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JAIL TIME FOR AUDACIOUS BUSINESS TAX CLAIMS

In July a South Australian man was sentenced to 2 years and 4 months jail for attempting to obtain nearly $1.5 million in refunds he wasn't entitled to.

Mr Adam Hamshere, 39, used his accounting knowledge to set up a fake business. He obtained an ABN, and later registered for GST and Wine Equalisation Tax (WET), claiming he sold cigars.

On 31 March 2016 Mr Hamshere lodged five business activity statements (BAS), claiming he was entitled to GST and WET refunds of $1,444,069.

This immediately attracted ATO attention with their systems flagged this claim initiating an audit almost immediately. Mr Hamshere's brazen behaviour didn't stop there, he subsequently rang the ATO almost a dozen times asking for his refund, and during the audit claimed his paper and electronic records had been stolen.

Detailed investigations could find no evidence of business activity, nor evidence of Mr Hamshere's claims that all of his paper and electronic records had been stolen.

Mr Hamshere was charged in Adelaide District Court with six counts of section s11.1 & s134.2(1) of the Criminal Code 1995 as he attempted, by deception, to dishonestly obtain a financial advantage from the Commonwealth.

Acting ATO Assistant Commissioner David Mendoza said the strong sentence was a fitting result for such an audacious attempt to cheat the tax system.

"Those people who try to evade or cheat the tax and super system will get caught and we will take firm action. We will not tolerate this type of behaviour.

"The tax and superannuation systems are valuable community assets owned by all Australians and we all have a role in protecting them." Mr Mendoza said.

LEGISLATION LIST: AUGUST 2019

Both Houses will resume sittings on Monday 9.9.2019.

Below is a list of bills introduced with an outline of what they propose and their current status within Parliament.

Before the House of Representatives

The Treasury Laws Amendment (Ending Grandfathered Conflicted Remuneration) Bill 2019 was introduced on 1.8.2019 and proposes to end grandfathered conflicted remuneration to financial advisers and require grandfathered benefits to be passed through to retail clients, where their commissions remain payable in contracts after 1 January 2021.

The Treasury Laws Amendment (2018 Superannuation Measures No.1) Bill 2019 introduced on 24.7.2019, the bill proposes to:

- Introduce an employer shortfall exemption certificate for certain employees with multiple employers;
- Introduce reforms to further support the operation and integrity of the Superannuation Taxation Reform Package announced in the 2016-17 budget; and
- Extend the existing non-arm's-length income rules to capture non-arm's-length expenses

The treasury Laws Amendment (2018 Measures No.2) Bill 2019 introduced on 4.7.2019, the bill proposes to:

- Extend the regulation-making powers in the Corporations Act, establishing the foundation for the Federal Government's new regulatory framework for the Fin Tech sector; and

- Make a number of minor technical amendments to the venture capital and early stage investor provisions to ensure that these provisions operation in accordance with their original policy intent.

The Treasury Laws Amendment (Combating Illegal Phoenixing) Bill 2019 was also introduced on 4.7.2019 and bill proposes to:

- Provide an additional $8.7 million over four years from the 2018-19 financial year to increase funding for the Assetless Administration Fund; and
- Make minor amendments to the Government's already legislated insolvency reforms which formed part of the National Innovation and Science Agenda.

Again, introduced on 4.7.2019, the Treasury Laws Amendment (Putting Member's Interest First) Bill 2019 proposes to require that insurance be provided on an opt-in basis only for members with balances below $6,000 and any new members from 1 October 2019 who are under the age of 25.

Before the Senate

The Treasury Laws Amendment (2019 Tax Integrity and Other Measures No.1) Bill 2019 passed the House of Representatives on 1 August and is now before the Senate. The Bill proposes to:

- Remove tax deductions which arise on the repayment of loan principal for certain privatised entities;
- Ensure that partners in partnerships can't access the small business capital gains tax concessions when they alienate future income from the partnership;
- Deny deductions for some taxpayers for expenses associated with holding vacant land;
- Extend to family trusts a specific anti-avoidance rule that applies to other closely held trusts that engage in circular trust distributions;
- Allow the ATO to disclose to credit reporting bureaus the tax debt information of businesses that have owed the ATO at least $100,000 for more than 90 days and, importantly, have not effectively engaged with the ATO to manage their debt;
- Allow the ATO to implement an electronic invoicing framework-knowns as e-invoicing-in Australia;
- Prevent employers from using salary sacrificed contributions to satisfy the employer's superannuation guarantee obligations; and
- Prevent employers from reducing the base on which they calculate their superannuation guarantee obligations by the among of the salary sacrificed contributions.

