

School of Taxation and Business Law (Atax)

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GST and low-value imports

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1. Introduction

On 21 August 2015, the then federal treasurer (the Hon Joe Hockey) announced that the GST low value threshold (LVT) would be removed so that importations with a value of \$1,000 or less would be subject to Australian GST with effect from 1 July 2017. The announcement gave little detail, but it did indicate that a foreign supplier registration model would apply.²

This paper sets out the current law, and why there has been pressure put on the government in recent years to impose GST on low-value goods. The low-value threshold has been the subject of past studies and analysis and the conclusions of these studies will briefly be discussed. The paper then moves to a discussion of the current proposal. With little detail yet being made available, a variety of design options (and an analysis of the various options) will be canvassed. The paper concludes by examining key challenges that the government will face in enforcing a foreign supplier registration model, even despite the existence of various international agreements.

2. Current Law

The GST treatment of taxable importations is largely set out in Division 13 of the GST Act.³ Goods imported into Australia will generally be subject to GST as a taxable importation. Taxable importation is defined in s 13-5 as follows:

(1) You make a taxable importation if:

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² The Hon Joe Hockey, *Statement: Council on Federal Financial Relations Tax Reform Workshop*, 21 August 2015. It should be noted that Australian government leaders had decided on 22 July 2015 to "broaden the GST to cover overseas online transactions (physical goods) under \$1,000.": The Hon Joe Hockey, *Statement: Council on Federal Financial Relations Tax Reform Workshop*, 21 August 2015.

³ *A New Tax System (Goods and Services Tax) Act 1999*. All sections mentioned in this paper refer to this Act unless otherwise stated.

(a) goods are imported; and

(b) you enter the goods for home consumption (within the meaning of the Customs Act 1901).

Unlike taxable supplies, the liability for GST on taxable importations is payable by the importer. This is provided for by s 13-15, that states: “You must pay the GST payable on any taxable importation that you make.” If the purchaser is the importer of the goods, he or she (and not the supplier) will be liable for GST on the goods (assuming it is not a non-taxable importation). Goods are imported by the entity who causes the goods to be brought into Australia.⁴ In nearly all cases involving low value goods, the Australian purchaser will be this person.⁵ Section 13-5 specifically notes that there is no requirement for the importer to be registered for GST and the importer does not need to be carrying on an enterprise.

Per s 13-20, the amount of GST payable on the taxable importation is 10 percent of the value of the taxable importation, which is the sum of: the customs value of the goods imported, the amount paid for transport and insurance, the customs duty payable, and wine equalisation tax (if applicable). GST, customs duty and border clearance fees are to be paid to Australian Border Force (ABF)⁶ before the parcel is released to the importer.⁷ An importer who is registered for GST can claim an input tax credit on the taxable importation, if the taxable importation was made in carrying on an enterprise and for a creditable purpose.⁸

An importation is not a taxable importation to the extent that it is a non-taxable importation,⁹ defined in s 13-10 as an importation that is either:

- (a) a non-taxable importation under Part 3-2; or
- (b) it would have been a supply that was GST-free or input taxed if it had been a supply.

Section 42-5(1) (in Part 3-2) provides that an importation of goods covered by item 26 (amongst others) in Schedule 4 to the *Customs Tariff Act 1995* is a non-taxable importation. Item 26 refers to

⁴ *R v Bull* [1974] HCA 23 at paragraph 10 (per Gibbs J) and paragraph 122 of GSTR 2003/15.

⁵ This paper is solely focused on business to consumer transactions, where the Australia purchaser is the importer of the goods and under current legislation, would be liable for any GST payable. However, it is noted that if the non-resident supplier is the importer, the supplier will be making a taxable supply and therefore will be liable for GST: see s 9-25(3)(a).

⁶ Previously the Australian Customs and Border Protection Service (ACBPS).

⁷ The exact process for this will vary based on whether the parcel arrives by mail, air cargo or sea cargo. For more details see for example, Productivity Commission (2012) *Economic Structure and Performance of the Australian Retail Industry*, pp. 182-187.

