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15 September 2008

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

By email: taxboard@treasury.gov.au

Dear Sir / Madam,

I have pleasure in enclosing our formal submission to the Board of Taxation's *"Review of the Legal Framework for Administration of the Goods and Services Tax"*.

In our submission we have identified the key areas in the existing GST and Tax Administration Law where we consider there to exist significant compliance difficulties, as well as administratively burdensome obligations that have a very real impact on us as a large ASX-listed business. We have made recommendations in this submission that we believe will improve and simplify everyday GST compliance whilst at the same time preserving the revenue base of the Federal Government.

We commend the Federal Government's review into GST administration and compliance, and fully support those recommendations that the Board identifies will have the effect of making GST compliance easier for all businesses.

Finally, we have no reservations to our submission being made publicly available if considered appropriate by the Board.

If you wish to discuss any aspect of our submission further, please do not hesitate to contact Mr John Avery on 02 9767 2117 or Mr Yasser El-Ansary on 02 9767 2314.

Yours sincerely
AUSTRALAND HOLDINGS LIMITED

Tiernan O'Rourke
Chief Financial Officer

AUSTRALAND

SUBMISSION TO THE BOARD OF TAXATION
REVIEW INTO GST COMPLIANCE
SEPTEMBER 2008

KEY AREAS OF CONCERN AND RECOMMENDATIONS

1. GST registration, turnover, and similar specific quantum-based thresholds

Recognising that (with the exception of the registration turnover and low value tax invoice thresholds) all specific value-based thresholds contained in the GST Law were originally prescribed back in 1998/99, we think it is appropriate for the Board to consider recommending that all thresholds within the GST Law should be increased as soon as possible to reflect the movement in economic value of transactions since 1998/99.

Furthermore, all such thresholds should be the subject of an annual or bi-annual review by the Parliament to allow for a regular and periodic increase where considered appropriate.

2. Financial acquisitions threshold

As a large corporate taxpayer operating in the property development sector, our core business does not typically involve making significant financial supplies/acquisitions on a regular basis. From time-to-time, such financial transactions will arise in the context of special 'one-off' arrangements such as capital raisings, scrip-based mergers and acquisitions, or the issuing of new capital in a listed or unlisted managed investment trust that invests in property assets.

The policy intention behind the taxation of financial transactions in the context of GST is certainly clear and well understood by tax practitioners. However, the application of those principles to entities who do not regularly engage in financial transactions creates an additional compliance burden which does not seem in-line with the over-arching policy objectives. The end result is that many corporate entities may be required to comply with the financial acquisitions special rules even though their involvement in financial transactions is infrequent and irregular.

On this basis, we believe that the current "borrowing rule" exemption that applies to business financing transactions (section 11-15(5) – which is currently limited only to eligible 'borrowings') should be expanded to all financial transactions, irrespective of the particular method of financing that may be employed. There does not appear to be a justifiable basis to support why the borrowing exemption is limited only to business financing undertaken by means of borrowings, as opposed to equity or other forms of business financing.

Alternatively, if the borrowing rule cannot be extended, the existing financial acquisitions threshold should be increased to preclude a greater number of entities and transactions from being required to comply with these complex laws.

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3. GST registration, grouping and cancellation processes

As a large corporate taxpayer, we find the existing processes surrounding GST registration and grouping troublesome. Our key concerns in this area relate to the complex and unpredictable nature of the ATO's processes, which we believe could be improved if the GST Law made provision for a simpler administrative mechanism to be employed. Our key procedural concerns and associated recommendations are set out in the following paragraphs.

Entities with a turnover of greater than $20m per annum should be allowed to register, form/enter a GST group and cancel/de-group at any point during a tax period[1] without the need for formal ATO approval. At a practical level, all applications for registration and grouping (or de-grouping) should be automatically approved by the ATO rather than being subject to a specific approval process.

Large corporate taxpayers will typically be well aware of the specific GST Laws that apply in relation to whether entities are eligible to be registered and/or grouped and therefore an automatic (or default) approval process is not likely to create any significant instances of non-compliance with the relevant provisions in the GST Law.

