The Amazon Tax: Introducing GST on Low-Value Imported Goods

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In principle, Goods and Services Tax (GST) should apply to all consumption that occurs in New Zealand to support the simplicity, efficiency and equity of the tax system. Prior to December 2019, GST was not collected on goods valued below $400 purchased from offshore suppliers.[1] This anomaly was historically justified by the low revenue benefits relative to the high administrative costs of collection. However, the rise of online shopping in recent years has shifted this cost-benefit analysis. The government has therefore proposed rules to collect GST on low-value imported goods (LVIG). These rules, dubbed the "Amazon tax",[2] are enacted in the Taxation (Annual Rates for 2019–20, GST Offshore Supplier Registration, and Remedial Matters) Act 2019 (the Act).

Part I of this legislation note provides some background on the proposal to collect GST on LVIG. Part II argues in favour of the policy considerations behind the reforms. Part III evaluates the various collection models that could be adopted. It concludes that collection by offshore suppliers — the enacted model — is indeed the preferred model. Finally, Part IV discusses the concerns surrounding enforcement and the options for enforcement. This note concludes that the government has given careful thought to the policy and its implementation.

I BACKGROUND

The Taxation (Annual Rates for 2019–20, GST Offshore Supplier Registration, and Remedial Matters) Bill (the Bill) was an omnibus bill that proposed several tax policy and remedial changes.[3] This included introducing GST on LVIG[4] and ring-fencing tax deductions on rental properties,[5] and various other amendments.[6] The Bill was introduced in December 2018 and received the Royal assent in June 2019. This legislation note will only discuss the collection of GST on LVIG, which will apply from December 2019.

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1 Inland Revenue Department *Regulatory Impact Statement: GST on Low-Value Imported Goods* (The Treasury, December 2018) at 10.

2 See Lucy Bennett and Ryan Dunlop "Amazon Tax: What it means" *The New Zealand Herald* (online ed, Auckland, 2 May 2018).

3 Taxation (Annual Rates for 2019–20, GST Offshore Supplier Registration, and Remedial Matters) Bill 2018 (114).

4 Taxation (Annual Rates for 2019–20, GST Offshore Supplier Registration, and Remedial Matters) Act 2019 [Taxation (GST Offshore Supplier Registration) Act], pt 2.

5 Taxation (GST Offshore Supplier Registration) Act, s 62.

6 Taxation (GST Offshore Supplier Registration) Act, pt 3.

Previously, the New Zealand Customs Service (Customs) assessed and collected duties such as GST, tariff duty and cost recovery charges on imported goods.[7] No duty was collected on goods that attracted less than $60 of total duty,[8] which generally equated to parcels valued below $400.[9] The Act addresses the non-collection of GST on imports below this de minimis threshold.

Under the new system, offshore suppliers are required to register, collect and return GST on low-value goods supplied to New Zealand consumers.[10] The rules apply to "distantly taxable goods", which are goods valued at or below $1,000[11] that are outside New Zealand at the time of supply, supplied by a non-resident and delivered to a New Zealand address.[12] As with domestic suppliers, offshore suppliers are only required to register if their total taxable supplies to New Zealand consumers exceed $60,000 in value in a 12-month period.[13] They are not required to collect GST on supplies to New Zealand GST-registered businesses.[14] In certain circumstances, operators of electronic marketplaces (such as Amazon or eBay) and redeliverers will be deemed suppliers and therefore required to register and return GST.[15] Customs will cease to collect GST and any form of duty, such as tariffs and cost recovery charges, on imported consignments valued below $1,000, but will continue to collect GST and other duties on consignments valued above $1,000.[16]

II IS THE PROPOSAL A GOOD POLICY?

The Context and Impetus for Reform

New Zealand's GST system is a broad-based consumption tax based on the destination principle — the concept that goods and services that are traded across borders are taxed in the jurisdiction in which they are destined to be consumed.[17] Consistent with this principle, all goods and services consumed in New Zealand, including all imported goods, should be subject to GST regardless of their value.

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7 Grant Robertson, Stuart Nash and Meka Whaitiri *GST on low-value imported goods: An offshore supplier registration system — a government discussion document* (Policy and Strategy (Inland Revenue Department), Wellington, May 2018) at [1.7].

