LCR 2018/1EC - Compendium

Public advice and guidance compendium – LCR 2018/1

Summary of issues raised and responses

No:	Issue raised in relation to draft Law Companion Ruling LCR 2017/D2	ATO Response/Action taken in Law Companion Ruling LCR 2018/1
1	It should be remembered that many of the suppliers that will be impacted by the new legislation are not Australian entities and therefore have little experience of dealing with Australian GST. The Rulings should therefore spell out clearly what is required or at least provide links to where the relevant information can be easily found. I will point out examples of where I feel this may be useful in specific comments below. Paragraph 21 – it would be useful at this point to include a link that provides more detail on how to register and the time limits for doing so. It would also be beneficial to explain the different types of registration available as I understand that it will be possible to opt for either a 'limited' or 'full' registration. Guidance should explain the impact of the new legislation on both these methods of registration to enable companies to make a decision on the most appropriate route for them.	ATO web guidance has been designed with this feedback in mind and links to all the relevant information have been included. The registration options and the factors that businesses should consider when deciding between them are explained in web guidance.
2	Paragraph 25 – what documentation will be available to show that a customer has been taxed twice?	LCR updated at paragraph 229 to explain that the main document a recipient could use to show GST has been paid on taxable importation would be a receipt or import declaration advice from their customs broker.
3	Paragraph 30 – states that each item supplied will be treated as low value goods if the value is under AUD 1,000 even if the total transaction is over the threshold. Later paragraphs seem to suggest that if this transaction were sent in a single consignment then the low value rules would not apply (see	Further explanation included in paragraph 43 to 45 and paragraph 97 to explain when a transaction is split into two supplies and the interaction with the taxable importation rules.

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	example 6 for instance). It would be beneficial to include an example that clearly sets out the correct treatment when multiple low value items are included in a single consignment of over AUD 1,000.	
4	Paragraph 64 – This paragraph states that an EDP operator can be responsible for GST even where the actual supplier is responsible for bringing the goods to Australia. This requires further clarification, could you set out the circumstances in which the EDP is responsible and in which the Supplier is responsible. An example might be helpful here to illustrate the point. Additionally I would comment that the legislation around EDP's appears to be ill-conceived. Firstly you are asking entities that never physically received the cash from a transaction to pay over amounts of GST that they never receive, secondly most suppliers who trade through a marketplace are well below the threshold for registering for GST, this means that transactions will become taxable that would never have been taxable were it not for the presence of the marketplace. Thirdly, usually any returns go straight back to the supplier, how is the EDP to know that a GST credit arises in those circumstances. Finally a business that transacts through a marketplace but is located in Australia would not be taxable were it be below the registration threshold therefore it does not seem to be equitable for an overseas supplier to become taxable in the same circumstances.	This comment involved policy issues. The situations when an EDP operator is responsible for GST instead of a supplier are set out in LCR 2018/2 *GST on supplies made through electronic distribution platforms*.
5	Example 7 – There is a little detail regarding what is considered appropriate business processes between the EDP and the supplier. For instance would it be sufficient if in the	Information included in discussion on Business Systems Approach at paragraph 105. If an EDP operator and a merchant have an agreement that goods

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	EDP's contractual arrangements with the supplier required shipments to take place in method that would mean they were a taxable importation?	will be shipped in one consignment, the EDP operator can use this information to form a reasonable belief that the goods will be imported as a taxable importation, if a transaction adds up to over $1,000. Such a reasonable belief may come from the terms and conditions imposed by the EDP or through standard business practice. However, if the EDP has actual knowledge of departure from the terms and conditions or business practice, then they cannot have a reasonable belief.
6	Paragraph 94 – How envisaging that a supplier provides evidence of this, will it be on request or is some evidence to be provided with the parcel.	LCR clarifies that: • this information is not required to be provided with the parcel • specific information is not required to be recorded per transaction, but to show that the business systems will be likely to provide a reasonable basis for forming a reasonable belief. See paragraphs 107 and 130.
7	Paragraph 106 – Similar to the business systems methods, how is the reasonable steps approach going to be monitored and enforced?	Similar to the above at number 5 of this compendium, the supplier would be required to keep records about how they applied the reasonable steps approach which could later be requested by the ATO.
8	Paragraphs 236 to 240 – It is not particularly clear from this what the GST treatment would be if the supplier supplies low value goods under DDP incoterms. Is the process for accounting for GST the same as any low value goods. There is also no guidance on what happens if the supplier sends goods valued over AUD 1,000 to a consumer under DDP	The LCR explains that: • For low value goods, the importer is the consignee or addressee. • For goods that are not low value goods and which are supplied on delivered duty paid (DDP) incoterms, the supplier is making a supply that is