⁸ Sections 15-5, 15-10 and 15-15.

⁹ Section 13-5.

“goods, as prescribed by by-law, whose value is less than the amount prescribed by by-law”. The amount prescribed by by-law for the purposes of this item is a customs value of less than \$1,000.01.¹⁰ Goods below this value are generally exempt from GST and customs duty.¹¹ For the most part, items that are declared as being below the threshold are released for delivery without any physical checks to confirm the value of the importation.¹²

3. LVT concerns

3.1 Background

With the growth in online shopping and the associated increase in low-value parcels entering Australia, the appropriateness of the LVT has been subject to much scrutiny in recent years.

In 2009, the Board of Taxation, as part of the “Review of the Application of GST to Cross-Border Transactions”, examined the appropriateness of the LVT. They noted:

- Other factors (apart from GST) impacted purchasing decisions when consumers decide whether to purchase from Australian or overseas retailers.
- The threshold of \$1,000 had remained unchanged since 2005 and is not indexed. Over time, the ‘value’ of goods (in real-terms) that could be imported without GST would therefore fall.
- The increase in administrative costs of bringing more goods into the customs system would likely outweigh any benefit.
- If the administrative cost of collecting GST on low value imports was fully passed on to the Australian consumer, this may be a disproportionate cost.
- It would not be administratively feasible to bring non-resident suppliers into the GST system due to difficulties with seeking non-resident compliance and the extensiveness of online retail activity.

Overall, Recommendation 13 of the Board of Taxation stated:

“The low value importation threshold of \$1,000 is appropriate: The Board is of the view that it is not administratively feasible to try to bring non-resident supplies of low value goods and services into the GST system at this time.”

¹⁰ Section 42-5; Item 26 in By-law No 1305011 in Schedule of Concessional Instruments in Schedule 4 to the *Customs Tariff Act* 1995.

¹¹ Note that certain goods: tobacco, tobacco products, alcoholic beverages, goods imported by a passenger or crew member arriving in Australia, and goods forming part of a bulk order are not included in this exemption: see Customs By-law No 1305011.

¹² Low Value Parcel Processing Taskforce (2012) *Final Report* p. 68.

In 2011, the Productivity Commission, as part of their enquiry into the Australian Retail Industry, examined the sustainability and appropriateness of the current indirect tax arrangements in relation to imported goods. They noted that whilst the LVT may contribute to price differentials in products sold by domestic and overseas retailers, many other factors were driving the growth of online retail and affecting the competitiveness of domestic and overseas retailers.

The Productivity Commission examined the impact of reducing the threshold for the collection of duty and GST to \$100 whilst utilising the current processing system. They estimated that based on 2010-11 figures, it would cost over \$1.2 billion to collect \$496 million in revenue.¹³

Overall, the Productivity Commissioner made the following recommendations in relation to the LVT.

“Recommendation 7.1.

There are strong in-principle grounds for the low value threshold (LVT) exemption for GST and duty on imported goods to be lowered significantly, to promote tax neutrality with domestic sales. However, the Government should not proceed to lower the LVT unless it can be demonstrated that it is cost effective to do so. 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.

Recommendation 7.2

The Government should establish a taskforce charged with investigating new approaches to the processing of low value imported parcels, particularly those in the international mail stream, and recommending a new process which would deliver significant improvements and efficiencies in handling. ...

Once an improved international parcels process has been designed, the Australian Government should reassess the extent to which the LVT could be lowered while still remaining cost-effective.”