8 Customs and Excise Regulations 1996, reg 70(1).

9 Robertson, Nash and Whaitiri, above n 7, at [1.7].

10 Taxation (GST Offshore Supplier Registration) Act, pt 2.

11 Taxation (GST Offshore Supplier Registration) Act, s 5(2) definition of "entry value threshold".

12 Taxation (GST Offshore Supplier Registration) Act, s 7.

13 Goods and Services Tax Act 1985, s 51(1)(a).

14 Taxation (GST Offshore Supplier Registration) Act, s 10(6).

15 Taxation (GST Offshore Supplier Registration) Act, ss 37 and 39.

16 Inland Revenue Department and the Treasury *GST: Background Paper for Session 2 of the Tax Working Group* (Tax Working Group, February 2018) at 1.

17 Inland Revenue Department and the Treasury, above n 16, at 1.

When GST was first introduced in 1986,[18] few consumers purchased goods directly from offshore suppliers as online shopping did not exist. Thus, the administrative and compliance costs of taxing imported goods under the de minimis outweighed the revenue benefits of taxation.[19] This was the historic rationale for the GST relief on low-value imports. However, the cost-benefit calculation has shifted with the rise of e-commerce, which provides modern consumers with improved prices, convenience, ease of access and variety of choice. The proliferation of online shopping has significantly increased the volume of LVIG, on which no GST is collected, raising concerns about forgone revenue and competitive distortions.

The proposal to tax LVIG arose when New Zealand introduced GST on remote services (or "Netflix tax") in October 2018,[20] and Australia, in a world first, introduced GST on LVIG in July 2018.[21] Both policies have been successfully implemented. The European Union has also announced similar reforms to apply from 2021.[22] New Zealand's reforms are therefore consistent with the remote services rules and follow an emerging international trend to address the non-taxation of LVIG.

Arguments in Favour of the Policy

There are two key arguments for the introduction of GST on LVIG: protecting revenue integrity and maintaining competitive neutrality between domestic and overseas suppliers.

1 Revenue Integrity

The rise in the volume of LVIG from online shopping means the tax revenue forgone by GST relief on these goods is becoming increasingly significant. From August 2018 to July 2019 inclusive, New Zealanders spent $6.3 billion on online retail purchases. Of these online sales, $2.8 billion or 45 per cent were attributable to overseas stores.[23] In comparison, only 11 per cent of Australia's online sales are attributable to overseas stores,[24] indicating that New Zealand consumers import a much larger share of their retail purchases relative to Australian consumers. This is likely due to the limited domestic variety of a smaller economy. In 2017–2018, New Zealanders purchasing goods online from offshore suppliers spent $870 million on goods valued below the current de minimis.[25]

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18 Goods and Services Tax Act, s 8(1).
19 Taxation (Annual Rates for 2019–20, GST Offshore Supplier Registration, and Remedial Matters) Bill 2018 (114-1) (explanatory note) at 2.
20 Taxation (Residential Land Withholding Tax, GST on Online Services, and Student Loans) Act 2016, pt 3.
21 Tax and Superannuation Laws Amendment (2016 Measures No 1) Act 2016 (Cth), sch 2.
22 Robertson, Nash and Whaitiri, above n 7, at [1.5].
23 These figures were reached from an analysis of 12 Datamine reports from the 12 months between August 2018 and July 2019 inclusive: Datamine *Retailwatch* (August 2018–July 2019).
24 NAB Group Economics *NAB Online Retail Sales Index* (June 2019) at 4.
25 Inland Revenue Department, above n 1, at 10.

As a result, the Inland Revenue Department (IRD) estimates that the non-collection of GST on LVIG resulted in approximately $130 million of forgone revenue in the 2017–2018 fiscal year.[26] Although this revenue leakage amounts to only 0.6 per cent of total GST revenue,[27] this will increase in the future as online sales command an increasing share of the retail market. The growth of online sales is likely a result of both technological advancements that are enhancing the digital shopping experience and reducing delivery time and cost, and a rising proportion of digital natives in the consumer population. New Zealanders' online purchases are projected to grow at 7.3 per cent annually[28] — far outpacing growth in general retail sales (4.2 per cent)[29] and gross domestic product (2.7 per cent).[30] This means the volume of LVIG will continue to rise, with the IRD projecting the forgone revenue to grow at a rate of 10 per cent per year.[31] Therefore, modern circumstances have rendered obsolete the initial rationale for the de minimis threshold, and reform was needed to uphold revenue integrity.

