

# GST treatment of electronic commerce: comparing the Singaporean and Australian approaches

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## *Abstract*

This article analyses the Australian and Singaporean indirect tax systems as they apply to electronic commerce (e-commerce), specifically focusing on mechanisms for taxation of cross-border transactions. Both countries have similar goods and services tax (GST) mechanisms (broad base, low rate and limited exemptions), and at the same time somewhat different economic determinants of tax policy (size of the economy, dependence on foreign trade, etc). Therefore, it is considered useful to assess how these countries adapt their indirect tax systems to digitalisation of the economy. Using the broader Australian and Singaporean e-commerce taxation systems as points of reference, the article identifies a set of criteria, or qualities (including, for example, neutrality and fairness), for an efficient system of e-commerce taxation, and evaluates the experience and measures in those two countries against these criteria.

**Key words:** Indirect taxation, tax policy, electronic commerce, Singapore, Australia, VAT, GST

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## 1. INTRODUCTION

Electronic commerce (e-commerce) is growing rapidly around the globe.<sup>1</sup> International e-commerce transactions have become the norm rather than an exception, as cross-border flows have become faster and easier than ever before.<sup>2</sup> However, taxation of these transactions raises various challenges for tax authorities in many countries. For example, a recent line of Organisation for Economic Co-operation and Development (OECD) recommendations<sup>3</sup> underlines some of the tax-related challenges of the digital economy and e-commerce. These challenges include the following:

- creating the new nexus rules for highly digitalised business models;
- developing a profit allocation methodology that is consistent with the value creation process of new digitalised businesses;
- developing an effective and neutral mechanism for indirect tax collection from cross-border online sales of goods and services;
- ensuring international consistency in taxation of cross-border online transactions and prevention of double taxation and double non-taxation with respect to both indirect and direct taxes.<sup>4</sup>

Several international ‘best practice’ guidelines, such as the OECD’s *International VAT/GST Guidelines* (hereinafter ‘OECD Guidelines’), provide useful guidance on issues relating to the design of goods and services tax (GST).<sup>5</sup> In particular, the OECD Guidelines pertain to the reform of GST in relation to e-commerce transactions. The OECD Guidelines represent an important step towards harmonisation of indirect international taxation. However, there are a number of differences in national approaches to indirect taxation of e-commerce some of which will be discussed in this article.

This article compares and contrasts the Australian and Singaporean e-commerce indirect tax systems, specifically focusing on mechanisms for taxation of cross-border transactions. The authors compare the Australian and Singaporean e-commerce indirect taxation systems using well-known criteria, or qualities (including efficiency, simplicity, neutrality and fairness) of the ‘best practice’ GST as benchmarks, and evaluate the experience and indirect tax reform approaches in those two countries against these criteria.

Sections 2 and 3 discuss in detail the approaches to indirect taxation of e-commerce in Australia and Singapore specifically focusing on cross-border supplies of goods and digital services. Section 4 identifies the criteria that should underpin an efficient system of e-commerce taxation, and analyses the two countries’ approaches to indirect taxation

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<sup>1</sup> Digital sectors of the economy are more dynamic on average: Organisation for Economic Co-operation and Development (OECD), *Measuring the Digital Transformation: A Roadmap for the Future* (OECD Publishing, 2019).

<sup>2</sup> Ibid.

<sup>3</sup> OECD, *Tax Challenges Arising from Digitalisation – Interim Report 2018*, OECD/G20 Base Erosion and Profit Shifting Project, Inclusive Framework on BEPS (OECD Publishing, 2018).

<sup>4</sup> Ibid.

<sup>5</sup> OECD, *International VAT/GST Guidelines* (OECD Publishing, 2017).

of e-commerce. Conclusions are drawn in the final section of the article, together with recommendations to improve the existing systems.

## 2. SINGAPORE

Singapore has been positioning itself as a global hub of international trade since the 20th century,<sup>6</sup> and has introduced various tax policies supporting trade and e-commerce.<sup>7</sup>

In 1993, Singapore introduced GST. Observers suggest that ‘some of the characteristics of the Singaporean GST system are due to the peculiarities of the country, such as the lack of natural resources, which pushed the country to develop a very trade-oriented economy, its strong connections with the United Kingdom, and its geographical location’.<sup>8</sup> This quotation refers to the GST’s characteristic of international neutrality. It can be noted that GST design generally accommodates the destination principle well. This is due to the GST neutrality that is achieved by crediting input tax against output tax, thus applying the tax burden to the final consumer and remitting value added tax (VAT) to budgets at all levels of the supply chain. The OECD Guidelines endorse this fundamental advantage of GST.<sup>9</sup>

Recently, taxation of cross-border e-commerce trade in goods and digital services has appeared on the Singaporean political agenda, supported by tax officials.<sup>10</sup> This political attention to the issue partly arose as a result of the relevant OECD recommendations and developments in neighbouring economies,<sup>11</sup> primarily Australia and New Zealand. Internal reasons, such as the need to raise additional revenue, were also influential.<sup>12</sup>

Currently, the GST treatment of cross-border transactions of goods and services based on the destination principle is considered the primary tax policy option in Singapore,<sup>13</sup> as discussed below and subsequent steps aimed at ensuring GST neutrality between digital and non-digital economy are being made by tax policy-makers.<sup>14</sup> Tax conditions for e-commerce were more favourable before the reform because of the relatively high

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<sup>6</sup> Industrial Systems Research, *Industry and Enterprise: An International Survey of Modernization and Development* (Industrial Systems Research, 2013) 86.

<sup>7</sup> Ramkishan S Rajan and Shandre M Thangavelu, *Singapore: Trade, Investment and Economic Performance* (World Scientific, 2009).

<sup>8</sup> Francesco Cannas, ‘What Singapore Could Learn from the New Trends for VAT/GST Taxation of B2C Digital Supplies around the World’ (2016) 27(5) *International VAT Monitor* 320.

<sup>9</sup> OECD, *Measuring the Digital Transformation*, above n 1; OECD, *International VAT/GST Guidelines*, above n 5.

<sup>10</sup> See, eg, Suet Yen Loo, ‘Possible Tax on E-Commerce to Diversify Tax Base’, *News IBFD* (27 November 2017): ‘The Senior Minister of State (Finance and Law) was recently quoted as stating that e-commerce would be an area enabling Singapore to further diversify its tax base. Her comments followed those of the Prime Minister who had signalled that Singapore needs to prepare for tax increases to fund increasing government expenditure, particularly as the population ages’.

<sup>11</sup> Clinton Alley and Joanne Emery, ‘Taxation of Cross-Border E-Commerce: Response of New Zealand and Other OECD Countries to BEPS Action 1’ (2017) 28(9) *Journal of International Taxation* 38; OECD, *Addressing the Tax Challenges of the Digital Economy, Action 1 – 2015 Final Report*, OECD/G20 Base Erosion and Profit Shifting Project (OECD Publishing, 2015).

<sup>12</sup> Michelle Jamrisko, ‘Singapore to Ensure Rich Pay More in Tax Regime, Rajah Says’, *Bloomberg* (22 November 2017), <https://www.bloomberg.com/news/articles/2017-11-21/singapore-will-ensure-rich-pay-more-in-tax-regime-minister-says> (accessed 12 June 2021).

<sup>13</sup> *Goods and Services Tax (Amendment) Act 2018 (No 52 of 2018)* (Singapore).

<sup>14</sup> Inland Revenue Authority of Singapore, *e-Tax Guide, GST: Taxing Imported Services by Way of Reverse Charge* (22 August 2019); Inland Revenue Authority of Singapore, *e-Tax Guide, GST: Taxing Imported Services by Way of an Overseas Vendor Registration Regime* (26 August 2019).

threshold (SGD 400) for offshore supply of goods (still applying as on June 2021)<sup>15</sup> and because of the place of supply rules in the case of digital services which applied before the reform until recently (before 2020).<sup>16</sup> This reform will be finalised by 2023. So, both B2B and B2C import cross-border supplies of low value goods and digital services are in the process of appearing into the scope of Singaporean GST.<sup>17</sup>

## 2.1 GST e-commerce tax reform in Singapore: background and key changes.

Singapore is a developed country in relation to the digital economy and e-commerce, and a leader in global digital transformation, as evidenced by the rankings.<sup>18</sup>

A survey by Ernst & Young indicates that Singapore has a highly device-centric and digitally savvy population that utilises devices and mobile phones on a daily basis. New digital technologies are also very popular in Singapore, including novel payment methods, music streaming and online purchases.<sup>19</sup> It is important to note that Singapore's population density is among that of the top three countries in the world.<sup>20</sup> Thus, despite its relatively small territory Singapore has a rather large consumption tax base. The following factors should also be considered:

- the Singaporean e-commerce market is growing rapidly<sup>21</sup> – it almost tripled from 2010 to 2014 and then grew by around 10 per cent per year, reaching USD 3,740 billion in 2018;
- the majority of e-commerce sales (about 60 per cent) are cross-border transactions;<sup>22</sup>
- most e-commerce players in Singapore are local;<sup>23</sup>

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<sup>15</sup> Loo, above n 10.

<sup>16</sup> Cannas, above n 8, 321: 'In order to determine whether a supply of services is made "in Singapore", one has to look at section 13(4) of the Singapore GST Act, which provides that:

A supply of services shall be treated as made – (a) in Singapore if the supplier belongs in Singapore; and (b) in another country (and not in Singapore), if the supplier belongs in that other country'.

Furthermore, *Goods and Services Tax Act 1993*, s 15(3) provides: 'The supplier of services shall be treated as belonging in a country if — (a) he has in that country a business establishment or some other fixed establishment and no such establishment elsewhere; (b) he has no such establishment in any country but his usual place of residence is in that country; or (c) he has such establishments both in that country and elsewhere and the establishment of his which is most directly concerned with the supply is in that country'.

<sup>17</sup> Ernst & Young, *Worldwide VAT, GST and Sales Tax Guide, Singapore* (2017), <http://www.ey.com/gl/en/services/tax/worldwide-vat--gst-and-sales-tax-guide---xmlqs?preview&XmlUrl=/ecImages/taxguides/VAT-2017/VAT-SG.xml>: 'Supplies of goods or services in Singapore via the internet or any other electronic media does not alter the taxability of the transaction'.

<sup>18</sup> See IMD, *World Competitiveness Ranking* (2019), <https://www.imd.org/contentassets/6b85960f0d1b42a0a07ba59c49e828fb/one-year-change-vertical.pdf> (accessed 11 June 2021).

<sup>19</sup> Ernst & Young, *Savvy Singapore: Decoding a Digital Nation* (2017), <http://www.ey.com/sg/en/services/advisory/ey-savvy-singapore-decoding-a-digital-nation>.