The Treasury Laws Amendment (Making Sure Multinationals Pay Their Fair Share of Tax in Australia and Other Measures) Bill 2019 was first introduced on 4 July, passed the House of Representatives on 31 July and is now before the Senate. The Bill proposes to:

- Introduce new provisions to improve the integrity of Australia's thin capitalisation rules;
- Remove the ability for an entity to revalue its assets specifically for thin capitalisation purposes; and
- Ensure the non-ADI foreign controlled Australian tax consolidated groups and multiple entry consolidated groups that have foreign investments or operations are treated as both outward investing and inward investing entities.

JUSTIFIED TRUST

The concept of justified trust adopted by the ATO stems from the Organisation for Economic Cooperation and Development (OECD).

Justified trust builds and maintains community confidence that taxpayers are paying the right amount of tax. It also allows the ATO to focus resources in the right areas.

To achieve justified trust, the ATO seeks objective evidence that would lead a reasonable person to conclude a particular taxpayer paid the right amount of tax. This is a higher level of assurance than confirming certain risks do not arise.

The ATO tailors their assurance approach based on the unique business profile of a taxpayer.

When engaging with a taxpayer the ATO reviews the following four key areas.

Understanding a taxpayer's tax governance framework

The ATO confirms the existence, application and testing of a tax risk management and governance framework.

They recognise entities use different governance practices based on a range of factors, including their:

- Size

- Ownership
- Complexity
- Industry
- History
- Corporate culture

Identifying tax risks flagged to the market

The ATO reviews risks or concerns communicated to the market (for example, through Taxpayer alerts, Practical compliance guidelines, or Public rulings) and then determines whether these may be present.

Understanding significant and new transactions

The ATO seeks to understand current business activities, particularly significant or new transactions, and the tax outcomes.

Understanding why the accounting and tax results vary

The ATO analyses the various streams of economic activity and how they are treated for taxation and excise purposes.

This requires a holistic understanding of the taxpayer's business operations and financial performance. The ATO then compared this to its tax performance.

For example, the following are analysed:

- The Effective tax borne (ETB) and global value chain to understand the variance between accounting and income tax results
- Sales and acquisitions data and compare this to net GST paid.

Intended outcomes from our approach to justified trust

Justified trust gives the community confidence that large businesses are paying the right amount of tax. This fosters broader willing participation and engagement across the tax and superannuation system.

This approach helps the ATO on focus how to minimise the tax gap through:

- Engagement strategy (for example, identifying and resolving areas of concern at the earliest possible time)
- Active compliance (for example, audit cases)
- Active prevention across the market (for example, through Taxpayer alerts, Practical compliance guidelines, or Public rulings.)

TAX CRIME PROSECUTION CASE STUDIES

From failing to lodge income tax returns to submitting dodgy work-related expenses, the ATO will not tolerate any form of tax crime. The case studies below reinforce that those who deliberately cheat the system will be held to account.

Failure to lodge - Company director sentenced for ongoing non-compliance

A company director has been convicted and fined $51,500 after pleading guilty to seven charges relating to outstanding activity statements and failing to comply with information notices.

Mr Michael George Fotios, the Director of private resource company Delta Resource Management Pty Ltd, was convicted and fined $37,500 for failing to lodge five activity statements from 1 January 2016 to 31 March 2017.

He was also convicted of failing to provide information and documents as required by notice. He was fined $7,000 on each of the two charges relating to this failure.

Mr Fotios was fined a total of $51,500 across all seven charges in the Perth Magistrates Court after the magistrate considered his:

- plea
- financial circumstances
- lodgment of the relevant returns
- compliance with the information gathering notice.

The magistrate said due to the history of non-compliance and the seriousness of the offences, imprisonment was seriously considered as a sentencing option however, the appropriate penalty was applied. He described Mr Fotios' non-lodgment and non-compliance as contemptuous.

