

The Board of Taxation
C/- The Treasury
Langton Crescent
CANBERRA ACT 2600

Received
07 SEP 2009
Board of Taxation

Comment in respect to Section 5.4 of the Discussion Paper - Review of the application of GST to cross border transactions in respect to the "Connected To Australia" provisions of the GST Act.

Dear Sir / Madam

In section 5.2 of the discussion paper it was stated that the "Connected with Australia" provisions in the GST act draws many non resident entities into the Australian GST system which leads to inefficient outcomes.

Section 5.4 then asks for comment on options that limit the application of the "connected to Australia" provisions in respect to certain cross border business to business transactions

I recommended that the "Connected with Australia" provisions be limited so that they do not include repairs carried out by Australian businesses where the repair is being compensated by the warranty provisions of a non resident manufacturer.

In the aviation industry, non resident manufacturers extend warranty provisions on their products worldwide. They have a network of authorised repairers who they sub-contract to perform warranty repair work. The authorised repairer is contracted to provide the repair to the end customer free of charge then lodge a claim with the manufacturer. If the claim is approved, the Australian repairer will either be reimbursed by a replacement part or by a supplier credit invoice that can be applied to future purchases. Labour gets reimbursed at agreed hourly rates.

Currently, under GST determination GSTD / 2, such a repair is a taxable supply.

However, an Australian aviation repair business could be an authorised repairer for several non resident manufacturers. In order for them to comply with our GST obligations, they need to invoice the non resident manufacturer with GST for these services. The GST is then remitted to the ATO with the monthly BAS.

The non resident manufacturer is expected to register for GST in Australia and lodge monthly or quarterly BAS returns to claim back the GST as input tax credits.

The standard contracts that the non resident manufacturers have with their authorised repairers state that the repairers are responsible for all local duties and taxes. They are suspicious when told that they need to register for GST in Australia and do not wish to expose themselves to a country's tax system where they do not have a basis of operation.

In the aviation industry the authorised repairers and non resident manufacturers are not related parties in the Corporation Law sense, which is often the case in the motor vehicle industry. In the motor vehicle industry an Australian subsidiary company would be the repairer and the parent company would be the manufacturer. Therefore, the manufacturer would trust the repairer to act as their agent for GST purposes.

This level of trust does not exist in the aviation industry.

In the motor vehicle industry, the authorised repairer and the manufacturer work on an exclusive commercial relationship between the subsidiary and parent company. However, in the aviation industry, one authorised repairer is registered with several unrelated non resident manufacturers. Therefore, even if they did agree to allow the non resident manufacturer to act as their agent the authorised repairer would incur the compliance costs of managing and lodging quarterly BAS statements for several organisations.

However, in my experience there is not a single non resident manufacturer who is willing to register for GST in Australia. As far as they are concerned, the GST incurred is a local cost of business that the authorised repairer must absorb.

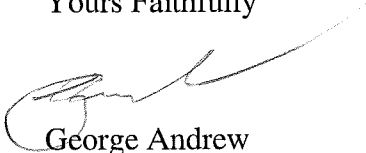
Therefore, the authorised repairer will write off the GST portion of the invoices as uncollectable debts.

It is clear that GST determination GSTD / 2 was drafted with the motor vehicle industry in mind. However, when the determination is applied outside the motor vehicle industry the result is that it captures non resident businesses that would otherwise not have any connection with Australia.

Because this is a business to business transaction as outlined in item 5.4 of the discussion paper, there are no end users within Australia who should be incurring the GST.

Therefore, the "connected with Australia" provisions of the GST act should not include repair services performed free of charge by an authorised repairer as per the warranty provisions of a non resident manufacturer's product.

Yours Faithfully



George Andrew
Public Officer