<sup>20</sup> World Bank, *Population Density (people per sq. km of land area)*, [https://data.worldbank.org/indicator/EN.POP.DNST?year\\_high\\_desc=true](https://data.worldbank.org/indicator/EN.POP.DNST?year_high_desc=true).

<sup>21</sup> Statista, *eCommerce, Singapore, Highlights*, <https://www.statista.com/outlook/243/124/ecommerce/singapore#>.

<sup>22</sup> US Department of Commerce, International Trade Administration, *Export.Gov, Singapore Country Commercial Guide*, <https://www.export.gov/article?id=Singapore-eCommerce>.

<sup>23</sup> Ben Sim, '7 Out of 10 Top E-Commerce Players in Singapore Are Local, Study Finds', *E27* (5 September 2017), <https://e27.co/7-10-top-e-commerce-players-singapore-local-study-finds-20170905/> (accessed 11 June 2021).

- Singapore is a perfect location for starting an e-commerce business due to its favourable business climate (it ranked second in the World Bank ‘Doing Business’ ratings for 2017);<sup>24</sup>
- Singapore is a popular destination for businesses engaged in e-commerce because of its competitive tax system, highly developed legislation and generally favourable business conditions.<sup>25</sup>

E-commerce refers to business transactions (sales and purchases) that are concluded electronically. Any supply of goods or services in Singapore (except for export supplies) via the internet or any other electronic media is subject to GST, as is traditional commerce. This also applies when transactions are conducted ‘through a third party e-commerce service provider’.<sup>26</sup> This means that traditional GST concepts also apply to cross-border e-commerce in Singapore, in particular the place of supply for services (section 13(4) of the *Goods and Services Tax Act 1993* (Singapore)) and the rules on low value importation for goods.<sup>27</sup> For GST purposes, the sale of goods (books, shoes, etc) via the internet is treated as a supply of goods, and the sale of digitalised goods (online music, games, smartphone apps) downloaded by the customer via the internet is treated as supply of services.<sup>28</sup>

The currently occurring GST reform in Singapore involves several elements as described in Table 1 below.

**Table 1: GST Reform in Singapore**

Element of reform	Effective date
Reverse charge mechanism for import of B2B remote (both digital and non-digital) services	1 January 2020
Remote vendor registration mechanism for import of B2C digital services	1 January 2020
Extension of vendor registration mechanism for import of B2C remote (both digital and non-digital) services	1 January 2023
Reverse charge mechanism for import of B2B low value goods	1 January 2023
Remote vendor registration mechanism for import of B2C low value goods	1 January 2023

Source: composed by authors based on Inland Revenue Authority of Singapore (IRAS). *GST on Imported Services*, <https://www.iras.gov.sg/irashome/GST/GST-registered-businesses/GST-and-Digital-Economy/GST-on-Imported-Services/>.

<sup>24</sup> World Bank, *Doing Business 2017* (World Bank, 2017).

<sup>25</sup> Pooja Singh, ‘Why Singapore Is a Startup Paradise’, *Entrepreneur* (13 December 2018), <https://www.entrepreneur.com/article/324589> (accessed 11 June 2021).

<sup>26</sup> Deloitte & Touche, *Singapore Goods and Services Tax Guide, Volume 1* (CCH Tax Editors Singapore, 2017) [23-270] (GST Treatment for e-Commerce Transactions), 9864.

<sup>27</sup> Inland Revenue Authority of Singapore, *e-Tax Guide, GST Guide for e-Commerce* (3rd ed, 25 May 2016).

<sup>28</sup> *Ibid.*

## 2.2 Cross-border supply of goods

All physical goods supplied over the internet attract GST if the supplier is GST registered and the supply is conducted in Singapore. Export exemption (by means of zero-rating) is available for the supply of goods conducted over the internet to offshore consumers.<sup>29</sup> The supply of goods between an overseas supplier and a Singaporean purchaser will attract GST when the goods are imported, where the value of the goods being sold exceeds SGD 400.<sup>30</sup> Importation of all goods below the threshold qualifies for so-called import relief. The value of imported goods for GST purposes is determined as the cost, insurance and freight (CIF) plus other chargeable costs and the duty payable (if applicable).<sup>31</sup> To ensure a level playing field for local businesses to compete effectively, the GST will be extended to imported low-value goods.<sup>32</sup> Reform has been proposed in this direction; the status quo will likely be changed from 1 January 2023.

As of June 2021 there are no separate rules for business-to-business (B2B) and business-to-consumer (B2C) importations of low-value goods. This implies that all imports exceeding the threshold (SGD 400) are subject to GST; thus, the importer pays 7 per cent of the customs value of importation to the Customs and Excise Department. The Customs and Excise Department collects GST from the supplier of the goods sold in Singapore. This could be the postal service or the courier company, which in turn collects the GST from the purchaser.<sup>33</sup>

From 1 January 2023 different rules will be applied for business-to-business (B2B) and business-to-consumer (B2C) importations of low-value goods. Imposition of GST on low-value goods will be effected as follows:<sup>34</sup>

- 1) Overseas Vendor Registration for B2C import of low-value goods; and
- 2) Reverse charge for Business-to-Business ('B2B') import of low-value goods.

Overseas suppliers of goods and services will be subject to the same GST treatment as local suppliers. As explained in IRAS Draft Guide (2021)<sup>35</sup> the current non-taxation of low value goods results in a disparity in GST treatment between similar goods supplied by GST-registered local businesses and overseas ones. Therefore, the reform is aimed at ensuring the principle of destination and at taxation of all domestic consumption with GST. However, the existing import relief threshold of SGD 400 will remain which

<sup>29</sup> Inland Revenue Authority of Singapore, *GST Guide for e-Commerce*, above n 27.

<sup>30</sup> Ibid 6.

<sup>31</sup> Inland Revenue Authority of Singapore, *GST Guide for e-Commerce*, above n 27.

<sup>32</sup> Nikita Lingbawan, 'Singapore Extends Incentives for Qualifying Expenses and Extends GST to Imported Low-Value Goods in 2021 Budget', *News IBFD* (16 February 2021).

<sup>33</sup> Inland Revenue Authority of Singapore, 'Importing of Goods', <https://www.iras.gov.sg/irashome/GST/GST-registered-businesses/Working-out-your-taxes/Importing-of-Goods/>.

<sup>34</sup> Inland Revenue Authority of Singapore (IRAS), 'GST on Imports of Low-Value Goods', <https://www.iras.gov.sg/irashome/GST/GST-registered-businesses/GST-and-Digital-Economy/GST-on-Imports-of-Low-Value-Goods/>.

<sup>35</sup> Inland Revenue Authority of Singapore, *e-Tax Guide, GST: Taxing Imported Low-Value Goods by Way of the Overseas Vendor Registration Regime (Draft)* (26 February 2021) 8, para 4.3, [https://www.iras.gov.sg/irashome/uploadedFiles/IRASHome/e-Tax\\_Guides/DRAFT%20e-tax%20guide\\_Taxing%20imported%20low-value%20goods%20by%20way%20of%20the%20overseas%20vendor%20registration%20regime\\_v1.pdf](https://www.iras.gov.sg/irashome/uploadedFiles/IRASHome/e-Tax_Guides/DRAFT%20e-tax%20guide_Taxing%20imported%20low-value%20goods%20by%20way%20of%20the%20overseas%20vendor%20registration%20regime_v1.pdf).

means that legally such supplies will not be regarded as import of goods but rather as another domestic supply.

### 2.3 Cross-border supplies of digital services

A sale of digital services (such as music or software) over the internet to an individual consumer or a business equates to a supply of services for GST purposes. There are no separate rules for domestic supplies of B2B and B2C digital services. All domestic supplies of digital services are taxable. Supplies of services are subject to GST if the place of supply is Singapore. Application of section 13(4) of the *Goods and Services Tax Act 1993* determines whether the place of supply of services is Singapore. Specifically, a supply of services is treated as:

- a) made in Singapore if the supplier is in Singapore; and
- b) made in another country (and not in Singapore) if the supplier is in that other country.<sup>36</sup>

Export supplies of digital services are zero-rated under section 21(3) of the *Goods and Services Tax Act 1993*. Export of digital services means that services are performed for a consumer who is not in Singapore at the time the service is performed, and that the services are not supplied in direct connection to land or goods situated within Singapore.<sup>37</sup> There is an extensive list of zero-rated international services, and this includes digital services.

The most problematic tax compliance challenge related to e-commerce export of digital services supplied by Singaporean businesses lies in determining whether the purchaser is in Singapore. This is a necessary step in determining the GST rate (0 per cent or 7 per cent) that should apply.<sup>38</sup> The Internal Revenue Authority of Singapore (IRAS) *GST Guide for e-Commerce* (2016) provides the following criteria for that purpose:

- if the purchaser is a business, the supplier shall examine its address, domain name, internet protocol (IP) address, other information and customer declaration;
- if the purchaser is an individual, the supplier shall consider the usual place of residence.<sup>39</sup>

Generally, the supplier should make reasonable efforts to identify the residency of the customer. To resolve this issue, some global businesses require their customers to 'declare' their residence by selecting their country, and then direct them to country-specific web pages.<sup>40</sup> However, if customers do not declare their residency, businesses must rely on their systems and the evidence they have.

The *Goods and Services Tax Act 1993* also provides for a 'reverse charge' on the importation of 'prescribed services'. This means that if the recipient is a taxable entity,

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<sup>36</sup> Section 13(4) of the *Goods and Services Tax Act 1993* (Singapore). See also Cannas, above n 8.

<sup>37</sup> *Goods and Services Tax Act 1993*, s 21(3)(j).

<sup>38</sup> Seven per cent is the standard rate in Singapore. There is only one rate except for the zero rate in Singaporean GST (*Goods and Services Tax Act 1993*, s 16).

<sup>39</sup> Inland Revenue Authority of Singapore, *GST Guide for e-Commerce*, above n 27, 4.

