



## Proposals herald significant changes to GST

As indicated in *TaxTalk GST Special Edition* issued on 19 May 2009, the 2009-10 Federal Budget foreshadowed a range of significant reforms to the GST legislation arising from the Board of Taxation's review of the legal framework for the administration of GST.

On 11 September, the Assistant Treasurer announced the release of Treasury's second consultation paper (Consultation Paper) on some of the proposed reforms. The paper covers a number of issues, for which we previously had little detail about the Government's intentions.

This special edition of *TaxTalk* outlines the proposals in the Consultation Paper and considers the likely implications for key issues.

There is an opportunity to make submissions to Treasury in relation to the proposed changes to the GST law. However, once again taxpayers have a tight time frame in which to consider the proposals, with submissions due by 9 October 2009.

### Key GST reforms included in the consultation paper

The Consultation Paper deals with significant proposals in relation to a self assessment regime for GST, change of use adjustments and GST refunds.

#### 1. Self assessment

##### The issue

The Government will amend indirect tax laws to harmonise (where applicable) the current self-actuating system that applies to GST, luxury car tax, wine equalisation tax and fuel tax with the self-assessment system that applies for income tax purposes.

The differences between a self actuating system and a self assessment regime are, on the surface, technical. However, the implications for taxpayers can be significant. Some of these implications are addressed below.

Under the current self-actuating system, taxpayers are automatically liable for tax or entitled to a credit, for a tax period,

irrespective of an amount declared or claimed on a return. However, the Commissioner may no longer require payment more than four years after the relevant tax is due.

In contrast, under a self-assessment system, the Commissioner is taken to have made an assessment of the amounts included in a tax return, as at the date of lodgment. The return is treated as a notice of assessment, and taxpayers are liable to pay the assessed amount, even if the assessment was incorrect. Once a liability has been established in an assessment, there is no time limit for the Commissioner to recover the debt. However, the Commissioner would be restricted to a four year period in which a return may be reviewed and amended.

The Government is of the view that there are a number of advantages in moving to a self assessment system for indirect taxes, including lower compliance costs for taxpayers with common rules applying across taxes.

What would you like to change



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## The proposals

The key features of the proposed self assessment system are as follows:

- Generally, when a taxpayer's GST return is lodged, the Commissioner will be taken to have made an assessment of the taxpayer's liability or credit entitlement
- the Commissioner may make an amended assessment within four years from the date of a notice of assessment, or the date on which a taxpayer was required to lodge a return
- taxpayers can request an amendment to an assessment, within four years of the assessment issuing
- the assessment will be a conclusive statement of a taxpayer's net liabilities or entitlements
- decisions relating to an assessment will be reviewable indirect tax decisions
- the period to object to these decisions will be the later of the following:
  - four years after the notice of the initial assessment has been provided, or
  - 60 days after notice of the relevant decision has been provided to the taxpayer
- most assessments will relate to a net amount for a tax period, however, special rules will apply to importations and certain insurance provisions, and
- the Commissioner may determine the circumstances in which categories of taxpayers may correct mistakes in GST returns.



## Potential Implications

- These changes are technical in nature but will fundamentally change the way a taxpayer challenges the Australian Taxation Office's (ATO) view of the application of the GST law. In most cases, it is likely that a taxpayer's access to declaratory relief from the Courts will no longer be available.
- Taxpayers will be forced into the objection and appeal process prescribed in Part IVC of the Taxation Administration Act. This process can be considerably more time consuming and expensive than the declaratory relief process.

## 2. Change of use adjustments

### The issue

The consultation paper notes that the current change of use adjustment provisions do not adequately balance the competing considerations of the need to ensure the correct amount of tax is paid, and the need to ensure that the adjustment requirements do not impose an excessive compliance burden on taxpayers.

The Board of Taxation concluded that there was significant room for improvement in relation to a number of areas, including the need for greater consistency between the various GST provisions concerning change of use and similar rules in other areas of taxation law.

