



Australian Government

The Treasury

Treasury Response

House of Representatives

Standing Committee on Industry, Innovation,

Science and Resources

Impacts of global internet based businesses on local Australian business

Summary

The House of Representatives Standing Committee on Industry, Innovation, Science and Resources commenced an inquiry into the impacts on local businesses in Australia from global internet-based competition.

The Terms of Reference for the inquiry consider the impacts of global internet-based businesses on local Australian businesses, particularly in the retail and small business sectors. The Committee will consider how existing Australian industries and small businesses are coping with the development of global online businesses; what the competition consequences are for small businesses; and what the Australian Government and Parliament can do to foster innovation for Australian businesses in response to these challenges.

The Committee has heard from the Department of Industry, Innovation and Science on 6 December 2017, the Australian Competition and Consumer Commission and the Australian Retailers Association on 7 February 2018. Several questions arising from these discussions relate to taxation. Consequently, the Committee has invited Treasury to respond to the issues on taxation raised in this Inquiry.

Treasury has also noted competition related issues arising from the transcripts on which Treasury can specifically comment.

Treasury's response is limited to three main issues which were raised during Committee discussions. These are namely corporate taxation, GST and competition. The following responses are provided under these headings.

Corporate Taxation

The Government has been working determinedly, in partnership with the Organisation for Economic Cooperation and Development (OECD) and through the G20, to ensure multinational corporations pay the right amount of tax. Through these efforts, Australia is well advanced in combating multinational tax avoidance.

As G20 President in 2014, Australia was at the forefront of the global effort to deliver the first stage of the OECD/G20 Action Plan to combat Base Erosion and Profit Shifting (BEPS) by multinationals. The final BEPS recommendations, released in October 2015, were developed through the unprecedented cooperation of more than 60 countries over two years and provide a common framework for countries to address multinational tax avoidance. Australia made an early commitment to the recommendations and is a strong advocate for the broad adoption of the BEPS outcomes by all jurisdictions.

Where Australia did not have pre-existing anti-avoidance measures equivalent to the BEPS recommendations, the Government has either already implemented legislation to give effect to those recommendations or is in the process of developing legislation to do so.

Recently enacted BEPS-related legislation includes:

- New law to ensure that Australia's transfer pricing rules remain consistent with international best practice in preventing profit shifting through excessive related party payments.
- New law to implement Country-by-Country reporting. This will significantly increase the information available to the Australian Taxation Office (ATO) by requiring large multinationals to report to the ATO on their global operations, including income derived and tax paid in each country in which they operate.
- New law to extend the application of the GST to imported digital products in accordance with the OECD digital economy suggestions.

In addition, in June 2017 Australia signed the Multilateral Instrument (MLI), a multilateral treaty designed to enhance the integrity of Australia's bilateral tax treaties. Relevant Exposure Draft legislation to give effect to the MLI was released in February 2018.

The Government also released Exposure Draft legislation (in November 2017) to implement tough new BEPS anti-hybrid rules to prevent multinationals from exploiting cross-country differences in tax laws. The Government is currently considering responses from this consultation. The new rules will take effect six months after Royal Assent.

While coordinated global action is essential to achieving a clear, predictable and globalised tax system, the Government has taken further measures to complement the BEPS recommendations and ensure the ATO has all the powers it needs to combat multinational tax avoidance.

Principal among these are the Multinational Anti Avoidance Law (MAAL), to strengthen our permanent establishment integrity rules, and the Diverted Profits Tax (DPT) which from 1 July 2017 introduced a new 40 per cent penalty rate of tax to apply to multinationals avoiding tax by diverting profits offshore.

Along with the MAAL and the DPT, the Government has introduced further measures to enhance the ATO's enforcement capabilities:

- The Government has established a new Tax Avoidance Taskforce to enforce compliance with Australia's tax laws. The Taskforce will strengthen the ATO's capacity to identify and crack down on tax avoidance by large corporates, multinationals and high wealth individuals. The enhanced compliance is estimated to result in a \$3.7 billion gain to revenue over the 2016-17 / 2019-20 forward estimates period.
- The Government has increased penalties for multinationals failing to lodge tax documents on time and making false or misleading statements.
- The Government is encouraging large companies to adopt the Tax Transparency Code to support informed public scrutiny of tax information. A number of companies have already committed to applying the principles and details of the Code, and more companies are expected to follow.
- The Government has introduced legislation to protect whistleblowers who disclose information about tax misconduct to the ATO. The legislation is anticipated to take effect from 1 July 2018.

These Government actions will help protect the integrity of Australia's tax system and promote an environment in which Australian firms can compete on an equal footing with their foreign counterparts.

Goods and Services Tax (GST)

During hearings on 6 December and 7 February, the Committee heard questions about Australia's capacity to charge GST to internet-based companies such as Spotify, eBay, Amazon and Lottoland.

Relevant to these questions are the Government's recent introduction of two measures that apply GST to offshore companies, which provide goods and digital products to Australian consumers. These changes seek to maintain the integrity of the tax system and ensure a level playing field for domestic suppliers. Treasury continues to work closely with the ATO to ensure that the Government's legislated tax framework is supported by education and compliance efforts.

