

GST Bulletin

# March 2013 GST developments

## WHAT YOU NEED TO KNOW

This Bulletin outlines Australian GST developments in March 2013, which may impact your business, including:

- **The Private Tutor v Federal Commissioner of Taxation** – the AAT has held that a taxpayer was carrying on an enterprise but has denied the taxpayer's claim to any input tax credits for the relevant period.
- **GST Ruling GSTR 2013/1: Goods and services tax: tax invoices** – on 27 March 2013, the ATO issued GSTR 2013/1 which sets out the Commissioner's view regarding the operation of the tax invoice provisions.
- **GST waiver of tax invoice requirements** – 10 legislative instruments which waive the requirement for a tax invoice in certain circumstances have been registered on the Federal Register of Legislative Instruments.
- **Addenda to GST Rulings** – the ATO has issued addenda to various rulings to reflect amendments to Division 29-C of the GST Act in relation to tax invoices and the Federal Court decision in *Aurora Developments Pty Ltd v Federal Commissioner of Taxation*.
- **Brookdale Investments Pty Ltd v Federal Commissioner of Taxation** – the AAT has affirmed the Commissioner's objection decision that the sale of various properties by a property developer was not a GST-free supply of a going concern and upheld the Commissioner's finding regarding the quantum of consideration for the taxable supply.
- **Class Ruling CR 2013/19: GST Treatment of waste management services** – the ATO has issued a class ruling relating to the GST treatment of the supply of waste management services supplied by NSW Councils.
- **Draft Practice Statement PS LA 3618** – on 20 March 2013, the ATO released Draft Practice Statement PS LA 3618 which deals with the GST treatment of Australian taxes, fees and charges under Division 81 of the GST Act.
- **ATO Interpretive Decision ATO ID 2013/13: Amount of input tax credits relating to employee reimbursements** – the ATO has released a new interpretive decision regarding the amount of input tax credit available under section 111-10 of the GST Act if the acquisition is party creditable.
- **GST instalment option: Tax and Superannuation Laws Amendment (2013 Measures No 2) Bill 2013** – proposed amendments affecting the GST instalment system have been introduced into Parliament on 20 March 2012.
- **Carter v Federal Commissioner of Taxation** – the AAT has affirmed the Commissioner's objection decision regarding income and GST assessments with the taxpayer being unable to prove that the assessments were excessive.

| Relevant area                               | At a glance  | Relevant to                 |
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| <p><b>Division 9 – Taxable supplies</b></p> | <p><b><i>The Private Tutor and Federal Commissioner of Taxation</i></b></p> <p>The Administrative Appeals Tribunal ("AAT") in <a href="#">The Private Tutor and Federal Commissioner of Taxation [2013] AATA 136</a> has set aside the ATO's objection decision to cancel the taxpayer's GST registration. However, the AAT has denied the taxpayer's claim to input tax credits ("ITC").</p> <p><b>Facts</b></p> <p>The taxpayer was registered for GST and was engaged in several business activities, including tutoring and computing services, which he claimed constituted his enterprise. The Commissioner undertook a review of the taxpayer's Business Activity Statements ("BAS"), which showed that, for every quarterly tax period over a period of four years, he had lodged BAS in which he claimed ITCs that exceeded the amount of GST that he declared on taxable supplies.</p> <p>The Commissioner formed the view that the taxpayer was not carrying on an "enterprise" within the meaning of section 9-20 of the GST Act; that he was not entitled to the ITCs that he claimed; and that his GST registration should be cancelled. The Commissioner made assessments of the taxpayer's "net amount" for each quarterly tax period from 1 April 2007 to March 2011 and cancelled the taxpayer's registration.</p> <p>The issue before the Tribunal was whether the taxpayer was carrying on an "enterprise" and if so, whether the taxpayer was entitled to any ITCs.</p> <p><b>Decision</b></p> <p>The AAT found that the taxpayer was carrying on an "enterprise" during the relevant period, but was not entitled to any of the ITCs that he had claimed.</p> <p>The AAT concluded that the Commissioner placed too much emphasis on the small scale of the taxpayer's activities. In their view, the small scale of the taxpayer's activities was outweighed by other relevant factors, including:</p> <ul style="list-style-type: none"> <li>• the recurrent nature of the tutoring activities;</li> <li>• the tutoring activities were of a reasonable scale given the restraints within which those activities must be undertaken;</li> <li>• the taxpayer was registered with various coaching colleges;</li> <li>• the taxpayer kept reliable income records of his activities; and</li> </ul> | <p><b>All taxpayers</b></p> |

