

# **Review of the Legal Framework for the Administration of the Goods and Services Tax**

Issues paper

**July 2008**

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## FOREWORD

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Since its introduction in 2000, Australia's goods and services tax (GST) has formed an important part of Australia's tax system.

Under the *Intergovernmental Agreement on the Reform of Commonwealth-State Financial Relations* that exists between the Commonwealth and the States and Territories, all GST revenue is paid to the States and Territories. The GST revenue provides a robust and secure funding source for essential state and territory government services. In 2008-09, GST revenue is expected to be \$45.3 billion.

GST is administered by the Australian Taxation Office<sup>1</sup> on behalf of the Australian Government, with GST revenue being provided to the States and Territories. The Australian Government funds the Tax Office to administer GST, and is reimbursed by the States and Territories.

There are approximately 2.6 million active GST accounts.<sup>2</sup> It is important that the legal framework for the administration of the GST operates effectively and does not impose unnecessary compliance costs on affected businesses and non-profit bodies, or contain anomalies that undermine its operation.

The Board of Taxation has been asked by the Government to review the legal framework for the administration of the GST and identify ways to reduce compliance costs, streamline and improve the operation of the GST and remove any anomalies. The Board has been directed by the Government that its work should not extend to the rate of the GST or the scope and extent of what goods and services are subject to the GST.

In addition, the Government has sought that any recommendations made by the Board be broadly revenue-neutral and that recommendations have regard to the design features of the GST as a multi-stage value-added tax and not undermine the integrity of the GST.

The terms of reference for conducting the review do not extend to examining questions of the Commissioner of Taxation's effectiveness in administering the law.

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1 Referred to throughout this paper as the 'Tax Office'.

2 GST active accounts include various non-entity level GST registrations such as GST branches and non-profit sub-entities.

This paper provides an outline of the legal framework; it poses a number of questions on the operation of the current system and seeks feedback on the operation of the framework.

Consultation with industry and other affected stakeholders and submissions from interested parties will play an important role in shaping the Board's recommendations to the Government.

Eric Mayne  
Chair of Working Group, Board of Taxation

## EXECUTIVE SUMMARY

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The legal framework for the administration of the GST was developed having regard to the characteristics of Australia's GST system, the operation of value-added tax systems in comparable countries, and the legal framework for the administration of other taxes in Australia.

On 11 June 2008, the Government announced a review of the legal framework for the administration of the GST. The objective of the review is to reduce compliance costs and to streamline and improve the operation of the GST and remove any anomalies in its operation.

The review provides an opportunity for entities to raise issues concerning the legal framework for the administration of the GST and for them to be considered together in a systematic way.

Simplifying and removing anomalies from the rules that govern how entities meet their GST obligations, including calculating their GST liability, has the potential to reduce compliance costs for all entities.

In announcing this review, the Government noted that the review would not consider the rate of the GST, the scope and extent of what goods and services are subject to the GST, nor would it extend to questions of the Commissioner's effectiveness in administering the GST law.

Accordingly, the review can consider reforms to the GST law that result in reductions in compliance costs, that improve the operation of the GST or remove anomalies provided the changes do not result in any changes to the scope and extent of what goods and services are subject to the GST.

The Government also asked the Board that any recommendations made by it flowing from the review must have regard to the design features of the GST as a multi-stage value-added tax, not undermine the integrity of the GST, and be broadly revenue-neutral.

A copy of the terms of reference for the review is at Appendix A.

## THE BOARD OF TAXATION

The Board has been tasked with conducting the review.

The Board is an independent, non-statutory body established to advise government on various aspects of the Australian taxation system.

The Board has appointed a Working Group of its members to work on the review. The Working Group comprises Eric Mayne (Chair of Working Group), Chris Jordan AO, Curt Rendall and Richard Warburton AO.

## REVIEW PROCESS

This paper provides an overview of the legal framework for the administration of the GST and sets out a series of questions which are intended to assist stakeholders in preparing submissions. A complete list of questions is provided in Appendix B.

Submissions need not be limited to the questions in the paper. They can raise other issues related to the legal framework for the administration of the GST, including identifying areas that do not work as well as they could and making suggestions for changes. However, the Board will not consider submissions that relate to the rate of the GST or the scope and extent of what goods and services are subject to the GST.

The Board will be examining approaches to the administration of value-added taxes in other jurisdictions. Submissions may care to bring particular approaches taken in other jurisdictions to the Board's attention.

Where submissions seek changes to the legal framework for the administration of the GST that have the potential to reduce revenue, they should demonstrate how the benefits of the proposed changes outweigh the potential revenue impact from their implementation.

Submissions should have regard to the design features of the GST as a multi-stage value-added tax and should also ensure that any possible changes do not undermine the integrity of the GST system.

As part of the review, the Board will consult with stakeholders, including small and large enterprises including non-profit bodies, professional bodies, and State and Territory governments.

The consultation process will provide an opportunity to discuss the issues canvassed in this report in more detail.

Submissions and feedback from consultation sessions will be considered by the Board in preparing its recommendations to the Government.



## MAKING SUBMISSIONS

The Board welcomes submissions on the issues raised in this paper.

Submissions may be sent:

*By email to:*

[taxboard@treasury.gov.au](mailto:taxboard@treasury.gov.au)

*By facsimile to:*

02 6263 4471

*By post to:*

Review of Legal Framework for Administration of the GST  
Board of Taxation Secretariat  
C/- The Treasury  
Langton Crescent  
PARKES ACT 2600  
AUSTRALIA

Submissions should include a brief summary of major points and recommendations. They should also include contact details so that, if required, the Board can contact those making the submission to discuss the points raised. Submissions will be published on the Board's website ([www.taxboard.gov.au](http://www.taxboard.gov.au)) unless it is clearly stated that the submission is confidential.

The closing date for submissions is 15 September 2008.



# INTRODUCTION

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## THE OPERATION OF THE AUSTRALIAN GST

The GST is a broad-based, multi-stage, indirect tax that aims to tax final private consumption in Australia at a rate of 10 per cent. It is broad-based as it is intended to apply to supplies of most goods and services. It is an indirect tax and although it is imposed on entities, the incidence is intended to be imposed on transactions involving the supply of goods and services to consumers and unregistered entities, by being passed on in the price of goods and services.

In the supply chain, GST is paid by entities that make taxable supplies. A supply an entity makes will be a taxable supply if:

- the entity is registered or required to be registered for GST;
- the supply is made in the course or furtherance of an enterprise;
- is for consideration; and
- is connected with Australia.

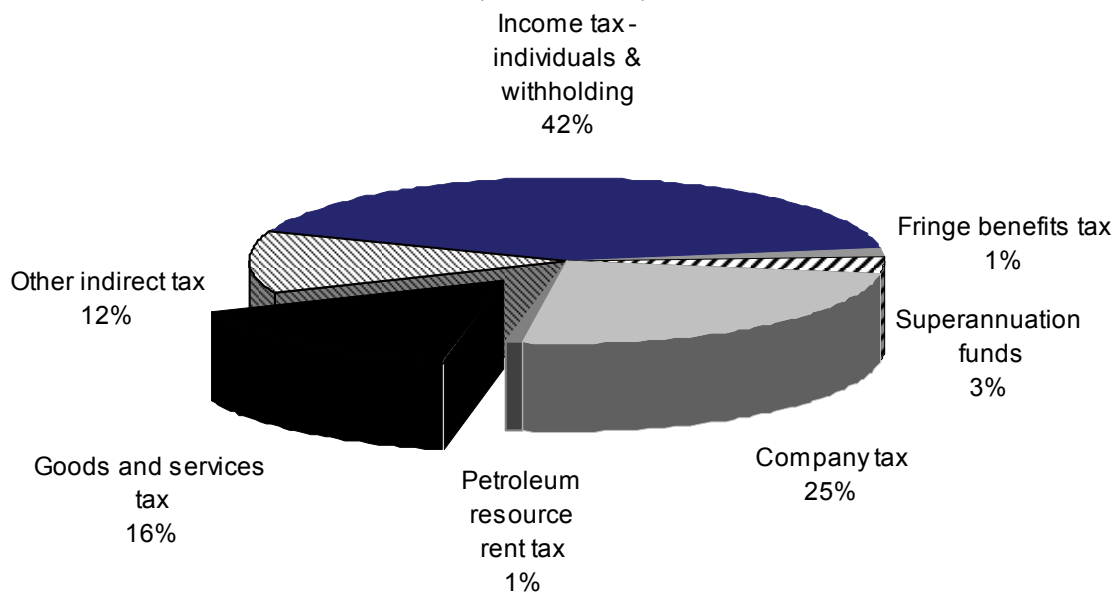
Entities may register for GST if they carry on an enterprise. Broadly, enterprises include, amongst other things, businesses, charities and government departments.

- Entities (other than non-profit entities) are required to register if their GST turnover is \$75,000 or more.
- Non-profit entities are required to register if their GST turnover is \$150,000 or more.
- Entities carrying on enterprises with turnover below these thresholds may voluntarily register.

In most cases, taxable supplies between registered entities result in no net gain to GST revenue. Although registered entities are required to remit GST on 1/11th of the full price of their taxable supply, they are allowed to claim a credit (an input tax credit) for

GST incurred on their creditable acquisitions.<sup>3</sup> Input tax credits effectively reduce to zero the effect of GST on registered entity to registered entity transactions. If an enterprise made taxable supplies and bore tax on its purchases and did not receive relief through input tax credits, this GST would be expected to be reflected in increased prices of its taxed supplies, resulting in embedded tax. The GST treatment of taxable supplies and creditable acquisitions is designed to avoid this occurring.

**Chart 1**  
**Estimated 2008-09 Australian Government general government revenue**  
 (accrual basis)



There are two types of supplies that are specifically excluded from being subject to GST.

- Some supplies are GST free. Suppliers have no liability for GST on these supplies but can still claim any related input tax credits. This effectively eliminates any GST from the price charged to a final consumer. Supplies that are GST free include basic foods, exports, most health services and non-commercial activities of charities.
- Other supplies are input taxed. Suppliers have no liability for GST on these supplies and cannot claim any related input tax credits.<sup>4</sup> This results in some GST being embedded in the price charged to entities carrying on enterprises and final

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3 The *A New Tax System (Goods and Services Tax) Act 1999* (GST Act), section 9-70 provides 'that the amount of GST on a taxable supply is 10 per cent of the value of the taxable supply'. The value of a taxable supply is price x 10/11 (section 9-75). GST payable on a taxable supply is therefore 1/11th of the price ( $\frac{1}{10} \times \frac{10}{11} \times price$ ).

4 Certain acquisitions qualify for reduced input tax credits.

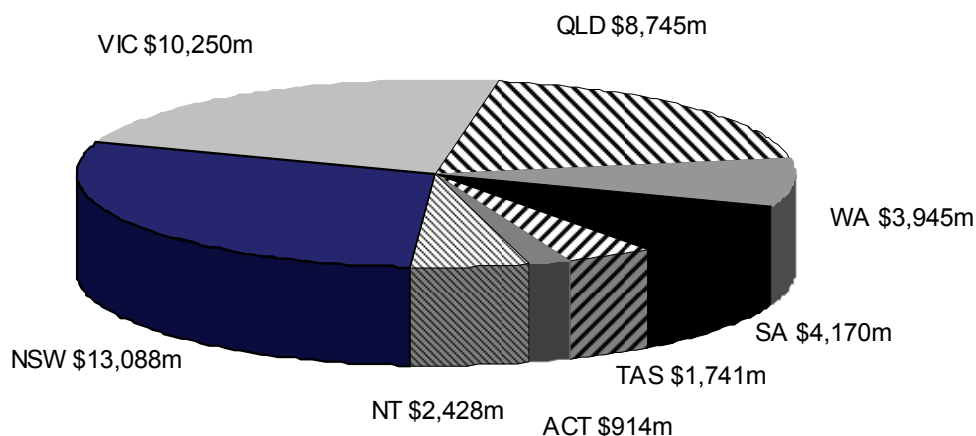
consumers. Supplies that are input taxed include financial supplies, residential rent and the sale of existing residential premises.

Some supplies may neither be taxable, nor GST free, nor input taxed; for example, a supply made by an unregistered entity or a supply that is not connected with Australia.

The GST is administered by the Tax Office and the legislation provides the Commissioner with a number of discretions in relation to the administration of the law. The Commissioner also has the power in some cases to issue legislative determinations under the law. The discretions and Commissioner's determinations allow the Commissioner to vary the operation of the basic rules, and thus have the potential to impact on compliance costs of taxpayers. The table at Appendix C contains a list of the discretions and Commissioner's determinations found in the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act).

The focus of this review is to reduce the complexity and compliance costs associated with the GST and provide greater certainty for taxpayers.

**Chart 2**  
**State shares of GST payments for 2008-09**  
**(totalling \$45.3 billion)**



## GST REVENUE

In 2008-09 GST revenue is expected to be \$45.3 billion. This accounts for almost 16 per cent of total Australian Government taxation revenue, as shown in Chart 1.

GST payments are expected to grow to \$53.7 billion by 2011-12, representing an average annual rate of growth of 5.9 per cent.<sup>5</sup>

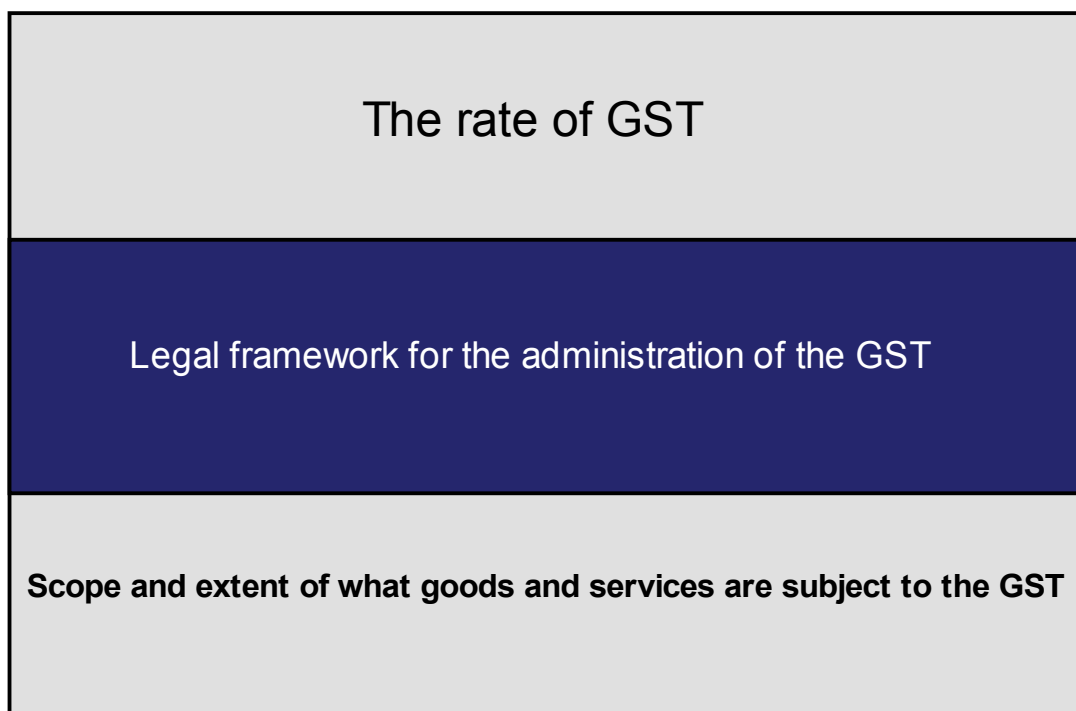
In accordance with the *Intergovernmental Agreement on the Reform of Commonwealth-State Financial Relations*, the Commonwealth administers the GST on behalf of the States and Territories and all GST revenue is paid to the States and Territories. States and Territories are able to spend their share of GST revenue according to their own budget priorities. Chart 2 sets out the share of the estimated GST payments for 2008-09 for each State and Territory.

## THE LEGAL FRAMEWORK FOR THE ADMINISTRATION OF THE GST

The operation of the GST system can broadly be divided into three areas:

- the scope and extent of what goods and services<sup>6</sup> are subject to the GST, which sets out what are taxable supplies, taxable importations, GST free and input taxed supplies, and the extent to which input tax credits can be claimed;

**Diagram 1**  
**Components of the GST system**



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5 These figures and charts are sourced from the 2008-09 Budget statements, which are available at [www.budget.gov.au](http://www.budget.gov.au)

6 The GST applies more broadly than to supplies of goods and services. It also applies for example to supplies of rights and real property.

- the rate of the GST, which determines how much GST is payable on taxable supplies and taxable importations; and
- the legal framework for the administration of the GST, which sets out the administrative rules.

These three areas of the operation of the GST system are illustrated in Diagram 1.

The terms of reference for this review relate to the legal framework for the administration of the GST, and do not extend to the rate of the GST nor to the scope and extent of what goods and services are subject to the GST.

The legal framework is designed to support the core provisions of the GST law that establish liabilities and entitlements and ensure the correct amount of GST is collected on taxable supplies and the right amount of input tax credits are claimed by registered entities. Many of the provisions within the legal framework exist for other reasons, including for the purposes of reducing compliance costs.

For the purpose of this review, the legal framework has been divided into four parts:

- basic administrative rules;
- other rules;
- rules relating to subsequent events; and
- the GST administrative environment.

### Basic administrative rules

The basic administrative rules cover registration, record keeping, accounting for GST and reporting. These are covered in the first chapter.

### Other rules

The legal framework for the administration of the GST contains other rules relating to specific entities including sole traders, trusts, partnerships, charities and incapacitated entities, small businesses and rules relating to grouping, branches and joint ventures. The second chapter focuses on these rules.

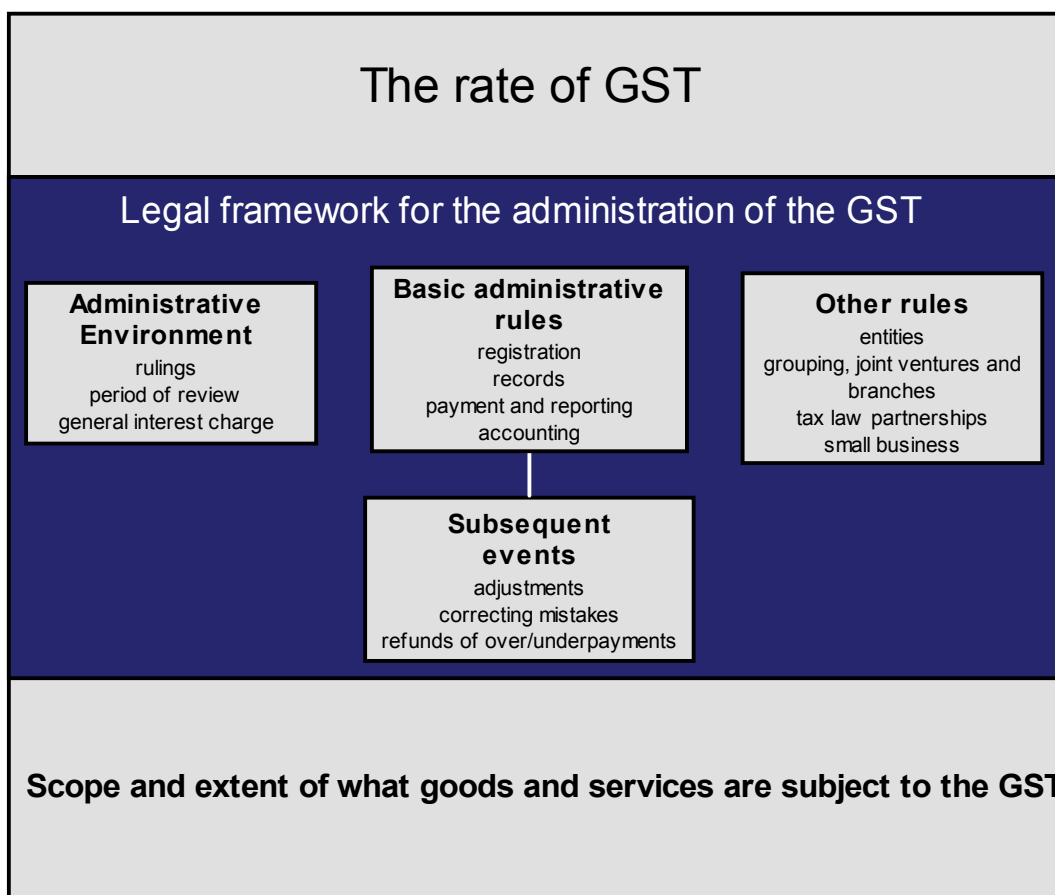
### Subsequent events

At times, subsequent events will require registered entities to revise their reporting of GST liabilities and entitlements. There are therefore rules relating to adjustments, correcting mistakes and refunds of overpaid GST. These are covered in the third chapter.

### GST administrative environment

The fourth part of the legal framework for the administration of the GST is the environment within which GST is administered. This contains GST specific rules such as those dealing with rulings, periods of review and the application of the general interest charge. This is covered in the fourth chapter.

**Diagram 2**  
**Legal framework for the administration of the GST**



The legal framework for the administration of the GST is represented in Diagram 2. The areas outside that framework include the rate of the GST and the scope and extent of what goods and services are subject to the GST, both of which are outside the scope of this review.

In addition to the legal framework for the administration of the GST, there is a broader tax system administration framework, which includes rules about running balance accounts, audit, penalties, collection and recovery. It applies to a range of taxes, not just GST. Any examination of this broader tax system framework that does not relate specifically to the GST is beyond the scope of this review. However, there may be adverse interactions with the legal framework for the administration of the GST which may need to be considered.



Any analysis of the Commissioner's administration of the GST law is also beyond the scope of this review. This is covered by separate ongoing reviews by other statutory office holders including the Inspector-General of Taxation and the Ombudsman.

