

GST REFORMS

INTERNATIONAL TRADE



TODAY'S SESSION

- Reform Update - GST on low value goods
- Port Services Charge – a practical compliance approach

Where to from here on GST on low value goods?

- FTA presented to the Senate Economics Legislation Committee recommending a 12 month delay from legislation receiving Royal Assent – Committee supported this with a recommendation of a 1 July 2018 implementation.
- Labor Senators submitted a dissenting report calling for an analysis and comparison of alternative implementation models.
- There is still an outside chance that the Treasury Laws Amendment (GST Low Value Goods) Bill 2017 could pass both Houses of Parliament with a go live date of 1 July 2017.
- The House of Representatives next sit from 22 May to 1 June 2017 with both Houses sitting from 13 to 22 June 2017. It may therefore be another few weeks before we know what direction this will all take.

GST on Port Services Charge – a practical compliance approach

- Inconsistent practice in terms of applying GST on Port Service Charges
- FTA initial engagement with Crowe Horwath and FTA members
- Development of a draft notice
- Preliminary ATO review
- TODAY – extended engagement with FTA members
- NEXT – final ATO Review
- FINALLY – launch of the final FTA notice

Background & Regulations around import declarations

- Import declarations must be lodged prior to vessel or aircraft arrival to allow the border and biosecurity agencies to complete their risk assessment. In particular, sec 72 Customs Act / regulation 32 states that import declarations are required to be lodged by the end of the next working day following the day on which the goods were imported.
- Importers and customs brokers must provide accurate data when completing import declarations. Any delay will increase likelihood of the consignment being selected for further assessment. In these circumstances there is no recourse to claim any associated storage or container dehire fees caused by the delay in processing.

How is any delay caused by the treatment of GST on port service charges (PSCs)?

- In practice, and as a consequence of the ATO ruling ATOID 2015/26, shipping lines treat the PSC as GST-free. Consequently, as no GST has been accounted for on the PSC, the Australian Taxation Office (ATO) requires the value of the PSC to be included in the import declaration's Value of Taxable Importation (VoTI). This ensures that the appropriate GST is remitted to the ATO.
- While most shipping lines have fixed PSC rates that the customs broker can obtain, others are forced to refer to shipping line invoices that are commonly only available between three days prior to arrival and up to the day of arrival. This causes practical difficulties for customs brokers in completing and lodging import declarations ahead of time.

What is the added complexity of freight forwarding practices?

- A significant problem is the inconsistent practice of some freight forwarders charging GST on the PSC component and others treating them as GST free. As a result, import declarations vary with some including, and others excluding, GST from the VoTI. This delay is further compounded by the time lag in communicating the PSC values from the shipping line, through to the freight forwarder and ultimately to the importer or customs broker.

Can we have different practices for shipping lines as against freight forwarders?

- The 2016 ATO guidance “GST and international freight transport” has been the catalyst for shipping lines moving to a policy of treating PSCs as GST free. While this provides clarity for shipping lines, it has not proven to be as clear for freight forwarders. This has resulted in the above inconsistent GST treatment among freight forwarders on the PSCs.

Can we have different practices for shipping lines as against freight forwarders?

- The ATO does not prescribe how freight forwarders should manage this matter. In essence, the freight forwarder must decide whether the PSC component is included as part of the international transport (and potentially GST-free) or part of its other services provided to the consignee (potentially subject to GST). In reality, the precise legal arrangements, the nature of the services provided and the residency of the freight forwarder will be the key determinants of the correct GST treatment for the freight forwarder.

What is a practical approach?

- Ideally, importers and customs brokers would experience a consistent approach from all freight forwarders. To resolve this, a suggested practical and conservative approach, in the context of this uncertainty, is for the freight forwarder to charge GST on the PSC component of its invoices to the consignee.

What is a practical approach?

- This suggested approach has the advantage that if GST is paid on the PSC component charged by the freight forwarder, then the ATO has a practical approach (per the 2016 ATO guidance above) that the PSC will not need be declared again in the VOTI. This will avoid the need for customs brokers to wait for the information on the PSC to complete the import declaration, thereby reducing delays in import clearances and avoid potential storage and other associated costs.

What is a practical approach?

- From the perspective of the freight forwarder's customer, in most cases, there would be no net GST impact as the importer can be expected to be registered for GST and can claim the GST as an input tax credit.
- In addition, to the extent that GST was charged when it could have been GST-free, the GST law nonetheless deems the GST to be payable once charged by the freight forwarder and remitted to the ATO. The importer is still entitled to claim a GST credit in that case. The 2016 ATO guidance above supports this approach.

What is a practical approach?

- Therefore, inclusion of GST on PSCs on freight forwarder invoices to the importer will ensure the correct GST is remitted to the ATO and will facilitate timely and accurate import declarations lodgement to support risk assessment by border and biosecurity agencies.

What did the ATO say?

Positive response from Tim Dyce (Deputy Commissioner of Taxation)

“We can advise that the text of the draft notice is correct in regard to the interpretation of the relevant provisions of *A New Tax System (Goods and Services Tax) Act 1999 (GST Act)*”

“We also consider that the draft notice correctly interprets the relevant ATO view products/rulings mentioned”

“You have correctly stated the ATO does not prescribe how freight forwarders should manage this matter”

“... good luck with your efforts to streamline the business practices in your industry”

We have since received further FTA member feedback

- Some customs brokers have taken matters into their own hands and charge importers the GST on PSC whether or not the shipping line or freight forwarder has charged GST on PSC to them.

We have since received further FTA member feedback

Scenario 1. Shipping line or freight forwarder does not charge GST on the PSC. The customs broker charges GST on the PSC on their invoice to the importer negating the need to add the value of the PSC in the import declaration's VoTI.

Scenario 2. Freight forwarder charges GST on the PSC. The customs broker in turn charges GST on the PSC on their invoice to the importer. This again negates the need to add the value of the PSC in the import declaration's VoTI.

- This method takes away any uncertainty from the customs brokerage staff regarding invoicing the customer AND allows the customs broker to lodge the import declaration with only the actual freight component to worry about as a part of VoTI.

What do you think?

- Is our draft notice useful?
- Any suggested changes?

NEXT STEPS

- FTA and Crowe Horwath will now finalise the advice and again send to the ATO
- FTA will disseminate a final notice