<sup>40</sup> Kenny Foo, 'Singapore: GST Planning for Electronic Commerce' (2001) 7(5) *Asia-Pacific Tax Bulletin* 117.

that entity will be required to charge GST to itself. The reverse charge provision<sup>41</sup> was inactive for a very long time. However, effective 1 January 2020 all imported remote services (digital and non-digital) purchased by Singaporean businesses (B2B) are subject to GST under the reverse charge mechanism. According to the Inland Revenue Authority of Singapore:

[w]ith the advent of technology, businesses in Singapore may increasingly procure services from overseas that in the past could only be supplied by local service providers. Under the current GST regime, a supply of services (other than an exempt supply) procured from a local GST-registered supplier is subject to GST, while the same supply of services, if provided from an overseas supplier (i.e. imported), is not subject to GST even if the services are consumed in Singapore.<sup>42</sup>

From 1 January 2020 overseas digital service providers of B2C digital services with a yearly global turnover of more than SGD 1 million that sell more than SGD 100,000 of digital services to customers in Singapore in a 12-month period are required to register for GST and charge GST.<sup>43</sup> Digital services are defined as services that are supplied over the internet or an electronic network that require minimal or no human intervention, and are impossible without the use of information technology.<sup>44</sup>

The IRAS proposals were first published in February 2019.<sup>45</sup> These provide details of mechanisms proposed for the taxation of cross-border B2B and B2C digital services in accordance with the country of destination principle. The proposals were incorporated into the *Goods and Services Tax Act 1993* by the *Goods and Services Tax (Amendment) Act 2018*. The Singaporean Minister for Finance announced in Budget 2018 that the new rules would be in force from 1 January 2020. A summary of proposed changes to the GST mechanism is presented in Table 2.

**Table 2: Summary of New GST Rules in Relation to Cross-Border Supply of Digital Services – Singapore**

Element of proposed rules	B2C	B2B
Place of supply rules for services	Place of customer (natural person) determined by proxies: <sup>46</sup>	Place of customer (Singaporean business or branch: registered or non-registered for GST): business

<sup>41</sup> *Goods and Services Tax Act 1993*, s 14.

<sup>42</sup> Inland Revenue Authority of Singapore, *Taxing Imported Services by Way of Reverse Charge*, above n 14.

<sup>43</sup> Inland Revenue Authority of Singapore, 'Purchasing Remote Services from Overseas Service Providers', <https://www.iras.gov.sg/irashome/GST/Consumers/Purchasing-Remote-Services-from-Overseas-Service-Providers/> (accessed 23 June 2021).

<sup>44</sup> Ibid.

<sup>45</sup> Inland Revenue Authority of Singapore, *e-Tax Guide, GST: Taxing Imported Services by Way of Reverse Charge (Draft)* (2018); Inland Revenue Authority of Singapore, *e-Tax Guide, GST: Taxing Imported Services by Way of an Overseas Vendor Registration Regime (Draft)* (2018).

<sup>46</sup> Inland Revenue Authority of Singapore, *GST: Taxing Imported Services by Way of Reverse Charge (Draft)*, above n 45; Inland Revenue Authority of Singapore, *GST: Taxing Imported Services by Way of an Overseas Vendor Registration Regime (Draft)*, above n 45.



	<p>Payment proxy (eg, credit card information based on (bank identification number), bank account details), (ii) residence proxy (eg, billing address, home address), (iii) access proxy (eg, mobile country code of SIM card, IP address, location of fixed land line through which the service is supplied).</p>	<p>establishment, fixed establishment or usual place of residence (ie, place of incorporation or place of legal constitution) is in Singapore.</p> <p>It does not matter whether the business recipient is registered for GST.</p>
<b>Threshold</b>	<p>Global turnover exceeding SGD 1 million and making B2C supplies of digital services to customers in Singapore exceeding SGD 100,000.</p>	<p>No threshold.</p>
<b>Mechanism of tax collection</b>	<p>Tax to be paid by remote vendor or online platform selling digital services in certain circumstances:</p> <p>‘The operator of the electronic marketplace will be regarded as the supplier if any of the following conditions are met:</p> <p>(i) The electronic marketplace authorises the charge to the recipient;</p> <p>(ii) The electronic marketplace authorises the delivery of supply to the recipient;</p> <p>(iii) The electronic marketplace sets the terms and conditions under which the supply is made;</p> <p>(iv) The documentation provided to the recipient identifies the supply as made by the marketplace, and not the supplier; or</p> <p>(v) The electronic marketplace and the supplier contractually agree that the marketplace is liable for GST.</p> <p>An electronic marketplace may not be regarded as the supplier only if all</p>	<p>Tax to be paid by the business acquiring the digital service, but only in case it does not have a right to credit the input tax. In case the business acquiring the digital service has a right to credit the input tax, the business is not liable for GST. If the business is not registered for GST, it needs to register and apply a reverse charge to imported services, similarly to a GST-registered business that is subject to the reverse charge.</p> <p>If purchasers have a full right to credit the input tax, they can elect to still pay GST under the reverse charge mechanism.</p>

	of the abovementioned conditions are not satisfied. <sup>47</sup>	
<b>Digital services covered</b>	<p>Digital services are defined as services that are delivered over the internet or an electronic network, the nature of which renders their supply essentially automated, involving minimal human intervention and being impossible in the absence of information technology.</p> <p>These services include supply of the following:</p> <ul style="list-style-type: none"> <li>• downloadable digital content (eg, downloadable mobile applications, e-books and movies);</li> <li>• subscription-based media (eg, news, magazines, streamed TV shows and music, and online gaming);</li> <li>• software programs (eg, downloadable software, drivers, website filters and firewalls);</li> <li>• electronic data management (eg, website hosting, online data warehousing, file sharing and cloud storage services); and</li> <li>• support services, performed via electronic means, to arrange or facilitate a transaction, which may not be digital in nature (eg, commissions, listing fees and service charges).</li> </ul>	

Source: Composed by the authors based on Inland Revenue Authority of Singapore, *e-Tax Guide, GST: Taxing Imported Services by Way of Reverse Charge (Draft)* (2018) and *GST: Taxing Imported Services by Way of an Overseas Vendor Registration Regime (Draft)* (2018); *Goods and Services Tax (Amendment) Act 2018*.

Table 2 indicates that offshore suppliers of B2C digital services to customers in Singapore would be covered by the proposed GST rules. The reverse charge mechanism would cover B2B transactions between offshore suppliers of digital services and business recipients based in Singapore, which generally do not have full responsibility for the deduction of input GST. The GST-registered recipient is allowed to claim the corresponding GST as an input tax credit, subject to input tax refund rules. These proposals are generally in line with international practice, and recommendations outlined in the OECD Guidelines.<sup>48</sup>

## 2.4 Critics of GST Reform

Singaporean GST legislation is relatively modern and straightforward, which provides the jurisdiction with an important competitive advantage. For example, in comparison with EU VAT the advantages of the Singaporean GST are:

<sup>47</sup> Inland Revenue Authority of Singapore, *GST: Taxing Imported Services by Way of Reverse Charge (Draft)*, above n 45; Inland Revenue Authority of Singapore, *GST: Taxing Imported Services by Way of an Overseas Vendor Registration Regime (Draft)*, above n 45.

<sup>48</sup> OECD (2017), *International VAT/GST Guidelines*, above n 5.

- 1) it is simpler than EU VAT and has a much broader base at the standard rate;<sup>49</sup>
- 2) it better supports neutrality:
  - there are fewer exemptions,
  - the single tax rate is set at a comparatively low level (7 per cent),<sup>50</sup>
  - the GST registration and collection thresholds are set at relatively high levels.<sup>51</sup>

Therefore, it is justifiable to suggest that the tax reform should be designed to preserve these advantages.

According to some estimates based on experience of foreign countries, lowering the import relief GST threshold for imported goods below a certain level would have a negative impact on the economy.<sup>52</sup> For example, Holloway and Rae find that a threshold of USD 200 could generate more net economic benefit for the APEC-6 countries (Canada, Indonesia, Japan, Malaysia, the Philippines and Thailand) compared to lower-threshold options.<sup>53</sup> Similar results for Canada are confirmed by McDaniel et al.<sup>54</sup> Hintsä et al find that a threshold of EUR 70-80 per parcel could cover administrative and compliance costs in European Union countries. Therefore, various studies support the view that removing the import relief GST threshold would, in practice, cause more losses than gains, in terms of both economic consequences and fiscal implications.<sup>55</sup>

The historical *de facto* inactivation of a reverse charge mechanism in Singaporean GST legislation, together with the considerations on compliance and administrative costs, could be used as an argument for choosing a remote vendor registration model for collecting GST on Singaporean e-commerce in relation to B2B transactions. That is, under the remote vendor registration mechanism local customers do not incur GST obligations, or administrative and compliance costs. Under such a model, offshore suppliers of goods or digital services would register remotely for GST and pay tax on supplies to customers in Singapore. Ideally, this mechanism should be used for B2C transactions only, as recommended by the OECD Guidelines.<sup>56</sup> Furthermore, taxing B2B cross-border supplies of services in the country of destination would have very little

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<sup>49</sup> Alain Charlet and Jeffrey Owens, 'An International Perspective on VAT' (2010) 59 *Tax Notes International* 943, 945.

<sup>50</sup> OECD, *Consumption Tax Trends 2018: VAT/GST and Excise Rates, Trends and Policy Issues* (2019).

<sup>51</sup> *Goods and Services Tax Act 1993*, First Schedule, 1(1).

<sup>52</sup> Christine McDaniel, Simon Schropp and Olim Latipov 'Rights of Passage: The Economic Effects of Raising the *de minimis* Threshold in Canada' (CD Howe Institute E-Brief, 23 June 2016), [https://www.cdhowe.org/sites/default/files/attachments/research\\_papers/mixed/E-brief\\_Rights%20of%20Passage\\_June16.pdf](https://www.cdhowe.org/sites/default/files/attachments/research_papers/mixed/E-brief_Rights%20of%20Passage_June16.pdf).

<sup>53</sup> Stephen Holloway and Jeffrey Rae, 'De Minimis Thresholds in APEC' (2012) 6(1) *World Customs Journal* 31.

<sup>54</sup> McDaniel, Schropp and Latipov, above n 52.

<sup>55</sup> J Hintsä, S Mohanty, V Tsikolenko, B Ivens, A Leischnig, P Kähäri, A P Hameri and O Cadot, 'The Import VAT and Duty De-Minimis in the European Union – Where Should They Be and What Will Be the Impact?' (Cross-Border Research Association, Lausanne, Switzerland – in co-operation with HEC University of Lausanne and University of Bamberg Final Report, 14 October 2014), <http://www.euroexpress.org/uploads/ELibrary/CDS-Report-Jan2015-publishing-final-2.pdf>.

<sup>56</sup> OECD, *International VAT/GST Guidelines*, above n 5.

or no revenue effect, as business recipients would be able claim back the amount of GST included in the cost of supply.

