

# Indirect Tax update



3 June 2013

## ***GST administration reform update - no significant GST measures announced in the Federal Budget***

Apart from one minor GST measure concerning the National Disability Insurance Scheme (NDIS), there were no new GST related announcements in this year's Budget.

With regard to the NDIS, the Expense Measures provide that, from 1 July 2013 the GST law will be amended to make certain supports delivered under the National Disability Insurance Scheme Act 2013 GST-free. This is intended to mirror the existing GST treatment of services to people with disability.

Although the Budget was essentially silent on GST, a number of measures announced in prior years are yet to be legislated. As well as the proposed Division 142, regarding payment of refunds of overpaid GST (for which a revised Exposure Draft was released in February 2013), other outstanding measures include reforms to:

- the GST treatment of cross-border transactions
- the GST grouping membership rules
- the GST change of use provisions, and the GST treatment of tax law and general law partnerships.

With only a limited number of sitting weeks left for Parliament before the Federal Election, there may now be a question over the future of some of these proposed reforms, as all proposed government legislation lapses in a prorogued parliament.

## ***High Court decision on GST anti-avoidance provisions***

In the first GST general anti-avoidance matter to be considered by the High Court of Australia, the Court has unanimously allowed an appeal by the Commissioner of Taxation in relation to the application of the GST general anti-avoidance rules.

In *Commissioner of Taxation v Unit Trend Services Pty Ltd [2013] HCA 16*, the High Court held that despite the taxpayer's residential property development arrangement involving a series of choices or agreements each of which were expressly provided for under the GST law, the GST benefit obtained was "not attributable" to these choices, but to the wider arrangement. The GST benefit was therefore negated pursuant to the anti-avoidance provisions in Division 165 of the GST legislation.

## ***Correcting GST errors***

The *Goods and Services Tax: Correcting GST Errors Determination 2013* was registered on 9 May 2013.

This legislative determination specifies the circumstances in which a taxpayer, in working out its net amount for a tax period, may correct certain errors that were made in working out its net amount for an earlier tax period, rather than revising the GST return or requesting that the Commissioner amends the relevant assessment for the earlier tax period.

The Determination commences on 10 May 2013, and applies in working out net amounts for tax periods that start on or after 1 July 2012.

The Determination contains a number of differences to the ATO's Correcting GST Errors fact sheet which applied for correcting mistakes before 10 May 2013. These include amended (and in many cases, more generous) value limits and time limits for correction of errors which resulted in the net amount or assessed net amount being understated.

## ***Draft GST Ruling on Single RE Fees***

On 8 May 2013, the Australian Taxation Office (ATO) released GSTD 2013/D1, dealing with the application of item 32 of the reduced input tax credit (RITC) provisions in the GST Regulations to a single fee charged to a managed investment scheme that is a 'recognised trust scheme' (RTS) from a Responsible Entity (RE).

Item 32 introduced a new rate of RITC (55 per cent) for certain supplies acquired by a RTS after 1 July 2012, however, a range of services acquired by an RTS remain eligible for a 75% RITC.

GSTD 2013/D1 confirms the Commissioner's approach to date, namely that a single RE fee is consideration for a 'mixed supply', and therefore needs to be split into its 75% and 55% elements. The Draft Determination also sets out a suggested means of apportionment.

Comments are due by 5 June 2013.

## ***GST and second-hand goods***

On 15 May 2013, the ATO released Draft GST Determination GSTD 2013/D2 which sets out the Commissioner's preliminary views regarding the meaning of 'second-hand goods' for GST purposes.

The Draft Determination also considers when such goods are “acquired for the purposes of sale or exchange (but not manufacture) in the ordinary course of business” so as to give rise to either:

- a creditable acquisition when they are acquired, or
- application of a global accounting method to reduce the GST payable when parts of divided second-hand goods are later re-supplied.

The Draft Ruling also considers the application of the GST second-hand goods rules to entities that carry on a business involving the leasing and selling of second hand goods.

Comments on the draft Determination are due by 12 June 2013.

### **Customs and Excise update**

#### **Proposed Australian Industry Participation Plan requirement for major projects**

The *Australian Jobs Bill 2013*, introduced into the House of Representatives on 15 May 2013, implements part of the Government's \$1 billion Plan for Australian Jobs aimed at improving opportunities for Australian businesses to win contracts on large investment projects and enable them to tap into global supply chains.

Specifically, the measures in the Bill require major projects with capital expenditure of \$500 million or more to implement Australian Industry Participation (AIP) Plans outlining how local industry will be given a full, fair and reasonable opportunity to participate in the project. Currently, AIP Plans are only required by project proponents seeking to access the Enhanced Project By-law Scheme (EPBS), a voluntary scheme that eliminates the five per cent tariff on eligible goods not produced in Australia for projects over \$10 million in applicable sectors.

The Bill also creates a new Australian Industry Participation Authority with sufficient powers to ensure compliance with these measures and to administer a range of initiatives aimed at building capability and capacity within local business to win work on major projects.

The amendments will commence on a day to be fixed by Proclamation (being a date no later than 6 months after Royal Assent).

### **2013-14 Federal Budget - Customs and excise measures**

There were no significant announcements concerning customs and excise in the 2013-14 Federal Budget, which was handed down on 14 May 2013. The following minor measures were announced:

- The Government will restructure the Import Processing Charge with effect from 1 January 2014 to recover the cost of all import related cargo and trade functions undertaken by the Australian Customs and Border Protection Service. Specifically, costs charges will be increased for consignments valued over \$10,000 for both sea and air import declarations.
- The indexation of excise and excise-equivalent customs duty for tobacco and tobacco products will be changed to average weekly ordinary times earnings instead of the Consumer Price Index commencing from 1 March 2014. This measure gives effect to one of the recommendations of *Australia's Future Tax System* review.

#### **Correcting fuel tax errors**

*Correcting Fuel Tax Errors Determination 2013* (FTE 2013/1), registered on 9 May 2013, specifies the circumstances in which a taxpayers may, in a later tax period, correct errors that were made in working out their net fuel amount in an earlier tax period. The Determination is intended to minimise compliance costs and any liability an entity may have for the general interest charge or to administrative penalties by removing the need to revise a previous GST return.

The Determination commences on 10 May 2013, and applies in working out net fuel amounts for tax periods that start on or after 1 July 2012.

The Determination contains a number of differences to the ATO's *Fuel tax credits - making adjustments and correcting mistakes* fact sheet, including amended value limits and time limits for the correction of errors which resulted in the net fuel amount or assessed net fuel amount being understated.

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