### The proposals

The Consultation Paper proposes three separate adjustment regimes for changes in the use of assets. These adjustment regimes relate to residential property, the extent of private use and inputs into other input taxed supplies (predominantly financial supplies). The key features of each are as follows:

- Residential property:
  - residential premises will be input taxed if sold five years or more after construction, regardless of how the premises were used
  - acquisitions made during the

- construction process will be aggregated and the following will apply:
  - For premises' built for sale, there will be up to five annual adjustments if the premises are rented out prior to sale, and
  - an increasing adjustment of aggregated input tax credits will be required.
- For private use and input taxed supplies other than property:
  - No adjustment will be required, unless the change in use varies by more than ten per cent from the original claim (or previous adjustment)
  - adjustments will be aligned with the due date for income tax returns
  - the thresholds for changes in the private use of assets will increase and changes in extent of private use will be calculated on the same basis as for income tax, and
  - A separate regime will apply for changes in use of assets used in making financial supplies. The new adjustment thresholds for these assets are as follows:
    - for acquisitions below \$20,000 - no adjustment will be required
    - for acquisitions from \$20,000 to \$499,999 - there will be two adjustment periods

- for acquisitions over \$500,000 – there will be five adjustment periods, and
- for real property over \$5,000,000 - there will be ten adjustment periods, with acquisitions aggregated.

### Potential implications

- The change to adjustment thresholds for acquisitions used to make financial supplies is broadly in line with financial service industry representations. However, acquisitions between \$20,000 and \$50,000 now have to be adjusted twice (compared to only once previously). This seems unnecessary, and will increase compliance costs.
- The proposal that adjustments will only be required when the cumulative change in use exceeds ten per cent from the original intended use (or adjusted use) is a welcome development. However, the change in use will still need to be monitored. An improvement could be (for instance) to allow a financial institution to determine the ten per cent change of use by reference to its overall input tax credit recovery rate.
- The adjustment provisions are overly complicated. The mechanics of the calculation required under Division 129 have never been simply articulated. It is to be hoped that the general statement made in the Consultation Paper is translated into a precise

formula (or principle) which can be applied by taxpayers in practice.

- A significant omission from the proposals is the clarification of the type of acquisitions intended to be included in the adjustment regime. At the moment, non-asset acquisitions may be covered. However, this is a broad consensus that Division 129 is only intended to cover physical assets with a lasting value (the use of which can change over time), as these are already tracked for income tax and accounting purposes. It would be useful to clarify this point once and for all.

### 3. GST refunds

The Consultation Paper announces the Government's intention to amend the GST law to clarify that the Commissioner has discretion to refund GST where appropriate.

It states that the Commissioner would only apply his discretion where the taxpayer was able to provide clear and compelling evidence that the tax has not been passed on.

Factors which would weigh against the exercise of the discretion may include administration and compliance costs, potential windfall gains and asymmetry issues (such as where the recipient of the supply has claimed input tax credits and the Commissioner is unable to recover those credits if the GST overpaid is refunded).

### Potential implications

While the Government is purportedly clarifying the exercise of the Commissioner's discretion to refund GST, the requirement that taxpayers provide "clear and compelling evidence" that GST has not been passed on to a customer may mean that the Commissioner's discretion will rarely be exercised.

### Other proposed reforms

In addition to the items above, the Consultation Paper includes further detail in relation to the following proposals:

- **Other adjustment provisions** – the Government proposes amendments to the following adjustment provisions:
  - Adjustments for cessation of registration – including circumstances where assets have been acquired GST-free under the going concern, farmland or associate provisions or where assets are effectively exported by the deregistering entity, and
  - adjustments for pre-registration acquisitions – to ensure that decreasing adjustments are available for certain plant and equipment, prepaid periodic services and real property.
- **general law partnerships** (an association of persons 'carrying on a business as partners') – the Government proposes to amend the



GST law to clarify the treatment of general law partnerships, including:

- Supplies made by a partner to a partnership (such as in-kind contribution of property to the partnership as part of his or her capital contribution)
  - supplies of an interest in a partnership
  - in-kind distributions of partnership property, and
  - changes in membership.
- **Tax law partnerships** (an association of persons 'in receipt of income jointly') – the discussion paper proposes two options:
    - Treating tax law partnerships for GST purposes in the same way as general law partnerships, or
    - retaining tax law partnerships for reporting and turnover threshold

purposes (on the basis that each co-owner is carrying on an enterprise in its own right), and allowing an option for the partners to elect to report separately.

- **Bare trusts** – the Government proposes to amend the law to clarify that transactions entered into by a bare trustee are not made in the course or furtherance of an enterprise carried on by the trustee, and are considered to be made by the beneficiaries.
- **Running balance accounts** – The Consultation Paper proposes amendments to ensure that the

Commissioner has the discretion not to offset an RBA payment, surplus or credit against a BAS amount prior to the amount becoming due and payable. However, the Commissioner will still have the power to offset amounts before this date. The Government also accepts that each role undertaken by a joint venture operator should be treated separately for RBA purposes.

- **Non-profit sub-entities** – the law will be amended so that non-profit sub-entities will be able to access the same GST concessions as their parent entity.

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