## SCOPE OF THE REVIEW

The review will examine all areas of the GST law and GST administrative environment<sup>7</sup> where improvements have the potential to streamline and improve the operation of the GST and remove anomalies, provided the proposed changes do not relate to the rate of the GST or the scope and extent to which goods and services are subject to the GST.

The terms of reference for the review do not extend to proposals to change the rate of the GST or other changes which result in a change to the GST status of any of the following transactions under the GST law:

- supplies or other transactions that are:
  - subject to GST;
  - input taxed;
  - GST free; or
  - out of scope of the GST system;
- importations of goods that are taxable or non-taxable importations; or
- acquisitions that are creditable acquisitions or creditable importations.

## ISSUES PAPER

The issues in this paper have been grouped together under four areas: basic administrative rules, other rules, subsequent events and the GST administrative environment.

At the end of each section of the paper issues are raised for consideration, including questions which may provide a starting point for submissions. A complete list of the questions is contained at Appendix B. As mentioned above, submissions need not be limited to the questions in the paper, and can raise other issues related to the legal framework for the administration of the GST, which fall within the terms of reference for this review.

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7 The earlier part of this chapter and Chapter 4 explain what is meant by the GST administrative environment.

The Board welcomes submissions from all types of entities impacted by the GST, including small, medium and large businesses, superannuation funds and other enterprises, including non-profit bodies, charitable institutions and the government sector.

# CHAPTER 1: BASIC ADMINISTRATIVE RULES

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1.1: Registration

1.2: Records

1.3: Payment and Reporting

1.4: Accounting

1.5: Basic administrative rules — other issues



# CHAPTER 1.1: REGISTRATION

## PURPOSE

- 1.1.1 The GST system imposes a registration requirement on those entities that carry on enterprises with a turnover that equals or exceeds the relevant registration turnover threshold.<sup>8</sup> For various reasons the GST system does not seek to tax all value added. Rather, only the value added in the course or furtherance of an enterprise is intended to be included in the base. Australia's GST registration system allows smaller enterprises not to participate in recognition of the compliance costs imposed for a relatively small amount of revenue gained and the limited effect on competition from excluding them from GST.
- 1.1.2 Registration is a requirement for an entity to claim input tax credits for the GST included in the price of its acquisitions. Entities that are not required to register may choose to register if they are carrying on an enterprise. There are a significant number of entities carrying on enterprises that are voluntarily registered for the GST.

## DESCRIPTION

- 1.1.3 Entities may register for GST if they are carrying on an enterprise or intend to carry on an enterprise. Enterprise is a wide concept. An enterprise includes an activity carried on in the form of a business, as well as things done in the course of commencement or cessation of the enterprise. It also includes, amongst other things, certain leasing or licensing of property and the activities of superannuation funds, charities, non-profit bodies, religious institutions and government authorities.
- 1.1.4 An entity is required to register if it carries on an enterprise and its GST turnover meets the registration turnover threshold.<sup>9</sup> In order to determine whether an entity's GST turnover meets the threshold, an entity is required to

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8 Although the legal liability of GST falls upon registered entities, the economic effect is intended to be passed on to unregistered entities and consumers.

9 Entities that fail to register when required to do so are liable for penalties and potential prosecution.

calculate one or both of its current turnover or its projected turnover. The GST system gives greater weight to projected GST turnover. If an entity's projected turnover meets the registration threshold, it will be required to register. If the Commissioner is satisfied that an entity's projected turnover is below the registration threshold, then it will not be required to register.

- 1.1.5 Entities may choose to register and pay GST even if their turnover is below the registration turnover threshold. If the Commissioner is not satisfied that an entity's projected turnover is below the registration threshold, the entity will be required to register if its current turnover is at or above the registration threshold. An entity's current turnover is the value (excluding GST) of all its supplies, with some exceptions,<sup>10</sup> made or likely to be made in the 12 months preceding the end of the current month. Its projected turnover is the estimated value (excluding GST) of all its supplies, with some exceptions,<sup>11</sup> in the 12 months from the start of the current month. GST free supplies must be included in the calculation of current and projected turnover. An entity whose turnover is close to the threshold may continue to monitor its turnover on an ongoing basis to determine whether its GST turnover changes in a way that would impact on registration.
- 1.1.6 The registration turnover threshold is \$75,000,<sup>12</sup> unless the entity is a non-profit body in which case the threshold is \$150,000. The Commissioner must register an entity which he is satisfied is required to be registered or has applied for registration and carries on an enterprise from the date that registration is sought.
- 1.1.7 The Commissioner may backdate the date of registration or date it in the future. However, the date must not be earlier than the date specified in the entity's application or the date from which the entity was required to be registered, whichever comes first. If registration is backdated, the entity will have to remit GST to the Tax Office from the date of its registration.

## Cessation of registration

- 1.1.8 Entities that are registered but not required to register may choose to de-register. An entity may apply for cancellation of registration where it is carrying on an enterprise and its GST turnover does not meet the GST

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10 The main exceptions are: input taxed supplies; supplies not connected with an enterprise carried on by the supplier; supplies that are not connected with Australia; and supplies of certain rights or options made through an enterprise carried on outside Australia.

11 The main exceptions are: input taxed supplies; supplies not connected with an enterprise carried on by the supplier; supplies that are not connected with Australia; supplies of certain rights or options made through an enterprise carried on outside Australia; transfers of ownership of capital assets; and supplies as a consequence of ceasing or substantially and permanently reducing the size of the enterprise.

12 Taxi operators are required to be registered, regardless of turnover.

registration threshold. The Commissioner must cancel an entity's registration if:

- it has applied for cancellation;
- it has been registered for at least 12 months;<sup>13</sup> and
- the Commissioner is satisfied the entity is not required to be registered.<sup>14</sup>

1.1.9 An entity must apply to the Commissioner for cancellation of its registration if it is no longer carrying on an enterprise. The Commissioner must cancel an entity's registration, whether the entity applies or not, if he is satisfied that the entity is no longer carrying on an enterprise and he believes on reasonable grounds that it will not carry on an enterprise in the next 12 months. The Commissioner must decide the date of effect of the cancellation.<sup>15</sup>

1.1.10 Registered entities generally obtain relief from GST on their acquisitions which are made for the purpose of carrying on their enterprise by claiming input tax credits. Where the entity's registration has been cancelled, the entity may have obtained input tax credits on a number of acquisitions from which the entity may continue to obtain an economic benefit. If these credits were retained there would be relief from GST for what is now a non-creditable acquisition.

1.1.11 To deal with this situation, the GST Act provides that if:

- an entity's registration is cancelled; and
- prior to the cancellation the entity's assets included assets that had been acquired as creditable acquisitions or creditable importations;

then the entity has an increasing adjustment<sup>16</sup> which increases its GST liability.<sup>17</sup>

1.1.12 This adjustment reverses any input tax credits claimed on assets to the extent of the remaining value of the asset. The adjustment will be attributable to the entity's final tax period. The GST Act also contains special rules for amounts

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13 Entities that have been registered for less than 12 months may apply to have their registration cancelled. In deciding whether to cancel the entity's registration, the Commissioner must have regard to the length of time the entity has been registered, whether the entity has previously been registered and any other relevant matters – section 25-57 of the GST Act.

14 GST Act, section 25-55.

15 GST Act, subsection 25-60(1).

16 Adjustments are dealt with in further detail in Chapter 3.1.

17 GST Act, division 138.

of GST and input tax credits that have not yet been attributed where entities account on a cash basis.<sup>18</sup>

- 1.1.13 If a supplier seeks the cancellation of its registration to be backdated,<sup>19</sup> then registered recipients of its goods or services retrospectively lose their entitlement to input tax credits. If these input tax credits have already been paid to them by the Tax Office, then purchasers would have an obligation to repay these amounts to the Tax Office (unless the four-year time limit is exceeded).
- 1.1.14 There are similar but more limited provisions in relation to assets held when an entity becomes registered, which allow adjustments for trading stock on hand.<sup>20</sup>

### Registration of foreign residents

- 1.1.15 Foreign entities are eligible to apply for GST registration and may exercise that choice. Australia is one of relatively few Organisation for Economic Co-operation and Development countries that permit foreign entities not making taxable supplies in the country to register and the only one that does not offer a direct refund system as an alternative. Some countries such as New Zealand do not reimburse foreign entities for the GST on their inputs unless they are carrying on taxable activities in the country. Many countries reimburse GST through a refund system.
- 1.1.16 Foreign entities may decide to register in Australia if, for example, by registering the foreign entity becomes eligible for input tax credits on its acquisitions but would not become liable for a GST liability on its supplies. A foreign entity not in Australia will not need to register to claim reimbursement for GST on acquisitions of exported goods and things other than goods or real property from Australia, as the export generally will be GST free. However, its acquisitions of services from an entity in Australia may be subject to GST in a wider range of circumstances than its acquisitions of goods. Where the services are inputs into the foreign entity's enterprise but the outputs of the enterprise are not connected with Australia, the foreign entity may have an incentive to register. In the same way as resident companies, the foreign entity also may have an incentive to register where it would be entitled to input tax credits for the GST on its acquisitions and its supplies would be subject to GST, but the recipients of its supplies would be entitled to input tax credits for the GST.

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18 GST Act, division 138.

19 For example, because the entity was not carrying on an enterprise from a point in the past or the entity's GST turnover fell below the registration threshold from a point in the past and the entity requested cancellation of registration from that point.

20 GST Act, division 137.



- 1.1.17 If the foreign entity chooses not to register, any GST borne on its purchases from a registered entity in Australia will remain uncompensated, that is, the GST will remain a cost to the purchaser. The foreign purchaser is likely to seek to pass on this cost in the price of its sales – that is, the tax will become ‘embedded’ in the price of its sales.
- 1.1.18 If a foreign enterprise’s value of supplies that are connected with Australia exceeds the registration turnover threshold, it is required to register and will be liable to remit GST on its taxable supplies.
- 1.1.19 There are two other areas of the GST law that may reduce compliance costs for foreign residents.
- In cases where a foreign resident operates through a resident agent, the resident agent is liable for GST on sales and importations made through the agent and claims input tax credits arising from transactions the foreign resident makes through the agent.<sup>21</sup> If all of the foreign resident’s taxable supplies and taxable importations for a tax period are made through the resident agent,<sup>22</sup> the foreign resident is not required to lodge a GST return for that period. Thus, although a foreign resident may initially have to apply for registration, it may never need to lodge a GST return if its Australian-based operations are entirely conducted through one or more resident agents.
  - A foreign resident supplier and a recipient can agree to reverse-charge the GST payable on a taxable supply that the foreign resident makes under certain conditions.<sup>23</sup> That is, the recipient may assume the foreign resident’s GST liability for the supply. In these circumstances, a foreign resident need not be registered for GST if, for instance, the recipients reverse-charge the GST payable on all of the taxable supplies the foreign supplier makes.

## ISSUES FOR CONSIDERATION

- 1.1.20 As noted above, the GST sets out rules for how taxpayers carrying on enterprises enter and leave the tax system. The issue is how to achieve this with the lowest compliance burden possible.

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21 GST Act, division 57.

22 Or the foreign resident’s net amount (that is, the entity’s GST liability for a period less the entity’s input tax credit entitlement for the period increased or decreased by any adjustments) is zero.

23 GST Act, division 83.

**Q1.1**

Are the relevant thresholds for registration easy to understand and able to be calculated easily by taxpayers? If not, how can these calculations be simplified and improved?

**Q1.2**

Do taxpayers find the system of registration and cancellation easy to comply with? If not, what aspects are the most difficult to comply with? In what ways can the system of registration and cancellation be simplified and improved?

**Q1.3**

Are the circumstances in which taxpayers can choose or are required to cancel their registration easily understood by taxpayers? Does the GST law provide the appropriate balance between certainty and flexibility for taxpayers in determining the date of effect from which registration and cancellation of registration apply? If not, how could this be improved?

**Q1.4**

Do foreign entities find the process of registration, cancelling registration, refunding and remission of GST easy to comply with? If not, how can the process be simplified and improved? Are there any anomalies that exist? If so, what changes are required to address them?

**Q1.5**

Are there any factors that discourage foreign entities from registration? If so, what change should be considered?

**Q1.6**

Do the current arrangements for resident agents acting for non-residents and the voluntary reverse charge mechanism operate effectively to enable their use by non-resident entities? If not, how could their operation be improved?

## CHAPTER 1.2: RECORDS

### PURPOSE

- 1.2.1 There is a requirement to keep business records for tax purposes. Broadly, the law requires business records to be kept for the purposes of GST for five years after the relevant transactions are completed.<sup>24</sup> These records must be in English or in a form that allows them to be readily accessed and understood in order to determine a tax liability.
- 1.2.2 The GST Act specifically requires tax invoices to be issued if requested which provide documentary evidence of creditable acquisitions and serve as a record for claiming input tax credits. The GST Act also requires that adjustment notes be issued to substantiate certain adjustments that have the effect of reducing the net amount payable by an entity. As far as possible the GST record keeping requirements should be consistent with other record keeping requirements.

### DESCRIPTION

#### Tax invoices

- 1.2.3 A tax invoice must generally be issued for each taxable supply that exceeds \$75.<sup>25</sup> The consideration for the supply may be monetary, non-monetary or a combination of both. The tax invoice must generally be issued by the supplier, include the issuer's Australian Business Number (ABN), the price of the supply and such other information as the regulations specify and be in the approved form. The Commissioner has the power to issue a legal determination to waive the requirement that a tax invoice must be held in particular circumstances. For example, this has been done in relation to charge card statements and imported services that have been reverse-charged. The Commissioner also has discretion to treat a document that is not a tax invoice as a tax invoice.

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24 TAA 1953, section 382-5 in Schedule 1.

25 GST Act, section 29-80 and GST Regulations, subregulation 29-80.01. Where a recipient requests it from the supplier, a tax invoice must be provided within 28 days (subsection 29-70(2)). This amount excludes GST (that is, GST inclusive amount is \$82.50).

- 1.2.4 Generally, a recipient of a supply must hold a valid tax invoice before claiming an input tax credit. If there is a barter transaction, this is treated as a supply for consideration by each party and tax invoices will need to be issued to enable input tax credits to be claimed by the parties. In such non-monetary cases, the GST is based on the GST inclusive market value of the property or services given as consideration. Further information is included in Chapter 1.4.
- 1.2.5 Sometimes it will not be practical for the supplier to issue a tax invoice, such as situations where the recipient determines the value of the goods or services rather than the supplier. In these cases it may be more appropriate for the recipient to issue the invoice. Situations in which these 'recipient-created tax invoices' can be issued are determined by the Commissioner.

### Adjustment notes

- 1.2.6 An adjustment note is issued when there is an adjustment event, which is broadly an event which changes the supplier's GST liability or acquirer's input tax credit entitlement.<sup>26</sup> Typically this will occur where:
- a supply is cancelled;
  - the consideration is changed; or
  - the supply for some reason changes its GST status (for example, if goods listed for export are not exported within 60 days).
- 1.2.7 Suppliers and recipients generally require an adjustment note to claim a decreasing adjustment to their GST liability. However, the GST law does not require an adjustment note if the amount of the decreasing adjustment is \$50 or less. It is irrelevant what the value of the original supply may have been.
- 1.2.8 A supplier generally must issue an adjustment note within 28 days of being requested by the recipient, or within 28 days of the supplier becoming aware of the adjustment event. An adjustment note must include the issuer's ABN and such other information as the Commissioner determines in writing and be in the approved form.

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<sup>26</sup> Chapter 3.1 contains more information on adjustments.

## ISSUES FOR CONSIDERATION

- 1.2.9 There is a need to provide documentary evidence of creditable acquisitions which can substantiate an entitlement to an input tax credit or a decreasing adjustment. The issue is how to achieve this with the lowest compliance burden possible.

### **Q1.7**

Do the tax invoice, recipient-created tax invoice and adjustment provisions operate effectively to minimise anomalies or compliance costs? If not, in what way should they be modified?

### **Q1.8**

Do the GST invoice and adjustment note requirements add additional compliance costs to the normal commercial invoice requirements? If so, how can those costs be minimised?

### **Q1.9**

Does the legal framework for the administration of the GST apply effectively where there is a dispute about the status of a supply and the supplier refuses to issue a tax invoice or adjustment note? If not, what changes should be made?

### **Q1.10**

Are there inconsistencies between GST record keeping requirements and those for other legislation which add to compliance costs? If so, how can these be harmonised?



## CHAPTER 1.3: PAYMENT AND REPORTING

### PURPOSE

- 1.3.1 In addition to imposing liability, a tax system must set out rules for when and how this tax is to be paid and how liabilities and entitlements are to be reported.
- 1.3.2 Such a system should place as little burden as possible on taxpayers, while still ensuring tax is paid in the appropriate time, amount and manner.
- 1.3.3 It is also important that the reporting requirements to the Tax Office operate effectively and do not impose unnecessary compliance costs.

### DESCRIPTION

#### Tax periods

- 1.3.4 The GST system makes taxpayers liable for tax on supplies they make and eligible for input tax credits on their creditable acquisitions. However, requiring payment immediately on a supply (or refund immediately on an acquisition) would not be practical and would result in an excessive burden being placed on taxpayers. Instead, the GST Act establishes the concept of tax periods.
- 1.3.5 Rather than meeting liabilities and receiving entitlements as they arise, these amounts only become due and payable either 21 or 28 days after the end of the relevant tax period, depending on the payment cycle of the entity. At this time, taxpayers pay the total amount of tax incurred over the period, less any input tax credits claimed (and as modified by any adjustments).
- 1.3.6 Tax periods can be of varying length, normally being monthly, quarterly or annual.

### Quarterly tax periods

1.3.7 As a default rule, taxpayers have quarterly tax periods, finishing on 30 September, 31 December, 31 March and 30 June.<sup>27</sup>

### Monthly tax periods

1.3.8 Entities may elect to have monthly tax periods,<sup>28</sup> in which case the periods will end on the last day of each month.<sup>29</sup> This election may be withdrawn by notifying the Commissioner at least 12 months after the election had effect.<sup>30</sup> However, the withdrawal may only be effective from a day on which a quarterly tax period commences.

1.3.9 If the Commissioner is satisfied that the taxpayer's annual GST turnover will be at least \$20 million; that the taxpayer will be carrying on an enterprise for less than three months; or that the taxpayer has a history of tax non-compliance, then the taxpayer will be required to use monthly tax periods.<sup>31</sup>

1.3.10 Taxpayers who cease to be required to use monthly tax periods may use quarterly tax periods by notifying the Commissioner, subject to the same conditions on withdrawing an election to use monthly tax periods.

### Annual tax periods

1.3.11 Taxpayers who are voluntarily registered<sup>32</sup> may elect to use an annual tax period.<sup>33</sup> This period will last for the entire financial year ending 30 June. This election must be made prior to 21 August (for taxpayers that would otherwise report GST monthly) or 28 October (for taxpayers that would otherwise report GST quarterly) in the relevant financial year. The Commissioner may deny the use of annual tax periods if the taxpayer has failed to comply with one or more of its taxation obligations.

### Instalment tax periods

1.3.12 Broadly, entities with an annual GST turnover of \$2 million or less may, providing certain criteria are met, elect to pay GST by instalments. Entities that make such an election are assigned a yearly tax period within which they

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27 GST Act, section 27-5.

28 Entities that are generally in a refund position may choose to have a monthly tax period.

29 GST Act, section 27-10.

30 The Commissioner has a discretion to cancel such an election within 12 months. He must take into account certain specified factors when exercising this discretion.

31 GST Act, section 27-15.

32 Taxpayers are voluntarily registered where their annual GST turnover is below the registration threshold and they are not required to be registered under a special rule.

33 Additionally, taxpayers may not elect to use the annual tax period while concurrently choosing to pay GST by instalments.



are required to pay quarterly or, in some cases, twice-yearly instalments. At year end, these taxpayers must lodge an annual GST return in which they are required to reconcile the total of the instalments they have paid throughout the financial year with their actual GST liability for the year (further information is contained in Chapter 2.3).

### Special tax periods

- 1.3.13 Special tax periods may apply in certain circumstances. The Commissioner may determine a special tax period exists covering any time that would otherwise not fall within a tax period.
- 1.3.14 The Commissioner may also, at the request of the taxpayer, determine that the taxpayer may use a special tax period. To be eligible, a taxpayer must satisfy the Commissioner that their annual GST turnover exceeds \$20 million, that the tax periods are consistent with the taxpayer's commercial accounting periods, that the tax periods will result in 12 complete tax periods occurring in a year and any other requirements the Commissioner may impose. The Commissioner may revoke this determination if the taxpayer ceases to meet these requirements.

### Payment of GST

- 1.3.15 When taxpayers have incurred a GST liability, at some point they must pay the appropriate amount of tax (or, where the taxpayer is in a net credit position, receive a refund).
- 1.3.16 The key concept governing a taxpayer's liability or entitlement is the net amount. The net amount is the total of a taxpayer's tax liability, input tax credits and adjustments for a tax period.<sup>34</sup> Where the net amount is positive the taxpayer must pay that amount. Where it is negative, the taxpayer is entitled to a refund from the Tax Office (and where the amount is zero, the taxpayer has no net liabilities or entitlements).
- 1.3.17 Division 33 of the GST Act establishes the obligation to provide payment to the Tax Office where a taxpayer has a positive net amount for a tax period.<sup>35</sup>
- 1.3.18 This amount is able to be paid electronically in all cases, but must be paid electronically if the taxpayer's annual turnover is \$20 million or more.

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34 Note that the WET and LCT are added to the net amount. See Division 13 of the *A New Tax System (Luxury Car Tax) Act 1999* (LCT Act) and Division 21 of the *A New Tax System (Wine Equalisation Tax) Act 1999* (WET Act).

