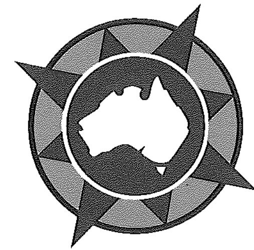
Received
07 SEP 2009
Board of Taxation

1 September 2009

The Board of Taxation
c/- The Treasury
Langton Crescent
CANBERRA ACT 2600



Dear Sir/Madam

Review of the Application of GST to Cross-Border transactions

Further to the Board of Taxation *Review of the Application of GST to Cross-Border transactions* Discussion Paper of July 2009, please find enclosed the response to the Review by the Customs Brokers and Forwarders Council of Australia Inc. (CBFCA) to the Discussion Paper.

As the Board of Taxation will appreciate there are many issues in the Discussion Paper that require extensive commentary and this may not have been able to be achieved in the CBFCA response.

As such the CBFCA would be happy to meet with the Board or its Secretariat to further discuss issues in the response.

Yours faithfully

STEPHEN J MORRIS
Executive Director

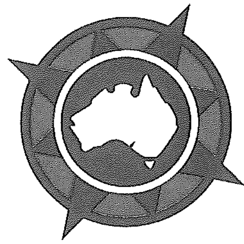
A Member of
The International Air Cargo Association
TIACA

Customs Brokers & Forwarders Council of Australia Inc.

National Office
Tel: 07 3256 1244
Fax: 07 3262 4400
PO Box 303 Hamilton Qld 4007
Brisbane Australia
Email: cbfcano@cbfca.com.au
Website: www.cbfca.com.au

ABN 92 287 746 091

Received
07 SEP 2009
Board of Taxation



CBFCA

AUSTRALIA

Communicate. Innovate

Board of Taxation Review

The Customs Brokers and Forwarders Council of Australia Inc. response to the *Board of Taxation Review of the Application of GST to Cross-Border transactions*

CONTENTS

POSITION PAPER **PAGE**

1 INTRODUCTION 1

1.1 Key Issues 1

1.2 Customs Brokers and Forwarders Council of Australia Inc. Role 2

1.3 Response 2

1.4 Contact Details 2

2 GOODS AND SERVICES TAX RULING 2005/6 3

3 VALUE OF TAXABLE IMPORTATIONS 4

4 ISSUES RAISED IN THE DISCUSSION PAPER 6

4.1 Supply of Services Involving Non-Residents 6

4.2 Supplies of Goods by Non-Residents 6

4.3 The Role of Resident Agents 8
Term of Reference 2 – Non-Residents, Agents, Simplification 8

4.4 Simplifying and Reducing Costs Related to Cross-Border Transactions 8

4.5 On-Line Supplies and Low Value Transactions 9

4.6 Limiting the Application of the Connected with Australia Provisions 10
Q 5.1 10

4.7 Shifting the GST liability of non-residents to residents through compulsory reverse charge 10
Q 5.2 to 5.4 10

4.8 Non-residents not required to be registered for GST being allowed a direct refund of any GST 11
Q 5.13 11

4.9 Supplies made to a non-resident but provided to a registered Australian business being GST-free 11
Q 5.18 and Q5.19 11

4.10 Reverse Charging for Private Consumers 11
Q 5.21 11

4.11 Reviewing the Low Value Threshold Limit of $1,000 12
Q5.24 and Q 5.25 12

1 INTRODUCTION

1.1 Key Issues

The Customs Brokers and Forwarders Council of Australia Inc. (CBFCA) participated in detailed consultations with both the Australian Customs and Border Protection Service (ACBP) and Australian Taxation Office (ATO) representatives following the introduction of the A New Tax System (ANTS) Bills and prior and subsequent to the passing of the ANTS legislation.

Over the last five years much of the dialogue between the CBFCA and the ATO and ACBP has concerned two issues which are significant from the CBFCA's perspective, namely:

a) the impact of GST Ruling 2005/6 on CBFCA members and their non-resident clients;

b) the administration of the ANTS legislation as it relates to the calculation of a value of taxable importations (VoTI).

