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Interdepartmental Accounting Group Inc

Tax Update

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About Hanrick Curran

Hanrick Curran is a leading multi-disciplined independent firm of Chartered Accountants. We provide quality accounting and consulting services across Queensland, Australia and into select international markets.

We provide Strategic Business Advice to our clients, guiding them in the growth of their enterprise. We also provide Audit, Financial Reporting, Valuation Services, Taxation, HR and Superannuation and Corporate Growth Consulting.

Disclaimer

The information provided contains general information only about the Australian income tax and Goods & Services tax rules. It is recommended that you seek professional tax advice specific to your own circumstances.

Hanrick Curran would be happy to be engaged to assist you with any advice required.

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Indirect Tax Update - What's Covered?

- Quiet Year in Tax (except small business)
- FBT Updates
 - Meaning of Commercial Parking Station (Qantas case)
 - John Holland Case – FIFO

Indirect Tax Update - What's Covered?

- GST Update
- GSTR 2014/2 – Credit Card Surcharges
- GSTR 2015/1 – Division 142 – GST refunds
- GSTR 2015/2 – Development Leases with Government Agencies
- Looking Ahead – The Netflix Tax – Proposed GST on Digital Downloads

FBT – FCT v Qantas 2014 FCAFC 168

- Meaning of “Commercial Parking Station”
- s 136(1) a 'commercial parking station' is defined this way:
“in relation to a particular day, means a permanent commercial car parking facility where any or all of the *car parking spaces are available in the ordinary course of business to members of the public* for all-day parking on that day on payment of a fee, but does not include a parking facility on a public street, road, lane, thoroughfare or footpath paid for by inserting money in a meter or by obtaining a voucher.
- Available to Public

FBT – FCT v Qantas 2014 FCAFC 168

- Argument that Airport Car Parks were only used by Air Commuters only (not general public), and NOT employees travelling between home and work, so no inequality between Employees provided with Car Spaces.
- Court Dismissed Arguments and held public parking station was just used to give a proxy for value. No ambiguity of the term ‘Public’

FBT – FCT v Qantas 2014 FCAFC 168

- Canberra Airport Terms: 'This Car Park is available only to airline passengers and meeters & greeters of airline passengers.' This is a contractual restriction imposed by the parking station operator.
- Qantas argued – not a 'Public' car park because of restrictions
- Court held – same as previous argument.
- While restrictions, still available to the public
- Commercial Parking Station just used as a basis for value. It didn't matter whether the employees might use it or not.

FBT – FCT v John Holland 2015 FCAFC 82

- First In First Out (FIFO) workers
- Transport to & from remote workplace is a Residual Benefit (Div 47)
- S47(7) – transport is exempt benefit provided it meets criteria
- In this case – didn't meet criteria, so John Holland argued 'Otherwise Deductible rule'
- Basic rule – Lunney's Case (1958) – travel between home and work is private and not deductible
- John Holland terms of employment – "Perth Airport was their base" – paid from arrival at Perth Airport and incl travel to Geraldton and onto Mining Camp

FBT – FCT v John Holland 2015 FCAFC 82

- Question was: if ‘hypothetically, the employee paid for their flight from Perth to Geraldton, would they receive a tax deduction.
- Held once arrived at Perth airport - akin to an office worker in the City required to travel to other offices = deductible travel.
- Therefore the travel would be ‘otherwise deductible’.
- Consider Employee Travel Policies – Employees on Duty once travel commences.
- If considered travelling on private time – possibility the FBT will apply

GSTR 2014/2

Goods and services tax: treatment of ATM service fees, credit card surcharges and debit card surcharges

GSTR 2014/2

You will be charged \$2 for using this ATM.

Do You wish to Continue?

