



Mr Christopher Lyons
Manager
Indirect Taxes and Not-for-Profit Unit
Individuals and Indirect Tax Division
The Treasury
Langton Crescent
PARKES ACT 2600

via email: lowvaluegoods@treasury.gov.au

2 December 2016

Dear Mr Lyons,

Re: *Applying GST to low value goods imported by consumers - Tax Laws Amendment (2017 Measures No. 1) Bill 2017*

Summary of eBay's Position

As you are aware, eBay (Appendix A) has actively engaged with the Commonwealth Treasury and the government advocating against imposing the GST on all overseas purchases that Australians make online.

Contrary to our strong recommendation, the current draft law, namely the *Applying GST to low value goods imported by consumers - Tax Laws Amendment (2017 Measures No. 1) Bill 2017*, proposes that foreign online businesses participating in ecommerce, with annual Australian sales above \$75,000 per year, will be asked to register with the Australian Tax Office, and charge Australians 10% GST.

The draft legislation requires eBay to collect tax on the sale of goods, goods for which eBay does not hold, nor sell, nor collects payment for. In short, eBay is a marketplace, eBay is not a seller. A seller takes money in return for a good. Buyers and sellers trading on eBay set their own terms on transactions, determine by their own agreement the quantum and the method of payment. The transaction is theirs. eBay cannot collect tax from money it does not receive. There are no systems in place or in existence to achieve what the draft legislation potentially uniquely demands of eBay. There is a fundamental misunderstanding of eBay and its business model if it is expected that eBay collects the GST on behalf of sellers.

Unfortunately, the proposal is anti-consumer, anti-free trade and is not consistent with the government's positive policies on innovation and small business. It requires significant amendments prior to any introduction into the Parliament.

The proposed measure does not take into account how the digital economy and ecommerce work and seems to misunderstand the role of various operators in the supply chain.

Australia would be a “first mover” if it adopted these proposed measures, and would set a dangerous precedent under which other jurisdictions may follow suit, harming Australian small businesses (of which there are more than 28,000 on ebay.com.au) and potentially subjecting them to reciprocal domestic taxes in other markets.

In short, eBay does not support the introduction of this policy measure into the Parliament and is of the view that it cannot generate the expected revenue stated in the Federal Budget 2016/2017. The simple reason being that eBay’s business model does not process the actual transactions, nor does it own the goods purchased. While eBay understands the Government’s intent to collect more revenue, our business model suggests eBay cannot collect.

Importantly, eBay enables and supports Australian businesses and if this measure were introduced it would call into question our ability to continue to do so in Australia. This policy measure could potentially shut down parcels being shipped to Australia and impact on competition and choice in the market.

eBay Recommendations

- We respectfully request that the government conduct a formal review into the proposed policy measure to reduce the current GST LVT to zero for overseas online purchases and look to major trading partners such as the United States, which has increased its threshold and urged the US Trade Representative to negotiate similar thresholds with trading partners.
- If the government proceeds with a significantly reduced threshold model, then we respectfully request that the government formally reviews any proposed collection method prior to its introduction into the Parliament and revisits the threshold level, adopting the recommendations of the Productivity Commission’s report from 2011/2012.
- If the government is intent on pursuing a policy regarding overseas online shopping, then the government should follow the lead of the United Kingdom, and instead introduce a measure which is more workable and came into effect in the UK in 2016. Where a transaction takes place overseas, but the goods are already located in the UK, HMRC determines that VAT is payable. When alerted by HMRC, platforms are given 30 days to contact the seller and oblige the seller to make arrangements for the collection of VAT, or to remove the seller from the platform.
- If the government does pursue a zero threshold, a marketplace like eBay should be exempt from collection, given it is not a seller and requires similar treatment to the payment system exemptions under the digital goods and services tax. eBay’s business model does not provide for collection and does not intermediate payments. eBay is simply an online shopping mall, connecting buyers and sellers. Therefore eBay’s business model does not support collection. It cannot collect tax on money it does not receive.
- If the government proceeds we respectfully request that the government includes a sunset clause, whereby the legislation’s impact would be assessed by an independent authority, such as the Productivity Commission, one year following the commencement date to determine if the legislation is working.

