



## Submission to the Treasury Department's Consultation into the GST Treatment of Cross Border Transactions

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## Context

The Australian Sporting Goods Association Incorporated (ASGA) welcomes the opportunity to make a submission to the Treasury Department's *Consultation into the GST Treatment of Cross Border Transactions*.

ASGA was formed in 1981 as the national industry association representing a broad spectrum of sporting goods and active lifestyle industry participants, including manufacturers, importers, agents, wholesalers and retailers.

ASGA is a leading industry voice on issues impacting the health, trade, regulation and taxation of the sporting and active lifestyle goods industries. ASGA aims to foster market growth, provide services and advocate for increased participation in sport and physical activity.

Members of ASGA include the world's leading sports brands and major Australian retailers. We represent over 1000 sporting and active lifestyle goods retail stores around Australia.

Sports retailers range from the very large (1,000+m<sup>2</sup>) like Rebel Sport and Sportsmart, through to franchisees like The Athletes Foot, family-owned businesses in the High Streets of regional towns and tiny golf club pro-shops. Ownership and business models include franchises, listed corporations, family-owned companies and vertically-integrated international brands.

While the sector is dominated by very large international players (Nike, adidas, etc) and large local retailers (Rebel Sport), in fact the majority of companies in the sector are small and medium enterprises, often family-run businesses.

## Current state of the sporting goods sector

The state of the sporting and active lifestyle retail sector has certainly improved recently, but only slowly and cautiously. One small and independent sporting goods retailer noted that:

“After a massive downturn in sales following the GFC, we are seeing a slight but cautious improvement in the last year or so.”

ASGA's own research shows retail trade in sporting footwear, apparel and equipment rose from \$1.05b in Q3 2011/12 to \$1.19b in Q2 2013/14.<sup>1</sup>



Source: ASGA

This tracks with the more general figures from the Australian Bureau of Statistics, which shows an increase in general retail trade of \$21b in February 2012 increasing to \$23b in February 2014.<sup>2</sup>

<sup>1</sup> ASGA Market Intelligence Sporting Goods Retail Survey – Oct-Dec 2013 Quarterly Results

<sup>2</sup> <http://www.abs.gov.au/AUSSTATS/abs@.nsf/Latestproducts/8501.0Main%20Features2Feb%202014?opendocument&tabname=Summary&prodno=8501.0&issue=Feb%202014&num=&view=>



However, despite the positive news, retailers remain concerned about tough trading conditions.

Consumer sentiment, while trending upwards, remains well down on pre-GFC levels. Unemployment is getting slowly worse and retailers are concerned interest rates, at historic lows currently, are likely to start moving higher in the near future.

### Specific recommendations and concerns

ASGA is broadly supportive of the direction outlined in the Exposure Draft of the *Tax Laws Amendment (GST Treatment of Cross Border Transactions) Bill 2015*.

While the sporting and active lifestyle goods sector has little interest in the tax treatment of intangibles, it is clear the legislation enabling GST to be applied to intangible goods will be markedly similar to the legislation that will be required for tangible goods. As the Treasurer made clear in his *Statement regarding the Council on Federal Financial Relations Tax Reform Workshop*<sup>3</sup> on 21 August 2015, the same type of vendor registration model under consideration for intangibles will be applied to tangible goods.

As such, this submission will outline our ideas and concerns about the proposed Amendment, specifically about how it relates to the vendor registration model and what further concerns we have heading into a new amendment to apply the GST to all consumer-driven cross-border transactions.

#### *Start date*

ASGA notes the start date for the implementation of the Amendment (that is, the scrapping of the low value threshold and the application of GST at the point of transaction to intangible goods supplied by non-resident entities) is 1 July 2017.

ASGA notes that Australian retailers are facing a difficult trading environment and it will be difficult for many of them to wait until 2017.

We implore the government to move the start date forward to 1 July 2016.

#### *Registering for GST*

Given the suppliers we are discussing are, by definition, domiciled overseas and are not subject to Australian taxation law, it is unclear how the Government will implement or enforce this Amendment.