GSTR 2014/2 ATM Services

- Fee of < \$1,000 for supply of the following **ATM services** is a financial supply:
 - a withdrawal from an account
 - a deposit into an account
 - an electronic transfer from an account
 - advice of the balance of an account

GSTR 2014/2 Credit Card Surcharges

- Fee for use of a credit card to pay for the transaction
- Generally taken to be part of the Consideration for the supply of the goods or service so takes on its taxable form
- Eg if Paying for an Electricity Invoice (a taxable supply) and the retailer charges 1% surcharge for paying by card, the 1% surcharge is taken to be part of the taxable supply = subject to GST

GSTR 2014/2 Credit Card Surcharges

- If a mixed supply, credit card surcharge must be apportioned between the different types of supplies
- Eg Ben enrolls in a TAFE course and pays for Course Fees (GST Free) and Text Books (Taxable Supply)
- TAFE charges a 1% credit card fee
- Required to apportion the fee between GST Free Supply and Taxable Supply on a reasonable basis

GSTR 2014/2 Credit Card Surcharges

- If additional fee for not paying by a certain date – Fee is treated as a credit transaction – a financial supply (a separate supply to the original transaction)
- Credit Card fee must be apportioned between taxable supply and the financial supply on a reasonable basis

GSTR 2014/2 Credit Card Surcharges

- If Credit Card used to pay Australian Government taxes – Credit Card fee takes on the same tax profile as the tax
- Generally not subject to GST.

GSTR 2015/1

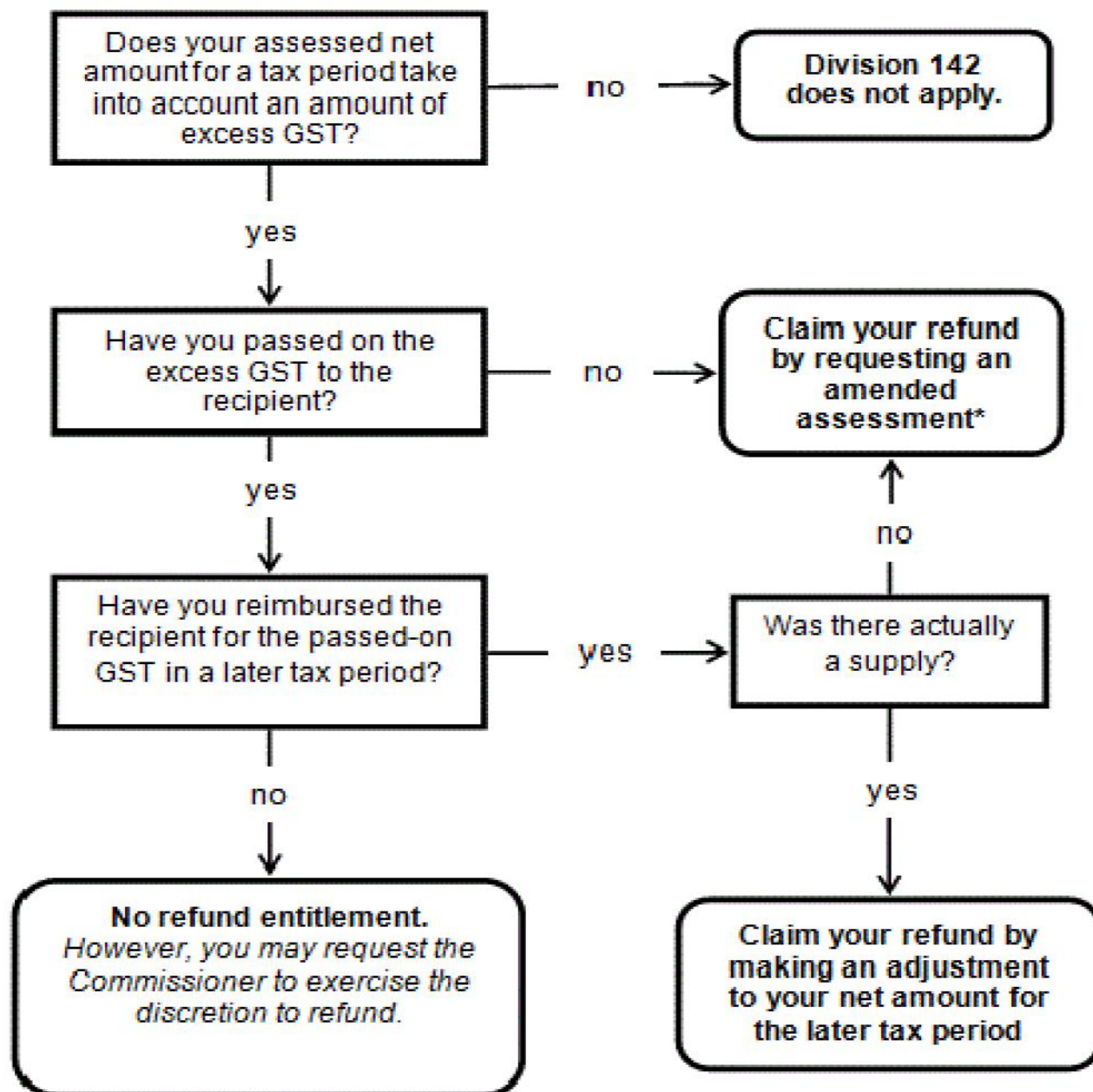
The meaning of the terms 'passed on' and 'reimburse' for the purposes of Division 142