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	terms. What happens if the GST is accounted for at check-out, will the supplier effectively be charged again on import? How will this double taxation be relieved? This section would benefit from some extra example dealing with these scenarios.	connected with Australia because they are the importer. Additional information is available on the ATO website on the implications if they make a taxable supply when goods are supplied on DDP terms. This includes providing information about how they would need to be registered in the standard GST system to claim input tax credits for the GST on importation, and information about the deferred GST scheme.
9	I've reviewed the proposals on the methods of converting foreign currency amounts to Australian Dollars both in terms of determining the value of the goods and calculating the GST. In terms of calculating the GST the proposed method seems very reasonable particularly for a multinational retailer who is processing a large number of transactions in a number of different currencies. This will aid compliance and is very welcome. It is therefore difficult to understand why a similar methodology cannot be applied in calculating the customs value. I appreciate that, to a certain extent, you are constrained by existing customs law however in your document you state that the Bill enables the Commissioner to make a legislative instrument which specifies an alternative method for these purposes. Would it be possible to make this alternative method the same as the method for calculating the GST. This would be helpful to most companies that trade with many different countries, and therefore many different exchange rates and currencies.	The ATO has undertaken consultation on these aspects. In response to feedback, it is proposed to provide additional options for currency conversion when determining whether the customs value of goods is A$1,000 or less. This conversion will only be necessary where the goods are sold in a currency other than Australian dollars where the goods are around A$1,000 and it is unclear whether they are low value goods. A draft legislative instrument will be published for consultation.
10	Valuation of goods - under paragraphs 41 and 56, the basis	This is a policy issue – no change made.

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	for determining if the goods would be LVIs is by reference to their 'customs value'. This would be converted into AUD based on the date of agreed consideration for the goods. Under paragraph 162, it is noted that the customs value may differ from the GST base. Given the volume of LVIs, for simplicity and ease of compliance, we recommend to provide a single basis to determine the valuation for LVI regulations.	
11	Currency conversion – paragraph 60 note that the basis for converting the customs value into AUD is to be based on the rates published by the Reserve Bank of Australia on the day consideration is agreed. Under paragraph 162, the basis for converting the value is noted as being covered under the prior GST Ruling 2001/2. For simplicity, an option to enable the use of a single rate for both customs and GST valuation should be considered.	This is a policy issue – no change made.
12	Business systems and reasonable steps approach (paragraph 92 vs paragraph 106) – it appears that reasonable steps approach is adopted where the business systems and processes do not provide sufficient information that the imported goods form taxable importation. Please confirm if this is the understanding and if so, it would be helpful to elaborate on the situation where this approach has to be taken in the absence of a business process. The example 9 does not quite illustrate this approach.	It is anticipated that the business systems approach would be used in the vast majority of cases where the exception is applied. In the absence of reliably identifying a practical example that would not be covered by the business systems approach, a situation has been used where the supplier requests that goods are shipped together.
13	Preamble – this Ruling is intended to provide information to foreign suppliers on how to calculate GST payable, preventing double taxation and to correct errors or deal with	It is unclear what this comment refers to as it not expected that administrative penalties would apply in any particular example used in the LCR.

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	changes in the GST treatment of a supply. To the extent that any administrative penalty regime (as per the draft Explanatory Memorandum) may kick in for any of these errors, then it would be helpful to indicate this without the need of a detailed knowledge of the Australian tax penalty regime.	
14	It would be helpful to include guidance on what happens if an entity unexpectedly crosses the registration threshold, and whether they would need to account for GST on past sales or only from when they are registered.	Further information about the registration threshold is provided in web guidance.
15	Further plain English guidance should be provided on: • whether business-to-business supplies count towards the registration threshold, and • how supplies to unregistered businesses are treated.	These details have been addressed in web guidance. Changes made to LCR to make it clear that supplies only count towards the registration threshold if they are connected with Australia. This means offshore supplies of low value goods made to a recipient that is not a consumer will not count towards the threshold, unless the supply is connected with Australia for other reasons. See paragraph 27.
16	The LCR is unclear about: • how Australian businesses are affected, and • how the registration threshold is calculated for suppliers – is it the value of the goods that attract GST or the total GST amount?	These details have been addressed in web guidance.
17	On the shipping issue, we have advised our clients of the ATO's view regarding a composite supply of delivered goods. We haven't been advised by non-residents of any situations in which the shipping would not form part of the price. They simply couldn't see how the words of the legislation	Guidance in this area has been expanded to clarify the ATO view, see paragraphs 186 to 190.