False work-related expense claims - Incorrect deductions land chef in hot water

A Queensland woman has been convicted of three criminal offences after making false and misleading statements on her income tax returns.

Ms Helen Feulufai was employed as a chef at a hospital, where she was supplied with a full work uniform, including personal protective equipment and tools, by her employer. She was also not required to travel or use her own vehicle in the course of her employment. Despite this, Ms Feulufai claimed travel and clothing expenses as work-related deductions on her 2016 to 2018 financial year income tax returns.

She also claimed charitable donations to an organisation that was not registered as a deductible gift recipient, in order to obtain refunds to which she was not entitled.

The refunds amounted to more than $45,000 over three years.

Ms Feulufai had been audited previously for claiming similar deductions, and in both cases sent a letter providing education about valid deductable expenses for travel, vehicle and charitable donations.

In addition to repaying the refunds, in June 2019 Ms Feulufai was ordered to pay a fine of $3,000, as well as an additional $20,000 payment to the Commissioner of Taxation and court costs.

Five employees convicted for false WRE claims

Five employees of an engineering firm have been convicted and ordered to pay orders and fines of more than $50,000 for making false work-related expense (WRE) claims.

In 2015 The ATO identified unusual patterns of WRE for car and travel expenses being claimed by Bechtel employees at Curtis Island. Checks with the employer confirmed the company reimbursed all drive-in, drive-out employees for their travel expenses, and that they were not entitled to claim any costs in their tax returns.

The employees had been given tax advice by their employer in relation to WRE. We also developed a fact sheet which Bechtel issued to affected individuals with their payslips.

As part of the engagement process, The ATO met with registered agents of the affected employees and provided a new tailored webpage for Bechtel employees. The ATO also established a dedicated email and hotline number for employees seeking further advice on how to amend their returns and avoid a potential penalty.

While most employees chose to voluntarily amend their tax returns, some declined the opportunity or continued to claim incorrect WRE deductions. This resulted in the conviction of five Bechtel employees for falsely claiming WRE and they have been ordered to pay a total of $54,315 in orders and fines.

Convictions:

- Mr Michael Doon was convicted in the Southport Magistrates Court on 15 October 2018 for making a false and misleading statement. He received a $700 fine and was ordered to pay an additional $7,840.
- Mr Ralph Mueller was convicted in the Brisbane Magistrates Court on 16 April 2019 for making a false and misleading statement. He received a $500 fine and was ordered to pay an additional $8,000.
- Mr Arnulfo Elpa was convicted in the Townsville Magistrates Court on 8 October 2018 for recklessly making a false or misleading statement (s8N). He received a $1,000 fine and was ordered to pay an additional $9,509.
- Mr Phillip Frid was convicted in the Brisbane Magistrates Court on 12 October 2018 for recklessly making a false or misleading statement (s8N). He received a $1,000 fine and was ordered to pay an additional $19,766.
- Mr Phillip Presley was convicted in the Latrobe Valley Magistrates Court on 16 October 2018 for recklessly making a false or misleading statement (s8N). He received a $6,000 fine.

Refund fraud - Three years and three months jail for tax fugitive

On 30 May 2019, a 56-year-old New South Wales man was sentenced to three years and three months jail a decade after he fraudulently obtained and attempted to obtain more than $200,000 from the ATO. He was also ordered to pay reparations of $154,188.

Between 2002 and 2004, Mr Peter Garven lodged three fraudulent income tax returns on behalf of Peter Garven Consulting and Garven Resources, netting himself $102,504 in refunds he was not entitled to. After submitting a string of false business activity statements, Mr Garven fraudulently obtained a further $51,684 in GST refunds.

Following extensive audit activity, in which Mr Garven was given every opportunity to amend his returns, the matter was referred to the courts.

When Mr Garven failed to appear for trial, a warrant was issued for his arrest. Mr Garven remained a missing person until he was arrested by New South Wales Police in 2017.

Man convicted of income tax fraud

A tax scam involving handwritten income tax forms, lodged fraudulently on behalf of a number of overseas citizens whose personal details had been stolen, has led to a jail term for an overseas citizen.