It is unclear from the Amendment and the explanatory materials about how overseas suppliers will register for GST, under what circumstances they will be required to do so (apart from meeting the \$75,000 turnover threshold) and what, if any, measures the Australian Government can take to encourage or force those companies to register. For example, what penalties are in place for a company that doesn't register? How will that be enforced?

<sup>3</sup> <http://jbh.ministers.treasury.gov.au/media-release/075-2015/>

It may be this information is found in the current GST legislation (I haven't had time to go through that in any detail) but, for the moment, ASGA members would appreciate greater clarity in how the Amendment will be implemented and enforced.

### ***Identifying Overseas Suppliers***

It has been noted in other consultations about the Low Value Threshold that a relatively small number of overseas online retailers (accounts range from 20 to 50) account for a large percentage of the total consumer imports into Australia. While that is true for the economy overall, it is the case that in specific industries the largest overseas online competitor is not counted in that 'top 50'.

ASGA is concerned that nothing in the Amendment or explanatory material discusses which overseas suppliers will be encouraged to register for GST, or how they will register. Depending on how companies will be encouraged to register, it may be worth having specific industries identify specific overseas online suppliers to ensure the widest possible take-up of registration.

While it is not necessary to include this issue in the legislation, ASGA members thought it worth raising as part of the more general consultation into the low value threshold.

### ***GST Registration Threshold***

ASGA agrees the threshold for registration for overseas suppliers should be the same as Australian suppliers (turnover of \$75,000 for a for-profit business, \$150,000 for a not-for-profit). The explanatory material (s. 1.58) makes it clear the threshold only applies to the turnover of the Australian portion of that business.

That seems reasonable, although we are concerned about the case of (as an example) an overseas supplier who is doing \$70,000 worth of business with Australian consumers one year, then does \$80,000 worth of business the following year. What steps are in place for the Australian Government or the business itself to recognise it has crossed that threshold and therefore needs to register for GST?

We would argue that large overseas businesses, if their turnover with Australian consumers is over \$50,000 but less than \$75,000, should be required (or at least encouraged) to register, or at least list themselves on a government-held database so they can be informed of their responsibilities under the legislation on the chance they cross the threshold.

### ***Suppliers and Reasonable Belief***

While we agree that, in most cases of online purchasing by an Australian consumer "the transaction will be largely automated and the foreign supplier may have only a limited capacity to investigate the residency and GST registration status of the recipient. Even in cases where supplies involve more dealings with the customer, generally the foreign supplier will need to rely upon information provided by the customer,"<sup>4</sup> it is nevertheless incumbent on the overseas supplier to take every reasonable step to confirm the identity of the consumer.

We note that, while there are penalties for an Australian consumer who provides false information, there are no penalties for the supplier if they do not take the reasonable steps required to verify the identity of an Australian consumer. There should be penalties for an overseas supplier who does not take such steps.

### ***Electronic Distribution Platforms***

ASGA supports the shifting of the GST collection from individual suppliers to Electronic Distribution Platforms. This is especially important where there are a large number of small-scale suppliers that would fall under the registration threshold but which, together on the one EDP, constitute a significant percentage of particular retail industries.

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<sup>4</sup> *Tax Laws Amendment (GST Treatment of Cross-Border Transactions) Bill 2015* Exposure Draft Explanatory Material (p. 15, s. 1.44)

### ***Transitional arrangements***

Apart from our concerns over the start date (see above), ASGA agrees there needs to be some transitional arrangements while this Amendment takes effect. The arrangements outlined in the explanatory material seem appropriate and could be brought forward for a start date of 1 July 2016.

### **Conclusion**

As noted above, ASGA and our members are broadly supportive of this Amendment to apply the GST to intangibles. Our concerns relate, for the most part, to how and when the new legislation will be implemented and enforced.

Our members thank Treasury and the Minister for the opportunity to be involved in this consultation and I would be pleased to discuss this submission further, at your convenience.

ENDS