

GST alert

Grant Thornton periodical reporting
on Goods and Services Tax issues
for clients in business.

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This edition of GST Alert relates to the recently released **compliance program**.

ATO's compliance program 06-07

The recently released ATO compliance program states that the following areas of GST practice will be focused on:

- Financial supplies, especially the extent to which input tax credits have been claimed and the apportionment methods used.
- Floats and capital raisings; the focus is again on eligibility to claim input tax credits. The ATO is using ASX data to "match" with their own data.
- Property transactions in general, with specific focus on use of the margin scheme. Margin scheme amendments constitute approximately 33% of additional revenue raised by the ATO through audit activity.
- For small to medium enterprises, that appropriate GST systems and controls are in place. The ATO has found that these do not generally keep pace with the growth of an entity. The ATO will send 1200 questionnaires to business and 200 audits will be conducted.

Grant Thornton firms are able to assist businesses with these issues through our GST prudential audit program. Our experience in conducting these reviews shows that the benefit gained through such an exercise invariably outweighs the cost of it and is far less expensive if any actual audit were to be conducted by the ATO.

Financial supplies

Care needs to be taken to ensure that where expenses are incurred in relation to a sale of shares, IPO, debt structuring etc that input tax credits or reduced input tax credits have been correctly calculated and claimed. Further, where apportionment of input tax credits is required, can the process and calculations be substantiated?

It is important to note that there is no one "correct" method of apportioning input tax credits. The method adopted simply has to be "reasonable" in the circumstances. Accordingly there may be a number of different ways in which the apportionment may be done. We are able to assist with this and show you which is the best method to use.

Property

The main ATO focus is on correct adherence to the ATO's requirements in order to apply the margin scheme. Care should be taken to ensure that valuations obtained comply strictly with the relevant ATO ruling. We are aware of cases where the ATO has sought a "second opinion" from the Government's valuer in relation to a client's valuation. We understand that the ATO will challenge the valuation obtained by the client where it differs to the ATO's valuation by more than 10%.



Care also needs to be taken to ensure that where the margin scheme or going concern GST free exemption is intended to apply that the parties agree in writing to that effect. This is a requirement of the GST law. It may also be prudent to include a clause in the contract allowing the vendor to recover GST from the purchaser in the event that GST is, for whatever reason, payable. On the basis that the purchaser would be able to claim an input tax credit for the GST paid, both parties should be left in a revenue neutral position.

If you are a vendor wishing to apply the farm land GST free exemption, it would be prudent to obtain a warranty from the purchaser to the effect that a farming business will continue to be conducted on the land. Again, this is a requirement of the GST law.

GST systems

Since the introduction of GST on 1 July 2000 many people have been trained in relation to GST for the businesses in which they are involved. Not only were the basics of GST explained and their application to the business analysed, but there was also a development and appreciation for the underlying system that would have to deal with the GST issues.

Now, 6 years on, some of those personnel may have left the organisation. The ATO wishes to know that your organisation and its systems are still correctly applying the GST law. For example:

- Do your personnel now have the same level of understanding in both application of GST law and systems design?
- What GST staff training is undertaken? How frequently does this occur? Are new staff trained in GST aspects?
- Has the business changed over this 6 year period and has the system evolved accordingly?
- Have changes in GST law over this period been considered and adopted?

If you receive correspondence from the ATO concerning a GST questionnaire or audit, you should contact your Grant Thornton advisor immediately.

Cases and AAT Decisions

Private Use

A taxpayer was recently successful at the Administrative Appeals Tribunal in its application to restore input tax credits and income tax deductions for the construction of a motor catamaran (Peerless Marine Pty Ltd v FC of T 2006 ATC 2419). The credits and deductions were disallowed, as it was not thought that they were claimed in the course of an enterprise or business. The AAT agreed with the appellant that they were incurred in the course of an enterprise or business.

This case highlights essential issues in such an appeal or dispute with the ATO. The need to demonstrate intention is vital. For this a business plan and business like manner in the way the activity is conducted is vital. Where there is the possibility of an activity not being regarded as being an enterprise, documentary evidence is essential to prove that there is an enterprise. Further, the AAT expressed a preference for 'evidence that demonstrates the process of logic involved'.

The ATO is keen to disallow input tax credits where there is possibly a private or domestic benefit. Activities such as horseracing, motor racing, hobby farms, and boating come under intense scrutiny. The taxpayer is required to prove that the activity is not a hobby or leisure activity, and this can be difficult without the appropriate documentary evidence.

ATO Seeking Test Cases

The ATO is seeking to fund test cases for both the definition of residential property and also to test aspects of the margin scheme. Thus, it may be possible to challenge the ATO without a cost, if the aspects in dispute are ones the ATO wish to test.

For further information please contact:

Adelaide

Philip Paterson
67 Greenhill Road
Wayville SA 5034
T 08 8372 6666
F 08 8372 6677
E info@gtsa.com.au

Brisbane

Bob Lunney
Grant Thornton House
102 Adelaide Street
Brisbane QLD 4000
T 07 3222 0200
F 07 3222 0444
E info@gtqld.com.au

Melbourne

Mark Cummings
Rialto Towers
525 Collins Street
Melbourne VIC 3000
T 03 9611 6611
F 03 9611 6666
E info@gtvic.com.au

Sydney

Robert Quant
383 Kent Street
Sydney NSW 2000
T 02 8297 2400
F 02 9299 4445
E info@gtsw.com.au

Perth

Peter Fallon
256 St George's Terrace
Perth WA 6000
T 08 9481 1448
F 08 9481 0152
E pfallon@gtwa.com.au

Grant Thornton

www.granthornton.com.au

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