35 GST Act, sections 33-3 and 33-5.

- 1.3.19 Separate rules apply to taxable importations. Generally, GST must be paid upon entry for home consumption, in the same fashion as customs duty. However, this can be varied by regulation. The GST Regulations allow approved entities, which must have monthly tax periods amongst other requirements, to pay GST liabilities arising from importations together with their other GST liabilities (this is explained in more detail later in this chapter).<sup>36</sup>
- 1.3.20 It is possible for taxpayers to have liabilities in relation to tax periods even though they have a negative net amount for the tax period. For example, assume a taxpayer commences a business and makes acquisitions without making any supplies. In these circumstances, the taxpayer therefore has a negative net amount and claims a refund. After this refund is claimed, it is discovered that not all of the acquisitions were creditable acquisitions. The taxpayer's input tax credits still exceed their GST liability, and so their net amount remains negative. However, the taxpayer has received an amount of refund to which the taxpayer is not entitled. The taxpayer is liable to repay this amount.
- 1.3.21 In these circumstances a taxpayer must repay the excess amount to the Commissioner. However, the provisions of the GST Act dealing with refunds and payments do not cover debts that arise in this way. No due dates for payment of this debt are presently specified under the GST Act. However, the debt is allocated to a running balance account (RBA) and a general interest charge may accrue from the date of overpayment.<sup>37</sup>

### Net amounts and other taxes

- 1.3.22 The net amount for a tax period includes LCT<sup>38</sup> and wine equalisation tax WET.<sup>39</sup> These amounts are added to the amounts calculated and payable under the GST Act.
- 1.3.23 However the definition of the net amount in the GST Act does not specifically include WET and LCT amounts or include legislative cross-references to the LCT and WET Acts by way of a note in the GST Act.

### GST returns

- 1.3.24 A central accounting obligation for GST is the requirement to provide a GST return for each tax period to the Commissioner. This obligation is set out in

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36 GST Regulations 33-15.

37 TAA 1953, Part IIB; in particular, the definition of 'RBA deficit debt' in sections 8AAZA and 8AAZF, which provide that general interest charge (GIC) is payable on an RBA deficit debt.

38 LCT Act, Division 13. Other than LCT payable on taxable importations of luxury cars.

39 WET Act, Division 21. Other than WET payable on customs dealings.

Division 31 of the GST Act, which also provides that this return must be in the form approved by the Commissioner.

- 1.3.25 The tax period a taxpayer uses governs how frequently they must report. It also affects the time available for providing a return. Quarterly taxpayers must generally provide a return by the twenty-eighth day after the end of the tax period. Other taxpayers must generally provide a return by the twenty-first day of the month after the tax period.
- 1.3.26 The Commissioner has discretion to allow a taxpayer more time to provide a return or to require a further or fuller return.<sup>40</sup>

## ISSUES FOR CONSIDERATION

- 1.3.27 As noted above, the GST system needs to provide rules for how taxpayers are to pay the liabilities imposed by the tax and in what form they should provide this information to the Commissioner. The issue is how to achieve this with the lowest compliance burden possible.

### Q1.11

Are there any ways in which the present law relating to:

- GST returns and lodgment;
- the GST payment process; or
- tax periods and net amounts

could be improved?

### Q1.12

Are any changes desirable to the legal framework for the administration of the GST to ensure that refunds of GST are paid as soon as possible, consistent with maintaining the integrity of the GST system? If so, what changes should be made?

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<sup>40</sup> GST Act, sections 31-8, 31-10 and 31-20.

**Q1.13**

Do the rules concerning monthly, quarterly and annual tax periods operate effectively? Do they correspond sufficiently with the reporting periods that apply for other reporting purposes? If not, how should they be modified?

## CHAPTER 1.4: ACCOUNTING

### PURPOSE

- 1.4.1 Timing rules are necessary for the operation of any tax system. Taxpayers must be able to determine when liabilities and entitlements arise and how they are to be brought to account.
- 1.4.2 For the GST, these accounting rules should seek to ensure that liabilities and entitlements are attributed to particular times based on clear and unambiguous rules, accurately representing the real situation of the taxpayer while minimising any compliance burden.

### DESCRIPTION

- 1.4.3 The GST Act contains rules on attributing GST, input tax credits and adjustments to tax periods.<sup>41</sup> Different rules are provided for taxpayers who account on an accruals basis compared with taxpayers who account on a cash basis. The aim of providing cash and accruals accounting alternatives is to enable an entity to use its commercial accounting records for GST, thereby reducing GST compliance costs.

### Cash and accruals accounting

- 1.4.4 The cash basis and the accruals basis are the two basic methods of accounting for GST. Entities that account on a cash basis recognise GST liabilities and input tax credit entitlements only when consideration is provided or received and only to the extent consideration is paid or received. This means that such entities need only pay GST when they receive payment and can only claim input tax credits as they provide payment. In contrast, entities that account on an accruals basis generally recognise taxable supplies in the earlier of the tax period in which consideration is received or in which they issue a tax invoice. Entities recognise input tax credits in the earlier of the tax period in which a tax invoice is received or any consideration is provided.<sup>42</sup>

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41 These rules are set out in Division 29 of the GST Act.

42 Subject to holding a valid tax invoice.

- 1.4.5 Accounting on a cash basis generally requires less record keeping and is easier for small businesses. However, under international and Australian accounting standards, cash accounting is generally only considered appropriate for smaller businesses and individuals. It is considered that cash accounting does not accurately depict the true state of an entity that engages in significant numbers of transactions involving obligations or deferred payments, or entities with complex structures engaged in a variety of different activities.
- 1.4.6 Under the GST system, the default accounting method is accruals. Taxpayers must account on an accruals basis unless they are eligible to elect to account on a cash basis.
- 1.4.7 Accounting on a cash basis is a concession which is generally only made available to certain entities. Entities are eligible if they are:
- small business entities;<sup>43</sup>
  - enterprises that are not businesses, whose GST turnover does not exceed \$2 million;
  - entities that account on a cash basis for income tax (that is, using the receipts method); or
  - endorsed charitable institutions, trustees of an endorsed charitable fund, gift-deductible entities or government schools.
- 1.4.8 The Commissioner also has a discretion to permit entities that do not fall within any of these categories to account on a cash basis where they apply to him in writing and he considers it appropriate. In deciding whether to exercise this discretion, the Commissioner must consider the size and nature of the enterprise and the nature of the accounting system the enterprise generally employs.<sup>44</sup>
- 1.4.9 Taxpayers accounting on a cash basis must switch to the accruals basis if they stop being eligible under the criteria above (or the Commissioner withdraws his permission). Taxpayers may also cease using the cash basis to account for GST by notifying the Commissioner of their intention.<sup>45</sup>
- 1.4.10 When taxpayers who account on different bases transact, they each apply the relevant normal rules. As such, in these circumstances GST and input tax

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43 Under the *Income Tax Assessment Act 1997* (ITAA 1997) (other than as a result of section 328-110 of the ITAA 1997).

44 GST Act, section 29-45.

45 GST Act, subsection 29-50(1).

credits are likely to be attributable, in whole or part, to different tax periods by the different parties.<sup>46</sup>

- 1.4.11 When a taxpayer changes between accounting methods, the GST Act provides that adjustments may occur in order to avoid double taxation (or refunding) and bring to account amounts that would otherwise be untaxed (or go unrefunded).

## Attribution

- 1.4.12 Under either the cash or accruals accounting method, rules on when liabilities and entitlements must be brought to account are necessary. The GST Act contains rules setting out the tax period to which liabilities and entitlements must be attributed.
- 1.4.13 For taxpayers who account on an accruals basis, the GST payable on a supply will be attributed to the first tax period in which any consideration is received for the supply or the invoice for the supply is issued.<sup>47</sup> Similarly, input tax credits for acquisitions are attributable to the earlier of the tax period in which the recipient provides consideration or an invoice is issued, with the restriction that input tax credits may not be claimed until a tax invoice is held.<sup>48</sup> Finally, adjustments must generally be attributed to the period in which the taxpayer becomes aware of the adjustment.<sup>49</sup>
- 1.4.14 For taxpayers using cash basis accounting, the GST payable on a supply must be attributed to a tax period to the extent that consideration for the supply is received in that tax period.<sup>50</sup> That is, a taxpayer must pay tax only on the amounts they have been paid. Likewise, the taxpayer can only claim input tax credits for creditable acquisitions to the extent that they have provided consideration for the acquisition,<sup>51</sup> subject again to the requirement that the taxpayer must hold a tax invoice. Adjustments generally will be attributable to the first period in which the taxpayer becomes aware of the adjustment. However, adjustments that arise from adjustment events are subject to the basic cash accounting rule and, as such, these adjustments generally are only attributable when and to the extent that consideration has been provided for entities accounting on a cash basis.

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46 Mismatches are not unique to transactions between taxpayers on different bases and can also arise, for example, where taxpayers have different tax periods.

47 GST Act, subsection 29-5(1).

48 GST Act, section 29-10. Subsection 29-10(4) is not dealt with here as it is considered elsewhere in this paper.

49 GST Act, section 29-20.

50 GST Act, subsection 29-5(2).

51 GST Act, subsection 29-10(2).

- 1.4.15 Imports are subject to different rules. The GST payable on taxable importations is not attributable to any tax period. Instead, the GST is due at the same time and in the same way as customs duty, which is generally immediately upon entry for home consumption.
- 1.4.16 However, a deferral scheme exists.<sup>52</sup> Where taxpayers have a monthly tax period and have chosen to report and provide payment electronically, amongst other things, they may apply to the Commissioner to participate in the deferred GST scheme.<sup>53</sup> The Commissioner will provide approval where a taxpayer has a satisfactory compliance record and meets the other eligibility requirements. This approval will be revoked if the entity ceases to be eligible or ceases to have a satisfactory compliance record. Taxpayers reapplying for entry to the scheme after revocation may be required to provide a bank guarantee to cover future GST liabilities.
- 1.4.17 Input tax credits relating to imports are also treated differently.<sup>54</sup> They are attributable to the tax period in which GST is paid or, for taxpayers that are part of the deferred scheme, the period in which the liability to pay GST arose.
- 1.4.18 Special rules also exist for other types of transactions and payments, including those involving security deposits, lay-by arrangements, insurance, gambling, vouchers, second-hand goods and supplies made on a progressive or periodic basis. In general, these rules either provide that certain triggers for attribution will be disregarded or deferred, or provide for a special regime covering applicable transactions where the normal rules are modified or replaced. Certain entities, such as agents and insurance brokers, associates and enterprises that are accounting for GST using a simplified accounting method (discussed in Chapter 2), will also use modified attribution rules.
- 1.4.19 In addition to these exceptions, all rules for attribution may be varied in specified circumstances, by a determination of the Commissioner. The Commissioner has issued determinations in relation to:
- supplies and acquisitions subject to a statutory cooling-off period;<sup>55</sup>
  - supplies made via mechanically operated vending machines;<sup>56</sup>
  - certain supplies and acquisitions made through agents;<sup>57</sup>

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52 GST Regulations, 33-15.01 to 33-15.09.

53 The deferred GST scheme generally eliminates any cashflow impact because the importer can claim an input tax credit to offset the deferred GST liability in the same BAS.

54 GST Act, section 29-15.

55 GST Ruling GSTR 2000/29, Schedule 2.

56 GST Ruling GSTR 2000/29, Schedule 3.

57 GST Ruling GSTR 2000/29, Schedule 4.



- supplies and acquisitions where partial consideration is provided before the full consideration is known;<sup>58</sup>
- supplies and acquisitions made under a contract providing for the retention of consideration;<sup>59</sup>
- lay-by sales;<sup>60</sup>
- gas or electricity supplies by public utility providers;<sup>61</sup>
- GST payable on a taxable supply made by a copyright owner that is subject to a remuneration notice given to a collecting society;<sup>62</sup>
- prepayments for telephone supplies;<sup>63</sup>
- billing agents – electricity distribution;<sup>64</sup> and
- activities that combine matters covered under other determinations.<sup>65</sup>

## Contra transactions

1.4.20 Where supplies are made for non-monetary consideration such as where businesses undertake contra transactions by exchanging goods of equal value, GST is calculated having regard to the market value of the non-monetary consideration. The parties to the transaction that are registered for GST determine their liability for GST and input tax credit entitlements by reference to the market value of the non-monetary consideration they receive from the other party. Where the parties are dealing at arm's length, each party may potentially account for an amount of GST which is the same as the amount of their input tax credit entitlement for the tax period.

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58 GST Ruling GSTR 2000/29, Schedule 5.

59 GST Ruling GSTR 2000/29, Schedule 6.

60 *A New Tax System (Goods and Services Tax) Act 1999 (Particular Attribution Rules for Lay-By Sales) Determination (No. 1) 2000.*

61 *A New Tax System (Goods and Services Tax) Act 1999 (Particular Attribution Rules for Supplies of Gas or Electricity made by Public Utility Providers) Determination (No. 1) 2000.*

62 *A New Tax System (Goods and Services Tax) Act 1999 (Particular Attribution Rules for Supplies and Acquisitions Relating to the Operation of a Collecting Society under the Copyright Act) Determination (No. 1) 2000.*

63 *A New Tax System (Goods and Services Tax) Act 1999 (Particular Attribution Rules for Prepayments for Telephone Supplies) Determination (No. 1) 2001.*

64 *A New Tax System (Goods and Services Tax) Act 1999 (Particular Attribution Rules for Suppliers of Electricity Distribution Services Relying on Information from Billing Agents) Determination 2003.*

65 GST Ruling GSTR 2000/29, Schedule 1.

## ISSUES FOR CONSIDERATION

1.4.21 As noted above, the GST system needs to provide rules linking liabilities and entitlements to specific tax periods. The issue is how to achieve this with the lowest compliance burden possible.

### **Q1.14**

Does the present attribution system, including the special attribution rules, provide clear and accurate rules on when liabilities and entitlements arise while also minimising compliance costs? If not, how should it be modified?

### **Q1.15**

Are the GST accounting methods as closely aligned with commercial accounting practices as possible? If not, how can they be further aligned?

### **Q1.16**

Is the present availability and operation of the two accounting bases, including their interactions in transactions between cash and accruals taxpayers, appropriate? If not, how should it be modified?

### **Q1.17**

Is the current treatment of contra transactions for GST purposes appropriate? If not, what changes could be made to improve their treatment and minimise compliance costs?

## CHAPTER 1.5: BASIC ADMINISTRATIVE RULES — OTHER ISSUES

### The Commissioner's discretions

1.5.1 The legal framework for the administration of the GST provides a range of discretions in the law to ensure that there is a degree of flexibility in the administration of the law that enables the Commissioner to take into account the individual circumstances of entities to reduce compliance costs. The Commissioner is also given the power to issue legislative determinations under the law to enable specific rules to be developed dealing with discrete areas of the GST law. Ensuring the Commissioner has the ability to exercise discretions and to make legislative determinations provides a mechanism to allow the administration of the law to strike a balance between providing sufficient certainty for taxpayers, whilst enabling sufficient flexibility for the law to be applied having regard to the individual circumstances of entities.

### Reviewable decisions

1.5.2 The GST law establishes a framework by which taxpayers can object to and have decisions of the Commissioner reviewed. An entity can object against a GST decision that has been made by the Commissioner if the entity is dissatisfied with it and the decision is a reviewable decision.

### ISSUES FOR CONSIDERATION

1.5.3 Submissions could also include responses to the following questions.

#### **Q1.18**

Do the discretions in the GST law presently available to the Commissioner balance certainty and flexibility?

#### **Q1.19**

Should any changes be made to the discretions in the GST law presently available to the Commissioner?

**Q1.20**

Are the circumstances in which powers may be exercised by way of legislative determination by the Commissioner appropriate and sufficient? Should there be greater or less reliance on legislative determinations compared to general discretions?

**Q1.21**

Is the current scope of the reviewable GST decisions appropriate?

## CHAPTER 2: OTHER RULES

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2.1: Entities

2.2: Grouping, joint ventures and branches

2.3: Small business

2.4: Other rules — other issues



# CHAPTER 2.1: ENTITIES

## PURPOSE

2.1.1 The GST is designed to tax supplies connected with Australia and made by entities carrying on an enterprise. The GST applies a broad definition of entity to ensure that economic activity is potentially brought within the scope of the GST system regardless of the type of entity carrying on an enterprise.

## DESCRIPTION

2.1.2 The definition of 'entity' includes an individual, a body corporate, a corporation sole, a body politic, a partnership, any other unincorporated association or body of persons, a trust or a superannuation fund.<sup>66</sup> The breadth of this definition means that the GST applies to a range of entity types, including sole traders, corporations, partnerships, trusts, superannuation funds, charities and government agencies. It also includes entities that are insolvent or incapacitated.<sup>67</sup>

### Sole traders

2.1.3 A sole trader is an individual who carries on business alone without being in partnership or incorporated into a company. It is the individual that registers for GST.

### Partnerships

2.1.4 'Partnership' is specifically defined in the GST Act.<sup>68</sup> This definition of partnership contains two limbs:

- (a) an association of persons (other than a company or a limited partnership) carrying on business as partners or in receipt of ordinary income or statutory income jointly; or
- (b) a limited partnership.

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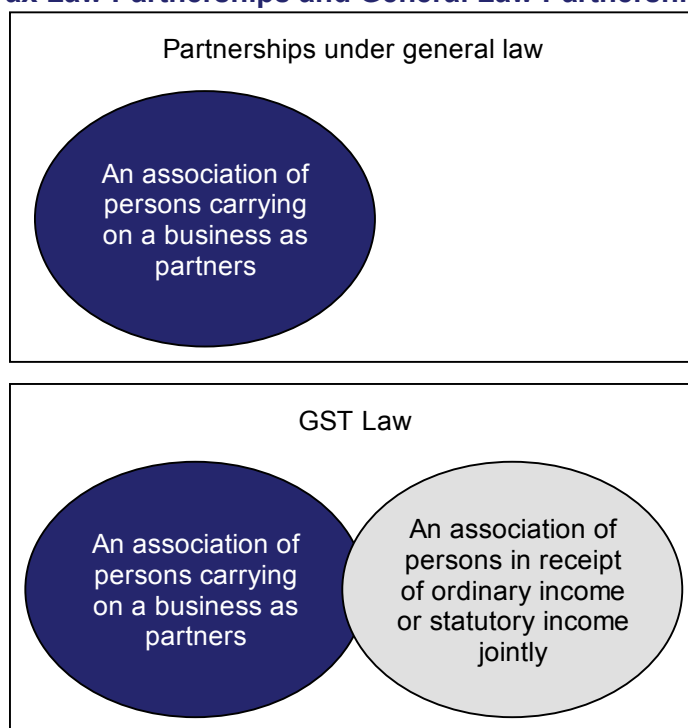
66 GST Act, section 184-1.

67 An incapacitated entity is defined in section 195-1 of the GST Act as an individual who is bankrupt or an entity that is in liquidation or receivership or has a representative appointed.

68 By reference to section 995-1 of the ITAA 1997.

- 2.1.5 Paragraph (a) incorporates two types of partnership. An association of persons carrying on business as partners follows the common law meaning of partnership (a general law partnership), while the second phrase ‘in receipt of ordinary income or statutory income jointly’ does not exist at general law. This partnership is therefore known as a tax law partnership.
- 2.1.6 A general law partnership is not a distinct legal entity; instead it is the partners (such as a group of lawyers or accountants) who carry on a business together. For GST purposes the partnership is treated as if it were a separate entity.
- 2.1.7 A tax law partnership is formed where, for instance, two entities acquire a commercial property as tenants in common with the intention of leasing it to derive income jointly. Accordingly, by being in joint receipt of income, a tax law partnership arises.

**Diagram 2.1.1**  
**Tax Law Partnerships and General Law Partnerships**



- 2.1.8 Under general law, a change in the membership of a general law partnership may result in the dissolution of the partnership. However, where the business of the partnership is to be carried on by continuing partners, the Commissioner considers (taking into account the context of the GST law) that, where certain criteria are met, a reconstituted partnership is formed.<sup>69</sup> The

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<sup>69</sup> GSTR 2003/13 Goods and services tax: general law partnerships, paragraphs 163-169.



Commissioner allows the reconstituted partnership to use the same ABN, effectively allowing it to continue for GST purposes.

- 2.1.9 The Commissioner does not extend this treatment to tax law partnerships. Where there is a change in the membership of a tax law partnership, the partnership is automatically terminated.<sup>70</sup> If the tax law partnership were registered for GST, it would then need to deregister. Any new tax law partnership comprising the new members may then need to register the newly created partnership for GST.
- 2.1.10 A tax law partnership is treated as an entity for GST purposes, although it does not exist outside the tax law.
- 2.1.11 A limited partnership is similar to a general law partnership with some added features. In a limited partnership there are two categories of partners: general partners who manage the business and limited partners who take no part in management. General partners are subject to unlimited liability whereas limited partners are liable only to the extent of the capital they contribute to the partnership.

### Non-profit bodies

- 2.1.12 The activities of certain non-profit bodies are treated as carrying on an enterprise. This allows them to register and claim input tax credits. This is part of a system of concessions available to certain non-profit bodies.
- 2.1.13 Non-profit bodies have a higher registration turnover threshold of \$150,000 compared with \$75,000 for businesses. Where non-profit bodies do not meet the registration threshold, they still have the option of registering for the GST. Non-profit bodies are also eligible for several concessions under the GST.
- 2.1.14 Registered non-profit bodies pay GST on the taxable supplies they make and are entitled to input tax credits for the GST paid on their creditable acquisitions. Unregistered organisations do not pay GST on the supplies they make and are not entitled to input tax credits for the GST paid on inputs.
- 2.1.15 Certain registered non-profit bodies can choose to treat some or all of their separately identifiable branches or activities as separate entities for GST purposes.<sup>71</sup>
- 2.1.16 In addition, donations to a non-profit body that are made voluntarily, and for no material benefit, are not subject to GST.

