



**AUSTRALIAN BANKERS' ASSOCIATION INC.**

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16 September 2008

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

Dear Board of Taxation,

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

This submission is made on behalf of the members of the Australian Bankers' Association to provide input to the Board of Taxation's *Review of the Legal Framework for the Administration of the Goods and Services Tax*.

The ABA would like to take this opportunity to thank the Board of Taxation for its consideration in this very significant initiative and would welcome further involvement in working through the issues arising from the review.

Yours sincerely

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**Tony Burke**



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

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

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The issues set out in this document are grouped in accordance with Chapter headings contained in the Issues Paper published by the Board of Taxation in July 2008.

Legislative references set out below are in respect of the "A New Tax System (Goods and Services Tax) Act 1999".

## **Chapter 1 - Basic Administrative Rules**

### **1. Issue - Apportionment (Division 11)**

There is a considerable amount of uncertainty around the "extent of creditable purpose", resulting in a great deal of tax payer and tax administrator time spent in vetting and reviewing methodologies, at considerable cost.

#### **For Consideration**

Consideration should be given to a legislative basis for apportionment safe harbours - for example a default revenue method, or an agreed rate with the Commissioner. Such amendments would allow taxpayers to have the flexibility to choose their own 'fair and reasonable' method, or to use a safe harbour if certainty is required, or where it is too costly to use another method.

### **2. Issue - Borrowing exemption (Division 11)**

The Act creates inefficiency, where GST cost can drive a choice of either borrowing funds or seeking equity to raise capital.

#### **For Consideration**

Broadening of the exemption in section 11-15(5) would result in reductions in compliance costs and improve the operation of the GST where borrowing is to include any form of borrowing, whether secured or unsecured, and includes the raising of funds by the issue of a bond, debenture, discounted security or other document evidencing indebtedness.

### **3. Issue - Registration (Division 25)**

For the purposes of section 25-10 GST registration can be effected part way through a month whereas membership of a GST group cannot be aligned to a registration date due to the operation of section 48-85. This can create additional compliance cost with the requirement for a one off part month BAS for an entity that is (for all intents and purposes) part of a larger GST group.

#### **For Consideration**

Grouping should be able to be aligned with registration.

### **4. Issue - Tax Invoices (Division 29)**

The requirement to keep Tax Invoices for the purposes of attribution pursuant to Division 29 of the Act (and Regulations) is unnecessarily onerous and costly for

large businesses, which deal with the processing of many thousands of invoices daily.

### **For Consideration**

The rules around the requirement to hold a Tax Invoice pursuant to Division 29 should be reviewed and relaxed in line with discretions allowed to the Commissioner of Taxation for the purposes of administering income tax.

For example, mere evidence of payment should be sufficient substantiation for an input tax credit for corporations with a turnover in excess of \$100M turnover.

Generally, administrative rules and requirements around Tax Invoices in VAT/GST regimes are aimed at compliance risk in the cash economy. However, such a compliance risk does not exist for large corporations.

Another benefit of a measure such as this is that it would alleviate unnecessary paper trails created under the Recipient Created Tax Invoice requirements. Further, it would enable large corporations to rely on the use of business credit card statements as evidence of creditable acquisitions.

### **5. Issue - Attribution Hire Purchase (Division 29)**

The Commissioner currently treats supplies under Hire Purchase (HP) agreements as a purchase of goods on deferred payment terms. There is undue complexity around the timing of credits and adjustments for incomplete HP agreements.

Further, the current rules for attribution of GST credits on HP discriminate against taxpayers paying GST on cash basis as opposed to accrual. That is, a taxpayer accounting for GST on an accruals basis can take a full GST credit up front on the first HP instalment whereas the taxpayer accounting for GST on a cash basis cannot claim a GST credit until each instalment is paid.

The effect of the above is to create tax inefficiency and drive taxpayers to use certain finance products over others, purely on the basis of GST attribution.

### **For Consideration**

For simplicity, the Commissioner should make a determination under the available legislation (Section 29-10) to place cash taxpayers on the same footing as accruals taxpayers, by allowing the full GST credit for HP to be taken on the first instalment. This measure does not create a timing loss to the revenue as the financier will be an accrual taxpayer.

Notwithstanding the above, the Commissioner might consider treating HP agreements as supplies for a period, pursuant to Division 156.

### **6. Issue - Lodgement (Division 31)**

Compliance costs for taxpayers could be reduced significantly by reducing the frequency of BAS lodgement.

### **For Consideration**

Division 31 should be amended so that every taxpayer has the option of returning GST quarterly, irrespective of turnover. Such lodgement could be aligned with

Instalment Activity Statement/payment (either at the same time or month following).

## **Chapter 2 - Other Rules**

### **1. Grouping trusts/partnerships (Division 48)**

The provisions of the Act and Regulations that prescribe the rules for grouping of trusts and partnerships are extremely difficult and complex to understand. The definitions supporting them are convoluted, making the application of (what should be) reasonably straightforward rules, unclear. Accordingly, there is a great deal of uncertainty around the operation of the grouping rules for these entities.