### 3. AUSTRALIA

As discussed above, there has been a significant increase in the international trade of goods, services and intangibles. In particular, telecommunications and computer technologies have advanced enormously in recent years. Correspondingly, consumption by Australians of goods and services originating from offshore, both as a business input and for private consumption purposes, has increased significantly.<sup>57</sup>

Australia's GST is a VAT that is applied at a rate of 10 per cent on most goods and services transactions connected with Australia. It is a consumption tax paid by final consumers when consumption takes place in Australia. The tax effectively excludes B2B transactions (via the mechanism of crediting the input tax against the output tax).<sup>58</sup> Generally, GST applies to goods, services and intangibles acquired from outside Australia for consumption in Australia. Exports of goods, services and intangibles from Australia are treated as GST-free (zero-rated). This approach follows the destination principle as outlined above;<sup>59</sup> that is, GST is applied to consumption that occurs in Australia, irrespective of the origin of the supply, and is not applied to consumption outside Australia.

Application of the destination principle to the taxation of supplies of services and intangibles is problematic, as in some cases it is difficult to identify whether the consumption is taking place in or outside Australia. Therefore, most jurisdictions implement proxies for determining the place of consumption, using the consumer's location (or consumer residence or place of performance) instead. However, again, the significant growth in international electronic transactions has increasingly distorted identification of the place of consumption. As a result, some of the goods and services consumed in Australia are not taxed. For example, the purchase of digital content by an Australian consumer from an overseas supplier may not be taxed if the supplier is not registered for GST purposes.

Generally, if a person carries on a business or other form of enterprise in Australia, they must register for GST if their GST turnover<sup>60</sup> over a 12-month period is AUD 75,000 or more (AUD 150,000 or more for non-profit organisations).<sup>61</sup> A registration system is used for administration of the GST to ensure that GST is paid by liable businesses, and to provide relief (an entitlement to input tax credit)<sup>62</sup> for GST imposed on acquisitions by businesses of goods and services. Once registered, businesses receive an Australian

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<sup>57</sup> National Australia Bank, *Online Retail Sales Index, In-Depth Report June 2017* (2017), <https://business.nab.com.au/wp-content/uploads/2017/08/NORSI-JUN-2017.pdf>.

<sup>58</sup> See, generally, *A New Tax System (Good and Services Tax) Act 1999* (Cth) Div 11 (GST Act).

<sup>59</sup> OECD, Committee on Fiscal Affairs Working Party No 9 on Consumption Taxes, *International VAT/GST Guidelines: Guidelines on Neutrality* (28 June 2011), <https://www.oecd.org/tax/consumption/guidelinesneutrality2011.pdf>.

<sup>60</sup> 'GST turnover' refers to gross business income (not profit), and only supplies connected with Australia are included in the turnover.

<sup>61</sup> GST Act, above n 58, Div 23.

<sup>62</sup> However, an input tax credit is available for taxpayers 'carrying on an enterprise' and also satisfying some other conditions under s 11-15 of the GST Act.

Business Number (ABN), which facilitates administration of the GST.<sup>63</sup> If non-resident businesses supply goods, services or other things (such as rights) for consumption in Australia, they may have an obligation to register for GST and pay GST on any taxable supplies they make.<sup>64</sup> Non-resident businesses may register voluntarily for GST, and that allows them to recover GST incurred on their business acquisitions in Australia.<sup>65</sup>

Internet sales within the ‘indirect tax zone’ (ITZ)<sup>66</sup> are taxed in the same way as the physical sale of goods and services; that is, registered businesses:

- are required to include GST in the price of sales to their customers and then remit the GST to the Australian Taxation Office (ATO);
- are able to claim credits for the GST included in the price of their business-related purchases, as a refund from the ATO or a credit against their GST.

In 2017, a new law covering B2C supplies of digital content purchased by Australian consumers was introduced.<sup>67</sup> New GST rules for the import of low value goods purchased by Australian consumers were also implemented in June 2018. The key changes include elimination of the current threshold of AUD 1,000 for low value import of goods, and the introduction of a remote vendor model for payment of GST on such supplies.<sup>68</sup>

### 3.1 Cross-border supplies of goods

Previously, importation of goods from overseas suppliers to Australian purchasers attracted GST where the value of the goods being sold exceeded AUD 1,000. All transactions that take place online where the seller is an Australian business now attract GST.

The AUD 1,000 threshold originated from the customs entry thresholds and duty/tax-free thresholds for goods entering the country. James observes that such thresholds are generally established to balance revenue, administration and compliance costs.<sup>69</sup> Nonetheless, the Australian threshold is also characterised as a mechanism for reducing the regulatory burden on international trade. According to the ATO, the low value threshold has served to ‘minimise delays in the delivery of mail and cargo, reducing the cost to business of importing low value consignments, determining a value below which it is uneconomical to collect the tax and duty, and to facilitate international trade by minimising intervention’.<sup>70</sup>

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<sup>63</sup> See Australian Taxation Office (ATO), ‘Registering for GST’ (last modified 20 April 2021), <https://www.ato.gov.au/Business/GST/Registering-for-GST/>

<sup>64</sup> GST Act, above n 58, Div 23.

<sup>65</sup> Ibid.

<sup>66</sup> Ibid, s 195-1. The indirect tax zone (ITZ) covers an area smaller than Australia and excludes certain offshore territories and sea locations. Section 9-25 of the GST Act distinguishes between the supply of goods, real property and ‘anything else’ with respect to the ITZ.

<sup>67</sup> *Treasury Laws Amendment (GST Low Value Goods) Act 2017*. The Act specifically indicates ‘intangible supply’, which includes digital content.

<sup>68</sup> Kathryn James, ‘Applying the GST to Imports of Low-Value Goods in Australia’ (2018) 47(2) *Australian Tax Review* 83.

<sup>69</sup> Kathryn James, *The Rise of the Value-Added Tax* (Cambridge University Press, 2015) ch 2.

<sup>70</sup> Ibid.

Division 13 of the *A New Tax System (Goods and Services Tax) Act 1999* (the GST Act) outlines the GST treatment of taxable importations.<sup>71</sup> A taxable importation is described in section 13-5.<sup>72</sup> Notably, section 13-5 provides that there is no requirement for the importer to be registered for GST and the importer does not need to be carrying on an enterprise.<sup>73</sup> If the non-resident supplier is the importer, the supplier will be making a taxable supply and will therefore be liable for GST.<sup>74</sup> However, a voluntary reverse charge mechanism was introduced into GST law. The mechanism allows a registered business (Australian or non-resident), by arrangement with the non-resident supplier, to take on the GST obligations of the non-resident supplier.<sup>75</sup>

### 3.2 Recent reform

For more than a decade, the Australian retail industry had been calling for the Australian government to remove the preferential tax treatment granted to low value goods.<sup>76</sup> For example, the National Retail Association argued that the low value threshold ‘poses the greatest threat to traditional retail jobs and domestic online retail growth’, and that Australian retail had lost a number of jobs because of that issue.<sup>77</sup> It was claimed that such a move would provide a level playing field for Australian retailers. The call to tax low value goods led to the Australian government’s determination to broaden the tax base and improve revenue collection.

There have been various reports on the treatment of low value goods under the Australian GST system.<sup>78</sup> Regarding the cost effectiveness of the GST application to low value goods, it is commonly concluded that low value goods should be treated in the same way as all goods sold domestically. According to a report by the Productivity Commission, eliminating the low value threshold would provide additional GST revenue of around AUD 480 million, but it would entail a collection cost of over AUD 2 billion, borne by businesses, consumers and the government.<sup>79</sup> The Productivity Commission recommended removing the low value threshold only when it would be cost effective to do so. Similarly, the Low Value Parcel Processing Taskforce found in 2012 that if the low value threshold were removed, the GST collection costs would outweigh the revenue collected.<sup>80</sup> The review also concluded that there would be a negative effect on the economy.

However, these studies anticipated that GST would be collected as an at-the-border charge using the then-current collection mechanism. Therefore, the Australian

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<sup>71</sup> GST Act, above n 58, Div 13.

<sup>72</sup> Ibid, s 13-5.

<sup>73</sup> Ibid.

<sup>74</sup> Ibid, s 9-25(3)(a).

<sup>75</sup> Ibid, s 84-10.

<sup>76</sup> See, for example, Brett Winterford, ‘Retailers Call for GST Review as Online Sales Boom’, *CRN* (4 January 2011), <https://www.crn.com.au/news/retailers-call-for-gst-review-as-online-sales-boom-243091> (accessed 11 June 2021).

<sup>77</sup> News.com.au, ‘Retailers Call for GST on Online Sales’ (14 September 2012), <http://www.news.com.au/finance/work/retailers-call-for-gst-on-online-sales/news-story/3a84e4dbab88452dcdcd95db6fc6172> (accessed 11 June 2021).

<sup>78</sup> Low Value Parcel Processing Taskforce, *Final Report* (July 2012); Productivity Commission, *Collection Models for GST on Low Value Imported Goods, Discussion Paper* (July 2017).

<sup>79</sup> Productivity Commission. *Economic Structure and Performance of the Australian Retail Industry, Inquiry Report* (2011).

<sup>80</sup> Low Value Parcel Processing Taskforce, above n 78, 7-10 and 10-11.

government tried to find ways to reduce the costs of collection and the compliance burden. For example, one approach considered was to levy GST on international retailers via a point-of-sale charge rather than an at-the-border charge.<sup>81</sup> In 2015, there was extensive discussion of GST-related issues between the Commonwealth Treasurer and the State and Territory (subnational) Treasuries, following which the Commonwealth Treasurer reported:

the [State and Territory] treasurers agreed to apply the GST to offshore sales into the Australian market. This is a significant initiative. From the 1 July 2017, the GST will be applied to all products and services sold by vendors overseas into Australia. This will deliver competitive neutrality for Australian businesses, it will ensure that there is fair and equal treatment of all goods and services, so that if goods and services in Australia were to have the GST applied by companies in Australia, then the same would apply overseas.<sup>82</sup>

The recent reform modifies the GST Act to cover sales of low value goods, digital products and other imported services to Australian consumers by non-resident entities.<sup>83</sup> The new law covers the importation of low value goods, defined as goods with a customs value of AUD 1,000 or less.<sup>84</sup> The AUD 1,000 threshold was established at the time when the consideration for the supply was first agreed.

These changes affect non-resident entities selling to Australian consumers. Moreover, freight forwarders and operators of electronic distribution platforms (EDPs) facilitating supplies to Australian consumers are also affected.<sup>85</sup>

Under the new law, a supply of goods is connected to the ITZ<sup>86</sup> if:

- the supply involves the goods being brought to Australia with the assistance of the supplier or;
- the goods are low value; and
- the purchaser of the goods is a consumer.<sup>87</sup>

If the non-resident supplier meets the AUD 75,000 per year threshold, the supplier is required to register for GST and to remit GST to the Australian Taxation Office on its sales.<sup>88</sup> Supplies that are connected with the ITZ need to be taken into account in determining whether the supplier's turnover for GST purposes is AUD 75,000 or more annually.<sup>89</sup>

The new law also covers a supplier that assists in bringing goods into Australia. That includes the supplier delivering goods into Australia and the supplier procuring,

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<sup>81</sup> Productivity Commission, *Collection Models for GST on Low Value Imported Goods*, above n 78.

