advice from the ATO does not suggest that this is an issue requiring legislative amendment or any administrative measures.

### 7. *Single registration for a series of entities*

The GST law requires each entity that satisfies the registration threshold to register for GST separately.

The New Zealand GST regime includes the capacity for registration for a group of commonly owned entities. Offshore suppliers of low value imported goods are required to register under the same system as all other registrants and, accordingly, can register for a group of commonly owned entities, and the New Zealand authorities indicated that many of them do so.

New Zealand does not have a simplified registration system for its LVIG regime and so its grouping arrangements for low value imported goods fall within its standard arrangements. The Board noted that there are grouping registration arrangements in Australia under the standard registration arrangements, which suppliers can choose to use.

The Board considered whether the simplified registration system for the LVIG regime could include a single registration for identified entities in the same 100 per cent-owned corporate group. The Board was unable to identify any apparent integrity or other concern with permitting such a simplified regime. However, there was no evidence it was an issue for commonly owned entities. It was also not apparent to the Board that there would be significant simplification benefits since all details of each entity would still need to be provided.

## OBSERVATION

The Board concluded that it is not apparent that any benefit of group registration of the simplified system would outweigh the cost of adding complexity to the simplified system. Accordingly, the Board does not recommend any change to the simplified registration system to allow group registration.

### 8. *Late registration*

The LVIG regime, because it applies to mainly offshore suppliers, is heavily reliant on 'light touch' compliance measures aimed at promoting voluntary participation.

The Board received feedback from stakeholders that when suppliers fail to register for GST for the LVIG regime when first required to do so, they can be reluctant to make a voluntary disclosure of non-compliance. This is because of concerns about the potential exposure to GST liability for the previous four years as well as penalties.

There were mixed views on this issue. Some stakeholders argued that a legislative amendment was warranted to encourage new entrants, while others argued that this would unfairly prejudice those who had done the right thing by registering in the past. Other stakeholders argued for a compromise position of an amendment period of two years for smaller suppliers, whereas others argued that this would inappropriately benefit offshore suppliers over domestic suppliers to which an amendment period of four years applies, or alternatively would have little effect on the assumption that it would be the more recent years in which the liability to remit GST would be higher.

The ATO advised the Board that to date, ATO compliance staff have dealt with the issue of pre-registration liability, where it has been identified, through their normal case management process. Assistance in meeting past liabilities is provided by the ATO through the availability of 'payment arrangements' whereby debt is paid over a negotiated period of time.

## OBSERVATION

The Board is not convinced that any amendment to the existing arrangements for encouraging voluntary registration would result in a better or more equitable system, but it would have the disadvantage of increased complexity. Considering the ATO's advice as to the approach it takes, the Board recommends no change.

### 9. *Searchable register*

A stakeholder from the freight-forwarding industry suggested that a publicly available register of simplified registrants under the LVIG regime could allow verification checks of registrants. It was suggested that this would make it easier for intermediaries to determine the identity of businesses and whether they are registered under the simplified system with a unique 12-digit ATO Reference Number (ARN).

It was argued that the simplified registration regime does not have the benefit of the checks undertaken before an Australian Business Number (ABN) is issued, in light of limitations arising from the reduced proof of identity requirements for simplified registration. This means the details on a register of simplified registrants would be limited. Furthermore, privacy and secrecy issues would have to be overcome and require legislation to implement a publicly searchable register similar to the Australian Business Register (ABR).

It was unclear to the Board what there would be benefits from a searchable register of offshore suppliers registered under the simplified method, beyond the ability to check ARNs for transcription errors.

## OBSERVATION

The Board has concluded that it is not clear that the benefit of a searchable register of ARNs would outweigh the cost including increased complexity.

### 10. *Same treatment for B2B supplies*

Under the Australian regime, B2C transactions are subject to the LVIG regime whereas business-to-business (B2B) transactions are not, regardless of whether the offshore supplier is registered under the standard or the simplified method.

The LVIG regimes in the United Kingdom, Norway, and New Zealand similarly only charge GST on B2C transactions.

However, in New Zealand, offshore suppliers are given the option (where they have a certain minimum percentage of B2C transactions) to charge GST on all sales, so that they do not have to distinguish between B2C and B2B transactions. This simplifies their administration.

The Board received no submissions in support of a similar regime for Australia.

In Australia, offshore suppliers who are registered under the standard regime and charge GST may as a practical matter be issuing tax invoices and so if GST is charged on a B2B transaction, the customer may claim the input tax credit. However, offshore suppliers who are registered under the simplified method cannot issue tax invoices. This means that GST charged on a B2B transaction would require the customer to seek a refund from the offshore supplier and the offshore supplier to make a commensurate adjustment in their next reporting period.

## OBSERVATION

To overcome this situation for offshore suppliers using simplified GST registration would require input tax credits to be allowed in the absence of a tax invoice, or offshore suppliers who are not subject to the more stringent information requirements for standard GST registration to issue a tax invoice. Both of these options would give rise to integrity concerns and accordingly the Board proposes no change.

While the New Zealand regime has benefited from these simplification processes, the Board notes that the New Zealand regime does not have an option of simplified GST registration.

### 11. *Suggested simpler method of dealing with GST incorrectly charged*

There are exemptions in the GST law for certain goods and services such as those relating to food, education and health, making them GST-free. Furthermore, some supplies of car parts are GST-free to a person with a disability who is gainfully employed or to disabled veterans, in which case the consumer can submit a form to the supplier to indicating that the supply is GST-free.

In cases where suppliers of low value imported goods incorrectly charge consumers GST on GST-free goods and services the process for seeking a refund of the GST can be difficult. The process for recovering that GST can involve the recipient seeking a refund from the supplier, and then the supplier is entitled to adjust their next lodgement to the ATO by the GST amount refunded to the consumer.

A question has arisen as to whether there should be capacity for the consumer to claim the GST back from the ATO.

## OBSERVATION

Similar to its view of issue 10, the Board considers allowing consumers to access a refund from the ATO would give rise to integrity concerns. Having an additional refund mechanism will add unnecessary complexity to the LVIG regime. As such, the Board proposes no change.

### 12. *Suggested option for remitting GST on certain high value supplies*

New Zealand provides concessions which allow certain suppliers that are remitting GST on low value imported goods, to also remit GST on high value imported goods. The purpose of this concession is to encourage compliance by removing the administration burden of complying with multiple laws where the supplier predominantly imports low value goods.

Furthermore, stakeholders have indicated that it can be difficult to distinguish whether a good is a low value good, particularly when the good is priced close to the threshold.

However, none of the submissions received suggested that Australia should adopt a similar concession as New Zealand for high value supplies.

The ABF and the ATO advised that, if such a regime were to be implemented, there may be integrity issues and increased administration arising where some high-value goods are subject to GST at the border, and some are not.

## OBSERVATION

In light of the lack of apparent demand, potential integrity risks, and increased administration, the Board does not recommend providing suppliers an option for paying GST on high-value goods.

### 13. *Deliberate non-compliance*

The Board, throughout its consultation, was told anecdotally of limited circumstances where deliberate non-compliance has been observed with respect to the LVIG regime. These circumstances included:

- some merchants selling low value goods via an EDP and falsely claiming to the EDP that the goods are located in Australia to avoid the application of GST;
- some merchants deliberately undervaluing on customs declarations goods that are above the A\$1,000 threshold for taxable importations to avoid GST at the border; and

- some merchants knowingly not registering for GST despite being subject to LVIG obligations.

## OBSERVATION

The examples of potential non-compliance given to the Board involve false declarations and fraud or evasion. The Board considers the range of compliance strategies introduced by the ATO with respect to monitoring compliance on the LVIG regime currently appear to be sufficiently administered with respect to detecting risk and maintaining an efficient system. The Board is reluctant to recommend a systemic change that would impose a more onerous administrative burden on taxpayers doing the right thing, to combat activities which, if they occur, will represent clear fraud and/or evasion.

## Future Directions

### 14. *Future developments in e-commerce platforms*

The LVIG regime has been highly successful in promoting compliance among large retailers, EDPs, and the businesses selling through those platforms. This is likely to account for a high proportion of low value imported goods.

The imposition of GST on EDPs in particular is highly efficient, capturing a significant portion of the GST on low value imported goods from a small number of entities.

E-commerce platforms do not currently remit GST to the ATO. Providers of such e-commerce platforms provide a service in the form of a platform on which international transactions can occur, dealing with issues such as payment, exchange rate, and value added taxes. The e-commerce platform only provides calculations of value added taxes but liability for those taxes remains with the vendor. It was argued that these platforms are properly distinguishable from EDPs on the basis that, unlike an EDP, the relationship with the end consumer remains with the vendor, not with the e-commerce platform provider.

The Board considers that there may be opportunities to improve the efficiency of the system by re-examining the role of e-commerce platforms that currently fall outside of the definition of 'electronic distribution platform'.

The Board heard that some e-commerce platforms have the knowledge and capability to correctly assess the correct amount of GST and to collect the GST. In these circumstances, the Board considers that further work could be done to consider whether it would be appropriate for e-commerce platforms to be required to provide information in relation to their customers' liabilities for GST, or for GST liability to be imposed on the operators of e-commerce platforms. The Board considers that the imposition of GST on e-commerce platforms could, like the

imposition of GST on EDPs, be a simple and efficient mechanism to collect GST on low value imported good transactions that occur outside the EDP environment.

The Board understands that in no other jurisdiction is the liability to collect GST imposed on an e-commerce platform. However, it does not appear that other jurisdictions have considered this issue in any depth.

## RECOMMENDATION

The scope of this post implementation review does not include policy and therefore does not include a consideration of whether the LVIG regime should be extended, including to all e-commerce platforms.

However, the Board notes that new business models in e-commerce are constantly evolving, while at the same time the COVID-19 pandemic has greatly expanded the use of online B2C transactions. In this environment, the Board suggests that in the future the Government could consider whether e-commerce platforms could have a greater role to play in the collection of GST on low value imported goods, whether as a legislated source of information or as a legislated GST collection point.

## Outline of report

**Chapter one** of this report provides an introduction to the Board's review.

**Chapter two** outlines the background to and legislative framework of the LVIG regime and is supported by the Appendix which provides further contextual detail.

**Chapter three** considers the compliance burdens associated with the LVIG regime. It is based on the premise that a system that is easy to comply with is not only more efficient, but more conducive to voluntary participation.

**Chapter four** considers the level of compliance with the LVIG regime and possible strategies for improving compliance.

**Chapter five** is entitled 'Future Directions' and sets out the Board's broader observations on emerging issues. It includes a discussion of the need to continue to monitor new business models, and a suggestion that consideration be given in the future to leveraging e-commerce platforms to assist with the efficient operation of the LVIG regime.

# DIAGRAMMATIC OVERVIEW OF THE LVIG REGIME

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The following end-to-end flowchart sets out the LVIG regime in diagrammatic form, including key considerations that merchants, EDPs, and redeliverers need to navigate to determine whether they have a GST obligation in respect of a supply of low value imported goods.

A number of 'pressure points' have been identified which increase the administrative burden for compliant suppliers. Each of these pressure points have been addressed throughout the report, supported by recommendations to assist taxpayers.

Each pressure point has been graded in accordance with how it has been perceived to adversely impact taxpayer's ability to comply with the regime: red is considered a 'key challenge, amber denotes aspects of compliance that are moderately challenging while green challenges have only been perceived as mild. These grades are relative, rather than absolutes.

# GST Collection on Low Value Imported Goods

## 1 Australian buyer orders goods from an international supplier

Australian consumers will generally order goods directly from the merchant or indirectly, via an EDP or redeliverer.

## 2 Supplier learns about Australian regulatory requirements

Suppliers determine whether they have obligations under the LVIG regime by considering whether they are an EDP, merchant or re-deliverer and if they are required to register for GST.

### a. Is the supplier an EDP, merchant or redeliverer?

A GST obligation may be imposed on the EDP, merchant or re-deliverer in, broadly, the following order of priority:

- EDPs are responsible for collecting GST on consumer sales to Australia they facilitate.
- Merchants are responsible for the GST when an EDP is not required to collect GST on goods sold to Australia. That is, when they supply the goods directly to the buyer.
- Redeliverers are responsible when neither an EDP or merchant is responsible for the GST.

### b. Is the supplier required to register for and remit GST?

If the EDP, merchant or redeliverer exceeds the A\$75,000 registration turnover threshold, it is required to register for GST and to remit GST to the ATO.

Suppliers not required to register can sell goods to Australian consumers without charging GST.

## 3 Supplier registers for GST

Suppliers can choose between a simplified digital registration process and standard GST registration (which is a more involved process but allows the supplier to claim input tax credits).



- ! Determining whether the supplier is an EDP or redeliverer can be complex.
- ⚙️ 'Drop-shipping' arrangements can draw two overseas suppliers in a single supply chain into the LVIG regime, resulting in potential lack of clarity as to liability.
- ⚙️ Redeliverers can find it difficult to collect the necessary information needed to comply with GST requirements from the merchant.

Continued over page

## 4 Supplier determines if the supply falls within the LVIG regime

The LVIG regime collects GST on low value imported goods made to Australian consumers at the point of sale.

### a. Is the supply a low value imported good?

Low value goods are physical goods with a customs value of A\$1,000 or less. The LVIG regime does not apply to\*:

- Goods held in Australia
- GST free goods
- alcohol and tobacco products, and
- multiple low value goods consigned together with a combined customs value over A\$1,000.

### b. Is the buyer a consumer?

The buyer is a consumer if they are not registered for GST or if they are not purchasing the goods for use in their business. Buyers can provide their ABN to the supplier as evidence that they are a business and not a consumer.

\* The Australian Boarder Force collects GST via a separate process where the LVIG regime does not apply.

- 
- ! To navigate the LVIG regime, suppliers need a basic understanding of Australian GST law. For example, they need to identify GST-free supplies.
  - ! The calculation of GST can be complex for EDPs, when shipping and EDP discounts are provided at the point of sale.
  - ⚙️ International shipping terminology differs from Australian legislation, making it difficult to determine if goods are part of separate consignments each under the A\$1,000 threshold or a single consignment exceeding the threshold.
  - ⚙️ There is a timing difference between the calculation of the sale price for GST and the customs value. This can create complexity due to foreign exchange fluctuations.

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- 🔗 Some suppliers will take time to verify information provided by the buyer. To avoid delaying a transaction, GST is often charged in advance and refunded if necessary. The advance payment of GST increases administrative costs if it must subsequently be refunded.

## 5 Supplier lodges tax return and pays GST

Suppliers must lodge a quarterly GST return. Non-resident suppliers can pay GST via a credit card or international EFT transfer.

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- ⚙️ Some suppliers find it difficult (especially those unfamiliar with Australian tax practices) to determine the appropriate level of evidence to collect and retain to support their GST claims.

## 6 Processing and amending returns and other adjustments

A refund for returned goods must include an amount for GST. The supplier can make an adjustment to reduce the amount of GST payable in their next GST return.

Replacement goods are not required to have GST charged again.

- 
- ⚙️ The refund process creates additional compliance costs and may give rise to cash flow issues for the supplier who is out of pocket until the GST adjustment is made.

- ! key challenge
- ⚙️ moderate challenge
- 🔗 mild challenge

# GLOSSARY

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The following abbreviations and acronyms are used throughout this report.

| Abbreviation        | Definition  |
|---------------------|---|
| ABF                 | Australian Border Force                                   |
| ABN                 | Australian Business Number                                |
| ABR                 | Australian Business Register                              |
| ABS                 | Australian Bureau of Statistics                           |
| AO                  | Order of Australia – Officer of the Order                 |
| ARA                 | Australian Retailers Association                          |
| ARN                 | Australian Registration Number                            |
| ASBFEO              | Australian Small Business and Family Enterprise Ombudsman |
| ATO                 | Australian Taxation Office                                |
| AusPost             | Australia Post  |
| BAS                 | Business Activity Statement                               |
| BEPS                | Base Erosion Profit Shifting                              |
| B2B                 | Business to business                                      |
| B2C                 | Business to consumer                                      |
| CAPEC               | Conference of Asia Pacific Express Carriers               |
| CAANZ               | Chartered Accountants Australia and New Zealand           |
| COAG                | Council of Australian Governments                         |
| COVID-19            | Coronavirus Disease                                       |
| E-commerce platform | Electronic commerce platform                              |
| EDP                 | Electronic Distribution Platform                          |
| EFT                 | Electronic Funds Transfer                                 |
| EU                  | European Union  |
| FOB                 | Freight on Board  |
| FTA                 | Freight and Trade Alliance                                |
| GST                 | Goods and Services Tax                                    |
| G20                 | Group of Twenty   |
| Home Affairs        | Department of Home Affairs                                |

| Abbreviation | Definition  |
|--------------|---|
| ICS          | Integrated Cargo System                                     |
| IOSS         | Import One Stop Shop  |
| ITZ          | Indirect Tax Zone   |
| LCR          | Law Companion Ruling  |
| LCT          | Luxury Car Tax  |
| LRE          | Limited Registration Entity                                 |
| LVIG regime  | Low Value Imported Goods regime                             |
| MYEFO        | Mid-Year Economic and Fiscal Outlook                        |
| NAB          | National Australia Bank                                     |
| OECD         | Organisation for Economic Co-operation and Development      |
| PC           | Productivity Commission                                     |
| PRN          | Payment Reference Number                                    |
| PSM          | Public Service Medal  |
| QC           | Queen's Counsel   |
| SWIFT        | Society for Worldwide Interbank Financial Telecommunication |
| The Board    | Board of Taxation   |
| VAT          | Value-Added Tax   |
| WET          | Wine Equalisation Tax                                       |

# CHAPTER 1: INTRODUCTION

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- 1.1 On 5 July 2021, the Assistant Treasurer, Minister for Housing and Minister for Homelessness, Social and Community Housing, the Hon. Michael Sukkar MP, requested that the Board undertake a post-implementation review of the LVIG regime which facilitates the imposition of GST on low value imported goods.

