

GST Bulletin

July 2013 GST developments

WHAT YOU NEED TO KNOW

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

- **Rod Mathiesen Truck Hire Pty Ltd as trustee for the Mathiesen Family Trust and Commissioner of Taxation** – The AAT in *Rod Mathiesen Truck Hire Pty Ltd as trustee for the Mathiesen Family Trust and Commissioner of Taxation* [2013] AATA 496 has held that the consideration received at settlement for the sale of land included the amount owing under a loan agreement between a taxpayer and purchaser.
- **Decision Impact Statement: *ATS Pacific Pty Ltd v Commissioner of Taxation*** – the ATO has released a Decision Impact Statement on 1 July 2013 regarding the Federal Court decision in *ATS Pacific Pty Ltd v Commissioner of Taxation* [2013] FCA 341 on the supplies made by inbound tour operators to non-resident travel agents.
- **ATO Interpretative Decision ATO ID 2013/37: GST and Ship's stores** – the ATO has released ATO ID 2013/37 which considers whether an entity is making a GST-free supplies of ship's stores to passengers and crew when it sells certain types of merchandise on board a ship undertaking an international voyage.
- **NDIS Scheme: GST-free supply (National Disability Insurance Scheme Supports) Determination 2013** – the the GST-free supply (National Disability Insurance Scheme Supports) Determination 2013 has been registered on the Federal Register of Legislative Instruments.
- **Decision Impact Statement: *Cyonara Snowfox Pty Ltd v Federal Commissioner of Taxation***- the ATO has released a decision impact statement regarding the Full Federal Court decision in *Cyonara Snowfox Pty Ltd v Federal Commissioner of Taxation* [2012] FCAFC 177 on the requirements of the taxpayer to apply the margin scheme.
- **ATO Interpretative Decision ATO ID 2013/38: GST and the recovery of waste levy and carbon pricing mechanism costs by waste disposal facility operators** – the ATO has released ATO ID 2013/38 which considers whether waste disposal facility operators are liable for GST on the total amount charged to customers for allowing them to dispose of waste at a waste disposal facility.
- **ATO Interpretative Decision ATO ID 2013/40: GST refund and offset of fee against reimbursed amount** - the ATO has released ATO ID 2013/40 which considers whether an entity has fully reimbursed an amount which corresponds to an overpayment of GST under section 105-65(1)(c) of Schedule 1 to the TAA when an administration fee is 'offset' against the amount which corresponds with overpaid GST.
- ***AJJJ's Emporium Pty Ltd v Commissioner of Taxation*** – The AAT in *AJJJ's Emporium Pty Ltd v Commissioner of Taxation* [2013] AATA 501 affirmed the Commissioner's decision to apply a shortfall penalty because of a taxpayer's reckless claim of input tax credits.
- **Addenda to GST rulings** – the ATO has released addenda to GSTR 2006/9A5 and GSTR 2006/10A3: Goods and service tax, GSTR 2004/1: Reduced credit acquisitions and GSTR/2003/4: Stores and spare parts for international flights and voyages.

Relevant area	At a glance	Relevant to
<p>Division 9 – Consideration</p>	<p>Consideration includes amounts owing under a loan - <i>Rod Mathiesen Truck Hire Pty Ltd as trustee for the Mathiesen Family Trust</i></p> <p>The AAT in <i>Rod Mathiesen Truck Hire Pty Ltd as trustee for the Mathiesen Family Trust and Commissioner of Taxation [2013] AATA 496</i> has held that the consideration received at settlement for the sale of vacant land included the amount owing under a loan agreement between the vendor and the purchaser.</p> <p>Facts</p> <p>Under a contract for sale dated 14 March 2008, the taxpayer agreed to sell land to the purchaser for \$3,177,650 plus GST. After entering into the contract, the purchaser notified the taxpayer that it was unable to pay the whole amount of the purchase price at settlement. At settlement on 16 May 2008, the taxpayer and the purchaser entered into a Settlement Balance Facility Agreement (Agreement) and the taxpayer received \$2,017,885 from the purchaser. Under the Agreement, the taxpayer lent the purchaser \$1,498,682 as an adjustment from the settlement price of the land. The loan was secured by a mortgage over the land. At settlement, the property was transferred to the purchaser and the transfer instrument recorded consideration as \$3,495,403. The taxpayer failed to make the loan repayment by the due date and on 23 February 2009, the taxpayer and the purchaser entered into a deed of variation under which the purchaser agreed to pay \$500,000 within 21 days and transfer three developed lots to the taxpayer. On February 29, the purchaser paid \$500,000 to the taxpayer but did not transfer the developed lots the taxpayer.</p> <p>The Commissioner assessed the taxpayer for GST on the basis that it received full consideration of \$2,017,895 and \$1,477,520 under the Agreement for the transfer of the property. The taxpayer claimed that it was only liable for GST to the extent of the payments received. It contended that the proper approach was to look at the substance and the reality of the transactions, which it said, amounted to a deferral of payment of the purchase price under the contract for sale. Alternatively, it was contended the loan transaction was ancillary to a single or dominant supply under the contract for sale.</p> <p>Decision</p> <p>The AAT affirmed the decision of the Commissioner and held that for GST purposes, all of the consideration in relation to the sale of the land was received by the taxpayer at the time of settlement. The AAT rejected the argument that the loan between the taxpayer and the purchaser was incidental or ancillary to the supply under the contract for sale. They were distinct transactions. The nature of the Agreement was that it was a loan to the purchaser. The obligation to</p>	<p>All taxpayers</p>

