

# GSTalert

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

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In this edition of **GSTalert** we consider a range of GST news items...

## GST and promotional items

The AAT has recently ruled that promotional items which are packaged with GST-free food items are composite supplies - that is, a GST-free supply combined with a taxable supply. The case in question involved a large food supplier (that wished to remain anonymous) which, from time to time, supplied non-food items with its food as a promotional exercise.

Despite the packaging of the relevant food stating that the promotional item was free and despite the price of the food remaining unchanged throughout the promotional exercise, the AAT ruled that the supply of food, with the promotional item, was a composite supply for consideration, as a promotional item has intrinsic value, cannot be consumed with the food and is unconnected with the food.

Furthermore, as the promotional items could only be acquired with the food the AAT concluded that the consideration was for the supply as a whole. The implications of this case are quite far reaching and go beyond the nation's food suppliers and manufacturers - the nation's retailers need to also account for GST on promotional items supplied with GST free items.

## New GST thresholds

From 1 July 2007, the following GST thresholds have been lifted:

- tax invoice requirements - lifted from \$50 to \$75
- GST registration threshold - lifted from \$50,000 to \$75,000 (for charities this threshold has increased from \$100,000 to \$150,000)
- cash accounting threshold - lifted from \$1,000,000 to \$2,000,000 in accordance with the standardised definition of small business

## Forfeited deposits

The Full Federal Court has overturned the AAT's decision regarding GST on forfeited deposits. In *Reliance Carpet Co Pty Ltd v FCT*, the taxpayer received a deposit from a purchaser in respect of real property that was being sold by the taxpayer. However, the purchaser failed to complete the transaction so the taxpayer had the contract rescinded and kept the deposit received.

Last year, the AAT concluded that forfeiture of the deposit represented consideration for the taxpayer agreeing to give up their rights to sue the would be purchaser for damages. This, according to the AAT, amounted to a supply for GST purposes, the consideration of which was the deposit.

However, the Full Federal Court ruled that the contract for the sale of the property was for the supply of real property, "nothing more and nothing less". According to the decision, the giving up of contractual rights is not a supply in the ordinary sense, nor was there a supply of interim obligations.

Therefore, the Federal Court were unable to identify a supply for GST purposes and concluded that GST cannot apply to the forfeited deposit. It should, however, be noted that the Commissioner has sought leave from the High Court to appeal the decision owing to the wide ranging implications

Where does this leave taxpayers? As it stands, GST does not need to be remitted on forfeited deposits and this principle is not limited to just real property - it can cover forfeited deposits on any number of goods and services. Keeping in mind the four year limitation on amendments to GST, taxpayers should seek to review their transactions and prepare amendments where appropriate as soon as possible.

## Agency relationships

A recent case before the AAT has acted as a reminder to those who are engaged in an agency relationship. While the case in question, TSC 2000 Pty Ltd v FCT, concerned a commercial lottery syndicate, the principles drawn from it can apply to anyone acting on someone else's behalf.

Without delving deeply into the specifics of the case, the taxpayer accepted cash from participants in order to acquire lottery tickets with winnings distributed to the participants. The Commissioner had argued that the taxpayer was making gaming supplies in its own right whereas the taxpayer claimed it was merely acting on behalf of gamers. The AAT decided against the latter argument, resulting in the taxpayer being assessed on the net cash received from participants.

Although the specifics are narrow, the general principle that can be drawn from the case is that if a taxpayer is acting on behalf of someone else, then the contracts and agreements between the parties need to be accurately drafted to reflect the agency relationship.

## E-commerce and telecommunications

### Telecommunications supplies

Telecommunications or telecoms is the transmission, emission or reception of signals by wire, radio, optical or other electromagnetic systems. It is the carrier medium for other products (whether or not that product is charged for). For instance, a telephone call is a telecoms service. It is the provision of the electronic carrier medium for the voice. Similarly, telex and facsimile services; they are the carrier services for the actual telex message or copy paper document that is transmitted. Digital services are the content that is transmitted such as software, music, pictures or web hosting. This is often called e-commerce supplies. The supply of goods from a web site is often called internet supplies.

Telecoms are treated as connected with Australia if the recipient effectively uses and enjoys the supply in Australia.

Thus an overseas supplier needs to account for GST on the supply. The ATO, however, will not attempt to collect GST where it is administratively difficult. It should, however, be remembered that where an Australian entity makes supplies of telecommunications services to another country, it is likely that there will be a GST liability in that country.

### E-commerce supplies

The supply of content or e-commerce supplies by an entity that has no establishment in Australia is not subject to Australian GST even when the recipient is based in Australia. The one exception to this rule is that a GST registered entity that cannot reclaim all of its GST credits that receives an e-commerce supply must charge itself GST as if it has made the supply to itself. This is called the reverse charge. The position is, however, different in other countries. E-commerce supplies in many countries, particularly into Europe, create an obligation to register and account for VAT in that European country. Failure to do so can lead to severe penalties.

### Internet supplies

The sale of goods from a web site by an Australian entity to an Australian customer will be subject to GST. Where the supply is made by an overseas entity to an Australian customer or by an Australian entity to an overseas customer, the situation is different. If the goods will be exported there is no GST on the sale, but it will be subject to GST in the country where the goods are dispatched to. The Customs Duty and GST will be payable by the person receiving the goods. There are, however, de minimis amounts where no tax is payable. These are:

- Australia - import value less than \$1,000
- NZ - where less than NZ\$50 duty or GST is payable
- UK - import value less than £36 for gifts or £18 for purchases

Where the values exceed these limits your customers need to pay any duty and GST due, and it is prudent for the website to contain a warning for the customer of this extra cost.

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