#### **For Consideration**

The law around grouping of trusts and partnerships for Division 48 need to be redrafted so that:

- It is more plainly worded, and is found in one place
- Each type of entity is treated separately, so there is no overlap in definitions

In addition to the above, the Commissioner should be given a specific discretion under Division 48 to approve a GST group in certain circumstances.

### **2. Issue - Mortgagee Sales and Margin Scheme (Divisions 75 and 105)**

There are significant compliance costs and risks associated with mortgagee sales and the question of whether a particular sale is, firstly, taxable with a liability arising under Division 105 and, secondly, chargeable with GST under the margin scheme of Division 75.

#### **For Consideration**

Sufficient time has now passed since the introduction of GST to remove the Division 75 margin scheme. Further, clarity could then be achieved by making all residential property input taxed and all commercial property taxable.

### **3. Issue - Insurance (Division 78)**

The need to track the extent of input tax credit entitlement (ITCE) of policyholders at the time of settlement creates a significant compliance risk and cost to the insurer.

#### **For Consideration**

Cash settlements should be treated as taxable supplies to the extent the insured is entitled to an ITC. This would not affect the entitlement to a Decreasing Adjustment, which will continue to be available to the extent that the insured is not entitled to an Input Tax Credit. Effectively, one eleventh of all cash settlements will give rise to a GST credit, with no requirement for the insurer to track ITCE. This would be a major simplification and reduction in compliance cost and risk for insurers.

Under this approach the liability for GST on cash settlements would rest with the insured, to the extent they are carrying on an enterprise. This liability will similarly be reduced (washed) on goods and services purchased (with the proceeds of the cash settlement) in carrying out the enterprise.

#### **4. Issue - Division 100**

Division 100 of the GST Act is unnecessarily complex with regard to attribution and in respect of valuation seeks to recover an amount on account of GST which is more than the actual consideration received for the voucher.

##### **For Consideration**

In view of the above, consideration should be given to the removal of Division 100 or an amendment to ensure GST is only paid on the consideration received (i.e. not face value).

### **Chapter 3 - Subsequent Events**

#### **1. Issue - Adjustments (Division 129)**

Division 129 places an unreasonable compliance burden on taxpayers and as a result there is a lack of integrity around the practical application of the Division.

The Division seeks to adjust a taxpayer's net amount where the creditable purpose of an acquisition or importation is changed.

Complexity arises due to:

- the low dollar value threshold to which the provisions apply
- the varying "adjustment periods" that apply depending on the dollar value thresholds
- the wide ambit of the Division
- current fixed asset accounting systems do not provide division 129 solutions for financial suppliers

It is reasonable to argue that very few (if any) taxpayers are able to meet their compliance obligation under the Division unless significant costs are incurred

##### **For Consideration**

In view of the above the Division should be rewritten so that will specifically apply to:

- Goods and real property in excess of \$500,000
- An adjustment period of 5 years, from the time of acquisition or importation, for goods and real property in excess of \$500,000
- An adjustment period of 12 months for all other acquisitions

In the case of financial service (FS) providers the Division should work as an adjunct to the FS providers GST apportionment methodology. This would effectively allow for an "annual adjustment" for all expenses, with an extended

period for high value acquisitions. This idea borrows features from the United Kingdom VAT system's "capital goods scheme" and annual adjustment mechanisms, which has worked well in the UK to produce a fair result since 1990.

## **2. Issue - Financial Acquisitions Threshold (Division 189)**

The Financial Acquisitions Threshold (FAT) in Division 189 (and interaction with Division 11) does not operate effectively or minimise compliance costs, as it requires a taxpayer to make a decision in relation to current and future acquisitions.

### **For Consideration**

The FAT should be made to work retrospectively over a "GST year" (say to June 30), which would allow a taxpayer to look backwards and make a one off adjustment based on actual expenditure and use where FAT is exceeded, similar to the approach suggested immediately above, supplementing the operation of Division 129.

The FAT adjustment should be made as a one off in a BAS before the year end (December 31).

## **3. Issue - Correcting GST Mistakes**

The current process for correcting GST mistakes lacks integrity given that time limits and value thresholds advised by the Commissioner are unrealistic for large corporations.

### **For Consideration**

The BAS should include a label to disclose all adjustments in excess of the Commissioner's limits. In the alternative, these limits should be increased significantly for large corporations with a turnover in excess of \$100M.

## **Chapter 4 - Administrative Environment**

### **1. Issue - Contra transactions**

Taxpayers are faced with significant compliance cost and risk as a result of contra transactions that occur between fully taxable parties.

### **For Consideration**

The Commissioner should be allowed to deem fully creditable business-to-business contra transactions as GST free, or taxpayers should be able to agree the same in writing between themselves.

Whilst such a measure would have little or no application in a financial supply environment, it is important to businesses in fully taxable circumstances.

### **2. Issue - Private Rulings**

There is an imbalance in the private rulings system where taxpayers cannot seek review of decisions, reducing the willingness of taxpayers to enter into the process.



**For Consideration**

Taxpayers should be allowed to object to a private ruling issued by the Commissioner.