In March 2019, Mr Tharun Likki was sentenced to two years and three months jail for fraudulently obtaining more than $117,000 and attempting to obtain another $22,180. Working with others, Mr Likki illegally obtained the visa details of a number of Indian nationals living in Australia, using their details to generate Tax File Numbers (TFN) and then lodged paper tax returns on their behalf.

Mr Likki filled out a number of the forms himself, confirmed by handwriting analysis during the investigation.

The fraud was uncovered by an anonymous report received through the Tax Evasion Referral Centre.

FOREIGN VENDORS OF AUSTRALIAN PROPERTY NO LONGER ABLE TO SKIP TOWN

Minister for Housing and Assistant Treasurer, Michael Sukkar, announced the Government's foreign resident capital gains tax (CGT) withholding laws have raised more than $1 billion since their introduction on 1 July 2016.

Effectively, the law requires buyers to withhold CGT on land they acquire from non-residents.

According to Mr.Sukkar

- More than half a billion dollars in CGT assessments have also been captured in compliance and engagement activity by the Tax Avoidance Taskforce over the last two years. This includes $290 million in cash collected thanks to the Morrison Government's focus on property and other asset sales by multinationals and foreign residents.
- Taken together, the decisive actions of this Government have kept more than $1.3 billion in the country. The message is clear to multinationals and foreign residents – you can't avoid paying your CGT.
- The Tax Avoidance Taskforce and the foreign resident capital gains tax withholding laws, which both commenced 1 July 2016, have helped shut down opportunities for foreign entities who try to get their money out of the country before meeting their obligations.
- The enhanced data analytics and technical expertise of the Taskforce, led by the Australian Taxation Office, ensures that sales are identified and investigated more quickly than ever.

  The Taskforce is now intervening and engaging with non-resident vendors in real-time, ensuring that where it's required, tax is collected on the spot before the sales proceeds can leave the country. In some instances, additional security has been sought over other assets to ensure foreign resident taxpayers meet their obligations.

The Taskforce's compliance activity covers both direct property sales and sales of interests in companies and trusts whose assets are primarily property. The types of property include major infrastructure assets, agricultural assets, mining tenements, hotels and office towers.

EXTENSION OF DIRECTOR'S PENALTY NOTICES TO INCLUDE GST

The recent *Treasury Laws Amendment (Combating Illegal Phoenixing) Bill 2019* (the Bill), set to come into effect from 1 October 2019, contains new tax integrity measures targeting illegal Phoenixing activity. The Bill makes directors personally liable in certain circumstances for a company's actual or 'estimated' outstanding GST liability. The Bill has significant implications for all company directors.

To understand the importance of this new legislation it is necessary to understand what a Director Penalty Notice (DPN) is. Currently this is a Notice that the ATO can send a director that can make that director personally liable for two types of tax debts of a company – Pay As You Go ("PAYG") and Superannuation Guarantee Charge ("SGC") liabilities.

The DPC regime is set out in Division 269 of Schedule 1 of the Taxation Administration Act 1953. There are two types of Director Penalty Notices. The first is the traditional Director Penalty Notice which gives a director 21 days to take certain actions to avoid personal liability. The second type of DPN, often referred to as a "Lockdown DPN", can make a director automatically personally liable for PAYG and SGC if company tax returns are not lodged on time – there is no opportunity to avoid that liability once the DPN is served on the director.

The Bill proposes to extend the Commissioner's reach to include estimated of an entity's "net amount" under the GST Act. When an entity has failed to lodge a GST return on its due date, the Commissioner can issue a notice of an entity's estimated net amount to the taxpayer. The taxpayer will then be deemed to owe this estimated net amount of GST to the Commissioner, despite an actual assessment not having been made.

The Bill will extend the current DPN regime, which presently applies to PAYG and SGC liabilities, to include an entity's unsatisfied GST liability resulting in an entity's assessed not amount (or its estimated net amount) potentially becoming the personal obligation of its directors who received a DPN.

There will be only 21 days between the Commissioner issuing a DPN to a director, and the outstanding amount being recoverable. Directors may decide the company is insolvent and place it in administration. All directors need to be vigilant especially new directors as they can become liable 30 days after their appointment where they are appointed after the due date and the amount of GST is still outstanding. All directors will need to understand the company's GST obligations and have a good grasp of hoe the GST regime works.

