

Indirect Tax Update

2 June 2014

GST cases update

- The AAT has found that payment made in settlement of a legal matter was not consideration for a taxable supply. The underlying dispute concerned breach of a restraint clause in an employment contract. The dispute was ultimately settled, with the taxpayer paying \$200,000 to the plaintiff. The taxpayer requested a ruling from the Australian Taxation Office (ATO) to the effect that the payment was consideration for a taxable supply, which should therefore give rise to an input tax credit entitlement. The taxpayer appealed against the Commissioner's objection decision following an unfavourable ruling. The AAT found in favour of the Commissioner, rejecting the taxpayer's arguments that the payment was consideration for a supply by the plaintiff of either:
 - Surrender of contractual rights,

- Release of the taxpayer from the restraint clause, or
- Surrender of the right to sue.

On the basis of the facts, the AAT therefore affirmed the Commissioner's objection decision, with the result that the taxpayer was denied an input tax credit in respect of the payment. This decision is consistent with prior cases and views expressed by the ATO in public rulings concerning the GST treatment of judgment debts or settlement amounts.

- As reported in our April edition, in *ATS Pacific Pty Ltd v Commissioner of Taxation [2014] FCAFC 33*, the Full Federal Court has considered the GST implications for an Australian resident inbound tour operator which made supplies to non-resident travel agents. The Full Federal Court unanimously dismissed the taxpayer's appeal and upheld the Commissioner's cross appeal, finding that the taxpayer made single

taxable supplies to the non-resident tour operators. Since then:

- The taxpayer has lodged an application for special leave to appeal to the High Court, and
- The ATO has issued a new interim Decision Impact Statement (DIS) which outlines its administrative treatment pending the outcome of the special leave application, including implications for taxpayers who may have either under or over paid GST, based on the Full Federal Court's decision. Affected entities have until 27 June 2014 to provide comments on the interim DIS.

Customs Update

Customs & excise update

The 2014-15 Federal Budget, handed down on 13 May 2014, saw a number of excise related amendments, including a proposal to index fuel excise biannually commencing on 1 August 2014, and changes to the

taxation of ethanol and biodiesel.

The Government also confirmed that, from 1 July 2015, the Australian Customs and Border Protection Service (ACBPS) will be consolidated into the Department of Immigration and Border Protection to create a single agency, the Australian Border Force. In the lead up to this change, the Government

plans to enhance Australia's border protection services within the existing ACBPS by:

- improving trade and passenger facilitation through the implementation of more efficient processes,
- better targeting and intercepting of illegal trade and travellers through

enhanced Information Communication Technology systems, intelligence and enforcement capability, and

- strengthening integrity and capability of the border workforce.

Let's talk

For a deeper discussion of how the above indirect tax issues might affect your business, please contact:

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