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|  | <ul style="list-style-type: none"> <li>the taxpayer undertook his activities with a view of making a profit.</li> </ul> <p>The AAT noted that if the activities were considered in light of the "truly attributable expenditure", a profit was the only possible outcome.</p> <p>However, the AAT agreed with the Commissioner and disallowed the ITCs claimed by the taxpayer. The Tribunal stated that the taxpayer's approach to claiming ITCs had been undisciplined and largely unprincipled. The AAT found that the taxpayer claimed ITCs in respect of acquisitions that were not subject to GST or which appeared to be entirely private or domestic in nature.</p>  |                             |
| <p><b>Division 29-C<br/>Tax Invoices</b></p> | <p><b>GST Ruling GSTR 2013/1 Goods and services tax: tax invoices</b></p> <p>On 27 March 2013, the ATO issued <a href="#">GST Ruling GSTR 2013/1</a> which sets out the information requirements for a tax invoice under section 27-70(1) of the GST Act. It also explains when a document is in the approved form for a tax invoice.</p> <p>The ruling also:</p> <ul style="list-style-type: none"> <li>examines the circumstances under section 29-70(1A) when a recipient of a document for a supply can treat that document as a tax invoice even though it does not meet all of the tax invoice requirements;</li> <li>explains section 29-70(1B), which allows the Commissioner to treat a particular document as a tax invoice even though that document does not meet all of the tax invoice requirements; and</li> <li>states the circumstances in which a supplier need not issue a tax invoice and where an input tax credit is attributable to a tax period even if the recipient does not hold a tax invoice.</li> </ul> <p>GSTR 2013/1 sets out that in order to meet the requirement that particular information must be clearly ascertained, a reference to an external source (eg Australian Business Register) does not meet these requirements.</p> <p>The following GST advices have been withdrawn with effect from 27 March 2013 as a result of the issue of GSTR 2013/1:</p> <ul style="list-style-type: none"> <li><a href="#">GST Advice GSTA TPP 027</a>: Goods and services tax: can a manager of an agricultural managed investment scheme issue tax invoices for supplies of produce it makes on behalf of participants?</li> </ul> | <p><b>All taxpayers</b></p> |

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|  | <ul style="list-style-type: none"> <li>• <a href="#">GST Advice GSTA TPP 056</a>: Goods and services tax: where an employee novates a lease to his or her employer, can an invoice to the employee be treated as being received by the employer through its agent (the employee)?</li> </ul> <p>The ruling applies from 1 July 2010. Its predecessor GSTR 2007/17 was withdrawn from 25 May 2011. The new ruling does not set out the situations where the Commissioner would exercise his discretion (which were set out in GSTR 2000/17). Rather these situations are now the subject of legislative determination with a date of effect of 1 July 2010 (details below).</p>   |                             |
|  | <p><b>Waiver of tax invoice requirements</b></p> <p>On 21 March and 22 March 2013, 10 legislative instruments were registered on the Federal Register of Legislative Instruments in relation to the waiver of the requirement for a tax invoice in certain circumstances. These are:</p> <ul style="list-style-type: none"> <li>• <i>A New Tax System (Goods and Services Tax) Waiver of Tax Invoice Requirement (Creditable Acquisition by a Lessee or Sub-Lessee Following a Sale of a Reversion in Commercial Premises) Legislative Instrument 2013 (<a href="#">WTI 2013/9</a>)</i> – this instrument waives the requirement for a lessee or sub-lessee (as recipient) of commercial premises to hold a tax invoice in certain circumstances for an input tax credit to be attributable to a tax period for a creditable acquisition of the premises.</li> <li>• <i>A New Tax System (Goods and Services Tax) Waiver of Tax Invoice Requirement (Acquisitions Where Total Consideration Not Known) Legislative Instrument 2013 (<a href="#">WTI 2013/4</a>)</i> – this instrument waives the requirement for a recipient making a creditable acquisition to hold a tax invoice for an input tax credit to be attributable to a tax period, where the total price of the thing or things acquired cannot be ascertained at the time an invoice is issued or a payment is made.</li> <li>• <i>A New Tax System (Goods and Services Tax) Waiver of Tax Invoice Requirement (Offer Documents and Renewal Notices) Legislative Instrument 2013 (<a href="#">WTI 2013/5</a>)</i> – this instrument waives the requirement for a recipient making a creditable acquisition to hold a tax invoice for an input tax credit to be attributable to a tax period when they hold an offer document or a renewal notice that meets certain prescribed requirements.</li> <li>• <i>A New Tax System (Goods and Services Tax) Waiver of Tax Invoice Requirement (Acquisition from or Acquisitions by a Partnership) Legislative</i></li> </ul> | <p><b>All taxpayers</b></p> |