	<p>advance the loan money was off-set against at settlement against the purchaser's obligation to pay for the land. Thereafter, the taxpayers rights against the purchaser were under the Agreement and the mortgage.</p>	
<p>Division 38 – GST-free supplies</p>	<p><i>Decision Impact Statement: ATS Pacific Pty Ltd v Commissioner of Taxation</i></p> <p>The ATO has released a Decision Impact Statement on 1 July 2013 regarding the Federal Court decision in <i>ATS Pacific Pty Ltd v Commissioner of Taxation</i> [2013] FCA 341 (covered in our GST Bulletin dated 13 May 2013).</p> <p>The Commissioner's view is that this case is applicable to all inbound tour operators (ITO) that transact as principals or are engaged by non-resident travel agents to enter into contracts with Australian Providers for the provision of products to non-residential tourists. Also where the consideration for the supply by the ITO to the non-resident travel agent is equal to the price paid by the ITO itself, this should be characterised as a supply of a contractual right or promise directly to the non-resident tourist.</p> <p>Based on this, the accommodation products supplied are supplies of real property, and the supply of non-accommodation products would fall under section 38-190(2) and would not be GST-free.</p> <p>The secondary issue that the Federal Court was concerned with related to whether the taxpayer supplied an arranging or booking service. The Commissioner acknowledges that if the taxpayer is entitled to retain its margin in the event that an Australian Provider did not provide the products, it may support the conclusion that the taxpayer made two separate supplies. However, the Commissioner disputes this finding and proposes to submit this to the Full Federal Court.</p> <p>Finally, in relation to the refund issue under section 105-65 the Commissioner supports the decision of the Federal Court that the Commissioner had discretion in relation to refunds sought by the taxpayer. However, section 105-65 has since changed and now covers overpaid amounts involving an arrangement that was treated as giving rise to a taxable supply, but which does not give rise to a supply.</p>	<p>Travel agents</p>

	<p>GST payable on sales made by ship's stores</p> <p>The ATO has released ATO ID 2013/37 which considers whether an entity is making a GST-free supplies of ship's stores to passengers and crew under item 5 in the table in section 38-185(1) of the GST Act, when it sells certain types of merchandise on board a ship undertaking an international voyage.</p> <p>ATO ID 2013/27 provides that an entity is not making GST-free supplies in such circumstances.</p> <p>The ATO's reasoning turns on the requirements of item 5 of section 38-185(1) of the GST Act. Specifically it turned upon the classification of whether the goods were used or consumed on board the ship. This depended on the type of product being purchased.</p> <p>Goods to be consumed after the duration of the voyage such as alcohol, tobacco, perfume and cosmetics purchased in large quantities, durable goods such as electronic items, jewellery and fashion clothes and accessories are not GST-free supplies of ship's stores.</p>	<p>Ship operators</p>
	<p>NDIS Scheme: GST-free Supply (National Disability Insurance Scheme Supports) Determination 2013</p> <p>The GST-free Supply (National Disability Insurance Scheme Supports) Determination 2013 commenced on 6 July this year.</p> <p>The supply of disability support may be GST-free where the supply meets the requirements of section 38-38 of the GST Act. For example the supply must be one or more of the reasonable necessary supports specified in the NDIS plan.</p> <p>The Determination provides a list of 22 kinds of supplies that may be considered GST-free. The GST-free supplies will generally reflect supplies where the supplier has received government funding.</p> <p>The Determination also excludes particular supplies that will not be GST-free even if they meet the requirements under section 38-38 of the GST Act. These supplies include transport by taxis and supplies associated with assistance with rental costs.</p> <p>The Determination will effect supplies made on or after 1 July 2013 which are made on or before 30 June 2016.</p>	<p>Disability support suppliers</p>
<p>Division 75 - Margin scheme</p>	<p><i>Decision Impact Statement: Cyonara Snowfox Pty Ltd v Federal Commissioner of Taxation</i></p> <p>The ATO has released a Decision Impact Statement on 29 July 2013 regarding the Full Federal Court Case <i>Cyonara Snowfox Pty Ltd v Federal Commissioner of Taxation</i> [2012] FCAFC 177 (covered in our GST Bulletin dated 26 February 2013). This case was also denied special leave to appeal to</p>	<p>Taxpayers that use the margin scheme</p>