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70 GSTR 2004/6 Goods and services tax: tax law partnerships and co-owners of property, paragraphs 219-225.

71 GST Act, Division 63.

## Charities<sup>72</sup>

- 2.1.17 Supplies by charities<sup>73</sup> for nominal consideration, and supplies by charities of second-hand goods donated to them, are GST free. However, to avoid unfair competition, the commercial activities of charities are subject to the GST.<sup>74</sup> Commercial activities include, for example, non-accommodation supplies made at 50 per cent or more of the market price and 75 per cent or more of the cost of acquiring the thing supplied.
- 2.1.18 Raffles and bingos conducted by charities are GST free and charities may choose to treat certain fundraising events as input taxed. This concession is also available to gift-deductible entities and government schools.

## Incapacitated entities

- 2.1.19 If an entity becomes insolvent or incapacitated, a representative, such as a liquidator or receiver, may be appointed to manage the affairs of the entity. As a result, the GST administrative framework needs to accommodate these arrangements and clearly specify who is responsible for particular GST consequences.
- 2.1.20 In circumstances where a representative is appointed to an incapacitated entity, the GST Act<sup>75</sup> does not expressly deem the representative to be liable for the GST consequences that arise during its appointment. However, it is intended that, generally, the representative will be liable for the GST consequences that arise from supplies and acquisitions that are made within the scope of its responsibility or authority for managing the incapacitated entity's affairs.
- 2.1.21 The GST law currently:
- requires the representative to register for GST in its capacity as representative, if the entity it represents is registered or required to be registered;<sup>76</sup>
  - specifies when the Commissioner is required to cancel the representative's GST registration;<sup>77</sup>

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72 These concessions also extend to gift-deductible recipients and government schools.

73 The term charity refers to charitable institutions and trustees of charitable funds.

74 Provided as with any enterprise the charity is registered or required to be registered for GST.

75 GST Act, Division 147.

76 GST Act, section 147-5.

77 GST Act, section 147-10.

- requires the representative to notify the Commissioner if and when it ceases to represent the incapacitated entity;<sup>78</sup>
- specifies that increasing adjustments that arise in relation to pre-appointment transactions undertaken by the incapacitated entity are, if the representative provides written notice to the Commissioner, to be treated as adjustments that the incapacitated entity has (instead of the representative);<sup>79</sup> and
- specifies that the tax periods applying to the representative, in that capacity, are the same as those applying to the incapacitated entity.<sup>80</sup>

2.1.22 Where a representative is appointed over an incapacitated entity, the GST framework should provide taxpayers with certainty in relation to the GST consequences and liabilities arising from various transactions. In particular it should specify:

- who is liable for, or entitled to (as the case requires), the GST consequences that arise from supplies, acquisitions and importations made when a representative is appointed;
- whether the GST consequences that arise from an action performed by the representative should be the same as those that would have arisen had the action been performed by the incapacitated entity; and
- whether a representative should be indemnified for any payment of GST it makes to meet its obligations.

2.1.23 The former government announced in the 2005-06 Budget that it would clarify the GST obligations for representatives that are appointed over entities that have become incapacitated. In press release No. 53 on 13 May 2008, the Treasurer announced the way forward on tax measures announced but not yet enacted by the former government. The incapacitated entities measure was listed as a measure where a final decision has not yet been reached. The Board welcomes comments on the treatment of incapacitated entities.

## ISSUES FOR CONSIDERATION

2.1.24 As noted above, the GST applies a broad definition of entity to ensure that economic activity is potentially brought within the GST system regardless of the type of entity carrying on the activity. The issue is whether this approach results in the lowest compliance burden possible for taxpayers.

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78 GST Act, section 147-15.

79 GST Act, section 147-20.

80 GST Act, section 147-25.

2.1.25 A number of journal articles have raised issues on tax law partnerships, including these summarised below:

- It has been suggested that the compliance obligations surrounding tax law partnerships are unnecessarily onerous.<sup>81</sup>
- It has also been suggested that the concept of tax law partnership does not have a meaningful role in the GST law, and instead that the co-owners, either as individuals or by forming a GST group or joint venture, can properly account for the GST liability.<sup>82</sup>
- Some commentators have raised concerns around the compliance difficulties for determining the moment at which a tax law partnership arises.<sup>83</sup> Even when it is clear a tax law partnership exists, it can be difficult for taxpayers to determine whether it is the co-owners as individuals, or the tax law partnership, that is making a particular supply.<sup>84</sup>

### Q2.1

Does the GST law apply in relation to different entities in a way that is streamlined and reduces compliance costs? Are there ways in which it could be improved and any anomalies removed?

### Q2.2

Are any changes needed to the current treatment of tax law partnerships as entities to ensure that the GST law operates effectively? If so, what changes should be made?

### Q2.3

Does the GST law deal appropriately with circumstances in which:

- sole traders or partners die and their assets are passed to the control of an executor or trustee of the deceased's estate; or
- entities become incapacitated?

If not, what changes should be made to ensure that the GST law operates effectively?

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81 Mirza H, 'Call this a partnership?', *In The Black*, November 2004, page 58.

82 Welshe D, 'State of Play with GST: groups, joint ventures and tax law partnerships', *Taxation Institute of Australia Conference paper*, 9 September 2004, pages 13-14.

83 McMahon J, 'GST and Partnerships an ongoing concern', *Taxation in Australia*, November 2003, pages 259 and 262.

84 Refer 32 above, Welshe, pages 16 paragraph 4.5.

## CHAPTER 2.2: GROUPING, JOINT VENTURES AND BRANCHES

### PURPOSE

- 2.2.1 Most medium to large businesses do not operate as isolated entities. Rather, their operations may be conducted in corporate structures such as groups of related companies and associated entities, joint ventures between entities, or branches within an entity. In recognition of this, the GST Act provides special rules for reporting GST liabilities and entitlements that GST groups, GST joint ventures and GST branches may choose to apply. In general terms, the special rules result in effectively treating GST groups and, to a lesser extent, GST joint ventures as if they were a single entity for GST purposes. The rules have the opposite effect for GST branches, effectively allowing the splitting of a single legal entity into a series of separate entities for GST purposes.
- 2.2.2 The purpose of the GST groups, joint ventures and branch rules, amongst other things, is to allow flexibility in the GST reporting arrangements to reduce the compliance costs of entities.

### DESCRIPTION

#### GST groups

- 2.2.3 Under the GST law,<sup>85</sup> companies within a 90 per cent owned group, and in some cases other entities including partnerships, trusts and individuals, can be approved as a GST group. A GST group is treated as a single entity for certain GST purposes,<sup>86</sup> with one member of the group (the representative member) dealing with all the GST liabilities and entitlements of all members of the group. This allows the grouped entities to effectively ignore most intra-group transactions for GST purposes, thus reducing their compliance and cash-flow costs. The representative member must be an Australian resident for taxation purposes.

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85 GST Act, division 48.

86 By ignoring intra-group transactions and treating the group as a single entity for GST purposes.

2.2.4 To group for GST purposes, entities must satisfy membership requirements<sup>87</sup> and obtain the Commissioner's approval.<sup>88</sup> The membership requirements vary with the type of entity. Broadly, the basis for allowing entities to group is: a degree of common ownership and control between entities; a degree of commonality of beneficiaries, shareholders and partners of entities seeking to group (or their family members); and if the entities are non-profit bodies, that they are members of the same non-profit association. To form the GST group, members must satisfy the following criteria:

- be registered for GST purposes;
- have the same GST tax period as all other group members;
- account for GST on the same basis as all other group members;
- not be a member of any other GST group; and
- not have any branch registered for GST.

2.2.5 Certain religious bodies can choose to form a GST religious group which is broadly treated as a single entity for GST purposes.<sup>89</sup>

## GST joint ventures

2.2.6 Entities engaged in certain joint ventures can have them approved as GST joint ventures.<sup>90</sup> For a GST joint venture, the joint venture operator (that is, an entity nominated for this role by the participants) deals with the GST liabilities and entitlements arising from the joint venture operator's dealings on behalf of the participants in the joint venture.

2.2.7 To form a GST joint venture, the entities must satisfy participation requirements of a GST joint venture<sup>91</sup> and they need to obtain the Commissioner's approval.<sup>92</sup> The participation requirements are that a joint venture participant:

- participates, or intends to participate, in a joint venture for exploration or exploitation of mineral deposits or for a purpose specified in the regulations;

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87 GST Act, sections 48-10 and 48-15.

88 GST Act, section 48-5.

89 GST Act, division 49.

90 GST Act, division 51.

91 GST Act, section 51-10.

92 GST Act, section 51-5.

- is a party to a joint venture agreement with all the other participants or intended participants;
- is registered for GST; and
- accounts for GST on the same basis as all other participants.

## GST branches

2.2.8 The GST law enables a branch of a registered entity to be separately registered as a GST branch.<sup>93</sup> This allows a GST branch to account separately for GST from its parent entity. This special rule recognises the commercial reality that some entities may operate through branches and that their branches may do their normal accounts separately, with their accounts only being amalgamated annually. If the normal GST rules applied, this could mean that these accounts would have to be amalgamated every tax period, potentially increasing compliance costs.

2.2.9 Generally, an entity is able to register one of its branches separately as a GST branch if:<sup>94</sup>

- the branch maintains an independent system of accounting;
- the branch can be separately identified by either the nature of its activities or its location; and
- the entity registering the branch intends to carry on an enterprise through the branch.

2.2.10 Entities that are members of a GST group cannot register their branches.

## ISSUES FOR CONSIDERATION

2.2.11 As noted above, the purpose of the GST groups, joint ventures and branch rules is to allow flexibility in the GST reporting arrangements to reduce the compliance costs of related entities.

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93 GST Act, division 54.

94 GST Act, section 54-5.

#### **Q2.4**

Do the rules for:

- forming, operating, altering and dissolving a GST group, a GST religious group, a GST joint venture and a GST branch; and
- reporting their GST liabilities and entitlements

achieve an appropriate balance between providing flexibility, minimising compliance costs and ensuring the integrity of the GST system? If not, how should they be modified?

#### **Q2.5**

Do the current arrangements for the timing of entry into and exit from GST groups, and accounting for GST liabilities upon entry into and exit from GST groups, operate effectively? If not, what changes are appropriate to improve their operation whilst minimising compliance costs?



## CHAPTER 2.3: SMALL BUSINESS

### PURPOSE

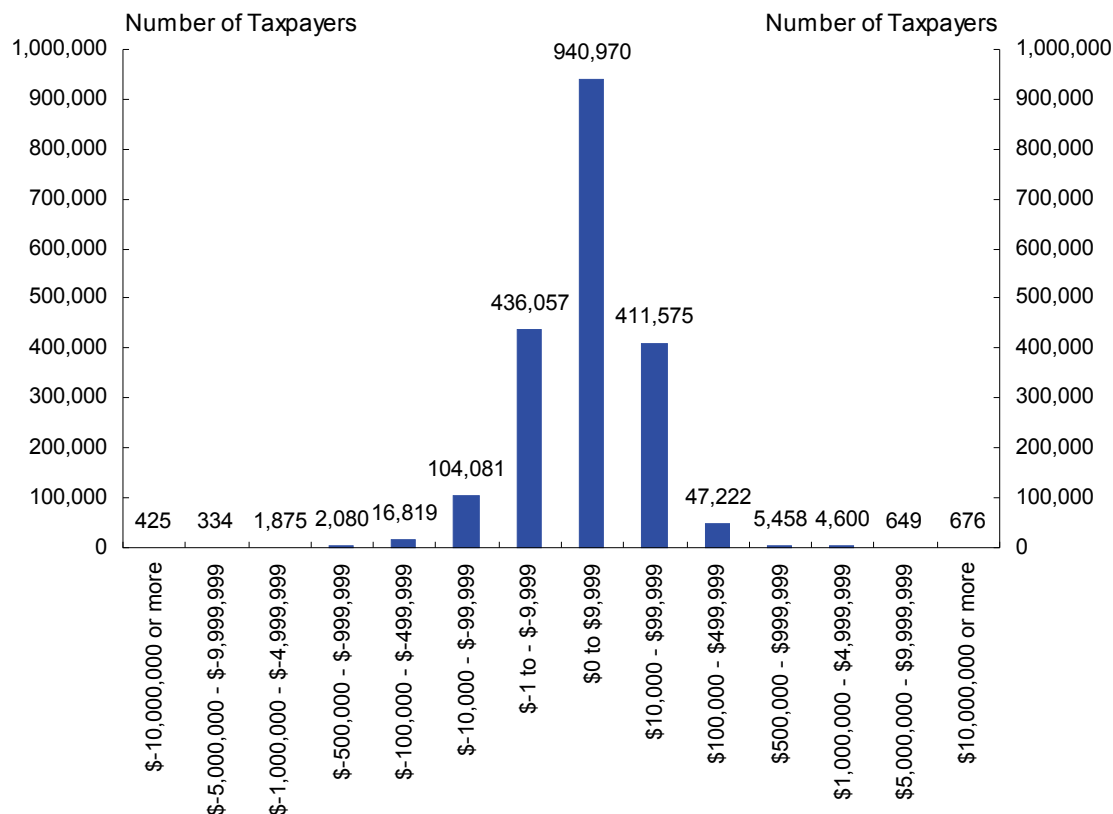
- 2.3.1 Within the Australian GST system, all entities registered for GST must fulfil certain obligations in accounting for GST, and collecting and remitting tax to the Commissioner. In such a system, some compliance costs for business are unavoidable.
- 2.3.2 The GST Act contains a number of provisions that are designed to reduce the compliance costs for small businesses and other enterprises, including non-profit bodies, in accounting and reporting GST. These include simplified accounting methods (SAMs), allowing some businesses to account for GST on an annual basis, as well as allowing for GST to be calculated annually and paid in quarterly instalments.
- 2.3.3 For GST purposes, a small business is an enterprise with a turnover less than \$2 million. There are approximately 2.5 million businesses operating in Australia with a turnover below the \$2 million threshold, representing around 96 per cent of businesses in the revenue system.<sup>95</sup> Around 2.2 million of these businesses are registered for GST, contributing around a quarter of GST revenue.
- 2.3.4 According to the Tax Office's 'Taxation Statistics' almost half of GST registered taxpayers<sup>96</sup> had a net GST liability of less than \$10,000 for the 2006-07 financial year (see chart 2.3.1).

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95 Australian Taxation Office, *Compliance Program 2006-07*, Commonwealth of Australia, 2006, p 15.

96 This includes a GST registered taxpayer that has multiple GST registrations.

**Chart 2.3.1  
Taxpayers' net GST liability by amount, 2006-07<sup>97</sup>**



2.3.5 In 2007, a survey found that those small businesses relying on an external accountant paid an average of \$500 per quarter for business activity statement (BAS) preparation.<sup>98</sup>

## DESCRIPTION

2.3.6 All entities registered for GST must lodge periodic GST returns in a form approved by the Commissioner.<sup>99</sup> At present, this periodic reporting of GST liability is made through the BAS. The BAS is used not only for GST, but also to report LCT, WET, fringe benefits tax (FBT) instalments, pay-as-you-go (PAYG) withholding and income tax instalments and fuel tax credits. As well as collecting information on GST liability, the Commissioner also uses information contained on the BAS for statistical and compliance purposes.<sup>100</sup>

97 Australian Taxation Office, 'Net GST liabilities by amount, 2005-06 to 2006-07 financial years', *Taxation Statistics 2005-06*, p 109.

98 Unpublished research by the Board of Taxation.

99 GST Act, section 31-5.

100 Australian Taxation Office, 'GST reporting option will reduce costs – Media Release Nat 2000/27', 30 March 2000, <http://www.ato.gov.au/corporate/content.asp?doc=/content/00141270.htm>

- 2.3.7 The standard BAS requires separate amounts to be given for total sales, export sales, GST free sales, capital purchases and non-capital purchases. There are approximately 23 different types of BAS, tailored by the Tax Office to individual taxpayer's circumstance and their choice of reporting obligations.

### Simplified Accounting Methods

- 2.3.8 The GST law<sup>101</sup> allows the Commissioner to create SAMs, which aim to simplify compliance requirements for small businesses. Current SAM measures are aimed at assisting entities carrying on an enterprise with less than \$2 million in turnover that have a mix of GST free and taxable transactions. SAMs assist eligible businesses estimate components of the GST calculation such as GST free purchases, rather than record these individually. This in turn helps small businesses work out the amount of GST they have to pay, or the amount they can claim as a refund.
- 2.3.9 Entities that are eligible for SAMs must make a mix of taxable and GST free supplies, or creditable or GST free acquisitions. This is designed to lower the compliance burden by not requiring the entity using the SAM to track the tax status of each supply they make or acquire. Rather, there are a number of different methods that the Commissioner allows to estimate the GST liability.
- 2.3.10 There are five simplified GST accounting methods to choose from, depending on turnover, the nature of the business, and the nature of the point-of-sale equipment (except for the purchases snapshot method). The following table<sup>102</sup> summarises these methods.

**Table 2.3.1**  
**The five simplified GST accounting methods**

Method	Business norms	Stock purchases	Snapshot	Sales percentage	Purchases snapshot
<b>Turnover threshold</b>	SAM turnover of \$2 million or less	SAM turnover of \$2 million or less	SAM turnover of \$2 million or less	GST turnover of \$2 million or less	GST turnover of \$2 million or less
<b>How GST free sales and/or purchases are estimated</b>	Apply standard percentages to sales and purchases.	Take a sample of purchases and apply this to both sales and purchases.	Take a snapshot of sales and purchases and use this.	Work out what percentage of GST free sales are made in a tax period and apply this to purchases.	Take a snapshot of purchases and use this to calculate GST credits.

101 GST Act, division 123.

102 From the Tax Office website:

<http://www.ato.gov.au/businesses/content.asp?doc=/content/14156.htm&page=6&H6>

- 2.3.11 These methods help entities work out the information they need to correctly complete the GST section of their activity statement. However, they can only be applied to sales and/or purchases of trading stock. If entities decide to use a simplified GST accounting method, they will still need to separately consider other sales (such as non-stock or capital items) and expenses (such as rent, phone and any capital items) when they complete their activity statement.
- 2.3.12 Prior to 1 July 2007, the use of SAMs was mostly restricted to food retailers. A legislative change in 2007 gave the Commissioner the power to develop SAMs for all entities with an annual turnover of less than \$2 million. Take-up of SAMs by taxpayers has been very low. Around 2,400 small business taxpayers used a SAM in 2007, out of roughly 110,000 taxpayers that were eligible to use a SAM. However, a recent sampling of small businesses in the food retailing industry suggests that the take-up rate has increased to around 15 per cent.

## Existing reporting options

### Annual lodgment

- 2.3.13 The GST law enables some taxpayers to elect to account for GST annually, rather than quarterly.<sup>103</sup> Broadly, this aims to reduce the tax compliance burden for taxpayers by aligning the GST tax period and due date for lodgment of the GST return with income tax. This concession is available to entities that are voluntarily registered for GST (for example, where their GST turnover is less than the current registration threshold of \$75,000). As of 30 September 2007 approximately 150,000 taxpayers reported annually, representing around 17 per cent of small businesses who are eligible for this concession.

### Paying GST by instalments

- 2.3.14 Taxpayers who are required to be registered for GST (that is, their turnover is at or above the registration threshold) cannot elect to account for GST annually as described above. However, small businesses that are not in a net refund position can elect to pay GST by instalments over the year.<sup>104</sup>

### Quarterly remittance and annual reporting (Option 2 on the BAS)

- 2.3.15 Businesses with an annual turnover of less than \$20 million can make their quarterly GST payments on the basis of a simplified remittance form, showing only total sales, GST collected on sales and GST paid on purchases. An annual

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103 GST Act, division 151.

104 GST Act, division 162.

information report containing the remaining detail must be lodged by the time the annual income tax return is submitted.

#### Quarterly GDP instalment and annual reconciliation (Option 3 on the BAS)

- 2.3.16 Businesses with an annual turnover less than \$2 million can elect to have quarterly instalment amounts calculated for them by the Tax Office. This amount is printed on their quarterly BAS. The Tax Office calculates these instalment amounts from information the business has previously reported and adjusts these figures to take into account likely growth in the business and growth in the Australian economy, as measured by gross domestic product (GDP). They pay four instalments and there is an annual GST return with any amount owing or refundable calculated at that time.
- 2.3.17 The instalments can be varied, but penalties can apply if the estimate is too low. For example, a business may be liable to pay a penalty at the general interest charge rate if its varied rate is less than 85 per cent of the rate that would have covered its actual tax liability. As at 30 September 2007, approximately 184,000 taxpayers paid GST by quarterly instalments, representing around 8 per cent of taxpayers eligible for the concession.

#### Adjustments made where there is an annual apportionment of creditable purpose

- 2.3.18 Some transactions involve acquisitions that are only partially eligible for input tax credits, such as when the acquisition is partly for business and partly for non-business use. However, entities which have a GST turnover of \$2 million or less can generally elect to make their apportionments of input tax credits annually. This issue is discussed further in Chapter 3.

#### BAS Easy proposal

- 2.3.19 Prior to its election, the Government proposed a number of potential reforms to GST reporting, 'BAS Easy'. These were proposals to reduce the complexity of GST calculations for small business and to minimise their reporting requirements for GST.<sup>105</sup> These proposals were part of wider simplification plans for the BAS, which aimed to ensure businesses in the hospitality, health and education sectors had access to simplified accounting methods to assist them with GST free transactions.
- 2.3.20 Under the BAS Easy proposal, small businesses without GST free transactions (for example, tradespeople and independent contractors) could elect to apply

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105 Emerson C, *BAS Easy: a proposed option for completing your BAS in a few minutes*, 19 April 2007, <http://www.craigemersonmp.com/files/bas-easy-policy-19-april-2007.pdf>

an agreed ratio to taxable sales, in order to determine input tax credits.<sup>106</sup> The ratio would be determined according to either the business norms method or the snapshot method.