Also, all large taxpayers should be able to deal with the ATO on GST registration and grouping issues on an electronic basis. At the moment, some processes relating to registration and grouping involve the lodgement of paper-based application forms which are prone to human errors and extended delays in processing by the ATO. Taxpayers should have access to a complete electronic commerce interface with the ATO that allows for all registrations, deregistrations and grouping applications to be completed and lodged through a central portal. We believe that an approach such as this is consistent with standard modern day business practices.

4. Tax invoices and adjustment notes

It is often the case with large corporate taxpayers that manage a significant number of wholly-owned related parties that tax invoices will be received from suppliers in the name of one particular corporate group entity that is setup as a 'vendor' in the supplier's financial payments system. It may sometimes be the case that an invoice is made out to the head entity of a corporate group, even though the underlying supply is made to a subsidiary member of that corporate group.

Under the existing GST Law, an outcome such as this would contravene the requirement for tax invoices to be issued directly to the legal entity to which the actual underlying supply is made. However, where the tax invoice is addressed to the head entity [instead of the subsidiary] that is a member of a GST group with that subsidiary entity, no mischief exists in relation to the claiming of GST credits by the head entity of that GST group.

On this basis, we believe the Board should recommend that the GST Law be amended to allow for tax invoices to be issued in the name of any entity within a GST group [rather than necessarily the specific entity to which the supply is made], as long as the underlying supply of goods/services can be attributed to a specific member of that GST group.

In terms of the requirement for adjustment notes to be issued subsequent to the issuing of tax invoices, our experience is that most suppliers are reticent (or simply not able) to issue a

[1] The current GST Law only allows for GST grouping and de-grouping taking effect from the start of a specific tax period. This is inconsistent with commercial practice whereby changes to substantial shareholdings can occur at any point in time which, on the basis of the existing law, creates significant administrative and compliance timing mis-matches.

document titled 'adjustment note' where circumstances arise under the GST Law that require such. It is commonplace in our experience for new tax invoices to be issued which have the effect of cancelling (or superseding) the previously issued incorrect tax invoice; rather than issuing an adjustment note.

Again, adopting this approach is considered more practical for most businesses, as most financial systems do not make provision for separate types of tax invoices to be issued in respect of the one transaction.

5. Paper-based GST returns

From time-to-time, the ATO issues paper-based GST returns to new entities that are newly registered as part of a broader corporate group. It is typically the case that following lodgement of the first paper GST return, the taxpayer is entitled to apply for an electronic commerce interface certificate with the ATO.

We believe that the GST Law should be amended to require all new entities that form part of a large corporate group to only lodge GST returns by electronic means, rather than relying on the preparation and lodgement of a once-off paper-based return. Also, separate one month only first BASs should not be required as long as GST registration and grouping can take effect from the same point in time.

6. Refunds of GST negative net amounts

On occasion, the ATO's GST return analysis processes causes a delay in receiving refunds of negative net amounts (GST refunds). In a large scale business where high value transactions are commonplace and frequent, such delays can cause cash flow timing uncertainty and present a real financial opportunity cost.

In our view, the GST Law should provide a clear mechanism that provides taxpayers with more certainty around when the ATO must refund a negative net amount to a taxpayer. We propose a time limit of five working days be imposed where an electronic GST return is lodged by a large taxpayer. We do not consider it appropriate for the Federal Government to be able to retain refunds for excessive periods of time and to therefore benefit from the generation of a financial advantage windfall gain. The underlying architecture of the GST supports a prompt GST refund mechanism, given that the system does not rely on an assessment of tax liability being issued by the Commissioner of Taxation.

7. Correcting GST mistakes thresholds

The current administrative practice employed by the ATO in allowing taxpayers to correct inadvertent GST mistakes through current period business activity statements is an important concession [section 11 of this submission contains an expanded discussion about the appropriateness of this existing mechanism in terms of day-to-day GST compliance for a large corporate taxpayer].