## Background

- 1.2 Before 1 July 2018, goods imported directly by consumers costing A\$1,000 or less did not attract GST and high value goods with a customs value over A\$1,000 were assessed and charged GST at the Australian border.
- 1.3 From 1 July 2018, GST was applied to low value goods using a vendor registration model referred to as the LVIG arrangements. This model requires merchants, certain online platforms and redeliverers<sup>5</sup> with an Australian GST turnover of A\$75,000 or more to register, collect, and remit GST to the ATO. Non-resident suppliers of low value imported goods can also access the simplified GST registration and reporting system. The existing processes to collect GST on imports above A\$1,000 at the border remain unchanged.
- 1.4 At the announcement of this measure in the 2016-17 Budget, the Government committed to reviewing the LVIG arrangements after two years to ensure that the measure was operating as intended and to consider any international developments and experiences regarding the collection of GST and other consumption taxes. Given that the measure has now been in place for several years, the Government requested the Board to undertake this post-implementation review.

## Terms of Reference

- 1.5 The Terms of Reference for the review are as follows:

The Board is asked to do the following:

- a) 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

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<sup>5</sup> The three categories of supplier are referred to collectively in this report as 'offshore suppliers'.

the same tax regime as goods that are sourced domestically. In doing so, the review will:

- i. assess the effectiveness of the administration of the measure;
  - ii. assess industry compliance with the LVIG rules;
  - iii. undertake a targeted external consultation process, working closely and collaboratively with the Treasury, Australian Taxation Office, and Australian Border Force;
  - iv. examine the issues identified in the consultation process; and
  - v. provide any observations, findings, and appropriate recommendations for improvements and certainty to the ongoing operation of the LVIG regime.
- b) Report on and assess any relevant international developments and experiences regarding the collection of GST and other consumption taxes on LVIG.

1.6 The Board was asked to report back to the Government by 17 December 2021.

## The Review Process

### *Review team*

1.7 The Board established a Working Group led by Board members Dr Julianne Jaques QC, who chaired the review, Ms Tanya Titman, Ms Andrea Laing, and Chair of the Board, Rosheen Garnon. The Working Group also comprised Ms Suzanne Kneen, an indirect taxes specialist and partner with PwC and representatives from the ATO, the Treasury and Australian Border Force. The Board was grateful for the specialist assistance provided by industry and taxation specialists.

### *Consultation Process*

1.8 The Board's consultation process involved:

- The release of a Consultation Guide on 2 August 2021;
- Six virtual roundtable consultation meetings attended by representatives from the tax profession, domestic and foreign retailers, and specialists in e-commerce, freight forwarding, logistics and customs processes;
- Meetings with representatives of revenue authorities in New Zealand, the United Kingdom, and the European Union and

- An invitation for, and receipt of, written submissions.

## ***Submissions***

1.9 The Board received eight written submissions in response to the Consultation Guide (two of which were confidential). The following organisations provided public submissions:

- Conference of Asia Pacific Express Carriers (CAPEC);
- Freight and Trade Alliance (FTA);
- Alibaba.com Singapore E-Commerce Private Limited;
- Australian Retailers Association (ARA);
- Chartered Accountants Australia & New Zealand (CAANZ); and
- Australian Small Business and Family Enterprises Ombudsman (ASBFEO).

1.10 The Board recognises the significant contributions made by stakeholders in making their submissions. The Board carefully considered all submissions and other contributions made during the review.

## ***The Board's Report***

1.11 In formulating the report, the Board has given careful consideration to the issues that stakeholders raised in their submissions and at the consultation meetings, and the views of the members of the Working Group.

1.12 The Board's recommendations set out in this report were developed specifically in response to the terms of reference and reflect the view of the Board and not those of any particular member of the Working Group

# CHAPTER 2: THE LVIG REGIME— BACKGROUND, HISTORY AND OPERATION

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## KEY POINTS

- The LVIG regime was a significant reform to the Australian GST system and a key component of Australia’s response to addressing the tax challenges arising from digitalisation of the economy.
- Online shopping for imported goods has grown exponentially since GST was first introduced in Australia, creating pressure to ensure that domestic retailers operate on a ‘level playing field’ with their foreign competitors.
- Achieving greater competitive neutrality in GST and VAT systems has been recognised as priority by the OECD and a number of its member countries. However, designing an efficient, workable system of collecting tax on low value imported goods has been perceived as challenging.
- The LVIG regime seeks to remove the unfair advantage foreign retailers had prior to 1 July 2018 and achieve efficiency by adopting the model of a ‘vendor collection’ approach, operating as an extension to the domestic ‘taxable supply’ rules administered by the ATO instead of the ‘taxable importation’ rules administered by ABF.
- Australia was the first country to implement a vendor model to collect GST on low value imported goods. A number of other countries have since implemented, or are in the process of implementing, a similar regime. The vendor collection approach has been adopted by the OECD.

- 2.1 The introduction, with effect from 1 July 2018, of the GST regime for the taxation of low value imported goods was the second phase of arguably the most important reforms to the GST since its introduction in 2000. The first phase comprised legislation to impose GST on suppliers of cross-border sales of services and digital products. The LVIG regime builds on the platform created by the digital services rules and, for the first time, extends the reach of GST to cross-border supplies of low value tangible goods.
- 2.2 Details of the legislative framework and context of the LVIG regime are set out in the Appendix to this report.

## The evolution of the LVIG regime

### *The introduction of GST on Low Value Imported Goods*

- 2.3 From its commencement on 1 July 2000, GST provided separate regimes for the treatment of domestic supplies of goods and imported goods. While domestic supplies were taxable to the supplier, imported goods were subject to taxable importation rules involving collection of GST from the importer at the border. However, the taxable importation rules only applied to consignments with a customs value of more than A\$1,000. The effect was that low value imported goods were exempt from GST.
- 2.4 In the early years of GST, online shopping by Australian consumers was in its infancy. The rationale for the low value exemption, and the level at which it was set, ultimately reflected a judgement as to the point at which practical and administrative difficulties of collecting the tax outweighed the benefits in terms of greater competitive neutrality and revenue. However, by 2010, when the Board conducted its review into the Application of GST to Cross-Border Transactions, the Board reported growing concerns from local retailers ‘about competitive neutrality in relation to international e-retailers’. Nevertheless, the Board concluded in its 2010 report that, at that time, it was ‘not administratively feasible to try to bring offshore suppliers of low value imported goods and services into the GST system’.<sup>6</sup>
- 2.5 The low value exemption was considered again by the Productivity Commission (PC) in 2011. The PC noted that the apparent growth in the volume of parcels entering Australia, largely driven by the growth in online shopping from overseas retailers, was placing pressure on the existing facilities of Customs and Australia Post and causing a loss of GST and customs revenue that could be expected to increase if current trends continued. It also echoed the Board’s statement in its 2010 report regarding growing concerns in the domestic retail industry that the low value threshold was putting it at a competitive disadvantage to its offshore competitors, creating an ‘unlevel playing field’.
- 2.6 The PC considered that, while there are many factors affecting the international competitiveness of Australian retailers, there was a strong theoretical case for eliminating the low value exemption. It noted that:

*in principle, the GST, as a broad-based consumption tax, should apply equally to all transactions. Having no low value threshold and subjecting all imported goods to the payment of GST would minimise distortions in resource allocations, losses in efficiency, and consequent reductions in community welfare.*<sup>7</sup>

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<sup>6</sup> Board of Taxation, *Application of GST to Cross-Border Transactions*, recommendation 13, 2010, page 47.

<sup>7</sup> Productivity Commission, *Economic Structure and Performance of the Australian Retail Industry*, No. 56, 4 November 2011, page 210.

- 2.7 Ultimately, the PC recommended against lowering the low value threshold ‘unless it can be demonstrated that it is cost effective to do so’. Its view was that ‘the cost of raising the additional revenue should be at least broadly comparable to the cost of raising other taxes, and ideally the efficiency gains from reducing the non-neutrality should outweigh the additional costs of revenue collection’.<sup>8</sup>
- 2.8 In 2012, the public debate on the impact of the low value threshold tended to focus on the feasibility of removing or lowering the threshold. Questions were raised about whether it would be possible to develop new processes and technologies to collect the GST more efficiently at the border. However, the PC also identified an alternative approach. It observed that:

*[t]here are already some arrangements in place which allow international online retailers to collect taxes at the time of sale and pass them on to the government of the country where the buyer is located ... An arrangement of this nature would be an efficient way to collect GST. But adopting this approach would require other changes to processes.*

*Arrangements would have to be put into place to ensure that when the parcel arrived at the border it could be identified as having already had tax paid on it, and the tax due reconciled with the tax forwarded by the retailer. The success of this approach would probably depend on there being incentives for overseas online retailers and their customers in Australia to participate in these arrangements. It may also be difficult to extend this approach to smaller online retailers who only make occasional sales to customers in Australia.*<sup>9</sup>

- 2.9 The alternative approach is generally referred to as a ‘vendor collection’ approach as it uses the vendor (or supplier) as the relevant collection point rather than the importer.

### ***OECD G20 Action Plan on Base Erosion and Profit Shifting***

- 2.10 In 2013, OECD and G20 countries adapted a 15-point Action Plan to address base erosion and profit shifting. The OECD has indicated that its BEPS Project had its genesis in the 2008 global financial crisis, ‘when confidence in the fairness of the international tax system plunged’.<sup>10</sup>
- 2.11 Action 1 was directed at ‘addressing the tax challenges of the digital economy’ and aimed to ‘Identify the main difficulties that [it] poses for the application of existing international tax rules and develop detailed options to address these difficulties ... considering *both direct and indirect taxation*’. Relevantly, this extended to the issue of ‘how to ensure the

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<sup>8</sup> Productivity Commission, *Economic Structure and Performance of the Australian Retail Industry*, No. 56, 4 November 2011, page 214.

<sup>9</sup> *ibid*, page 208.

<sup>10</sup> OECD/G20 Inclusive Framework on BEPS, *Progress report July 2019 - July 2020*, July 2020, page 2.

effective collection of VAT/GST with respect to the cross-border supply of digital goods and services'. It was noted that:

*decreased VAT revenues and the possibility of unfair competitive pressures on domestic retailers who are generally required, depending for instance on their size, to charge VAT on their sales to domestic consumers. As a consequence, the concern is not only this immediate loss of revenue and competitive pressures on domestic suppliers, but also the incentive that is created for domestic suppliers to locate or relocate to an offshore jurisdiction in order to sell their low value goods free of VAT.<sup>11</sup>*

2.12 The final OECD report on Action 1 was published in 2015.<sup>12</sup> It emphasised the need for tax authorities to find the right balance between 'the need for appropriate revenue protection and avoidance of distortions of competition, which tend to favour a lower threshold and the need to keep the cost of collection proportionate to the relatively small level of VAT collected, which favours a higher threshold'.<sup>13</sup> With these considerations in mind, the report outlines possible models for lowering the administrative cost of collecting import VAT by limiting the need for customs authorities to actively intervene in the collection process. The four approaches are:

- traditional 'border collection model' in which VAT is assessed at the border for each low value good individually;
- a 'purchaser collection model' in which purchasers would be individually liable to self-assess and pay GST;
- a 'vendor collection model' in which suppliers would be liable to collect, charge, and remit the VAT in the country of importation; and
- the 'intermediary collection model' in which imports on low value goods would be collected and remitted by intermediaries such as express carriers, postal operators and e-commerce platforms.

### **Budget 2016-17**

2.13 In the 2016-17 Budget, the Government announced its intention, with effect from 1 July 2017, to extend the GST to low value goods imported by consumers. The regime was to be a 'vendor registration model' under which overseas suppliers with an Australian turnover of A\$75,000 or more would be required to register for, collect, and remit GST.

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<sup>11</sup> OECD/G20, Base Erosion and Profit Shifting Project, *Addressing the Tax Challenges of the Digital Economy: Action 1 Final Report.*, 2015, page 120.

<sup>12</sup> *ibid.*

<sup>13</sup> *ibid.*, pages 120-1.

The intention of the measure was to ensure that ‘low value goods imported by consumers will face the same tax regime as goods that are sourced domestically’.<sup>14</sup>

- 2.14 Further details of the proposal were made available in November 2016 with the release of Exposure Draft legislation and accompanying explanatory material. The Exposure Draft set out the key design feature of the proposed ‘vendor’ model, namely a mechanism for collecting GST from vendors, EDPs, and goods forwarders (later labelled as ‘redeliverers’). In effect, the proposed model was a hybrid of the vendor collection and intermediary collection models identified by the OECD in 2015.
- 2.15 Following consultation on the Exposure Draft, a Bill to give effect to the proposed regime was introduced into Parliament on 16 February 2017. The Bill was referred to the Senate Economics Legislation Committee (the Committee) on 23 March 2017 for inquiry. The Committee urged the Government to note its concern that, while alternative models had been suggested to it, it did not have sufficient information to form the view that any of these models was preferable to the one proposed in the Bill. Its recommendation was that the Bill be passed but that the implementation date be delayed to 1 July 2018.
- 2.16 The legislation giving effect to the LVIG regime<sup>15</sup> passed both Houses of Parliament on 21 June 2017. As a result of amendments made in the Senate, the start date was postponed until 1 July 2018 and the legislation was referred immediately to the PC to conduct an inquiry into the effectiveness of the legislation and the feasibility of alternative collection models.

### *Productivity Commission Inquiry Report – Collection Models for GST on Low Value Imported Goods*

- 2.17 The PC released its report *Collection Models for GST on Low Value Imported Goods* in October 2017. It observed that the key advantages of the legislated model were its apparent low cost to implement and administer and that it was broadly in line with international initiatives. However, it also noted four areas of concern and uncertainty raised by stakeholders:
- because of its essentially voluntary nature, the regime may collect limited revenue, and less than the government predicts;
  - it may impose a significant compliance burden on foreign suppliers;
  - EDPs may not collect sufficient information to comply with rules and may choose to block foreign suppliers from selling to Australian consumers using their platforms; and

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<sup>14</sup> *The Commonwealth of Australia, Budget Measures Budget Paper No. 2, 2016-17 (2016)*

<sup>15</sup> *Treasury Laws Amendment (GST Low Value Goods) Bill 2017.*

- there is a small risk that the regime may add unduly to the cost of trade.

2.18 The report compared the legislated model with various alternative approaches. The first alternative model considered by the PC was a ‘transporter model’ under which GST on low value goods would be assessed by customs authorities at the border before being released to transporters such as Australia Post or express couriers that would take responsibility for collecting and remitting the GST. Under a variation of this model – called the ‘modernised transporter model’ – transporters would be responsible for assessment, collection, and remission of GST. The PC rejected the transporter models as feasible alternatives in the near term because of the legacy paper-based declaration processes for most goods sent by international mail.

2.19 The report concluded that:

- a border collection model would be unworkable for low value imported goods because the administrative and compliance costs would far outweigh the revenue collected and disrupt the delivery of goods; and
- self-assessment by purchasers or collection by banks, credit card schemes and other financial intermediaries would be hampered by limitations in current payment systems, and other information technology.

2.20 The review concluded that ‘while the legislated model has limitations, and carries significant uncertainties, the Commission does not have sufficient sound evidence to recommend an alternative collection model at this stage’.<sup>16</sup> The legislated model was ‘the most feasible among the imperfect alternatives at the time of implementation’.<sup>17</sup> Accordingly the PC decided not to recommend further delays in implementation. However, it recommended instead that two further reviews be undertaken after the new rules are implemented:

- a post implementation review within two years to provide an early indication of the efficacy of the legislated model; and
- a later review to ensure that the arrangements are operating as intended, and to take account of international developments.<sup>18</sup>

### *Online Trade Data in 2017*

2.21 In their 2017 inquiry on Collection Models for GST on low value imported goods, the PC noted that there was at that time very little data to estimate the GST gap reliably. The

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<sup>16</sup> Productivity Commission, 2017, *Collection Models for GST on Low Value Imported Goods, Inquiry Report*, page 10.

<sup>17</sup> *ibid*, page 2.

<sup>18</sup> *ibid*, page 12.

estimation range for potential GST collection at the time of the report was between A\$390 million and A\$1 billion.

- 2.22 As reported by the PC, according to the NAB Online Retail Sales Index, online sales were A\$22.7 billion in July 2017. The NAB estimates showed this to be an increase from A\$11.7 billion in July 2012. The NAB observed that year-on-year growth in games and toys, and fashion grew faster for offshore suppliers than domestic suppliers.

### *Concerns in 2017*

- 2.23 The Board was advised that following the Budget announcement, not everyone shared a positive view on the implementation of GST on low value imported goods. A number of stakeholders voiced concern that the regime would not achieve competitive neutrality and could have the unintended consequence of capturing sales market participants using EDPs who may not otherwise have to gross up their price for GST.
- 2.24 Further concerns were raised with respect to the risk that GST on low value imported goods may act as a trade barrier and Australian consumers may lose access to certain online suppliers who decide to withdraw from the Australian market.
- 2.25 Other criticisms involved the administration investment required by many stakeholders to prepare their business to comply with the rules.
- 2.26 Following the consultation process, it was clear to the Board that these criticisms and issues were proven to be largely unfounded. This is discussed further in this report.