As a result of the Productivity Commission’s recommendations, the Low-Value Parcel Processing Taskforce (LVPPT) was established. Their report, released in 2012, provided extensive information regarding the volume and nature of low value goods, as well as the import and border processes for

¹³ Productivity Commission (2012) *Economic Structure and Performance of the Australian Retail Industry*, 200.

such goods. The report noted that from 2006-07 to 2010-11, low value parcels entering Australia via international mail increased from 23.5 million to 48.06 million. Similarly, from 2008-09 to 2010-11, low value imports entering Australia as air cargo increased from 6.68 million to 10.57 million.¹⁴

Numerous reform options in relation to the LVT, including the potential to have overseas suppliers collect GST and/or duty on low value goods were given detailed analysis. In relation to the option of having overseas suppliers collect GST, the LVPPT stated:

“Under this potential solution, duty and/or GST liability arrangements would be amended to extend the circumstances where offshore suppliers remit duty and/or GST. As the supplier is generally in a foreign jurisdiction, any obligation imposed directly on them at the time of purchase would likely be non-enforceable, and hence rely on voluntary cooperation by suppliers. As simplicity of application would be a key consideration in compliance in such circumstances, this measure would only seek to apply to goods up to a prescribed value. Given the added complexity of duty calculation, if a prescribed value limit is set for this measure, a variation would be to limit the approach to GST remittance only.

To have an impact on border processes, this reform would need to be coupled with legislative amendments that would allow goods on which the remittance of duty and/or tax by an overseas supply could be verified to be treated as duty or tax pre-paid for importation purposes. At the border, these goods would then only be subject to border security and biosecurity clearance.”

Overall, the LVPPT recommended:

Recommendation 4.3

To streamline revenue collection, legislative arrangements could be amended to enable and encourage appropriately regulated overseas suppliers to collect GST from purchasers of low value goods at the time of purchase.

However, the LVPPT also acknowledged that as overseas supplier registration would rely on voluntary compliance, it would not be sufficient as a standalone reform.

¹⁴ Low Value Parcel Processing Taskforce (2012) *Final Report*, pp. 23, 32.

The Government response to the LVPPT report agreed in principle to Recommendation 4.3, but highlighted the fact that such a reform would only be effective as part of a broader range of reforms. They stated:

“The Government notes that involving overseas suppliers in collecting the GST due on low value imports could generate efficiencies for import processing by reducing the need for revenue collection at the border. However the report emphasises that this reform would only be effective as part of a broader range of range of reforms related to revenue collection at the border and not as a standalone reform. The Government will consider ways to progress this reform as part of any broader package of reforms which is implemented.”

3.2 Impact of LVT

The GST exemption for low-value imported goods is regarded as a tax expenditure, and there is no doubt that the existence of the LVT does result in lost tax revenue. However, the amount of lost tax revenue is hard to determine, with the tax expenditure estimate being of low reliability. The estimates made in the 2011 and 2012 Tax Expenditure Statements (around the same time the Productivity Commission and LVPPT were releasing their reports), are vastly different and significantly higher than the estimates made in more recent Tax Expenditure Statements.

The tax expenditure estimates in relation to the LVT from the 2011 and 2012 Tax Expenditure Statements are shown in Tables 1 and 2 below.

Table 1: 2011 Tax Expenditure Statement - H10 Importation Threshold

2007-08	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15
\$320M	\$300M	\$390M	\$470M	\$630M	\$690M	\$760M	\$830M

Table 2: 2012 Tax Expenditure Statement – H10 Importation Threshold

2008-09	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16
\$300M	\$390M	\$470M	\$530M	\$650M	\$710M	\$780M	\$860M

It can be seen from the above tables that in the 2011 Tax Expenditure Statement, it was estimated that by 2014-15, the LVT would result in lost tax revenue of \$830M per year. Whilst the 2014-15 figure

was reduced to \$780M in the 2012 Tax Expenditure Statement, significant increases each year were still expected, with the 2015-16 estimate being given as \$860M.

More recent tax expenditure statements show significantly lower estimates, as shown in Tables 3 and 4 below.