Notwithstanding this, the current thresholds applied by the ATO in this administrative practice are considered to be too narrow to be as effective as they could be for many large taxpayers. We feel that the existing limitations relating to the time period and financial quantum involved are overly restrictive and do not adequately represent commercial practice in large corporate taxpayers. The Board should consider recommending that changes be made to embed taxpayer's rights to the existing correcting GST mistakes regime within the GST Law itself. At the same time, a more generous approach to the threshold time and quantum-based limits should be introduced to allow for a greater number of routine, day-to-day inadvertent mistakes to be self-corrected without the need for the ATO to divert resources to processing routine corrections and adjustments relating to relatively small compliance errors.

At an absolute minimum, amendments should be made to the existing regime to allow for the thresholds to be applied on a 'net' basis, rather than on a 'per mistake' basis as is currently the case. The effect of this would be that a greater population of GST mistakes could be corrected using this administrative practice thereby reducing compliance costs for both taxpayers and the ATO.

8. Contra and barter transactions

Taxpayers involved in a business-to-business transaction that involves a taxable supply and fully creditable acquisition as part of a barter arrangement should have the option of not being required to report the transaction on their GST returns.

The reporting of taxable supplies and a corresponding creditable acquisition does not result in any net revenue for the Government. From a commercial viewpoint, it is often difficult to identify all instances of where a barter arrangement exists as such transactions are not always recognised in the taxpayer's financial system. It is often the case that the reporting of the transaction for GST purposes is the only justification for creating entries in the financial system to capture the transaction. The contra arrangement gives rise to some practical issues for businesses in terms of settling and reconciling accounts payable and receivable positions in respect of such an arrangement.

9. Sale of going concern concession

The current requirements imposed under Division 38-J in respect of disposals of businesses (enterprises) as a GST-free going concern are, on occasion, overly burdensome. The compliance difficulties arise in respect of the dual requirements for the vendor to provide to the purchaser 'all of the things necessary for the continued operation of an enterprise', as well as to 'carry-on the enterprise up until the date of supply'.

Where it can be evidenced that an enterprise is being carried-on, which can be assessed from both an income tax and accounting perspective, it should not be necessary for further evidence to be provided in order to merely satisfy Division 38 of the GST Law.

The Board should consider the merits of adopting a simpler, and more consistent, approach in the GST Law to determining when a going concern enterprise exists. Perhaps one option that could be considered is for an approach whereby the vendor can simply make a declaration to the purchaser (within the body of the business sale contract) that the vendor is carrying-on an enterprise, and that the vendor is supplying everything relevant to the carrying-on of that enterprise to the purchaser as part of the commercial transaction. Further evidence – as suggested by the ATO in its GST public ruling relating to this concession – should not be required if such a declaration is made by the vendor.

10. Division 129 changes in extent of creditable purpose

Division 129 (in its current form) is proving difficult to administer in commercial practice for property developers. Whilst the tax policy intention behind this Division is appropriate, there currently exist a number of interpretative complexities that render the provisions unworkable.

The Board should consider recommending to the Government that a complete re-assessment of how Division 129 applies to changes in the extent of creditable purpose of specific acquisitions. Fundamental changes are required to this part of the GST Law to clarify the scope and application of the Division and how taxpayers can more readily ascertain the financial quantum of any adjustments required in particular circumstances.

11. The tax law partnership 'fiction'

The concept of a tax law partnership exists to provide taxpayers engaged in a commercial activity from which joint income is derived with a mechanism by which to account for, report and distribute joint income and expenditure.

Whilst the concept has a well understood basis for Australian income tax purposes, we do not believe that the concept necessarily delivers the same synergies in a GST context.

In our view, the concept of a tax law partnership is suited to the income tax regime because of the proximity between accounting and income tax concepts. However, being a transaction-based tax, the GST is more closely matched with a legal substance analysis of transactions rather than accounting reporting.