## ***An overview of the LVIG regime***

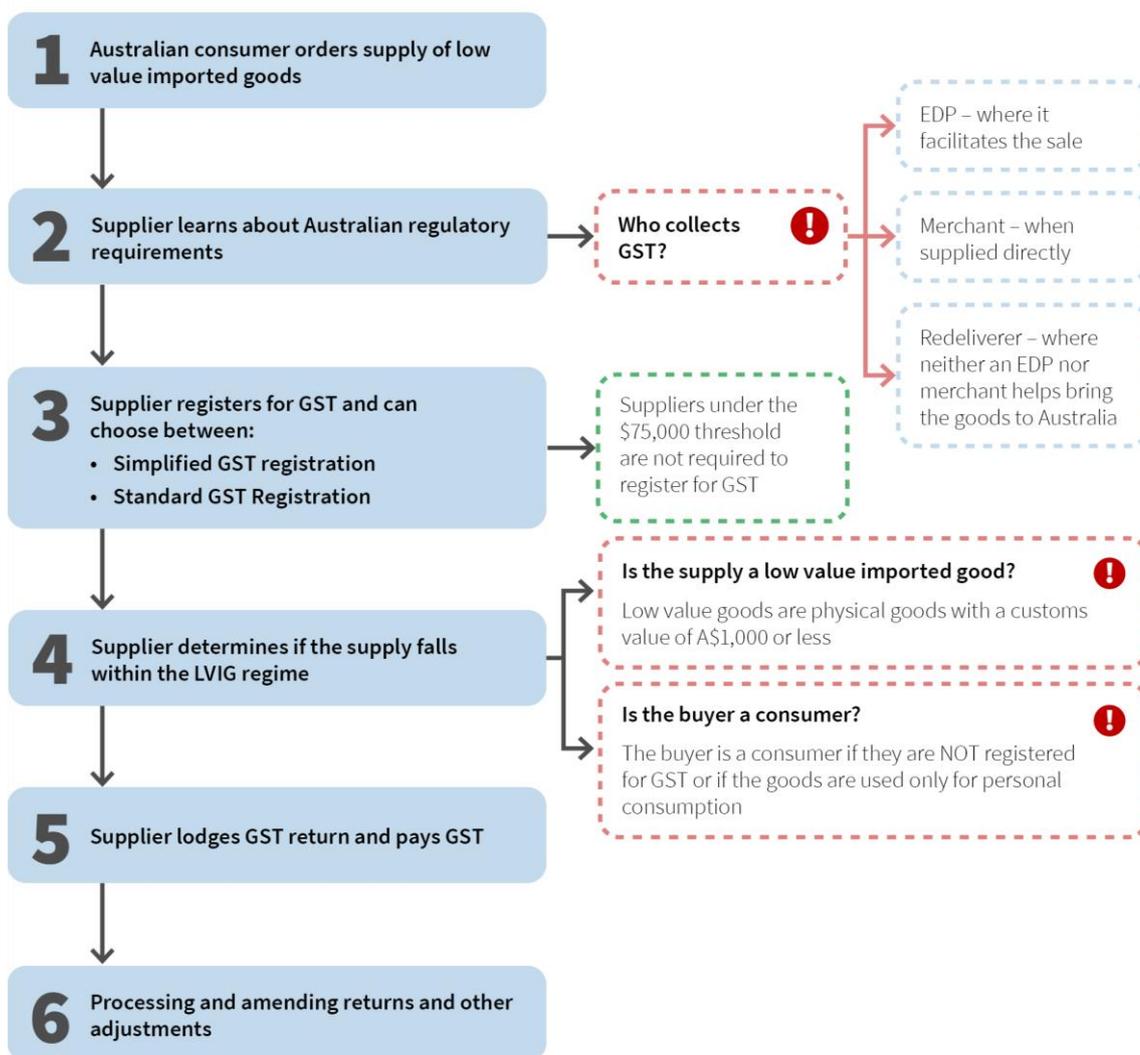
### *The Vendor Collection approach*

- 2.27 The LVIG regime came into effect on 1 July 2018, effectively removing the low value exemption for consumers in Australia. The LVIG regime uses a ‘vendor collection’ or ‘vendor registration’ model which imposes the obligation to collect and remit GST on the supplier, rather than importer as is the case for taxable importations. In this sense, the LVIG regime aligns the treatment of low value imported goods with domestic consumer supplies, while largely preserving the taxable importation rules for imported goods valued at over A\$1000. This is achieved legislatively by deeming offshore supplies of low value imported goods to be ‘connected’ with the Australia’s ‘indirect tax zone’ (ITZ).<sup>19</sup>

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<sup>19</sup> The ‘indirect tax zone’ includes all land territory of Australia (except external Territories), the coastal seas and certain installations (such as oil drilling rigs and similar mining exploration installations) attached to the Australian seabed: section 195-1 of the GST Act. In this report, the terms Australia and ‘indirect tax zone’ are used interchangeably.

## GST Collection on Low Value Imported Goods



### Responsibilities

2.28 As the LVIG regime is an extension of the taxable supply rules, the ATO is responsible for compliance, assessment, and collection of GST. The ABF supports the integrity of the system through its ‘integrated cargo system’ (ICS),<sup>20</sup> capturing key information from import and cargo documents to transfer data to the ATO in support of its compliance activities.

<sup>20</sup> The Integrated Cargo System is the only method of electronically reporting the legitimate movement of goods across Australia’s borders. The system features sophisticated risk management technology to help ABF Customs and Border Protection officers target high-risk cargo, and introduces new compliance assurance models with an emphasis on working with industry to ensure accurate risk assessment and the swift movement of low risk freight – source: ABF Integrated Cargo System terms and acronyms, <https://www.abf.gov.au/help-and-support-subsite/Guides/ics-terms-acronyms.pdf>.

## *Policy intent*

2.29 The purpose of the LVIG regime is to ensure that imports by consumers of low value imported goods are subject to GST, 'consistent with the equivalent supplies made with Australia'. This, in turn, is intended to overcome the competitive disadvantage previously experienced by domestic supplies.<sup>21</sup>

## *Supplies of low value imported goods*

2.30 The LVIG regime makes supplies of low value imported goods to consumers subject to GST where they are connected with Australia if they are imported into Australia. This means that GST may now apply to the supply of these goods.

2.31 An offshore supply is connected with Australia where the recipient of the supply is a consumer and the supplier is directly or indirectly<sup>22</sup> involved in bringing the goods to Australia or the supply is made through an EDP.

2.32 A supply of low value goods includes tangible property (other than tobacco products or alcoholic beverages) with a purchase price of A\$1,000 or less when the sale is made. A supplier will not be subject to GST if, after taking reasonable steps, it reasonably believes that goods will be imported as a taxable importation. (that is, a supply with a customs value<sup>23</sup> in excess of A\$1,000). As such where a number of low value imported goods are bought together and shipped together in a single consignment greater than A\$1,000, the supplier is not required to charge GST if they form a belief on a reasonable basis that the goods will be imported as a taxable importation.

## Types of suppliers

2.33 There are three categories of suppliers which, if registered or required to be registered, may be responsible for the collection of GST on low value imported goods:

- **merchants** who sell goods directly to consumers in Australia;
- operators of **EDPs**, being a service (including a website, internet portal, gateway, store or marketplace) that allows entities to make supplies available to end-users, and the service is delivered by means of electronic communication; or

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<sup>21</sup> *Explanatory Memorandum to Treasury Laws Amendment (GST Low Value Goods) Bill 2017*, para 1.2 - 1.15.

<sup>22</sup> A supplier will indirectly import a good to Australia where a redeliverer is used.

<sup>23</sup> In most cases, the customs value of goods will be based on the FOB invoice price plus certain other additions. These include commissions (other than buying commissions), certain royalties, freight prior to the goods arriving at the place of export, packing costs, contributions you make to the manufacture of the goods that are not included in the price (assists).

- **redeliverers**, including businesses that assist and charge entities to obtain goods from offshore supplier<sup>24</sup> by acting as a personal shopper or by providing a mailing address for delivery in the relevant jurisdiction, and forwarding the goods to the consumer.

2.34 Broadly, the EDP rules apply to shift GST liability for supplies made through the platforms from individual merchants to the operators of the platform.



2.35 The operators of EDPs are often better placed to comply with GST obligations because they are generally larger and better resourced entities than individual merchants. Similarly, a redeliverer will bear the GST liability in circumstances where the original merchant or platform has no role in assisting the consumer in getting the goods to Australia.

### *Registration options – Simplified vs Standard*

2.36 An offshore supplier is required to register for GST in Australia on low value imported goods if it has Australian GST turnover of A\$75,000 (or A\$150,000 for non-profit bodies). Offshore suppliers that are required to register for Australian GST for low value imported goods can either choose to use the standard registration method used by domestic Australian businesses or a simplified method. Simplified GST registration is designed specifically for non-resident businesses and uses an online system accessible via a portal on the ATO's website, that allows businesses to register, lodge and pay Australian GST.

2.37 Under the simplified GST registration option, businesses are not issued an ABN and cannot issue tax invoices or claim input tax credits, making this option unsuitable for some businesses. The business is instead issued with a 12-digit ARN which is a unique identifier for the business. The simplified registration option assists in reducing the complexity involved with registering for GST under the standard option.

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<sup>24</sup> An offshore supplier is an entity who is required to be registered for GST and makes a supply of offshore low value goods where the supply involves the goods being brought into the indirect tax zone and the supplier delivers the goods into the indirect tax zone, or procures, arranges or facilitates the delivery of the goods into the indirect tax zone.

2.38 By comparison, the standard registration option allows a non-resident business to register for GST using Australia’s standard domestic GST system. This process involves the non-resident business also applying for an ABN which can take up to 28 days to issue.

2.39 The benefit to a non-resident business that registers under the standard registration method is an ability to claim GST credits on eligible purchases.

**Table 1: Simplified versus standard registration**

|   | Simplified GST registration  | Standard GST registration   |
|---|--|---|
| <b>Proof of identity</b>                          |   |    |
| <b>Provided with an ARN</b>                       |   |    |
| <b>Register for an ABN</b>                        |   |    |
| <b>Claim GST credits</b>                          |   |    |
| <b>Can issue Tax Invoices or Adjustment Notes</b> |    |   |
| <b>Lodgement, reporting and payment</b>           | <p>Must lodge GST returns and pay GST quarterly</p> <p>Payment is made electronically via SWIFT bank transfer or credit card</p> | <p>Not limited to quarterly accounting periods</p> <p>Can use activity statements to report GST via an Australian tax agent, through specific software or lodge a paper return.</p> |

### *Notification and record-keeping requirements*

- 2.40 The supplier responsible for GST on low value imported goods must ensure that information is provided in the form of receipts or invoices to customers and included on certain customs documents – for example the self-assessed clearance or import declaration.
- 2.41 When a supplier charges GST on a sale of low value imported goods, they must issue a receipt to the customer. The receipt must include the supplier's name, GST registration number (ABN or ARN), date of issue, description of the goods supplied and the amount of GST payable (where applicable), including the GST-inclusive price. A supplier registered for standard GST can choose to issue a tax invoice in satisfaction of the requirements of the LVIG regime. This option is not available to supplier's who have simplified GST registration.
- 2.42 Records of all transactions relating to a supplier's Australian tax affairs are required by law to be kept for five years.

### *A business to consumer regime*

- 2.43 The LVIG regime applies broadly to B2C supplies – that is, where the recipient is either not registered for GST or is registered for GST and did not acquire the goods either solely or partly for an Australian business purpose. The supplier will not be liable for GST on B2B supplies. The supplier may treat a supply as a B2B supply if the recipient provided both an ABN and a declaration indicating that they are registered for GST.
- 2.44 Where GST is imposed on a B2B supply (For example, because the recipient failed to provide an ABN or evidence of registration), the recipient is required to seek a refund of the GST from the supplier rather than claiming an input tax credit.
- 2.45 Where a low value imported good is acquired partly for business purposes, the recipient is liable to pay GST on the non-business portion via a reverse charge mechanism.<sup>25</sup>

### *International regimes*

- 2.46 Since commencement of the Australian LVIG regime, equivalent regimes in respect of low value imported goods have been implemented or are in the process of being implemented in New Zealand, the United Kingdom, the European Union, Norway, Switzerland, Singapore, and Malaysia.
- 2.47 Each of the systems shares common features with the Australian LVIG regime however there are some differences. These differences were either necessitated by the different

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<sup>25</sup> Reverse charges occur in situations where GST is paid by the purchaser. Source: <https://www.ato.gov.au/business/gst/in-detail/rules-for-specific-transactions/international-transactions/reverse-charge-of-gst-on-things-purchased-from-offshore/>.

tax and regulatory environments in the different jurisdictions or were the result of policy choices by the relevant governments in those jurisdictions.

2.48 As part of the review, the Board examined three of the equivalent regimes in detail: New Zealand, the United Kingdom and the European Union, and consulted with the revenue authorities in those jurisdictions. The key observations from international practice were:

- Each system follows broadly the same ‘vendor collection’ model as Australia;
- Each system has a mechanism to shift the burden of collecting GST or VAT to online platforms, equivalent to Australia’s EDP rules;
- Australia and New Zealand both have turnover-based registration thresholds aligned with their domestic rules (set at A\$75,000 and NZD60,000 registration). The United Kingdom has no registration threshold for imported low value goods;
- Only Australia and New Zealand have specific ‘redeliverer’ provisions. The Board understands that the proposed Singapore regime will also include special rules for redeliverers;
- Australia appears to be unique in providing a simplified registration option with reduced proof of identity requirements;
- New Zealand provides eligible businesses with an option to charge and remit GST on certain business-to-business supplies and high value consignments; and
- The European Union, unlike the other jurisdictions, has a ‘backstop’ to its LVIG regime, where rather than collecting VAT from a registered supplier, it is collected by Customs at the border.

**Table 2: Comparison of International GST regimes for low value imported goods**

|                                       | <b>Australia</b>  | <b>New Zealand</b>   | <b>United Kingdom</b>                                     | <b>European Union</b>                         |
|---------------------------------------|---|--|---|---|
| <b>GST/VAT Rate</b>                   | 10%   | 15%  | Full rate goods 20%,<br>reduced rate goods 5%             | Varies based on EU<br>state of<br>importation |
| <b>Definition of a low value good</b> | Tangible personal property with a GST value of less than A\$1,000 | Distantly taxable goods as defined by s4B of the New Zealand GST Act | Defined based on VAT applicable goods below the threshold |   |

|  | <b>Australia</b>  | <b>New Zealand</b>   | <b>United Kingdom</b>  | <b>European Union</b>  |
|--|---|--|--|--|
| <b>Registration requirements</b>                 | A\$75,000<br>Australian GST turnover                                      | NZD\$60,000  | £0 international importers<br><br>Where goods are stored in EU and sales to Northern Ireland are more than £70,000 | EUR 10,000 – there is no requirement to register in the Import One-Stop Shop (IOSS) as all low value goods are taxed at the border if not taxed at point of sale |
| <b>High/low value goods distinction</b>          | A\$1,000  | NZD\$1,000   | £135   | EUR 150  |
| <b>B2B transactions</b>                          | Excluded from GST   | Excluded from GST, some practical arrangements available for this rule | Excluded from GST  | IOSS only applicable to B2C  |
| <b>Multiple low-value goods, one consignment</b> | Where the goods are separately identifiable, they are treated separately  | Rules consistent with Australia  |  |  |
| <b>Registration options</b>                      | Simplified method, Standard registration method                           | Standard registration method   |  | IOSS number  |
| <b>Preventing double taxation</b>                | Supplier refund, or GST credit where registered under the standard method | GST credit available where invoicing can substantiate the claim        | VAT credit available where invoicing can substantiate the claim  | There is no option to claim a refund from the regulator if an IOSS was not provided on importation   |
| <b>Online platforms</b>                          | Electronic Distribution Platform as defined in s84-70 of the GST Act      | Online Marketplace   |  | Electronic Interface   |
| <b>Redeliverers</b>                              | Deemed suppliers  |  | Not Applicable   |  |

# CHAPTER 3: EASE OF COMPLIANCE AND ADMINISTRATION

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## KEY POINTS

- The LVIG regime incorporates a number of features designed to lower the compliance burden by affected businesses, including:
  - simplified registration and reporting;
  - a mechanism to shift the burden of collecting and paying GST to larger, better-resourced entities known as EDPs.
- The simplified registration and reporting arrangements have been broadly popular and make it easier for some non-resident businesses to comply but have also necessitated certain trade-offs.
- Issues have been raised around the distinction between EDPs and e-commerce platforms, creating uncertainty.
- E-commerce platforms are playing an important role in helping their business clients meet their obligations under the LVIG regime but could have a greater role within the system.
- A key advantage of the 'vendor registration' model is that it places a reasonably low administrative burden on the ATO and ABF.

3.1 The LVIG regime aims to lower the overall compliance burden in the following important ways:

- It provides businesses that sell low value imported goods directly to consumers in Australia access to simplified registration and reporting methods; and
- It includes rules designed to shift the burden of collecting and paying GST to larger, better-resourced entities. Accordingly, where a merchant trades via an EDP, the GST burden falls on the EDP and not the merchant.

3.2 This Chapter presents the Board's findings in relation to the overall compliance burden of the LVIG regime in four parts as summarised below:

**Part 1:** Examination of the ‘user experience’ of complying with the LVIG regime from the perspective of merchants.

**Part 2:** Examination of issues arising from the rules relating to EDPs.

**Part 3:** Consideration of the compliance burden falling on ‘redeliverers’, a discrete category of supplier under LVIG rules, and drop shippers.