We respectfully request that there is further consideration and due process applied to a potential policy measure that will adversely impact online shoppers, and the 28,000 Australian small and medium businesses selling and exporting to the world. Please reach out to eBay’s Director of Government Relations Kristen Foster via email: krfoster@ebay.com if you require further information.

We thank you for considering eBay's principles based submission.

Yours sincerely

Jooman Park
Vice President & Managing Director
Australia & New Zealand

eBay GST LVT Submission

GST on low value foreign purchases

Nations all over the world have a low value threshold to encourage trade and because the cost of collection is more than the revenue raised. In 2016, the United States moved its *de minimis* threshold up from US\$200 to US\$800 and encouraged other nations to follow suit.

Australia is moving in the opposite direction.

The *Tax Laws Amendment (2017 Measures No. 1) Bill 2017* is complicated, inefficient, fundamentally flawed and unfair.

An unworkable, ineffective and unprecedented model

It is an unworkable model with an unworkable commencement date.

It would miss the vast majority of direct, online purchases and miss the majority of platform purchases. It could unfairly and unproductively target eBay's Australian marketplace and by extension the interests of its millions of Australian consumers who risk paying more for products, plus it raises the question of whether global sellers will sell to Australian consumers anymore, given the complexities of Australian domestic taxation imposed on them to do so, when ultimately they do not reside in Australia. They will simply see a huge part of their choice disappear and risk paying double or triple taxation, because liability for collection would potentially rest with four different entities: the seller; the platform; the freight forwarder, and the buyer.

The legislation is open to abuse and is subject to moral hazard. When an extra ten per cent is paid by Australians directly to overseas sellers, there is no way to ensure the money paid will ever reach the Australian Tax Office. The Australian government will educate consumers to expect to pay an extra ten per cent for anything purchased overseas – and will urge foreign companies to charge Australian buyers an extra ten per cent. Yet it has no practical, fair way of ensuring the extra money paid by Australians is ever sent to Australia.

The legislation presumes foreign companies would register with a foreign taxation authority for no benefit, invest in designing and implementing unique systems for customers of that nation, making their products less competitive in a global market. They would be required to discern which buyers are in Australia; collect an extra ten per cent from those particular buyers; and then voluntarily remit the money to a foreign, Australian government.

To police this measure Australia would have to rely on parcels being stopped at border points. The Productivity Commission noted that the cost of such an initiative is many multiples of the revenue raised and would overall harm the community. In 2011, the Productivity Commission calculated that lowering the tax free threshold to \$20 would raise \$550 million but cost \$2 billion to collect using current systems¹. It described the GST as a "*minor part*" of the competitive disadvantage experienced by retailers. The Commission said lowering the threshold was "*mainly symbolic*" and the net effect on the community "*would almost certainly be negative.*"².

In consultations we have been told that buyers of goods more than \$1,000 will escape this new form of tax collection. Unlike low value goods, the government has confirmed high value goods will not be

¹ <http://www.pc.gov.au/inquiries/completed/retail-industry/report>

² As above.

required to have collected at the point of sale. Instead, the current porous model that relies on Customs detection will remain. Retaining the existing architecture for higher value goods would point to a lack of faith in the model that is currently being proposed.

However, blatantly ignoring the Productivity Commission's findings, which are still as relevant today as they were in 2011, the Australian government has released draft legislation to lower the online threshold to zero "requiring" millions of overseas sellers to register with the ATO and collect and send taxes to Australia. The measure is due to commence on 1 July 2017 and would require significant measures for its implementation and enforcement. These will be impossible to put in place in circumstances where eBay does not even collect the proceeds of sale, notwithstanding the short timeframe proposed.

Impact on Australian small businesses

Australian small businesses could find that this measure will prompt an anti-trade response from other jurisdictions. If Australia requires foreign businesses to comply with Australian tax laws and introduce costly, complex measures for which they have no recompense, other jurisdictions may want Australian small businesses to establish similar systems for our exports. This would be an administrative burden for Australian small business.

If the Australian government pursues the draft legislation, the "mumpreneurs", "greypreneurs" and entrepreneurs operating via ecommerce in Australia could be liable to pay domestic taxes in other jurisdictions that may follow Australia's lead.

There is also the issue of how this proposed law will impact on Australia Post, who Treasury advised will be captured under the proposed measure as a goods forwarder. This could also impact the Federal Budget's bottom line, with additional funding and resources potentially required to take on such a burden.

