2 December 2016

Please find the following submission with questions, comments and concerns surrounding the draft legislation Treasury Laws Amendment (2017 Measures No. 1) Bill 2017: Low Value Imported Goods.

I feel that it is important that I start by saying that our business is in complete support of the proposal to bring parity to the retail landscape of on and off-shore retailers. Furthermore, additional GST revenue is only a positive thing for Australia and, as a wholly owned Australian based business we acknowledge that it is in the best interest of the country. There are some crucial points to be considered with this legislation, which could potentially have a detrimental impact on the industry, the Australian consumer and our business, namely:

* That the information surrounding the changes is clear and can be explained to our customers.
* That the start date for the new legislation is considered with practical applications around changes to business processes and technology.
* That there is a level-playing-field between both retailers as well as freight providers and other services involved with cross-border trade involving low-value consignments.
* That the legislation addresses the issues that may be exploited by vendors using postal versus commercial (SAC) reporting import channels.
* That the consumer (recipient) is provided with a clear process for dealing with GST payments that will not lead to negative shopping experiences or an over-charge of GST by off-shore vendors or the Australian Government at the time of import.

The following has been written based on our interpretation of the documentation provided by the Australian government, feedback from our customers and meetings held with representatives from Treasury, DIBP and the ATO following the release of the draft legislation.

Timeframe is too short

* The timeframe for technological and business process changes between the finalisation of the legislation and the proposed go-live of 1 July 2017 is far too compressed. We are requesting an extension of a minimum 12 months from the date of the legislation being finalized before this goes live.
  + This legislation is proposing a system change that would be impacting the vendor websites at the point of checkout OR would require a completely different mirrored site purely for Australian consumers. In addition, because these changes are financial in nature, they will need to be tested with extreme thoroughness prior to go-live.
  + In addition to the changes to the vendor websites and back-end reporting, there will also need to be changes to the electronic data manifests being provided to freight companies to include the VRN/ABN information for cargo reporting. These changes will need to be developed and tested between vendors and freight providers.
  + Furthermore, the freight providers will need to test their system changes with the changes required in the cargo reporting systems (i.e. Cargowise, Cyberfreight, etc.) and the cargo reporting & customs systems will also require changing – this is touched on later in this document.
  + As there is a requirement to provide remittance to the Australian Government, this will mean that there will be accounting changes within the internal business processes of the vendors that will also require implementing.
  + The reality of making a change to an eCommerce and or shipping platform is as follows:
    - A business will not commence with system changes prior to the final legislation being absolutely.
    - The business would then need to design the solution and scope the changes.
    - The scope document would be reviewed by development teams to provide feedback, timeframe estimates, etc.
    - There will be a cost to making the development changes, which may have budget impacts and may require board decisions, which could add additional time in making a start on the changes.
    - Depending on the development required there will be a period of weeks-to-months to make the changes, test and eventually roll-out to live.
  + With legislation still in draft and an anticipation of a number of responses being submitted, it is assumed that final legislation will not be available for review until March at the earliest.
  + To have the system changes made in time for a 1 July 2017 go live would be nearly impossible. To put it in perspective, the changes to the legislation for GST collection on digital purchases was based on a practice, which has existing precedence elsewhere in the world. As such, international retailers who have digital selling platforms have systems which are geared for taxation at the point of sale. This legislation was passed in its final form in May 2016 for go live on 1 July 2017. The proposed collection of GST on sales of physical merchandise is a world-first and would presumably involve a significantly higher number of vendors. This is further complicated by the importation process, which includes a difference between commercial freight (SAC) and postal imports and different requirements again for consignments over $1,000, which also includes the collection of GST. There are foreign currency considerations, which may see orders moving from Low-to-High Value and vice-versa. There is no-doubt that this is a far more complicated arrangement, with a time allowance for implementation that is far shorter than the allowance for a simpler rollout that had global precedence.
* Customs and Cargo Reporting Systems
  + It is noted that to implement these changes will also require a system change within the customs platforms as well as within the accredited cargo-reporting platforms such as EDI Cargowise and Cyberfreight.
  + What is the anticipated ready-date for the customs system and what is their anticipated requirement for testing prior to go-live?

Preventing Unfair Advantages to Non-Compliant Vendors

* We understand that there are around 2,000 vendors that have already been identified as potentially qualifying for the >$75,000 threshold and that the Australian authorities will be focussing on ensuring compliance for the top 500 vendors.
  + This suggests that whilst within the other 1,500 vendors it is anticipated that a percentage of them will become compliant, it also insinuates that a number of them are likely to ignore the changed legislation and will attempt to avoid collection and payment of GST until enforced to do so.
  + If this were the reality, there would be the very real possibility that the non-compliant vendors would have a 10% price advantage over compliant vendors.
  + As a freight provider specialising in low-value cross-border shipments vendors will be looking to companies like ours to assist them with their understanding of the legislation, the changes required, etc. It would be very helpful if we were able to gain a deeper understanding of how the Australian authorities are contemplating policing non-compliant vendors. This will assist in providing a level of comfort to our customers in agreeing for them to become early-adopters for compliance.