#### *Applying a snapshot ratio to account for GST*

- 2.3.21 One option within the BAS Easy proposal was to allow businesses without GST free transactions access to a snapshot method, principally to help calculate input tax credits. A snapshot method for calculating a GST ratio would allow small businesses to calculate a ratio of input tax credits on purchases to GST on sales for two periods of four weeks<sup>107</sup> (snapshots) in the base year. Businesses would then average the two ratios and apply the resulting ratio of input tax credits to GST for all other periods. This was designed to reduce the number of GST transactions that small businesses would be required to process each year. The snapshot would then be applied for up to three years, unless the Commissioner reviewed the ratio and directed the business to recalculate its snapshot prospectively, or if the nature of the business changed significantly.
- 2.3.22 An illustration of how the BAS Easy snapshot method might be designed using this approach is provided at Appendix D.<sup>108</sup> The example illustrates capital items being accounted for separately.

#### *Applying a business norms ratio to account for GST*

- 2.3.23 Another option within the BAS Easy proposal was to allow businesses without GST free transactions access to a business norms method, principally to help such businesses calculate input tax credits. Under the business norms method, the Commissioner would issue a business norms ratio for each category of business, the business norm being the ratio of input tax credits to gross GST, calculated on the basis of historic data for a business category. Rather than calculate its GST liability on the basis of the information ordinarily provided on its BAS, a small business would multiply its GST turnover by the ratio applicable for its business category.
- 2.3.24 Under one variation of this proposal, the business norms model could be applied only to the first year of operation for a small business. This was intended to provide time for the small business to put in place appropriate GST accounting arrangements after commencing business, before they would be required to adopt either the snapshot method (described above) or the existing BAS reporting requirements.

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106 Emerson C, 19 April 2007, page 4.

107 Emerson C, , 19 April 2007, pages 1 and 5.

108 Industry and Small Business Policy Division, Department of Innovation, Industry, Science and Research, unpublished material.

- 2.3.25 An illustration of how the BAS Easy business norms method might be designed using this approach is provided at Appendix E.<sup>109</sup> The example illustrates capital items being accounted for separately.

### Removing annual reconciliation

- 2.3.26 Under the BAS Easy proposal a small business would not be required to complete an annual reconciliation for GST purposes.<sup>110</sup>

### Compliance requirements

- 2.3.27 Under the BAS Easy proposal a small business could only be audited by the Tax Office in cases of suspected fraud by the taxpayer in under-reporting GST sales or over-reporting purchases. The Tax Office would reserve the right to vary the business norms ratio or request the business to calculate a new snapshot ratio.<sup>111</sup>

### Dealing with capital items

- 2.3.28 The Taskforce on Reducing the Regulatory Burdens on Business reported<sup>112</sup> that the most difficult part of completing the BAS form for small business is distinguishing between capital and non-capital purchases. The Tax Office has a policy of allowing all items with a purchase price of \$1,000 or less to be reported as non-capital. The Taskforce recommended the policy be promoted and the Government agreed. The Tax Office has included advice regarding the reporting of low-cost capital items in revised and updated GST Activity Statement Instructions since 1 July 2006.

- 2.3.29 If a SAM is used, sales and purchases of capital items need to be treated separately.

## ISSUES FOR CONSIDERATION

- 2.3.30 Some commentators have suggested that while small businesses can account for total GST collected and paid correctly, they find reporting the related sales and purchases into their GST free, input taxed, taxable and capital/non-capital

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109 Industry and Small Business Policy Division, Department of Innovation, Industry, Science and Research, unpublished material.

110 As is currently the case with SAM users.

111 C Emerson, *BAS Easy: a proposed option for completing your BAS in a few minutes*, 19 April 2007, page 6. <http://www.craigemersonmp.com/files/bas-easy-policy-19-april-2007.pdf>

112 <http://www.regulationtaskforce.gov.au/>

components difficult. Accordingly, they recommend BAS reporting could be simplified by requiring only the reporting of net GST payable or refundable.<sup>113</sup>

**Q2.6**

Which aspect of GST reporting is the most arduous for small business:

- a) keeping records;
- b) compiling information;
- c) completing the BAS form; or
- d) other (please outline)?

How could this be improved?

**Q2.7**

Would a formula-based approach to estimating input tax credits be helpful to small businesses without GST free transactions (like many tradespeople and some small caterers)? Would small non-profit organisations find it helpful?

**Q2.8**

Would redesigning BAS reporting options on the BAS form for small business to exclude Items G1, G2, G3, G10 and G11 reduce small business confusion and errors on the BAS? Are there other design options which could achieve this?

**Q2.9**

If you are using one of the existing SAMs, what factors encouraged you to do so? Conversely, if you have chosen not to use a SAM, what factors influenced your choice? Would these factors apply to an expansion of the business norms and snapshot methods under the BAS Easy proposal?

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113 Taxation Institute of Australia, submission to the Taskforce on Reducing the Regulatory Burden on Business, 28 November 2004, page 10.  
[http://www.regulationtaskforce.gov.au/\\_data/assets/pdf\\_file/0003/70266/sub078.pdf](http://www.regulationtaskforce.gov.au/_data/assets/pdf_file/0003/70266/sub078.pdf)



**Q2.10**

Are the existing reporting options (that is, annual, paying GST by instalments, Option 2 and Option 3 on the BAS), well balanced between ensuring the integrity of the GST system and minimizing compliance costs and adverse cash-flow consequences for small business? If not, what changes would assist in achieving the right balance?

**Q2.11**

What do you see as the potential advantages or the potential problems of the BAS Easy proposal for your business?



## CHAPTER 2.4: OTHER RULES — OTHER ISSUES

### Vouchers

- 2.4.1 The supply of a voucher for the provision of goods and services up to a stated monetary value is not subject to GST. However, GST is payable when the voucher is redeemed for goods and services. The voucher rules recognise that when a voucher is issued the GST status of the goods or services for which the voucher is redeemed may not be known.

### Financial acquisitions threshold

- 2.4.2 Entities are generally not entitled to claim input tax credits where their acquisitions relate to the making of financial supplies. Despite this, the GST law contains a *de minimis* test which seeks to ensure that the majority of entities are not denied input tax credits where they make financial supplies which do not form part of their main business activities. The threshold test is known as the financial acquisitions threshold.

### Supplies to associates

- 2.4.3 The GST law ensures that if supplies are made to an associate below market value they are treated on the basis that they were provided for market value. Similarly, where supplies are made to associates for no consideration they are brought into the GST system. This ensures that transactions between associates are properly accounted for, for GST purposes.

## ISSUES FOR CONSIDERATION

- 2.4.4 Submissions could also include responses to the following questions.

### **Q2.12**

Do the GST voucher provisions operate effectively? If not, what changes should be made?

**Q2.13**

Does the financial acquisitions threshold operate effectively and minimise compliance costs for affected taxpayers? If not, what changes should be made to simplify it and reduce compliance costs?

**Q2.14**

Do the associate provisions that apply to transactions between associates for no consideration apply appropriately and interact effectively with other areas of the GST law? If not, what changes should be made to ensure that the GST law operates effectively?

## CHAPTER 3: SUBSEQUENT EVENTS

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3.1: Adjustment provisions

3.2: Correcting GST mistakes

3.3: Refunds of overpaid GST



## CHAPTER 3.1: ADJUSTMENT PROVISIONS

### PURPOSE

- 3.1.1 An entity's liability for GST is attributed to a particular tax period, which may be either a month, a quarter or a year. For each tax period an entity works out the GST attributable as a result of any supplies it has made and deducts any attributable input tax credits it may claim as a result of its acquisitions or importations.
- 3.1.2 When there are subsequent changes to transactions, it may be necessary to adjust the amount of GST paid, or the amount of input tax credits claimed on a previous BAS. This adjustment will generally be attributed to the tax period when the taxpayer becomes aware of the need for an adjustment.
- 3.1.3 The GST law contains a number of adjustment provisions. These provisions provide a mechanism to allow changes to be made to the amount of GST paid on taxable supplies or input tax credits claimed in a previous tax period. These adjustments are reflected in a later BAS to seek to reduce the compliance costs of entities.

### DESCRIPTION

#### Adjustments

- 3.1.4 The amount of GST paid or input tax credits claimed in a previous tax period may need to be adjusted to reflect changed circumstances and ensure that the correct GST outcome is obtained.
- 3.1.5 Adjustments may arise due to, amongst other things:
- the cancellation of a supply or acquisition;
  - changes in consideration, such as a change in price due to a discount;
  - changes in GST status, such as when goods intended for export are not exported within the time limit and may change status from GST free to taxable;

- changes in intended use;
- debts becoming bad or overdue for 12 months or more; or
- a change in enterprise or registration status.

3.1.6 An adjustment will either be an increasing or decreasing adjustment.

3.1.7 An increasing adjustment is added to the net amount for a tax period, which will either increase the amount payable by the entity to the Tax Office, or reduce the amount of any refund payable by the Tax Office to the entity.

3.1.8 A decreasing adjustment is subtracted from the net amount for a tax period, which will either decrease the amount payable by the entity to the Tax Office, or increase the amount of any refund payable by the Tax Office to the entity.

### Adjustments relating to changes in the extent of creditable purpose

3.1.9 Input tax credits are available when an entity acquires a thing for a creditable purpose; where it is, to some extent, intended to be used in carrying on its enterprise other than for the purposes of making input taxed supplies. The amount of input tax credits an entity is entitled to will depend on the extent to which it plans to use the acquisitions in the business (other than to make input taxed supplies). The extent of creditable purpose is determined at the time the purchase is made. However, the actual use over a period of time may be different to the intended use. Where there is a change in the extent of creditable purpose due to a change in use, either an increasing or decreasing adjustment is generally needed. However, an adjustment is only required where the GST exclusive value of the acquisition or importation exceeds \$10,000 for financial supplies and \$1,000 for all other supplies.<sup>114</sup>

3.1.10 In some industries<sup>115</sup> there is often a change in creditable purpose. For example, full input tax credits may be claimed for the construction of new residential premises. If they are temporarily rented out, this would be an input taxed supply, and an adjustment will be required at the end of the adjustment period. If they are later sold as new residential premises, this is a taxable supply and a further adjustment may later be required.

3.1.11 The method for calculating adjustments is set out in the GST legislation. To determine whether an adjustment is required the proportion of actual use is tracked over a period of time from the date of the acquisition to the end of the adjustment period. An acquisition or importation may be assigned multiple adjustment periods (broadly, tax periods that end on 30 June) thus requiring

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114 GST Act, division 129.

115 This includes commercial enterprises and non-profit bodies such as the community housing sector.



taxpayers to track the application and keep records of its actual use over a period of time. There could be one, two, five or ten adjustment periods, depending on the type of acquisition and its GST exclusive value.

### Adjustments for goods applied solely to private or domestic use

- 3.1.12 Increasing adjustments are necessary when a full input tax credit has been claimed but the actual use was solely for private or domestic purposes.<sup>116</sup> An increasing adjustment is generally made for the tax period in which the adjustment is identified. Once an adjustment has been made no further adjustment occurs if the goods are subsequently applied for a creditable purpose.

### Adjustments made where there is an annual apportionment of creditable purpose

- 3.1.13 Some transactions involve acquisitions that are only partially eligible for input tax credits, such as when the acquisition is partly for business and partly for non-business use. However, entities which have a GST turnover of \$2 million or less can generally elect to make their apportionments of input tax credits annually.
- 3.1.14 Broadly, the effect of this election is that where an acquisition is made during a tax period partly for business and partly for private purposes, a full input tax credit can be claimed in that period even though the acquisition is only partially creditable. Any apportionment is instead made by an increasing adjustment for the tax period in which the next annual income tax return is due to be lodged with the Tax Office.<sup>117</sup>

### Adjustments where a supply is made and it was earlier acquired without full input tax credits

- 3.1.15 An entity may have a decreasing adjustment where it was not entitled to a full input tax credit on acquisition or importation of something, but is required to account for GST on its disposal as a taxable supply.<sup>118</sup> This could arise where the original acquisition related to a financial supply, which is input taxed, but the thing was later sold as a taxable supply.
- 3.1.16 This provision only applies to acquisitions and importations that relate to financial supplies.<sup>119</sup>

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116 GST Act, division 130.

117 GST Act, division 131.

118 GST Act, division 132.

119 For similar provisions for other input taxed supplies see subsection 9-30(4) of the GST Act.

## Adjustments for going concerns

- 3.1.17 The GST law provides for supplies under a going concern arrangement (that is, under an arrangement where an ongoing business is sold) to be GST free in certain circumstances. This concession means, amongst other things that a purchaser does not have to borrow additional funds to cover the GST included in the price of a going concern.
- 3.1.18 However, an adjustment may be necessary where a recipient of a going concern does not intend to use the going concern wholly to make taxable or GST free supplies or where the nature of supplies made later changes.
- 3.1.19 An initial adjustment arises where the recipient of a going concern intends to use the going concern for purposes other than making taxable or GST free supplies.<sup>120</sup> The recipient must account for any private or input taxed use of the going concern. The adjustment would increase the recipient's net amount by an amount equal to the GST they would have borne on the acquisition had it been a taxable supply (that is, the GST there would have been on the supply less the input tax credit on its acquisition).<sup>121</sup>
- 3.1.20 A later adjustment arises where the actual proportion of the types of supplies made through the going concern (for example, taxable supplies or input taxed supplies) is different from the intended proportion. A later adjustment should recognise any change in use of a going concern and the impact on a recipient's previous accounting for GST and input tax credits.<sup>122</sup>

## Adjustments relating to bad debts

- 3.1.21 Where debts are written off as bad debts or have been overdue for 12 months or more, this may result in an adjustment to the net amount of tax payable.<sup>123</sup> There may be a decreasing adjustment by the supplier and a corresponding increasing adjustment by the entity which made the acquisitions to which these bad debts relate. Adjustments for bad debts only arise for entities that account for GST on an accruals basis.

## ISSUES FOR CONSIDERATION

- 3.1.22 The amount of GST paid or input tax credits claimed in a previous tax period may need to be adjusted to reflect changed circumstances and ensure that the

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120 GST Act, division 135.

121 If the supply is not a taxable supply as it is not connected with Australia Division 135 of the GST Act may also require an adjustment be made.

122 GST Act, division 135.

123 GST Act division 21.

correct GST outcome is obtained. The process for doing this should to be as easy to comply with as possible.

- 3.1.23 Commentators have observed that the adjustment mechanisms may give rise to unintended outcomes in some circumstances because of problems with the interaction of the adjustment mechanism with other areas of the GST law.<sup>124</sup>

### Q3.1

Are the adjustment provisions easy to understand and are adjustments easy to make? What impediments, if any, are there to making adjustments? Are the method statements or formulae specifying how to work out adjustments sufficiently clear? If not, how could they be modified?

### Q3.2

Are the adjustment provisions aligned with the transactions that an entity would process for accounting and income tax purposes?

### Q3.3

Are the adjustment threshold amounts, the number of thresholds and the timing of adjustments appropriate? Do they reflect an appropriate balance between accuracy and compliance costs? If not, how could they be modified?

### Q3.4

There are many different adjustment provisions in the GST Act. Are there any unintended circumstances that arise due to the interaction of the different adjustment provisions with one another and other areas of the GST law?

### Q3.5

Do the going concern provisions operate effectively? If not, what changes should be made to improve their operation and minimise the compliance costs of affected parties?

### Q3.6

Do the adjustment provisions cover all transactions where an adjustment should be available? Are there any other issues or anomalies with the adjustment provisions that need to be addressed? If so, what changes are needed?

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124 See for instance M Timmers, 'Division 135 – legislative defects: practical problems', *Australian GST Journal*, Vol. 4(8), 2004, page 213.



## CHAPTER 3.2: CORRECTING GST MISTAKES

### PURPOSE

- 3.2.1 There may be circumstances where the GST component of a taxpayer's BAS contains errors because the taxpayer made a clerical mistake or incorrectly applied the GST law to a transaction. For example, a taxpayer may have mistakenly failed to report a taxable supply or may have incorrectly classified a GST free supply as taxable.
- 3.2.2 The legal framework for GST administration includes mechanisms to correct such errors.
- 3.2.3 The process for correcting GST mistakes seeks to encourage taxpayers to accurately determine their liability without imposing significant compliance costs on them.

### DESCRIPTION

- 3.2.4 Where taxpayers find they have made errors in GST reporting on their activity statement, they need to correct those errors. The usual way to correct errors is to revise the activity statement in which the error occurred.
- 3.2.5 Where a taxpayer's activity statement is later revised because the GST liability was understated, the shortfall currently attracts a general interest charge (GIC) from the due date of the original activity statement.
- 3.2.6 However, in some cases taxpayers can make a correction on a later activity statement without being subject to GIC. The GST Act gives the Commissioner a determination making power concerning how to correct errors made in working out net amounts for the immediately preceding tax period.<sup>125</sup> No determination has been issued under this provision. The Commissioner has issued the *Correcting GST Mistakes* fact sheet, which allows entities to correct genuine mistakes in a later activity statement, depending on the annual turnover of the enterprise and the amount of the error, even if the error was not made in the immediately preceding tax period.

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125 GST Act, section 17-20.

- 3.2.7 The fact sheet provides that the ability to correct an error on a later activity statement depends upon the particular entity's turnover, the amount of the error and how long ago it was made. At one end of the spectrum, an entity with annual turnover of less than \$20 million has a correction limit of less than \$5000 and a time limit in which to make corrections of up to 18 months. At the other end of the spectrum, an entity with annual turnover over \$1 billion has a correction limit of less than \$300,000 and a time limit of up to 3 months.
- 3.2.8 The legislative authority for the approach taken in the *Correcting GST Mistakes* fact sheet is a combination of section 255-10 of Schedule 1 (deferring the payment time) and section 356-5 of Schedule 1 to the *Taxation Administration Act 1953* (TAA) (Commissioner's general power of administration of indirect tax laws).

## ISSUES FOR CONSIDERATION

- 3.2.9 As noted above, the process for correcting GST mistakes seeks to encourage taxpayers to accurately determine their liability, without imposing significant compliance costs on them.

### Q3.7

Does the process for correcting GST mistakes encourage taxpayers to accurately determine their liability, whilst imposing the lowest practical compliance costs? Is there a need to change the operation of the law with regard to correcting GST mistakes to meet the above objectives? If so, what changes should be made?

## CHAPTER 3.3: REFUNDS OF OVERPAID GST

### PURPOSE

- 3.3.1 Entities that are registered for GST must report their periodic tax obligations and entitlements to the Commissioner on their BAS. Where credits exceed liabilities, the registered entity is entitled to a refund or to have it applied against other tax debts.
- 3.3.2 Entities may also become entitled to a GST refund for a particular period because the entity carrying on the enterprise has incorrectly treated a transaction as being subject to GST. However, the Commissioner is not obliged to provide the refund unless certain conditions are met. In particular, there is a requirement that the entity reimburse the recipient of the supply if that recipient is not registered or required to be registered for GST. This is because it is the consumer who is intended to bear the effect of the tax.

### DESCRIPTION

- 3.3.3 In a transaction-based tax like GST, entities may incorrectly treat certain transactions as taxable supplies and therefore overpay the amount of GST.
- 3.3.4 The amendment<sup>126</sup> to the taxation law currently before Parliament following the KAP Motors decision<sup>127</sup> will ensure that the restriction on refunds applies even if the transaction on which overpaid GST is collected is found not to be a supply.
- 3.3.5 Entities may seek a refund of overpaid GST by amending the previously lodged BAS in a later tax period or in the current period. This is set out in the Tax Office fact sheet *Correcting GST mistakes*.
- 3.3.6 Requests for refunds for overpaid GST are subject to the Commissioner's discretion. The Commissioner needs to be satisfied that the entity has reimbursed the unregistered entity before claiming the refund of overpaid

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126 Tax Laws Amendment (2008 Measures No. 3) Bill 2008.

127 *KAP Motors Pty Ltd v FCT* [2008] FCA 159. The Federal Court of Australia held that the restriction on the payment of GST refunds does not apply if GST is paid on a transaction that is later determined not to be a supply for GST purposes.

GST. The Commissioner also can deny the refund if an entity overpaid GST on a sale to a business customer that is registered or required to be registered for GST.

3.3.7 The compliance costs incurred by the entity in reimbursing customers will vary with the nature of the business and its relationship with its customers. For example, in low value cash transactions through a retail outlet, the supplier may have no way of ascertaining the identity of the consumer. In higher value transactions, or in situations where there is an ongoing relationship between the supplier and the recipient, there is a greater likelihood that suppliers would reimburse recipients.

## ISSUES FOR CONSIDERATION

3.3.8 The law provides that the Commissioner need not give a refund where an entity makes a supply to a recipient unless the supplier has first reimbursed the recipient. The compliance costs arising from the reimbursement may vary considerably among entities.

### **Q3.8**

Are there any issues with the operation of the restriction on refund provision which need to be addressed to minimise the compliance costs of affected parties?

### **Q3.9**

Are there better ways to ensure that entities refund their customers for overpaid GST and ensure that compliance costs are minimised? If so, what alternative arrangements should apply?