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	supported the view in the EM/LCR.	
18	Comments provided on whether shipping and insurance will be subject to GST: As with many difficult and complex GST questions, it seems as though much will depend on the facts, eg: • Who actually contracts with the transporter? Is it the seller/platform or the recipient? If it is the recipient, how is that arrangement reflected commercially in terms of collecting payment. For instance, if the contractual flow is for shipping services to be supplied to the recipient, but procured by the seller (and payment collected by the seller) presumably there is a stronger case to disassociate the shipping service. • What options are offered by the platform operator for delivery? For example, if websites allow for delivery to made to a redeliverer outside of Australia, or for a click and collect function which the customer could themselves arrange, would the Commissioner's distinction between "optional delivery" which is more likely to be a separate service following the logic in example 13 of GSTD 2002/3 continue to hold true in the case of the LVG rules? • Even if the delivery method selected by the seller is mandatory, what happens if the actual delivery service is contracted through an entity	We agree that it is relevant whether the recipient has a genuine choice under the contract as to whether the supplier arranges delivery – if the recipient does not have any control over this aspect, this indicates that delivery is not a significant part of the supply. In practice, it is considered that it will be most common for the supplier to be receiving the supply of transport (ie. they are engaging the transporter and paying for the transport). They may on-charge the recipient for an amount for shipping charges, with this charge forming part of the consideration for a composite supply of delivered goods. The following factors will indicate that the international transport is integral, ancillary or incidental to the supply of goods: • the transport is procured, arranged or facilitated by the merchant or EDP • the recipient does not have a genuine choice about which entity brings the goods into Australia (meaning that the recipient is obliged to use the shipping service arranged by the merchant or EDP operator) • a single contract has been entered into that requires the goods to be delivered to the recipient in Australia • delivery is a means necessary for the recipient to receive the goods, but is not an aim in itself.

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	other than the seller? For example, it is often the case that the seller of record is a different legal entity to the logistics entity who undertakes, arranges and charges for the delivery service.	
19	Paragraphs 21, 22 GST Registration Particularly for the benefit of smaller retailers – to consider an example to guide the calculation of the registration threshold. Preferably also include an example requiring a foreign currency conversion (refer para 58), including GST-free supplies and excluding B2B supplies.	Additional advice has been included to clarify what is counted towards the registration threshold. Paragraph 167 addresses GST-free supplies and the registration threshold and paragraph 27 addresses supplies to recipients that are not consumers. Information about the GST registration threshold in the context of low value goods measure is on the ATO website.
20	Paragraph 36 –Example 1. Disaggregation Ambiguity on when to disaggregate a supply – when the ATO would consider it unreasonable to disaggregate. We note the draft EM cites a shipment of sand or box of nails at 1.38 and a pallet of floor tiles at Example 1.2. Offshore suppliers are likely to have difficulty (particularly large EDPs) in distinguishing when they have made a single supply of many units or one supply of multiple low value goods, and when it would be unrealistic to disaggregate a transaction. A more complex example than example 1 would be useful.	The law is designed so that the GST outcome will rarely turn on whether the goods are viewed as multiple supplies or parts of one supply. The exception in section 84-83 means that if the goods will be sent together in a consignment of over $1,000, then the supplier will not need to charge GST in either case. If there is a potential for the goods to be consigned separately, this is a factor that should indicate that these should be treated as separate supplies. This is consistent with the policy intention (see paragraph 1.48 of the explanatory memorandum).
21	Paragraph 162 - 165 Foreign currency conversion When can we expect greater clarity on conversion into Australian currency when calculating the GST payable (noting that this is addressed in one simplistic example – example 18). It would be useful if another example could be used to	A legislative instrument has been made which allows conversion on the final day of the entity's tax period for all their sales if they are registered under the simplified GST system (ie. as a limited registration entity). This is available at the link: Goods and Services Tax: Foreign

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	show calculation of the GST liability on taxable supplies of low value goods (customs value versus price for determining GST liability).	Currency Conversion Determination (No. 1) 2017. This is outlined on the ATO website.
22	Paragraphs 166 - 171 Australian consumer law requirements (requirement to show GST inclusive price) Consider including an example that allows prices on the listing page to be exclusive of GST, with GST added on at checkout, that is, when it can be reasonably determined that the transaction is a supply of low value goods.	Example 18 addresses this currently. There is a limit to how much advice the ATO can provide on Australian consumer law requirements or trades practices, given that these are administered by the ACCC or State agencies. We encourage clients to seek advice from these agencies directly.
23	Paragraph 190 Use of terminology The term 'switched off' could be explained more clearly through a definition.	Updated to include a definition of 'switch off' in paragraph 205.
24	Paragraph 227 Returned goods For clarity, paragraph 227 should also highlight that there is no requirement to issue an adjustment note under section 84-87.	Further explanation and examples 23 and 24 have been included about returned goods.
25	Penalties - ATO position on whether there would be a grace period for mistakes where the taxpayer has taken reasonable steps to meet their legal obligation but are still not fully compliant.	Information on the compliance approach for GST on cross-border services and digital products has been published on the ATO website. A similar approach will be taken for the low value goods measure. This means that in the first 12 months of the law, the ATO will take a measured and practical approach to compliance. If an entity has taken reasonable steps to meet their legal obligations and still find that they are not fully compliant, we will support them. For example, if they can show they have taken reasonable steps to comply, such as setting up systems, but have had a system failure, no penalty will apply.