Table 3: 2014 Tax Expenditure Statement - H11 Importation Threshold

2011-12	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18
\$350M	\$400M	\$380M	\$460M	\$530M	\$590M	\$650M

Table 4: 2015 Tax Expenditure H12 Importation Threshold

2011-12	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19
\$350M	\$400M	\$390M	\$410M	\$430M	\$440M	\$460M	\$480M

The 2015-16 estimate (\$860M in the 2012 release), was reduced to \$530M in the 2014 Tax Expenditure Statement and reduced further to \$430M in the 2015 Tax Expenditure Statement. The 2017-18 estimate decreased by almost \$200M between the 2014 and 2015 Tax Expenditure Statements.

The trend in the tax expenditure estimates is not surprising when data regarding online sales (particularly online international sales) is considered. Data from the National Australia Bank showed that in 2011, online retail sales grew by 29 percent. The online sales growth favoured international retailers, with international online sales growing by 40% in 2011, compared to 25% growth for domestic online sales. However, it was suggested that one of the main reasons for the surge in international sales was likely due to the strong Australian dollar at the time. In the second half of 2011, growth in international sales slowed significantly, and growth rates in Australian and international online sales converged.¹⁵

In more recent years, the rates of growth in online sales has declined significantly. Whilst annual growth in online retail spending has still been higher than annual growth in traditional retail spending, online shopping continues to represent only a very small portion of total retail spend. Further, growth

¹⁵ National Australia Bank, Online Retail Sales Index, In-depth report January 2010-2012

in domestic online sales is outstripping growth in international online sales, with the vast majority of online sales being from domestic retailers.¹⁶ This is shown in Tables 5 and 6 below.

Table 5: Online vs. traditional retail sales¹⁷

Year ended	Total online retail spend (\$bn)	Online retail spend as % of total retail spend	Annual % growth (online retail spend)	Annual % growth (traditional retail spend)
April 2012	\$11.1	5.1%	15.5%	4.1%
April 2013	\$13.5	6.0%	23.4%	3.2%
April 2014	\$15.25	6.6%	6.4%	5.7%
April 2015	\$16.9	7.0%	9.6%	3.7%

Table 6: Domestic vs. international online sales¹⁸

Year ended	Domestic sales as a percentage of total online sales	International sales as a percentage of total online sales	Growth in online domestic sales (annual)	Growth in online international sales (annual)
April 2012	73%	27%	16.2%	13.4%
April 2013	72%	28%	23%	24%
April 2014	74%	26%	8.1%	1.9%
April 2015	75.5%	24.5%	11.2%	5%

What these figures indicate is that even if GST was collected on all low-value imports, the revenue impact will be nowhere near as high as originally thought when the LVT first came under scrutiny. Further, the proposal suggested by the Government will not capture all low-value goods – this is partly due to its design (discussed in Section 4 below) and partly due to an expected low level of compliance (Section 5).

¹⁶ This is possibly due to the falling dollar.

¹⁷ Data sourced from National Australia Bank Online Retail Sales Index, available online: <<http://business.nab.com.au/tag/online-retail-sales-index>>.

¹⁸ Data sourced from National Australia Bank Online Retail Sales Index, available online: <<http://business.nab.com.au/tag/online-retail-sales-index>>. The data provided by National Australia Bank Online Retail Sales index separates online sales between ‘domestic online retail sales’ and ‘international online retail sales’. Data is not available to determine whether Australian retailers are shipping items direct from overseas to customers in Australia in order to take advantage of the LVT.

4. Analysis of current proposal

4.1 Proposal

On 21 August 2015, the then Treasurer, Joe Hockey, announced that the LVT would be reduced to zero with effect from 1 July 2017.¹⁹ Specifically, he stated:

“The Commonwealth ... recommended that the existing threshold for the GST liability [on imports] be reduced to zero, in line with the GST collection for other products and services. The states and territories have unanimously agreed to this in principle.

Non-residents (overseas suppliers) will be the ones who charge, collect and remit the GST for digital and physical products. As is the case in Australia, only vendors with an Australian turnover of \$75,000 will need to register and charge the GST.