## CHAPTER 4: GST ADMINISTRATIVE ENVIRONMENT

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4.1: Administrative environment — overview of recent changes

4.2: Rulings

4.3: Periods of review

4.4: General interest charge



## CHAPTER 4.1: ADMINISTRATIVE ENVIRONMENT — OVERVIEW OF RECENT CHANGES

- 4.1.1 It is important that taxes have rules that establish the environment within which they are administered. In Australia, these cover areas such as rulings, periods of review and the application of interest charges. There are some rules which are specific to the GST and also apply to some other indirect taxes which differ from those applied to other areas of the tax system such as income tax.
- 4.1.2 In November 2003, the former government announced a review of aspects of income tax self assessment (RoSA). The review focused on identifying whether the income tax laws achieved a fair balance between protecting the rights of individual taxpayers and protecting the revenue for the benefit of the whole Australian community.
- 4.1.3 The recommendations of the report requiring legislative solutions were given effect by amendments to the tax law in 2005,<sup>128</sup> with the majority of the remaining recommendations requiring administrative solutions being implemented progressively by the Tax Office.
- 4.1.4 In March 2007, the former government announced that the Board of Taxation was being asked to consult publicly on the scope to apply consistent self-assessment principles across all federally administered taxes (including the GST). The review in particular had the objective of assessing the merits of possible improvements to the taxation system in the areas of rulings, amendment periods and the application of general and shortfall interest charges.
- 4.1.5 On 11 June 2008, the Government announced the terms of reference for the above review would be replaced with this Review of the Legal Framework for the Administration of the Goods and Services Tax.

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128 These were contained in the *Tax Laws Amendment (Improvements to Self Assessment) Act (No. 1) 2005* and the *Tax Laws Amendment (Improvements to Self Assessment) Act (No. 2) 2005*.

4.1.6 The remainder of this chapter examines the following areas of the administrative environment of the GST:

- rulings;
- period of review; and
- general interest charge.

4.1.7 This review is not limited to a consideration of the possible application of the income tax changes to the above areas. However, the relevant income tax changes have been noted as background. Instead, the Board has the opportunity to consider a range of options to improve the overall GST administrative environment to reduce compliance costs, streamline and improve the operation of the GST and remove anomalies.

4.1.8 In addition, this review provides the opportunity to examine potential improvements to other areas of the legal framework for the administration of the GST covered in the earlier parts of this issues paper.

## CHAPTER 4.2: RULINGS

### PURPOSE

- 4.2.1 Australia's tax system relies heavily on voluntary compliance. Taxpayers and their advisers need to have a good understanding of the tax law in order for them to meet their obligations.
- 4.2.2 Rulings are a formal mechanism through which the Tax Office provides advice to taxpayers on the interpretation of the laws administered by the Commissioner. Rulings provide a means by which taxpayers can feel confident that they are assessing their tax liabilities in line with the Commissioner's interpretation of the law. Suppliers must be able to determine whether they have a liability for payment of GST (and a recoupment opportunity) at the time that a supply occurs. Taxpayers that rely on a ruling are provided with protection if, as a consequence of relying on the ruling, they underpay their GST liability or are overpaid a GST refund.

### DESCRIPTION

- 4.2.3 Indirect tax rulings are issued under the Commissioner's general power of administration of indirect tax laws<sup>129</sup> and applied to the GST, LCT and WET. The Board has been asked to consider how the current GST rulings regime could be improved to reduce compliance costs, streamline the operation of the GST and remove anomalies.
- 4.2.4 The only place where GST rulings are mentioned in the TAA is in section 105-60 in Schedule 1. This section, formerly section 37 of the TAA, had its origin in the rulings provision of the former sales tax system.<sup>130</sup> The reference, however, is not to a rulings system as a whole, but only to a taxpayer's ability to rely on the Commissioner's interpretation in cases where the Commissioner has altered a previous ruling.<sup>131</sup>

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129 TAA 1953, section 356-5 in Schedule 1.

130 *Sales Tax Assessment Act 1992*, section 77.

131 This concept of relying on indirect tax rulings only where they have changed is addressed in further detail below.

- 4.2.5 There are two types of GST rulings: private and public rulings.
- 4.2.6 GST private rulings are defined as any written ruling or written advice about GST that the Tax Office gives to a particular entity.<sup>132</sup> There are two types of private indirect tax rulings:
- specific private rulings, which provide specific advice to an entity about how the indirect tax law applies to its particular circumstances; and
  - written general advice, which is general advice to an entity which simply restates parts of a public indirect tax ruling or law without applying it to the entity's particular circumstances.
- 4.2.7 GST public rulings are defined as all forms of written advice involving the interpretation of the GST law, other than GST private rulings.<sup>133</sup> This is much broader than for income tax rulings, and includes booklets, guides and fact sheets. This means that because those other GST publications are binding it is necessary for them to be written in more legalistic language than would otherwise be the case. It may be that this has made them less useful than they might have been because they may have not been as easy to understand.
- 4.2.8 The Tax Office has advised that Tax Office Interpretative Decisions, Law Administration Practice Statements and technical skilling materials are not public indirect tax rulings because they do not constitute advice.<sup>134</sup> In addition, GST rulings do not include oral advice or assessments.<sup>135</sup>
- 4.2.9 The Commissioner makes class<sup>136</sup> and product<sup>137</sup> rulings in relation to other taxes, but not GST.

### Timing

- 4.2.10 Unlike private or public income tax rulings that may include specific times when they apply and cease, GST rulings do not have a legislative provision to govern when they apply.
- 4.2.11 GST rulings can be applied to transactions, however rulings may need to continue indefinitely where there is a regular or ongoing supply. This is

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132 Defined as a private indirect tax ruling in section 995-1 of the ITAA 1997. The legislative basis for private indirect tax rulings is sections 105-60 and 356-5 in Schedule 1 to the TAA 1953.

133 Defined as a public indirect tax ruling in section 995-1 of the ITAA 1997.

134 Australian Taxation Office, *Practice Statement Law Administration* (PS LA 2008/3) paragraph 60.

135 As per the definition of an indirect tax ruling in section 995-1 of the ITAA 1997.

136 A class of persons could be employees of a business, shareholders of a company or recipients of a particular government grant or subsidy.

137 A product is an arrangement in which a number of taxpayers enter into substantially the same transaction with an entity or group of entities, for example, managed investment schemes like agribusiness or film schemes.

subject to the Commissioner's discretion as, broadly, the Commissioner can change a GST private ruling that relates to a particular transaction at any time.

### Protection

- 4.2.12 A taxpayer is provided with protection in the event they rely on a GST ruling, and as a consequence, underpay their GST liability or are overpaid a GST refund by the Commissioner due to that ruling being altered.<sup>138</sup>
- 4.2.13 Protection includes protection from tax, penalties and interest charges.
- 4.2.14 The GST Act provides limited guidance on what would constitute an alteration of a ruling. For example, it is not clear if the withdrawal of a ruling would amount to an alteration.
- 4.2.15 With GST rulings, an action or actions must have been carried out by the taxpayer as a direct consequence of taking a ruling into consideration. This means that where a BAS is lodged and happens to be consistent with the ruling, this may not necessarily amount to reliance, and as a result the taxpayer would not be able to obtain the protection of the ruling.
- 4.2.16 This differs from the concept of reliance under the RoSA rulings regime where a taxpayer needs only to rely on a ruling that applies to them by acting (or omitting to act) in accordance with it.

### Objection and review rights

- 4.2.17 In the absence of an express legislative regime, there are no formal objection and review rights for GST private rulings.
- 4.2.18 Should a taxpayer undertake the proposed transaction as detailed in the GST private ruling and it results in a net amount for a tax period, one option open to the taxpayer is to request the Tax Office to make an assessment of their net amount for the tax period. The taxpayer can then object to the assessment under Part IVC of the TAA.
- 4.2.19 The Tax Office has advised<sup>139</sup> that in the interests of sound administration, it will review private indirect tax rulings on request. Ordinarily the review is conducted by a tax officer who was not involved in making the original decision.

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138 TAA 1953, section 105-60 of Schedule 1 provides legislative protection to entities against a retrospective GST liability if they rely on an indirect tax ruling. However, the Tax Office has advised that it adopts a broader administrative approach to GST rulings than is set out in the law. The Tax Office website says any taxpayer who relies on GST information contained in a public ruling is protected under the GST law.

139 Australian Taxation Office, *Practice Statement Law Administration* (PS LA 2008/3) paragraph 160.

## Implications for the supply chain

- 4.2.20 In a transaction-based tax like the GST, it is not only the party obtaining the ruling, but the obligations and entitlements of two parties which are affected by a particular transaction. However, GST private rulings only give protection to the taxpayer to whom it is specifically issued. Suppliers relying on upstream or downstream GST private rulings cannot share in the protection of these rulings. Further, one party may have a ruling without the knowledge input or consent of the other party.

## ISSUES FOR CONSIDERATION

- 4.2.21 Rulings provide a means by which taxpayers can feel confident that they are assessing their tax liabilities in line with the Commissioner's interpretation of the law. In 2005, a new advice and rulings regime was created in response to the recommendations from the Report on Aspects of Income Tax Self Assessment (RoSA). The RoSA rulings regime was incorporated into the TAA and applies to certain taxes,<sup>140</sup> including income tax, the Medicare levy, FBT and withholding tax.<sup>141</sup> This rulings regime, however, does not apply to indirect taxes such as the GST (other than fuel tax).
- 4.2.22 A comparison of the GST and income tax rulings systems is contained in Appendix F.

### Q4.1

Is there a need for the broader rulings regime to apply to GST, or is it appropriate that it is treated separately? If there is a need for the broader rulings regime to apply to GST, would there be a need for any GST specific adaptations to take account of GST being a transaction based tax? If yes, what would be needed?

### Q4.2

Does the fact that the GST law does not require the Commissioner to issue notices of assessment as a matter of course pose problems for the indirect tax rulings regime? If so, what changes should be made?

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140 TAA 1953, section 357-55 in Schedule 1 states that provisions about the following taxes are relevant for rulings: income tax, Medicare levy, FBT, franking tax, withholding tax, mining withholding tax, petroleum resources rent tax, the administration or collection of those taxes, a grant or benefit mentioned in section 8 of the *Product Grants and Benefits Administration Act 2000*, or the administration or payment of such a grant or benefit, a net fuel amount, or the administration or collection or payment of a net fuel amount.

141 TAA 1953, Division 357 in Schedule 1.



**Q4.3**

Do the current GST rulings provisions provide certainty for taxpayers concerning when rulings apply and cease? If not, what changes should be made?

**Q4.4**

Does the existing GST rulings system provide sufficient protection for taxpayers? If not, how should it be changed?

**Q4.5**

Should taxpayers have the right to object to a private ruling in respect of GST on a question of law?

**Q4.6**

Should the legal framework for the administration of the GST be altered to specifically provide for the issuing of GST product or class rulings?

**Q4.7**

Are there any other aspects of the existing GST rulings system that should be improved to provide taxpayers with greater certainty? If so, what changes should be made?



## CHAPTER 4.3: PERIODS OF REVIEW

### PURPOSE

- 4.3.1 It is inevitable that some errors will be made in determining the amount of GST due. This may result in the underpayment or overpayment of GST, or the payment of tax at the wrong time.
- 4.3.2 To address these errors, there exists a period, termed the period of review, during which extra payments of tax or additional refunds may be sought by the Commissioner or a taxpayer. The existence and duration of this period involves a balance between two competing concerns. Taxpayers should be liable for, or entitled to neither more nor less than required by the law. However, taxpayers should also be able to have certainty and finality in relation to their tax affairs.
- 4.3.3 To balance these concerns, the period of review should not significantly exceed the amount of time in which any errors could reasonably be identified by the Commissioner or taxpayer.
- 4.3.4 However, the period of review should only provide protection for mistakes, not for fraud or evasion.

### DESCRIPTION

#### General time limits

- 4.3.5 The GST is a tax applied to supplies and imports, not an annual assessment. Taxpayers become liable for GST (or entitled to an input tax credit) automatically upon making a supply (or acquisition). As discussed in Chapter 1.3, the taxpayer's net liability is payable on the twenty-first day or twenty-eighth day after the end of the tax period, depending on the payment cycle of the taxpayer. These liabilities are attributed to tax periods for which an overall net GST liability must be met (or a net credit entitlement refunded). The period of review for both liabilities and entitlements generally is connected to this tax period.

4.3.6 The period of review for GST is contained in Schedule 1 to the TAA. The provisions ensure that a four-year time limit generally applies on a taxpayer's liability and credit entitlements.

- The Commissioner may only recover unpaid indirect tax within four years.<sup>142</sup> That is, an unpaid amount ceases to be payable if four years have passed after the date it was due for payment.

4.3.7 Likewise, entitlements to refunds and credits expire four years after the end of the tax period or importation to which they are attributable.<sup>143</sup> An amendment<sup>144</sup> to the taxation law currently before Parliament will ensure that the four-year time limit will also apply where:

- the liability is created because it is later determined that a refund was overpaid to the taxpayer; and
- a refund is payable by the Commissioner due to a reduction in the liability of the taxpayer.

4.3.8 This four-year period applies to all GST transactions, with two exceptions:

- if a taxpayer or the Commissioner provides notification of an entitlement or liability within the four-year period, the GST may still be recovered even after the four-year period has passed; and
- where a taxpayer has engaged in fraud or evasion, there is no time limit.

### Input tax credits

4.3.9 For the GST, as well as there being a period of review for liabilities and refunds, the relevant provisions also create a separate period of review for input tax credits. This time for review of input tax credits is also four years. As with the period of review for liabilities and refunds, the period of review for input tax credits is connected to the attributed tax period of the input tax credit.<sup>145</sup>

4.3.10 Generally, input tax credits for acquisitions are attributable to the tax period in which consideration is provided for the acquisition or, unless the taxpayer accounts on a cash basis, an invoice is issued (Chapter 1 contains more information on input tax credits and attribution).<sup>146</sup> However, such input tax

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142 TAA 1953, section 105-50 in Schedule 1.

143 TAA 1953, section 105-55 in Schedule 1.

144 Tax Laws Amendment (2008 Measures No. 3) Bill 2008.

145 The main attribution rules are found in Division 29 of the GST Act. There are also other attribution rules, such as in some of the special rules in Chapter 4 of the GST Act.

146 GST Act, subsections 29-10(1)-(3).

credits cannot be claimed without a tax invoice and where this results in a claim being delayed, the input tax credit will instead be attributable to the tax period when a tax invoice is received.

- 4.3.11 A special provision operates to allow input tax credits for acquisitions to be attributed to later tax periods if they are not claimed in the tax period when either consideration is provided or an invoice is received.<sup>147</sup> This provision has the result that the time limit on claiming an input tax credit runs not from the time the eligibility arose, but from when the input tax credit is claimed.
- 4.3.12 Consequently, taxpayers are able to claim input tax credits in any tax period, and the period of review will not operate to prevent this as it will apply only from the tax period in which the claim is made.

### Other taxes

- 4.3.13 A number of other indirect taxes and credits, including WET, LCT and fuel tax credits, also have periods of review established by the same sections of the TAA.<sup>148</sup>
- 4.3.14 However, other taxes, including income tax, are subject to quite different rules. The Commissioner has two years to amend the income tax returns of an individual, a company that is a small business entity and the trustee of a trust estate that is a small business entity. The Commissioner has four years to amend the tax returns of all other taxpayers. There are integrity rules that deny the two year amendment period to taxpayers who carry on a business or are partners in a partnership that carries on a business that is not a small business entity or are the trustees or beneficiaries of a trust estate that is not a small business entity. In the case of fraud or evasion, there is no time limit on when the Commissioner may amend a tax return.

The income tax periods of review are more flexible than those for GST, with extensions being possible in certain circumstances including where an amendment is made (though only in relation to the matters amended), a court order is granted or the Commissioner and taxpayer agree.<sup>149</sup>

Additionally, as income tax is an assessment-based tax, its period of review runs from the date of lodgment. In contrast, as the GST is not assessment-based, the period of review runs from the date when the obligation becomes due and payable.

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147 GST Act, subsection 29-10(4).

148 TAA 1953, sections 105-50 and 105-55 of Schedule 1.

149 ITAA 1936, subsections 170(2), 170(3), 170(8).

## ISSUES FOR CONSIDERATION

- 4.3.15 Ideally, the rules around period of review should allow sufficient time for the correction of errors while also providing taxpayers with certainty and finality within a reasonable time.

### **Q4.8**

Does the existing fixed four-year period of review provide the best balance between providing certainty and ensuring the collection of the correct amount of tax?

### **Q4.9**

Are there any ways in which the operation of the GST periods of review would benefit from more closely resembling the income tax system?

### **Q4.10**

Is the present operation of the GST period of review appropriate for a transaction-based tax such as the GST?

### **Q4.11**

Do the rules relating to input tax credits, periods of review and attribution minimise complexity and compliance costs and provide an appropriate balance between the rights of taxpayers and protecting GST revenue? If not, what changes could be made to achieve this?

## CHAPTER 4.4: GENERAL INTEREST CHARGE

### PURPOSE

- 4.4.1 The general interest charge (GIC) was designed to ensure that taxpayers pay the right amount of tax by the due date. GIC also compensates the Government for not having use of the money that should have been remitted by the due date.
- 4.4.2 GIC applies to a variety of taxes, including income tax and the GST.

### DESCRIPTION

- 4.4.3 The GIC applies at a uniform rate of interest to known overdue tax debts. The GIC compounds daily from the day the tax is due until all tax and accrued general interest charges are paid. It is tax deductible and currently applies to most federal taxes administered by the Commissioner,<sup>150</sup> including GST.
- 4.4.4 The GIC rate is determined by adding a 7 percentage point uplift factor to the 90 day bank bill rate (the 'base rate'). The uplift factor's role is to make the GIC rate sufficiently high to encourage the prompt payment of tax liabilities when due, discouraging the use of tax debts as a source of business or private finance. For the April-June 2008 quarter the GIC annual rate was 14.69 per cent.
- 4.4.5 Registered entities are, under the core principles of the GST system, required to remit GST on taxable supplies they make. In some cases, a shortfall may arise from a 'GST wash transaction'. Broadly, a GST wash transaction arises where a supply that is incorrectly treated as not being subject to GST is made to a purchaser who would have been eligible to claim an input tax credit if the supply was treated as taxable – so that there is no overall impact on revenue. Currently, the Commissioner<sup>151</sup> allows a partial remission of the GIC to the

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150 TAA 1953, subsections 8AAB(4) and (5).

151 Tax Office, *Practice Statement Law Administration* (PS LA 2008/9).

base rate for inadvertent wash transactions and a full remission<sup>152</sup> of GIC for such transactions in more limited circumstances.

- 4.4.6 A shortfall interest charge (SIC)<sup>153</sup> has also been introduced into the income tax law. From the 2004-05 income year, a taxpayer whose income tax assessment is amended to increase their tax liability, incurs the SIC rather than the GIC on the shortfall amount during the shortfall period. That is, the SIC applies on a daily compounding basis from the due date for payment of the earlier, understated assessment to the day before the notice of the amended assessment is issued. There is a gap (21 days) between the issue of the notice of the amended assessment and the new due date— this is an interest free period. The higher GIC then accrues on any amount not paid by the new due date.
- 4.4.7 The SIC was introduced because, whilst the GIC is generally higher than commercial borrowing alternatives to discourage use of the Tax Office as a source of finance, in pre-amendment ‘shortfall’ cases, taxpayers are usually unaware of their debts. Consequently they are unable to respond to this incentive premium. The SIC therefore applies in lieu of the GIC for the period before assessments are amended.<sup>154</sup>
- 4.4.8 The SIC is intended to neutralise the loan benefit that taxpayers would otherwise receive from the temporary use of the shortfall amount, so that taxpayers who understate their tax liability when self assessing do not receive an advantage—in the form of a ‘free loan’—over those who meet their tax liabilities in full by the due date.
- 4.4.9 The SIC is set at the 90 day bank bill rate plus 3 percentage points, lowering the interest charge on shortfalls by 4 percentage points. The circumstances in which a taxpayer will be liable for the SIC are set out in Schedule 1 to the TAA.<sup>155</sup> The SIC is also tax deductible.
- 4.4.10 The SIC does not apply in a GST context. The GST system applies GIC to all debts. It does not draw a distinction between cases where an entity reports a net amount of X but only pays Y, and a case where an entity reports a net amount of Y (not realising that its liability was actually X) and pays this amount on time. In the latter instance, the entity would have an unknown debt of X-Y and the question arises as to whether it is appropriate for GIC to accrue on this debt up to the point of time that the entity is notified that the

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152 This includes where no comparative benefit has been obtained or GST has been accounted for in the correct period but by the wrong entity.

153 TAA 1953, subdivision 280-B in Schedule 1.

154 Explanatory Memorandum to Tax Laws Amendment (Improvements to Self Assessment) Bill (No .1) 2005.

155 TAA 1953, section 280-100 in Schedule 1.



shortfall exists (whether this notification is by way of assessment or otherwise).

- 4.4.11 Additionally, there may be instances that are unique to GST where an entity reports that it is entitled to a GST refund of X (and subsequently receives this refund), without realising that it is actually only entitled to a lesser refund of Y. Currently, GIC accrues on the amount overpaid to the entity from the date of overpayment, despite the fact that the entity would not know that the debt existed.
- 4.4.12 The income tax system operates on the basis of self assessment, with the Commissioner required to issue an assessment to taxpayers to crystallise liability, generally before returns are examined in any detail. However, the Commissioner need not and generally does not issue an assessment for a GST liability to crystallise.
- 4.4.13 By contrast, the GST law is self-actuating in the sense that liability for GST arises from making a taxable supply and its inclusion in the net amount of an entity. Liability does not depend on the issue of an assessment by the Commissioner.<sup>156</sup>

## ISSUES FOR CONSIDERATION

- 4.4.14 As noted above, the GIC seeks to provide an incentive for prompt payment of liabilities and to compensate the Government for the time value of money.
- 4.4.15 The Inspector-General of Taxation's Report on the Tax Office's administration of GST audits for large taxpayers released on 11 June 2008 recommended that the Government consult with the community on the need for legislative changes which have the effect of requiring or allowing the Tax Office to:
- adopt a default position of fully remitting the GIC in GST audit cases which result in adjustments that involve no net loss to the revenue such as wash transactions, cases involving documentation issues and cases where GST has been paid by the wrong entity; and
  - where warranted, address any undesirable behaviour on the part of the relevant taxpayer in relation to failing to account for GST on such transactions through a form of penalty.