2 Competitive Neutrality

The second objection to the exclusion of GST on LVIG is that it placed domestic suppliers at a competitive disadvantage relative to overseas suppliers. Prior to the Act, goods valued below $400 purchased from offshore suppliers were generally not subject to GST, while all purchases from domestic retailers were. The ability of offshore suppliers to offer GST-exclusive prices provided them with a systemic 15 per cent price advantage,[32] creating a distortion in the tax system. According to the principle of competitive neutrality, tax treatment should not be a factor in consumers' purchasing decisions. Sectors that are particularly vulnerable to competition from overseas online retailers are electronics, clothing, department store

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26 At 8.

27 The Treasury *Financial Statements of the Government of New Zealand for the year ended 30 June 2018* (9 October 2018) at 59.

28 Datamine *Retailwatch* (April 2019) at 7.

29 Statistics New Zealand "Infoshare" <http://archive.stats.govt.nz/infoshare>. This figure was arrived at using the following search path: "Industry sectors"\"Retail Trade (ANZSIC06) - RTT"\"Percentage changes, total and core sales, in current and constant prices (SAFC) (Qrtly-Mar/Jun/Sep/Dec)"\"Select variables". Under "Industry", select "Core industries total". Under "Current/Deflated, September 2010 Prices", select "Current". Under "Actual/Seasonally Adjusted/Trend", select "Actual". Under "Percentage change from previous period and same period previous year", select "Percentage change from same period previous year". Under "Time", select "2019Q1". Click "Go".

30 Statistics New Zealand, above n 29. This figure was arrived at using the following search path: "Economic indicators"\"National Accounts - SNA 2008 - SNE"\"Series, GDP(P), Rolling annual, Chain volume, Actual, Total, Percentage changes (Qrtly-Mar/Jun/Sep/Dec)"\"Select variables". Under "System of National Accounts Classification of Transactions and Other Flows", select "Gross Domestic Product - production measure". Under "Percentage change from same period previous year", select "Percentage change from same period previous year". Under "Time", select "2019Q1". Click "Go".

31 Inland Revenue Department *Regulatory impact assessment: GST on low-value goods* (20 July 2018) at 2.

32 See Goods and Services Tax Act, ss 8(1) and 12(1).

goods and books. Over half of online spending within these sectors are attributable to overseas retailers.[33]

The tax-induced competitive disadvantage created a further issue by incentivising domestic suppliers to relocate offshore.[34] A New Zealand supplier may have chosen to warehouse goods overseas then consign them directly to New Zealand consumers as LVIG, thereby avoiding GST and gaining a price advantage. This practice would have not only created inefficiencies but also reduced domestic capital, employment and direct tax revenue from company and personal income.

Arguments Against the Policy

There were limited arguments against the proposal, as reflected by cross-party support of the Bill and acknowledgement of its rationale by stakeholders, including major offshore suppliers.[35]

Those who have concerns may argue that even though the revenue benefits may outweigh administrative costs, the net benefit is not significant enough to justify reform. However, as discussed above, the forgone revenue and the net benefit would only increase with the inevitable expansion of online retail. This means the non-collection of GST on LVIG would become increasingly costly and difficult to justify. Moreover, as discussed below, the collection mechanism places the obligation on offshore suppliers, which means New Zealand authorities will not be unduly burdened by administrative costs.

Another objection relates to the detrimental impact on consumers. The policy means consumers will have to pay GST on imported goods valued below $400, whereas they would not have to under the status quo. In addition, suppliers' compliance costs may be passed onto consumers in the form of higher prices over and above the amount of the tax itself. However, these costs on consumers are merely adjustment costs required to eliminate an anomaly and preserve the integrity of the tax system, and so cannot serve as a compelling reason against the policy. Opponents also argued that consumer choice may be adversely affected as offshore retailers may cease to supply to New Zealand due to burdensome compliance costs.[36] However, this risk is overrated: in Australia, the introduction of a similar policy has not resulted in international suppliers exiting the market.

33 Datamine *Retailwatch* (July 2019) at 9.

34 Kathryn James "Applying the GST to imports of low-value goods in Australia" (2018) 47 AT Rev 83 at 83–84.

35 See APAC eBay and ANZ Alibaba Group "Submission to the Finance and Expenditure Committee on the Taxation (Annual Rates for 2019–20, GST Offshore Supplier Registration, and Remedial Matters) Bill 2018"; Amazon Australia and New Zealand "Submission to the Finance and Expenditure Committee on the Taxation (Annual Rates for 2019–20, GST Offshore Supplier Registration, and Remedial Matters) Bill 2018"; and TradeMe "Submission to the Finance and Expenditure Committee on the Taxation (Annual Rates for 2019–20, GST Offshore Supplier Registration, and Remedial Matters) Bill 2018".

