

Indirect Tax Update

1 March 2014

Exposure draft legislation on GST refund rules – revised start date

On 17 February 2014, Treasury released a further Exposure Draft and explanatory memorandum on proposed changes to the GST refund rules.

These measures were originally announced by the previous government on 17 August 2012, and have since been the subject of two rounds of public consultation, which culminated in the introduction into Parliament of the Tax Laws Amendment (2013 Measures No 4) Bill 2013. This Bill lapsed when Parliament was prorogued on 5 August 2013 prior to the federal election. On 6 November 2013, the Government announced that it would proceed with these measures, with some amendments.

Broadly, the exposure draft legislation proposes to replace the existing restriction on GST refunds in s105-65 in Schedule 1 to the *Taxation Administration Act 1953* with a new Division 142 in the *A New Tax System (Goods and Services Tax) Act 1999*.

Proposed Division 142 provides that, subject to certain exceptions, where an assessed net amount takes into account

an amount of GST exceeding that which is payable, then so much of that excess (after adjustments and corrections) that has been passed on to another entity, is taken to have always been payable on a taxable supply (and as a consequence, not refundable) until, and to the extent that, the taxpayer reimburses the other entity for the passed on GST.

The key difference in the latest exposure draft is the start date. The measures were originally intended to apply retrospectively from 17 August 2012, but will now apply to tax periods starting on or after the date of Royal Assent to the amending legislation. The proposed measures also differ from the lapsed Bill in that they:

- restore review rights - following the decision of the Administrative Appeals Tribunal in *Naidoo v Commissioner of Taxation* [2013] AATA 443 that a decision made by the Commissioner under s105-65 was not part of the assessment process and therefore did not qualify for a merits review, and
- clarify that tax invoices are only prima facie evidence of

amounts being passed on to another entity to the extent that the amount of GST ascertained from the tax invoice has been paid to the Commissioner.

The proposed legislation retains many of the drafting complexities of the original Exposure Draft, and if passed in its current form will make it more difficult for taxpayers to obtain refunds of overpaid GST. It is, at least, welcome news that taxpayers will not be required to apply the rules retrospectively.

Determination on GST refunds and private rulings

On 22 January 2014, the Commissioner of Taxation issued GST Determination GSTD 2014/1, regarding objection rights in relation to private rulings on GST refunds. In particular, the Determination:

- confirms that the Commissioner can make a private ruling on the way in which s105-65 applies or would apply to a taxpayer, on the basis that s105-65 is about the administration or collection of GST. Such a private ruling can be about any aspect of the operation of

s105-65, including the exercise of the Commissioner's discretion.

- States that a taxpayer can only object to a private ruling concerning s105-65 in very limited circumstances, namely where 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 GST return is lodged. Therefore, the effect is that a taxpayer cannot object to a private ruling about s105-65 if it relates to a tax period commencing on or after 1 July 2012 for which it has lodged a GST return.

Determination on call options and the margin scheme

On 5 February 2014, the Commissioner of Taxation issued GST Determination GSTD 2014/2 which sets out the Commissioner's view that where real property is acquired following the exercise of a call option, the call option fee does not form part of the consideration for the acquisition for the purposes of calculating

the margin for a supply under the margin scheme.

In particular, Appendix 1 to the Determination notes that in the context of a call option over real property, s9-17(1) of the GST Act recognises that the supply of the option is a separate supply to the supply of the underlying property. As a consequence of s9-17(1), the consideration for the call option is the call option fee, and the consideration for the supply or acquisition of the underlying property is limited to any additional consideration provided on the exercise of the call option. Therefore, a call option fee should not be included as part of the consideration for the acquisition in calculating the margin under subsection 75-10(2).

This is stated to be the case even if the agreement between the parties specifies that the call option fee forms part of the price for the supply of the real property.

Changes to excise and customs duty rates for tobacco and tobacco products

On 1 March 2014, excise and customs duty on tobacco and tobacco products will be indexed according to average weekly ordinary time earnings (AWOTE). AWOTE adjustments will occur twice a year, being 1 March and 1 September, to align with the

release of AWOTE data from the Australian Bureau of Statistics. This measure is part of the Government's proposal to introduce a series of four staged increases of 12.5 per cent to tobacco excise and excise equivalent customs duty (commencing 1 December 2013) and to index excise and customs duty on tobacco based on AWOTE from 1 March 2014 instead of the Consumer Price Index (CPI). The Excise Tariff Amendment (Tobacco) Bill 2014 and Customs Tariff Amendment (Tobacco) Bill 2014 were introduced into Parliament on 26 February 2014 to give legislative effect to these measures.

Accordingly, from 1 March 2014, the rates of customs and excise duty will increase to \$0.40639 per stick and \$508.01 per kilogram of tobacco content.

Note that rates of customs and excise duties on spirits and beer will continue to be indexed on 1 February and 1 August each year based on the CPI.

Let's talk

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

Peter Konidaris, National
Indirect Taxes leader
+61 (3) 8603 1168
peter.konidaris@au.pwc.com

Adrian Abbott, Sydney
+61 (2) 8266 5140
adrian.abbott@au.pwc.com

Gary Dutton, Brisbane
+61 (7) 3257 8783
gary.dutton@au.pwc.com

Suzi Russell, Sydney
+61 (2) 8266 1057
suzi.russell@au.pwc.com

Ross Thorpe, Perth & Sydney
+61 (8) 9238 3117
ross.thorpe@au.pwc.com

Michelle Tremain, Perth
+61 (8) 9238 3403
michelle.tremain@au.pwc.com

© 2014 PricewaterhouseCoopers. All rights reserved. In this document, "PwC" refers to PricewaterhouseCoopers a partnership formed in Australia, which is a member firm of PricewaterhouseCoopers International Limited, each member firm of which is a separate legal entity. This publication is a general summary. It is not legal or tax advice. Readers should not act on the basis of this publication before obtaining professional advice. PricewaterhouseCoopers is not licensed to provide financial product advice under the Corporations Act 2001 Cth). Taxation is only one of the matters that you need to consider when making a decision on a financial product. You should consider taking advice from the holder of an Australian Financial Services License before making a decision on a financial product.

Liability limited by a scheme approved under Professional Standards Legislation.