



**Submission to Deputy Commissioner Policy and Strategy –
New Zealand Inland Revenue Department**

GST on low-value imported goods: An offshore supplier registration system

10 July 2018

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Introduction

Amazon appreciates the opportunity to respond to the New Zealand Government's discussion document '*GST on low-value imported goods: An offshore supplier registration system*', and values the hundreds of thousands of New Zealanders who choose to use our services to shop, grow their businesses, innovate and export to overseas marketplaces every year.

Historically, many governments and tax authorities have adopted Goods and Services Tax (GST) policies whereby the importation of goods below a defined *de-minimis* threshold would not be subject to GST and/or associated customs duties or charges. As the NZ Government's discussion document notes, these policies have stemmed from a recognition that the compliance and administrative costs associated with low value imported goods (LVIGs) would outweigh the value of any GST collected.

Amazon recognises the NZ Government's concerns about its tax base and the position of NZ domestic retailers as being the primary drivers of the proposal to require offshore suppliers to collect GST on LVIGs supplied to NZ consumers. In addressing these concerns, Amazon urges the NZ Government to consider the elements of a GST collection model that will best meet its objectives of creating a genuinely level playing field between domestic and overseas retailers and maximising the collection of GST revenue. In particular, we urge the government to consider an approach that will ensure compliance by all suppliers regardless of differing business models. We are concerned that an unenforceable and unworkable collection model will harm both consumers and competition by potentially reducing access to competitively priced goods from overseas marketplaces.

We recognise that the NZ Government has proposed an offshore supplier registration model that would require marketplaces to be treated as the supplier for the purpose of registering for GST and calculating, collecting and remitting GST on underlying supplier transactions. We also note the advice of the NZ Government's Tax Working Group that "[o]ptions for collecting GST between the point of sale and delivery...should continue to be reviewed to see if practical issues with them can be overcome and become an effective means of collecting GST on low value goods."¹

Amazon is concerned that the proposed supplier model will not achieve the NZ Government's objectives to create a level playing field between NZ and overseas retailers and maximise GST revenue collection. Moreover, this approach will likely require dedicated resources to address its shortfalls, similar in scale to those required to implement the modernised transporter model, while collecting only a fraction of the comparable revenue.

While we welcome the opportunity to suggest improvements to the NZ Government's proposed supplier model, Amazon would ultimately need to assess the feasibility and impact of any model adopted once the implementation details were established. This assessment may result in changes to

¹ Letter to NZ Government from Hon Sir Michael Cullen, Chair of the Tax Working Group, '*GST on low-value imported goods*', 26 February 2018

the products and services Amazon is able to provide to NZ consumers, including goods or services offered by third parties on Amazon's websites.

The following submission addresses the challenges of implementing an effective model for the collection of GST on LVIGs. We have structured our submission into three distinct sections:

1. The broad issues with compliance and enforcement against entities and the necessity of border enforcement mechanisms in achieving the objectives of the proposed changes.
2. Our response to the advice of the Tax Working Group by outlining the scope and benefits of an alternative model, the modernised transporter model, for remittance of GST on LVIGs.
3. Our response to the NZ Government's proposed model for an offshore supplier registration system, with suggestions for how this approach could be improved. Amazon emphasises that even with these improvements, the model will likely not meet the NZ Government's objectives, nor match the modernised transporter model's rates of compliance or revenue collection.

As an overarching recommendation, we strongly support the proposed removal of tariffs and cost recovery charges from all imported goods valued at or below \$400 regardless of the GST collection model ultimately adopted. This approach will reduce complexity and compliance costs and deliver direct benefits to NZ consumers.

Finally, we urge the NZ Government to ensure the introduction of any new rules provides a lead time of 18-24 months to allow for businesses to implement changes to systems and processes and also to allow for appropriate communication plans to be deployed.

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1. Compliance and enforcement on low-value imported goods

Effective compliance in cross-border tax collection requires enforcement at the border. Any collection model without border enforcement will depend on voluntary compliance and offshore enforcement, as was recognised in the final report of the Australian Government's 2017 Productivity Commission review.² Australia will be the first country globally to adopt a supplier registration model. According to the Australian Government's own modelling, at maturity – five years after implementation - this model will only collect GST on approximately half of all low-value goods imported into Australia. Amazon is concerned that even these estimates are optimistic, as ecommerce business models will continue to evolve, and consumers will increasingly purchase from untaxed suppliers driven by financial incentives.