36 Inland Revenue Department, above n 1, at 25.

Lastly, some have argued that the policy unduly increases the costs of trade and therefore undermines New Zealand's commitment to free trade.[37] However, applying GST to all imported goods regardless of value is in accordance with the destination principle and achieves greater consistency in the tax system.[38] The policy merely results in the equal tax treatment of imported goods and domestic goods, and so cannot constitute an undue restriction on trade.

Conclusion on Policy

The GST relief on LVIG was an anomaly in the tax system, grounded in historic circumstances where the administrative costs of collection outweighed the revenue benefits. Today, with the proliferation of online shopping, those circumstances no longer exist, and the new rules seek to eliminate this anomaly to preserve the fairness and integrity of the tax system. In the absence of arguments that persuasively defend the status quo, and given the need to protect revenue integrity and competitive neutrality, levying GST on LVIG is warranted from a policy perspective.

III WHICH COLLECTION MODEL SHOULD BE ADOPTED?

The next issue is *how* GST on LVIG should be collected. Broadly, there are three potential collection models:

(1) The supplier collection model: GST is collected at the point of sale by the offshore supplier.
(2) The intermediary collection model: GST is collected between the point of sale and delivery by various intermediaries.
(3) The purchaser collection model: GST is collected after delivery through the consumer.

The enacted rules adopt an offshore supplier collection model (the first option). This follows Australia's legislated approach,[39] but neither the Tax Working Group nor the government conducted a robust analysis as to whether New Zealand should take a separate path.[40]

This note now evaluates the advantages and disadvantages of the three collection models. The models will be assessed against the following criteria:[41]

37 Inland Revenue Department, above n 1, at 26.
38 Inland Revenue Department and the Treasury, above n 16, at 1.
39 See Tax and Superannuation Laws Amendment (2016 Measures No 1) Act, sch 2.
40 Robertson, Nash and Whaitiri, above n 7, at [1.10]–[1.12].
41 These criteria have been developed from the criteria set out in Inland Revenue Department, above n 1, at 19.

- Certainty and simplicity: The rules should be clear and simple to understand so taxpayers are aware of their GST obligations in advance of transactions.
- Ease of compliance: The compliance costs for businesses, intermediaries and consumers should be minimised to encourage compliance.
- Efficiency of administration: The administrative and enforcement costs for government authorities should be minimised to ensure costs are proportionate to gains.
- Neutrality and equity: Taxpayers in similar circumstances engaging in similar transactions should be subject to similar levels of taxation.
- Effectiveness: The correct amount of GST should be collected in the right place and in a timely manner. The potential for tax evasion and avoidance should be minimised while counteracting measures are kept proportionate to the risks.
- Sustainability and flexibility: The system should maintain revenue integrity and competitive neutrality, without unduly restricting trade or impeding economic growth, and retain sufficient flexibility to keep pace with technological and commercial developments.

The Supplier Collection Model

Under a supplier collection model, offshore suppliers are required to register, collect and return GST on New Zealand imports of low-value goods. The taxing point occurs at the point of sale.

The newly enacted rules provide a useful illustration of the model. Where a non-resident supplies distantly taxable goods — goods located outside New Zealand, valued up to $1,000 and supplied to New Zealand consumers [42] — the goods are treated as supplied *in* New Zealand and therefore subject to GST. [43] Where distantly taxable goods are supplied through an electronic marketplace or a redeliverer, those entities, as opposed to the underlying supplier, are treated as the supplier for GST purposes and required to register and return GST.[44] Non-resident suppliers are required to register and return GST when their total supplies in New Zealand exceed $60,000 in a 12-month period — a registration threshold consistent with the threshold for domestic suppliers.[45] If a non-resident supplier does not meet the threshold, GST will only be charged on goods valued above $1,000 at the

42 Taxation (GST Offshore Supplier Registration) Act, s 7.
43 Taxation (GST Offshore Supplier Registration) Act, s 7.
44 Taxation (GST Offshore Supplier Registration) Act, ss 37 and 39.
45 Goods and Services Tax Act, s 51(1)(a).

border under the existing border collection model.[46] Supplies to GST-registered businesses will not be subject to GST.[47]

The key advantage of the supplier collection model is that it avoids certain pitfalls that would arise from extending the border collection model currently used for high-value imports. With the volume of LVIG increasing at 17 per cent per year,[48] it would be onerous for Customs to stop every individual consignment at the border to assess and collect GST. Doing so would swamp capacity, create substantial costs and cause delays for consumers.[49] By placing the obligation to collect GST on offshore suppliers, costs are shifted from government authorities to private market participants. This increases efficiency and decreases administrative costs.