Double Charge of GST

* There needs to be a simplified process for dealing with the possibility of double-charging for GST and the related credit issues to refund the GST back to the recipient who has (or is being) double-charged. This would occur in the case of:
  + Vendors charging GST on all orders, regardless of whether they are HV or not
  + GST being charged for HV orders at the time of import based on standard HV entry processes
  + Whilst the legislation is quite clear on which orders should and shouldn’t be charged GST, the practical application of this at the retailer and border control/import level is much less-clear.
  + It is likely that vendors will choose the path-of-least resistance when building GST charging into their checkout technology, which will simply be to apply GST to all sales, regardless of whether they are deemed High or Low Value.
  + There needs to be a simplified process for traditional customs brokers to easily identify orders coming from GST compliant vendors to ensure that there is no GST charged on HV imports that have already had GST applied at the time of sale.
* Along with the above HV vs. LV calculations, there exists additional complication for vendors to determine taxable vs non-taxable supply, both for consolidation of orders as well as in the case of reverse charge rules.
  + As legislation that is expected to attract adoption through an ease of implementation and execution, there are a number of “what-if” scenarios that aren’t easily dealt with at the point of sale for an off-shore vendor. If any one of these scenarios are handled improperly it may lead to poor customer experiences, which could have a detrimental impact on the return of that customer to the retailer’s web site.
  + It’s important to note here that we’re not only talking about foreign owned vendors, but also Australian businesses that have taken the advantage of off-shore sourcing and fulfillment of orders. If the purpose of the legislation is to bring about parity amongst retailers it is important that this does not disadvantage retailers through its complexity.
  + In addition to educating vendors it will be critical that customs brokers are also made aware of the various types of clearances, when imports should be classed as GST-Free, whose GST collection takes precedence in the situation where GST was collected at the time of sale, but for whatever reason, is also payable at the time of import based on the current law, which is not expected to change.

Platform/Marketplace Complications

* It is understood that where a vendor sells goods via a platform (eBay, Amazon, etc.) that it is the responsibility of the platform to collect, report and remit the GST to the Australian government. Furthermore, we understand that it is the amount of sales the platform makes, not the individual vendor, which determines the $75,000 threshold. So, for clarity:
  + - Vendor A has $100,000 worth of sales on eBay USA
    - Vendor A has a further $100,000 worth of sales on Amazon USA
    - Vendor A has $50,000 worth of sales through their own USA website
  + In this scenario, Vendor A will not need to apply for a VRN as their sales do not exceed the $75,000 threshold.
  + Now, Vendor A uses a single commercial freight provider to deliver the goods to customers, regardless of the sales channel. Is it correct to assume that the vendor will be required to provide data to their freight provider with three different scenarios for the VRN/ABN field?
    - EBay USA’s VRN/ABN
    - Amazon USA’s VRN/ABN
    - Leave the VRN/ABN field blank because Vendor A does not have direct sales exceeding $75,000
  + What is to stop a vendor from either:
    - Using the platform’s VRN/ABN for consignments that weren’t actually sold on the platform
    - Not providing a VRN/ABN even if their direct sales exceed $75,000 and if questioned stating that their sales are through multiple platforms and their direct sales are under $75,000
  + It seems that vendors selling goods through platforms could either face greater complexity in their consignment data reporting or additional advantage in hiding their own sales amongst the platforms.
  + It also appears that platforms might become disadvantaged in reporting analysis should vendors be using a platform’s VRN/ABN for goods not sold via that platform. This would mean that the funds remitted by the platform may be less than what the reporting suggests they should remit.

Postal Clearance

* We have a significant issue with the difference between the treatment of postal imports and commercial cargo reporting (SAC entries).
  + Not subject to the same reporting requirements at the point of entry due to the inability of postal entities to provide complete data from the origin shippers/vendors.
  + The legislation is unclear as to what the monitoring and auditing requirements will be towards vendors utilising postal services for the import of their freight into the ITZ. It has been shared with us that there are several mechanisms in place both to investigate/audit the sales from an off-shore vendor into Australia with certain countries as well as to potentially recover GST monies owed. However, without publicly disclosing the extent to which these mechanisms exist, how and when they will be utilised it appears to be an idle threat to vendors using the postal channel versus the much more stringent commercial/SAC cargo reporting.
  + If off-shore vendors utilise postal services to circumvent the SAC cargo reporting channel for the importation of freight, it will lead to two negative outcomes:
    - The purpose of the legislation, being to collect GST from off-shore vendors, will fail.
    - There is the very real possibility that there will be a detrimental impact on Australian companies operating within the SAC cargo reporting channel as vendors move away from commercial airfreight to the postal solution purely to avoid reporting requirements.

Goods Forwarder Clarification

* Clarification of “Goods Forwarder”
  + There is contradiction within the documentation, which is causing confusion as to what businesses fall into the classification of a “Goods Forwarder”
  + Within the Explanatory document, page 7, first paragraph, it states that “Entities that merely deliver goods to the ITZ for the supplier or which do not carry on an enterprise are not goods forwarders.”
  + Within the Explanatory document, page 23, example 1.13, it states that “Zippy Deliveries also meets the definition of a goods forwarder because they deliver the goods to the ITZ”

Cost Pressures on Suppliers

* Cost pressures on freight providers
  + Note that we have already been notified by several of our clients that the GST will not be able to be incorporated into their sales price without having a detrimental impact on their turnover and, as such, they will be looking for other areas to save 10% of cost so that the changes present a cost-neutral position to their business. They have specifically stated that there will be an expectation that we, as the freight provider, will need to lower our margins in order to ensure that we retain their business.
  + Whilst this is a commercial situation that does not directly involve the ATO, Treasury or the DIBP, the reality is that putting this legislation into place with such little notice may have significant negative impact on the profitability and ongoing viability of our business.
  + Freight forwarding operates on very thin margins, of between 10-15% gross and 2-3% EBIT. Retailers expecting that we will wear their GST, or even a portion of it, will send our business into negative territories.
  + The freight industry catering to off-shore retailers is growing and we are employing more and more people every month. If these changes are implemented too quickly and without appropriate time for vendors and freight providers to put in appropriate strategic measures, there could be very real detrimental impacts on employment of our staff and people employed in similar businesses.