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|  | <p><i>Instrument 2013 (WTI 2013/6)</i> – this instrument waives the requirement for a recipient or partnership to hold a tax invoice before an input tax credit for a creditable acquisition is attributable for a tax period.</p> <ul style="list-style-type: none"> <li>• <i>A New Tax System (Goods and Services Tax) Waiver of Tax Invoice Requirement (Acquisitions under an Agency Relationship) Legislative Instrument 2013 (WTI 2013/1)</i> – this instrument waives the requirement for a recipient making a creditable acquisition through their agent, insurance broker or by way of a supply made through the supplier’s agent to hold a tax invoice for an input tax credit to be attributable to a tax period.</li> <li>• <i>A New Tax System (Goods and Services Tax) Waiver of Tax Invoice Requirement (Acquisitions by Recipients Using Electronic Purchasing Systems) Legislative Instrument 2013 (WTI 2013/3)</i> – this instrument waives the requirement for a recipient making a creditable acquisition using electronic purchasing systems to hold a tax invoice for an input tax credit to be attributable to a tax period.</li> <li>• <i>A New Tax System (Goods and Services Tax) Waiver of Tax Invoice Requirement (Acquisitions from Property Managers) Legislative Instrument 2013 (WTI 2013/7)</i> – this instrument waives the requirement for a recipient making a creditable acquisition of real property by way of a supply through a supplier’s property manager to hold a tax invoice for an input tax credit to be attributable to a tax period.</li> <li>• <i>A New Tax System (Goods and Services Tax) Waiver of Tax Invoice Requirement (Acquisition of a Motor Vehicle under a Full or Split Full Novated Lease Arrangement) Legislative Instrument 2013 (WTI 2013/10)</i> – this instrument waives the requirement for an employer making a creditable acquisition of a motor vehicle by way of a lease through a full or split full novation arrangement to hold a tax invoice for an input tax credit to be attributable to a tax period.</li> <li>• <i>A New Tax System (Goods and Services Tax) Waiver of Tax Invoice Requirement (Creditable acquisition of Taxi Travel) Legislative Instrument 2013 (WTI 2013/8)</i> – this instrument waives the requirement for a recipient making a creditable acquisition of taxi travel to hold a tax invoice for an input tax credit to be attributable to a tax period.</li> <li>• <i>A New Tax System (Goods and Services Tax) Waiver of Tax Invoice Requirement (Acquisitions from or Acquisitions by a Beneficiary of a Bare</i></li> </ul> |  |
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|   | <p><i>Trust) Legislative Instrument 2013 (WTI 2013/2)</i> – this instrument waives the requirement for a recipient making a creditable acquisition from a beneficiary through the trustee of a bare trust, or a beneficiary of a bare trust making a creditable acquisition from a third party through the trustee of the bare trust, to hold a tax invoice for an input tax credit to be attributable to a tax period.</p> <p>The legislative instruments apply to net amounts for tax periods commencing on or after 1 July 2010.</p>   |  |
|   | <p><b>Addenda to GST rulings</b></p> <p>On 27 March 2013, the Commissioner has issued addenda to the following rulings to reflect amendments to Division 29-C of the GST Act in relation to tax invoices from 1 July 2010:</p> <ul style="list-style-type: none"> <li>• <a href="#">GSTR 2000/29</a> – Goods and services tax: attributing GST payable, input tax credits and adjustments and particular attribution rules made under section 29-25.</li> <li>• <a href="#">GSTR 2000/37</a> – Goods and services tax: agency relationships and the application of the law.</li> <li>• <a href="#">GSTR 2003/13</a> – Goods and services tax: general law partnerships.</li> <li>• <a href="#">GSTR 2004/6</a> – Goods and services tax: tax law partnerships and co-owners of property.</li> <li>• <a href="#">GSTR 2005/1</a> – Goods and services tax: the GST implications of the purchase of fuel using a fuel card.</li> <li>• <a href="#">GSTR 2008/3</a> – Goods and services tax: dealings in real property by bare trusts.</li> </ul> | <p><b>All taxpayers</b></p>                          |
| <p><b>Division 38 – GST-free supplies – going concern</b></p> | <p><b>Addenda to GST Rulings</b></p> <p>The Commissioner has also issued addenda to the following rulings to reflect the Federal Court’s decision in <a href="#">Aurora Developments Pty Ltd v FC of T 2011 FCA 232</a> (covered in our GST bulletin of April 2011) where it was held that the supply of a residential development site was not a GST-free supply of going concern.</p> <ul style="list-style-type: none"> <li>• <a href="#">GSTR 2002/5</a> – Goods and services tax: when is a “supply of a going concern” GST free?</li> <li>• <a href="#">GSTR 2005/5</a> – Goods and services tax: arrangements of the kind described in Taxpayer Alert TA 2004/8: use of the Going Concern provisions and the Margin Scheme to avoid or reduce the Goods and Services Tax on the sale of new residential premises.</li> </ul>   | <p><b>Sellers / purchasers of going concerns</b></p> |

