

Indirect tax update

2 March 2015

GST Update Remote area employee housing – input tax credits denied

In *Rio Tinto Services Limited v Commissioner of Taxation* [2015] FCA 94, the Federal Court found that the taxpayer was not entitled to input tax credits on acquisitions related to the provision of remote area employee housing. Rio Tinto argued that the acquisitions were wholly for a creditable purpose, as the supply of residential accommodation was not an end commercial objective in itself, but was wholly incidental and necessary to the relevant mining operations. The Court rejected this “enterprise costs” argument, finding that the acquisitions related to making supplies that would be input taxed. For further details of the case and its implications, see this [TaxTalk Alert](#).

GST-free health supplies – residential care

Three legislative determinations which affect the GST-free health supply rules have been registered on the Federal Register of Legislative Instruments. The Determinations all relate to the amendments made to the specified care and services listed in Schedule 1 to the *Quality of*

Care Principles 2014 (made under the *Aged Care Act 1997*) that came into effect on 1 July 2014.

The *A New Tax System (Goods and Services Tax) (GST-free Supply—Residential Care—Government Funded Supplier) Determination 2015* and the *A New Tax System (Goods and Services Tax) (GST-free Supply—Residential Care—Non-government Funded Supplier) Determination 2015* ensure that eligible residents of State or Territory funded and privately funded residential accommodation will receive GST-free all the residential care services that are GST-free to eligible residents of Commonwealth funded services (under the *Aged Care Act 1997*), taking into account the 2014 changes to the *Quality of Care Principles*. The *GST-free Supply (National Disability Insurance Scheme Supports) Amendment Determination 2015* updates references in earlier NDIS determinations to take into account these changes.

All three legislative determinations are taken to have commenced on 1 July 2014.

References to “Australia” in the GST legislation

The *Treasury Legislation Amendment (Repeal Day) Act 2015* (the Amendment Act), among other things rewrites the provisions which define “Australia” for income tax purposes, following a “one term, one meaning” protocol. This has flow on implications for indirect tax laws, including the GST law. In essence, these involve replacing all references to Australia in the GST legislation with the term “indirect tax zone”, with effect from 1 July 2015.

According to the Explanatory Memorandum to the Bill, this is intended to be no different to the current scope of ‘Australia’ for indirect tax purposes, but “this change in terminology allows the policy outcome to be preserved while still having a consistent definition of Australia across the taxation laws”.

Corresponding changes to the GST Regulations are contained in the *Exposure Draft Tax and Superannuation Legislation Amendment (Sunsetting Measures) Regulation 2014*. The Amendment Act also contains changes to the definition of Australia in the Australian Business Number

(ABN) legislation, to align it with the income tax, rather than the GST definition.

The new "indirect tax zone" term will also apply from 1 July 2015 for luxury car tax and wine equalisation tax purposes.

Customs and Excise Update Remake of the Customs Regulations

The Australian Customs and Border Protection Service has released exposure drafts of the *Customs Regulation 2015* and the *Customs (International Obligations) Regulation 2015*. The draft regulations propose to remake the *Customs Regulations 1926* (the Regulations), which are due to sunset on 1 April 2015. They also propose amendments to the Regulations to improve their operation, including repealing redundant provisions, simplifying language, restructuring provisions that are difficult to navigate and making other minor changes.

Increase in excise duty rates

Rates of excise and excise-equivalent customs duty on certain spirits, beer and petroleum products (including gaseous fuels) have increased effective 2 February 2015 in line with biannual indexation.

Administration of the Tariff Concession System

The Australian National Audit Office (ANAO) has recently released its report on Customs' Administration of the Tariff Concession System (TCS). The ANAO made three recommendations aimed at building greater awareness of the TCS, improving the transparency and accountability of the Tariff Concession Order (TCO) decision-making process, and better supporting the delivery and oversight of compliance activities directed at managing the risk of TCO misuse.

Anti-dumping reforms introduced into Parliament

The *Customs Amendment (Anti-Dumping Measures) Bill (No 1) 2015* and the *Customs Tariff (Anti-Dumping) Amendment Bill 2015*, introduced into the House of Representatives on 26 February 2015, propose to strengthen and modernise Australia's anti-dumping laws.

Specifically, the Bills:

- introduce more stringent deadlines for the submission of information to dumping and subsidisation investigations
- simplify and modernise the publication provisions for anti-dumping notices

- consolidate the lodgement provisions for anti-dumping applications and submissions
- amend the provisions dealing with new exporters
- implement a higher procedural and legal threshold for review to be undertaken by the Anti-Dumping Review Panel
- allow the Government to replace the statutory International Trade Remedies Forum with administrative business consultative arrangements, and
- clarify a number of provisions including those dealing with the length of the investigation period in anti-dumping matters, cumulative assessment of injury, normal value, calculation of the dumping margin, material injury determinations, effective notice periods, the definition of a subsidy, the lesser duty rule and the operation of the exemption provisions.

It is expected that these measures will commence on a single day to be fixed by Proclamation.

Let's talk

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

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