**Part 4:** Observations regarding the extent to which the regime might place an administrative burden on the ATO and ABF.

## Merchants

### *The requirement to register*

- 3.3 The first interaction an entity has with the LVIG regime is to determine if and when it is required to register for GST. This generally involves determining whether the business has ‘Australian GST turnover’ of A\$75,000 in a 12-month period. An entity with turnover below the threshold is not required to register for GST and can sell goods to consumers in Australia without charging GST. An entity may choose to register even if its turnover does not meet the GST turnover threshold.
- 3.4 Applying the GST turnover test may at times involve a certain degree of complexity. It requires familiarity with the Australian GST rules and, in particular, requires the business to identify and exclude any supplies taken not to be ‘connected with Australia’. This means, for example, that supplies of high value goods are not included. Similarly, supplies to recipients that are not consumers (that is, B2B supplies) are also excluded. This may create a compliance challenge for the supplier as they may not have a reliable way of determining whether the recipient is a business or consumer. Supplies made through an EDP are also excluded from GST turnover of the vendor– while these supplies are connected with Australia, they are deemed to be supplies made by the EDP and not the merchant. The EDP needs to include sales of low value imported goods to consumers and imported digital products to Australian-based consumers in their GST turnover calculation.
- 3.5 The GST turnover test also requires ongoing monitoring as it operates on a rolling basis, applying to a 12-month period of either the current month and the previous 11 months, or the current month and projected sales for the next 11 months.
- 3.6 Despite its potential complexity, the GST turnover test was not an area of concern raised with the Board during the review.

## ***The registration process***

- 3.7 As set out in Chapter 2, generally, non-resident suppliers that are required to register for GST can select between either the simplified or standard registration options.

### ***Simplified versus standard GST registration***

- 3.8 ATO data indicates that the simplified registration option has proven popular with businesses with 1,285 out of 1420 (approximately 89.5 per cent) of LVIG regime registrants<sup>26</sup>, using simplified GST registration.<sup>27</sup> The preference for this simplified option is most pronounced among businesses with annual turnover below A\$10 million. The data shows that many of the larger businesses have found it more advantageous to have standard GST registration. This is likely to be because larger entities are more likely to be required to be registered under the domestic regime in any event, may have more incentive to claim input tax credits which can only be done using ordinary registration, and/or may wish to provide monthly rather than quarterly reports. Accordingly, for businesses with turnover above A\$50 million, at least 60 per cent use a Business Activity Statement (BAS), and up to 40 per cent using simplified GST registration.<sup>28</sup>
- 3.9 Based on feedback received, stakeholders generally welcomed the inclusion of the simplified GST registration option as part of the LVIG regime. The standard GST registration process was seen as unduly complex and time-consuming for many non-resident businesses, especially smaller businesses and those operating in a language other than English,<sup>29</sup> which face administrative complexities in meeting their obligations with the ATO.
- 3.10 Stakeholders specifically noted that the proof of identity requirements of the standard GST registration process were onerous and advised that documentation accompanying an application needed to be certified as a true and correct copy of the original document sighted. Where documentation is in a language other than English, the documentation is required to be translated to English and provided along with a certified copy of the original. Once certified and/or translated, proof of identity documentation needs to be provided to the ATO along with a non-resident Australian Business Register (ABR) application reference number and coversheet (available on the ATO website).
- 3.11 While generally satisfied with the operation of simplified GST registration, stakeholders identified three areas in which it could be improved.

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<sup>26</sup> An LVIG registrant is an entity that is registered for GST and subject to GST obligations under the LVIG regime. LVIG registrants may also have obligations under the domestic 'taxable supply' rules.

<sup>27</sup> Data supplied by the ATO, current as of 28 July 2021.

<sup>28</sup> Taken from registrants for which information is available, being the majority of registrants.

<sup>29</sup> Documents must be submitted in English: the ATO provides details of certified translators for offshore suppliers.

1. *Access to simplified registration option*

Under the current law, where the ATO issues an assessment of GST on the supply of low value imported goods to an *unregistered* business, this must be done under the standard GST registration. This is because the simplified GST registration requires the entity to elect to be a limited registration entity.<sup>30</sup>

The ATO has advised that where an entity voluntarily enters the LVIG regime and discloses a liability for earlier periods, that entity can elect to use simplified GST registration including for prior periods.

The ATO advised that at any time after a business has registered with a standard GST registration, they may elect to change to a simplified GST registration. Those that have been compulsorily registered for past periods may elect to change to a simplified GST registration for future periods. Only one entity has raised this issue with the ATO and sought to access simplified GST registration for past periods, after being issued with an assessment by the Commissioner and compulsorily registered for GST.

### OBSERVATION

This issue was not the subject of any substantive submissions and the advice from the ATO does not suggest that this is an issue requiring legislative amendment or any administrative measures.

2. *Multiple registrations for a single business*

The LVIG regime requires each entity within a group that meets the registration threshold to register separately for GST. Some stakeholders suggested that this process is administratively inefficient, preferring the approach adopted in New Zealand where only a single group entity is required to register and report.

GST grouping is available in Australia for entities that have either standard or simplified GST registration. However, the representative member needs to be an Australian resident and each member needs to have the same reporting cycle. Entities that use the simplified GST registration option report only on a quarterly cycle therefore if the representative member is on a monthly cycle the other members will need to register under the full GST system and nominate as a monthly reporter. The Board noted that there is no simplified registration option in New Zealand.

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<sup>30</sup> Subsection.25-5(2) of *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* (GST Act).

**OBSERVATION**

The Board concluded that it is not apparent that any benefit of group registration of the simplified system would outweigh the cost of adding the complexity to the simplified system. Accordingly, the Board does not recommend any change to the simplified registration system to allow group registration.

3. *A searchable database of entities registered under the simplified option*

During the consultation, a stakeholder from the freight-forwarding industry advised that the development of a publicly available list of simplified registrants under the LVIG regime would allow verification checks. It was suggested that this would, in turn, make it easier for intermediaries to determine the identity of businesses and whether they had simplified GST registration. However, the ATO advised that the provision of a searchable register would be incompatible with the reduced proof of identity requirements of the simplified GST registration option.

While a publicly available database of ARNs may assist in identifying whether the non-resident supplier is registered for GST, the benefits may be limited. For example, in light of limitations arising from the reduced proof of identity requirements for simplified registration, the details on the register would be limited and would not have the benefit of the checks undertaken before an ABN is issued. Furthermore, issues such as privacy and secrecy legislation would need to be addressed in order to implement a publicly searchable ABR register.

**OBSERVATION**

The Board has concluded that it is not clear that the benefit of a searchable register of ABRs would outweigh the cost involved including increased complexity.

*Registration threshold – too high or too low?*

- 3.12 The GST registration threshold of A\$75,000 for non-resident suppliers operating in the LVIG regime aligns with the GST registration threshold for domestic businesses.
- 3.13 During the review, some stakeholders suggested that the A\$75,000 GST registration threshold is relatively low in the context of non-resident suppliers and queried whether the threshold should be increased substantially. A threshold amount of A\$500,000 was suggested.
- 3.14 Other stakeholders suggested that reducing the threshold to zero may also be appropriate. The United Kingdom, for example, operates its LVIG regime without a registration threshold for suppliers of low value imported goods, requiring them to

register from the first sale. Interestingly, their domestic regime does set a threshold for registration at GBP85,000.

- 3.15 Other jurisdictions, including New Zealand, have adopted registration threshold rules similar to Australia. Singapore proposes to extend their registration threshold test further with the inclusion of a global turnover test exceeding S\$1,000,000, in addition to an annual turnover threshold.
- 3.16 In the European Union, registration for the IOSS is not compulsory, however, where a supply is made to the European Union without an IOSS registration, the goods are subject to VAT at the border.
- 3.17 Overall, the Board heard that Australia's registration threshold reduces the burden on business making it easier to comply. The Board also notes that the level of Australia's threshold reflects the threshold for registration for GST in Australia. Stakeholders also said that the registration threshold makes Australia a 'friendlier' country to which to export.

## OBSERVATION

The Board does not consider adjusting the threshold for non-resident suppliers would benefit the LVIG regime, rather it would distort the competitive neutrality intended by aligning the 'playing field' between domestic and offshore businesses.

## *Managing Payments and Refunds*

- 3.18 For some offshore suppliers, determining whether a supply is subject to the LVIG regime can, in theory, be a significant challenge; requiring familiarity with the Australian GST legislation to ensure GST is applied correctly and to prevent calculation errors or double taxation occurring. These issues are explored in detail below.

## *Business-to-Business and Business-to-Consumer supplies*

- 3.19 As set out in Chapter 2, under the LVIG regime, B2C transactions are subject to GST under the LVIG regime whereas B2B transactions are not (regardless whether or not the offshore supplier uses the standard or simplified GST registration). Similarly, the equivalent LVIG regimes in the United Kingdom, the European Union, and New Zealand only charge GST on B2C transactions.
- 3.20 In New Zealand, suppliers are given the option (where they have a certain minimum percentage of B2C transactions) to charge GST on all of their inputs, so that they do not have to distinguish between B2C and B2B transactions. This simplifies their administration. The Board received no submissions or feedback from stakeholders in support of a similar regime for Australia.

- 3.21 In Australia, non-resident suppliers who are registered under the standard regime and charge GST may issue tax invoices to satisfy their invoicing requirements. Where GST is incorrectly charged on a B2B transaction, the business customer is required to seek a refund of the GST from the supplier, even if a tax invoice has been provided. Non-resident suppliers who are registered under the simplified method cannot issue tax invoices so GST charged on a B2B transaction would require the customer to seek a refund from the supplier and the supplier to make a commensurate adjustment in their next reporting period. The Board considered whether this process could be simplified.
- 3.22 In order to reduce the compliance burden for non-resident suppliers using the simplified method, input tax credits would need to be facilitated in the absence of the ability to issue a tax invoice. It is currently a fundamental feature of Australia's GST regime that input tax credits are tied to the provision of a tax invoice containing specific information including the ABN of the supplier, which is only issued to a supplier that provides adequate information to the Australian Business Registrar (who is the Commissioner of Taxation). The Board was concerned that to insert an exception to these design features would give rise to integrity concerns and accordingly the Board proposes no change.
- 3.23 The Board notes that while the New Zealand regime has benefited from these simplification processes, New Zealand does not have an option of simplified GST registration.

#### OBSERVATION

To overcome this situation for non-resident suppliers using the simplified method would require input tax credits would need to be facilitated in the absence of a tax invoice. This would give rise to integrity concerns and accordingly the Board proposes no change.

While the New Zealand regime has benefited from these simplification processes, the Board notes that the New Zealand regime does not have an option of simplified registration.

#### *Incorrectly charged GST*

- 3.24 Differentiating between taxable and GST-free supplies for Australian customers in a high-volume low value multi-jurisdictional market has seen the majority of offshore suppliers adopt a conservative approach, and the default position is to charge GST on the supply.
- 3.25 In particular, a merchant may later discover that they have incorrectly charged GST on a supply which was not a taxable supply. In these scenarios, incorrectly charged GST will need to be reversed. This will arise where: <sup>31</sup>

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<sup>31</sup> Law Companion Ruling: LCR 2018/1, *GST on low value imported goods*, paragraph 236.

- the item had a customs value exceeding A\$1,000
- the goods were tobacco, tobacco products or alcoholic beverages
- the recipient was not a consumer in relation to the supply (that is, the recipient was registered for GST and acquired the goods to some extent for use in their enterprise), or
- the supply is GST-free<sup>32</sup> or input taxed.

3.26 In cases where suppliers of low value imported goods incorrectly charge consumers GST on GST-free goods and services the process for seeking a refund of the GST can be difficult. The process for recovering that GST can involve the recipient seeking a refund from the supplier, and then the supplier is entitled to adjust their next lodgement to the ATO by the GST amount refunded to the consumer.

3.27 A question has arisen as to whether there should be capacity for the consumer to claim the GST back from the ATO.

#### OBSERVATION

Similar to its view of issue 10, the Board considers that allowing consumers to access a refund from the ATO would give rise to integrity concerns. Furthermore, having an additional refund mechanism will add unnecessary complexity to the LVIG regime. As such, the Board proposes no change.

#### *Remitting GST on certain high value supplies*

3.28 New Zealand provides concessions which allow certain suppliers that are remitting GST on low value imported goods, to also remit GST on high value imported goods. Under the New Zealand system, where goods are valued above the low value goods threshold, suppliers have the option to charge GST on these high value goods where 75% or more of the total value of goods supplied to consumers in New Zealand consists of goods individually valued at NZ\$1,000 or less; or the Commissioner of Inland Revenue has given approval.

3.29 The Board understands that the purpose of this concession is to encourage compliance by reducing the administrative burden of complying with multiple laws where the supplier predominantly imports low value goods. The New Zealand Revenue Department advised the Board that the option is popular and has achieved a high level of uptake.

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<sup>32</sup> There are exemptions in the GST law for certain goods and services such as those relating to food, education and health, making them GST-free. Furthermore, some supplies of car parts are GST-free to a person with a disability who is gainfully employed or to disabled veterans, in which case the consumer can submit a form to the supplier to notify the supplier that the supply is GST-free.

- 3.30 Stakeholders have indicated that it can be difficult to distinguish whether a good is a low value good, particularly when the good is priced close to the A\$1,000 threshold and varying exchange rates are involved. However, there were no submissions made or feedback provided to the Board that a regime similar to that in place in New Zealand should be implemented.
- 3.31 The ABF and the ATO advised that, if such a regime were to be implemented, there may be integrity issues and increased administration arising where some high value goods are subject to GST at the border, and some are not.

### **OBSERVATION**

In light of the lack of apparent demand, potential integrity risks, and increased administration, the Board does not recommend providing suppliers an option for paying GST on high value goods.

### **Currency conversion**

- 3.32 Where goods are priced close to the A\$1,000 low value goods threshold, there is the possibility that due to currency fluctuations the good will meet the requirements for GST at the point of sale, and then have a customs value in excess of A\$1,000 on importation. Where this occurs, the goods will be subject to GST under the LVIG regime and treated as a non-taxable importation as it relates to goods that have been subject to GST. Supporting documentation provided by ABF assists in making this determination. This ensures goods are not subject to double taxation.
- 3.33 Where goods are priced marginally over the low value goods threshold at the point of sale and subsequently have their customs value fall below A\$1,000, at the time of importation, they are not treated as a taxable importation or a supply of low value imported goods, therefore limiting the extent of any loss to revenue.
- 3.34 While the requirement to undertake currency conversion to establish the value of goods was identified by the Board as a potential pressure point in the LVIG regime, it was not a source of complaint by stakeholders. This may be partly because, overwhelmingly, imported retail goods tend have a value that is well below the A\$1,000 threshold. The Board was advised that instances of currency fluctuations causing the LVIG regime to be applied to an import inconsistently with the rules for high value imports are likely to be very rare. In light of the above, the Board does not recommend any change to the conversion of currency under the LVIG regime.

### **Drop-shipping arrangements**

- 3.35 Drop shipping is the process where an entity (the first entity) sells goods that it does not own at the time of sale and then facilitates another offshore entity (the second entity) to deliver the good directly to the customer in Australia. Only the second entity directly

handles the product. There are a number of variables in the arrangements, including whether the first entity is offshore or onshore, and the location of the goods. The GST implications may differ according to these variables.

- 3.36 Entities engaged in drop shipping did not raise any concerns with the Board at this point of time.

## RECOMMENDATION

While there is limited guidance in relation to this issue, there are no indications that parties to drop shipping arrangements are having difficulty with the regime. If it becomes apparent that clarification is required, the Board recommends that the ATO consider providing additional administrative guidance.

## Electronic distribution platforms

- 3.37 EDPs play a crucial role in the LVIG regime and are responsible for a high proportion of the overall collection of revenue. The Board observed that, in the lead up to the implementation of the LVIG regime, the leading online marketplaces made a significant investment in building highly sophisticated systems to collect and remit GST for low value imported goods sold through their platforms. Based on the feedback received, the Board understands that these platforms are working well for merchants and provide a seamless experience for consumers.

- 3.38 The policy justification for imposing GST obligations on EDPs is set out in the explanatory materials accompanying the legislation that first introduced the concept – the digital services regime.

*Generally, in such cases the platform operator – the entity supplying access to the platform – has most of the information about the recipients of supplies. Additionally, the operators are generally much larger and better resourced entities than most of the entities making supplies through the platform. They also generally have significant influence over the terms of sales made using their platforms and either manage or closely regulate the payment process.<sup>33</sup>*

- 3.39 A significant portion of LVIG transactions on which GST is paid occur through a small number of large EDPs. A small number of these EDPs contended that the definition of EDP is unclear, and that platforms that are not significantly dissimilar to EDPs are treated differently as no GST liability is payable on their low value imported goods transactions. During the review, it was suggested to the Board that either the definition of EDP is

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33 Explanatory Memorandum to Tax and Superannuation Laws (2016 Measures No. 1) Bill 2016, para 1.101.

unclear, or it is not being properly understood and implemented by all entities to which it applies.