The Board of Taxation's (the Board) discussion paper touches on the first of these issues and it will be addressed in greater detail in this submission.

The discussion paper is silent on the second of these issues but it too will be discussed in greater detail in this submission.

In addition, the submission responds to the terms of reference set out and to the questions raised in the discussion paper which the CBFCA believes are significant for its members.

These include:

a) design features underpinning the involvement of non-residents in the Australian GST system with a view to simplifying the design

b) the extent to which non-residents should be drawn into the operation of the GST

c) the role of resident agents acting for non-residents and whether there is scope to broaden it

d) ways to simplify and reduce compliance and administrative costs associated with cross-border transactions

e) The impact of on-line supplies and low value transactions

f) Limiting the application of the connected with Australia provisions

g) Shifting the GST liability of non-residents to residents through compulsory reverse charge

h) Expanding the non-resident agency provisions

i) Non-residents not required to be registered for GST being allowed a direct refund of any GST

j) Supplies made to a non-resident but provided to a registered Australian business being GST-free

k) Reverse charging for private consumers

l) Reviewing the low value threshold limit of $1,000

1.2 Customs Brokers and Forwarders Council of Australia Inc. Role

The CBFCA is the peak industry body representing two hundred and forty nine (249) Business and one thousand (1000) Individual members (employed by licensed corporate customs brokerages) engaged in the provision of international supply chain management and logistics services to Australian and foreign businesses and individuals.

The CBFCA members provide the critical interface at the border between their clients and a number of Commonwealth regulatory authorities. These include the ACBP, the Australian Quarantine and Inspection Service (AQIS) and the ATO (through its service agreement with the ACBP).

CBFCA members are responsible on behalf of their clients for compliance with goods and services tax (GST) legislation as it applies to both imports into and exports from Australia.

The CBFCA itself has been actively involved in the evolution, implementation and administration of the GST law as it relates to both imports and exports. This involvement has addressed issues concerning the supply of both goods and services as they relate to the impact of GST on:

a) CBFCA members' clients, principally in relation to the import and export of goods;

b) CBFCA members themselves and the services they supply to both residents and non-residents.

The CBFCA therefore welcomes the review being undertaken by the Board of Taxation and the opportunity to present this submission.

1.3 Response

The CBFCA response has been structured on the key issues identified by the CBFCA on which it is of the opinion that relevant comment can be provided

1.4 Contact Details

The contact for issues relating to the CBFCA Position Paper is:

Mr Stephen Morris
Executive Director
Customs Brokers and Forwarders Council of Australia Inc
PO Box 303
Hamilton Qld 4007
T: (07) 3256 1244
F: (07) 3262 4400
e-mail: **smorris@cbfca.com.au**
Web: **www.cbfca.com.au**

2 GOODS AND SERVICES TAX RULING 2005/6

The CBFCA was involved in detailed consultations with the ATO when the Goods and Services Tax Draft Ruling (GSTR 2003/D7) which preceded the final ruling was first published. The ATO was made well aware at that time that its interpretation of the law in relation to the supply of local transport services to non-residents would cause significant difficulties in terms of both application and administration. Despite that advice the ATO chose to release GSTR2005/6 virtually unchanged from the draft ruling in respect of the provision of transport services to non-residents.

The ruling was also silent on the issue of a range of ancillary services supplied to non-residents by CBFCA members. These services relate to a range of functions necessary to secure the clearance and delivery of consignments of imported goods through the cross-border process. The ATO is still to provide clear and specific advice on the GST treatment of these services when they are supplied to non-residents.

The difficulties created by the ruling arise only in relation to imported consignments that are moved under the recognized Incoterms delivered duty paid (DDP) and delivered duty unpaid (DDU). In each case, the overseas shipper is responsible for arranging the delivery of the consignment of goods from the point of origin overseas to the address of the consignee in Australia.

