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Attention: Board of Taxation Secretariat

Review of Legal Framework for Administration of GST

This submission is made by the Commonwealth Bank of Australia (the Group) to provide input to the Board of Tax Review of the *Legal Framework for the Administration of the Goods and Services Tax*.

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

Please feel free to contact George Spathis on 02 9378 2343 or Craig Klappdor on 02 9378 3779 to discuss any of the matters detailed in this submission.

Yours sincerely


George Spathis

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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

Issue – Apportionment (Division 11)

There is a considerable amount of uncertainty around the “extent of creditable purpose”, resulting a great deal of taxpayer and tax administrator time spent on vetting and reviewing GST recovery methodologies at considerable cost to both parties.

For Consideration

Consideration should be given to a legislative basis for apportionment safe harbours, for example a default revenue method, or a special method agreed with the Commissioner. Such legislative 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.

Taxpayers using a method such as a special method should then be required to make a one off annual adjustment to reflect their existing apportionment methodology each year, which could be tied in with the operation of Division 129 adjustments.

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 subsection 11-15(5) would reduce compliance costs and improve the operation of the GST. Accordingly the definition of borrowing should include any form of borrowing, whether secured or unsecured, and would include the raising of funds by the issue of a bond, debenture, discounted security or other document evidencing indebtedness.

Issue – Tax Invoices (Division 29)

The requirement to keep Tax Invoices for the purposes of attribution is unnecessarily onerous and costly for large business which deals with the processing of a many thousands of invoices on a day to day basis.

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 Tax 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.

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, as a result 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 discriminates 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 a 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 may like to consider treating HP agreements as supplies for a period, pursuant to Division 156.

Issue – Attribution (Division 29)

Taxpayers have the option of accounting for GST on different accounting bases (cash or accruals) which results in inconsistent timing of liabilities and credits between taxpayers and also gives rise to complexities in the application of other adjustment provisions of the Act, such as bad debt adjustments.

For Consideration

GST should be attributed by all taxpayers on a cash basis, “following the cash” is significantly simpler for compliance and can actually reduce Tax Office risk in situations where large credits are claimed and mismatched with counterparty liabilities.

Of course, if a taxpayer chose to account for a liability on an accruals basis (at the time of invoice and prior to receiving payment) this would not affect the integrity of the system. However, there should be no requirement for a taxpayer to pay an amount of GST before it is received from the customer. Similarly the integrity of the system is protected where credits are not claimed until payment is made to the supplier.

This measure, if implemented, would protect ATO revenue and remove the requirement for such things as bad debt adjustments and the various attribution rules around the holding of Tax Invoices and supplies made for a period.

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 should have 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

Grouping trusts/partnerships (Division 48)

Pursuant to Division 48 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
- 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.

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.

Issue – Insurance (Division 78)

For the purposes of establishing an insurer's entitlement to Decreasing Adjustment, the need to track the extent of input tax credit entitlement (ITCE) of policy holders at the time of settlement creates a significant compliance risk and cost to insurers.

For Consideration

Division 78 should be amended so that cash settlements are treated as taxable supplies to the extent the insured is entitled to an ITC.

Further, such a change would not affect 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.

Such a change would have the effect of making one eleventh of all cash settlements either a GST credit *or* decreasing adjustment with no requirement for the insurer to track ITCE. This measure would be a major simplification and reduction in compliance cost and risk for insurers.

Under this approach the liability for GST on cash settlements should 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.

Issue – Vouchers (Division 100)

Division 100 of the Act is unnecessarily complex with regard to attribution of GST and creates a significant compliance risk in accounting for the acquisition of vouchers when providing customer and staff awards.

Further, in respect of valuation Division 100 seeks to recover an amount on account of GST which is more than the actual consideration received for the voucher.

The “voucher” provisions of Division 100 were a measure borrowed from foreign VAT provisions and took their origin in those jurisdictions as “book voucher”. That is, vouchers that would be redeemed for the acquisition of books. Given that books were not subject to VAT in these jurisdictions the “book voucher” itself was not subject to tax on its acquisition to avoid the need to make an adjustment.

In the Australian context such a measure was of no consequence as books in Australia are subject to GST. However, at the time of implementation of GST the Retail Traders Association lobbied for a voucher provision so that if a voucher was later redeemed for a GST-free item then no GST

adjustment would need to be made. A similar argument was made sometime later by the telecommunications industry in relation to prepaid phone cards being used for international (GST-free) phone calls.

The reality of the situation is that very few, if any, vouchers are ever redeemed for GST-free goods/services it is more a question of timing benefit available to the retailer or telco.

The better approach is to tax every voucher at the time it is supplied and to pay GST on the additional consideration received when the voucher is redeemed. Should the voucher (if ever) be redeemed for a GST-free good/service then the adjustment provisions will allow for an adjustment to the earlier GST.

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

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 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.

Issue – Turnover threshold (Division 188)

The meaning of *GST turnover* for the purposes of Division 188 is convoluted and is not easily understood (and followed) by taxpayers, as a number of changes have been made to the Division since the introduction of GST.

For Consideration

A fresh look should be taken at Division 188 with a view to rewriting it so that *GST turnover* is defined simply as *the value of all taxable supplies*.

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 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 allows 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 to supplement the operation of Division 129.

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

Chapter 4 - Administrative Environment

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.

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 as parties to the transaction .

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.