Take for example this scenario which is commonplace in many property development businesses. A landowner ("L"), may contract with a development joint venture ("JV") to dispose of its economic rights to the income flowing from the ultimate development of the L's land. In disposing of that economic interest in return for what would typically be classified as a 'development rights fee', L would no longer be required to account for the on-going development and ultimate sale of that developed land in its financial records. Instead, L would simply account for the economic disposal of its interest in the land as a once-off income amount (being the development rights fee). The JV would then take over the economic control of the land and therefore it would be required to account for the on-going development and ultimate sale of the developed land (eg. subdivided land lots, apartments, houses etc).

In the above example, for both income tax and accounting purposes JV would be required to report the income and expenditure derived from the development and ultimate sale of the land (ie. account on an 'economic substance' approach). However, in a GST context, the sale of the developed land can only ever be effected by the legal landowner whose details will need to be shown on the contract for sale of land. The result of this is a mis-match in reporting as between the JV and L's books of account for GST purposes. This mis-match creates unnecessary complexity and confusion for all stakeholders looking to understand the substance of the arrangement.

The Board could consider removing any obligation for a joint venture (that is a tax law partnership for income tax purposes) to register as such for GST purposes, and instead, allow each separate legal entity to register in its own capacity and account for the relevant transactions to which it is a party. Taxpayers who still prefer the use of the tax law partnership concept for GST purposes could be granted the option of using that approach where they consider it appropriate in the context of their own business.

12. GST private binding rulings

Division 110 of Schedule 1 to the Tax Administration Act 1953 does not allow taxpayers to formally object to the outcome of a GST private binding ruling handed down by the Commissioner. There does not appear to be a justifiable basis for denying taxpayers the right to appeal against a Commissioner's decision in respect of the GST Law. The fact that a GST assessment is not issued by the Commissioner by default upon lodgement of a taxpayer's BAS is not seen as a constraint on being able to commence a formal objection process.

We believe it would be appropriate for changes to be made to the Tax Administration Law to include GST private rulings in the list of 'reviewable GST decisions' contained in section 110-50. A change such as this would bring into line the status of GST private rulings with other Federal taxation rulings and provider greater equality, certainty and transparency for all taxpayers.

13. Review of aspects of income tax self assessment (ROSA)

The implementation of the Government's ROSA initiatives in 2005 should be re-visited to assess the merits of adopting some of those measures in the GST and Tax Administration Laws. The ROSA initiatives have without doubt improved compliance and certainty for all taxpayers and introduced a more rigorous approach to management of taxpayer compliance by the ATO.

14. General interest charge and shortfall interest charge

In our view, the application of full GIC to amounts of underpaid GST relating to revenue-neutral transactions is unreasonable. Whilst there is an administrative practice adopted by the ATO which clarifies when the Commissioner will exercise his discretion to remit the GIC to the 'base penalty rate', it would be more appropriate to review and improve the overall penalty regime in the Tax Administration Law as it applies to GST.

The introduction of a shortfall interest charge for amendments to self-assessed amounts may at first be an appropriate option in the context of GST, however the current SIC rate – full GIC rate less 4 percent points – is excessive for transactions that would not result in any net revenue gain for the Government.

Perhaps the most appropriate outcome for revenue-neutral transactions is for the Tax Administration Law to clearly provide for only the base rate GIC to be applicable, rather than adopting the current practice of relying on the Commissioner's discretion to achieve that outcome. Full GIC should continue to apply to transactions that are not revenue-neutral (ie. where something less than a full input tax credit is available to the recipient of a taxable supply).

15. Separate penalty regime for GST non-compliance

We believe the current regime that applies to dealing with GST compliance errors is sound. The imposition of GIC (either at full rate or base penalty rate) serves as a sufficient deterrent and motivation for proactively managing GST compliance. In addition, the administrative penalty provisions (although in our view – on occasion – over-eagerly applied by the Commissioner) act as further motivation for entities to ensure full and proper compliance to the extent possible.

On this basis, we do not believe that any additional strict liability penalty regimes are required in the context of GST. It could perhaps be argued that introducing more stringent and costly penalty regimes will only serve the purpose of driving the correction of compliance errors 'underground', thereby acting as a disincentive for entities to proactively correct compliance errors by communicating openly and honestly with the ATO.