Another advantage of the model is that GST is included in the purchase price quoted on digital storefronts, providing consumers with price transparency. If upfront prices were not GST-inclusive, consumers would face unexpected claims for taxes after the conclusion of sale, creating unwanted uncertainty and suboptimal customer experiences.

The vulnerability of the supplier collection model lies in its reliance on voluntary compliance by non-resident actors — actors over which the New Zealand government has little jurisdiction to enforce tax laws. The lack of a powerful enforcement mechanism has two related consequences: first, it makes the model susceptible to widespread non-compliance; and secondly, in the event of non-compliance, authorities would have to resort to a patchwork of soft enforcement options, which may be costly and ineffective. Low compliance would create not only a revenue leakage but also a new kind of competitive distortion — one between compliant and non-compliant suppliers — which would undermine the rationale of the policy.

Therefore, while the supplier collection model performs well on certainty and efficiency of administration, its effectiveness, neutrality and sustainability are dependent on achieving broad compliance.

The Intermediary Collection Model

Under this model, GST is collected by entities in the supply chain between the points of sale and delivery, such as Customs, transporters or financial intermediaries.

1 Collection by Customs

Collection by the customs authority of the importing country is the traditional method used to collect GST on high-value imports. Under this model, the authority determines the duty and taxes payable on each consignment and

46 Stuart Nash *Taxation (Annual Rates for 2019–20, GST Offshore Supplier Registration, and Remedial Matters) Bill: Commentary on the Bill* (Inland Revenue Department, December 2018) at 3.

47 Taxation (GST Offshore Supplier Registration) Act, s 12.

48 Inland Revenue Department, above n 1, at 10.

49 Australian Government Productivity Commission *Collection Models for GST on Low Value Imported Goods: Productivity Commission Inquiry Report* (No 86, October 2017) at 5.

withholds the parcel's release until receipt of payment.[50] Because the responsibility is placed on a government entity, the issue of non-compliance is largely eliminated.

The extent of a customs authority's tax collection function should strike a balance between the administrative costs incurred and the tax revenue generated. Extending the border collection model to LVIG in a cost-effective way "rests on the availability of electronic advance data (EAD)".[51] EAD is item-level data communicated to the destination country in advance of the item's arrival that is critical for the efficient assessment of GST liabilities.[52] Most goods enter New Zealand through the cargo stream or the international mail stream. In the cargo stream, EAD is incorporated into clearance processes, meaning Customs can obtain the relevant data and often tax payments prior to a shipment's arrival. This allows goods to be cleared immediately on arrival. However, in the international mail environment, systems still operate on legacy paper-based declaration processes. This means consignments must be stopped at the border for individual inspection, assessment of tax liabilities and arrangement of payment.[53]

The burden of manually processing every parcel through the mail stream would outweigh the low tax revenue collected, even with a large increase in the volume of LVIG.[54] Moreover, the sheer quantity of parcels would overwhelm Customs processes, potentially leading to inaccuracies and diverting resources away from more important functions such as border security. It would also entail significant disruptions and delays for consumers. Although the development of electronic data transmission processes in the postal environment is on the global agenda, this is unlikely to occur in the near future.[55] This means the Customs model is unattractive for the time being.

2 Collection by Transporters

The liability to collect and return GST may be placed on transporters such as New Zealand Post (responsible for carriage of international mail) and express carriers (responsible for carriage of cargo). There are two possible approaches. The first involves separating the GST assessment and collection tasks, with Customs assessing liability at the border before releasing goods to transporters, who then collect the GST from the purchaser before delivering the item. The second involves assigning the liability for both GST assessment and collection to transporters: transporters assess and charge the GST to vendors based on the information they supply, and vendors collect the GST from purchasers at the point of sale.[56]

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50 OECD *Addressing the Tax Challenges of the Digital Economy, Action 1 — 2015 Final Report* (2015) at 195.
51 James, above n 34, at 86.
52 OECD, above n 50, at 195.
53 At 195–196.
54 Inland Revenue Department, above n 1, at 10.
55 See Australia Post *Productivity Commission consultation on Collection Models for GST on Low Value Imported Goods* (Australian Government Productivity Commission, September 2017) at 8.
56 See Australian Government Productivity Commission, above n 49, at 86–88.