- 3.40 The Board acknowledges that the statutory definition of EDP appears, on its face, to be fairly broad. It applies to a ‘service (including a website, internet portal, gateway, store or marketplace)’ that ‘allows entities to make supplies available to end-users’ and is ‘delivered by means of electronic communication’.<sup>34</sup> While this definition of EDP clearly encompasses the well-known electronic ‘marketplaces’, the precise scope of the definition is the subject of debate. It was argued by some stakeholders that an additional category of business known as ‘e-commerce platforms’ may, or should, also be captured.
- 3.41 Conversely, an e-commerce platform is a type of business which provides retailers with the software to enable them to trade online and may also facilitate the payment process. It generally does not provide an online marketplace and its primary customer is the online business, rather than the ultimate customer.
- 3.42 During the review, the Board found little evidence of businesses experiencing difficulty in determining whether they should be properly regarded as an EDP under the current law. Practical assistance is available under the ATO’s Law Companion Ruling LCR 2018/2<sup>35</sup> which stakeholders found to be a useful aid to navigating the rules. The LCR does not deal specifically with e-commerce platforms but includes the following relevant statement:
- A service is not an EDP if it only builds or maintains the infrastructure behind a service that makes supplies available to end-users. For example, a service provider who builds a website that includes a shopping cart functionality (for the operator of a website) is not itself an EDP.*<sup>36</sup>
- 3.43 The ATO advised the Board in the course of this review that EDPs are characterised by a degree of control and interest over individual consumer-based transactions for sales, returns and refunds.
- 3.44 Other stakeholders saw an important characteristic of an EDP is that it is customer-facing, that is, that it ‘owns the relationship’ with the consumer, which is typically not the case for e-commerce platforms. The Board accepts that the ATO’s current interpretation approach precludes treating e-commerce platforms as EDPs. However, new business models are evolving and there are some platforms which offer varying services resulting in blurred lines as to where they fit within the definition. The ATO’s guidance provides two distinct examples of what is and is not a marketplace. It was recognised that the ATO’s guidance will need to evolve as the e-commerce landscape and technology continues to develop.

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34 Subsection 84-55(1) of GST Act.

35 Law Companion Ruling LCR 2018/2, *GST on supplies made through electronic distribution platforms*.

36 *ibid*, para 27.

## RECOMMENDATION

The Board recommends that the ATO continue to monitor developments in technology and business models with a view to ensuring that guidance material remains fit for purpose.

## Redeliverers

- 3.45 During the review, some stakeholders advised that the cost of compliance with the LVIG regime for redeliverers is high as they can have limited visibility over the vendors or platforms which send products for redelivery, have reduced capacity to verify the accuracy of documentation and face logistical challenges and tax liability risks for goods received in Australia.<sup>37</sup>
- 3.46 A limited number of redeliverers were engaged in the consultation process. However, it was suggested that consideration be given to relieving redeliverers from the responsibility to collect GST or remove smaller scale redeliverers from the LVIG regime by increasing the turnover threshold.
- 3.47 Redelivery is a service that is only required in some jurisdictions, being those to which offshore vendors may not deliver (such as Australia and New Zealand). The Board acknowledges redeliverers are a complex aspect of the LVIG regime. Many of the challenges and complexities faced by redeliverers arise because the redeliverer is not a party of the contract between the vendor and the customer (but rather has a separate service contract with the customer) and therefore has limited visibility over the transaction.
- 3.48 The Board understands that redelivery services are popular among Australian online consumers. In the absence of specific provisions, goods acquired through redelivery services would escape GST altogether, undermining the integrity of the regime and possibly leading to an increased use of redeliverers. The redelivery provisions have a key role in ensuring that the LVIG regime achieves a level playing field between domestic supplies and imports of low value goods.

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<sup>37</sup> Submission by the Australian Retailers Association (ARA).

## RECOMMENDATION

The Board considers that providing any exemption for redeliverers would create integrity concerns for other entities in the regime. At this stage there is no apparent lack of understanding amongst redeliverers as to their responsibilities. The Board recommends the ATO monitor this issue and provide further administrative guidance if required.

## Cost of administration

3.49 The low cost of administration was identified by the PC as one of the key advantages of the LVIG regime. The estimated cost in the first three years of its operation, based on original revenue projections of A\$300 million over the same period, would have equated to 4.4 cents for every dollar of additional revenue.<sup>38</sup> Noting actual revenue collected and assuming original cost estimates to be accurate, the cost to revenue ratio would show the LVIG regime to have been more cost effective than originally modelled. This makes the LVIG regime very efficient from an administration perspective, especially compared to collecting the GST at the point of import which the PC predicted would 'swamp the system's current capacity'.<sup>39</sup>

3.50 The implementation and ongoing administration of the LVIG regime has involved the following resource commitments from the ATO:

- developing guidance material for publication on the ATO website, some of which was translated into Chinese (China was identified as the major non-English speaking country with businesses likely to be affected by the law);
- allocating Client Relationship Managers to approximately 100 of the most significant businesses (EDPs, large merchants, and redeliverers) prior to commencement of the law;
- establishing a dedicated ATO email address [AustraliaGST@ato.gov.au](mailto:AustraliaGST@ato.gov.au) for businesses to contact the ATO with specific enquiries
- the publication of three Law Companion Rulings dealing with different aspects;
- the publication of a new GST Legislative Instrument on currency conversion;<sup>40</sup>
- developing scripting specific to this law for call centre staff;

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<sup>38</sup> Productivity Commission, *Collection Models for GST on Low Value Imported Goods, Inquiry Report*, 2017, page 6.

<sup>39</sup> *ibid.*

<sup>40</sup> ATO, *Goods and Services Tax: Foreign Currency Conversion Determination 2018 – LVG 2018/1*, 2018.

- an extensive community education and outreach program in which senior ATO officers travelled to locations in the United Kingdom, United States of America, Europe, mainland China, and Hong Kong to meet with the largest potential taxpayers and to deliver seminars for businesses; and
- from 2019, an active compliance program including review and audit activities, a mystery shopping program, and debt enforcement.

3.51 While border processes have remained unchanged with the introduction of the LVIG regime, ABF delivered changes in the ICS to capture and transfer data to the ATO in support of its administration and compliance activities for the measure.

3.52 ABF also contributed to raising awareness and the education campaign by publishing dedicated web content as well as three Australian Customs Notices to inform industry of the LVIG regime, including reporting requirements at the border.

# CHAPTER 4: COMPLIANCE LEVELS

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## KEY POINTS

- The LVIG regime has achieved a higher-than-expected revenue performance. The ATO has a high level of confidence that the large EDPs and retailers are meeting their compliance obligations.
- There is less confidence in compliance levels among smaller offshore suppliers – some stakeholders queried whether compliance levels may be very low. However, ATO compliance activity has not indicated widespread failure to comply.
- The most significant compliance risk is with businesses failing to register, either because they are unaware of their obligations or because they believe that failing to comply carries a low risk. Some businesses, when learning of their obligations, are reluctant to register because of concerns about pre-registration tax liabilities and penalties.
- There is some limited anecdotal evidence that some offshore suppliers are seeking to avoid their GST obligations and gain an advantage over their competitors by misrepresenting relevant facts or false reporting. These practices do not point to a systemic weakness in the design of the LVIG regime.
- The ATO are continuing to evolve their compliance approach through ‘better’ data and moving from a ‘light touch’ approach into compliance strategies involving audit activity where deliberate non-compliance is identified.

## Introduction

- 4.1 The policy intent of imposing GST on low value imported goods was to level the playing field between domestic and offshore businesses. This includes ensuring that all businesses who meet the registration threshold are compliant.
- 4.2 There is a high degree of confidence that larger retailers and EDPs are complying with their obligations under the LVIG regime. However, some stakeholders suggested during the review process that the position regarding smaller businesses might be far less certain and compliance levels among this group may be low. There was an appetite among some attendees at consultation forums for more and better data to allow overall levels of compliance with the LVIG regime to be properly assessed.

- 4.3 As a ‘vendor registration’ model, the LVIG regime operates as part of the Australian self-assessment system and relies, at the first instance, on encouraging qualifying businesses to voluntarily comply. The challenge of enforcing compliance arises because a large proportion of the liable taxpayers are offshore, making the usual levers to enforce compliance less effective.
- 4.4 In the course of the review, the Board has:
- considered overall compliance levels by way of a targeted external consultation process with the ATO, Treasury, ABF and external stakeholders and analysing available data (noting there are limitations in the availability and quality of data);
  - investigated integrity risks and potential weak spots in the LVIG framework; and
  - examined ATO and ABF strategies to promote compliance – ranging from ‘soft’ compliance measures such as public education to more active compliance and enforcement.

## Measuring compliance levels

### *Lesson from the data*

- 4.5 Revenue collections from the LVIG regime in its first three years of predictions have significantly exceeded estimates. In that period, the regime generated A\$760 million in GST revenue, against the official forecast of A\$170 million.

**Table 3: Revenue collections**

|  | 2018-19 | 2019-20 | 2020-21           |
|--|---------|---------|-------------------|
| GST on Low Value Imported Goods                        | A\$m    | A\$m    | A\$m              |
| GST revenue, <i>Budget 2016-17 &amp; MYEFO 2017-18</i> | 70      | 100     | 130               |
| Net GST revenue as of 20 April 2021*                   | 360     | 400     | N/A <sup>41</sup> |

- 4.6 The ATO reported that as of 28 July 2021, a total of 1420 businesses had registered for the LVIG regime with a high proportion of those using the simplified registration method (‘Limited Registration Entity’ or ‘LRE’). A breakdown of registrants according to annual turnover appears to show a significant uptake (850 registrants) by businesses with annual turnover of less than A\$10 million, the threshold at which business is categorised as a ‘small business entity’ for Australian income purposes. As would be expected, the number

<sup>41</sup> This data has not yet been published.

of registrants reduces in the higher turnover thresholds and there are only 10 registered businesses with Australian sales of A\$250 million or more.

**Table 4: Registration by turnover**

| Turnover range          | BAS No.    | LRE No.      | Total No.    |
|-------------------------|------------|--------------|--------------|
| a. <A\$10m              | 85         | 765          | 850          |
| b. A\$10m – A\$50m      | 20         | 20           | 45           |
| c. A\$50m – A\$250m     | 10         | 5            | 15           |
| d. A\$250m+             | 5          | <5           | 10           |
| e. Turnover undisclosed | 10         | 490          | 500          |
| <b>Total</b>            | <b>135</b> | <b>1,285</b> | <b>1,420</b> |

- 4.7 The ATO data does not include a breakdown of revenues collected for businesses in each turnover range. However, it is clear that a very high proportion of total revenue is collected from a small number of high value retailers and EDPs. The ATO estimates that 80 per cent of total revenues from the LVIG regime are collected from five per cent of the registered businesses (approximately 30 businesses).

### **Insights from stakeholders**

- 4.8 During the consultation process, the different stakeholder groups expressed different perspectives on the published revenue data. Some regarded the higher-than-expected revenue figures as wholly positive, emphasising that revenue collections represent a substantial improvement over the period prior to the enactment of the LVIG regime when no GST was collected on low value imported goods, significantly leveling the playing field between domestic supplies and imports.
- 4.9 However, there was much less certainty among stakeholders regarding compliance among the smaller retailers, with some speculating that compliance levels may be low for smaller businesses (indicatively, those with Australian sales in the A\$75,000 to A\$500,000 turnover range). This was generally attributed to the notion that smaller businesses were less likely to be aware of their obligations and less capable of navigating complex GST rules. Deliberate non-compliance, while not unheard of, was considered to be much less of a contributing factor. Offshore suppliers are, according to one of the stakeholders, ‘postured towards protecting their Australian consumer market and remaining compliant with tax authorities’.<sup>42</sup>
- 4.10 Some suggested that the ATO and ABF should invest in producing *more and better data* on overall levels of compliance. This was motivated by a view that while collections may

<sup>42</sup> Conference of Asia Pacific Express Carriers (CAPEC).

be high compared to original estimates, the theoretically collectable GST may be significantly higher, translating into a substantial 'tax gap'<sup>43</sup> from the LVIG regime.

4.11 The ATO recognised that there is no measure of the size of non-compliance or 'LVIG GST gap' in relation to the LVIG regime. However, they advised that they do not have any sense from their compliance measures, that there is significant non-compliance with the LVIG regime at this stage, or that there is a significant LVIG GST tax gap relative to other areas of the tax law.

4.12 The ATO advised that they take the following measures to ensure compliance by suppliers with the LVIG regime:

- monitoring of overseas financial movements;
- the ATO's 'Mystery Shopping program' (anonymised purchases by the ATO from suppliers of low value goods);
- analysis of datasets relating to websites visited by consumers in Australia;
- exchanges of information with other jurisdictions, including requests for information on particular businesses;
- awareness and education campaigns; and
- review and audit activities.

4.13 The ATO has implemented a phased approach to promoting compliance with the LVIG regime. Its compliance program has evolved and progressed through phases mirroring the maturation of the implementation and administration of the LVIG regime. Accordingly, its focus has shifted from awareness and education campaigns in the initial phase to review and audit activities where non-compliance is identified.

4.14 The Commissioner, subject to the tax secrecy provisions, has various powers to request data and information from domestic taxpayers during the course of an audit or review. For the administration of the LVIG regime and the collection of information from non-resident entities, the ATO relies on the Convention on Mutual Administrative Assistance in Tax Matters. In addition, the Multilateral Convention assists with administrative co-operation between jurisdictions involving the assessment and collection of taxes, with a particular view to combating tax avoidance and evasion.

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<sup>43</sup> The ATO defines a 'tax gap' as the difference between the amount of tax the ATO collects and what it would have collected if every taxpayer was fully compliant with the law, <https://www.ato.gov.au/about-ato/research-and-statistics/in-detail/tax-gap/australian-tax-gaps-overview/>.

- 4.15 The ATO has advised that specifically and accurately quantifying the component of the GST gap for suppliers under the LVIG is not practically feasible in light of data gaps and information limitations.

### RECOMMENDATION

The Board recommends that the ATO continue to monitor this area and investigate the tax gap if concerns in this regard were to increase or if advances in technology were to result in the cost of doing so decreasing. The ATO should also continue to adapt its compliance measures to ensure ongoing levels of compliance with the LVIG regime by suppliers.

- 4.16 ABF plays a support role in relation to the administration of the LVIG regime.<sup>44</sup> This includes:
- delivering changes to the ICS to support data collection for the measure;
  - transferring data to the ATO to support compliance activities; and
  - publishing information on ABF's website to raise awareness of the measure. ABF's collaboration with the ATO in support of the measure has been to ensure that the measure has minimal impact on the way goods are processed at the border — that is, not impeding trade or flow of goods.
- 4.17 Educating industry on their revenue and reporting obligations is an important strategy utilised by ABF to encourage voluntary compliance and reduce likelihood of revenue evasion.
- 4.18 The ABF has used a number of information products to help importers to understand their obligations regarding the LVIG regime, such as Australian Customs Notices, articles published in the Goods Compliance Update, and other information available via the ABF website. Additionally, the Home Affairs/ABF Global Service Centre provides assistance with general enquiries about the GST vendor collection method.

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<sup>44</sup> Home Affairs Notice No. 2018/13: 'The Australian Taxation Office (ATO) will administer the collection of GST from vendors and will undertake compliance and implementation activities.'

## ***Awareness supports compliance***

- 4.19 Stakeholders were universal in their praise for the breadth and quality of the ATO's initial public education campaign. This involved senior ATO officers travelling to locations in the United Kingdom, United States, Europe, mainland China, and Hong Kong to meet with the largest potential taxpayers and to deliver seminars for businesses. The ATO partnered with offshore associations and peak bodies to deliver webinars on the law. The ATO advised that one webinar targeting Chinese suppliers was delivered by a Chinese speaking ATO officer and was attended or viewed by almost 2,000 businesses.
- 4.20 CAANZ, while endorsing the quality of the initial education campaign, expressed concern that it has now lost momentum, possibly due to the impact of the COVID-19 pandemic. They saw an opportunity for the ATO and ABF 'to use existing relationships and technology more effectively in delivering seminars and information'.

## ***Other guidance***

- 4.21 The ATO provided support to businesses (and consumers) through detailed information on [ato.gov.au](http://ato.gov.au). This also included translating some information into Chinese (China was identified as the major non-English speaking country with businesses likely to be affected by the law).
- 4.22 ATO Client Relationship Managers were allocated to approximately 100 of the most significant businesses (EDPs, large merchants, and redeliverers) prior to commencement of the law. This gave these businesses a point of contact within the ATO who were familiar with their circumstances and could assist with issues encountered.
- 4.23 The ATO established a dedicated ATO email address [AustraliaGST@ato.gov.au](mailto:AustraliaGST@ato.gov.au) (also used for the Digital Products and Services law) for businesses to contact the ATO with specific enquiries. This email address is managed by technical advice staff and remains active.
- 4.24 The ATO has further provided written guidance via the publication of rulings:
- GST on low value imported goods | Australian Taxation Office ([ato.gov.au](http://ato.gov.au))
  - LCR 2018/1 – This ruling describes how the Commissioner will apply the GST law to a supply of LVIG;
  - LCR 2018/2 – This Ruling explains how GST will apply to supplies made through EDPs from 1 July 2018;
  - LCR 2018/3 – This Ruling clarifies who is and is not a redeliverer, when a redeliverer is responsible for GST and how GST should be accounted for where multiple redeliverers assist in bringing goods to Australia;

- Goods and Services Tax: Foreign Currency (Customs Value of Low Value Goods) Determination 2018; and
- Various fact sheets on information for suppliers of LVIG.

