Indirect Tax Update

1 July 2014

GST cases update

Four decisions of the Administrative Appeals Tribunal (AAT) during the last month have considered issues relating to entitlement to input tax credits on acquisitions:

In *Davsa Forty-Ninth Pty Ltd as Trustee for the Krongold Ford Business Unit Trust and Commissioner of Taxation [2014] AATA 337*, the AAT found partly for the Commissioner and partly for the taxpayer in relation to entitlement to input tax credits and decreasing luxury car tax adjustments on acquisition of motor vehicles. The taxpayer acquired a number of prestige vehicles over a four year period. During this time, some were used for private use, and only one sale was made (at a loss). The AAT found that the motor vehicles were acquired in carrying on an enterprise. However, for all but one of the vehicles, the taxpayer was not entitled to input tax credits. This was for a range of reasons including lack of evidence for an appropriate basis of apportionment to take into account the private use of the vehicles; lack of valid tax invoices; lack of consideration; and a failure to satisfy the second hand goods rules in the GST legislation.

In *Dotrac Pty Ltd and Anor and Commissioner of Taxation [2014] AATA 336*, the AAT found in favour of the Commissioner, denying entitlement to input tax credits for acquisitions purportedly related to property development sites which were not owned by the taxpayers. The Tribunal found that the taxpayers were not carrying on an enterprise as the activities of the taxpayer were difficult to identify, and there was no evidence of commercial purpose or expectation of profit. Although acquisitions were invoiced to the taxpayers, the AAT found that they did not acquire anything (as the relevant acquisitions were actually made by the land owners). In addition, the AAT held that the taxpayers had not provided consideration for any acquisitions, as the promissory notes which they provided to subcontractors represented, at most, promises to pay in the future.

In *North Sydney Developments Pty Ltd and Commissioner of Taxation [2014] AATA 363*, the AAT held that a taxpayer's September 2009 'stop the clock' letter notifying an entitlement to refunds for its December 2005 and January 2006 tax periods was a valid notice for the purposes of section 105-55 in Schedule 1 to the Taxation Administration Act 1953 (meaning that the four year time limit did not apply). The AAT rejected the Commissioner's contention that the notification was not valid because it did not identify what the taxpayer's input tax credit entitlements were, finding that the letter, by describing the notification as relating to the expected outcome of Business Activity Statements for the relevant months, satisfied the requirements of a complying notification. In addition, if any greater degree of specificity was required, the letter also satisfied that requirement because it indicated the reason for the notification, namely the lack of access to records which were in the possession of a receiver.

In *Advent 7 Pty Ltd and Commissioner of Taxation [2014] AATA 365*, the AAT found that the taxpayer was not entitled to input tax credits for the purported acquisition of management/ marketing services from other entities where there were "strong connections between the relevant entities and their officers". The Tribunal found that the evidence presented by the taxpayer fell well short of establishing that it had made acquisitions for a creditable purpose. The AAT also upheld a penalty for recklessness.

Excise update

Fuel excise indexation - The Excise Tariff Amendment (Fuel Indexation) Bill 2014 and Customs Tariff Amendment (Fuel Indexation) Bill 2014 propose to amend the Excise Tariff Act 1921 and the Customs Tariff Act 1995 to reintroduce biannual indexation of excise and excise-equivalent customs duty applying to fuels in line with changes in the Consumer Price Index. The additional revenue generated by this measure is intended to assist in funding road infrastructure. The amendments apply indexation to duty on domestically manufactured and imported fuel with effect from 1 August 2014. Indexation will not apply to rates of excise and excise-equivalent customs duty on certain fuels, such as aviation fuels.

Product Stewardship for Oil: increase in excise rate - The Excise Tariff Amendment (Product Stewardship for Oil) Bill 2014 and Customs Tariff Amendment (Product Stewardship for Oil) Bill 2014 amend the Excise Tariff Act 1921 and the Customs Tariff Act 1995 to increase the excise and excise-equivalent customs duty on new and recycled petroleum-based oils, greases and their synthetic equivalents from 5.449 cents to 8.5 cents per litre or kilogram with effect from 1 July 2014.

Blends of fuel exempt from excise - The Excise (Blending exemptions) Determination 2014 (No 1) specifies circumstances in which blends of excisable fuels, with or without other substances, are taken not to be excisable goods. Excise duty is therefore payable on the components of these blends (where applicable), but not on the blends themselves. The determination commences on 1 July 2014 and revokes and replaces Excise (Blending exemptions) Determination 2012 (No 2).
Repeal of the carbon tax: fuel tax implications - The Customs Tariff Amendment (Carbon Tax Repeal) Bill 2013 [No 2] and Excise Tariff Amendment (Carbon Tax Repeal) Bill 2013 [No 2], which are part of the package of Bills that propose to repeal the carbon tax, remove the equivalent carbon price imposed through the fuel tax credit system, via excise and excise equivalent customs duties.

Let's talk

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

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