The Commonwealth will draft legislation for the application of the new arrangements from 1 July 2017.”²⁰

Aside from this statement, no other details were provided. Further, little reasoning and no background document was provided explaining why a foreign vendor registration model was adopted.²¹ Mr Hockey did mention that this approach was the best from amongst three or four proposals because it was consistent with what was happening internationally. Further, he stated that abolishing the LVT, but keeping the current process of inspecting parcels at the border was “plainly ridiculous”.²²

¹⁹ Mr Hockey indicated there if it were possible, a start date earlier than July 2017 would be implemented: Transcript of Treasurer’s press conference, Canberra, 21 August 2015.

²⁰ The Hon Joe Hockey, *Statement: Council on Federal Financial Relations Tax Reform Workshop*, 21 August 2015. The reference to “digital goods” in Mr Hockey’s extracted statement is a reference to the Government’s announcement on budget night in May 2015 that the GST would be extended to “imports” of digital goods, and that a foreign supplier registration model would apply to that measure.

²¹ There is nothing in My Hockey’s statement regarding the \$1,000 customs duty exemption, which is what the GST low value threshold is linked to. It is submitted that there will be no change to that exemption.

²² Transcript of Treasurer’s press conference, Canberra, 21 August 2015. The Productivity Commission had previously estimated that abolishing the LVT, without changing the current parcel processing model, would generate \$600 million of extra revenue at a cost of over \$2 billion: Productivity Commission (2012) *Economic Structure and Performance of the Australian Retail Industry*, p. 169.

4.2 Design features

4.2.1 New measure: Added or replacement regime?

It is unclear from the government's announcement whether the new regime (a foreign supplier registration model) will replace the existing regime (where the ABF is responsible for collecting the relevant fees, duties and taxes on taxable importations above \$1,000), or operate in addition to the current regime. It appears that there are three possibilities.

1. Full replacement of current system
2. Partial replacement of current system
3. Add-on to current system

The 'taxing point' of low-value and high-value imports at turnover levels both above and below the threshold under each of these options is summarised in the table below (either at point of sale – i.e. collection by foreign supplier, or taxation at border – i.e. collection by ABF).

Table 7: Design options for proposal

Option	Turnover level	Imports < \$1K	Imports > \$1K
Option 1 – Full replacement	< \$75,000	Not taxable	Not taxable
	> \$75,000	POS	POS
Option 2 – Partial replacement	< \$75,000	Not taxable	TAB
	> \$75,000	POS	POS
Option 3 – Add-on	< \$75,000	Not taxable	TAB
	> \$75,000	POS	TAB

4.2.1.1 Option 1: Complete replacement

If the new regime completely replaces the existing regime, the ABF would no longer collect GST on importations as they enter the country, regardless of the value. If a foreign supplier has Australian turnover of \$75,000 or more, all goods (both high value and low value) would be taxed at the point of sale. All goods (regardless of value) from an overseas supplier with Australian turnover of less than \$75,000 would not be subject to GST.

This option seems unlikely due to threats to the revenue base. Currently, imports with a value above \$1,000 are subject to GST, regardless of the Australian turnover of the supplier. If the new system (which only requires foreign suppliers with turnover above \$75,000 to register) completely replaces the existing system, the government will be removing certain high value imports from the GST base. Additionally, unless compliance by retailers with turnover above \$75,000 could be ensured, the government would be risking the revenue currently collected by ABF on imports with a value above \$1,000.

4.2.1.2 Option 2: Partial replacement

Under this option, the new system would apply to both high and low value imports, but only if the supplier was required to be registered. That is, if the foreign vendor has Australian turnover of \$75,000 or more, all imports would be taxed at point of sale. The existing system (collection of GST at border) would be maintained for high-value imports purchased from suppliers who are not required to be registered (i.e. those with an Australian turnover of less than \$75,000).

On the one hand, this option seems logical. Unlike option 1, GST would still be collected on high-value imports supplied by those vendors below the turnover threshold. Further, for foreign suppliers who have been brought into our GST system due to turnover, it seems inconsistent to then require them to only collect GST on some of the goods (those with a value of less than \$1,000) they are exporting to Australia. This would increase complexity for foreign suppliers, who would need to appropriately determine the value of the goods. This could change due to exchange rate fluctuations, and unless the definition of ‘value of the taxable importation’ is changed, would also need to take into account freight, insurance and customs duty.