<sup>82</sup> The date, 1 July 2017, was later changed to 1 July 2018. See Hon Joe Hockey (Treasurer), Transcript of Press Conference, Canberra (21 August 2015), <https://ministers.treasury.gov.au/ministers/joe-hockey-2015/transcripts/press-conference-canberra-8>.

<sup>83</sup> *Treasury Laws Amendment (GST Low Value Goods) Act 2017*.

<sup>84</sup> Tobacco and alcohol are subject to customs duty. GST Act, above n 58, s 84-79(3).

<sup>85</sup> *Ibid*, s 84-81.

<sup>86</sup> The ITZ refers to Australia, but does not include external territories and certain offshore areas.

<sup>87</sup> *Treasury Laws Amendment (GST Low Value Goods) Act 2017*.

<sup>88</sup> GST Act, above n 58, s 23-5.

<sup>89</sup> *Ibid*.

arranging or facilitating delivery of the goods into Australia (in other words, freight forwarding).<sup>90</sup> Situations in which a supplier makes transport arrangements with third parties or provides assistance to the purchaser in relation to transport arrangements are similarly covered by the introduced law.<sup>91</sup> If the goods are delivered to Australia by a freight forwarder as a result of an arrangement with the purchaser, the freight forwarder will be treated as making the supply. The freight forwarder and/or EDP is also required to register for GST purposes if its annual turnover is AUD 75,000 or more. A freight forwarder covered by this GST provision will need to collect information from the supplier about the transaction, such as the consideration for the supply, in order to be able to meet its GST liability.

According to the new law, an Australian consumer includes any entity that is generally an Australian resident. An entity is a consumer of a supply made to the entity if:

- a) the entity is not registered; or
- b) if the entity is registered, the entity does not acquire the thing supplied solely or partly for the purpose of an enterprise that the entity carries on in the ITZ.<sup>92</sup>

Notably, the connection is not the place of consumption but is reliant on the identity of the consumer as an Australian resident and the place to which the goods are sent. Identifying a consumer as an Australian resident for purposes of the *Income Tax Assessment Act 1997* (Cth) might be a complex task. To address this issue, the new law provides that a supplier in some situations is treated as making a supply to an entity that is not an Australian consumer. In particular, GST liability will not apply where a supplier takes reasonable steps to obtain information about whether or not an entity is an Australian consumer,<sup>93</sup> and if, after taking such steps, the supplier reasonably believes that the other entity is not an Australian consumer.<sup>94</sup>

The new law does not specify which factors will allow a supplier to form a 'reasonable belief' about the identity of an Australian recipient. However, one important factor is whether the recipient is registered for GST.<sup>95</sup> This should be confirmed by the ABN, or other identifying information relating to that entity disclosed to the supplier. Other important factors are prescribed by the Australian Commissioner of Taxation. Specifically, Goods and Services Tax Ruling GSTR 2017/1 provides other relevant details and examples of information needed to support a conclusion about the recipient's residency status.<sup>96</sup>

Examples of information that the Commissioner will accept as supporting a conclusion about the recipient's residency status include:

- the recipient's billing address;

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<sup>90</sup> Ibid, s 38-355(3).

<sup>91</sup> Ibid, s 84-81.

<sup>92</sup> Ibid, s 84-75(2).

<sup>93</sup> Ibid, s 84-83.

<sup>94</sup> Ibid.

<sup>95</sup> It should be noted that in many cases the recipient may not be registered for GST.

<sup>96</sup> Australian Taxation Office, Goods and Services Tax Ruling GSTR 2017/1, 'Goods and Services Tax: Making Cross-Border Supplies to Australian Consumers'.



- the recipient's mailing address;
- the recipient's banking or credit card details, including the location of the bank or credit card issuer; and
- location-related data from third-party payment intermediaries and other information.<sup>97</sup>

However, the ATO notes that this is not a full list of evidence that would be relevant to establishing the residency status of a recipient.<sup>98</sup>

### 3.3 Mechanism of tax collection under the new rules

Under the introduced amendments, the current 'border model' arrangements for collecting GST on imports above AUD 1,000 will be retained. Currently, GST, customs duty and border clearance fees are required to be remitted to the Australian Border Force (ABF). However, imports of goods with a value of 1,000 AUD or less will be subject to a new and separate regime. The mechanism of administration and collection of GST under the new amendments could be described as an 'expanded vendor' model.<sup>99</sup> The GST obligation is placed on the seller, the EDP or the freight forwarder, depending on the supply chain for the item in question. The GST is collected on transactions with consumers only (B2C). Australian entities registered for GST can provide their ABN to the supplier as evidence that they are registered. Under the new collection model, sellers, EDPs and redeliverers must provide the ABF with details of their ABN and the ABN of the recipient (where applicable); that is, freight companies and express carriers need to collect that information and provide it to the ABF.

According to the Australian government, the main advantages of this collection mechanism are improved tax neutrality, competitive neutrality for Australian retailers, additional government revenue and relatively low administration costs.<sup>100</sup> In comparison to the border model, this mechanism entails lower administrative costs for government and avoids likely delays and disruptions to goods delivery for consumers.<sup>101</sup>

### 3.4 Cross-border supplies of digital services

As discussed above, the new amendments to the GST Act related to low value goods were delayed until July 2018. However, the delay did not affect the start of the previously introduced measure requiring non-resident suppliers to register and remit GST on services, digital products or rights supplied to Australian consumers. This measure has been in force since 1 July 2017. The introduced amendments affect section

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<sup>97</sup> Ibid, para 29.

<sup>98</sup> The list is relevant in the context of GST Act, s 84-100. However, most of these examples are not relevant for income tax residency.

<sup>99</sup> Productivity Commission, *Collection Models for GST on Low Value Imported Goods*, above n 78.

<sup>100</sup> Hon Joe Hockey (Treasurer), 'Statement: Council on Federal Financial Relations Tax Reform Workshop', *Media Release* (21 August 2015), <https://ministers.treasury.gov.au/ministers/joe-hockey-2015/media-releases/statement-council-federal-financial-relations-tax-reform>; Hon Scott Morrison (Treasurer), 'Delivering a Fairer Playing Field for Australian Businesses', *Media Release* (21 June 2017), <https://ministers.treasury.gov.au/ministers/scott-morrison-2015/media-releases/delivering-fairer-playing-field-australian-businesses>.

<sup>101</sup> Hon Joe Hockey (Treasurer), above n 100; Hon Scott Morrison (Treasurer), above n 100.

9-25 of the GST Act in order to make a supply of services connected with the ITZ a taxable supply for GST purposes, unless the supply is GST-free or input taxed.<sup>102</sup>

According to the amended law, such sales are now generally subject to GST in the same way as are supplies made by Australian taxable persons to domestic consumers. The key changes are as follows:

- the GST is imposed on intangible supplies, such as supplies of digital content, games and software, and services performed offshore for customers in Australia;
- the supplier or the operator of an electronic distribution service (EDP) will be liable for the GST;
- the GST applies only to B2C transactions; B2B transactions are exempted.

The introduced requirement for supplies to ascertain whether recipients are ‘Australian consumers’<sup>103</sup> allows the inclusion of the supply of anything that is not goods or real property (that is, services and intangibles such as digital products supplied from overseas to an Australian consumer).<sup>104</sup> When such a supply is delivered to an Australian consumer from overseas and is made through an EDP, the operator of the platform is taxed, rather than the actual supplier. Considering the large number of suppliers of digital products supplying to Australian consumers, the proposed changes will also apply to EDPs. If an EDP is used to supply to Australian consumers, the operator of the platform, rather than the original supplier of the digital product, is deemed to be the supplier liable for the GST.<sup>105</sup> This is a significant deviation from the previous rules contained in sections 9-5 and 9-10 of the GST Act, which made the actual supplier liable.<sup>106</sup>

The ‘Australian consumer’ test for low value goods is somewhat broader than the test that applies to the supply of inbound intangible consumer supplies. In addition to the above requirements, there is a further condition that the recipient of the supply be an Australian resident for income tax purposes. However, for low value goods there is a sufficient connection to Australia if the goods are imported to Australia (even by a non-resident).<sup>107</sup>

The concept of an EDP was introduced as part of amendments made to the GST treatment of supplies of intangibles by overseas suppliers. An EDP is categorised as a service (including a website, internet portal, gateway, store or marketplace that allows businesses to make supplies available to end users) where:

- the supplies are made to end users by means of the service;

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<sup>102</sup> GST Act, above n 58, s 9-5.

<sup>103</sup> Ibid, s 9-25(7) provides a relevant definition: ‘Suppliers must take reasonable steps to ascertain whether recipients are Australian consumers’.

<sup>104</sup> Ibid, s 9-25.

<sup>105</sup> Ibid.

<sup>106</sup> There are some exceptions to the general rule, such as the ‘reverse charge’ under Division 84. As part of these changes, the reverse charge rules in Division 84 of the GST Act were completely rewritten. The rules in Division 84 of the GST Act were expanded to impose a reverse charge on low value goods supplied to GST-registered businesses where a full input tax credit is not available.

<sup>107</sup> GST Act, above n 58, s 9-26.

- the service is provided by means of electronic communication; and
- the supplies are made by electronic communication.<sup>108</sup>

If an EDP supplies low value goods, the requirement to supply by way of electronic communication will not apply. The operator of the EDP will be liable for GST where a supply involves both a freight forwarder and the operator of the EDP.<sup>109</sup> Conversely, a carriage service (as per the definition outlined in the *Telecommunications Act 1997*)<sup>110</sup> providing access to a payment system, processing payments or providing vouchers is not covered by the concept of EDP. The intention is to ensure that providers of ordinary telecommunications services and credit card service providers are excluded from the operation of the provision.

