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2 December 2016

By Post and E-mail

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MELBOURNE
SYDNEY

Dear Christopher

Applying GST to low value goods imported by consumers

Arnold Bloch Leibler welcomes the opportunity to make a submission to the Treasury in relation to the *Treasury Laws Amendment (2017 Measures No. 1) Bill 2017 Exposure Draft*, the Exposure Draft Explanatory Materials and the associated 'Question and Answer' document.

Our submission is aimed at the overall policy of the measures rather than specific drafting issues.

I **enclose** Arnold Bloch Leibler's submission.

We would welcome an opportunity to discuss the contents of our submission with you in due course.

Yours sincerely

Clint Harding
Partner

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SUBMISSION

APPLYING GST TO LOW VALUE GOODS IMPORTED BY CONSUMERS

Our submission addresses our main concerns around the administration and practical implications of the provisions, including the short timeframe in which suppliers will have to integrate this law change in their business systems.

Administration and enforcement

- (a) We have reservations regarding the ability of the Australian Taxation Office and the Department of Immigration and Border Protection to effectively enforce the proposed legislative changes. We are concerned that the proposed amendments are a 'one size fits all' approach that does not provide sufficient enforcement mechanisms, nor sufficient 'encouragement' to the wide range of overseas suppliers (from large to small) that will be affected by the measures.
- (b) We recognise that larger, better known overseas suppliers with worldwide reputations are likely to voluntarily comply with the new measure and many suppliers would be likely to comply with the measure in good faith. However, our concern is that there will not be high levels of voluntary compliance from other overseas suppliers especially if they operate in numerous jurisdictions and may not have a sufficient scale of sales into Australia. Such entities may not have the internal administrative ability or access to advisers to enable easy compliance.
- (c) There is a potential risk that consumers may seek to take advantage of supplies from those overseas suppliers who are non-compliant. There is therefore the potential for an increase in the import of goods that do not meet the stringent controls, in terms of safety, customer services standards, ethical sourcing and so forth, which are a key element of Australian consumer protection. Further, the proposed changes to the rules concerning electronic distribution platforms (who will in some

circumstances have the obligation to charge and collect the GST) may incentivise small suppliers to leave the platform and simply set up their own non-compliant website based business.

- (d) While goods forwarders will be required to collect additional data from the overseas supplier, to be included in the relevant import declarations in relation to low value goods directly¹, it is unclear how similar information will be collected for low value goods that arrive in Australia via international mail. If the mail delivery entities, which just facilitate the delivery of mail, are not required to collect such information, a significant number of low value goods are likely to enter Australia without the desired 'checks and balances' in place. We consider that some kind of mechanism directed towards low value goods being brought into Australia via the international mail system, or at least a 'spot check' system, should be considered to address this.
- (e) We understand that some advertising overseas will be done to inform overseas suppliers about the change to the Australian GST laws and how they will be affected and that the intention is to get overseas suppliers affected by this measure into the system in the first year or two without having to utilise formal compliance action. It is also intended that the law be designed to not draw small businesses into the net unnecessarily, business would need to be of reasonable size before catching the attention of the ATO for non-compliance.
- (f) Whilst we have reservations about the ability to enforce the measures, we do not recommend stopping low value goods at the border because of the cost involved and the delays it would cause to delivery times. We certainly would not recommend blocking non-compliant websites. The 'leakage' from non-compliant small suppliers in our view would not be sufficient to justify the cost to enforce nor the potential restrictions on Australian consumers' rights.

¹ Refer to page 3 of the 'Question and Answer' document.

- (g) We support the intention to carry out a post-implementation review after two years² to ensure that the measure, once implemented, is both working and being administered effectively.

Notification

- (a) We are unsure how information regarding whether GST has been charged and paid on the low value imported good will be notified. However, we understand the intention is that overseas vendors will be required to provide certain information to the transporters/goods forwarders who are then required to provide this to the customs brokers to be entered into the 'ICS' (customs system). This information will then be provided to the ATO for checking. This relies on the quality of the information provided by the overseas supplier in the first place.

Start date

- (a) It is intended that this measure apply to tax periods starting on or after 1 July 2017. Given there is only draft legislation seven months out from the intended start date, we note there is a limited time for overseas suppliers, particularly the larger ones, to get systems in place to accommodate this law change. If it is not possible to defer the start date, we suggest that the legislation include transitional rules.

Aggregation and disaggregation

- (b) It is unclear when goods will be aggregated and disaggregated for the purpose of determining whether they meet the \$1,000 low value threshold. This must be clear so that suppliers are aware whether Division 13 of the *A New Tax System (Goods and Services Tax) Act 1999* or the provisions contained in the Exposure Draft will apply to impose GST on the importation.

² Per the 2016-17 Federal Budget measure 'Applying GST to Low Value Goods Imported by Consumers' Budget Paper No. 2 at page 19.