The difficulties created by the ATO interpretation of the GST law contained in the ruling required a response from the industry that supplies both local delivery and ancillary services to non-residents in DDP and DDU transactions. In September, 2006 a group of industry organizations working under the informal title Australian International Transport Service Providers (AITSP) lodged a submission with the then Assistant Treasurer seeking remedies to the impact of the ruling on industry members. The AITSP group comprises the following industry organizations:

a) CBFCA

b) Australian Federation of International Forwarders

c) Conference of Asia Pacific Express Carriers

d) Australian International Movers Association

The submission had not been dealt with before the change of government in 2007 so it was necessary to resubmit it to the new government in January 2008. After extensive consultation between AITSP representatives and officials in The Treasury and ATO an announcement was made in the 2009 Federal Budget that the government would amend the GST law to reduce GST compliance costs for businesses involved in the domestic transport of exported and imported goods, with effect from 1 July 2010. A discussion paper was released to coincide with the announcement. It called for submissions by 17 June 2009 on a number of suggested amendments to the GST law that are designed to address the concerns of the AITSP. The AITSP did lodge a submission in response to the discussion paper on 17 June 2009.

The submission agreed broadly with the suggested legislative amendments mooted in the discussion paper as most of them had been proposed in the earlier AITSP submissions. There were, however, two significant issues on which the AITSP sought further action from Treasury and the ATO. They were:

a) a change to the effective date of the amendments to no later than 12 May, 2009, the date of the Budget announcement;

b) the need for specific action, either administratively or in the proposed legislative amendments, in relation to ancillary services supplied by AITSP members to non-residents.

Consultations on that submission are continuing.

Should the Board require copies of the submissions that have been made to date by the AITSP in relation to GSTR2005/6 they can be provided.

To the extent that this Board of Taxation review touches on the issues raised by the AITSP in relation to GSTR2005/6 the CBFCA seeks the Board's support for the general propositions that have been advanced by industry. As things currently stand there is a significant level of uncertainty amongst CBFCA members about the application of the GST law to cross-border transactions as they relate to supplies of services to non-residents. This uncertainty is compounded by the fact that left unresolved the issues raised in the AITSP submission of 17 June 2009 leave CBFCA members exposed to the possibility of large unpaid GST liabilities. On the basis of consultations so far with Treasury and the ATO this is not the outcome that is intended from the Budget announcements but until there is a clear statement about the resolution of these issues CBFCA members remain exposed to financial risk. This risk is considerable bearing in mind the authority of the ATO to seek retrospective adjustments for a period of four years.

The CBFCA understands that the reason for the delayed date of effect for the amendments foreshadowed in the Budget announcement is to allow the ACBP time to adjust its internal systems to accommodate the process changes that would be needed, particularly in relation to the calculation of a VoTI. If this is the principal reason for the delay it is not warranted. Provision already exists in ACBP systems to calculate a VoTI based on the place of consignment being the final delivery address in Australia. This is the case now for importation of goods through the postal system where lodgment of a formal import declaration is required. The CBFCA sees no difficulty in adopting the same calculation processes for non-postal transactions even if it involves temporary adoption of an administrative work-around to achieve the necessary outcome. In the view of the CBFCA this is preferable to the current situation whereby the delay in introduction of the proposed law change is creating uncertainty about the potential threat of retrospective liabilities for CBFA members.

3 VALUE OF TAXABLE IMPORTATIONS

Issues in relation to the determination of overseas freight and insurance paid or payable as it relates to the VoTI [Section 13-20A A New Tax System (Goods and Services) Tax Act 1999 (the Act)] were identified by the CBFCA prior to the implementation of the legislation on 1 July 2000. Informal discussions were held between the CBFCA, the then Australian Customs Service (now ACBP) and the ATO to seek ways and means to resolve the issues identified.

No appropriate resolutions were advised in the informal discussions and in December 2002 the CBFCA made a formal submission to the ATO on the issue. The CBFCA also provided input in 2003 to the ATO Goods and Services Tax Draft Ruling GST 2002/D11 *Importation of Goods into Australia.*

Discussions have continued since 2003 to this time in trying to seek resolution to this long-standing issue. While the provisions in the GST law appear to be relatively straightforward in terms of the formula for calculating a VoTI in practical terms there are many obstacles in calculating a figure that would be exact for the purpose of establishing GST liabilities on taxable importations.