In situations where a supply involves multiple EDPs, and in the absence of an agreement between the parties, the supplier will be deemed the first platform operator to either:

- a) receive or authorise consideration for the supply; or
- b) authorise delivery of the supply.<sup>111</sup>

Additionally, subject to certain conditions, the platform operator can reach an agreement with the supplier that the supplier will be liable for the GST.<sup>112</sup>

Suppliers covered by these provisions are required to register for GST purposes, but they can also elect to be treated as limited registration entities.<sup>113</sup> The general GST registration threshold of AUD 75,000 per year will apply to the entity, consistent with the registration threshold applying to domestic suppliers. Limited registration entails a lesser compliance burden compared to standard GST registration.<sup>114</sup> In particular, limited registration entities are required to submit their GST returns on a quarterly basis, but such entities are not entitled to receive an ABN or to claim input tax credits with respect to any GST that is included in their business costs incurred in Australia.<sup>115</sup> However, considering that the majority of overseas suppliers do not have a presence in Australia, negligible costs will be incurred that may give rise to the GST refund entitlement. Importantly, there is no requirement for issue of tax invoices or adjustment notes for inbound intangible consumer supplies.<sup>116</sup> This measure is intended to provide relief for overseas entities covered by the extended GST provisions from certain administrative obligations encountered by domestic suppliers.

The Treasurer<sup>117</sup> will have the power to determine that specified classes of intangible supplies made by non-residents are GST-free, where applying GST would be inconsistent with Australia's international obligations. Similarly, the Treasurer has the

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<sup>108</sup> Ibid, s 84-70.

<sup>109</sup> Ibid, s 84-81.

<sup>110</sup> Ibid, s 84-70(2).

<sup>111</sup> Ibid, s 84-81.

<sup>112</sup> Ibid, s 84-81(5).

<sup>113</sup> Ibid, Div 146.

<sup>114</sup> Ibid, s 146-25.

<sup>115</sup> Ibid, ss 146-10, 146-15.

<sup>116</sup> Ibid, s 84-73.

<sup>117</sup> The Treasurer of Australia is the minister in the Australian (Commonwealth) government responsible for government expenditure and revenue raising.

power to decide that specified classes of intangible supplies made by non-residents are input taxed.<sup>118</sup>

An additional important amendment arose as a result of the 2009 Board of Taxation Review.<sup>119</sup> The changes apply to cross-border transactions involving B2B supplies where GST would be payable on a supply by a non-resident to an Australian business. In such a scenario, the GST obligations are shifted to Australian businesses that are registered for GST, reducing compliance costs for non-resident entities.<sup>120</sup> According to the explanatory material, operators are generally better placed to comply and ensure that digital goods and services obtained in a similar manner are taxed accordingly.<sup>121</sup> The changes apply to a variety of services supplied from offshore to Australia.

Currently, Australia is actively implementing new GST regulations with the aim of encompassing cross-border e-commerce in GST legislation. It is interesting to note that Australia is a pioneer in abolishing the threshold for low value imported goods and introducing a new mechanism for cross-border e-commerce in goods containing features of several models discussed in the OECD's BEPS Action 1 Report.<sup>122</sup> Therefore, the Australian experience in this area is vital for other countries.

#### 4. CRITERIA AND RESULTS OF COMPARATIVE ANALYSIS

##### 4.1 Criteria

There is a significant body of literature focused on tax-relevant criteria.<sup>123</sup> Generally, authors use four criteria to assess various taxes.<sup>124</sup> This article, in line with the literature, utilises the following criteria for evaluating the introduced and proposed rules for e-commerce cross-border taxation in Australia and Singapore:

- efficiency (revenue adequacy);
- simplicity (ease of administration and compliance);
- neutrality (non-distortion of business behaviour);
- fairness (creating a level playing field for foreign and domestic businesses).

On the one hand, it seems justifiable to assume that the weighting of different criteria in a specific tax system implemented by a country corresponds with its unique economic

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<sup>118</sup> If a supply is input taxed, no GST is payable on the supply and there is also no entitlement to an input tax credit for anything acquired to make the supply (GST Act, above n 58, ss 11-15 and 15-10) – for example, financial supplies or supplies of residential premises.

<sup>119</sup> Board of Taxation, *Review of the Application of GST to Cross-Border Transactions, Report to the Assistant Treasurer* (February 2010).

<sup>120</sup> GST Act, above n 58, s 84-85.

<sup>121</sup> Exposure Draft Explanatory Material to the Tax Laws Amendment (GST Treatment of Cross-Border Transactions) Bill 2015.

<sup>122</sup> OECD, *Addressing the Tax Challenges of the Digital Economy, Action 1 – 2015 Final Report*, above n 11.

<sup>123</sup> See, for example, Clinton Alley and Duncan Bentley, 'A Remodelling of Adam Smith's Tax Design Principles' (2005) 20(4) *Australian Tax Forum* 579; Simon R James and Christopher Nobes, *The Economics of Taxation: Principles, Policy and Practice*, 7th updated edn (Financial Times-Prentice Hall, 2004); P M Jackson, 'Efficient Local Government Finance: The Never Ending Story' in F Terry (ed), *Towards Restructuring: The Dimensions of Change in Local Government* (1994) 55-62.

<sup>124</sup> Alley and Bentley, above n 123; James and Nobes, above n 123; Jackson, above n 123.

and legal circumstances. On the other hand, countries may try to harmonise their indirect tax systems with each other in order to minimise trade barriers. The noticeable example is harmonisation of VAT systems in the European Commission member states.<sup>125</sup>

Generally, the efficiency criterion implies that a tax should generate revenue with minimal administration and compliance costs. Efficiency entails the notion that the revenue generated will at least exceed the costs of administration of the introduced tax. Evidently, as one of the primary functions of taxation is revenue mobilisation, the new tax should generate adequate revenue that exceeds the costs of administration. The same approach to this criterion can be found in the OECD GST Guidelines.<sup>126</sup>

Simplicity entails that a tax should be easy to understand and simple to comply with.<sup>127</sup> However, simplicity is a subjective concept. For example, Professor Tran-Nam argues that '[i]n a more mature economy where market structures, business organisations and commercial transactions have grown continuously and rapidly in complexity, tax laws have to evolve accordingly'.<sup>128</sup> Nonetheless, generally a simple and transparent tax makes it easier for taxpayers to comprehend their obligations and rights. A simple tax may involve reduced compliance costs for taxpayers, as well as minimal administrative costs for the revenue authorities of a country. Simplicity for taxpayers is also imperative in the context of tax competition between jurisdictions.<sup>129</sup> Finally, tax simplicity is vital for domestic consumers, who can experience a reduction in the supply of goods and services if the compliance burden is excessive and suppliers are pushed out of a jurisdiction's market.

The fairness criterion is met when a level playing field is created within a domestic market in a single jurisdiction. The tax should treat taxpayers with similar economic capacity in the same way. The fairness consideration also needs to take into account potential exposure to complexity and the distribution of compliance costs and risk; that is, offshore and domestic suppliers operating in the same market should be subject to equal tax treatment. Otherwise, certain suppliers could have a comparative advantage if, for example, some offshore or domestic suppliers were excluded from GST liability. This would equip such suppliers with a competitive edge, helping them to increase their market share.

The neutrality criterion implies that a tax should be neutral and equitable: tax law should give similar treatment to conventional and electronic forms of commerce. Taxpayers in similar situations carrying out similar transactions should be subject to similar levels of taxation. Generally, all taxes affect the choices individuals and business make by influencing their motivation to work, save, invest or consume. Therefore, ideally, a tax should not distort the behaviour of individuals or of businesses.

The criteria selected generally reflect the broader notion that free international trade ideally leads to an increase in wealth for all trading nations. The other justification for

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<sup>125</sup> OECD, *Consumption Tax Trends 2018*, above n 50.

<sup>126</sup> OECD, *International VAT/GST Guidelines*, above n 5.

<sup>127</sup> *Ibid*, 18: 'Certainty and simplicity: The tax rules should be clear and simple to understand so that taxpayers can anticipate the tax consequences in advance of a transaction, including knowing when, where, and how the tax is to be accounted'.

<sup>128</sup> Binh Tran-Nam, 'Tax Reform and Tax Simplicity: A New and "Simpler" Tax System?' (2000) 23(2) *University of New South Wales Law Journal* 241.

<sup>129</sup> Tax competition can be defined as competition between governments to offer a business-friendly regime and the lowest possible tax burden in order to attract investment, businesses and talents into the jurisdiction.

the selected criteria is the concept of ‘efficient enterprises’,<sup>130</sup> according to which the ‘key issue with respect to regulating global movement of money is the reduction of transaction costs to facilitate the creation of more wealth’.<sup>131</sup> These considerations are reflected in the tax, customs, trade and investment policies of Singapore, the economic development of which is based on its openness to global trade.

However, evidently, various countries have different economic and policy priorities in formulating tax policy. For example, some countries favour a protectionist economic policy based on the idea of defending the national market from foreign suppliers. Thus, countries focused on protectionist economic policies may interpret the above criteria differently. Generally, protectionist policies take the form of imposing a higher level of compliance and a higher share of the taxation burden on foreign suppliers than on domestic suppliers. By the same token, fiscal efficiency and neutrality may not be a priority if the primary policy goal is to build a protective barrier around the domestic market.

#### 4.2 Comparing Australian and Singaporean GST regimes: post-reform

Table 3 provides a summary of the post-reform approaches in Australia and Singapore to taxation of cross-border supply of goods against the selected criteria.

**Table 3: Post-Reform Approach to Taxation of Cross-Border Supply of Goods**

		Country	
		Singapore	Australia
<b>Approach suggested by the reform proposal</b>	<b>Who will remit the tax?</b>	Local and overseas suppliers of low value goods including electronic marketplaces and redeliverers that has a global turnover exceeding SGD 1 million and makes B2C supplies of low value goods and remote services to customers in Singapore exceeding SGD 100,000	Offshore suppliers, express carriers, postal operators, internet platforms.
	<b>Are there any simplification measures?</b>	Yes. While input tax claims incurred on taxable purchases made in Singapore are not allowed, the regime features simplified GST reporting and documentation requirements.	An option for limited GST registration (no GST refund entitlement).

<sup>130</sup> Richard Gordon and Andrew P Morriss, ‘Moving Money: International Financial Flows, Taxes, and Money Laundering’ (2014) 37(1) *Hastings International and Comparative Law Review* 1.