GST on Digital Products

Prior to 1 July 2017, GST did not apply to services and digital products imported by Australian consumers. This included intangible online services that operated outside Australia to provide services to consumers in Australia such as Netflix and Spotify.

On 1 July 2017, the Government extended the GST to offshore intangible supplies to Australian consumers. The measure is estimated to generate a revenue gain of \$350 million across 2017-18 and 2018-19. Since this regime was implemented, business registrations and revenue collections by the ATO have been strong.

The tax applies to intangible supplies such as supplies of digital content, games and software. It also extends to consultancy and professional services performed offshore for customers in Australia.

GST on Low Value Imported Goods

Currently, GST does not apply to goods under \$1000 imported from overseas by Australian consumers. This means that domestic businesses, which are required to pay GST, are disadvantaged when compared to foreign competitors. On 21 June 2017, the Treasury Laws Amendment (GST Low Value Goods) Bill 2017 was passed, which addresses this concern.

As of 1 July 2018, GST will apply to offshore goods costing \$1,000 or less that are supplied to Australian consumers. High value goods with a customs value of \$1,000 or greater will continue to have GST charged at the border. Under the new regime, businesses with an annual turnover of \$75,000 or more will be affected by this change. This includes companies such as eBay, Amazon, Alibaba and Etsy, which provide an online platform to sell low-value goods to Australian consumers. This new measure will align Australia with other countries who already tax goods imported by consumers.

The Committee heard specific questions about the Government's chosen vendor collection model compared with a potential transport liability model to collect GST on low value imported goods

The vendor collection model means that suppliers, online marketplaces and re-deliverers with an Australian GST turnover of \$75,000 or more will be required to register, charge, report and remit GST on sales of offshore low value goods to consumers in Australia. The government's decision to employ the vendor collection model in carrying out the extension of GST to low value goods has been supported by an inquiry by the Productivity Commission (PC) in October 2017. In its review, the PC considered various alternate models for applying GST to low value imported goods.

The PC concluded that the vendor collection model is the most feasible of the possible alternatives, and commented that this reform would improve tax neutrality between imported and domestically retailed low value goods.

Among the alternatives considered, the PC considered transporter models, which involves transporters taking responsibility for assessing GST liabilities on items they transport.

The PC found that the transport model cannot sensibly be considered as a feasible alternative in the near term because of the legacy paper-based declaration process still in operation for most goods sent by international mail. The PC commented that while a transporter model is likely to achieve higher compliance and collection rates than the legislated model, the administrative and compliance burden for the transporter model would be higher.

Additionally, the Committee heard discussions about the expected rate of compliance to the new low value goods tax regime

To date, the ATO has undertaken a considerable international awareness campaign and has reported a positive global response to the announcement of the change in regime. Major suppliers are expected to comply in order to protect their brand and reputation. Under the digital services regime, which was introduced on 1 July 2017, the ATO recorded higher than expected registrations and is so far reporting strong collections. The ATO is equipped with a range of tools to pursue companies that do not comply.

Effectiveness of tax regimes for the gambling industry

Questions were raised on 7 February about the appropriate taxation of gambling companies such as Lottoland.

Treasury has consulted with the ATO and confirms that as Lottoland has an Australian business presence and Australian customers, it is required to pay income tax as well as GST. States and Territories also separately apply specific gambling taxes. The ATO has identified non-resident entities that provide gambling services to Australian consumers and has undertaken compliance activities across income tax and indirect taxes to ensure that those who are required to be registered have done so and are compliant with the law.

Competition

The Government recognises that fair and effective competition is a vital element of a strong economy, and is working to ensure that Australia's competition policy settings remain 'fit for purpose' in a rapidly changing and digital world.

The Government asked Professor Ian Harper and an expert panel to undertake an independent 'root and branch' Competition Policy Review. A key focus for the Review was how new technologies are 'digitally disrupting' the way many markets operate and the way consumers engage with markets.

The *Competition and Consumer Amendment (Misuse of Market Power) Act 2017* implements a key recommendation of the Review to strengthen the prohibition on the misuse of market power by large businesses. The new misuse of market power provision of the *Competition and Consumer Act 2010* (CCA) (section 46) will better ensure dominant firms cannot use their market power to harm competition. It ensures that Australia's competition law is framed to encourage growth and innovation, and is in keeping with our major trading partners such as the US, EU and Canada.

On 4 December 2017, the Treasurer, the Hon Scott Morrison MP, directed the Australian Competition and Consumer Commission (ACCC) to conduct an inquiry into digital platforms. The inquiry will look at the effect that digital search engines, social media platforms and other digital content aggregation platforms have on competition in media and advertising services markets.

The ACCC released an issues paper on 26 February 2018. The preliminary report is to be submitted to the Treasurer by 3 December 2018, with a final report due by 3 June 2019.

Additionally, the *Competition and Consumer Amendment (Competition Policy Review) Act 2017* contains a significant package of reforms designed to simplify and better target the anti-competitive conduct prohibitions in the CCA. The changes include reforming merger approval processes and introducing a prohibition against anti-competitive concerted practices.