

Indirect Tax Update

3 November 2014

GST update

ATO Rulings update

- **GST refunds** - On 24 September 2014, the Australian Tax Office (ATO) issued Draft GST Ruling GSTR 2014/D4 which sets out the Commissioner's preliminary views on the meaning of the terms 'passed on' and 'reimburse' for the purposes of the new refund rules in Division 142 of the *GST Act*. For further details, including a summary and potential implications of the Draft Ruling, see this [TaxTalk Alert](#) issued on 25 September 2014. Comments on the draft ruling are due by 7 November 2014.
- **Motor vehicle incentive payments** – On 1 October 2014, the ATO issued final GST Ruling GSTR 2014/1 which explains the Commissioner's views on the GST consequences of incentive payments made by motor vehicle manufacturers, importers and distributors (collectively referred to as manufacturers) to motor vehicle dealers. The Ruling seeks 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. Part A of the Ruling makes general observations relevant to the GST consequences of motor vehicle incentive payments and provides specific advice on common types of incentive payments through worked examples. Part B of the Ruling outlines the information requirements for third party adjustment notes issued by manufacturers to dealers.

- **Brokerage services: overseas exchanges** - On 29 October 2014, the ATO issued Draft GST Determination GSTD 2014/D4 which sets out the Commissioner's preliminary view that the supply of brokerage services that facilitate the sale or purchase of financial products on overseas securities or futures exchanges are GST –free, as they are a supply made in relation to rights that are for use outside Australia. This is a belated clarification of the Commissioner's view of the GST free treatment of 'rights' following the High Court decision in *Travellex Ltd v Commissioner of Taxation* [2010]HCA 33.

The Draft Determination covers a broad range of financial products that are tradable rights having a financial character, including shares, units in exchange traded funds, debt instruments (eg bonds), listed options and warrants, and non-deliverable cash settled derivatives. However does not include products involving supplies of goods or real property.

The Draft Determination also notes that the terms "sale or purchase" and "traded" include equivalent dealings in financial products that require brokerage services, e.g . opening, closing-out, cash settling, or exercising a right in relation to a financial product. Some brokerage situations involving instruments issued on overseas exchanges can involve relationships between domestic Australian brokers and overseas counterparties, and the GST treatment of these services has been unclear for some time. The Draft Determination provides some guidance, but may not apply to all fact situations.

Comments on the draft are due by 28 November 2014.

GST cases update

- The High Court has refused the taxpayer's application for special leave to appeal against the decision of the Full Federal Court in *ATS Pacific Pty Ltd v Commissioner of Taxation [2014] FCAFC 33*. The Full Federal Court found that the supplies made by the taxpayer, an Australian resident inbound tour operator, to non-resident travel agents were taxable (and not GST-free).
- In the last month, the Administrative Appeals Tribunal (AAT) has considered two cases on the meaning of 'enterprise' for GST purposes:
 - In *Guru 4U and Commissioner of Taxation [2014] AATA 740*, the AAT found that the taxpayer, a company set up to provide 'lifestyle counselling and advisory services' had undertaken only preliminary steps, and was not yet carrying on an enterprise (and was therefore not entitled to be registered for GST purposes).
 - In *Cronan and Commissioner of Taxation [2014] AATA 745*, the AAT found that eBay trading activities undertaken by the taxpayer did amount to an enterprise, and that the taxpayer was liable for GST (and income tax). The ATO raised assessments based on industry benchmarks. As the taxpayer had not kept

records of the relevant transactions, it was not able to discharge the onus of proving that the assessments were excessive.

Customs & excise update

Japan-Australia Economic Partnership Agreement implementation

The *Customs Amendment (Japan-Australia Economic Partnership Agreement Implementation) Bill 2014*, proposes to amend the *Customs Act 1901* to introduce new rules of origin for goods that are imported into Australia from Japan, to give to the *Japan-Australia Economic Partnership Agreement* (the Agreement). The measures in the Bill will enable goods that satisfy the rules of origin to enter Australia at preferential rates of customs duty. The amendments also impose obligations on exporters of Australian goods to Japan and for which a preferential rate of duty will be claimed, and on people who produce such goods.

Complementary amendments to give effect to the Agreement will also be made to the *Customs Tariff Act 1995* by the *Customs Tariff Amendment (Japan-Australia Economic Partnership Agreement Implementation) Bill 2014*.

The amendments will be operative from the later of Royal Assent and the day the Agreement comes into force for Australia.

Tariff classification of ceiling fans with lights

In *Mercator Lighting Pty Ltd and Chief Executive Officer of Customs [2014] AATA 694*, the AAT held that electric ceiling fans with integrated lights should be classified under the

lights heading, and particularly subheading 9405.10.00 of Schedule 3 to the *Customs Tariff Act 1995*. The AAT found that the fans constituted composite goods made up of different components and were prima facie classifiable under both the fans heading and the lights heading. However the AAT was of the view that neither the fan component, nor the light component gave the goods their 'essential character' for the purposes of Rule 3(b) of the Interpretation Rules in Schedule 2 to the Act. Consequently, the goods were to be classified as lights in accordance with Rule 3(c) (the residual provision) of the Interpretation Rules.

Tariff proposals reintroduce biannual indexation of fuel excise

Excise Tariff Proposal (No 1) 2014 and Customs Tariff Proposal (No 1) 2014, tabled in Parliament on 30 October 2014, give effect to the Government's announcement in 2014-15 Federal Budget that it would reintroduce biannual indexation of fuel excise to the Consumer Price Index. In accordance with the tariff proposals, the rate of excise and excise-equivalent customs duty for liquid fuels, such as petrol and diesel will increase to \$0.386 per litre from 10 November 2014 to assist in funding investment in road infrastructure following delays in the passage of a number of customs and excise Bills currently before Parliament. Duty rates for alternative fuels, such as gaseous fuels, will also increase proportionately based on the liquid fuel duty rate.

Indexation of duty on fuel will apply each year thereafter on 1 February and 1 August, with the next increase scheduled for 1 February 2015.

The Government expects that the tariff proposals will be validated by parliament within 12 months.

The *Tax and Superannuation Laws Amendment (2014 Measures No 6) Bill 2014* proposes consequential amendments to the *Fuel Tax Act 2006* and the *Energy Grants (Cleaner Fuels) Scheme*

Regulations 2004 to ensure that changes to the amount of excise and excise-equivalent customs duty payable by taxpayers as a result of the above tariff proposals are taken into account in calculating fuel tax credits and the cleaner fuels grant for biodiesel and renewable diesel. Therefore, upon Royal Assent to this Bill, fuel tax credit and

grant claimants are able to claim the higher rate of fuel tax credits and grant amounts.

Let's talk

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

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