The ACBP in an agreement with the ATO is responsible for the collection of GST at the border and as to the determination of the customs value which underpins the VoTI (Section 13-20 of the Act). As to the determination of the VoTI the ATO has advised that it defers to the expertise of ACBP in such international trade matters however the CBFCA would suggest that this deference is misplaced and as to appropriate policy and or process, this has not been forthcoming by the ATO on this key GST application.

Discussions with the ATO and ACBP have largely been about what could or should be accepted as fair representative values as distinct from exact values (paid or payable) and the legal interpretation of these aspects have yet to be determined.

After seven (7) years of discussions and deliberations there exists a need for a *safe harbour* arrangement, relating to the determination of international transport and insurance costs in the VoTI calculation.

It should be noted that CBFCA members and their clients are subject to both benchmarking and compliance audits by the ACBP, which in the main have focused on amounts declared as to VoTI. An issue which has been common point of contention arising from the audits is the question of materiality and there have been many instances, where ACBP auditors have recorded errors in collection of GST liabilities where the amount in question was less then $20.

In addition, the ACBP perceives that the ANTS legislation is a *customs related law (Section 4B of the Customs Act)* for the purposes of Section 243U of the Customs Act, which gives rise to the application of Infringement Notices (as to a strict liability offence) as well as a compliance history record.

The CBFCA has also suggested reference to a variety of ATO Practice Statements such as PS LA 2003/2 and PS LA 200411 in order to seek resolution of the matter.

Considerable ACBP resources are devoted to achieving audit results however, the application of these resources should be determined on the basis of the results which in many cases are insignificant and any liability no matter how large or small will, in the vast majority of cases, be treated as an import tax credit in due course.

A meeting between industry, the ACBP and the ATO was held on 19 May 2009 in an another attempt to develop a resolution to the problem. The CBFCA take from that meeting was that resolution to the long-standing VoTI issue would not be achieved.

What was clear from the meeting is that the ATO may now have finally realised the difficulties/complexities as to a simple resolution of this problem. It was pleasing to note also that the ACBP placed on the table a requirement for the ATO to provide specific guidance and direction on:

- Determination of the VoTI.
- Materiality.
- Appropriate workplace instructions for ACBP auditors.
- Development of an appeal process, and
- Enforcement of GST provisions under the Memorandum of Understanding between the ATO and ACBP on these issues

4 ISSUES RAISED IN THE DISCUSSION PAPER

4.1 Supply of Services Involving Non-Residents

The discussion paper raises many issues in relation to cross border transactions and the impact of the GST on non-residents. CBFCA members deal with non-residents in a number of ways. In the majority of cases those dealings relate to the movement of goods to and from Australia.

CBFCA members supply or arrange international transport services on behalf of non-residents. They raise invoices on non-residents in respect of those services. They also act on behalf of non-residents in arranging the delivery of import transactions on DDU terms and the clearance and delivery of import transactions on DDP terms. Again, they raise invoices on non-residents for these services as well. For the most part, non-residents involved in these dealings are themselves corporate entities and service providers.

The GST law has always provided that the supply of international transport is GST-free (Section 38-355 of the Act). Section 38-190 of the Act provides, among other things, that supplies to non-residents are GST-free, subject to the exceptions provided in Sub-Section 38-190(3). Therefore, until the publication of GSTR2005/6 the CBFCA had operated on the principle that supplies made by its members to non-residents were generally not subject to GST and that as a consequence non-residents involved in receiving those supplies were not caught in the Australian GST system. This view had been confirmed by the ATO on a number of occasions prior to the release of GSTR2005/6, including by private rulings issued by the ATO to some CBFCA members.

As a general principle it makes good practical sense for services related to the international movement of goods to be GST-free. With the exception of the circumstances covered by GSTR2005/6 it is in fact the case that services provided to non-residents in relation to the international movement of goods are GST-free. It therefore makes no sense to tax non-residents for services that relate to the last small segment of what is in fact international transport, namely the domestic sector of international shipments moved on DDU and DDP terms.

