

Freehills

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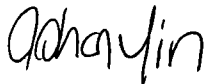
Review of the legal framework for the
administration of the GST
Board of Taxation
c/- the Treasury
Langton Crescent
PARKES ACT 2600

Dear Sir / Madam

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

Please find attached a submission from John Pickering in response to the Issues Paper –
Review of the Legal Framework for the Administration of the Goods and Services Tax
(July).

Yours sincerely



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Articled Clerk

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1 Terms of Reference

We make this submission based upon a situation which one of our clients is facing and which has exposed anomalies in the administration of the Goods and Services Tax (**GST**), notably the collection of GST during a period where the taxpayer's registration has been cancelled by the ATO and is being disputed.

2 Background

Our client (a partnership) owned a property and conducted a business of breeding thoroughbred horses and Suffolk sheep for many years. The partnership was registered for GST purposes from 2001.

In November 2005, officers from the Australian Taxation Office (**ATO**) conducted a GST audit on our client. The apparent purpose of the audit was to establish whether or not our client was carrying on an "enterprise" (as defined in section 9-25 of the GST Act) which would determine their eligibility to be registered under part 2-5 of the GST Act.

On 13 January 2006, our client received a letter from the ATO advising that the ATO did not consider that it was carrying on an enterprise. Accordingly, the ATO advised that the GST registration was cancelled retrospectively from September 2001. The ATO also issued assessments on that basis.

Our client objected (amongst other things) against the decision to cancel the registration. The objection was disallowed and as a consequence our client then appealed to the Administrative Appeals Tribunal (**AAT**). On 26 October 2007, the AAT handed down its decision which was that the evidence was overwhelmingly in support of the conclusion that our client was carrying on an enterprise, and accordingly the Tribunal made the following order:

"1. The first applicant's registration under Division 23 of the GST Act not be cancelled."

3 Anomaly in the GST laws

The anomaly in the GST laws stems from sales made during the period 1 October 2005 (the date from which the ATO cancelled the GST registration) to 26 October 2007 (the date upon which the AAT re-instated the taxpayer's GST registration). During this period, pursuant to the order of the AAT, our client was (belatedly) taken to be registered for GST purposes.

Pursuant to section 9-5 of the GST Act, any supply that our client made in the course of their business, when they were registered for GST, is a taxable supply. They were liable to remit GST on this taxable supply to the ATO.

As you are aware, the normal situation where a registered entity is making a taxable supply would be for the entity to "gross up" the value of the taxable supply to take into account GST, and then remit the GST to the ATO.

However, during the period 1 October 2005 to 26 October 2007, our client's GST registration had been cancelled by the ATO. As a consequence, during this period, no GST was charged nor remitted in relation to taxable supplies.

Further, according to section 11-5 of the GST Act, only entities registered, or required to be registered for GST can make a creditable acquisition and claim an input tax credit. For an entity to claim an input tax credit for the creditable acquisition, the entity must hold a tax invoice. As our client was acting under the assumption that they were not eligible to be registered, some tax invoices were not kept.

The net effect of this, as a consequence of having the registration re-instated from September 2001, is that our client is now required to remit GST to the ATO, based upon sales in the period for which they were not able to charge GST, nor claim input tax credits for certain creditable acquisitions. There is no prospect of passing on the GST liability to GST registered purchasers and, in any event, no GST invoice was ever provided to those purchasers. The consequence is that the liability for GST is that of our client alone.

4 Submission

In our view, an entity should not suffer a detriment merely because of an ATO error.

The GST Act as it stands does not appropriately address this situation.

We submit that the law should be amended, so that in the event that GST is payable by a taxpayer as a result of an incorrect cancellation of the registration by the ATO, the Commissioner must adjust the GST payable (by remission or otherwise) so that the taxpayer is restored to the position that it would have been in if the ATO had not incorrectly cancelled the registration.

We do not seek a benefit or gain to the taxpayer, merely a systematic, equitable and practical solution to an anomaly arising from incorrect action by the ATO.



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