

## Indirect tax update

1 February 2015

### GST update

#### **GST and the sale of leased premises**

On 3 December 2014, the High Court handed down its decision in *Commissioner of Taxation v MBI Properties Pty Ltd [2014] HCA 49*. The High Court allowed the Commissioner's appeal, finding that MBI was required to make an increasing adjustment under Division 135 of the *GST Act* in relation to its GST-free acquisition of a going concern comprising three residential apartments which were leased to an entity managing a serviced apartment complex.

For further details of the decision and its implications, see this [TaxTalk alert](#).

The [ATO's Decision Impact Statement](#), issued on 22 December 2014, confirms that the High Court decision is consistent with the Commissioner's views on the GST consequences following a sale of leased premises.

#### **The takeaway**

This decision provides certainty that the new owner of leased premises:

- is required to pay GST on the rent it receives if the supply of the property is a taxable supply, or

- may be subject to an increasing GST adjustment under Division 135 of the *GST Act* if it acquired the property as a GST-free going concern

Comments on the ATO's Decision Impact Statement are due by 18 February 2015.

#### **ATO rulings update**

Since the last edition of TaxTalk, the ATO has released final versions of rulings on:

- **ATM service fees and credit/debit card surcharges** - [GSTR 2014/2](#) explains the Commissioner's view that:
  - ATM service fees are generally consideration for an input taxed supply
  - credit and debit card surcharges imposed by merchants generally form part of the price for the supply of the relevant goods/services, and
  - the GST treatment of debit charge surcharges for cash withdrawals depends on the exact nature of the transaction.

Much of the ruling reflects longstanding industry practice in relation to these charges. This ruling was previously released for

comment as GSTR 2014/D2.

- **Bitcoin** - [GSTR 2014/3](#) explains the Commissioner's view that a transfer of bitcoin from one entity to another is a 'supply' for GST purposes and not an input taxed financial supply. The exclusion of supplies of money from the definition of supply does not apply to bitcoin, because bitcoin is not 'money' as defined in the *GST Act*. This Ruling was previously released for comment as GSTR 2014/D3.
- **Brokerage services** - overseas exchanges - [GSTD 2015/1](#) sets out the Commissioner's view that the supply of brokerage services that facilitate the sale or purchase of financial products on overseas securities or futures exchanges, is a GST-free supply. The Determination was previously issued in draft as GSTD 2014/D4, and is substantially the same as the draft. For details, see the summary in the [November 2014 edition of TaxTalk](#)

## **Customs update**

### **Proposed anti-dumping reforms**

Industry Minister, Ian Macfarlane and his Parliamentary Secretary, Bob Baldwin have announced measures to strengthen Australia's anti-dumping rules. The new measures will place a significant onus on foreign exporters to cooperate in anti-dumping investigations, provide a range of new support services for Australian companies who access the system and streamline a number of processes. See this [TaxTalk Alert](#) for an outline of the proposed reforms.

### **Free Trade Agreements - update**

- The *Japan-Australia Economic Partnership Agreement* has entered into force on 15 January 2015. As part of its implementation, the *Customs (Japanese Rules of Origin) Regulation 2014* was registered to prescribe matters relating to the rules of origin that are required to be prescribed under new Division 1K of Part VIII of the *Customs Act 1901* (Japanese originating goods). Under the agreement, importers are entitled to reduced rates of duty for most goods imported from Japan, provided the goods meet the rules of origin.

- The *Korea-Australia Free Trade Agreement* has entered into force on 12 December 2014. The *Customs (Korean Rules of Origin) Regulation 2014 a Customs Amendment (Korean Rules of Origin) Regulation 2014* set out matters relating to the rules of origin that are required to be prescribed under new Division 1J of Part VIII of the *Customs Act 1901* and prescribe new refund circumstances in respect of goods imported into Australia from Korea, in order to fulfil Australia's obligations under the Agreement.

## **Let's talk**

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

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