LEVELLING THE PLAYING FIELD FOR ONLINE HOTEL BOOKINGS

On 8 May 2018 the Federal Government announced it would level the playing field to ensure offshore sellers of Australian hotel accommodation calculate their goods and services tax (GST) turnover in the same way as local sellers from 1 July 2019.

Unlike Australian-based businesses, offshore sellers of Australian hotel accommodation are exempt from including sales of hotel accommodation in their GST turnover. This means they are often not required to register for and charge GST on their mark-up on the wholesale price of the accommodation.

Removing this exemption will level the playing field by ensuring the same tax treatment of Australian hotel accommodation when booked through a domestic or an offshore seller.

If accommodation is paid for (in part or in full) before 1 July 2019 the sale from the offshore seller will not be subject to GST.

The ATO has given offshore sellers practical guidance on these matters.

Offshore seller

Registering for GST

You may need to consider if you are required to be registered for GST from 1 July 2019 in the event that the law passes Parliament.

Standard GST registration is the most relevant to offshore sellers of accommodation.

Tax invoices

Once the law has passed Parliament you will need to provide a tax invoice within 28 days of customers' requests for taxable sales of accommodation from 1 July 2019.

GST reporting and payment

You are not required to pay or report GST on relevant sales until the proposed law passes Parliament.

Affected offshore sellers are expected to keep business records to enable GST to be reported and paid as soon as reasonably practicable after the law is enacted.

You may be entitled to claim GST credits once you are registered or required to be registered. However, you cannot claim a GST credit until you hold a tax invoice, or a recipient created tax invoice (RCTI). You cannot issue an RCTI unless you are eligible to do so and have a written RCTI agreement with the Australian accommodation provider.

Concessional treatment for offshore sellers

If you make a genuine attempt to comply the ATO will apply a concession and you won't have to pay penalties during the first 12 months of this measure.

The concession is not automatic, and you will need to advise the ATO that you want to access these concessions. Following the law passing Parliament, additional guidance will be published to outline how you can request access to these concessions.

Australian accommodation providers

If you are an Australian accommodation provider and use offshore intermediaries to sell accommodation, you need to determine if you are selling:

- directly to the customer using the accommodation or
- to the offshore intermediary (reseller).

If offshore intermediaries are reselling your accommodation, you need to provide tax invoices to them within 28 days of their request or enter into an RCTI agreement with them.

Customers purchasing accommodation

Business customers should not request a tax invoice from offshore sellers until after the law passes Parliament.

Legislation and supporting material

The Treasury Laws Amendment (Making Sure Multinationals Pay Their Fair Share of Tax in Australia and Other Measures) Bill 2019External Link was introduced to Parliament on 4 July 2019 and is currently before the Senate.

The current Bill was preceded by the Treasury Laws Amendment (Making Sure Multinationals Pay Their Fair Share of Tax in Australia and Other Measures) Bill 2018 and was introduced to Parliament on 20 September 2018, but lapsed at the dissolution of Parliament prior to the 2019 Federal Election.

ATO RELEASES PRACTICAL COMPLIANCE GUIDELINE 2018/9 ON TAX RESIDENCY OF FOREIGN COMPANIES

The residency can give rise to significant tax implications including exposure to Australian income tax and capital gains tax, application of Australian's participation exemptions and Controlled Foreign Company (CFC) rules.

A company that is not incorporated in Australia will be a tax resident of Australia if either of the below is met:

- the company carries on a business in Australia and has its Central Management and Control (CMAC) in Australia; or
- the company carries on a business in Australia and its voting power is controlled by shareholders who are residents of Australia.

Recent Taxation Ruling 2018/5 outlined key issues determining of CMAC. The criteria of carrying on a business in Australia is met if the CMAC is in Australia even though the trading or investment activities of the business generating the profits are not in Australia.