The advantage of a transporter model over an offshore supplier model is that the legal responsibility for collecting GST is placed on entities within New Zealand's jurisdiction. This means the model could achieve significantly higher compliance and collection rates. Ease of enforcement is also aided by the fact that there are fewer transporters providing services to New Zealand than there are suppliers providing goods.

However, as with the Customs model, the lack of EAD in the mail environment precludes the feasibility of the transporter model. Paper-based systems would create overwhelming inefficiencies in the form of time delays and administrative and compliance costs. In light of these constraints, some have suggested a phased implementation, where the model would apply initially only to cargo goods with the mail stream incorporated as EAD becomes more prevalent.[57] However, this would be unwise as levying GST on cargo but not mail items would lead to distortions in the transportation market and only marginally improve tax neutrality.

3 Collection by Financial Intermediaries

The responsibility of collecting GST may be assigned to financial intermediaries involved in processing online purchases of goods from offshore suppliers, such as banks, credit card companies or other payment providers. Financial intermediaries can recover the GST liability from the supplier or the purchaser through a withholding arrangement and remit it directly to the tax authorities.

The first advantage of this approach is that the assessment and collection of GST occur prior to the arrival of the goods in the country, and this facilitates faster movement of goods through Customs. Secondly, the tax collectors in this model have no incentive to assess GST inaccurately, unlike vendors, who must charge higher prices to customers to collect GST. Thirdly, by providing payment services for New Zealanders, the tax collectors are generally within the jurisdictional reach of New Zealand tax authorities. This incentivises compliance and enables effective enforcement.

Unfortunately, this model is not viable because financial intermediaries do not capture the necessary information for assessment of GST liabilities. Because payment systems are designed for timely processing and settlement, information collected is limited to the basic vendor and purchaser account information required to authenticate identities and confirm sufficiency of funds. Financial intermediaries do not collect information on the nature of the transaction (whether sale of goods or of services), the description of the goods, the location of the goods at time of purchase, the nature of the end use for the purchase (whether consumer or business), or the location of delivery.[58] All these details are necessary for the accurate assessment of GST liability under the policy.

57 At 94–95.
58 At 115.

The financial intermediary model would inevitably result in the incorrect levying of GST, such as in purchases of international air travel or gifts delivered to overseas friends.[59] Although a refund mechanism could be implemented, this would be time-consuming and burdensome for both consumers and the IRD. Furthermore, this model provides scope for tax avoidance through the use of alternative payment mechanisms such as foreign bank-issued cards or virtual currencies.[60] Significant changes in data collection processes would be required for financial intermediaries to support a taxation function, which means this model is not viable in the medium term.

The Purchaser Collection Model

The purchaser collection model requires consumers to self-assess and pay GST on LVIG. There are two variations of this model:

(a) the purchaser pre-registers their details, self-assesses their liability and pays GST to authorities at the point of sale, importation or delivery; or
(b) the purchaser self-assesses their liability and annually accounts for the tax through a reporting mechanism.[61]

This model removes the onus of assessing and collecting GST from border authorities, thereby reducing administrative burdens.

Fatal to the efficacy of this model, however, is its reliance on self-compliance. Significant investment is needed to educate consumers on the new GST regime and their obligations. More importantly, it is highly likely that consumers will deliberately under-report or fail to comply if no sanction is visible, particularly given that tax avoidance attracts limited social stigma. A United States study found that even when taxpayers were individually prompted to self-report their sales tax liability, the compliance rate was a mere 1.6 per cent.[62] A purchaser collection model requires effective monitoring of every person who shops online, and this would entail a host of procedural and technical difficulties. Even if it were possible to design such a monitoring system, the administrative burden involved would far outweigh the revenue benefits under the policy.

Evaluation

This section discussed three possible models for the collection of GST on LVIG: supplier collection, intermediary collection and purchaser collection. More specifically, there are five possible entities that may be liable for

59 Shiv Narayan "Goods and Services Tax on Privately-Imported Goods" (2014) 26 NZULR 470 at 489.
60 At 489.
61 OECD, above n 50, at 197.
62 John E Anderson "Paying the State Use Tax: Is a 'Nudge' Enough?" [2017] Public Finance Review 260 at 269.

collection: suppliers, Customs, transporters, financial intermediaries and purchasers.

