

## Indirect tax update

1 May 2015

### Goods and services tax (GST)

#### Input tax credit claim out of time

In *The Trustee for SBM Trust and Commissioner of Taxation* [2015] AATA 174, the Administrative Appeals Tribunal (AAT) held that a taxpayer was out of time to claim input tax credits (ITCs), even though the credits related to creditable acquisitions that were made before amendments to the law in 2010 (the introduction of Division 93) that imposed a four year time limit on the making of claims. The acquisitions occurred in tax periods (relevant periods) in the 2005 and 2006 years, and the taxpayer sought to claim the ITCs in 2012 by revising its Business Activity Statements (BASs) for those relevant periods.

In dismissing the taxpayer's claim, the AAT said that the purported revision of the BASs was not the proper course for the taxpayer to take, and that by not including the ITCs in the original BASs of the relevant periods, the ITCs ceased under subsection 29-10(4) of the GST Act to be attributable to those periods. Instead, the ITCs became attributable to the first subsequent tax period for which

a GST return taking the ITCs into account was given to the Commissioner. It was not in dispute that the taxpayer could have included the claims in the original BASs for the relevant periods.

Under section 93-5 of the GST Act (as it relates to these circumstances), a taxpayer ceases to be entitled to an ITC where the credit was not included in a GST return of the taxpayer lodged (or required to be lodged) with the Commissioner within 4 years of the ITC being attributable under subsection 29-10(1) of the GST Act. As the taxpayer did not include the ITC claim in a GST return lodged with the Commissioner within the 4 year claim period, the AAT held that the taxpayer was no longer entitled to an input tax credit for the GST incurred in the price paid for those acquisitions.

#### GST changes on cross-border intangibles

On 9 April 2015, the Australian Treasurer announced that the government will be introducing new GST measures aimed at overseas companies supplying digital services into Australia. The Treasurer stated that "a company providing intangible services into Australia, such as media services or so on,

wherever they are located they should charge GST on those services."

There are no specific details yet as to the proposed changes, however, they are widely anticipated to be announced in the May 2015 Budget (on 12 May 2015).

Preliminary issues for consideration include how broad the interpretation of 'intangible services' will be (in some OECD countries it includes software; in others it doesn't), what the proxy will be for consumption in Australia (credit card billing address or otherwise), whether the changes will impact Business-2-Consumer transactions only (or also Business-2-Business), the date of effect of the changes and whether there will be a registration threshold under which overseas entities will not be required to remit any GST on these types of supplies.

The most pressing issue for taxpayers affected by similar VAT/GST changes in other countries is the time period provided for implementation and ensuring that there is sufficient time to make any necessary systems changes.

More details will follow next month pending an announcement in the Budget."

## **Customs**

Customs and excise measures introduced into the Commonwealth Parliament or as legislative instruments or regulations include the following:

*Excise Regulation 2015* registered on 30 March 2015 repeals and remakes the *Excise Regulations 1925* due to sunset.

*Customs Regulation 2015* registered on 30 March 2015 replaces the *Customs Regulations 1926* which will sunset on 1 April 2015 in accordance with section 50 of

the *Legislative Instruments Act 2003*.

*Customs (International Obligations) Regulation 2015* registered on 30 March 2015 replaces relevant provisions of the *Customs Regulations 1926* which relate to Australia's international obligations.

*Customs and Other Laws (Repeal and Consequential Amendments) Regulation 2015* registered on 30 March 2015 repeals the *Customs Regulations 1926* and amends the *Maritime Powers Regulation 2014* and *Migration Regulations 1994* to update references.

## **Senate inquiry to cover Wine Equalisation Tax**

On 25 March 2015 the Australian Senate moved to set up an inquiry into the Australian grape and wine industry. The terms of reference include an examination into the impact of the Wine Equalisation Tax rebate on the grape and wine industry supply chains. Submissions to the inquiry can be made until 22 May 2015 and the Committee is due to report back to the Senate by 11 November 2015.

## **Let's talk**

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

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