If that issue can be resolved it will no longer be a problem for either CBFCA members or for their non-resident clients.

Therefore, in terms of simplifying the design features of the GST as it relates to non-residents the CBFCA believes that the GST law needs to be made very clear that all services supplied to or by non-residents in relation to international transport are GST-free.

The alternative under the current law and ATO interpretation is to potentially catch in the GST net every non-resident business involved in the provision of these services and their clients. With all due respect to the ATO, that is an outcome that could not be properly administered in any circumstances.

4.2 Supplies of Goods by Non-Residents

CBFCA members are authorized by their clients to arrange the clearance through official border processes of goods imported into Australia. In the majority of import transactions the importer is liable for the GST that arises on each taxable importation.

However, where goods are shipped by non-resident suppliers under DDP terms the liability for GST rests with the non-resident. It is normal practice in these circumstances for the non-resident, either directly or through his non-resident transport

provider, to appoint an Australian customs broker to arrange the clearance and delivery of the shipment in Australia.

The GST liability on the taxable importation is calculated by the customs broker and paid to the ACBP to secure release of the goods. In cases where the non-resident is registered for GST and is part of the deferral scheme for imports the liability is deferred and brought to account in the next monthly BAS.

Under the current arrangements there are some clear inequities in the application of GST liabilities to goods owned by non-residents. Those who have access to appropriate professional advice about GST in Australia and its application to their goods at the time of importation are less likely to incur the cost of embedded GST. They are also more likely to be aware of the need to register for GST and the rights and responsibilities that registration presents.

There is a lack of clarity in the law and the published rulings about the status of sales by non-residents under DDP terms. The ruling on imports (GSTR2003/15) suggests that in these cases a non-resident "may" be making both a taxable supply and a taxable importation in a single transaction. There is no further commentary in the ruling to support this suggestion. GSTR2000/31 on supplies connected with Australia is equally sparse in terms of justification for the interpretation it offers on this point.

From a non-resident's perspective it is virtually impossible without access to specialist professional advice to determine their GST liability in DDP transactions. Without a cogent explanation for the reason for the ATO "deeming" that one transaction gives rise to two GST liabilities it is very difficult to explain or justify this position to non-residents who have had no previous experience of Australia's GST law.

It is also reasonable to say that the majority of non-residents who sell goods to Australian consignees on DDP terms are unaware that they are required to register for GST once they reach the threshold level of annual sales prescribed in the GST Act. Furthermore, they are unaware that once they reach the registration threshold they are required to charge GST on those sales. This creates the anomalous situation where non-residents with access to GST advice are arguably in a commercially less favourable position than those without access to such advice.

In the CBFCA 's view all non-residents who sell on DDP terms to Australia should be treated in the same way in relation to GST liabilities. The current confusion about the requirement to register or not and to charge GST or not can be eliminated by the simple step of deeming DDP transactions not to be taxable supplies because they are not connected with Australia. This is justifiable on the basis that:

a) the transactions themselves are sales made in the jurisdiction of the non-resident;
b) the Australian consignee has no liability for GST now for either the supply by the non-resident or for the taxable importation.

The GST liability would remain with the non-resident at the time of importation. A mechanism to claim input tax credits through registration, as currently exists, or an alternative refund arrangement should be available to non-residents who sell goods on DDP terms.

Subject to the level of the customs duty free and GST-free value threshold (currently $1000) there is not likely to be any significant impact on revenue if this proposal is adopted. For those transactions valued at less than $1000 there would be no change to the amount of revenue collected. Most of the DDP importations valued at more than $1000 involve business to business transactions which even under current arrangements

theoretically result in zero revenue gain. The proposal therefore is essentially revenue neutral.