Major questions arising from the draft legislation

Put simply, sophisticated systems have not been designed and do not exist to put the legislation into effect.

? The proposed law is "grey"

There is moral hazard in this legislation with too many uncertain and "grey areas", questions such as:

- How does this law interact with current GST law, Australian Consumer law and trade law?
- How will regulators enforce against all three categories who are domiciled across the globe?
- How will collection work, will consumers be taxed four times i.e. by the vendor, by the electronic distribution platform and by the goods forwarded and as a consumer? Where does the "buck stop", who is ultimately liable and how will each operator know if another operator has collected?
- How do the below \$1000 threshold rules work and the above \$1000 threshold rules inter-work?
- How does government expect business to get ready by 1 July 2017 for a proposed implementation date then, especially given the obvious challenge that no other country is following such a model?

Alternatives

No jurisdiction worldwide has proposed anything similar to Australia's draft legislation.

In the United Kingdom, an alternative approach has been introduced by Her Majesty's Revenue and Customs³. While eBay opposed this measure in the UK, we note that it is preferable, and potentially workable, in comparison to the unworkable position being advocated by the proposed draft legislation in Australia.

Where a transaction takes place overseas, but the goods are already located in the UK, HMRC determines that VAT is payable. When alerted by HMRC, platforms are given 30 days to contact the seller and oblige the seller to make arrangements for the collection of VAT, or to remove the seller from the platform.

Conclusion

The legislation as drafted will fail to raise significant if any revenue, will be extremely cumbersome and expensive to enforce, will be easily avoided by most buyers and most overseas sellers, and unfairly targets successful online platforms in Australia and the buyers and sellers who currently use it.

It is unworkable legislation, with an unworkable commencement date.

eBay calls on the government to reconsider its position in the interests of constructive national policy that is consistent with the principles and benefits of free trade, innovation and entrepreneurship and in the interests of all Australians.

³ <https://www.gov.uk/government/publications/vat-overseas-businesses-and-joint-and-several-liability-for-online-marketplaces/vat-overseas-businesses-and-joint-and-several-liability-for-online-marketplaces>

Appendix A

About eBay

eBay is an online marketplace. Sellers put their products before a worldwide audience of buyers. More than 165 million people shop on eBay worldwide, freeing buyers and sellers from their geography and local economic conditions.

28,000 small to medium sized Australian businesses operate on eBay every day. It gives them a world of opportunity to sell their products to established and emerging markets. Appendix A includes examples of Australian sellers using eBay's marketplace to grow, employ and export.

eBay has built its technology and platform to connect and empower, to lift people up and foster entrepreneurship.

Online platforms like eBay are particularly beneficial for small businesses, because we provide a gateway to global sales. Exporters grow faster, are less likely to go out of business, and are twice as likely to outperform their domestic market.

Currently, fewer than 5% of Australian businesses export, compared with 28% in the UK, 16% in Germany, 15% in France and 4% in the US. However, almost 90% of Australian eBay sellers are exporters.

eBay's presence in the market is a benefit for the Australian economy, encouraging exports, innovation, resilience and growth.

In Australia major retailers like Myer, Target and BigW are on www.ebay.com.au, alongside mum and dad entrepreneurs, medium and microbusinesses competing worldwide.

eBay itself is not a seller. Like an online classifieds or a shopping centre landlord, we provide a virtual location where buyers and sellers meet. eBay does not own the goods for sale, hold them, or have a warehouse. eBay does not set the price of the items, or receive payment for them. Sellers conduct transactions with buyers. Buyers and sellers communicate directly with each other and often negotiate prices between themselves.

Appendix B

eBay and the Opportunity Economy



Last month eBay released the [Opportunity Economy Report](#). The report measures optimism levels in the industry, attitudes towards emerging technologies, deep dives into perceived barriers to growth, export behaviours and, perhaps most importantly, a variety of Australian small and medium business (SMB) case studies.