This low collection rate reflects the fundamental flaw of Australia's legislated supplier registration model, in that it lacks any mechanism to enforce compliance at the border. Without border enforcement, governments will not achieve their objectives of creating a level playing field between domestic and overseas retailers and maximising the collection of GST revenue. Amazon supports these objectives and has urged the Australian Government to adopt an approach that would better achieve them.

In its current form, the NZ Government's proposed offshore supplier registration model (the 'supplier model') is similarly dependent on voluntary compliance from many thousands of offshore suppliers (including small businesses) and marketplaces that have no presence in NZ. This will require offshore enforcement of NZ laws against each of these businesses in every country in which they operate. Local laws cannot be effectively enforced with respect to goods sold by nonresident entities, in part due to the limitations of multilateral and mutual assistance treaties. This has the real potential to disadvantage local businesses, as voluntary compliance with the law cannot be assumed. As a result, Amazon is concerned that many businesses will not comply with the supplier model and will face no consequences for non-compliance given the lack of an effective enforcement mechanism.

Another key limitation of the supplier model is that purchases made through online intermediaries and referrers are untaxed. Suppliers looking to circumvent the law will easily be able to migrate their sales to non-compliant marketplaces or new marketplaces that operate below the NZD \$60,000 threshold. Consumers will adapt their buying behaviours to seek out the marketplaces and suppliers who do not charge the GST, further reducing GST collection. Moreover, as technology advances, the cost of establishing a marketplace will continue to plummet and new marketplaces will proliferate, potentially increasing such behaviour.

A fair and effective cross-border tax collection model should be technologically neutral, keeping pace with these shifts in buying behavior and the ever-changing supply chain models that continue to emerge. Border enforcement would address this limitation and therefore create a more level playing field.

² Australian Government Productivity Commission, *Collection Models for GST on Low-Value Imported Goods*, Productivity Commission Inquiry Report, No. 86, 31 October 2017, pp. 44-47

We note the discussion document cites the NZ Government's implementation of the GST on cross-border services and intangibles as evidence that an offshore supplier registration system is "effective and relatively easy to comply with."³ However, we suggest that there are fundamental differences between the requirement for non-residents including marketplaces to collect GST on electronically supplied services (ESS) and the proposal to apply a similar requirement for tangible goods. These include:

- There is a mechanism to tax tangible goods at the time of physical importation, with the potential to achieve close to 100% compliance. This option does not exist for ESS;
- Cross border transactions of goods require the determination of where the goods are shipped from and whether the goods fall within changes to LVIG rules, raising the issue of which party is best placed to accurately make these determinations. ESS do not require similar determinations;
- A standard rate of GST is applied to all ESS transactions, whereas goods in most jurisdictions attract different GST rates depending on the underlying product type. This requires detailed analysis to determine the appropriate GST liability, raising the issue of which party is best placed to accurately make these determinations;
- Once the GST registration threshold is breached, all ESS transactions are subject to GST. This is different to LVIG requirements, where there is an additional need to identify whether the value of a transaction is above or below prescribed LVIG values; and
- Transactions involving goods can be canceled, requiring the return of items, and giving rise to additional complex requirements for the supplier to track and amend underlying GST charged on initial sales. The process is much simpler for ESS transactions, which can simply be reversed.

Amazon urges the NZ Government to consider these important differences as it assesses whether the offshore supplier registration model for ESS can be easily replicated for tangible goods. Amazon believes there is a case for considering a different approach for LVIGs, particularly in the potential role of border enforcement.

1.1. Stricter customs/border controls

A common feature of all transactions that involve goods shipped to customers from overseas is that the goods need to be imported and declared to customs or border authorities. If customs and border authorities' GST compliance activities are carried out correctly and strictly enforced, this should ensure that the majority of offshore suppliers declare and remit the correct amount of customs duties and GST on the goods they import. Robust compliance measures should apply to shipments through both express carriers and postal operators, ensuring compliance regardless of transportation mode. Amazon recommends that the NZ Government would most efficiently achieve its objectives by focusing on increased resourcing, better technological and reporting systems, and identification of indicators of fraud or under-declared values for goods.

