# *LCR 2018/2EC - Compendium*

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# Public advice and guidance compendium – LCR 2018/2

## Summary of issues raised and responses

| No: | Issue raised in relation to draft Law Companion Ruling LCR 2017/D4 | ATO Response/Action taken in Law Companion Ruling LCR 2018/2 |
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| 1. | If the payment for a downloaded application is made via a voucher, the GST reporting will be made by the application provider. In this case, means of payment will determine who should be liable for the reporting of GST. Is the reason behind this approach related to that the EDP may not have the means to pay and report for the GST related to 'vouchers sales'? Or is it so that sales made via vouchers needs to be verified and that such verification of the "tapped code" needs to be done via the application provider's platform? And for that reason, when vouchers are used as means of payment, such sales are deemed to be made from the application provider's platforms and not from the EDP? If the reason is related to lack of means to pay the GST, when vouchers are used as means of payment, there is a similar situation / problem described in the first bullet above when payment for downloaded digital products are routed directly to the application provider.<br>Further on, what means of proof would be sufficient to use for the EDP´s in order not to be become liable for GST reporting in Australia when vouchers are used as means of payment? The use of a voucher could in practice mean that a specific code is tapped in on line and when that is done, the application is downloaded / the sale is finalized. I would assume that the code tapped by the consumer is the only evidence the EDP will have to verify that a voucher has been used. I am struggling a little bit on determining the strength of such evidence in combination with the potential risk for an EDP to be levied with additional GST if it fails to prove that vouchers have been used. This is a very practical aspect and it may be so that the EDP`s can provide very good reports verifying the use of vouchers, in an undisputable manner. | Paragraph 47 has been added to make clear that the merchant remains responsible for any GST when a face value voucher is redeemed (unless the voucher is redeemed through an EDP), and is also responsible for making any increasing adjustments if the voucher is not redeemed. |

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| 2 | The relevant stakeholder expressed support for the GST collection model underpinning the new law. | No change made. |
| 3 | Example 4 – concern that the example may be read as though Michael is working on a freelance site and developing an app for a specific client. Instead the example is designed to illustrate someone in Australia who has designed an app for sale to the general public through the EDP. The example has led to some confusion from an operator of a platform that has freelancers on the site. | Example 4 has been amended to better explain that Michael has developed the app off the site and is looking to sell the app through the site. |
| 4 | **Paragraph 43 Face value vouchers**<br>Although the comment relates to EDP not being liable to GST on vouchers, we did note that there is a comment that there is an increasing adjustment for the merchant if the voucher is not redeemed (and reference is made to Division 100). It would assist if there is explanation to the extent of the application in Law Companion Ruling LCR 2017/D2 *GST on low value imported goods*, that is, only for vouchers that were originally sold for redemption of goods shipped to Australia or vouchers sold to Australian residents?<br>Specifically for foreign merchants, the challenge is identifying whether the voucher would otherwise be a taxable supply, that is, supply of low value goods or can it qualify as a supply that is outside the scope of GST that is, it can be used to redeem for goods to be shipped from and to overseas.<br>It would assist if the ATO provides examples on whether proxies such as the address of the buyer of the voucher is sufficient to determine whether an increasing adjustment is required. | No change made. GSTR 2003/5 *Goods and Services Tax: Vouchers* (paragraphs 121 - 129) deals with when an increasing adjustment happens. |
| 5 | **Paragraph 61 Determining merchants business presence**<br>How does the EDP determine the jurisdiction of the merchant's business presence in the context of determining if the supplies are made through an | Paragraph 58 has been amended so that the EDP may use the business address of the merchant with whom it contracts in order to determining from where |

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| | Australian business and are the responsibility of the merchant (for example, confirmation of business name and address? A declaration?). | intangible supplies are made. |
| 6 | **Paragraph 84 When an EDP directly or indirectly sets any of the T&Cs under which the supply is made**<br>The following examples don't necessarily relate to the supply and should be removed (they just set standards for the platform):<br>• *'requires merchants to meet particular performance requirements, such as those relating to the quality of the goods or*<br>• *requiring them to maintain a particular customer rating to use the platform, or*<br>• *requires merchants to display a rating based on stipulated behaviours relating to that*<br>• *merchant's conduct on the platform.'* | No change made.<br>These two aspects are key indicators of indirectly controlling the supply and the way the merchant makes that supply. The reference in the LCR is to a requirement to maintain certain performance standards, not the mere presence of a rating system. |
| 7 | **Paragraph 102 How to determine which entity is the EDP**<br>Provide guidance in instances where multiple entities are involved in operating a single EDP (as opposed to multiple EDPs), which entity is the 'operator' and responsible for the GST (noting the Commissioner's discretion to prescribe additional rules by legislative instrument for determining which EDP is responsible).<br>*For example, where a supply is made through an EDP that is a website, it is possible for multiple related (or unrelated) entities to be involved in making that supply. In particular, a different entity may be responsible for:*<br>• *Setting the T&Cs for the customers using the website*<br>• *Setting the T&Cs for the sellers using the website*<br>• *Contracting with the sellers for the provision of the services* | **Paragraph 28 amended** to make clear that a website operator does not cease to be an EDP because it chooses to outsource to another entity, certain aspects of the functionality, infrastructure, legal terms or organisational structure used to enable its website to function.<br>We are considering whether further guidance is needed. |