The Practical Compliance Guideline (PCG) provides guidance for taxpayers on establishing where a CMAC is located and contains 15 examples. Below are some key factors:

- Board minutes recording who made the decisions and where they were made
- Decision making in more than one place (when directors physically meet in multiple locations or when board meetings are conducted electronically)
- The person that is merely influential versus real decision maker
- Relevance of company's activities when identifying high level decision making
- Decision making in a corporate group
- The PCG also outlines a transitional and ongoing compliance approach
- There is also a safe harbour for subsidiaries of public companies

Australian corporate groups controlling foreign incorporated companies need to carefully assess their position seek specialist advice.

EX-gratia payment scheme for former British child migrants

This fact sheet provides tax guidance about lump sum payments paid to relevant individuals received from the UK Government under the ex-gratia payment scheme for former British child migrants.

It states they do not have to pay tax on the money received from the ex-gratia payment scheme for former British child migrants

The ATO has reviewed the compensation payments proposed under the UK Government's Payment scheme for former British child migrants and does not consider that the compensation payments are subject to income tax or capital gains tax.

In order for a payment to be taxed as income the receipt must have the characteristics of income. This includes the facts that the receipt is earned, expected, relied upon and is received regularly. Payments received under the Payment scheme for former British child migrants do not show any of these characteristics and therefore would not be treated as income for the purposes of Australian income tax law.

While the right to seek compensation is considered to be a capital gains tax asset it is considered that this right would have arisen prior to 20 September 1985. A capital gains tax asset that is acquired before this date is not subject to capital gains tax. To remove any doubt, the compensation received under this scheme is considered to be compensation that relates to damages received for a 'wrong, injury or illness' that the person being compensated suffered personally. Compensation payments paid for personal injury are not subject to capital gains tax.

RENTAL PROPERTY OWNERS TOOLKIT

In a recent review of individual tax returns, The ATO found that nine out of 10 taxpayers with a rental property made mistakes in their tax return.

To assist taxpayers to lodge correctly, the ATO have developed a new toolkit for rental property owners (/Tax-professionals/TP/Tax-Time-Toolkit---Rental-property-owners/).

The toolkit focuses on areas where mistakes are commonly made, including:

- interest on a loan taken out to purchase a rental property
- borrowing expenses incurred when taking out a rental property loan
- repairs, maintenance and capital expenditure
- renting out a room, a unit or a whole house on an occasional basis through the sharing economy.

Each fact sheet within the toolkit is also available as a PDF.

CAPITAL DISTRIBUTIONS FROM FOREIGN TRUSTS

Campbell v Commissioner of Taxation (2019) A.A.T.A. 2043 22.7.2019

An Australian tax resident who receives a distribution of capital from a foreign trust must include this amount in their assessable income.

However, Section 99B(2) of I.T.A.A. 1936 sets out certain amounts that are excluded from being taxed. The first exclusion is for:

(a) corpus of the trust estate (except to the extent to which it is attributable to amounts derived by the trust estate that, if they had been derived by a taxpayer being a resident, would have been included in the assessable income of that taxpayer of a year of income);

Given the way the tax legislation is framed, the taxpayer must prove an assessment, or amended assessment, is excessive outlining the correct amount of the assessment or amended assessment.

In *Campbell v Commissioner of Taxation*, the Australian resident beneficiary was assessed on amounts of capital she received from a New Zealand trust.

Her accountant argued before the AAT that there was an original corpus amount of $3 million, which should have been protected from tax by the exclusion in section 99B(2)(a).

However New Zealand accountants had originally provided trust financial statements showing all of the trust capital was accumulated income – meaning any capital distributions to her would be subject to tax under section 99B. Although the N.Z. accountants provided revised financial statements, showing an increased amount of original corpus and reduced amount of accumulated income, the AAT did not accept this.

There were no witness statements lodged and no witnesses called, and a lack of evidence that could allow the AAT to conclude that any of the amounts the

Australian resident beneficiary received could be traced back to amounts that would have been excluded because of section 99B(2)(a).

The takeout here is that if you have an interest in an overseas trust; to deal with these potential section 99B issues, it is crucial to gather the relevant evidence now.

We often see that:

- financial statements for the foreign trust are not always kept to the level of detail necessary to help Australian resident beneficiaries deal with their section 99B problems
- source documents are sometime lacking for the amounts originally received by the trust.

