

# Indirect Tax Update

1 February 2014

## Outstanding GST reform measures

On 14 December 2013, the Government announced its intentions in relation to the 64 outstanding tax and superannuation measures, including a number of GST measures, signalling an end to the process outlined in its earlier announcement on 6 November 2013. As anticipated, the government has confirmed that the majority of outstanding GST measures will not proceed, including proposed measures relating to:

- the GST grouping membership rules
- change of use provisions and other adjustment provisions
- vouchers
- multi-party transactions
- partnerships and bare trusts

Measures which will go ahead include the proposed Division 142 measures to restrict GST refunds, amendments to the “connected with Australia” rules, and replacing the GST-free concessions for the supply of going concerns and farmland with a reverse charge mechanism. For further details see this [TaxTalk Alert](#).

## GST cases update

There have been a number of GST cases decided since our last edition of TaxTalk in 2013, including:

- In *Australian Style Investments Pty Ltd as Trustee for the Australian Style Investments Unit Trust and Commissioner of Taxation* [2013] AATA 847, the Administrative Appeals Tribunal (AAT) held (in favour of the Commissioner) that execution of a deed providing for appointment of a proxy to vote against resolutions at a meeting of unit holders in trusts constituting a registered managed investment scheme was not the supply of an “interest in or under... securities”, and therefore was not a financial supply for the purposes of the GST Regulations.
- In *Swanbat Pty Ltd and Commissioner of Taxation* [2013] AATA 891, the AAT considered whether the Commissioner was entitled to recover a GST refund which it had paid to the taxpayer after more than four years, following a

private ruling that supplies were GST-free.

- In *The Married Couple and Commissioner of Taxation* [2013] AATA 888, the AAT found that a couple who had purchased vacant land on which they undertook some works were not a partnership carrying on an enterprise for GST purposes.
- In *Mattress Innovations Pty Ltd v Suncorp Metway Insurance Limited* [2013] QCA 377, the Queensland Court of Appeal found, based on construction of the insurance contract, that an insurer was not entitled to reduce the amount payable on a claim by one-eleventh to take into account the input tax credit entitlement of the insured.

In addition, the ATO has issued an interim Decision Impact Statement in relation to the decision of the Full Federal Court in *MBI Properties Pty Limited v Commissioner of Taxation* [2013] FCAFC 112. The case concerned the application of the adjustment provisions in Division 135 of the GST Act to supplies made in relation to serviced apartments.

As detailed in this [\*TaxTalk Alert\*](#), the Full Federal Court found that MBI was not required to make increasing adjustments under Division 135 in relation to the acquisition of residential units as part of a GST-free going concern (the units were part of a serviced apartment complex, and were subject to leases to a management company). The Commissioner has since applied for special leave to appeal to the High Court. The interim Decision Impact Statement, in essence, states that pending the outcome of this appeal, the ATO will continue to administer the law in accordance with its existing rulings, and taxpayers who lodge returns on this basis will be protected from having to pay any underpaid tax, penalty or interest.

The interim DIS also sets out the position for taxpayers who consider that they are entitled to a refund based on the Full Federal Court's decision.

### ***GST determination on objecting to private rulings on GST refunds***

On 22 January 2014, the ATO released GSTD 2014/1 which sets out the Commissioner's view that a taxpayer can only object to a private ruling that the Commissioner makes on the way in which s105-65 in Schedule 1 to the *Taxation Administration Act 1953* (which provides that the Commissioner need not give a refund in certain circumstances) applies or would apply to the taxpayer, if the Commissioner has not made an assessment of the taxpayer's net

amount for the tax period in which they took into account an amount of incorrect GST.

For tax periods starting on or after 1 July 2012, the Commissioner is treated as having made an assessment of a taxpayer's net amount when the taxpayer lodges a GST return. The effect of the Commissioner's view in the determination is therefore that for pre 1 July 2012 tax periods, taxpayers would generally be able to object against a private ruling concerning the application of s105-65. However for tax periods commencing on or after 1 July 2012, there would be no such objection rights (except, for example, in the very limited circumstances where the ruling concerns a future tax period for which the taxpayer has not lodged a GST return).

### ***GST and moveable home estates***

Following consideration of comments in relation to Draft GST Ruling GSTR 2013/D2 on the GST consequences of supplies made by an operator of a 'moveable home estate' (for example gated communities or retirement villages comprised of moveable 'buildings', but not including caravan parks or camping grounds), the ATO has announced the withdrawal of the Draft Ruling. The ATO has confirmed that it will not change the GST treatment of moveable home estates, which will continue to be treated as commercial residential premises with the same GST rules for long-term accommodation.

### ***Increase in tobacco excise from 1 December 2013***

Excise and excise equivalent customs duty for tobacco and tobacco products has increased from 1 December 2013 by 12.5 per cent. This amendment is part of the Government's proposal to introduce a series of four 12.5 per cent increases in excise and excise equivalent customs duty for tobacco and tobacco products. Accordingly, further 12.5 per cent increases are expected to apply from 1 September 2014, 1 September 2015 and 1 September 2016.

### ***Import processing charges to increase from 1 January 2014***

The *Import Processing Charges Amendment Act 2013* increases the import processing charges that are levied from 1 January 2014 on air, sea and post consignments with a value of \$10,000 dollars or more.

### ***Proposal concerning compliance regime for gaseous fuels abandoned***

As part of its announcement regarding outstanding tax measures, the Government advised on 14 December 2013 that it will not proceed with the proposal for a comprehensive compliance regime for gaseous fuels. This measure was originally introduced into Parliament in September 2012, however was subsequently removed from the amending Bill.

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### ***Let's talk***

For a deeper discussion of how these issues might affect your business, please contact:

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