³ 'GST on low-value imported goods – an offshore supplier registration system: a government discussion document', Policy and Strategy, Inland Revenue, May 2018, p. 10

Amazon also recognises that at present, NZ customs and border authorities may lack the resourcing and capability to undertake compliance and enforcement activities in relation to LVIGs cost-effectively at scale. However, shifting collection responsibilities and costs to offshore marketplaces is not the most efficient alternative, and ultimately, effective enforcement at the border may require much of the same resources and capabilities that the NZ Government is seeking to avoid. In this context, it is appropriate to consider which entities in the supply chain are best placed to assist with GST collection and remittance on LVIGs, in a way that facilitates effective border enforcement. Amazon notes that there is already operational infrastructure and technical mechanisms in place for the collection and remittance of GST on high-value goods at the border.

Express carriers and postal operators are involved in the actual delivery of all imported sales and are therefore ideally placed to assist in border enforcement of GST on LVIGs. They customarily contract with suppliers to fulfil the customs clearance procedures and pay the import duties and taxes on their behalf. They have the direct relationships required to collect essential shipping data elements (ultimately from the principal supplier) including description of the goods, consignee details, country of dispatch and country of destination, weight, pieces, value and currency (at shipment level).

As the NZ Government may be aware, Amazon has proposed an alternate collection model, utilising the unique position that express carriers and postal operators occupy in the supply chain for imported goods. Amazon has described this approach as a 'modernised transporter model' because it leverages the technological change that is already underway in parcel processing globally, driven by a combination of commercial and national security concerns. Amazon has provided submissions detailing the modernised transporter model to the Australian Government's Productivity Commission inquiry into models for collecting GST on low value imported goods.⁴⁵

As stated above, we recognise that the NZ Government has requested feedback on the design of an offshore supplier registration model. At the same time, we note the advice of the NZ Government's Tax Working Group that "[o]ptions for collecting GST between the point of sale and delivery...should continue to be reviewed..."⁶ This recommendation recognises that the involvement of express carriers and postal operators is critical in achieving the NZ Government's objectives for collecting GST on LVIGs.

If the NZ Government were to adopt the supplier model for GST collection on LVIGs, it would be only the second country globally to do so. The model is untested, with the Australian Government's modelling suggesting that approximately 85% of LVIGs passing its border will remain untaxed in the first 12 months.⁷ Amazon is also concerned that an unenforceable and unworkable collection model will harm

⁴ http://www.pc.gov.au/__data/assets/pdf_file/0008/221489/sub035-collection-models.pdf

⁵ http://www.pc.gov.au/__data/assets/pdf_file/0017/222182/subs004-collection-models.pdf

⁶ Letter to NZ Government from Hon Sir Michael Cullen, Chair of the Tax Working Group, 'GST on low-value imported goods', 26 February 2018

⁷ Australian Treasury estimates indicated collection rates starting at 15 per cent in 2017-18 and then 21 per cent in 2018-19. See Amazon, 'Submission to the Productivity Commission: Collection models for GST on low-value imported goods', 4 September 2017, p. 43.

NZ consumers by potentially reducing access to competitively priced goods from overseas marketplaces. We would therefore urge the New Zealand government to delay adoption and implementation until it has had sufficient opportunity to determine whether offshore suppliers are able to make the complex changes needed to comply with Australian law, whether Australian authorities are able to enforce the law, and whether large numbers of non-Australian suppliers are voluntarily complying.

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2. The modernised transporter model

Amazon proposes an alternative GST collection model that takes the core principles of border enforcement and combines them with the significant and ongoing technological developments in logistics and clearance processes over recent years. The modernised transporter model would place enforceable liabilities on a limited number of domestic express carriers and NZ Post (collectively 'transporters') who each have a physical presence in NZ, and in respect of whom Inland Revenue has jurisdiction. For these reasons, and because the model will over time drive consistent treatment of goods entering NZ irrespective of who sold them, this model will ensure nearly 100 percent GST collection rates and will truly level the playing field between NZ and overseas retailers.

Importantly, the modernised transporter model is neutral across transportation modes, using the availability of Electronic Advance Data (EAD) from both cargo and postal operators. Where currently certain transporters may be challenged to provide EAD, other stakeholders may be incentivised to provide the data in return for expedited facilitation, such as pre-arrival clearance and immediate release. In this respect, the model takes advantage of technological advancements that have occurred through recent years and are continuing to gather pace, driven by a combination of commercial and national security concerns. Governments are seeking greater visibility and assurance in regards to goods crossing their borders, while postal operators are competing with express couriers in parcel delivery, meeting the increasing expectations of customers for fast and convenient delivery. Achieving these outcomes cost-effectively and at scale requires data-driven solutions across both the cargo and postal streams to ensure there are no loopholes for non-compliant and potentially unsafe goods.