## ***Specific compliance issues***

### ***Late registration***

- 4.25 The LVIG regime, because it applies to mainly offshore suppliers, is heavily reliant on ‘soft’ compliance measures aimed at promoting voluntary participation. The Board received feedback from some stakeholders that suppliers that had failed to register for the LVIG regime when first required to do so can be reluctant to make a voluntary disclosure of non-compliance because of the potential exposure to GST liability for the previous four years as well as penalties. Some stakeholders indicated, suppliers that were unaware of their LVIG obligations have lost the ability to factor the GST component into the price of goods sold, meaning the cost of the pre-registration tax is borne by the supplier rather than being passed on to the consumer. This could constitute a significant financial burden for some businesses, acting as a disincentive to voluntary compliance.
- 4.26 Some stakeholders suggested that providing concessional treatment could promote voluntary compliance. Others counterargued that this could unfairly prejudice those who had registered from the time they were required to do so.
- 4.27 The Board considered a range of approaches to encouraging more businesses to voluntarily register for the LVIG. The first suggestion is for a formal amnesty, similar to the ATO’s ‘Project DO IT’ campaign,<sup>45</sup> in which businesses that come forward during a specified time period would be able to settle past tax claims on concessional terms. This could be accompanied by a ‘phase two’ education campaign to raise awareness of the regime. A more ambitious suggestion was a statutory discretion giving the Commissioner the power to relieve taxpayers from the primary tax liability if certain conditions are satisfied.
- 4.28 A further suggestion was for a statutory amendment to reduce the four-year amendment period to two years, provided no fraud has occurred. A refinement to this proposal would be to reduce the amendment period only for small businesses, possibly by tying eligibility to the ‘small business entity’ test for businesses with annual turnover of A\$10 million or less. This would confine the concessional treatment entities that, because of a lack of resources, are less likely to be aware of their obligations under the LVIG.
- 4.29 There were various views on this issue amongst the different stakeholder groups. Some argued that a legislative amendment was warranted to encourage new entrants, while

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<sup>45</sup> Project DO IT was an initiative by the ATO to encourage eligible taxpayers to voluntarily disclose unreported foreign income, capital gains or incorrectly claimed deductions.

others argued that this would unfairly prejudice those who had done the right thing by registering in the past. Some argued for a compromise position of an amendment period of two years for smaller suppliers, whereas others argued that this would inappropriately benefit offshore suppliers over domestic suppliers (who are subject to an amendment period of four years), or alternatively would have little effect (on the assumption that it would be the more recent years in which the liability to remit GST would be higher).

- 4.30 The ATO advised the Board that it is confident in its ability for it to resolve the issue of disincentives to voluntary registration through its normal case management process. These involve co-operative engagement with businesses and their advisors to achieve a result that is mutually acceptable and within the provisions of the law. In appropriate cases, the ATO enters settlement negotiations with suppliers with a focus on dealing with past period liabilities. These negotiations take into account the particular circumstances of the business. The objective is to settle any past liabilities, arrange the payment of these, and ensure engagement and compliance going forward. The ATO can also provide assistance to suppliers in meeting past liabilities through the availability of 'payment arrangements' whereby the debt is paid over a negotiated period of time. The ATO advises that it is regularly approached by tax advisors and receives voluntary disclosures from them for offshore suppliers.

### RECOMMENDATION

The Board is not convinced that any amendment to the existing arrangements would result in a better or more equitable system, but it would have the disadvantage of increased complexity. Considering the ATO's advice as to the approach it takes, the Board recommends no change.

#### *Deliberate non-compliance*

- 4.31 The Board, throughout consultation, was told anecdotally of limited circumstances where deliberate non-compliance has been observed with respect to the LVIG regime.
- 4.32 It was noted in consultation that some merchants could sell goods via an EDP and falsely claim the goods to be located in Australia. Some stakeholders advised the Board that there can be some difficulties for the EDP associated with identifying the location of the goods which is vital to determine who is liable for the GST.
- 4.33 It was suggested to the Board that high value goods could be undervalued to avoid GST applying when imported. That is, goods valued at sale over A\$1,000 are delivered to Australia with documentation that deliberately mis-declares the customs value as less than A\$1,000 in order not to be assessed as a taxable importation, unless detected by the ABF.

- 4.34 Finally, some stakeholders raised concerns that there may be entities with a GST threshold between A\$75,000 and A\$500,000 who knowingly decide to not register for GST on their supplies to gain a competitive pricing advantage over their competitors.

### OBSERVATION

The examples of potential non-compliance given to the Board involve false declarations and fraud or evasion. The Board observes the range of compliance strategies introduced by the ATO with respect to monitoring compliance on the LVIG regime currently appear to be sufficiently administered with respect to detection risk and maintaining an efficient system. The Board is reluctant to recommend a systemic change that would impose a more onerous administrative burden on taxpayers doing the right thing, to combat activities which, if they occur, will represent clear fraud and/or evasion.

- 4.35 The ASBFEO advised the Board that small business importers have raised concerns with his Office about international retailers potentially undercutting local businesses by reducing or evading GST and duties on their imported goods, and in some cases have advertised that they will incorrectly declare a lower value of their goods to reduce or avoid customs taxes. The Ombudsman recommends increased audit activity by the ATO, Home Affairs, and ABF.
- 4.36 The Board acknowledges the gravity of the risks raised by the Ombudsman and encourages the continuing engagement between his Office, the ATO, Home Affairs and ABF.

# CHAPTER 5: FUTURE DIRECTIONS

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## KEY POINTS

- The GST on LVIG regime has been highly successful in promoting compliance among large retailers, EDPs and the businesses selling through those platforms. This is likely to account for a high proportion of low value imports.
- Online commerce is a dynamic, rapidly evolving area and the impacts of COVID-19 on consumer spending habits are not yet fully understood.
- The law, as currently drafted, places significance on two key factors in determining which online platforms should comply with the EDP rules: an ability to comply and a degree of control over the transaction. Arguably the ability to comply should be the key determinant of whether an intermediary should be responsible for GST.
- Other online platforms such as e-commerce providers may be similarly equipped to meet the GST obligations of their business customers. Expanding the range of online platforms that are liable to GST could contribute to the overall sustainability of the regime.
- Accordingly, the Board considers that there may be opportunities to considerably improve the system by re-examining the role of e-commerce platforms that currently fall outside of the definition of EDP.
- The Board sees merit in consideration being given in the future to the viability of utilising other e-commerce platforms to collect GST, particularly as the market and technology in this space is continually developing.

5.1 This chapter explores the role of online platforms in the future and consider the current and future suitability of their participation in the LVIG regime.

## Impact of COVID-19

5.2 The pandemic drove a large spike in the number of users of online shopping platforms during 2020. AusPost notes that during 2020, 1.3 million additional households entered the online shopping market with each consumer on average making more purchases.

- 5.3 ABS data<sup>46</sup> for online sales as of June 2021 indicates that from January 2020 to their reporting date, online sales grew by approximately 80% with peaks in sales during lockdown periods.
- 5.4 The long-term impact that COVID-19 will have on consumer shopping habits is currently an unknown. It is unclear whether the current growth is sustainable as brick-and-mortar stores begin to reopen and lockdowns and border restrictions ease. However, current research indicates a view that the higher volume of online shopping will be a permanent shift.

## Immediate observations

- 5.5 A pressure point identified in the review, and the focus of this chapter, concerns the critical role played by electronic platforms in the LVIG regime. For present purposes, 'electronic platforms' refer to both EDPs and e-commerce platforms.
- 5.6 As previously noted, due to their ability to operate as an effective vehicle for GST collection, an EDP is deemed the supplier of all low value imported goods where their platform facilitates the transaction. For this reason, EDPs play a valuable role in the ease of administration to the regulators. The Board has observed high participation from EDPs including investment in technology to meet their obligations. However, e-commerce platforms which in some respects operate in the same market as these EDPs, currently do not fit within the scope of the regime.
- 5.7 Providers of e-commerce platforms provide a service in the form of a platform on which international transactions can occur, dealing with issues such as payment, exchange rate and value added taxes. While e-commerce platforms provide calculations of value added taxes, liability for those taxes remains with the vendor. It was argued that these platforms are properly distinguishable from EDPs on the basis that, unlike an EDP, the relationship with the end consumer remains with the merchant, not with the e-commerce platform provider.

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<sup>46</sup> Australian Bureau of Statistics, Online Sales, June 2021 – Supplementary COVID-19 Analysis, <https://www.abs.gov.au/articles/online-sales-june-2021-supplementary-covid-19-analysis>.

## EDP operators and e-commerce platforms – the distinction

- 5.8 An e-commerce platform is a system that is used to design and build an online shopping platform and where buyers and sellers can transact directly via the internet. An e-commerce platform will often provide more than a means of processing a payment in that it will facilitate an experience for the consumer and provide the merchant seamless access to a suite of tools to successfully run an online business.
- 5.9 An EDP is a service which operates to allow merchants to make sales of low value imported goods available to customers, delivered through electronic communication, such as an electronic marketplace. The ATO has published rules around what constitutes an EDP operator.<sup>47</sup>
- 5.10 It is important to note that EDPs and e-commerce platforms operate across a spectrum where definite EDPs are observed at one end and other platforms easily identifiable as the provision of a service being e-commerce software at the other. There is a range in between these platforms where stakeholders argue the lines are blurred.
- 5.11 The purported key distinction between an EDP and other e-commerce platforms is the concept that an EDP is a 'marketplace' that acts as an intermediary between buyers and merchants while merchants interact directly with consumers using e-commerce software. There are a set of characteristics that generally separate a marketplace from other forms of online commerce, and they are largely focussed on how the platform interacts with the sale.
- 5.12 There is a question, however, as to whether this is a relevant distinction if the primary reason that GST is imposed on the EDP is administrative ease of imposition and collection. That is, whether an e-commerce provider has the knowledge and the means to remit GST to the ATO, should it be required to do so?

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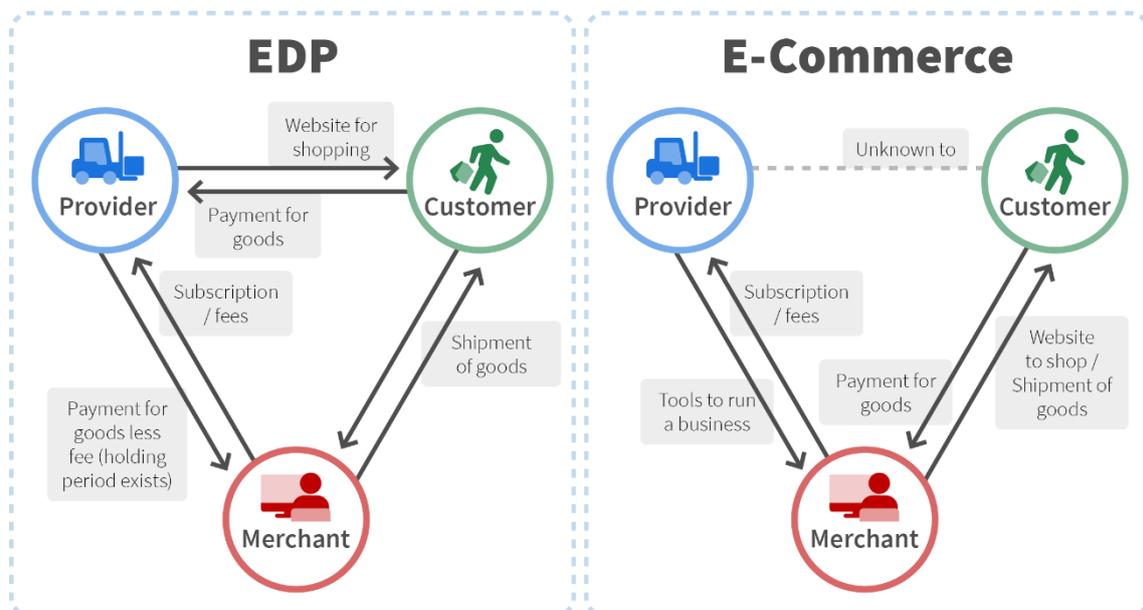
<sup>47</sup> see Law Companion Ruling LCR 2018/2 *GST on supplies made through electronic distribution platforms*.

**Table 5: Key differences between EDPs and e-commerce platforms**

| Electronic Distribution Platform                          | E-Commerce Platform                                       |
|---|---|
| Owens the consumer relationship                           | Removed from the relationship with the consumer           |
| Often directly or indirectly influences the terms of sale | Direct relationship is held between merchant and consumer |
| Transactions occur in the electronic marketplace          | Transactions occur on merchant’s website                  |
| Often consumer guarantees offered                         | No consumer protection                                    |
| Can receive payment on behalf of merchant                 | Direct transaction  |
| Some will warehouse goods                                 | No service available                                      |

5.13 These characteristics also impact the technical structure of a transaction when it occurs. The following diagram provides a visual overview as to how these processes differ between platforms:

## Difference between EDP and E-commerce



## The efficiency argument

- 5.14 As discussed in Chapter three, EDPs are legislatively deemed the supplier of low value imported goods where goods are purchased by consumers via their platforms and brought into Australia. This is irrespective of whether it is the merchant or the EDP that assists with the delivery to an end consumer.<sup>48</sup>
- 5.15 One of the key considerations in shifting the GST burden to an EDP that they are better placed to comply with the laws because they are generally better resourced than the merchant using their marketplace.<sup>49</sup> This supports the ‘efficiency argument’ as an EDP has the ability to build efficiencies in their processes and improve levels of compliance while reducing compliance cost and risks for the tax authorities.
- 5.16 The OECD explored the contribution of EDPs to a GST system in their report *The Role of Digital Platforms in the Collection of VAT/GST on Online Sales*. The notion that the market participant who can most efficiently collect and remit the GST should have the obligation to do so was supported in their findings.
- 5.17 The OECD further commented that policies should be subject to change to reflect development in markets and digital platforms.
- 5.18 The Tax and Superannuation Laws Amendment (2016 Measures No. 1) Bill 2016 indicates a key feature of an EDP is the ability to directly or indirectly influence the terms of sale for products sold on their platform.<sup>50</sup>
- 5.19 Stakeholders have generally accepted that it is efficient and reasonable to shift the burden of GST collection with regard to low value imported goods to EDPs. For example, Alibaba noted in its submission that:

*‘Fees charged by third party payment processing firms in relation to GST collection have become an increasing cost for EDPs which only charge a small fee on each sale. To sustain the practice of GST collection by EDPs, the authority may consider following the suit of some states in the U.S. where the states authorities provide incentives in the forms of credits or allowances to EDPs for collecting and remitting sales tax to the state tax revenue departments.’<sup>51</sup>*

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<sup>48</sup> Section 84-85 of the GST Act.

<sup>49</sup> *Treasury Laws Amendment (GST Low Value Goods) Bill 2017 Explanatory Memorandum*, paragraph 1.120.

<sup>50</sup> *Tax and Superannuation Laws Amendment (2016 Measures No. 1) Bill 2016*.

<sup>51</sup> Alibaba.com Singapore E-Commerce Private Limited.

## ***Suggested shifting of competitive neutrality***

- 5.20 As set out in this report, the introduction of the LVIG regime was motivated principally by concerns of competitive neutrality and creating a level playing field between domestic supplies and imported goods. Some stakeholders have asserted that in addressing this issue, the regime has given rise to different competitive neutrality concerns. That is, concerns of a level playing field between domestic and offshore suppliers have been supplanted by concerns about a level playing field as between the various businesses that are required to comply. In particular, stakeholders wish to ensure the rules are applied consistently as between larger business and smaller businesses and between the different types of electronic platforms.
- 5.21 If this has occurred, however, it will mean that there is a new competitive neutrality issue for domestic businesses as well. That is, the interests of domestic businesses and EDPs will be aligned against other offshore vendors which, by utilising services other than EDPs, are not paying (or charging) GST on their sales.

## ***The current role e-commerce platforms play in the LVIG regime***

- 5.22 It is important to acknowledge e-commerce platforms are already providing an important role and the Board's consultation process has observed a number of benefits that e-commerce providers have brought to the regime.

### ***Tool for awareness***

- 5.23 Many e-commerce providers have equipped their software with the ability to facilitate the calculation and collection of GST, which has removed complexities for the offshore vendor in calculating their own obligations. These are 'opt in' systems that providers have created for their clients and the platforms do not collect or remit the GST but play a role in ensuring that compliant businesses have a means to fulfil their obligations, even where they may have little Australian tax knowledge.
- 5.24 Further, the systems are often designed to 'flag' with users when transactions which are processed via their service reach the registration threshold. This does not place a burden on the e-commerce provider to ensure their clients follow through with their obligations but rather it allows the user of their services to comply.

### **International Learnings**

The Board has observed that other jurisdictions are receiving similar commentary in relation to the role that e-commerce platforms should play. One jurisdiction noted that one e-commerce platform has requested inclusion in their LVIG system, for the purposes of providing a more comprehensive service to its customers.

### *Education to increase compliance*

5.25 Other benefits that e-commerce platforms have provided the regulators of the LVIG is a secondary source for education. Where new taxes are introduced, our consultation process has observed that suppliers of e-commerce products are generally well-equipped to educate their clients on their new Australian tax obligations. One participant confirmed that they provided educational materials and hosted discussions with their clients on the LVIG regime to boost awareness. Our observation of these platforms is that they generally will facilitate and encourage their clients to meet their Australian tax obligations.

### *Collection of data – more beneficial*

5.26 As discussed throughout the report, there are severe constraints on regulators to accurately measure compliance; e-commerce platforms appear to be well placed to bridge information gaps.

5.27 As the e-commerce platforms enable the point-of-sale system for merchants, they have access to the data to recognise:

- total supplies into Australia (therefore being able to identify suppliers selling over A\$75,000 worth of goods via their platform);
- total amount of GST collected via direct website sales;
- total taxable sales to consumers;
- total sales to businesses;
- total sales via marketplaces; and
- total direct sales through merchant websites.