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156 *Platypus Leasing Inc v. FCT (No. 3)* [2005] NSWSC 388.

- 4.4.16 The Assistant Treasurer and Minister for Competition Policy and Consumer Affairs announced on 11 June 2008 that this recommendation for legislative change would be considered by the Board as part of this review.

**Q4.12**

Are the current GIC arrangements in the legal framework for the administration of the GST working effectively in the context of the GST as a transaction-based tax, including their application to revenue neutral transactions, cases involving documentation issues and where GST has been paid by the wrong entity? Are any changes to the current GIC arrangements with regard to the GST desirable?

**Q4.13**

Should undesirable behaviour by entities be addressed by the introduction of a separate penalty?

**Q4.14**

Are there any specific problems with the operation of the GIC regime for particular entity types such as small business and non-profit bodies? If so, how could they be addressed?

**Q4.15**

Are there circumstances in which a 'SIC-like' charge would be appropriate for GST? How could this work given that usually there is no GST assessment?

## GLOSSARY

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ABN	<p>Australian Business Number</p> <p>A business identifier which acts as the GST registration number. For a recipient to claim input tax credits, the ABN must normally appear on the supplier's tax invoice.</p>
BAS	<p>Business Activity Statement</p> <p>Used by entities to account to the Tax Office for their GST liabilities and credit entitlements.</p>
Class rulings	<p>Specific types of public rulings, which aim to provide certainty to participants in similar arrangements and remove the need for individual participants to seek private rulings.</p>
FBT	<p>Fringe benefits tax</p>
GIC	<p>General Interest Charge</p> <p>A uniform interest charge imposed where there is a late payment of a tax debt. The rate is worked out using a statutory formula based on the monthly average yield of 90 day Bank Accepted Bills published by the Reserve Bank of Australia. The rate of GIC generally reflects the interest rate charged by financial institutions on unsecured loans and is updated quarterly.</p>
GST	<p>Goods and services tax</p>
GST Act	<p><i>A New Tax System (Goods and Services Tax) Act 1999</i></p>
GST free	<p>One of the types of supply that is excluded from being subject to GST.</p> <p>There is no liability for GST on a GST free supply, but the supplier can claim credits for the GST on its own related acquisitions.</p> <p>The main GST free items are specified exports, health, basic food, education, international travel and certain charitable activities.</p>
GST private rulings	<p>Any written ruling or written advice about GST that the Commissioner gives to a particular entity.</p>
GST public rulings	<p>All forms of written advice involving the interpretation of the GST law, other than GST private rulings.</p>
GST Regulations	<p><i>A New Tax System (Goods and Services Tax) Regulations 1999</i></p>
Indirect tax rulings	<p>Any ruling or advice given or published by the Commissioner in relation to GST, WET and LCT (but not fuel tax).</p>

Indirect taxes	<p>The liability for an indirect tax falls on someone with the intent for them to pass on the cost of the tax, through means such as higher prices, to the persons it is intended bear the cost of the tax.</p> <p>For the purposes of the TAA, indirect taxes are defined to include GST, WET and LCT.</p>
Input tax credits	<p>If a recipient of goods or services is a registered entity, it will normally be able to claim a credit for the amount of GST in the price of its acquisition, provided it holds a tax invoice. This credit is offset against any GST on goods or services that the recipient supplies to its own customers, resulting in a net amount payable or refundable.</p>
Input taxed supplies	<p>One of the types of supply that is not directly subject to GST.</p> <p>There is no liability for GST on supplies made, and the supplier cannot claim credits for the GST on its own acquisitions other than certain acquisitions for which reduced input tax credits are available.</p> <p>The main input taxed items are financial services and the supply of residential premises.</p>
<i>Intergovernmental Agreement on the Reform of Commonwealth-State Financial Relations</i>	<p>This agreement exists between the Commonwealth and the States and Territories. Under the agreement, all GST revenue is paid to the States and Territories and any change to the GST rate or base requires the agreement of all the States and Territories.</p>
ITAA36	<i>Income Tax Assessment Act 1936.</i>
ITAA97	<i>Income Tax Assessment Act 1997.</i>
LCT	<p>Luxury car tax</p> <p>LCT is a tax of 25 per cent imposed on luxury cars. It is generally payable when a car is sold or imported at the retail level. It is in addition to any GST payable. A Bill currently before the Parliament will increase this rate to 33 per cent.</p>
Partnership	<p>An association of persons (other than a company or a limited partnership) carrying on business as partners, or in receipt of ordinary income or statutory income jointly, or a limited partnership.</p>
Period of review	<p>For income tax, the period in which the Commissioner can make an amendment to a taxpayer's assessment.</p> <p>There are significant differences between the GST rules and the equivalent income tax provisions (see Chapter 3 for details).</p>
Private ruling (income tax)	<p>A written ruling on the way in which the Commissioner considers a relevant provision applies or would apply to a person in relation to a specified scheme.</p>

Product ruling (income tax)	Specific types of public rulings which aim to provide certainty to participants in similar arrangements and remove the need for individual participants to seek private rulings.
Public ruling	A published written ruling on the way in which the Commissioner considers a relevant provision applies or would apply to entities generally or a class of entities.
RoSA	Review of Aspects of Income Tax Self Assessment  Recommendations from the 2004 review aimed to improve taxpayer certainty by improving the framework for the Commissioner's advice, reducing exposure to the risk of increased liabilities, and mitigating the penalty and interest consequences of errors made by taxpayers acting in good faith.
RoSA rulings regime	Division 357 of Schedule 1 to the <i>Taxation Administration Act 1953</i> provides a rulings regime which applies to specified taxes, including income tax. This regime does not apply to indirect taxes such as the GST.
SAM	Simplified Accounting Methods  The Commissioner can create simplified accounting methods that entities with turnover below \$2 million can choose to apply with a view to reducing their costs of complying with the requirements of the GST.
SIC	Shortfall Interest Charge  As a result of the RoSA changes, the SIC replaces the GIC with a charge at a lower rate for the period between when an income tax shortfall amount would originally have been due and when the shortfall is corrected in an amended assessment.
TAA	<i>Taxation Administration Act 1953</i>
Tax Law Partnership	An association of persons that is not in business, but that is nevertheless in receipt of ordinary income or statutory income jointly.
Tax Office	The Australian Taxation Office is the Government's principal revenue collection agency. Its role is to manage and shape tax, excise and superannuation systems that fund services for Australians.
Tax periods	GST reporting and accounting periods may be monthly, quarterly or annual, depending on the taxpayer's circumstances.
Value-added tax	A tax imposed on the value (usually defined as sales less purchases) that is added at each stage of the manufacturing and distribution process and levied at the point of sale to the final consumer.
Wash transaction	Transactions with no net impact on revenue that is where supply that is incorrectly treated as not being subject to GST is made to a purchaser who would have been eligible to claim an input tax credit if the supply was treated as taxable.

WET

Wine equalisation tax

A value-based tax which is applied to wine consumed in Australia. It applies to assessable dealings with wine (unless an exemption applies), which include wholesale sales, untaxed retail sales and applications to own use. The WET rate is 29 per cent of the wholesale sale value.

## APPENDIX A: TERMS OF REFERENCE

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### Terms of reference for Consultation on Review of the Legal Framework for the Administration of GST

The Board of Taxation should consult with relevant stakeholders and report to the Government on the merits of possible changes to the legal framework for the administration of the goods and services tax. The intent of any possible changes should be to reduce compliance costs, to streamline and improve the operation of the GST and remove anomalies in the following areas:

#### Liabilities and entitlements — as set out in the *Taxation Administration Act 1953* (Tax Administration Act)

For example:

- refunds of overpaid GST;
- period of review of GST payable and refunds;
- general interest charge; and
- rulings.

#### Adjustment and entity rules — as set out in the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act)

For example:

- adjustments to previously declared GST or input tax credits;
- correcting GST mistakes;
- tax law partnerships and general law partnerships;
- GST grouping; and
- joint ventures.

#### Accounting for GST — as set out in the GST Act

For example:

- attribution of GST and input tax credits and tax invoice requirements; and
- tax periods and accounting for GST and calculating GST obligations.

In pursuing the reference, the Board should ensure that its consultations and recommendations focus on the legal framework for the administration of the GST as set out in the Tax Administration Act and GST Act. Whilst the Board may consider related issues to the above categories consistent with its terms of reference, its work should not extend to the rate of the GST or the scope and extent of what goods and services are subject to the GST. The Board should also not examine questions of the Commissioner of Taxation's effectiveness in administering the GST law as these are subject to separate ongoing review by other statutory office holders.

The Board should have regard to the design features of the GST as a multi-stage value-added tax and should also ensure that any possible changes do not undermine the integrity of the GST. In considering any changes to reduce compliance costs to streamline and improve the operation of the GST and remove anomalies, the Board should ensure that its recommendations are broadly revenue-neutral. The Board should also consider the implications of any possible changes to GST administration provisions for other indirect taxes that currently share common tax administration provisions in the Tax Administration Act or the GST Act.

The Board should consult widely with business on the basis of a discussion paper and then undertake targeted consultation with affected taxpayers, including small and large businesses, professional bodies and State and Territory Governments. Regional representatives should also be included in the consultations. The Board should report to the Government by the end of December 2008 on the outcome of its consultations and its recommendations.



# APPENDIX B: QUESTIONS

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## LIST OF QUESTIONS INCLUDED THROUGHOUT THE PAPER

### Chapter 1: Basic administrative rules

Q1.1 Are the relevant thresholds for registration easy to understand and able to be calculated easily by taxpayers? If not, how can these calculations be simplified and improved?

Q1.2 Do taxpayers find the system of registration and cancellation easy to comply with? If not, what aspects are the most difficult to comply with? In what ways can the system of registration and cancellation be simplified and improved?

Q1.3 Are the circumstances in which taxpayers can choose or are required to cancel their registration easily understood by taxpayers? Does the GST law provide the appropriate balance between certainty and flexibility for taxpayers in determining the date of effect from which registration and cancellation of registration apply? If not, how could this be improved?

Q1.4 Do foreign entities find the process of registration, cancelling registration, refunding and remission of GST easy to comply with? If not, how can the process be simplified and improved? Are there any anomalies that exist? If so, what changes are required to address them?

Q1.5 Are there any factors that discourage foreign entities from registration? If so, what change should be considered?

Q1.6 Do the current arrangements for resident agents acting for non-residents and the voluntary reverse charge mechanism operate effectively to enable their use by non-resident entities? If not, how could their operation be improved?

Q1.7 Do the tax invoice, recipient-created tax invoice and adjustment provisions operate effectively to minimise anomalies or compliance costs? If not, in what way should they be modified?

Q1.8 Do the GST invoice and adjustment note requirements add additional compliance costs to the normal commercial invoice requirements? If so, how can those costs be minimised?

Q1.9 Does the legal framework for the administration of the GST apply effectively where there is a dispute about the status of a supply and the supplier refuses to issue a tax invoice or adjustment note? If not, what changes should be made?

Q1.10 Are there inconsistencies between GST record keeping requirements and those for other legislation which add to compliance costs? If so, how can these be harmonised?

Q 1.11 Are there any ways in which the present law relating to:

- GST returns and lodgment;
- the GST payment process; or
- tax periods and net amounts,

could be improved?

Q1.12 Are any changes desirable to the legal framework for the administration of the GST to ensure that refunds of GST are paid as soon as possible, consistent with maintaining the integrity of the GST system? If so, what changes should be made?

Q1.13 Do the rules concerning monthly, quarterly and annual tax periods operate effectively? Do they correspond sufficiently with the reporting periods that apply for other reporting purposes? If not, how should they be modified?

Q1.14 Does the present attribution system, including the special attribution rules, provide clear and accurate rules on when liabilities and entitlements arise while also minimising compliance costs? If not, how should it be modified?

Q1.15 Are the GST accounting methods as closely aligned with commercial accounting practices as possible? If not, how can they be further aligned?

Q1.16 Is the present availability and operation of the two accounting bases, including their interactions in transactions between cash and accruals taxpayers, appropriate? If not, how should it be modified?

Q1.17 Is the current treatment of contra transactions for GST purposes appropriate? If not, what changes could be made to improve their treatment and minimise compliance costs?

Q1.18 Do the discretions in the GST law presently available to the Commissioner balance certainty and flexibility?

Q1.19 Should any changes be made to the discretions in the GST law presently available to the Commissioner?

Q1.20 Are the circumstances in which powers may be exercised by way of legislative determination by the Commissioner appropriate and sufficient? Should there be greater or less reliance on legislative determinations compared to general discretions?

Q1.21 Is the current scope of the reviewable GST decisions appropriate?

## Chapter 2: Other rules

Q2.1 Does the GST law apply in relation to different entities in a way that is streamlined and reduces compliance costs? Are there ways in which it could be improved and any anomalies removed?

Q2.2 Are any changes needed to the current treatment of tax law partnerships as entities to ensure that the GST law operates effectively? If so, what changes should be made?

Q2.3 Does the GST law deal appropriately in circumstances in which:

- sole traders or partners die and their assets are passed to the control of an executor or trustee of the deceased's estate; or
- entities become incapacitated?

If not, what changes should be made to ensure that the GST law operates effectively?

Q2.4 Do the rules for:

- forming, operating, altering and dissolving a GST group, a GST religious group, a GST joint venture and a GST branch; and
- reporting their GST liabilities and entitlements

achieve an appropriate balance between providing flexibility, minimising compliance costs and ensuring the integrity of the GST system? If not, how should they be modified?

Q2.5 Do the current arrangements for the timing of entry into and exit from GST groups, and accounting for GST liabilities upon entry into and exit from GST groups, operate effectively? If not, what changes are appropriate to improve their operation whilst minimising compliance costs?

Q2.6 Which aspect of GST reporting is the most arduous for small business:

- keeping records;
- compiling information;
- completing the BAS form; or
- other (please outline)?

How could this be improved?

Q2.7 Would a formula-based approach to estimating input tax credits be helpful to small businesses without GST free transactions (like many tradespeople and some small caterers)? Would small non-profit organisations find it helpful?

Q2.8 Would redesigning BAS reporting options on the BAS form for small business to exclude Items G1, G2, G3, G10 and G11 reduce small business confusion and errors on the BAS? Are there other design options which could achieve this?

Q2.9 If you are using one of the existing SAMs, what factors encouraged you to do so? Conversely, if you have chosen not to use a SAM, what factors influenced your choice? Would these factors apply to an expansion of the business norms and snapshot methods under the BAS Easy proposal?

Q2.10 Are the existing reporting options (that is, annual, paying GST by instalments, Option 2 and Option 3 on the BAS), well balanced between ensuring the integrity of the GST system and minimizing compliance costs and adverse cash-flow consequences for small business? If not, what changes would assist in achieving the right balance?

Q2.11 What do you see as the potential advantages or the potential problems of the BAS Easy proposal for your business?

Q2.12 Do the GST voucher provisions operate effectively? If not, what changes should be made?

Q2.13 Does the financial acquisitions threshold operate effectively and minimise compliance costs for affected taxpayers? If not, what changes should be made to simplify it and reduce compliance costs?

Q2.14 Do the associate provisions that apply to transactions between associates for no consideration apply appropriately and interact effectively with other areas of the GST law? If not, what changes should be made to ensure that the GST law operates effectively?

### Chapter 3: Subsequent events

Q3.1 Are the adjustment provisions easy to understand and are adjustments easy to make? What impediments, if any, are there to making adjustments? Are the method statements or formulae specifying how to work out adjustments sufficiently clear? If not, how could they be modified?

Q3.2 Are the adjustment provisions aligned with the transactions that an entity would process for accounting and income tax purposes?

Q3.3 Are the adjustment threshold amounts, the number of thresholds and the timing of adjustments appropriate? Do they reflect an appropriate balance between accuracy and compliance costs? If not, how could they be modified?

Q3.4 There are many different adjustment provisions in the GST Act. Are there any unintended circumstances that arise due to the interaction of the different adjustment provisions with one another and other areas of the GST law?

Q3.5 Do the going concern provisions operate effectively? If not, what changes should be made to improve their operation and minimise the compliance costs of affected parties?

Q3.6 Do the adjustment provisions cover all transactions where an adjustment should be available? Are there any other issues or anomalies with the adjustment provisions that need to be addressed? If so, what changes are needed?

Q3.7 Does the process for correcting GST mistakes encourage taxpayers to accurately determine their liability, whilst imposing the lowest practical compliance costs? Is there a need to change the operation of the law with regard to correcting GST mistakes to meet the above objectives? If so, what changes should be made?

Q3.8 Are there any issues with the operation of the restriction on refund provision which need to be addressed to minimise the compliance costs of affected parties?

Q3.9 Are there better ways to ensure that entities refund their customers for overpaid GST and ensure that compliance costs are minimised? If so, what alternative arrangements should apply?

### Chapter 4: GST Administrative environment

Q4.1 Is there a need for the broader rulings regime to apply to GST, or is it appropriate that it is treated separately? If there is a need for the broader rulings regime to apply to GST, would there be a need for any GST specific adaptations to take account of GST being a transaction based tax? If yes, what would be needed?

Q4.2 Does the fact that the GST law does not require the Commissioner to issue notices of assessment as a matter of course pose problems for the indirect tax rulings regime? If so, what changes should be made?

Q4.3 Do the current GST ruling provisions provide certainty for taxpayers concerning when rulings apply and cease? If not, what changes should be made?

Q4.4 Does the existing GST ruling system provide sufficient protection for taxpayers? If not, how should it be changed?

Q4.5 Should taxpayers have the right to object to a private ruling in respect of GST on a question of law?

Q4.6 Should the legal framework for the administration of the GST be altered to specifically provide for the issuing of GST product or class rulings?

Q4.7 Are there any other aspects of the existing GST rulings system that should be improved to provide taxpayers with greater certainty? If so, what changes should be made?

Q4.8 Does the existing fixed four-year period of review provide the best balance between providing certainty and ensuring the collection of the correct amount of tax?

Q4.9 Are there any ways in which the operation of the GST periods of review would benefit from more closely resembling the income tax system?

Q4.10 Is the present operation of the GST period of review appropriate for a transaction-based tax such as the GST?

Q4.11 Do the rules relating to input tax credits, periods of review and attribution minimise complexity and compliance costs and provide an appropriate balance between the rights of taxpayers and protecting GST revenue? If not, what changes could be made to achieve this?

Q4.12 Are the current GIC arrangements in the legal framework for the administration of the GST working effectively in the context of the GST as a transaction-based tax, including their application to revenue neutral transactions, cases involving documentation issues and where GST has been paid by the wrong entity? Are any changes to the current GIC arrangements with regard to the GST desirable?

Q4.13 Should undesirable behaviour by entities be addressed by the introduction of a separate penalty?

Q4.14 Are there any specific problems with the operation of the GIC regime for particular entity types such as small business and non-profit bodies? If so, how could they be addressed?

Q4.15 Are there circumstances in which a 'SIC-like' charge would be appropriate for GST? How could this work given that usually there is no GST assessment?

## APPENDIX C: COMMISSIONER'S DISCRETIONS AND DETERMINATIONS<sup>157</sup>

Reference in the GST Act	Discretion/Determination
9-85	Converting other currencies into Australian currency.
11-30(5)	Methods for working out extent of creditable purpose of creditable acquisition.
13-20(3)	Methods for determining amount paid for insurance or transport for the purposes of the value of importations.
15-25(4)	Methods for determining the extent of creditable purpose for creditable importations.
17-20(1)	In specified circumstances a net amount may be worked out to take account of other specified matters. The matter must relate to the correction of errors made in determining net amounts in the immediately prior tax period.
25-10(1)	The date of effect of registration.
25-57(1)	May cancel registration if applied for within 12 months of registration, and the registrant is not required to be registered. May have regard to length of registration, prior registration status and any other relevant matters.
25-60(1)	Date on which cancellation of registration takes effect.
27-22(1)	May revoke election of monthly tax periods within 12 months where GST turnover is below tax period turnover threshold. May have regard to duration of elections, prior registration status and tax periods, as well as other relevant matters. May specify date of effect; provided the date is the first of January, April, July or October.
27-25(2)	Deciding the date of effect of the 'cancellation' of a determination made by the Commissioner which requires an entity to report GST monthly.
27-30(1)	Where relevant tax periods change or become registered, determine a tax period of less than three months.
27-37(1)	Determine tax periods applying to an entity to be tax periods requested by that entity if tax meets tax period threshold, request is consistent with relevant commercial accounting periods, tax periods result in twelve complete tax periods in a year and any requirements in the regulations are met.
27-38(2)	Deciding the date of effect of a 'cancellation' of a determination made by the Commissioner under s27-37(1) (which allows an entity to adopt 12 tax periods per year, consistent with their commercial accounting periods).

<sup>157</sup> The term 'discretion' is used to describe provisions in the law that are not self-operating, so that the outcome depends on the Commissioner forming an opinion, making a determination, exercising a power or refusing to do any of the above. This attachment contains a range of these discretions which are included in the GST Act.