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		After the first year, we will undertake our usual enforcement procedures if a non-resident supplier has not registered for GST or is not remitting GST on its sales.
26	Undisclosed principals – what is the responsibility of the supplier to identify the recipient and get details of the principal. We received a recent query involving a transaction governed by a contract signed between the supplier and the agent (GST-registered) of the undisclosed principal *[acquirer]* (not registered). In the contract, there was no mention of the principal. Would it be reasonable for the supplier to form a reasonable belief that the recipient is the agent and as such treat this transaction as a B2B supply?	If the supplier is aware at the attribution time that they are making the supply to a principal that is not registered, they will not have a reasonable belief for these purposes, even if they obtain the ABN and a declaration of GST registration from the agent. The agent should not provide their ABN and registration details if they are transacting on behalf of an unregistered principal (unless there are two supplies because of Division 153-B). If they do, the penalty in subsection 284-75(4) in Schedule 1 to the *Taxation Administration Act 1953* may apply to them.
27	Transitional rules – to confirm that the normal attribution rules apply for determining if a supply of low value goods has been made from 1 July 2018 (earlier of invoice or any consideration, not delivery)	Explanation about attribution rules and the application date has been added in the 'Date of Effect' and 'When do the amendments apply' sections.
28	Provide extra example provided as in explanatory memorandum that covers where the value of the goods was above $1k (at the time of transaction) but below $1k (upon importation).	Paragraph 67 mentions that currency fluctuations that happen after consideration is agreed will not affect whether the supply is connected with Australia under the amendments. Example 1.12 of the EM to Treasury Laws Amendment (GST Low Value Goods) Bill 2017 illustrates this situation.
29	If there is a taxable importation but a volume discount is subsequently applied which means it was a sale of one or more low value goods, how does the consumer recover the overpaid GST?	There is a process that can be used for varying the customs value – this is administered by the Department of Home Affairs.
30	Regarding example 8, what happens if merchants know how goods will be shipped?	It is the EDP operator who will need to decide whether the exception applies, however they can use information from

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		merchants (or from their agreements with merchants) when applying this exception. See issue number 5 of this compendium.
31	Is there an ABR look up application programming interface?	Refer to the ABR LookUp website for information on user tools. These links are also provided in GSTR 2017/1.
32	Does the fact freight and insurance costs from the place of export to Australia are excluded from the customs value support the mixed supply view for shipping?	No, this is a part of the customs legislation. We do not see it as being relevant to whether there is a mixed supply or composite supply of delivered goods.
33	Will there be additional fields on the import declaration for the measure?	Yes there are changes to customs documents, including the import declaration, and self-assessed clearance, for this measure. For the import declaration, the fields added are: • the vendor ID field, which captures the GST registration number (either an ARN or ABN) of the supplier for GST purposes • the importer ID field, which captures the Australian business number (ABN) of the purchaser (if applicable) • the GST-paid exemption code, which is used to show if GST has been charged on the sale of each of the goods. Further detail is provided on our website.
34	Paragraph 241 - can an election be used to shift liability from the supplier to an EDP for supplies of goods that are already connected with Australia (under section 9-25(1) or (3)) under section 153-B?)	Yes, if all the requirements of the provisions in Division 153-B are met (including that both are registered for GST – which can be under the simplified GST system or standard system). Note that Division 153-B cannot be used to shift GST liability from an EDP operator to a merchant (see the exceptions section 153-55(4A) and section153-60(3A)).

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35	Requested that the LCR explains what territories are excluded from the indirect tax zone.	Footnote 1 directs readers to paragraphs 26 and 27 of LCR 2016/1. These paragraphs explain what territories are excluded from the indirect tax zone.
36	Query as to the information to be provided to customers pursuant to the requirements of section 84-89.	The approved form details are included in the LCR at paragraphs 194 to 196.
37	If I make a supply of low value good and an item excluded from the low value goods rules, for example alcohol and clothing, how exactly is that treated? Is one element taxed as a low value good and the other element taxed at the border? Alternatively, is the whole consignment taxed at the border? There is no example in LCR.	Example 2 has been added to address this issue.
38	Raised initial confusion about whether a supply is an offshore supply of low value goods that an EDP operator is responsible for GST in relation to, if only the merchant (and not the EDP operator) assists in bringing the goods to Australia.	Made changes to paragraph 76 to address this issue.