Review of the Legal Framework
for the Administration of the GST

Corporates and business associations consultation meeting
Brisbane, 6 August 2008, 11.15am - 12.45pm

Summary of key issues

- Key issues to cover during session: prior period adjustments, joint ventures, grouping, recipient created tax invoices.

- Prior period adjustments – can adjust same BAS a number of times. Administrative burden. Option – if revenue neutral and no time differential but wrong entity, ignore. If correct tax wasn't accounted for – lodge a supplementary return (eg sales tax used this approach) – put both refunds and liabilities in it and include interest option – taxpayer gets paid interest on refunds where appropriate – based on entitlement date. Another option, widen ATO's discretionary powers.

- Recipient created tax invoices – requirement for separate agreement. Option – incorporate into tax invoice. Alternative – reduce information required in separate agreement.

- Is it time to relax the requirements around tax invoices? Option – remove recipient names from tax invoices.

- Tripartite arrangements eg B2B transaction – if apply normal accounting practices, credit is not being claimed back. Option – agreement between legal recipient and payer that entitlement transfers (so credit is claimed by payer).

- Insurance regime complicated. Example of insurer missing out on input tax credits see B2B solution above.

- Need information on insured to comply with law. Option – CTP standard recovery rate.

- Capital/revenue distinction on BAS – for large corporates who make extensive capital purchases, it is very difficult to get precise capital amounts - equipment is bought into stock and then issued out. Option – remove those boxes on BAS.

- Some boxes on BAS do not relate to GST liability. Option – review of BAS.

- Example – non-resident entity lodging a tender in Australia needs an ABN. Problematic to get the form filled out – verification information for offshore directors and public officer requirements (for ABN). Option – reduce proof of identity requirements.

- Different requirements for TFN, ABN, GST registration. Option – register for GST without ABN.

- Contra transactions in banking context – problem is recognition of the GST status of the supply. Time cost. Option - Div 83/84 broad reverse charging approach, rather than exchange of tax invoices.

- Joint ventures – not a separate legal entity. Operator accounts for tax (has accounts, money etc). Legal entity compared with administrative entity – issue mixing up liabilities for different taxes between entities. If lodge all BAS's and instalment activity statements at once – timing issues for credits - issues of refunds policy across taxes. Option – acknowledge each JV as a separate taxpayer (system issue). Alternative option – JV operator treated as a separate taxpayer (without new ABN).

- Grouping – moving in and out of a group and issues around credits and liabilities. If demerge, relationship between entities is gone. Issues around entitlement to credit (eg volume rebate, leasing office space) – expenses made by members, not head entity.

- Entity sells home loan and securitises to trust – bank has to own a unit in the trust. Option – GST clean exit rule.

- Interaction between definition of entity for GST purposes and definition of associate leads to uncertainty. Option – define associate in GST context (not just via income tax definition).

- Associate rules – market value applies, rather than agreed cost. Then have adjustment rules. Interaction problem. Option – international practice, higher of cost or market value.

- Electronic side of BAS – doing things on screen in real time would be helpful eg administering GST group.

- Reviewable GST decisions – can't object against private ruling, have to go through assessment process. Option – adopt ROSA principles.

- Interactions between adjustment provisions and grouping including agreeing to GST liabilities for the purchaser and seller in a takeover. Option – give Commissioner broader discretionary power to endorse parties agreeing who will do what (eg claim adjustment etc).