On the other hand, without significant levels of compliance by foreign suppliers, the government is still risking substantial amounts of revenue. Rather than the new system resulting in increased revenue (due to GST collection on low value goods), low levels of compliance by foreign suppliers may cause existing GST revenue to fall. This is because the responsibility of collecting GST on high-value imports that currently rests with ABF would shift to the foreign supplier (if they are required to be registered for GST). Unless the ABF could quickly determine whether GST had already been collected by the foreign supplier, high-value goods may be imported and delivered to the purchaser without the collection of GST.

Additionally, some high-value imports would still need to be stopped at the border for the purposes of collecting customs duty. There would therefore be no efficiency gains in having the GST on high-value goods collected by the foreign supplier.

4.2.1.3 Option 3: Add-on

It is the opinion of the authors that due to concerns regarding compliance, the new proposal will operate in addition to, rather than a replacement to, the existing regime of taxing importations with a value in excess of \$1,000 at the border. All high value imports would continue to be taxed at the border, regardless of the turnover level of the supplier. Low-value imports are taxed at the point of sale with GST collected by the foreign supplier if their Australian turnover is over \$75,000.

By maintaining the current system, there will be no lost revenue from current levels. Even if there are low levels of compliance by foreign suppliers, and limited amounts of GST are collected and remitted in relation to low-value imports, the level of GST collected on high-value imports by ABF will be maintained.

However, it may cause complications for foreign suppliers who are required to register for GST that supply both low and high value imports. Such suppliers would be required to collect and remit GST on some goods but not others.

4.2.2 Registration turnover threshold for foreign suppliers

The proposal is based on a compulsory registration turnover threshold of \$75,000AUD (within Australia). As yet, no specific information has been released as to how the foreign supplier's Australian turnover will be calculated. One possibility is that the 'connected with the indirect tax zone' definition will be expanded to accommodate importations that currently fall outside this definition. If, as is expected, that importations above \$1,000 continue to be taxed at the border, it is unclear whether those goods will be included when calculating the foreign supplier's registration turnover.

The threshold has clearly been selected to maintain consistency with Australian suppliers. Choosing the domestic turnover threshold (which was based on striking a balance between keeping compliance costs low and minimising lost GST revenue) may not be appropriate. A foreign enterprise that is

slightly below the \$75,000 (Australian) registration threshold may be very large (based on global turnover) and is unlikely to be claiming any input tax credits.²³

4.2.3 Entitlement to input tax credits – overseas supplier

An overseas supplier who is required to register for GST will be entitled to claim input tax credits on creditable acquisitions associated with making those supplies. This causes potential for fraudulent claims for input tax credits from overseas suppliers in order to receive unwarranted GST refunds.²⁴ There will rarely be input tax credits associated with these supplies, as the inputs used were likely acquired overseas. Any that were acquired in or from Australia would likely be GST-free exports. For this reason, the government may follow the approach adopted in the GST and digital products draft legislation,²⁵ which intends to create a special registration regime with significantly reduced reporting requirements but without any entitlement to claim input tax credits.

5. Enforcement of New Measure

5.1 Nature of compliance task

The government proposal will only be successful if effective enforcement mechanisms are in place, as having a taxing rule that is not enforced is tantamount to not having the taxing rule at all. The ATO will need to ensure those affected foreign suppliers are aware of their obligations under the new regime. This will be a challenging task, not only due to the number of foreign jurisdictions, but also due to the need to identify who the affected taxpayers are. When asked, Mr Hockey was not able to provide even a ballpark figure of how many foreign suppliers would be required to register for GST.²⁶

Even if companies are identified, achieving a high (or even medium) degree of compliance with the new taxing measure will be difficult. It will involve multiple jurisdictions, and within each jurisdiction, there may be numerous suppliers affected ranging broadly in size. While larger suppliers with worldwide reputations are more likely to voluntarily comply with the new measure, it is unlikely

²³ A foreign supplier with \$75,000 of Australian turnover would generate \$6,818 of GST revenue (1/11th of the value of the taxable supply), as it is unlikely that any input tax credits would be available (as discussed below). The net GST generated from an Australian supplier with the same turnover would be a lot less, as they would have claimed input tax credits against their collected GST.