The modernised transporter model is an alternative, not a complement, to the supplier model, and the former cannot be layered on top of the latter. A single point of tax assessment with a single party (the transporter) accountable for the GST is the only model that will drive consistency and compliance. Layered models will lead to duplicate or no GST being collected and asking multiple parties to incur compliance costs will further drive up costs for consumers.

Whether under the supplier model or the modernised transporter model, the event triggering the GST liability on goods sold overseas to NZ consumers is not the sale of the goods alone (a transaction that occurs outside of NZ and which should not be subject to NZ taxes) but rather the importation of those goods into NZ. The actual importer of the goods is generally the consumer, and the supplier of the LVIGs typically engages the transporter on behalf of the consumer to handle importation of the goods into NZ and delivery to the consumer. As the transporter is the party facilitating the importation of the LVIGs for the consumer, the transporter is the most appropriate party to collect and remit the GST payable on those goods, based on information from the supplier. This model would also provide consistency with the established process whereby courier companies collect GST on goods above the de minimis threshold.

Amazon would welcome the opportunity to discuss implementation of the modernised transporter model with the NZ Government in more detail.

3. Improvements to proposed offshore supplier registration system

Amazon recognises that the NZ Government has proposed an offshore supplier registration model that would require marketplaces to be treated as the supplier for the purpose of registering for NZ GST and calculating, collecting and remitting GST on underlying supplier transactions. We are concerned that this approach will not achieve the NZ Government's objectives to create a level playing field between NZ and overseas retailers and maximise GST revenue collection. Moreover, this approach will likely require dedicated resources to address its shortfalls, similar in scale to those required to implement the modernised transporter model, while collecting only a fraction of the comparable revenue.

While we welcome the opportunity to suggest improvements to the NZ Government's proposed supplier model, Amazon would ultimately need to assess the feasibility and impact of any model adopted once the implementation details were established. This assessment may result in changes to the products and services Amazon is able to provide to NZ consumers, including goods or services offered by third parties on Amazon's websites.

3.1. Border enforcement

The primary, practical limitation of the NZ Government's proposed supplier model is that it lacks an effective border enforcement process and is instead dependent on voluntary compliance and ineffective offshore enforcement. Without border enforcement, Amazon is concerned that the NZ Government's proposed model will increasingly leak GST revenue over time and distort competition. Suppliers looking to circumvent the law will easily be able to migrate their sales to non-compliant marketplaces or new marketplaces that operate below the NZD \$60,000 threshold. Consumers will have an incentive to purchase through untaxed suppliers and marketplaces, while non-compliant entities will benefit at the expense of compliant entities, and goods will flow through the border with no GST collected and remitted. Moreover, as technology advances, the cost of establishing a marketplace will continue to plummet and new marketplaces will proliferate, increasing such behaviour. Amazon believes this outcome would be unworkable and urges the NZ Government to consider different methods of border enforcement to create a more level playing field between NZ and overseas-based retailers.

3.2. Red lane/green lane parcel processing

Amazon recommends the NZ Government consider steps to modernise parcel processing for LVIGs with the aims of maximising compliance and GST revenue collection. The NZ Government may consider leveraging recent and ongoing technological advancements in parcel processing to put in place border enforcement that is low-cost and scalable over time, with minimal impacts on NZ consumers. While this approach would not achieve the same level of compliance as the modernised transporter model, any level of border enforcement would improve compliance and level the playing field among offshore sellers.

Under present arrangements, Electronic Advance Data (EAD) is required to be submitted to the NZ Customs Service for packages sent via express couriers and freight forwarders. Amazon proposes that suppliers should be required to provide the NZ Customs Service with certain minimum EAD to help assess on an expedited basis that GST has been collected and remitted. Customs should then 'match' carrier information with supplier information and, accordingly, determine which packages are GST compliant. Based on this compliance determination, packages should be directed through different channels at the border. If a package is not GST compliant because it cannot be 'matched' between a marketplace and courier, that package should automatically be sent to a red channel. GST compliant packages would be directed through a green channel.