It is a good idea to:

- gather evidence from individuals who hold knowledge of how the trust was established, funded and operated
- gather whatever supporting documents are available that may corroborate the individuals' evidence.

Often these distributions of capital are made from a foreign trust at the same time as the distribution of a deceased estate. Given it is the deceased that often has the knowledge of the trust's history, it is vital to get this documentation while they are alive and have capacity.

Australian resident beneficiaries who think they may receive a distribution of capital from a foreign trust should gather the relevant trust evidence at their earliest opportunity.

COMMON GST ERRORS – IMPORTING OR EXPORTING GOODS AND SERVICES

For GST luxury car tax and wine equalisation tax purposes, from 1 July 2015, where the term ‘Australia’ is used in this document, it is referring to the ‘indirect tax zone’ as defined in subsection 195-1 of the A New Tax System (Goods and Services Tax) Act 1999 (GST Act).

If you run an enterprise that imports or exports goods or services in Australia, then there are a few things you should know about your GST obligations. ATO compliance activities indicate that most errors are made by small to medium businesses.

On-sale of imported goods

GST is payable on most goods imported into Australia. If the goods are subject to GST on importation, you are required to pay GST to the Department of Home Affairs before the goods are released. This is unless you are part of the deferred GST scheme.

The ATO have identified GST-registered taxpayers that have not accounted for the on-sale of imported goods on their business activity statement (BAS).

When imported goods are on-sold, you are required to report the sale and account for the GST even if you have paid GST on the importation. The on-sale is to be reported on your BAS and GST is payable, unless the supply is GST-free or input taxed.

If you are registered for GST and import the goods for a creditable business purpose, you can claim an input tax credit for the creditable importation.

Installing and assembling imported goods

There may be instances where an overseas business will incorrectly charge GST on importations where they install or assemble goods.

A supply of goods to an Australian business where the supplier installs or assembles the goods in Australia, but does not import the goods into Australia, is not connected with Australia for non-resident suppliers. Therefore, the non-resident supplier will not be subject to GST on these transactions.

Incorrect reporting of warehoused goods by overseas suppliers

Goods that are imported and then warehoused in Australia for later sale to Australian consumers are connected with Australia and subject to GST, unless they are sales of goods classified as GST-free.

Typically, this occurs when a non-resident business imports goods to Australia and has them warehoused by a third-party logistics provider in Australia for sale at a later date. The non-resident business sells the product to an Australian consumer through their websites, electronic distribution platforms or third parties. The goods are then delivered to the consumer from the warehouse within Australia.

Where goods are on sold and are taxable supplies, the GST is required to be included in the sale price. A GST shortfall occurs when GST is not charged by the non-resident supplier to the consumer when they are required to be registered for GST.

If you are a non-resident business who supplies goods already warehoused in Australia, you need to consider whether you have GST obligations and entitlements.

In these circumstances you need to:

- determine if you are required to register for GST
- determine the type of registration that best suits you.

If you register for GST or are required to be registered, you also need to:

- include GST in the price you charge for supplies that are subject to GST
- determine if you are eligible to claim GST credits
- report and pay GST amounts to the ATO.

Incorrectly classifying exports

It is important to understand how goods are exported out of Australia and the international commercial (Inco) delivery terms that apply. Taxpayers may believe themselves to be the exporter. However, when the terms of delivery are analysed, this is not the case. A change to your Inco delivery terms (for example, delivered duty paid to ex-works) in an agreement can alter your circumstances. This could potentially lead to you no longer being considered the exporter and GST becoming payable on the supply.

Non-residents and non-deductible expenses

If you are a non-resident business registered for GST in Australia under the full GST registration system, you should be aware that registered businesses are not entitled to claim GST credits on certain purchases. Under the GST law you cannot claim a GST credit for expenses that are non-deductible for income tax purposes. Examples of non-deductible expenses include:

- purchases of a private nature
- entertainment provided to employees
- entertainment expenses.

If you are a registered for fringe benefits tax your position may be different.

Voluntary disclosure

After reviewing your international cross border transactions, you may discover mistakes in your reported GST amounts. If this occurs, The ATO encourages you to make a voluntary disclosure. Reduced penalties will apply if you voluntarily disclose errors before we conduct any compliance activity.