5.28 E-commerce platforms enable merchants to sell through many different channels including directly via the merchants website. As they enable sales through multiple channels, they also are sophisticated enough to identify when GST needs to be applied to a transaction and when it does not (for example, when a business reaches the A\$75,000 threshold GST is applied, but when a sale is made via a marketplace, GST is not applied).

5.29 E-commerce platforms are collecting information in relation to transactions that occur via their platforms, however this data is not being used to support the administration of the LVIG regime.

5.30 The Board notes that the idea of ‘leveraging’ e-commerce platforms as a source of data to promote tax compliance has recent precedent. The ATO is currently in the process of

implementing a reporting regime for operators of 'sharing economy platforms'.<sup>52</sup> This will require platforms to report identification and payment information regarding participating merchants to the ATO for data matching purposes. Imposing LVIG reporting obligations on e-commerce providers would arguably be consistent with the sharing economy regime.

### **The Board's view**

- 5.31 The LVIG regime has been highly successful in promoting compliance among large retailers, EDPs and the businesses selling through those platforms. This is likely to account for a high proportion of low value imports.
- 5.32 The imposition of GST on EDPs in particular is highly efficient, capturing a significant portion of the GST on low value imported goods.
- 5.33 E-commerce platforms do not currently remit GST to the ATO. Providers of e-commerce platforms provide a service in the form of a platform on which international transactions can occur, dealing with issues such as payment, exchange rate and value added taxes.
- 5.34 Currently, e-commerce platforms only provide calculations of value added taxes but liability for those taxes remains with the vendor. It was argued that these platforms are properly distinguishable from EDPs on the basis that unlike an EDP, the relationship with the end consumer remains with the vendor, not with the e-commerce platform provider.
- 5.35 The Board considers that there may be opportunities to considerably improve the system by re-examining the role of e-commerce platforms that currently fall outside of the definition of 'electronic distribution platform'.
- 5.36 E-commerce platforms have the knowledge and capability to correctly assess the amount of GST and to collect the GST. In these circumstances, the Board considers that further work could be done to consider whether it would be appropriate for GST liability to be imposed on the operators of e-commerce platforms.
- 5.37 The Board considers that the imposition of GST on e-commerce platforms could, like the imposition of GST on EDPs, be a simple and efficient mechanism to collect GST on LVIG transactions that occur outside the EDP environment.
- 5.38 The Board understands that in no other jurisdiction is the liability to collect GST imposed on an e-commerce provider. However, some interest was expressed in this concept in the jurisdictions with which the Board consulted, namely the United Kingdom, New Zealand and the European Union.

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<sup>52</sup> Board of Taxation, *Tax and the Sharing Economy: A Report to the Government*, 2017.

## RECOMMENDATION

The scope of this post implementation review does not include policy and therefore does not include a consideration of whether the LVIG regime should be extended including all e-commerce platforms.

However, the Board notes that new business models in e-commerce are constantly evolving, while at the same time the COVID-19 pandemic has greatly expanded the use of online B2C transactions. In this environment, the Board suggests that in the future the Government could consider whether e-commerce platforms could have a greater role to play in the collection of GST on low value imported goods, whether as a legislated source of information or as a legislated GST collection point.

# APPENDIX – LVIG LEGISLATIVE FRAMEWORK AND CONTEXT

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## The introduction of the Goods and Services Tax (GST)

GST in Australia was introduced by the Howard Government by A New Tax System (Goods and Services Tax) Act 1999 (GST Act) and took effect from 1 July 2000. The GST replaced wholesale sales tax and a number of other State-based indirect taxes with a 10 per cent value added tax on goods and services imposed progressively at each level of the supply chain, with the tax ultimately borne by the final consumer. The Federal Government imposes and collects the GST, which is then passed onto the States by distribution from the Commonwealth Grants Commission.<sup>53</sup>

GST is designed to be a tax on the consumption of most goods and services, including things that are imported. However, there are a number of exemptions on items like basic healthcare, some household goods and certain foods.

Importantly, for GST to apply, the supply must be ‘connected with’ Australia’s ITZ. A supply of goods is connected with the ITZ if the goods are delivered, or made available, in the ITZ to the recipient of the supply. This means exports will generally not be subject to GST.

The GST law comprises separate rules for domestic supplies of goods and services for so-called ‘taxable importations’. The two sets of rules have some important differences:

- GST on taxable supplies is payable by the supplier, is subject to a registration threshold, and collected by the ATO under the self-assessment system; and
- GST on taxable importations is payable by the importer, has no registration threshold, and is collected by ABF under general customs processes.

Imported goods are generally only a taxable importation (and therefore, subject to GST at the border) if imported in a consignment with a customs value exceeding A\$1,000. Critically, the

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<sup>53</sup> This regime addressed the consequences of the High Court’s decision in *Ha v State of New South Wales* (1997) 189 CLR 465 in which it was held that Business Franchise Fees of a type that had been imposed by the States from the 1970s were excises and therefore, under the Australian Constitution, the States did not have the power to charge them.

LVIG regime does not change this treatment. Instead, it operates by extending the rules for taxable supplies.

### ***Taxable supplies***

The rules for taxable supplies are subject to a registration threshold. A business is required to register for GST in the period when their actual or projected annual GST turnover is A\$75,000 or more (A\$150,000 for not-for-profit entities). This amount has increased from A\$50,000 (and A\$100,000 respectively) when the GST was introduced in Australia. There are also registration requirements for certain businesses such as taxi license holders irrespective of their turnover.

Entities seeking registration for GST are required to provide a range of information to verify their identity and entitlement to registration. Upon registration, the entity is generally required to provide monthly or quarterly GST returns.

### ***GST Turnover***

GST turnover is a concept introduced with the GST Act and effectively refers to the GST base with respect to which a business would be required to collect GST. This includes total GST exclusive business income less:

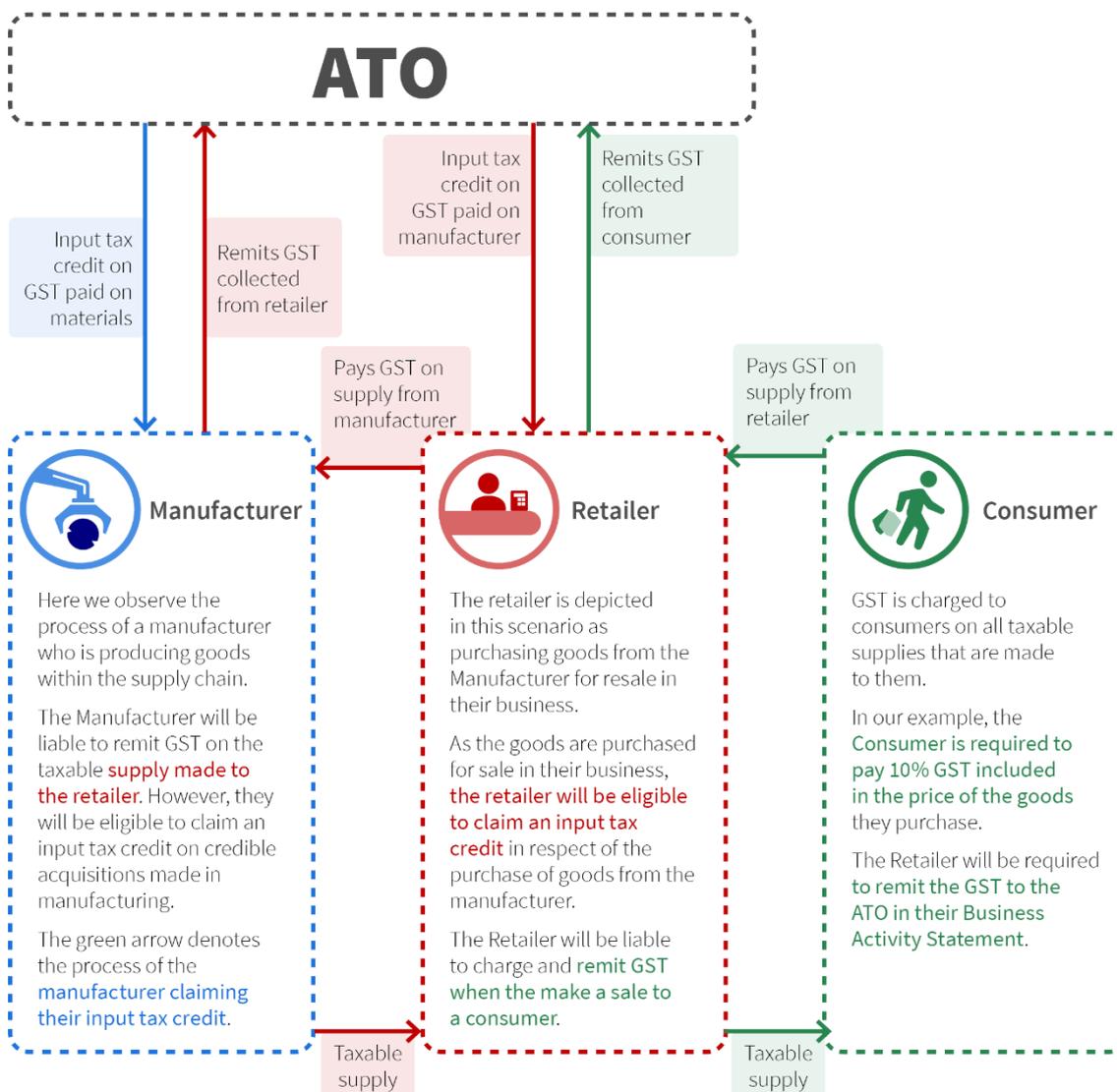
- sales that are not taxable supplies;
- sales not connected with the business;
- input-taxed sales; and
- sales not connected with Australia.

### ***How GST is charged***

GST is designed to be paid with respect to each transaction in the supply chain, with the amount of tax based on the consideration paid for the goods or services acquired. To ensure that the GST is effectively paid by the consumer, businesses that are registered for GST are eligible to claim an input tax credit from the ATO on purchases they make for their business. This means the GST liability will be ultimately borne by the consumer.

The following diagram depicts a simple illustration of how GST is accounted for in a supply chain where a manufacturer manufactures goods and sells to a retailer who subsequently sells the product to a consumer.

## GST supply chain



### Taxable importations

Imported goods are treated differently to domestic supplies under the GST law. The ABF collects the GST from the importers of imported goods upon importation, but only where the import value is A\$1,000 or above and the goods are not GST-free or input taxed. Importers of goods are liable for GST irrespective of whether they are required to register for GST or whether they carry on an enterprise. However, an importer that is registered is generally entitled to an input tax credit for any GST on their inputs.

When the GST Act was introduced, the tax treatment of importations was considered in the context of liability for customs duties. Specifically, GST was only payable on taxable importations

where customs duty was also required to be collected.<sup>54</sup> This meant that most goods with a customs value equal to or less than the prescribed amount of A\$250 were not subject to GST. This amount was increased to A\$1,000 in 2005.<sup>55</sup> Goods with a lower value were exempt from GST.

## Introduction to the LVIG

The legislative framework for the LVIG regime operates by deeming offshore supplies of low value goods to be connected with the ITZ,<sup>56</sup> making them subject to GST. The effect is that supplies of low value goods are subject to the same GST rules as domestic supplies, while imported high value goods continue to be subject to the separate importation rules administered by the ABF.

A supply will be subject to the LVIG regime where it is a physical good with a customs value of A\$1,000 or less is made to a consumer and excludes tobacco products and alcoholic beverages. GST does not apply to sales of low value imported goods made to Australian GST-registered businesses<sup>57</sup>.

An important difference from the regime for domestic goods is that an offshore supply of low value goods is only subject to the LVIG regime where the recipient acquires the supply as a consumer. In this way, the LVIG regime is said to be a business-to-consumer or B2C regime. By comparison, the domestic GST rules apply to both B2C and B2B and allows businesses to claim input tax credits on 'creditable acquisitions'.

As a supplier regime, the LVIG regime is subject to a registration requirement. Similar to domestic suppliers, an entity is required to register if GST turnover in Australia exceeds the registration turnover threshold.

## Electronic distribution platforms, merchants and redeliverers

Under the LVIG regime, three categories of suppliers exist: merchants, EDPs and redeliverers. Their role in the regime is explained below.

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<sup>54</sup> Section 114-5 of the GST Act.

<sup>55</sup> Subsection 42-5(1) of the GST Act and item 26 in Schedule 4 to the Customs Tariff Act 1995).

<sup>56</sup> Subsection 9-25(3A) of the GST Act.

<sup>57</sup> ATO website, GST on low value imported goods, <https://www.ato.gov.au/Business/International-tax-for-business/GST-on-imported-goods-and-services/GST-on-low-value-imported-goods/>.

## ***Merchants***

The ATO uses the term ‘merchant’ to describe any seller of goods. A merchant can sell goods directly to a consumer, or via an EDP or a redeliverer may assist buyers to purchase from merchants.

Where a merchant sells low value goods directly to a consumer (for example through their own website) and assists in getting the goods to Australia (for example by organising delivery), the merchant will be responsible for any GST that applies to the sale.

The merchant will not be responsible for GST where the supply is made through an EDP.

## ***Electronic distribution platforms***

Under the LVIG regime, an EDP is generally responsible for GST on supplies that are ‘made through’ its platform. An EDP is defined as a service (including a website, internet portal, gateway, store or marketplace) that allows entities to make supplies available to end-users delivered by means of electronic communication.<sup>58</sup>

EDPs are subject to the same taxable supply rules as merchants. This means, among other things, that the EDP will only be liable for GST if it meets the GST turnover threshold of A\$75,000 annual sales of supplies ‘connected with’ Australia.

Correspondingly, a business that makes a supply ‘through’ an EDP is taken not to be the supplier for LVIG purposes, instead the EDP must count this supply in determining if they are required to register. This ensures that the business, even if registered, is not required to collect and remit GST on any supplies they are not responsible for.

The purpose of the EDP rules is to shift the burden of collecting and paying GST from merchants to larger, better resourced entities that are better placed to comply with GST obligations.

The scope of the EDP rules is an important component of the LVIG regime and were a major focus of this review.

## ***Redeliverers***

The LVIG regime rules also treat a ‘redeliverer’ as the supplier of low value goods where it assists with the delivery of goods into Australia as part of an arrangement with a customer and an EDP or merchant does not have a role in getting these goods to Australia.

A ‘redeliverer’ is a type of online shopping service that assists Australian shoppers to buy goods online from overseas merchant by assisting with the delivery of the item into Australia. Typically, a redeliverer would provide the Australian customer with an overseas address to which

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<sup>58</sup> Subsection 84-70(1) of the GST Act.

purchased goods are first shipped at which point the redeliverer facilitates the delivery of the goods to the customer in Australia. The goods may be purchased by the Australian customer directly or by the redeliverer as agent for the customer.

The rate a redeliverer charges GST will be:

- 10% of the amount paid by the customer for the goods; plus
- 1/11th of the amount the customer pays for the redeliverer's services to get the goods to Australia. As a redeliverer, GST applies to all of their services, including international transport services and insurance for the transport of the goods.

Where a redeliverer assists in getting the goods to Australia (that is without the assistance of the merchant or an EDP), the redeliverer will be responsible for collecting GST on the sale.

### ***Order of priority***

The LVIG regime establishes priority rules for the three categories of suppliers. Depending upon how a supplier of low value imported goods sells its products to Australian consumers will determine which sales are included in working out a business's GST turnover.

The order of priority in determining who is responsible for GST, where the supplier is registered or required to be registered for GST, is outlined below:



## **Registration**

### ***Requirement to register for GST in the LVIG regime***

An offshore supplier must register for GST in Australia where they carry on an enterprise and their turnover meets or exceeds the registration threshold.

In Australia the registration turnover threshold is A\$75,000 (or A\$150,000 for not-for-profit entities) of relevant sales over a 12-month period.

## ***Determining GST turnover***

Determining whether an offshore supplier's turnover meets or exceeds the registration threshold will depend upon how sales of low value goods are made to consumers in Australia.

Generally, an offshore supplier's GST turnover will include gross business income, except for:

- GST from sales to Australian customers;
- Non-taxable sales and sales made for nil consideration;
- Sales not connected to the offshore supplier's business;
- input-taxed sales (exempt supplies);
- GST-free sales; and
- Sales not connected with Australia.

## ***Merchants***

A merchant's GST turnover will include gross revenue from sales made in the course of carrying out their business to the extent that those sales are connected to Australia and GST applies to them.

However, where a merchant sells low value imported goods through an EDP, the merchant will not include these sales in their turnover test; these sales instead will be included in the EDP's turnover.

## ***Electronic Distribution Platforms***

Where an EDP is responsible for GST on a sale made through their platform, the EDP will need to count these sales (plus any other sales the EDP makes that GST applies to) towards the turnover test.

There are also rules to ensure that if a sale is made through multiple EDPs, only one EDP operator will be responsible for GST.

## ***Redeliverers***

Where a redeliverer is responsible for GST on low value goods sold to Australian consumers, its sales, including the service charges which are subject to GST and any other sales made that GST applies to, will need to be included in the turnover test.

**EXAMPLE**

Sun City is an offshore supplier that sells sun hats for A\$35 each to consumers in Australia.

In the past 12 months, Sun City has seen an increased growth in sales to Australian consumers, resulting in A\$100,000 turnover. Half of these sales were made through its website the other half through an EDP.

When determining whether Sun City is required to register for GST in Australia, Sun City will need to include the sales of A\$50,000 it makes directly through its website. Sun City will not, however, include the A\$50,000 in sales made through the EDP as the EDP is responsible for the collections of GST on these sales.