²⁴ It is noted that currently, any entity that is carrying on an enterprise anywhere in the world can choose to register under Australia's GST regime and thereby claim back input tax on creditable acquisitions (if any). However, once overseas suppliers are required to register for GST, the number registered will increase, thereby increasing the risk of fraudulent claims for input tax credits.

²⁵ Tax Laws Amendment (Tax Integrity: GST and Digital Products) Bill 2015.

²⁶ Transcript of Treasurer's press conference, Canberra, 21 August 2015.

there will be high levels of voluntary compliance from others. Improving compliance is therefore likely to depend on enforcement.

Enforcement of the new law will not be easy. Putting aside international agreements for the moment, a country like Australia cannot (and will not) send its ATO officers to another country to carry out compliance activities. This would involve a breach of the territorial sovereignty of the foreign country. Indeed, even minor actions such as serving foreign taxpayers with notices, can be contentious.²⁷ In addition, a foreign court is not going to assist the ATO in its enforcement of Australia's GST laws in regard to a national of the foreign country.²⁸

5.2 Convention on Mutual Administrative Assistance in Tax Matters

To help address the lack of enforcement jurisdiction, Australia has entered into a number of bilateral agreements with other countries that provide for, or encompass assistance in, the assessment and collection of tax liabilities from foreign nationals,²⁹ as well as ratifying the most recent 2010 version of the Convention on Mutual Administrative Assistance in Tax Matters.³⁰

The Convention covers all taxes, including GST/VAT, but excluding customs duties.³¹ It also includes interest, penalties and costs of recovering taxes.³² Three key areas of assistance from other states are provided for, namely: (i) exchange of information (ii) service of documents and (iii) assistance in recovery of tax including the foreign revenue agency using their court system. However it must be appreciated that even with the Convention, there is no guarantee of successful enforcement of the new taxing measure.

First, the Convention does not cover all jurisdictions. Therefore even if the ATO had data on the location of foreign suppliers coming within this measure, they may not be in a jurisdiction covered by the Convention.

²⁷ See paragraph 163 of Council of Europe and OECD, *Commentary on the Provisions of the Convention on Mutual Administrative Assistance in Tax Matters*, 2010.

²⁸ *Government of India v Taylor and Anor* [1955] AC 491 at 503-508.

²⁹ Tax Information Exchange Agreements (TIEAs) and Double Tax Agreements (DTAs).

³⁰ The new version came into force in Australia in December 2012.

³¹ Article 2(1)(b).

³² Article 3(1)(c).

Secondly, seeking assistance from a foreign revenue agency is not a “run of the mill” thing. A decision to request assistance is not taken lightly because the foreign revenue agency is being asked to divert its resources away from its needs. Further, there are some internal³³ and external procedures to comply with before the ATO can seek assistance.³⁴

Thirdly, under the Convention, there are circumstances where requests for assistance can be denied as of right. They include the requirement that the requesting state has pursued all reasonable measures available under its own laws and practices.³⁵ In regard to recovery of a tax debt, a request can be denied where the administrative burden to the requested state is disproportionate to the benefit derived by the requesting state.³⁶

Fourthly, there is a valid question as to whether the ATO will or can allocate sufficient resources to the compliance effort for this measure, as the costs of pursuing a non-complying foreign supplier will be high. Therefore, there would need to be the expectation of substantial revenue gains (i.e. recovery of high levels of GST) before the ATO would pursue the matter.