<sup>131</sup> *Ibid.*

	<b>What supplies are covered by the new rules?</b>	B2C import supplies of tangible goods that have a value not exceeding the import relief threshold of SGD 400.	B2C import supplies of tangible goods with value of less than AUD 1,000.
	<b>Are there any differences between B2B and B2C?</b>	B2B import supplies of low value goods are exempted beside where the purchaser is not taxable (at least partly). In the latter case reverse charge mechanism applies.	B2B import supplies of tangible goods are exempted.
<b>Criteria</b>	<b>Neutrality</b>	The new regime theoretically does not distort business decisions. Thus, neutrality may be achieved because the GST tax burden is equal for foreign and domestic supplies to local customers. However, neutrality is impacted if the supply is not zero-rated at the jurisdiction of origin. Some suppliers may avoid GST due to difficulties in administrative control of the regime.	
	<b>Fairness</b>	In theory, the new regime is fair, since offshore and local suppliers are subject to equal GST liability. Thus, the reform eliminates the discrimination against local suppliers that existed before the reform. However, some non-compliant suppliers may evade GST liability by skipping the GST registration. The new mechanism relies on voluntary compliance as its main pre-condition. It is hard to perform GST control and audit in relation to cross-border e-commerce, in case of non-cooperative taxpayer's behaviour.	
	<b>Fiscal efficiency</b>	The new regime potentially generates a substantial amount of tax revenue. However, the costs of system administration and compliance might be also significant.	
	<b>Simplicity</b>	The new regime adds complexity by requiring suppliers to collect various information from customers, to determine and calculate their tax liability and to identify the place of consumption. An additional issue is distribution of taxpayer/tax agent roles between suppliers, carriers and internet platforms involved in the supply.	

Source: Authors

Table 3 indicates that the issues with neutrality, fairness and fiscal efficiency associated with the pre-reform Australian and Singaporean GST mechanisms can be addressed by the introduced reform. One of the major pillars of the reform is the extension of the destination principle, which ensures effective taxation in the state of consumption. This is in line with OECD guidance and the international consensus on this issue.

The neutrality criterion is addressed both under the Australian and Singaporean new rules, since equal GST liability applies to both foreign and domestic suppliers. However, thresholds apply differently for inbound supplies due to the EDP rules. Some authors suggest that 'putting a GST on low value imports is unlikely to revive Australian retailing in the face of intense online shopping competition, given the significant price

differentials for many popular consumer products'.<sup>132</sup> Further, it is argued that Australia's retail disadvantage can be attributed to its extremely regulated labour market and regulatory restrictions on retail and land use, rather than to the low value threshold.<sup>133</sup>

However, some commentators argue that the new measures will not achieve competitive neutrality. For example, representatives of EDPs, in their submission to the Senate Economics Legislation Committee inquiry into the enacting Bill, suggested that many sellers who use their services are microbusinesses whose turnover is below the AUD 75,000 threshold that would require them to register and apply GST to sales under AUD 1,000. Nevertheless, EDPs are treated as individual sellers under the new Australian regime. This means that a platform needs to register for the collection and remittance of GST and apply the GST charge to the products of each individual seller.<sup>134</sup>

Despite these arguments, the very fact of equal treatment of foreign and domestic suppliers under the new Australian rules addresses the neutrality principle significantly better compared to the previous regime. Some observers state that, since the purpose of the new regime is to create a level playing field, it would be reasonable to introduce such a regime even if there was a net revenue loss in the early years.<sup>135</sup>

There are some issues related to administration and compliance with the new rules. In particular, the new Australian regime introduces different tax remittance mechanisms for cross-border online supplies of low value goods in comparison with domestic supplies. This could create an 'administrative barrier' protecting the local market, which could be beneficial for domestic suppliers, owing to increased compliance requirements imposed on offshore suppliers. In this context, Berg and Davidson argue that the new measure is a tariff, since it levies GST on sellers who do not have the access to input tax credits that an Australian domestic seller would have.<sup>136</sup> However, any seller can choose to register in the normal regime in order to claim credits.

Additionally, it is not clear on what basis express carriers are included in the GST net, given their limited role in the process of cross-border e-commerce. Generally, express carriers are not involved in funds transfer, which means that they cannot include GST in the cost of the goods; that is, the express carrier must request GST from another player involved in the transaction. According to the Explanatory Memorandum on the reforms, the rationale for making EDPs liable for tax collection is that they are normally larger and better resourced than most of the individual sellers making supplies via the platform.<sup>137</sup> They also have more information about the consumers of supplies to enable them to decide whether the consumer is an Australian resident for tax purposes.<sup>138</sup> The Treasury supposes that 'compliance and administration would be simplified if liability

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<sup>132</sup> M Novak, *No to the GST Tax Attack: Why the Exemption for Online Purchases Should Stay* (Institute of Public Affairs, 2015).

<sup>133</sup> *Ibid.*

<sup>134</sup> Senate Economics Legislation Committee, *Treasury Laws Amendment (GST Low Value Goods) Bill 2017 [Provisions]: Report* (May 2017).

<sup>135</sup> *Ibid.*

<sup>136</sup> Chris Berg and Sinclair Davidson, 'Submission to the Productivity Commission Inquiry into Collection Models for GST on Low Value Imported Goods', available at: [https://www.pc.gov.au/\\_data/assets/pdf\\_file/0012/221430/sub033-collection-models.pdf](https://www.pc.gov.au/_data/assets/pdf_file/0012/221430/sub033-collection-models.pdf).

<sup>137</sup> Explanatory Memorandum to the Tax and Superannuation Laws Amendment (2016 Measures No 1) Bill 2016.

<sup>138</sup> *Ibid.*



for GST rested on the platform operator rather than the vendor'.<sup>139</sup> A similar logic could be applied to the inclusion of express carriers in the GST net.

A significant issue is that the Australian regime imposes a number of requirements on offshore suppliers, including the requirements to assess whether they need to register for GST, to identify taxable sales, to collect GST on taxable sales, and to report on and remit GST to the ATO based on their sales to Australian consumers. Therefore, the Australian regime inflicts notable compliance costs on offshore suppliers. For example, in their submission to the Senate Economics Legislation Committee inquiry, the EDPs eBay, Alibaba and Etsy expressed concern that they would be liable for GST on goods that they have never owned, held, tracked or traded.<sup>140</sup> EDPs in general suggest that the introduced system will be multifaceted and expensive to administer, and it is likely that the costs will be passed on to consumers. This would result in various impacts on consumers, including the apparent outcome that the tax and associated compliance costs would cause an upsurge in prices. However, the Australian Treasury notes that the chosen collection model is well balanced and that the inclusion of electronic platforms increased compliance with the new law.<sup>141</sup> The Treasury also argues that this model is the most appropriate, given that the number of businesses involved is expected to grow rapidly.

Generally, Australia has the jurisdiction to impose GST on non-resident suppliers; however, Australia has no jurisdiction over enforcement.<sup>142</sup> The Australian government has no power to issue a tax assessment for unpaid GST to an offshore supplier. Furthermore, some of Australia's trade partners (for example, the United States) have multiple levels of government collecting different taxes, which may exacerbate the enforcement challenge for the ATO because the ATO would need to deal with various governments.

The other potential issue is double taxation of the same supply in cases where jurisdiction of consumption applies the country of destination principle to cross-border supplies but jurisdiction of supply applies the country of origin principle to the same supply.<sup>143</sup> International tax treaties harmonising countries' approaches to the GST treatment of cross-border transactions can provide relevant solutions for this issue, especially in countries with high volumes of cross-border e-commerce trade.

#### **4.3 Comparing taxation of cross-border digital services in Singapore and Australia: post-reform**

Table 4 presents a comparison of approaches in Australia and Singapore to taxation of cross-border digital services against the selected criteria.

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<sup>139</sup> Ibid

<sup>140</sup> Senate Economics Legislation Committee, above n 134, 15.

<sup>141</sup> Explanatory Memorandum to the Tax and Superannuation Laws Amendment (2016 Measures No 1) Bill 2016, above n 137.

<sup>142</sup> Dale Boccabella and Kathrin Bain, 'Removal of the GST Low Value Threshold: Analysis of Main Design Options and Enforcement Issues' (2015) 2 *Australia Tax Law Bulletin* 172.

<sup>143</sup> It should be noted that not many countries apply the origin principle.

**Table 4: Post-Reform Approach to Cross-Border Digital Supplies**

		Country	
		Singapore	Australia
<b>Approach suggested by the reform proposal</b>	<b>Who will remit the tax?</b>	Offshore suppliers and marketplaces with a global turnover exceeding 1 million SGD, supplying digital services to consumers in Singapore that exceed SGD 100 (B2C); local business under reverse charge (B2B).	Offshore suppliers and marketplaces (B2C); local business under reverse charge (B2B).
	<b>Are there any simplification measures?</b>	Simplification measures for tax registration and declaration of tax by offshore suppliers are proposed (no invoices and no input tax credit).	Simplification measures for tax registration and declaration of tax by offshore suppliers are implemented. Limited registration option is available (no invoices and no input tax credit).
	<b>What digital services are covered?</b>	Digital services are defined as services that are delivered over the internet (or an electronic network) and the nature of which renders their supply essentially automated, involving minimal human intervention and being impossible in the absence of information technology. <sup>144</sup>	Sales of imported services and digital products to Australian consumers. Examples of imported services and digital products include online supplies of software, digital trade journal/magazine subscriptions, website design or publishing services and legal, accounting or similar consultancy services.
	<b>Are there any differences between B2B and B2C?</b>	There are significant differences in the tax remittance mechanisms (supplier registration vs. reverse charge).	There are significant differences in the tax remittance mechanisms (supplier registration vs. reverse charge).
<b>Criteria</b>	<b>Neutrality</b>	The implemented mechanism adequately addresses neutrality, as there is no double taxation. Tax is paid at the appropriate level of the supply chain. However, there can be double taxation if supply is not zero-rated at the jurisdiction of supplier.	

<sup>144</sup> These services include supply of the following:

- downloadable digital content (eg, downloadable mobile applications, e-books and movies);
- subscription-based media (eg, news, magazines, streamed TV shows and music, and online gaming);
- software programs (eg, downloadable software, drivers, website filters and firewalls);
- electronic data management (eg, website hosting, online data warehousing, file-sharing and cloud storage services); and
- support services, performed via electronic means, to arrange or facilitate a transaction, which may not be digital in nature (eg, commissions, listing fees and service charges).

	<b>Fairness</b>	Theoretically, a level playing field is created for offshore and local suppliers. However, administrative and compliance obligations are different for offshore and local suppliers.	
	<b>Fiscal efficiency</b>	There is no evidence yet. However, the proposed approach will potentially generate significant tax revenue.	There is no evidence yet. However, the proposed approach will potentially generate significant tax revenue.
	<b>Simplicity</b>	The implemented approach is quite complex. The compliance requirements for offshore suppliers are burdensome in terms of 1) differentiating between B2B/B2C supplies and 2) determining consumer location.  Local small businesses acquiring B2B digital services (such as Uber drivers) may have issues complying with the reverse charge mechanism.	