As a result, Sun City does not have sales equal to or exceeding the A\$75,000 turnover threshold in Australia and is not required to register for GST.

### ***Simplified and Standard GST Registration***

Generally, non-resident businesses that are required to register for GST can select between two registration options: simplified or standard. These options apply to non-resident businesses that import low value goods (with a value below A\$1,000), as well as services or digital products or intangibles, into Australia.

Non-resident businesses that choose the simplified option must register as an LRE. LREs have simplified registration and reporting requirements but are subject to certain limitations, namely:

- they cannot make creditable acquisitions;
- they are not entitled to hold an ABN or have their registration recorded on the Australian Business Register and therefore cannot issue tax invoices;
- they must submit and pay GST quarterly<sup>59</sup>; and
- they cannot elect to pay GST by instalments.

A comparison of simplified versus standard GST registration for non-resident businesses is included in the table below.

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<sup>59</sup> Under the domestic GST registration requirements, an entity's reporting and payment cycle is monthly, where GST turnover is A\$20 million or more; quarterly, where GST turnover is A\$20 million or less; or annually if voluntarily registered for GST (that is turnover is below A\$75,000).

***Simplified versus standard registration***

|   | <b>Simplified GST registration</b>   | <b>Standard GST registration</b>  |
|---|--|---|
| <b>Proof of identity</b>                          |   |    |
| <b>Provided with an ARN</b>                       |   |    |
| <b>Register for an ABN</b>                        |   |    |
| <b>Claim GST credits</b>                          |   |    |
| <b>Can issue Tax Invoices or Adjustment Notes</b> |   |    |
| <b>Lodgement, reporting and payment</b>           | <p>Must lodge GST returns and pay GST quarterly</p> <p>Payment is made electronically via SWIFT bank transfer or credit card</p> | <p>Not limited to quarterly accounting periods</p> <p>Can use activity statements to report GST via an Australian tax agent, through specific software or lodge a paper return.</p> |

A further advantage of simplified versus standard GST registration is that there is no requirement for a Public Officer or Australian financial representative. This can simplify the arrangements and costs for non-residents. This may be contrasted with arrangements in the European Union where non-residents are required to identify an agent in the country of import with whom the revenue authorities can deal.

A disadvantage of simplified versus standard GST registration is that a non-resident supplier under simplified GST registration cannot claim any GST credits for any inputs into the good that they have supplied. However, a non-resident supplier may form the view that, in any event, it is unlikely to have available GST credits for its inputs.

***Standard registration***

Before an entity can register for GST under the standard method, they must have a valid ABN. To be eligible for an ABN, you must undertake a registration and proof of identity process on the Australian Governments website.

To apply for an ABN, you must be able to substantiate the following information:

- Your business structure;
- Identity of the entity and key personnel; and
- Your business activities and associates.

Stakeholders have indicated that for offshore businesses, it can be difficult to meet the proof of identity requirements associated with obtaining an ABN, and as such will mean they're unable to register under the standard method.

Once an entity has a valid ABN, the ATO can facilitate GST registration by phone, a registered tax agent, or an online application. Entities registering for GST will need to declare the period in which they met the registration requirements.

### *Simplified GST registration*

Non-residents that do not have an ABN, or wish to not register for one, may register for GST on low value imported goods using the simplified method. This also applied to importers of digital products.

Registration is a simple two-step process; however, it is not needed if a non-resident supplier solely imports low value imported goods to Australia via an EDP.

Under simplified GST registration, an entity is unable to issue a tax invoice, as this requires a valid ABN.

### *Goods subject to the LVIG regime*

A supply will be subject to the LVIG regime where it is a physical good with a customs value of A\$1,000 or less and is made to a consumer but is not a tobacco product or alcoholic beverage.

Offshore suppliers are required to charge GST on a sale of low value imported goods if it is a taxable sale. A taxable sale is one which is:

- Connected with Australia (but not goods held in Australia);
- Made by a business registered (or required to be registered) for GST;
- Made for payment and as part of a business's operation; and
- Not GST-free or input taxed.

A sale is connected to Australia if the good is a low value imported good sold to a consumer; a merchant, electronic distribution platforms (EDPs), or a redeliverer assists in bringing the goods to Australia; and the exception for multiple goods that total over A\$1,000 does not apply.

GST does not apply to sales of low value imported goods made to Australian GST-registered businesses.<sup>60</sup>

## Returns, refunds and replacements

There may be occasions where refunds of GST for returned goods or incorrectly charged are required or when a replacement goods needs to be provided:

- Customers need to seek a refund from the supplier in the same way they do domestically
- Replacement goods (like for like) are not required to have GST charged again

When customers are reimbursed, suppliers can make an adjustment to reduce the amount of GST payable in their next GST return

Registered suppliers of low value imported goods are not entitled to a GST refund from the ATO unless they have reimbursed the customer for GST on the sale, and this would be by exception.

## Notification and record-keeping requirements

Notification and record keeping requirements will vary depending on the type of registration an entity has chosen under the GST on LVIG regime. The following section provides an overview of an entities record keeping requirements under each of the registration types.

When an offshore supplier charges GST on a sale of low value imported goods, they must issue a receipt to the customer. This can be in an electronic form, such as an email confirmation or a receipt.

The receipt must contain the certain information, including supplier name, ABN/ARN (as applicable), date of issue, description of goods, and must specify that GST has been paid and the amount. There is no requirement to issue a tax invoice but an eligible entity (that is, an entity with an ABN) that chooses to issue a tax invoice will meet the notification requirements.

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<sup>60</sup> ATO website, GST on low value imported goods, <https://www.ato.gov.au/Business/International-tax-for-business/GST-on-imported-goods-and-services/GST-on-low-value-imported-goods/>.

## ***Documentation***

Records are required to be maintained for Australian supplies for a minimum period of five years. Offshore suppliers find it difficult (especially those unfamiliar with Australian tax practices) to determine the appropriate level of evidence to collect and retain to support their GST claims.

Entities must provide a customs declaration for goods being imported into Australia indicating who responsible for GST. Further information on customs declarations can be found in LCR 2018/1.

## ***Lodgement of returns***

In a general sense, different methods are available for both domestic and offshore suppliers (under the standard method) to lodge their BAS. These are:

- Engage with an Australian tax agent to lodge on their behalf, this is beneficial as it provides a level of assurance in relation to the accuracy of the file, at an additional cost to the merchant;
- Self-lodge via an appropriate software platform; or
- Lodge a paper return.

Under the simplified option, lodging of returns and payment is required by the 28th day of the month after the end of the quarter excepting the period ending in December, which is due 28 February.

When lodging a GST return under the simplified GST system the offshore supplier must report the:

- Total Australian taxable supplies (exclusive of GST); and
- GST payable -normally 10% of total Australian taxable supplies.

If the GST payable is not 10% of the total, the offshore supplier must explain the reason.

## ***Payment***

Offshore suppliers can pay GST by credit card or SWIFT (international EFT transfer) with payment to be made by the due date. The easiest way to pay is with credit card although fees may apply.

Where an offshore supplier pays by SWIFT they need to provide the unique payment reference number (PRN) to their bank when they make a payment. This ensures their payment goes to the right account without delay.

## Interaction with regime for high value goods

Multiple goods with a combined customs value of more than A\$1,000 shipped together in one consignment are ‘taxable importations’ applied at the Australian border, meaning that GST is payable by the importer and collected by ABF at the border. For some offshore suppliers of low value goods, when an online order is received, it may not always be apparent whether, when low value goods are ordered, they will be combined into a high value consignment. The LVIG rules will not apply provided the offshore supplier, having taken reasonable steps, reasonably believes that a supply will be a taxable importation.<sup>61</sup>

The practical operation of the reasonableness test is explained in detail in Law Companion Ruling 2018/1, and several illustrative examples. It explains that the test will be satisfied if the merchant can demonstrate that it has business systems in place on which to base reasonable belief about whether goods will be a taxable importation or that it took ‘reasonable steps’ to obtain this information.

Goods sold in currencies other than Australian dollars will need to be converted into Australian currency. To relieve the administration burden on suppliers of LVIG, the regime allows for a pragmatic approach to determining whether a GST obligation will arise on supplier that are impacted by currency conversion. For example, where a good is valued in excess of A\$1,000 at the time of GST assessment (and therefore not subject to GST on low value imported goods), and subsequently is valued below A\$1,000 on importation due to fluctuations in foreign exchange, the supply is legitimately deemed to not have a taxing point. Conversely, where a good is deemed as subject to the LVIG regime, a declaration is submitted to customs and even if the customs value exceeds A\$1,000, the good will not be subject to any further GST.

The ATO has published guidance so that offshore suppliers can ensure they meet the low value goods threshold and determine the value of taxable supplies (Goods and Services Tax: Foreign Currency (Customs Value of Low Value Goods) Determination 2018 – F2018L00725 and Goods and Services Tax: Foreign Currency Conversion Determination 2018 – F2018L00724).

The ABF has released information on split consignments<sup>62</sup> in Australian Customs Notice No. 2021/01. A split consignment is where a single order containing multiple products are sent in separate consignments (often with the value of each package calculated under the threshold),

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<sup>61</sup> Section 84-83 of the GST Act.

<sup>62</sup> Shipping language differs in international trade compared to the Australian legislation, making it difficult to determine the classification of a consignment. Australian customs legislation explains a ‘consignment’ will consist of a single order and will generally (but not always) be transported to Australia in the same ship or aircraft. Multiple packages will also form a single consignment where those packages are ‘known to be part of the same order’ (see: ACN 2021/01 - Definition of consignment for the purposes of section 68 of the Customs Act 1901 (abf.gov.au)). In contrast, in the United Kingdom a consignment is defined as ‘an arrangement where an exporter delivers goods to a distributor, who agrees to only pay the exporter once they have sold it. The exporter retains ownership of the goods until they are sold, but also carries all of the financial burden and risk’ (see: Understanding International trade terms, <https://www.great.gov.uk/advice/prepare-for-export-procedures-and-logistics/understand-international-trade-terms/>).

with one or more packages arriving at the Australian border separately to the others. While the packages arrive at different times, the ABF may consider them to be a single consignment. If the total value of the goods (the value of all the packages combined) is higher than the threshold and are sent using split shipping, the offshore supplier or importer may be attempting to evade the payment of duties and taxes through practice known as ‘structured ordering’.

The ABF has long-established processes in place to protect Government revenue, including powers to carry out activities to verify customs laws are adhered to and recover any unpaid duties and taxes. This includes guidance to assist officers to determine whether multiple consignments arriving within a relatively short period are a normal business practice or an attempt to avoid the taxable imports threshold.

## High Value Goods and Role of Australian Border Force

The ABF sits within the Home Affairs portfolio (Home Affairs). Home Affairs’ role is to manage compliance with Australian import and export framework and to control, detect, deter and address illicit trade behaviours.<sup>63</sup>

The Home Affairs portfolio is responsible for collecting customs duty and tax including GST, Luxury Car Tax (LCT) and Wine Equalisation Tax (WET), on imported goods at the border.<sup>64</sup>

Customs duties are charged in accordance with the Customs Act 1901 (Customs Act) and the Customs Tariff Act 1995. The amount of customs duty payable on imported goods is generally based on the ‘customs value’ of the goods. The customs value is generally equivalent to the amount paid or payable to purchase the goods, converted to Australian currency at the rate of exchange prevailing on the day the goods are exported. For certain imported goods, dumping and/or countervailing duties are also payable.

Goods with a customs value at or below a A\$1,000 threshold, other than prescribed goods (which include tobacco and tobacco products, alcohol and alcohol products, petroleum and petroleum products), are not subject to customs duty and import processing charges. The ABF does not collect GST on these; the ATO does under the LVIG regime.

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<sup>63</sup> *GST administration annual performance report 2019-20*, GST administration by Department of Home Affairs, [https://www.ato.gov.au/About-ATO/Commitments-and-reporting/In-detail/GST-administration/GST-administration-annual-performance-report-2019-20/?page=14#13\\_\\_GST\\_administration\\_by\\_the\\_Department\\_of\\_Home\\_Affairs](https://www.ato.gov.au/About-ATO/Commitments-and-reporting/In-detail/GST-administration/GST-administration-annual-performance-report-2019-20/?page=14#13__GST_administration_by_the_Department_of_Home_Affairs).

<sup>64</sup> *ibid.*

## ***Customs valuation***

The ABF notes on their website there are several methods for valuing goods for customs purposes, the method most applied (transaction value) is based on the price actually paid (or payable) for the imported goods subject to certain adjustments.

A number of conditions must be met to use the transaction valuation method. For example, the buyer and seller are not related, where the buyer and seller are related, their relationship has not affected the price of the imported goods. The transaction value can involve deductions or additions such as commissions or royalties.

When the transaction value cannot be used, one of these alternative methods will be used to determine the Customs value:

- Identical goods value – the price of identical goods sold for export to Australia;
- Similar goods value – the price of similar goods sold for export to Australia;
- Deductive value – the price in a sale in Australia of the imported goods, identical goods or similar goods. This price must be adjusted for costs etc incurred between the ‘place of export’ and the sale in Australia;
- Computed value – this is based on the price of producing the goods, general expenses, other costs and profits relating to the imported goods; or
- Fall-back value – where no other methods are suitable, Customs and Border Protection will determine the value by taking into account the above valuation methods and any other relevant information.

The Customs value does not include freight and insurance costs in transporting the goods from the ‘place of export’ to Australia. However, any inland freight and inland insurance costs incurred by the purchaser before the goods leave the ‘place of export’ are included in the Customs value.

The cost of packing overseas, such as labour and packages, is included in the Customs value of the goods. However, the cost of containers (as defined in the Customs Convention on Containers) and pallets imported temporarily are not included in the Customs value.

The ABF notes that valuation of imported goods can be complex, and importers are urged to seek advice from a customs broker or to contact the ABF for advice. ABF also offers advance rulings to provide advice on how the ABF will apply certain laws to goods for importation.<sup>65</sup>

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<sup>65</sup> ABF Website, <https://www.abf.gov.au/importing-exporting-and-manufacturing/importing/how-to-import/requirements>.

## ***Declaration process***

Declarations are used by importers, or licensed customs brokers acting on their behalf, to clear imported goods from customs control into:

- home consumption (that is, the domestic commerce of Australia) – via an Import Declaration or Self-Assessed Clearance Declaration, or
- a licensed warehouse – via a Warehouse Declaration.

All goods imported into Australia are liable for duties and taxes unless an exemption or concession applies.

An import declaration must be completed when goods are imported and have a combined value of over A\$1,000 and are being cleared into home consumption. All applicable duties, taxes and charges must be paid before the goods can be released.

## **The role of the ATO**

Operating under the Public Governance, Performance and Accountability Act 2013, within the Treasury portfolio, the ATO is accountable under the Public Service Act 1999 as the principal revenue collection agency of the Australian Government.

The ATO effectively manages and shapes the tax and superannuation systems that support and fund services for Australians, by:

- Collecting revenue;
- Making it easier for the community to understand and comply with obligations; and
- administering GST on behalf of the states and territories in Australia.

## ***International cross-border administration***

The ATO's responsibilities and formal accountabilities under the framework established by the Council of Australian Governments (COAG) require specific reporting on its administration of GST.

The ATO works closely with government the tax profession and the broader community to deliver on the GST Administration Performance Agreement. This includes being responsible for international cross-border administration of GST on low value imported goods<sup>66</sup>.

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<sup>66</sup> *GST administration annual performance report 2019–20*, [https://www.ato.gov.au/uploadedFiles/Content/ITX/downloads/GST\\_administration\\_annual\\_performance\\_report\\_2019-20.pdf](https://www.ato.gov.au/uploadedFiles/Content/ITX/downloads/GST_administration_annual_performance_report_2019-20.pdf).

## ***Learning and education***

With the introduction of the low value goods regime in Australia, the ATO played (and continues to play) an integral role in raising awareness of the new requirements for offshore suppliers operating in the Australian market. The vendor collection model was a world-first approach to collection of GST, which required noteworthy commitment and investment from both the ATO and suppliers.

The ATO makes available, on its website, via publications and through tax practitioners, information and guidance for taxpayers – both domestic and offshore – on their obligations to charge and remit GST on supplies of low value goods to Australian consumers. Information is available in multiple languages to assist in easing the compliance burden.

Additional awareness activities included:

- educational campaigns partnering with international and domestic logistic providers to educate their clients on GST cross-border issues; and
- writing directly to new or emerging offshore suppliers regarding potential GST obligations.<sup>67</sup>

## ***Identification of non-compliance***

To encourage compliance, the ATO engages directly with taxpayers to ensure GST obligations are met.

However, in instances where further identification of potential un-registered offshore suppliers is required, the ATO utilises strategies such as:

- supplementing third-party financial transactions with data from other agencies such as ABF;
- increasing exchange of information with other jurisdictions –to compare registered client lists, and where appropriate seek assistance from other jurisdictions to support the ATO’s compliance activities; and
- assess community information against third-party data to determine the existence of tax risks.<sup>68</sup>

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<sup>67</sup> *GST administration annual performance report 2019–20*, [https://www.ato.gov.au/uploadedFiles/Content/ITX/downloads/GST\\_administration\\_annual\\_performance\\_report\\_2019-20.pdf](https://www.ato.gov.au/uploadedFiles/Content/ITX/downloads/GST_administration_annual_performance_report_2019-20.pdf).

<sup>68</sup> *ibid.*

### ***Providing clarity and advice around the application of the law***

The ATO offers public and private advice and guidance that addresses GST risks and help businesses understand their GST obligations. One of the key advice topics for 2019-20 was International and cross-border GST.