Reference in the GST Act	Discretion/Determination
29-10(3)	Circumstances in which a tax invoice is not required to claim an input tax credit.
29-20(3)	Circumstances in which an adjustment note is not required make a decreasing adjustment.
29-25(1)	The tax period to which specified types of GST, input tax credits or adjustments are attributable where satisfied that certain criteria are satisfied.
29-40(1)(c)	Enterprises may account on a cash basis.
29-45(1)	Entities to account on a cash basis if, having regard to the nature and size of the enterprise as well as the nature of the accounting system, this is appropriate.
29-70(1)	Treat as a tax invoice a particular document that is not a tax invoice.
29-70(3)	A class of tax invoice may be issued by the recipient of a supply.
29-75(1)	Treat as an adjustment note a particular document that is not an adjustment note.
29-75(3)	Circumstances where a specified period of time applies for the issue of an adjustment note by a supplier after becoming aware of the adjustment.
31-8(1)(b), 31-10(1)(b), and 31-10(2)(b)	A further period for the provision of a GST return.
31-15(2)	The form in which a nil return is to be provided.
31-20(1)	Direct a taxpayer to provide further or fuller returns.
31-25(3)	Electronic formats for lodgment must receive approval.
33-10(1)	Manner for payment not provided electronically.
38-185(1) Items 1-4	May allow further time for GST free export of goods from Australia.
40-165(1)(c)	On written application by the supplier, may decide that an event is a fundraising event, provided the Commissioner is satisfied that the supplier is not in a business of conducting such events and the proceeds of the event are for the direct benefit of the supplier's charitable or non-profit purposes.
40-165(4)	May determine in writing the frequency with which events may be held before they form a series of events.
48-85	Deciding the date of effect of approval for entities to operate as a GST group. The date of effect must be the beginning of a tax period applying to these entities or a day during an annual tax period or instalment tax period applying to the group.



Reference in the GST Act	Discretion/Determination
49-85	Deciding the date of effect of an approval for entities to form a GST religious group. The date must be a day when a tax period begins for all members of the group.
51-52(5)	Disallowing an election by an operator of two or more joint ventures to provide consolidated returns for these joint ventures if satisfied that the entity has a history of failing to comply with their tax obligations.
51-85	Deciding the date of effect of an approval for entities to form a GST joint venture. The date must be a day when a tax period begins for all members of the joint venture.
54-10	Deciding the date of effect of the registration of a GST branch. This date must not be before the specified date in the relevant application, or the date the relevant enterprise commences.
54-80	Deciding on the date of effect of the cancellation of registration as a GST branch.
57-35	Deciding the tax periods of resident agents.
66-70(1)	May determine in writing whether acquisitions of certain second hand goods are within the scope of the provisions relating to goods divided for re-supply and the amount of GST or credits.
70-20(3)	May determine in writing methods for working out, for reduced input tax credits, the extent to which an acquisition is made for a creditable purpose.
75-5	May allow a further period after the making of a supply of real property for the vendor and purchaser to agree to apply the margin scheme.
75-35	May, by legislative instrument, determine requirements for making approved valuations for the margin scheme.
78-90	Can specify the place and manner for payments of certain amounts of GST or of increasing adjustments under the insurance provisions by entities that are not registered or required to be registered.
83-30	Need not register a non-resident if satisfied that their GST turnover is below the registration turnover threshold but for supplies subject to a voluntary reverse charge.
105-20	Can specify the place and manner for payments of GST for supplies in satisfaction of debts by entities that are not registered or required to be registered.
123-5	May determine in writing simplified accounting methods for specified retailers making mixed supplies or supplies of food or small enterprise entities making mixed supplies or acquisitions.

<b>Reference in the GST Act</b>	<b>Discretion/Determination</b>
129-20(3)	May determine in writing, having regard to the income tax record keeping requirements, that fewer tax periods are adjustment periods for particular classes of acquisitions or imports that do not relate to business finance.
131-10(2)(b)	May allow an annual apportionment election to take effect from the start of a requested tax period.
131-20(3)	May disallow an annual apportionment election if satisfied that the taxpayer has not complied with a tax law.
151-10	May allow an annual tax period election to take effect from the start of a requested tax period.
151-20(3)	May, when requested, allow taxpayers to elect to have annual tax periods after the date by which the election would otherwise be required.
151-25(3)	May disallow an annual tax period election if satisfied that the taxpayer has not complied with a tax law.
151-60(1)(d)	May allow an entity a further period to provide a GST return for an annual tax period ended due to bankruptcy etc.
151-65(2)	May allow an entity a further period to provide a GST return for an annual tax period ended due to a change in membership in a GST group.
153-65(1)	May determine in writing that specified supplies or acquisitions by an entity on behalf of another entity to or from a third party are covered by arrangements under the special rules regarding agents and principals.
162-15	May allow an election to pay GST by instalments from the start of a tax period requested.
162-25(3)	May allow an election to pay GST by instalments to be made after it would otherwise be required.
162-30(3)	May disallow an election to pay GST by instalments if the taxpayer has not complied with the tax law.
162-75	Can require a taxpayer to give a notice to the Commissioner relating to an instalment payment on or before the date of payment.
162-90(1)(d)	May allow an entity a further period to provide a GST return for an instalment tax period ended due to bankruptcy etc.
162-95(2)(b)	May allow an entity a further period to provide a GST return for an instalment tax period ended due to a change in membership in a GST group.
162-135(1)	May work out a taxpayer's notified instalment amount (ie the default GST instalment the taxpayer must pay unless they choose to calculate their own instalments).
165-40	May declare, where the anti-avoidance provisions apply, an amount is the taxpayer's net amount in a specified tax period or is the amount payable in relation to a specified taxable importation.

<b>Reference in the GST Act</b>	<b>Discretion/Determination</b>
165-45(3)	May, where considering it fair and reasonable to negate a GST disadvantage that an entity has received due to a scheme where the anti-avoidance provisions have been applied, declare that an amount is the taxpayer's net amount in a specified tax period or is the amount payable in relation to a specified taxable importation.
165-55	May, in making declarations under the anti-avoidance rules, consider the facts and circumstances to be other than those that apply.
195-1 Subdivision 38-P period	May, in special circumstances, decide that the subdivision 38-P period finishes at an appropriate time when it otherwise would not finish at this time.



## APPENDIX D: EXAMPLE OF A BAS EASY SNAPSHOT METHOD APPROACH<sup>158</sup>

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To use the BAS Easy snapshot method you must have a SAM turnover of \$2 million or less.

If you use this method, you must take a snapshot of your trading pattern. That is, you must work out your input tax credits on trading (non-capital) purchases and GST on trading sales for four weeks. You calculate a ratio as follows:

$$\frac{\text{Total input tax credits for four weeks}}{\text{Total GST on sales for four weeks}}$$

You repeat this for another four-week period during the year. This second snapshot you conduct is to allow for seasonal fluctuations.

You then average these two ratios and apply this average ratio to your total sales for the quarter to estimate your input tax credits.

You can use the average ratio for up to three years.

### EXAMPLE: BAS EASY SNAPSHOT METHOD

Harry Carpenter runs Harry the Handyman, a home repair service and carpentry business. Due to the customised nature of the repair business, Harry makes many individual purchases of inputs, usually purchased at the closest hardware or building supplier to the customer's house. At the end of each quarter he has a large number of receipts to process to calculate the purchases figure for his BAS. He has no employees.

Harry is eligible for, and elects to use, the BAS Easy snapshot method to estimate his input tax credits.

Harry chooses March and September from the previous year as his snapshot months. Harry calculates input tax credits on purchases and GST on sales for March. He calculates the ratio of input credits on purchases to GST on sales from trading (0.73). He does the same for September, which is 0.77. The average of the two ratios is 0.75.

Harry's sales from normal trading for the period are \$110,000 and the GST on these is \$10,000 (1/11<sup>th</sup> of \$110,000). His BAS Easy estimate of input tax credits on trading purchases is \$7,500 (0.75 of \$10,000). Harry also sells a piece of equipment for \$3,300 (GST \$300) and buys a replacement for \$5,500 (input tax credit \$500).

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158 Industry and Small Business Policy Division, Department of Innovation, Industry, Science and Research, unpublished material.

Harry suspects his sales are going to be down by about 20 per cent on last year so the GDP instalment for GST calculated by the Tax Office is not suitable. He does not want to vary the amount in case of penalties if his estimate is not within 85 per cent of actual liability. He would also need to pay for accounting advice.

Harry decides to use BAS Easy snapshot for GST. His BAS Easy calculation sheet is as follows.

Draft illustrative example only<sup>159</sup>

Tax period

30/09/09

BAS Easy GST Calculation Sheet

Name

Harry Carpenter

**Do not lodge the calculation sheet with your BAS**

We recommend you file it with a copy of the BAS to which it relates

**GST amounts you owe the Tax Office from sales**

	Ordinary (for example trading) sales		G1A \$	<b>110,000</b>	
	Other sales (including of capital items)		G1B \$	<b>3,300</b>	
	Total sales (including all GST collected)		G1	<b>113,300</b>	G1 on the BAS
G2	Export sales	G2 \$			<del>☒</del>
G3	Other GST free sales	G3 \$			<del>☒</del>
G4	Input taxed sales	G4 \$			<del>☒</del>
G5	G2 + G3 + G4		G5 \$		<del>☒</del>
G6	Total sales subject to GST (G1 minus G5)		G6 \$	<b>113,300</b>	<del>☒</del>
G7	Adjustments (if applicable)		G7 \$		<del>☒</del>
G8	Total sales subject to GST after adjustments (G6 + G7)		G8 \$	<b>113,300</b>	<del>☒</del>
G9	GST on sales (G8 divided by eleven)		G9 \$	<b>10,300</b>	<del>☒</del>

**GST amounts the Tax Office owes you from purchases**

G10	Capital purchases	\$	<b>5,500</b>	<del>☒</del>	
G10 A	GST on capital purchases GST (G10 divided by 11)		G10A \$	<b>500</b>	<del>☒</del>
	Non-capital purchases				
	Trading sales (G1A)	G1A \$	<b>110,000</b>	<del>☒</del>	
	BAS Easy ratio (to 2 decimal places between 0 and 1)	G11A	<b>.75</b>		
	Estimated purchases (G1A times G11A)	G11B	<b>82,500</b>	<del>☒</del>	
G11 C	GST on non-capital purchases (G11B divided by 11)		G11C \$	<b>7,500</b>	<del>☒</del>
G12	GST on purchases (G10A plus G11C)		\$	<b>8,000</b>	<del>☒</del>

**Net GST**

Net GST payable (G9 minus G12 is positive)	\$	<b>2,300</b>	<del>☒</del>	1A in Summary section of the BAS
Net GST refundable (G9 minus G12 is negative)	\$		<del>☒</del>	1B in Summary section of the BAS

159 Industry and Small Business Policy Division, Department of Innovation, Industry, Science and Research, unpublished material.





## APPENDIX E: EXAMPLE OF A BAS EASY BUSINESS NORMS METHOD APPROACH<sup>160</sup>

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To use the BAS Easy business norms method you must have a SAM turnover of \$2 million or less.

If you use this method, the Tax Office will issue you with a ratio.

You can use the ratio for up to three years.<sup>161</sup>

### EXAMPLE: BAS EASY BUSINESS NORMS METHOD

Suppose that Harry Carpenter is eligible for, and elects to use, the BAS Easy business norms method to estimate his input tax credits. The Tax Office issues Harry with a BAS Easy business norms ratio for his sub-industry, which is 0.72. His BAS Easy calculation sheet is as follows.

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160 Industry and Small Business Policy Division, Department of Innovation, Industry, Science and Research, unpublished material.

161 Depending on revenue implications, may only be available to start up businesses during the first year of operation.

Draft illustrative example only <sup>162</sup>

Tax period

30/09/09

BAS Easy GST Calculation Sheet

Name

Harry Carpenter

**Do not lodge the calculation sheet with your BAS**

We recommend you file it with a copy of the BAS to which it relates

**GST amounts you owe the Tax Office from sales**

	Ordinary (for example trading) sales		G1A \$	<b>110,000</b>	
	Other sales (including of capital items)		G1B \$	<b>3,300</b>	
	Total sales (including all GST collected)		G1	<b>113,300</b>	G1 on the BAS
G2	Export sales	G2 \$			<del>☒</del>
G3	Other GST free sales	G3 \$			<del>☒</del>
G4	Input taxed sales	G4 \$			<del>☒</del>
G5	G2 + G3 + G4		G5 \$		<del>☒</del>
G6	Total sales subject to GST (G1 minus G5)		G6 \$	<b>113,300</b>	<del>☒</del>
G7	Adjustments (if applicable)		G7 \$		<del>☒</del>
G8	Total sales subject to GST after adjustments (G6 + G7)		G8 \$	<b>113,300</b>	<del>☒</del>
G9	GST on sales (G8 divided by eleven)		G9 \$	<b>10,300</b>	<del>☒</del>

**GST amounts the Tax Office owes you from purchases**

G10	Capital purchases	\$	<b>5,500</b>	<del>☒</del>	
G10 A	GST on capital purchases GST (G10 divided by 11)			G10A \$	<b>500</b> <del>☒</del>
	Non-capital purchases				
	Trading sales (G1A)	G1A \$	<b>110,000</b>	<del>☒</del>	
	BAS Easy ratio (to 2 decimal places between 0 and 1)	G11A	<b>.72</b>		
	Estimated purchases (G1A times G11A)	G11B	<b>79,200</b>	<del>☒</del>	
G11 C	GST on non-capital purchases (G11B divided by 11)			G11C \$	<b>7,200</b> <del>☒</del>
G12	GST on purchases (G10A plus G11C)			\$	<b>7,700</b> <del>☒</del>

**Net GST**

	Net GST payable (G9 minus G12 is positive)	\$	<b>2,600</b>	<del>☒</del>	1A in Summary section of the BAS
	Net GST refundable (G9 minus G12 is negative)	\$		<del>☒</del>	1B in Summary section of the BAS

162 Industry and Small Business Policy Division, Department of Innovation, Industry, Science and Research, unpublished material.

## APPENDIX F: RULINGS COMPARISON

Table 1: Comparison of private and public rulings under Income Tax and GST

	Private rulings		Public rulings	
	Income tax	GST	Income tax	GST
<b>Definition</b>	<p>Has the meaning given by s359-5 in Schedule 1 to the TAA 1953.</p> <p>The provisions that are relevant for rulings, as per s357-5 in Schedule 1 to the TAA 1953 do not include indirect taxes such as GST.</p> <p>Rulings can cover any matter involved in the application of the provision. Includes issues relating to liability, administration, procedure, collection and ultimate conclusions of fact.</p> <p>s359-5(2) Schedule 1 TAA 1953</p>	<p>Defined in s995-1 of the ITAA 1997 as any ruling or advice given or published by the Commissioner in relation to an indirect tax law, including one that has been previously altered, but not including:</p> <ul style="list-style-type: none"> <li>(a) one given orally; or</li> <li>(b) an assessment.</li> </ul>	<p>Has the meaning given by s358-5 in Schedule 1 to the TAA 1953.</p> <p>The provisions that are relevant for rulings, as per s357-5 in Schedule 1 to the TAA 1953 do not include indirect taxes such as GST.</p> <p>Includes:</p> <ul style="list-style-type: none"> <li>• public rulings issues in the formal rulings series, TR, TD, CR, PR and PGBR;</li> <li>• other publications can be given the status of a public ruling, but the publication must state that it is a public ruling.</li> </ul> <p>Can cover any matter involved in the application of the provision. Includes issues relating to liability, administration, procedure, collection and ultimate conclusions of fact.</p> <p>s358-5(2) Schedule 1 TAA 1953</p>	<p>Defined in s995-1 ITAA 1997 as an indirect tax ruling other than a private indirect tax ruling.</p> <p>Much broader than income tax definition, will include most forms of written advice involving the interpretation of an indirect tax law that are published by the Tax Office including rulings, booklets, guides, fact sheets.</p>

		Private rulings		Public rulings	
		Income tax	GST	Income tax	GST
<b>Issued under</b>	Div 359 of Schedule 1 to the TAA 1953	Commissioner's general power of administration of the indirect tax laws. Div 356 of Schedule 1 to the TAA 1953	Commissioner's general power of administration of the indirect tax laws. Div 356 of Schedule 1 to the TAA 1953	Div 358 of Schedule 1 to the TAA 1953	Commissioner's general power of administration of the indirect tax laws. Div 356 of Schedule 1 to the TAA 1953
<b>Date covered</b>	A private ruling may specify the time from which it begins to apply and the time at which it ceases to apply. Where it doesn't specify a time it applies from when it is made. s359-25 of Schedule 1 to the TAA 1953 A private ruling that does not specify an end time ceases to apply at the end of the income year or other accounting period in which it started to apply. s359-25 of Schedule 1 to the TAA 1953	Law silent on this. Whilst no legislative power to specify a date a ruling applies from and to, given the GST rulings are issued under the general administration powers in section 356-5 of Schedule 1 to the TAA 1953, the Commissioner can change a private ruling at any time. Private Rulings in GST can apply to one off transaction or ongoing transactions.	Applies from the time it is published or from such earlier or later time as is specified in the ruling. s358-10 of Schedule 1 to the TAA 1953 Applies until time specified in ruling or when it is withdrawn s358-15 of Schedule 1 to the TAA 1953	Law silent on this.	

	Private rulings		Public rulings	
	Income tax	GST	Income tax	GST
<b>Who it applies to</b>	The private ruling identifies the entity to which it applies to and specifies the relevant scheme and provision to which it relates. s359-20 of Schedule 1 to the TAA 1953	Only to the entity to whom it was given. s105-60(3)(a) of Schedule 1 to the TAA 1953	For product rulings, each ruling will define the class of entities to which the ruling applies and also set out any entities which are specifically excluded. PR2007/71	Law silent on this.
<b>When binding on the Commissioner</b>	If the ruling applies to a taxpayer and they rely on the ruling by acting in accordance with the ruling. s357-60 of Schedule 1 to the TAA 1953	Private rulings are binding on the Commissioner to the extent set out in s105-60 of Schedule 1 to the TAA 1953; see <i>Law Administration Practice Statement PS LA 2008/3</i> . The Commissioner is bound to apply the law as set down in a private indirect tax ruling up to the time of issue of an inconsistent public or new private ruling, unless the entity has contributed to the incorrect advice by misstatement or by suppressing (a) material fact(s).	If the ruling applies to a taxpayer and they rely on the ruling by acting in accordance with the ruling. s357-60 of Schedule 1 to the TAA 1953 May be relied on by anyone to whom it applies. May apply to entities generally, or: <ul style="list-style-type: none"> <li>a class of entities</li> <li>a class of entities, in relation to a class of schemes, or</li> <li>a class of entities, in relation to a particular scheme.</li> </ul> s358-5 of Schedule 1 to the TAA 1953	GSTR 1999/1 paragraph 10 states: <i>All forms of written advice involving the interpretation of GST law that we produce other than GST private rulings are public rulings within the terms of the TAA and are binding on the Commissioner.</i> Rulings in respect of the indirect tax laws provide a level of protection in accordance with section 105-60 of Schedule 1 to the TAA 1953 to entities to whom they properly apply and who rely on them. Broadly, if an entity relies on a public indirect tax ruling that says that the law applies to it in one way and

	Private rulings		Public rulings	
	Income tax	GST	Income tax	GST
When binding on the Commissioner (continued)				<p>another public indirect tax ruling is later issued advising that the law applies in a different way, the entity will not be liable for any more tax than would have been payable under the original ruling for the period before the change. That is, if an entity has underpaid a net amount, the amount underpaid will cease to be payable if the underpayment occurred in reliance on a public indirect tax ruling. Similarly, an amount overpaid as an indirect tax refund by the Commissioner will be taken to have been payable in full if the overpayment occurred in reliance on a public indirect tax ruling.</p> <p>An entity can rely on a public indirect tax ruling only if it is relevant to their circumstances.</p>

	Private rulings		Public rulings	
	Income tax	GST	Income tax	GST
<b>Objection review and appeal rights</b>	<p>If an entity is dissatisfied with their private ruling, they may formally object against it in the manner set out in Part IVC of the TAA 1953. However, objections must be lodged before an assessment is made for the income year or accounting period to which the ruling relates, or before the tax is due and payable in the case of a withholding tax matter. If the objection against the private ruling is not lodged before the assessment is issued, the objection must be lodged against the relevant assessment.</p>	<p>A GST ruling cannot be reviewed under the TAA as it is not a reviewable decision under section 110-50 of Schedule 1 to the TAA 1953.</p> <p>Nor can it be reviewed under the <i>Administrative Decisions (Judicial Review) Act 1977</i>.</p> <p>Where the taxpayer carries out a transaction which results in a net amount for a tax period, they can, under s105-10 of Schedule 1 to the TAA 1953, request the Tax Office to make an assessment under s105-5 of Schedule 1 to the TAA 1953 of their net amount for that tax period.</p> <p>Under s105-40 of Schedule 1 to the TAA 1953, the taxpayer may object to a decision made under s105-5 or 105-25 of Schedule 1 to the TAA 1953 involving an assessment in the manner set out in Part IVC of the TAA 1953.</p> <p>GSTR 1999/1</p>	<p>The Tax Office has advised where they are unable to rule favourably, they will (if the applicant wishes to test the Tax Office view) agree to issue a private ruling in response to a valid application by a proposed investor, enabling the relevant review processes to proceed.</p> <p>PR 1998/1 (the updated PR 2007/71 is silent on this).</p>	<p>While there is no formal right to object against an indirect tax private ruling, taxpayers can request an assessment and object against that assessment.</p> <p>(A key distinction between income tax and indirect taxes is that in most circumstances, an assessment is not issued in respect of an indirect tax liability.)</p>

	Private Rulings		Public rulings	
	Income tax	GST	Income tax	GST
<b>Commissioner discretion</b>	Subject to certain qualifications, the Commissioner must comply with an application for a private ruling and make the ruling. s359-35 of Schedule 1 to the TAA 1953	Law silent on this.	Commissioner has discretion whether or not to issue a public rulings including product rulings in relation to any particular product. Div 358 of Schedule 1 to the TAA 1953	Law silent on this.