3.3. Primary liability

A principle underpinning any fair and effective cross-border tax collection model is that it should not shift tax debts onto parties that do not have – and may be unable to obtain – sufficient information to determine the tax payable. The marketplace operator or provider is not the legal seller of record (SOR) in the transaction and marketplaces will not always know where and how these suppliers conduct their business to determine the GST accurately. For example, third party sellers who list their goods on Amazon are in control of their product listings, terms of sale, and fulfilment of sold goods to consumers. While some sellers can elect to use Amazon's logistics services, Amazon frequently will not touch the goods or services that are sold by third parties through Amazon's online stores since many sellers will directly fulfil orders submitted by consumers. In such cases, Amazon only facilitates orders between shippers and importers and may lack necessary information for determining the tax payable. Amazon therefore recommends that marketplaces should not have primary liability for GST or associated penalties for any GST errors relating to third-party sales due to inaccurate information provided by the suppliers. Rather, in an offshore supplier registration model, tax liability should be either on the SOR or the importer, with the marketplace operator (or carrier) liability limited to remitting collected proceeds designated by the SOR or consumer.

3.4. Channel neutrality

A key limitation of the offshore supplier model is that suppliers looking to circumvent the law will easily be able to migrate their sales to non-compliant marketplaces or new marketplaces that operate below the NZD \$60,000 threshold. Amazon considers that any GST law should be neutral and equitable in terms of its application across businesses. In particular, if the NZ Government seeks to place any obligations upon marketplaces, these should be the same regardless of the structure of marketplace operations and whether marketplace operators are physically located within a particular territory or not. The scope and meaning of 'marketplace' should be based on the broadest possible definition that captures all marketplace models and operations that facilitate underlying transactions between third-party sellers and customers.

3.5. Marketplace neutrality by enforcing or removing GST exemptions

Amazon is concerned that the registration threshold of NZD \$60,000 of low-value goods into NZ would make it nearly impossible for the government to detect noncompliance with the new GST law for all but the largest offshore suppliers. For example, without this threshold, it would be possible to execute a test buy for an inexpensive product from a company that is suspected of noncompliance in order to check whether they are paying the GST. However, with such a sizeable exemption, it may be very difficult to prove that a foreign business is above the threshold or required to be registered for GST.

A similar issue arises with goods improperly classified as gifts to avoid taxation. The NZ Government should consider measures to prevent circumvention. This could be achieved by eliminating the NZD \$60,000 threshold. Similarly, the gift exemption should either be fully enforced or eliminated to prevent improper classification.

3.6. Additional enforcement measures

Inland Revenue should consider additional measures applicable to other parties that would continue to be involved in the supply of goods to NZ consumers. This could include financial institutions involved in the payment chain playing a further role in identifying non-compliant suppliers and blocking payments for underlying transactions where GST has not been collected. While including financial intermediaries is a potential option, there may be significant limitations to its implementation given the complexities of cross-border payment systems and the number of financial institutions and services involved. Express carriers and postal operators, which have control over the goods and customs formalities, should be required to undertake due diligence on both the consignment of goods and suppliers so that they are able to provide sufficient details to the authorities to identify non-compliant providers.

Inland Revenue, working with the NZ Customs Service, should dedicate time and resources to actively identifying non-compliant suppliers. This could be achieved by performing 'test buys' from relevant websites and following those purchases through to determine whether GST is being collected and remitted by those suppliers. This would then allow the NZ Customs Service to focus specifically on bad actors and subsequently route packages shipped by those suppliers through a red channel.

3.7. Administrative simplifications

Ease of implementation is an important consideration, not only for offshore suppliers, but also for government, as it will make implementation of any GST collection model more achievable. In part, the following simplifications support measures already proposed in the NZ Government's discussion document:

- Amazon strongly supports the proposed removal of tariffs and cost recovery charges from all imported goods valued at or below \$400 regardless of the GST collection model

ultimately adopted. This approach will reduce complexity and compliance costs and deliver direct benefits to NZ consumers.

- Amazon recommends that Inland Revenue and the NZ Customs Service provide clear and simplified guidance as early as practicable on how GST status should be reflected in manifest and entry declaration data to avoid duplicative taxation at the border.
- Amazon recommends that the NZ Government harmonise the bases for assessing customs value and GST value to create a simplified assessment basis. Having different valuation bases for customs duties and GST adds confusion and complexity in administration for all suppliers, particularly small and medium sized enterprises.

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