In evaluating the merits of each model, the primary criterion is the efficiency of government administration. This is because the ability to administer collection at a justifiable cost relative to revenue benefits is crucial to the soundness and appeal of introducing GST on LVIG in the first place (as explained in Part II). This criterion rules out collection by Customs, where paper-based systems necessitating individual processing of consignments impose disproportionate administrative costs.

Another important criterion is the ease of compliance for the entity responsible for collection. Ease of compliance significantly reduces administration costs by increasing the rate of voluntary compliance and thereby decreasing monitoring and enforcement costs. Widespread compliance also enhances effectiveness and neutrality. This criterion rules out collection by transporters and financial intermediaries as these entities do not have the electronic systems or data collection processes to comply efficiently. It also rules out collection by purchasers due to educational and attitudinal barriers.

This leaves collection by offshore suppliers — the enacted model. The model effectively shifts collection costs from the government to private market participants, reducing government administration costs to a justifiable level relative to the tax revenue generated. Because offshore suppliers have the technology for efficient assessment and collection of GST, the compliance burden they bear is lower than that other entities would bear. Although liability is placed on extra-jurisdictional actors, New Zealand's experience from taxing remote services and Australia's experience from taxing low-value remote goods show a high degree of voluntary compliance by businesses, mitigating concerns on effectiveness.[63] Furthermore, as discussed in Part IV, authorities will have a range of enforcement tools at their disposal.

The last consideration is whether implementation should be delayed to provide time for technological developments that could increase the feasibility of alternative collection models, such as the availability of EAD in the international mail environment.[64] Some suggest that due to the risk of "path-dependence", if a particular model is implemented now, there could be substantial barriers to shifting to an alternative model that might later emerge as superior.[65] However, this is not sufficient reason to delay implementation. First, there is little evidence of "lock-in" risk constraining policymakers' flexibility. Secondly, and more importantly, it would be irrational to forgo many years of tax revenue in the hope that technological developments will produce a superior model. The mere fact that circumstances may change should not prevent policymakers from being decisive. Moreover, it is unlikely the adjustment costs in switching from one model to another would outweigh the forgone revenue from implementing no model in the meantime.

63 Inland Revenue Department, above n 1, at 11.
64 Australian Government Productivity Commission, above n 49, at 11.
65 James, above n 51, at 112.

Therefore, this note agrees with the government's approach of introducing an offshore supplier registration system for the collection of GST on LVIG.

IV HOW WILL THE POLICY BE ENFORCED?

A model that relies on offshore suppliers to register, collect and return GST is vulnerable to non-compliance. New Zealand's limited jurisdiction over non-resident actors makes enforcement difficult, and may increase the rate of non-compliance. Non-compliance would reduce GST revenue, prevent tax neutrality between foreign and domestic suppliers, and create new tax distortions between compliant and non-compliant foreign suppliers.

Voluntary Compliance

Despite these concerns, there is cause for optimism. New Zealand's "Netflix tax" is demonstrating a high rate of voluntary compliance. At the time of design, officials conservatively estimated that $40 million of revenue had been forgone and that 100 businesses would register. However, the results exceeded these expectations: the tax generated $131 million of revenue and 200 businesses registered in the 2018 fiscal year.[66]

Voluntary compliance is expected due to the desire of businesses to uphold their reputation, enhance goodwill and maintain corporate social responsibility. Reputation is particularly important to large international companies, who supply a sizable proportion of LVIG. The market concentration is further enhanced by rules deeming electronic marketplaces suppliers,[67] as the four largest marketplaces (Alibaba, eBay, Amazon and Wish) account for 64 per cent of cross-border online sales.[68] These marketplaces have complied with Australian legislation and three of the four (Alibaba, eBay and Amazon) have expressed their intent to comply with New Zealand's scheme.[69] This will go a long way in ensuring the success of the model.

Experience across various jurisdictions has shown that the rate of compliance increases greatly with the ease of compliance.[70] The government has ensured the model is as easy for foreign suppliers to comply with as possible, and intends to adopt a cooperative approach centred on educating and assisting suppliers in meeting their obligations. Looking ahead, one innovative method to bolster compliance may be through a joint registration system with Australia. This would mimic the "one-stop-shop" registration

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66 Inland Revenue Department, above n 1, at 11.

