

Indirect Tax Update

1 May 2014

ATO Rulings update

In the last month, the Australian Taxation Office (ATO) has issued the following draft GST rulings and determinations:

- **Motor vehicle incentive payments** - Draft GST Ruling GSTR 2014/D1.

This draft ruling, issued on 23 April 2014, explains the Commissioner's preliminary views on the GST consequences of incentive payments made by motor vehicle manufacturers, importers and distributors to motor vehicle dealers. The draft Ruling is intended to provide practical guidance to the motor vehicle industry following the decision of the Full Federal Court in *AP Group Limited v Commissioner of Taxation [2013] FCAFC 105*. It also includes consideration of the application of Division 134 in the GST legislation, which applies to certain third party payments made on or after 1 July 2010. Once finalised, the ruling will apply to tax periods starting on or after 1 May 2014. Comments on the draft are due by 6 June 2014.

- **GST-free supply of credit card facilities** - Draft GST

Determination GSTD 2014/D1.

This draft determination, issued on 2 April 2014, sets out the Commissioner's preliminary view that the supply of a credit card facility will be GST-free to the extent it is intended that the cardholder will use the facility to undertake a transaction when they are physically outside Australia, provided the cardholder's location outside Australia is integral to the relevant use of the credit card facility.

- **Rental guarantee arrangements** - Draft GST Determination GSTD 2014/D2.

This draft determination, issued on 9 April 2014, sets out the Commissioner's preliminary view that payments made by a vendor to a purchaser of real property when the rent received falls below the rental yield guaranteed by the vendor, give rise to an adjustment event under Division 19 in the GST Act, in the specific circumstances specified in the draft Determination. In these circumstances, the draft determination states that the vendor will have a decreasing

adjustment to the extent that the GST liability applicable to its supply of the real property (with a guaranteed rental yield) was attributable to a prior tax period. If the purchaser's acquisition of the property was a creditable acquisition, it will have a corresponding increasing adjustment.

GST Cases update

- The Commissioner has been granted special leave to appeal to the High Court against the decision of the Full Federal Court in *MBI Properties Pty Limited v Commissioner of Taxation [2013] FCAFC 112*. The Full Federal Court decided that the taxpayer (MBI) was not required to make increasing adjustments under Division 135 in the GST legislation in relation to the acquisition of residential units as part of a GST-free going concern.
- In *Living Choice Australia Limited and Commissioner of Taxation [2014] AATA 168*, the Administrative Appeals Tribunal affirmed the Commissioner's objection decision regarding calculation of input tax credits in relation to the construction and operation of retirement villages which

provide independent living units (ILUs) for occupation by their residents. The taxpayer's entitlement to input tax credits turned on the extent to which the "residential premises" (as defined) supplied to the residents included communal facilities and services.

Customs Update Free Trade Agreements - update

On 7 April 2014, the Government announced the conclusion of negotiations on the *Japan Australia Economic Partnership Agreement*. The Agreement aims to deliver significant benefits to Australian's agricultural producers, resource exporters, service providers and consumers. Read this [TaxTalk alert](#) for further details.

- Australia and South Korea have formally signed the *Korea-Australia Free Trade Agreement* on 8 April 2014. Under the Agreement, initially 84 per cent of Australia's exports (by value) to South Korea will enter duty free, rising to 99.8 per cent on full implementation. The Minister for Trade and Investment, Andrew Robb, advised that the Agreement is expected to be in force by the end of 2014.

Let's talk

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

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