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| <p><b>Division 38 – GST-free supplies – going concern</b></p> <p><b>Section 105-50 of Schedule 1 to the Taxation Administration Act 1953</b></p> | <p><b><i>Brookdale Investments Pty Ltd and Commissioner of Taxation</i></b></p> <p>The AAT has held in <a href="#">Brookdale Investments Pty Ltd and Commissioner of Taxation [2013] AATA 154</a> that the sale of various properties by a taxpayer was not a GST-free supply of a going concern.</p> <p>The AAT also separately considered the quantum of "consideration" for GST purposes received by the taxpayer on the supply of land to a third party in <a href="#">Brookdale Investments Pty Ltd and Commissioner of Taxation [2013] AATA 186</a>.</p> <p><b>Facts</b></p> <p>The taxpayer conducted a property development business and was registered for GST.</p> <p>In June 2006, the taxpayer sold a number of properties to the purchaser for \$3.5 million using a standard-form contract. The taxpayer did not remit any GST on the sale and lodged the Business Activity Statement ("BAS") for the quarter ending 30 September 2006 claiming a GST refund on purchases of \$1,870. The BAS was due by 28 October 2006, but was not lodged until 13 November 2006.</p> <p>Following an audit in 2010, the Commissioner determined that the taxpayer had failed to report the sale of the properties as a taxable supply. On 9 November 2010, the Commissioner issued the taxpayer with a "Notice to repay overpaid refund amounts and pay unpaid indirect tax" under section 105-50 of Schedule 1 to the <i>Taxation Administration Act 1953</i> (Cth) ("TAA") ("Section 105-50 Notice"). The Commissioner determined that the GST payable by the taxpayer on the sale of the properties was \$318,182 on the basis that the GST-free going concern provisions were not satisfied as there was no written agreement in place as required under section 38-325 of the GST Act. In February 2011, the Commissioner issued a "Notice of Assessment of net amount" ("Assessment"). The taxpayer objected to the Assessment on the grounds that the sale of the land was a GST-free supply of going concern under section 38-325 of the GST Act and that the Section 105-50 Notice was invalid. The taxpayer relied on the fact that the directors of the taxpayer company signed statutory declarations in May and April 2011 stating that the properties were "purchased as a going concern."</p> <p>The issue before the AAT was whether the taxpayer and the purchaser had agreed in writing that the supply was of a going concern.</p> <p>The AAT was also required to consider the validity of the Section 105-50 Notice.</p> | <p><b>Sellers / purchasers of going concerns</b></p> |
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|  | <p><b>Going concern</b></p> <p>The AAT held that the sale of the properties was not a GST-free supply of going concern. It was a taxable supply and the taxpayer was liable to pay GST.</p> <p>The sale contract between the taxpayer and the purchaser did not state that it was a supply of going concern. The AAT agreed with the approach previously taken by the Tribunal in <a href="#">Midford and Deputy Commissioner of Taxation [2005] AATA 623</a> and <a href="#">Re Nitram Consulting Pty Ltd and Commissioner of Taxation [2008] AATA 1119</a>, namely that in order to satisfy the condition in section 38-325(1)(c) of the GST Act, the agreement that the relevant supply is of a going concern must be made at or before the time of the supply (settlement). The directors' statutory declarations together could not constitute "an agreement in writing".</p> <p><b>Validity of Section 105-50 Notice</b></p> <p>Further, the AAT confirmed the validity of the Section 105-50 Notice as it was issued within the four-year amendment period. The taxpayer had asserted that the Section 105-50 Notice should have been issued by 28 October 2010 (it was issued on 9 November 2012). The Commissioner contended (which was upheld by the AAT) that it gave written notice to the taxpayer that the BAS was due on 27 November 2006. Further, the Tribunal relied on the Full Federal Court Decision of <a href="#">Cyonara Snowfox Pty Ltd v Commissioner of Taxation [2012] FCAFC 177</a> (covered in our <a href="#">GST Bulletin dated 26 February 2013 covering December 2012/ January 2013 developments</a>) which makes it clear that a notice under section 105-50 of the TAA is not rendered invalid by a reason of some later variation to an amount stated to be payable.</p> <p>The AAT held that the Section 105-50 Notice fulfilled its purpose, being to bring to Brookdale's attention the Commissioner's claim to an entitlement to an unpaid net amount for a particular tax period.</p> <p><b>Quantum of consideration for transfer of property</b></p> <p>In a separate proceeding before the AAT, the taxpayer also disputed the Commissioner's amended assessment for the December 2007 quarter.</p> <p>The taxpayer entered into a loan agreement with a third party which allowed the taxpayer to purchase a property. The loan agreement comprised of the "Loan Term Sheet" and a "Contract for the Sale of Shares" which acknowledged that the taxpayer was indebted to the third party for \$652,118.50. The taxpayer's loan liability was subsequently discharged after the property was subdivided and a lot ("Lot") was transferred to the third party. The taxpayer argued that consideration for the supply of the Lot to the third party was \$521,484, being the amount recorded in the</p> |  |
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|  | <p>taxpayer's financial accounts on the date the transfer of the land was executed. In contrast, the Commissioner contended that the consideration for the Lot was \$652,118.50 being the loan amount which was referred to in the Contract for the Sale of Shares (which referred to the "Principal Sum" of the Loan Term Sheet).</p> <p>The AAT affirmed the Commissioner's decision. The AAT held that the taxpayer had not discharged its onus of proof that the amended assessment was excessive. The AAT accepted that the consideration for the supply of the Lot was the loan amount as referred to in the Contract for the Sale of Shares. This was largely due to the fact that the financial statements relied upon by the taxpayer were unaudited and were not substantiated by any witnesses.</p>  |                                       |
| <p><b>Division 81 – Payment of taxes, fees and charges</b></p> | <p><b>Class Ruling CR 2013/19: GST treatment of waste management services</b></p> <p>On 13 March 2013, the ATO issued a class ruling <a href="#">CR 2013/19</a> relating to the GST treatment of waste management services ("WMS") by NSW Councils under Division 81 (Payment of taxes, fees and charges) of the GST Act.</p> <p>CR 2013/19 provides that certain fees and charges are exempt from GST unless regulation 81-10.01(1)(h) of the GST Regulations also applies. These include fees and charges for supplies of:</p> <ul style="list-style-type: none"> <li>• the kerbside collection of waste or the supply, exchange or removal of bins or crates used in connection with the kerbside collection of waste; and</li> <li>• a regulatory nature made by an Australian government agency.</li> </ul> <p>Unless regulation 81-10.01(1)(h) of the GST Regulations also applies, the following are examples of supplies of the kerbside collection of waste (domestic or non-domestic) that are exempt from GST:</p> <ul style="list-style-type: none"> <li>• where a base fee for kerbside waste service availability is charged;</li> <li>• additional "pick ups" of kerbside waste;</li> <li>• kerbside waste collection provided to properties outside the normal service area;</li> <li>• WMS to a collection point where a group of rural landowners take their domestic waste to a common area, that is not a waste disposal facility, for pick up; and</li> <li>• the occasional kerbside "Council clean up" for larger items, such as, whitegoods, furniture and</li> </ul> | <p><b>NSW Councils /residents</b></p> |