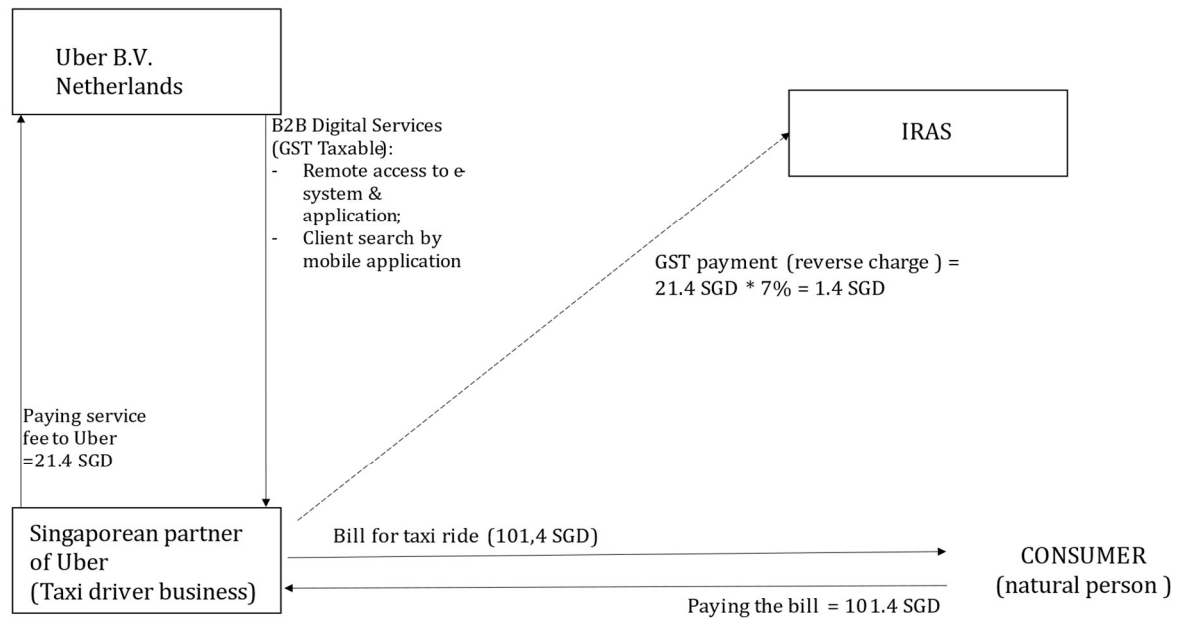
Source: Authors

Table 3 indicates that the newly introduced regulations in Australia and Singapore better address the neutrality, fairness and fiscal efficiency criteria compared to the previously used mechanisms. Once again, the extension of the destination principle allows offshore supplies of digital services to be encompassed within the GST net.<sup>145</sup>

Despite the international consensus on the concept, the issues relating to administration and compliance with the new rules remain, as mechanisms in Singapore and Australia entail different tax remittance arrangements for offshore digital supplies versus domestic supplies. On top of this, the tax remittance mechanisms for B2B and B2C supplies are different. Arguably, these differences could lead to an increased administrative and compliance burden for taxpayers and for tax authorities. Some of the potential issues are illustrated in Figure 1.

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<sup>145</sup> Application of the destination principle to indirect taxation of e-commerce is a well-established concept reflected in the GST/VAT-related reports by the OECD. See, for example, OECD, *Electronic Commerce: Taxation Framework Conditions* (Ottawa, 1998); OECD, *Tax Challenges Arising from Digitalisation – Interim Report 2018*, above n 3.

**Fig. 1: Offshore Supplier of Digital Services (B2B)**

Source: Authors

Figure 1 illustrates a scenario that resulted from the IRAS reform proposal, where a Singaporean taxi business registers for GST and remits GST for the B2B services acquired from an offshore supplier (Uber BV) under the reverse charge mechanism. Thus, the taxi business may be subject to a relatively high GST compliance burden, which can be costly. Under this scenario, the taxi business could be exempted from GST if the turnover of the business were below the threshold (SGD 1 million for 12 months).<sup>146</sup>

The other potential issue, highlighted above, is double taxation of offshore import supply. According to the OECD's GST Guidelines, addressing this issue would require the jurisdiction of origin to apply a zero rate to such supplies, or to provide similar treatment that results in crediting the input tax and exemption from the output tax.<sup>147</sup> However, current VAT/GST regulations in various countries are inconsistent; as a result, neutrality may not be achieved. One possible solution is a tax agreement aimed at harmonising the parties' approaches to VAT/GST treatment of cross-border transactions. For example, the EU has harmonised its VAT system to facilitate VAT

<sup>146</sup> Note the position in Australia: Misa Han, 'Uber loses GST fight with the Tax Office', *Australian Financial Review* (15 February 2021), <https://www.afr.com/technology/uber-loses-gst-fight-with-the-tax-office-20170215-gudwza> (accessed 12 June 2021).

<sup>147</sup> OECD, *International VAT/GST Guidelines*, above n 5.

neutrality, at least within the borders of its member states, by means of common legislation.<sup>148</sup>

#### 4.4 Results of comparative analysis

There are some important similarities between the two countries' approaches to indirect tax treatment of imported digital services (for example, the offshore supplier model for B2C transactions and the reverse charge mechanism for B2B supplies warranting taxation in the country of consumption). This is justifiable, as this tax policy option is conventional and the OECD recommends it. Some other countries have adopted similar policies, including the EU member states. Such a policy is well grounded on neutrality, fairness, fiscal efficiency and administrative simplicity. Besides, the policy accommodates the reality of digital e-commerce business, which is characterised by the market dominance of large internet platforms and aggregators.

With regard to B2B supplies, the OECD Guidelines provide

that local VAT legislation may not require the reverse charge to be made if the establishment of use is entitled to full input tax credit in respect of this supply. In such cases, the tax administration is encouraged to publicise this. Jurisdictions that do require a reverse charge to be made are likewise recommended to make this clear.<sup>149</sup>

This simplification measure is quite effective, since it can minimise compliance costs for B2B supplies of digital services.

Based on the above analysis of Singaporean and Australian approaches to GST treatment of e-commerce, a significant difference can be identified. Australia is pioneering the new approach based on the offshore supplier model and increased compliance requirements for offshore suppliers, internet platforms and express carriers. On the other hand, Singapore is adhering to a traditional GST treatment of offshore suppliers with exemption for low value goods (as on June 2021). Even after the reform (effective from 1 January 2023) the existing import relief threshold of SGD 400 will remain which means that such supplies will not be treated in the same way as imports of other goods but rather as another kind domestic supply (in the same way as importation of digital services).

The Australian approach in implementing a zero threshold for low value imported goods can be justified on the following grounds:

- 1) the Australian domestic market is quite significant and very attractive for offshore suppliers, and there is therefore potential for substantial GST revenue;
- 2) the scale of distortion of competition and unfair tax treatment (without new rules) of domestic and foreign suppliers is relatively high in Australia in comparison with Singapore;

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<sup>148</sup> Council of the European Union, Council Directive 2006/112/EC of 28 November 2006 on the Common System of Value Added Tax.

<sup>149</sup> OECD, *International VAT/GST Guidelines*, above n 5, 66.

3) generally, Australia is more protectionist in its fiscal and trade policy compared to Singapore.

However, certain issues, such as high compliance costs of GST collection, may potentially create an administrative barrier for offshore suppliers in cross-border e-commerce transactions. This, in turn, may lead to low fiscal efficiency of the new rules and weaken the e-commerce sector of the economy overall.

## 5. CONCLUSIONS

Global digital developments have exacerbated a contradiction that existed long before digital business models emerged in their current form. This contradiction is between global business activities that have no national borders, and national sovereign taxation powers and tax administration capabilities. To address this contradiction, an increasing number of international cooperation projects are currently being undertaken. This 'global tax governance' (or 'soft law') line is highly relevant in the context of indirect taxation of the digital economy.

Based on the above analysis of the Australian and Singaporean experiences in addressing taxation of e-commerce, broader observations can be made about taxation of the digital economy. Cross-border e-commerce represents significant challenges for tax authorities in various countries. Tax policy-makers need to consider a number of common issues in adjusting national tax systems to these new developments; for example, potential shortfalls in tax revenue due to rapid increase in e-commerce, and 'dead loss' issues resulting from ineffective tax administration. However, as noted above, it is likely that various countries will address the related issues on the basis of their national priorities.

The Singaporean priority is to maintain the most business-friendly environment possible. This priority is reflected in a very cautious approach to e-commerce tax reform on the part of the Singaporean authorities, including an extended period of consultation with businesses and other stakeholders. The introduced reform focuses on cross-border e-commerce transactions (supply of digital services), while the other part (cross-border supply of goods) is not addressed fully as on June 2021. It appears that the Singaporean tax authorities are willing to study the experiences of other countries before implementing new GST rules for cross-border supply of goods.

The Australian priorities also include maintenance of a business-friendly environment; however, protection of the tax revenue base and creation of a level playing field for local business are additional important priorities. The Australian economy is arguably less oriented towards international trade compared to the Singaporean economy and, thus, it can be argued that tax revenues and a level playing field are salient factors for the Australian government.

The intention of the Australian government to tax e-commerce transactions has resulted in the introduction of the new GST regime in that country. Removing the threshold on low value supply in Australia eliminates preferential tax treatment of online sales and increases economic efficiency. The drawback of the introduced regulation is that higher-priced imports negatively impact Australian consumers. The compliance burden associated with GST may also create a barrier for offshore suppliers, pushing them out of the Australian market and, as a result, limiting competition and consumer choice. However, the imposition of GST on low value goods generally facilitates equal

treatment of offshore and onshore retailers and helps to protect the GST base, given the rapid increase in the volume of such imports.

The Australian experience with new GST rules is very limited. Nonetheless, introducing new GST rules may not be enough per se to ensure an effective e-commerce taxation system. The system must be able to provide other sufficient qualities, or attributes, to ensure satisfactory outcomes for both taxpayers and tax authorities. To that end, the system must ensure a certain degree of transparency and simplicity, and must be able to provide consistent tax outcomes based on equal treatment of taxpayers. The Australian GST does not achieve all of these goals, but it performs sufficiently well on them not to cause undue ongoing concern.

The taxation of e-commerce in Singapore is in the process of reform, and the necessary qualities of a fully functioning GST system efficiently covering e-commerce are not yet fully in place. The delayed introduction of GST for low value imported goods in Singapore is justifiable; it is clear that Singapore may learn from some of the practices adopted in Australia in this sphere.

Overall, and despite the Singaporean reform being in its first phase, the GST approaches to e-commerce in both jurisdictions have many similarities and common issues related to neutrality, fairness, efficiency and simplicity. In both cases, however, it remains to be seen how effective the systems are in practice.