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| | • *Owning the website / its content, and*<br>• *Hosting the website / owning the servers from which the website is run.* | |
| 8 | **Compliance action**<br>Confirmation that where a supply is made through multiple EDPs and a written agreement exists but the operator treated as the supplier fails to report the GST, that no compliance activity will be undertaken against the supplier/other EDPs. | No change made.<br>If there are two EDP operators that may be liable, and they have an agreement under subsection 84-55(2), then only one EDP operator will be liable for GST.<br>There is no provision for joint and several liability in the law. |
| 9 | **Low value goods definition** - query as to how one knows the customs value at the point when consideration is first agreed with the recipient of the supply. | Footnote added to the definition of Low Value Goods which references Law Companion Ruling LCR 2017/D2. The latter explains in detail how to establish the customs value. |
| 10 | **Paragraphs 22 - 25** - Request for further guidance on what 'through' means in the context of multiple EDP entities (connected parties) involved in facilitating functions of the platform. | Paragraph 28 amended to clarify that the use of multiple infrastructure providers does not prevent an entity being an EDP.<br>We are considering whether further guidance is needed. |
| 11 | **Paragraph 43** Request for the rationale for limiting the exclusion from EDP liability to Face Value Vouchers rather than other types as well. | No change made as this question relates to the policy intent behind the legislation itself. |
| 12 | Paragraph 50 - query on whether the treatment of an 'experience' voucher requires ignoring/looking through what could be termed a 9-10(2)(e) supply of a grant/creation of a right, and whether it results in a further category of non-FVV for which the EDP cannot be liable. | Paragraph 53 amended to clarify that the EDP rules for inbound intangible supplies require that the supply is a digital product or service, and therefore any 'right' must be to such a supply. If the right is to an experience, this test will not be met, with the |

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| | | result that the entity redeeming the rights is still liable. |
| 13 | Paragraph 105 – query as to why, in example 13, Fennel is an EDP | Example 13 was removed on the basis that it was not likely to be commercially realistic. |
| 14 | If the merchant fails to pay amount for the GST to the EDP operator, then there is no recourse for the EDP operator to make an adjustment under the rules for bad debts? This was a concern. | No change made.<br>Bad debt relief is not available in this scenario. Division 21 is not relevant because the customer has paid, and therefore consideration for the supply has been received. |
| 15 | Request for guidance on alcohol products in the LCR context. | No change has been made to the LCR 2017/D4.<br>A new example 2 has been added to LCR 2018/1. |
| 16 | Query as to whether shipping cost factors in determining whether a good is a low value good. | No change made.<br>A detailed explanation is included in LCR 2018/2. |
| 17 | Query regarding example at para 38 on what occurs if the supply is a mix of tangible and intangible items. How does this impact whether the supply is LVG and how each aspect is taxed, that is, how does one calculate the value of the goods element? | No change has been made to the LCR.<br>Guidance on EDP liability for intangibles is contained in paragraph 52 of the LCR. Additional guidance on the treatment of international shipping at paragraph 186-190 of LCR 2018/1. |
| 18 | Comment in regard to para 48. Overseas law prevents gift cards from ever expiring. Confirm no tax on issue of own gift cards, but rather, on redemption. | No change made.<br>A face value voucher would remain taxable on redemption (see paragraphs 47 onwards). |
| 19 | Query as to status of single use vouchers for digital game downloads, and sales of tickets sold online. | No change made – dealt with by other amendments to the LCR.<br>These aspects are dealt with by the changes made to paragraphs 46-47 and 51-54. |

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| 20 | Queried whether the theme park referred to in the paragraph 57 description of experience vouchers, is in Australia. | Change made.<br>Wording changed to show that the operator of the theme park is in Australia. |
| 21 | Comment that paragraph 58 does not contain an example of when something will be 'wholly done' in Australia. | No change made as this is outside of the scope of the LCR. |