4.3 The Role of Resident Agents

Term of Reference 2 – Non-Residents, Agents, Simplification

CBFCA members may in some cases act as agents for non-residents in the context of managing cross-border transactions. It is not common for CBFCA members to act as agents in the commercial or common law sense of the word. The issue of agency generally arises only where a non-resident is selling on DDP terms to an Australian consignee. In transactions made under other relevant Incoterms there is no need for agency relationships to be established to manage the cross-border issues. Bearing in mind the proposal made above the CBFCA sees no particular advantage in broadening the scope of agency arrangements insofar as they relate to the relationship between CBFCA members and non-residents.

4.4 Simplifying and Reducing Costs Related to Cross-Border Transactions

Costs related to compliance and administration associated with cross-border transactions are not a significant issue under existing arrangements, provided that internal accounting and management systems are adequate.

To the extent that the GST system has the potential to involve even more non-residents than it does now there is a risk that costs incurred by CBFCA members could increase. This could be because non-residents might refuse to pay GST that is billed to them, thus leaving the liability with the supplier who raised the tax invoice.

The idea that a reverse charging mechanism should be more widely adopted also has the potential to increase costs for CBFCA members. It would require payment of GST to be extracted from consignees in DDP transactions. Consignees accept this liability in all other kinds of import transactions and might accept a reverse charge of GST readily for DDP transactions. However, the additional workload that would be imposed on CBFCA members to collect the reversed charged tax is probably unnecessary given that the bulk of the tax collected would be in respect of business to business transactions and would therefore be subject to an input tax credit claim.

The significant issue in terms of compliance and administration rests with the ATO. The more non-residents are drawn into the GST net the greater the responsibility of the ATO to ensure compliance. If there is to be equity in the application of the GST law then it follows that the ATO would need to devote considerably more resources to compliance by non-residents. In the context of the supply of goods by non-residents this is an issue only where import transactions are on DDP terms. As indicated above, most of these transactions are business to business so in principle there is no net revenue benefit to be gained by greater scrutiny of non-resident supply of goods to Australia. As far as supply of services to non-residents is concerned CBFCA members are principally involved with services related to international transport. Again this is only an issue where DDP or DDU transactions are involved. The resolution of the issues arising from GSTR2005/6 as they concern services related to international transport will largely eliminate any compliance issues as far as non-residents are concerned.

Taking all of these points into account, it seems to the CBFCA that there is no prospect of an effective revenue "return" to the ATO from expending any additional resources on compliance by non-residents involved in the supply of goods to Australian consignees. To the extent that it is necessary the CBFCA would encourage either legislative change or administrative revision that achieves the objective of removing non-residents from

the GST system in the context of the supply of goods and the services related to the transportation of those goods. This outcome would ensure both simplification and cost reduction in terms of current ATO compliance and administrative expenses.

4.5 On-Line Supplies and Low Value Transactions

CBFCA members deal primarily with the movement of goods in cross-border transactions and GST liability on those goods being assessed at the time of importation (referred to issues relating to the determination of the VoTI).

Online suppliers of services are therefore not an issue for the CBFCA, except to the extent that such as supply may have replaced what could otherwise have been supplied in a tangible form, such as software or recorded music. In general, this form of supply is not considered to have a major impact on the CBFCA members. In contrast however low value transactions have a significant impact on:

- CBFCA members
- ACBP
- Australian Quarantine and Inspection Service
- government revenue implications
- competitive neutrality
- marketplace competition, and
- resource dislocation

Several of the key outcomes of the existing low value determination have a long history commencing within 1997 with the Australia Government *Joint Committee of Public Accounts Inquiry into Internet Commerce.*

The outcomes of that Inquiry it is suggested helped frame the decision implemented on 12 October 2005 to increase the customs value threshold for imported goods from $250 $1000. The CBFCA would suggest that those deliberations and outcomes failed to address the impact of the Internet and as to offshore purchases and the continuing impact on revenue leakage and competitive neutrality.

The CBFCA has always held a strong view of the decision taken by the ACBP (presumed on the basis of discussions with the Department of Finance) to vary the customs duty and GST import transaction value to $1000. The CBFCA position was, and is, that this was not appropriate for a variety of sound border security, compliance, economic and social reasons (which the CBFCA referenced to ACBP prior to the introduction of the new threshold at the cutover to the Customs Integrated Cargo System Import Declaration process on 12 October 2005).