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|  | <p>mattresses that are not normally taken with the regular weekly or fortnightly WMS.</p> <p>The ruling provides the following examples of supplies that are not exempt under Division 81 but are taxable supplies where the requirements of section 9-5 are met:</p> <ul style="list-style-type: none"> <li>• WMS that Council provides in a competitive market, or that may be provided by duly accredited or authorised private sector suppliers; and</li> <li>• fees and charges in relation to waste disposal sites, garbage tips and refuse transfer station.</li> </ul> <p>The ruling applies from 1 July 2013 to all entities within the specified class (being all Councils that are members of the Local Government and Shires Association of New South Wales).</p>   |  |
| <p><b>Division 81 – Payment of taxes, fees and charges</b></p> | <p><b>Draft Practice Statement PS LA 3618</b></p> <p>On 20 March 2013, the ATO released <a href="#">Draft Practice Statement PS LA 3618</a> on the GST treatment of Australian taxes, fees and charges under Division 81 of the GST Act from 1 July 2013.</p> <p>The draft practice statement sets out the administrative approach the ATO will take where Australian government agencies determine the GST classification of supplies that they make for which Australian fees and charges are received as consideration.</p> <p>The draft practice statement provides that for fees and charges existing as at 1 July 2013, the ATO will take the view that, from 1 July 2013:</p> <ul style="list-style-type: none"> <li>• Australian fees and charges covered by the Treasurer’s determination that satisfy the requirements of section 81-10(1) and/ or regulation 81-15.01 are exempt;</li> <li>• if an entity classifies Australian fees and charges as being exempt in accordance with the Treasurer’s determination, the Commissioner will not disturb the treatment retrospectively;</li> <li>• those Australian fees or charges that are listed on the Treasurer’s determination that are regarded as being consideration for a supply will not be eligible to receive this treatment; and</li> <li>• if an Australian fee or charge that receives this treatment is subsequently considered not to be exempt, the Commissioner will require the treatment to be changed prospectively.</li> </ul> <p>Comments are due by 19 April 2013.</p> | <p><b>Australian Government Agencies</b></p> |