	<p>the High Court (covered in our GST Bulletin dated 8 July 2013).</p> <p>The Full Federal Court upheld the AAT's decision that section 75-5 of the GST Act (prior to 2005) required a taxpayer to make the choice to apply the margin scheme, no later than the time of supply.</p> <p>This decision of the Full Federal Court is consistent with the Commissioner's view and previous GST Rulings GSTR 2006/7, GSTR 2006/8 and practice statement PS LA 2005/2.</p>	
<p>Division 81 – Payment of taxes fees and charges</p>	<p>Recovery of waste levy and carbon pricing mechanism costs subject to GST</p> <p>The ATO has released ATO ID 2013/38 which considers whether waste disposal facility operators are liable for GST on the total amount charged to customers for allowing them to dispose of waste at a waste disposal facility.</p> <p>ATO ID 2013/28 stated that the waste disposal facility operators were liable for GST on the total amount charged to customers, including amounts for recovery of a waste levy under state or territory environment protection legislation and regulations and carbon pricing mechanisms costs under Commonwealth legislation even if the amounts are issued on separate tax invoices.</p> <p>This is because Division 81 of the GST Act does not apply to amounts for the recovery of waste levy and carbon pricing mechanism costs included in the total amount charged to customers. Therefore, the total amount charged to customers, including amounts for the recovery of waste levy and carbon pricing mechanism cost, is the consideration for the taxable supply of waste management services made by the entity and the entity is liable to pay GST to the ATO on the taxable supply.</p>	<p>Waste disposal facility operators</p>
<p>Refunds</p>	<p>Reimbursement of an overpayment of GST</p> <p>The ATO has released ATO ID 2013/40 which considers whether an entity has fully reimbursed an amount which corresponds to an overpayment of GST pursuant to section 105-65(1)(c) of Schedule 1 to the <i>Taxation Administration Act 1953</i> (TAA) when an administration fee is 'offset' against the amount which corresponds with overpaid GST.</p> <p>ATO ID 2013/40 provides that where an amount which corresponds to the overpaid GST is to be offset by an administration fee, the Commissioner is only satisfied that the recipients have been reimbursed to the extent of the amount which corresponds to the overpaid GST less the administration fee.</p> <p>Thus, the ATO is not satisfied that the taxpayer is entitled to a GST refund for the administration fee charged to clients under section 105-65 of the TAA as there has been no</p>	<p>All taxpayers</p>

	reimbursement to customers.	
Tax administration –Penalties	<p>AJJJ's Emporium Pty Ltd Penalty for recklessness</p> <p>The AAT in <i>AJJJ's Emporium Pty Ltd v Commissioner of Taxation</i> [2013] AATA 501 upheld a penalty imposed on a taxpayer for incorrectly claiming input tax credits resulting in a shortfall amount of \$72,317.</p> <p>Facts</p> <p>The taxpayer was an importer of construction goods. In 2012 the taxpayer was audited which resulted in the finding of an incorrect claim for input tax credits amounting to a \$72,317 shortfall.</p> <p>The issue for the AAT was whether or not the taxpayer had acted recklessly in claiming input tax credits despite not having any entitlement.</p> <p>The taxpayer argued that it was not reckless, and it had suffered a disadvantage by relying on advice received from the Tax Office (via a telephone hotline). This advice was provided to the taxpayer after the submission of its Business Activity Statement.</p> <p>Decision</p> <p>The AAT held that the taxpayer suffered no disadvantage as the advice from the Tax Office could not have impacted the taxpayers decision, given that it was given after the BAS statement was submitted.</p> <p>The AAT reasoned that the taxpayer should not have relied on general advice from the hotline, rather it should have received a private taxation ruling, especially because of the size of the taxpayer's input tax credit claim.</p> <p>It followed that the AAT upheld the penalty decision of 50 per cent of the shortfall amount.</p>	All taxpayers
Various	<p>Addenda to GST Rulings for July</p> <p>The Commissioner has issued the following addenda this month;</p> <ul style="list-style-type: none"> • GSTR 2006/9A5 - Goods and services tax: supplies. This addendum reflects the amendments made to the GST Act by the <i>Tax and Superannuation Laws Amendment (2012) Measures No.1) Act 2012</i>; • GSTR 2006/10A3 – Goods and services tax: insurance settlements and entitlements to input tax credits. This addendum reflects the amendments made to the GST Act by the <i>Tax and Superannuation Laws Amendment (2012)</i> 	<p>All taxpayers</p> <p>Insurers</p>

	<p><i>Measures No.1) Act 2012</i></p> <ul style="list-style-type: none"> • GSTR 2004/1: Reduced credit acquisitions. This addenda provides further guidance to item 32, supplies made by a recognised trust scheme on or after 1 July 2012; and • GSTR 2003/4: Stores and spare parts for international flights and voyages. This addendum reflects changes made by the <i>Indirect Tax Laws Amendment (Assessment) Act 2012</i>. This addendum applies on and from 1 July 2012. This addendum reflects the amendment to section 17-20(2) of the GST Act which is in relation to the determination of a taxpayers net amount for a tax period. 	<p>Supplies made by a recognised trust scheme</p> <p>Suppliers of ship or aircraft stores</p>
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