- Division 142 is concerned with GST refunds for overpaid GST (replaced section 105-65)
- No refund available if the recipient would get a windfall gain

GSTR 2015/1

The meaning of the terms 'passed on' and 'reimburse' for the purposes of Division 142

If GST is passed on but there is a refund of the GST to the supplier, the supplier will generally have a windfall gain unless it reimburses the recipient of the supply.^[2] Accordingly, a provision to restrict refunds of excess GST is appropriate to prevent windfall gains.



GSTR 2015/1

- Need to prove whether the ‘excess GST’ was ‘passed on’ to the customer
- Eg Charge Customers for a GST Free supply, but when preparing BAS, accidentally record as taxable. When applying for refund – must prove the tax was not charged to customer (ie copies of invoices showing no GST)
- In this instance – no GST was ‘passed on’ to the customer

GSTR 2015/1

Need to prove whether the 'excess GST' was reimbursed to the customer

Eg If discover that incorrectly treated a supply as taxable – offer to reimburse the customer – offer a credit note/offset etc for the amount of GST overcharged. Must have documentary evidence to prove this was paid to the customer and in respect of the GST overcharged.

GSTR 2015/2 – Development Lease Arrangements

- Government Agency grants a ‘short term’ lease or license (a development lease) to allow developer access to land to carry out development works.
- Once the developer has completed the development works in accordance with Government wishes, the Government Grants a long term lease or transfers freehold to the developer.

GSTR 2015/2 – Development Lease Arrangements

- Grant of short term lease will be a supply
- Often a rent will be payable = consideration = taxable supply
- Provision of Development services on the land will be a supply by the developer to the Government
- The grant of freehold/long term lease / option to acquire is consideration for the development services = taxable supply

GSTR 2015/2 – Development Lease Arrangements

- **Valuation of non-monetary consideration**
- GST inclusive market value is used to work out price/value for the supply
- Can use reasonable method to work out value
- Eg independent valuer's report / full costing under competitive tender process

GSTR 2015/2 – Development Lease Arrangements

- **Attribution**
- Earlier of tax invoice issued or consideration paid
- Generally no invoices issued until end of development
- If includes monetary consideration – consider timing
- Up front monetary consideration can cause GST payable on total invoice

The Future of GST?

Speculation

- What %? 10%, 12.5%, 15%
- What base? Will GST apply to more goods/services?
- Everything is on the table under Tax Review

The Future of GST?

What Looks Certain

- Digital Downloads (Netflix tax) from 1/7/2017
- GST on Goods purchased over internet < \$1,000
- How to Enforce GST Registration
- How to Enforce GST Collection

Netflix Tax

- Currently no GST on supplies made unless they are 'Connected with Australia'
- Services / Intangibles provided over the Internet are located at the source of the Computer Server
- If server not in Australia = no connection with Australia

Netflix Tax

- Registering Overseas Companies for GST in Australia
- Incredibly Difficult
- Originals of company's certificates of incorporation or Copy certified by a Court or at an Australian Embassy (JP / Notary not sufficient)
- Copies of each Director's Passport – certified
- Document Gathering can take months
- ATO takes > 28 days to process

Netflix Tax

- Proposed – simplified registration process for ‘no input tax credit registration’
- How to enforce?
- How does ATO know if overseas company has exceeded \$75,000 registration threshold?
- Draft legislation tabled for consideration

Questions???

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