67 Taxation (GST Offshore Supplier Registration) Act, ss 37–39.

68 International Post Corporation *Cross-Border E-Commerce Shopper Survey 2018: Key Findings* (January 2019) at 12.

69 See APAC eBay and ANZ Alibaba Group, above n 35, at [3]; and Amazon Australia and New Zealand, above n 35.

70 Robertson, Nash and Whaitiri, above n 7, at [5.2].

system of the European Union, under which suppliers can register and file a return in one member state, who then distributes the tax among the other member states. This system significantly lowers compliance costs for suppliers. Although it requires high levels of integration, it is worth exploring in the future once the supplier registration systems in Australia and New Zealand are well embedded.[71]

Enforcement Tools

In the event that goodwill and reputation alone are insufficient to ensure compliance, administrators still have a range of enforcement tools at their disposal.

The primary option signalled by the IRD is to rely on the cooperation of countries that have jurisdiction over non-compliant non-resident suppliers.[72] New Zealand has ratified a number of bilateral and multilateral treaties, including the Convention on Mutual Administrative Assistance in Tax Matters.[73] The Convention provides mechanisms for mutual cooperation among an extensive network of jurisdictions, and would allow New Zealand to request foreign tax authorities to provide information, serve documents and assist in collecting unpaid GST on New Zealand's behalf.[74]

While this mechanism is attractive in theory, it has several practical limitations. Notably, both China and the United States — which supply 33 per cent and 19 per cent, respectively, of New Zealanders' online cross-border purchases[75] — have declared that they do not intend to assist in the recovery of taxes.[76] Furthermore, invoking the Convention's recovery provisions may be difficult and ineffective, as the options are far from institutionalised in many countries and the actual practice of using them is nascent.[77] The value lost to non-compliance in the context of LVIG is unlikely to be significant enough to justify pursuing these options.

A second enforcement option is to use garnishee proceedings to intercept funds travelling from New Zealand to non-compliant entities. A garnishee order would compel a third party who owes money to an offshore supplier to pay the IRD to satisfy the supplier's tax debts. Payment could be made out of assets such as bank funds the supplier has in New Zealand, liabilities owed by New Zealand companies, or even revenue from consumers. The effectiveness of this option depends on the level of funds and connections the non-compliant supplier has in New Zealand.

71 At [5.6]–[5.9].
72 At [5.4].
73 Convention on Mutual Administrative Assistance in Tax Matters ETS 127 (opened for signature 25 January 1988, entered into force 1 April 1995), as amended by Protocol amending the Convention on Mutual Administrative Assistance in Tax Matters CETS 208 (opened for signature 27 May 2010, entered into force 1 June 2011). The Convention as amended by the 2010 Protocol was ratified by the Double Tax Agreements (Mutual Administrative Assistance) Order 2013.
74 Articles 1, 5, 11 and 17.
75 International Post Corporation, above n 68, at 10.
76 Council of Europe Treaty Office "Reservations and Declarations for Treaty No 127 — Convention on Mutual Administrative Assistance in Tax Matters" Council of Europe <www.coe.int>.
77 James, above n 51, at 110.

A third option in the face of persistent non-compliance is to limit the ability of suppliers to trade in New Zealand through website blocking. However, this is a blunt tool that involves several practical issues. Consumers can circumvent it through a virtual private network, and blocking one IP address may inadvertently block other unrelated websites if one address hosts multiple websites.[78] Moreover, website blocking is a draconian measure that is disproportionate to the limited tax revenue at stake. A preferable option may be to delay the goods of non-compliant suppliers at the border and prioritise the processing of compliant suppliers' goods, impeding the ability of non-compliant suppliers to trade competitively in the New Zealand market.

None of these enforcement tools are guaranteed to be singly effective and administrators will likely have to rely on multiple options to address non-compliance. Regardless, the level of expected voluntary compliance should be sufficient to secure the success of the system.

V CONCLUSION

Collecting GST on LVIG is a desirable policy that will eliminate an anomaly in the New Zealand tax system and restore revenue integrity and competitive neutrality. An offshore supplier registration system — the enacted model — is the preferred collection model to implement this policy. Despite concerns surrounding enforcement, the government should be commended for its introduction and design of this policy, which will place New Zealand at the forefront of an international trend towards the taxation of LVIG.

78 Australian Government Productivity Commission, above n 49, at 48–49.