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| <p><b>Division 111 – Reimbursement of employees</b></p>    | <p><b>ATO Interpretive Decision ATO ID 2013/13: Amount of input tax credits relating to employee reimbursements</b></p> <p>The ATO has released <a href="#">ATO ID 2013/13</a> which deals with the amount of input tax credits ("ITCs") an entity is entitled to claim under section 111-10 of the GST Act for a reimbursement the entity makes to an employee if the reimbursement is consideration for a partly creditable acquisition.</p> <p>ATO ID 2013/13 provides that the amount of the ITC for a creditable acquisition under section 111-10 of the GST Act is reduced if the acquisition is partly creditable.</p> <p>The ATO's reasoning behind this view is that, while section 111-10 of the GST Act sets out how an amount of ITC is worked out for a creditable acquisition (ie 1/11th of the amount of the reimbursement), due to the operation of section 11-30 (which deals with acquisitions that are partly creditable), to the extent that the acquisition for the reimbursement relates to making input taxed supplies the input tax credits are reduced accordingly. The ATO states that while section 111-10 states that it has effect despite section 11-25, there is nothing that states that section 111-10 overrides section 11-30.</p> | <p><b>Employers</b></p>                             |
| <p><b>Division 162 – Payment of GST by instalments</b></p> | <p><b>GST instalment option amendments introduced</b></p> <p>Proposed amendments affecting the GST instalment system have been introduced into Parliament on 20 March 2013. The amendments are contained in the <a href="#">Tax and Superannuation Laws Amendment (2013 Measures No 2) Bill 2013</a>.</p> <p>The proposed amendments would enable entities that are paying their GST by instalments, and that subsequently move into a net refund position, to continue to use the GST instalments option if they wish.</p> <p><b>Proposed amendments</b></p> <p>Currently, the GST legislation excludes a taxpayer from choosing to pay GST by instalments if that entity is in a net refund position or moves into a net refund position.</p> <p>The proposed amendments amend the GST Act to provide access to the GST instalment option for those entities that have elected to pay their GST obligations by instalments even though they move into a net refund position.</p> <p>The amendments also provide that entities that move into a net refund position and wish to continue paying their GST by instalments have an instalment amount each quarter of zero.</p>  | <p><b>Taxpayers that pay GST by instalments</b></p> |