The CBFCA could not, and still cannot, see any compelling reason for the transaction value threshold change in that Australia was not conforming to other economies' best practice in customs processes. In fact the Australian *de minimis* level is at a difference with all other developed economies' customs administration.

The outcome may be found in an argument as to equity between different modes of small express parcel services in a postal context as against express parcel services from international express carriers/freight forwarders. The CBFCA would suggest the equity argument is not sustainable and in fact, postal authorities are now moving to the market sector of express parcel services. As such it is not about the equity of customs treatment of express parcels through the post as against express carriers, but as to the implication of such arrangements on border security and an ever-increasing government revenue

leakage.

The number of customs import declarations (in particular air freight) have decreased significantly since the introduction of the Self Assessed Clearances (SAC) process with a corresponding and ever increasing number of SAC clearances (data on this which, in the main, is not available to industry could be obtained from ACBP should also reference Special Reporters and Re-mail Reporters) which have an impact on the revenue leakage. The process also has an impact on cost recovery and user fee arrangements under the Department of Finance Cost Recovery Guidelines (and Productivity Commission principles on cost recovery). A cross subsidisation of ACBP and AQIS service fees in respect to SAC also occurs with costs being recovered from importers who are required to enter goods by way of an import declaration (required for all goods with a customs value threshold of over $1000).

The CBFCA notes in the Board's discussion paper commentary at Clause 4.15/4.16 as to competitive neutrality, and raises the aspect of equity between purchases in Australia as to those from overseas suppliers.

On the introduction of the $1000 customs value threshold on 12 October 2005 no substantive information or empirical evidence was provided by the ACBP by way of discussion papers and or any other formal discussion process with *all* of industry.

The CBFCA's perspective is that the decision of 12 October 2005 lacked transparency and as such a most appropriate outcome would be for a comprehensive review of that decision and as to the aspects of revenue leakage, competitive neutrality, tax equity and cross subsidisation in cost recovery.

4.6 Limiting the Application of the Connected with Australia Provisions

Q 5.1

For cross-border transactions involving the supply of goods into Australia non-residents only become involved with issues of GST liability where those transactions are on DDP or DDU terms. As indicated previously, if a transaction is on DDP terms there is a strong argument that it is not connected with Australia, despite the current ATO interpretation on this point.

The CBFCA would therefore be in favour of any move that limited the scope of the *connected with Australia* provisions so that DDP transactions are regarded as not connected with Australia in terms of the supply of goods.

4.7 Shifting the GST liability of non-residents to residents through compulsory reverse charge

Q 5.2 to 5.4

In the context of the supply of goods by non-residents, again in DDP transactions alone, the CBFCA sees no particular merit in shifting GST liability to residents through a reverse charging mechanism.

It is difficult to see how such a mechanism would be accepted in practice in the context of a DDP sale of goods. Under current provisions there is a GST liability on the sale by the non-resident and a further liability on the taxable importation. In effect, GST is being charged twice on the same transaction to the same entity. If the proposal is to reverse charge both levels of GST to the resident at the same time, namely at the time of importation, then it is not likely to be attractive to residents. There are cash flow issues depending upon the resident's circumstances. There is also the commercial reality that the resident who is supplied or buys on DDP terms has an understandable expectation

that the non-resident supplier is meant to be responsible for all costs, taxes and charges to the point of delivery of the goods. To impose a reverse charge mechanism in these circumstances negates the internationally recognized practice of selling on DDP terms and has a negative impact on the competitive neutrality of non-residents who want to trade on those terms.

4.8 Non-residents not required to be registered for GST being allowed a direct refund of any GST

Q 5.13

The CBFCA's preferred position is to remove non-residents from the operation of the GST as much as possible. Those who sell on DDP terms to Australia should not be required to charge GST on their supplies to Australian customers. However, they would still be responsible for the GST liability on the taxable importation involved in each DDP transaction. If removing them from the system for the purposes of supplies means they no longer need to register then there should be a mechanism that allows a refund of the GST liability on taxable importations. The absence of such a mechanism would place non-residents at a cost disadvantage to their domestic competitors. Ideally the mechanism would be similar to the current GST deferral arrangement in which liability is deferred until the next calendar month. The difference in the proposed arrangement is that the liability would rest with the ATO to refund the GST amount that is deferred.