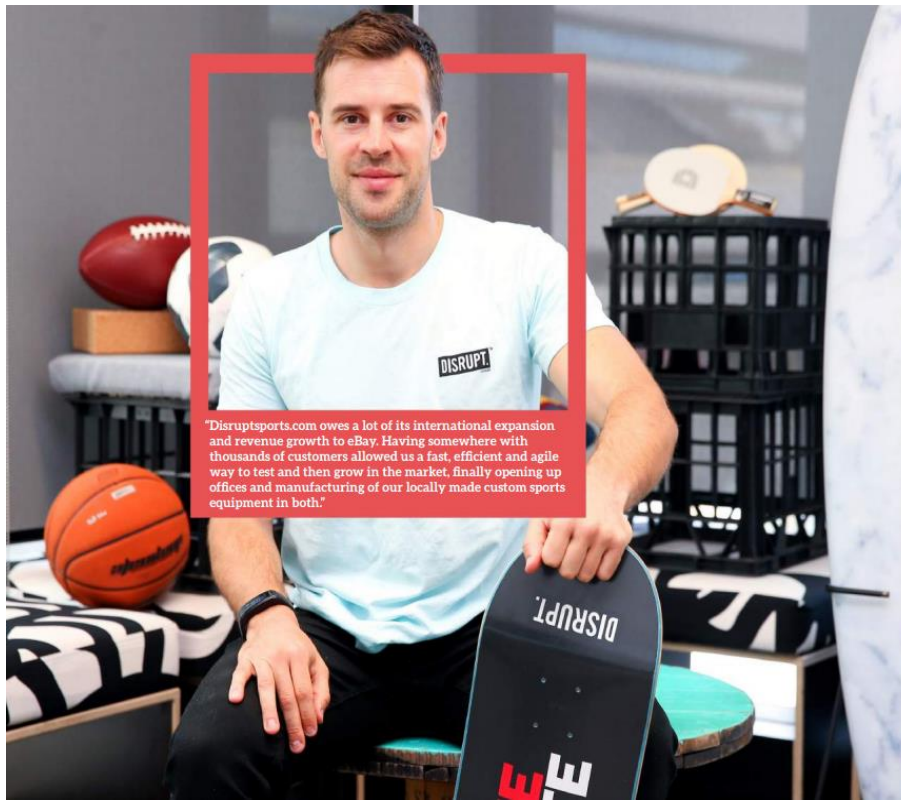
Key findings include:

- ✓ Australian SMB's selling online are more optimistic than Commonwealth counterparts despite concerns over the domestic economy, property costs and government bureaucracy.
- ✓ More than 70% of online-enabled Australian SMB's are exporting, as compared to less than 5% of registered businesses in Australia, and that number jumps to 88% when you look at SMB's leveraging eBay's global marketplace.
- ✓ Nearly a quarter of regional businesses saw more than 40% of their sales come from overseas customers in the past 12 months, compared to just 2% of metro-based businesses.
- ✓ 70% of SMB's say marketplaces like eBay are the key to competing against large retailers.
- ✓ There are now 2,100 eBay millionaires coming from 980 different Australian postcodes, which means eBay is currently creating 5 millionaires a week.

<http://www.ebaymainstreet.com/news-events/eBay-releases-opportunity-economy-report-australia>

Appendix C

Case Study of an Australian Seller on eBay who could be impacted by these proposals



"Disruptsports.com owes a lot of its international expansion and revenue growth to eBay. Having somewhere with thousands of customers allowed us a fast, efficient and agile way to test and then grow in the market, finally opening up offices and manufacturing of our locally made custom sports equipment in both."

GARY ELPHICK

DISRUPT.
SPORTS



BONDI, NEW SOUTH WALES

Disrupt Surfing

Disrupt is an online business that allows users to customise and personalise their action sports equipment. Founded by Gary Elphick, the concept for Disrupt was born from his time as a surf and snowboard instructor and has turned from a small operation selling surfboards, to a worldwide company with offices in both the UK and USA. Being on eBay gave Disrupt an automatic audience and was a key factor in extending their international reach beyond traditional trade routes as Gary and his team could make their product visible to customers on every continent. Exports now account for over 30% of Disrupt's sales, with consumer engagement across the globe including Mexico, Italy Portugal, Israel and New Zealand.

67%

67% OF AUSTRALIAN SMEBS AGREE THAT EARLY ADOPTION OF NEW TECHNOLOGY IS CRITICAL TO STAYING RELEVANT AND COMPETITIVE