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|                              | <p><b>Date of effect</b></p> <p>The proposed amendments will apply in relation to GST instalment quarters starting on or after the first 1 July that is on or after the Royal Assent of the Bill.</p>  |                             |
| <p><b>Administration</b></p> | <p><b><i>Carter and Federal Commissioner of Taxation</i></b></p> <p>The AAT has held in <a href="#">Carter and Commissioner of Taxation [2013] AATA 141</a> that a taxpayer has failed to prove that income tax and GST assessments issued to her were excessive. The Commissioner used the Cost of Goods Sold ("COGS") industry benchmarks to assess her business income and ascertain her income tax and GST liabilities.</p> <p><b>Facts</b></p> <p>The taxpayer was registered for GST and carried on a florist business. The ATO selected the taxpayer for an audit of her Business Activity Statements ("BAS") for the period 1 July 2007 to 30 June 2008 for the reason that she had reported COGS outside the industry benchmarks. The taxpayer was requested to provide the ATO with evidence that she was correctly reporting and recording her business income for the florist business.</p> <p>Following the audit, the taxpayer was notified that she had not kept records in such a manner to enable the Commissioner to readily ascertain her tax liability. As a consequence, the Commissioner exercised his discretion under section 105-5 of Schedule 1 to the <i>Taxation Administration Act 1953</i> (Cth) ("TAA") to issue default amended assessments based on the small business industry benchmarks for the florist industry. An administrative penalty of 75% was imposed in relation to the shortfall amount (this was later reduced to 50%).</p> <p>The issue before the Tribunal was whether the Commissioner's assessment of GST net amounts was excessive.</p> <p><b>Decision</b></p> <p>The AAT affirmed the Commissioner's objection decision. The taxpayer failed to discharge her burden of proof by producing to the Tribunal, evidence establishing that the relevant assessments on the balance of probabilities, were excessive.</p> <p>The AAT considered that in the circumstances, as the evidence before it did not prove how the taxpayer calculated the gross income of the florist business, it was open to the Commissioner to exercise his discretion and apply the small industry benchmark range for the florist industry. This resulted in an increase to the income of the florist business</p> | <p><b>All taxpayers</b></p> |

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|  | <p>for the 2008 business year, and accordingly increased the GST liabilities in respect of that year. The AAT found that in these circumstances, it was appropriate for the Commissioner to apply a penalty of 50%.</p> <p>The AAT noted that it was limited to the review of an objection decision and that it was not within its power to address the taxpayer's other claims such as that the Commissioner had acted inconsistently with section 99 of the Constitution and that there had been a breach of the <i>Public Service Act 1999</i> (Cth) by the Commissioner.</p> |  |
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