Some consideration would also need to be given to a means to allow non-residents to claim input tax credits or refunds on creditable acquisitions they make in Australia on promotional and marketing visits. If they are no longer part of the registration process such credits would not be readily available unless specific provision is introduced.

4.9 Supplies made to a non-resident but provided to a registered Australian business being GST-free

Q 5.18 and Q5.19

This issue is at the heart of the CBFCA's position in relation to the ATO interpretation of the GST law as set out in GSTR2005/6. The ruling provides at best questionable justification for the position that local delivery services related to DDP and DDU transactions are provided to Australian residents. However, if that view is maintained then the CBFCA would have no objection to those services being GST–free.

In the resolutions offered by the AITSP in its submissions in response to GSTR2005/6 the effective outcome would in fact be GST-free treatment of those services. The CBFCA does not want to delay the introduction of any amendments that give rise to that outcome but it is fair to say that treating these services as GST-free is perhaps a simpler result to administer than the one being proposed.

4.10 Reverse Charging for Private Consumers

Q 5.21

This issue is only likely to arise in the context of DDP import transactions involving the supply of goods. At present suppliers who make this type of supply and who are registered for GST are ostensibly charging GST and remitting GST payments to the ATO. In those circumstances there is no need to consider a reverse charge to a private consumer.

However, the vast majority of supplies of goods to private consumers by non-residents under DDP terms are not subjected to GST, either as a taxable supply or a taxable

importation. The transactions are not treated as taxable supplies because the non-resident supplier is not registered (even though there is a legal requirement to register). To the extent that transactions have a customs value of less than $1000 they would also not be regarded as taxable importations.

If a reverse charge arrangement for private consumers was required it would probably fall to customs brokers to collect that revenue. While the CBFCA can see an opportunity in this scenario for its members to generate revenue for the provision of the GST collection and customs clearance service it does not consider that the potential benefits outweigh the administrative costs and complexities that would be involved in undertaking the task.

If a reverse charge arrangement to private consumers is impractical, which would be the case in the opinion of the CBFCA, it leaves the situation where some non-resident suppliers are charging GST to their customers and others, including potentially competitors, are not. This is a distortion of the market that should not be allowed to continue. It could be eliminated by simply adopting the principle that supplies by non-residents under DDP terms should not be regarded as taxable supplies.

4.11 Reviewing the Low Value Threshold Limit of $1,000

Q5.24 and Q 5.25

The low value threshold causes a number of difficulties, particularly since it was raised to $1000. As commented, it results in competitive distortions between non-resident suppliers of goods on DDP terms where one supplier is registered for GST and a non-resident competitor is not. For example, a registered supplier has to account for GST twice in respect of the same transaction. A competing, unregistered supplier does not need to account for GST at any stage, despite the fact that registration might be required. Even if GST has no impact in principle on the price of either supplier's goods the fact remains that the registered supplier has to incur the costs related to GST compliance and administration. The unregistered supplier does not have these costs.

The increase in the threshold has resulted in a loss of both customs duty and GST revenue. The amount of revenue forgone since the higher threshold was introduced is suggested by the CBFCA as substantial (however no data is available from the ACBP or elsewhere to enable comparative or identified analysis) particularly as to importations that are *genuinely* valued at less than $1000. This understanding is supported by anecdotal (and some public evidence) from the ACBP that there have been serious abuses of the threshold involving transactions that have been found, on review, to be of a significantly higher value.

In the context of DDP import transactions there is no practical way to remove the connection between GST and customs duty in relation to the low value threshold. Calculation of the former depends entirely on the amount of the latter. In a practical, procedural sense the calculations are made virtually simultaneously. Any move to break this connection would result in process inefficiencies and increased administrative and compliance costs.