In the end, one cannot get away from the fact that some level of foreign revenue agency intervention is required to enforce this new taxing measure. Foreign suppliers determined to not pay this new GST liability will be aware of this. Careful and targeted use of the penalty regime may assist in persuading some suppliers to comply.

5.3 Back-up taxing point at the border

As noted above, it seems likely that many foreign suppliers (with Australian turnover in excess of \$75,000) will not register for GST as required under the new taxing measure. As a result, many low value importations that are now subject to GST will enter Australia on an unpaid-GST basis. The key policy question is whether measures should be put in place to identify and tax these items at the border. To not do so would significantly undermine the integrity of this new taxing measure. However, having

³³ The ATO has a GST Exchange of Information section. All requests of a foreign revenue agency must be submitted to the GST EOI section for approval: Practice Statement Law Administration PSLA 2007/13.

³⁴ A lot of the procedural requirements are to advise the requested state of the nature of the request so that it can be actioned, but one requirement is an assurance that the request is in conformity with the laws and practice of the requesting state and that the requesting state has pursued all reasonable measures available under its own laws and practices: Article 18.

³⁵ Article 21(2).

³⁶ Article 21(2). One instance of this is where the cost of collection is more than the tax debt: paragraph 206 of Council of Europe and OECD, *Commentary on the Provisions of the Convention on Mutual Administrative Assistance in Tax Matters*, 2010.

a back-up taxing point would slow down the processing of low value parcels at the border, and would cause delays in delivery times. It would also be costly.

Further, for a back-up taxing point to work, ABF would have to have systems for distinguishing “GST paid goods” from “GST unpaid goods”. This could for example, take the form of a “tagging system”, but the integrity of such a system would be crucial.

If “GST unpaid goods” are identified, ABF would need to be able to identify those importations where no GST is payable, either due to a foreign supplier being under the registration threshold, or the importation being GST-free. For those “GST unpaid goods” where GST should have been paid, a GST collection mechanism would need to be used – such as the regime that currently applies to importations incorrectly self-reported as being below the LVT. This collection regime is labour intensive, cumbersome and costly.

The slower processing at the border of untaxed importations that results from applying GST to them may serve to encourage some foreign suppliers to register and enter Australia’s GST regime. This is only likely if feedback from their Australian customers of delays in delivery and costs will affect demand for the supplier’s goods. Indeed, the government could adopt a policy of slower processing of “GST unpaid goods” that should have had GST on them. The Treasurer may have had this in mind when he commented: “There’s many levers we have to be able to apply some pressure to these companies.”³⁷

6. Conclusion

While a broad decision as to how to tax low-value imported goods has been made, there are still a number of important design decisions to make, only a select few of which have been canvassed in this paper. As yet, it is not clear whether the new system will operate in addition to, or instead of, the current system of collecting GST on high value imports.

One key question is whether a back-up taxing point at the border will be a design feature of the new taxing measure. It is hard to see how, especially in the early days, a high level of compliance will be achieved solely from the foreign supplier registration system. Without a back-up taxing point at the border, many stakeholders are likely to be disappointed. On the other hand, over reliance on the back-

³⁷ Transcript of Treasurer’s press conference, Canberra, 21 August 2015.

up taxing point will be cost prohibitive and may undermine the goal of bringing foreign suppliers into the Australian GST net.

Data from Tax Expenditure Statements shows that the impact of the LVT is considerably lower than estimates made in earlier years, when the LVT was coming under increased scrutiny. Further, as the current proposal will only effect suppliers with turnover above \$75,000, the overall impact (even if full compliance is achieved) is unknown. (That is, the Tax Expenditure estimates are based on the amount of lost revenue from all low-value imports. Under the current proposal, only those low-value goods sold by suppliers with a registration threshold above \$75,000 would be subject to GST). This may mean that the government is not concerned as to whether if high levels of compliance are achieved. However, if this is the case, the question must be asked as to whether the government should proceed with the proposal, or whether the LVT should remain until compliance and enforcement issues can be addressed.