

GST: A Young Lawyer's Survival Guide

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There is so much information out there at the moment on the GST. Ever since that uneasy Liberal/Democrat marriage was announced in June of this year, legal and accounting professionals have been scrambling to acquire information on the GST and to give quick-fire advice to clients. The clients, in turn, are panicking about the whole GST affair and are wondering about how they're going to get their businesses ready for when the GST comes into being on 1 July 2000. The consensus seems to be that business, and particularly small business, will be far from ready.

Admittedly, I have found some of the literature being disseminated on the subject of GST virtually impenetrable. This article does not regurgitate slabs of the GST legislation but rather it serves to outline the basic concepts which we will all need to become familiar with.

What is a GST?

A Goods and Services Tax is a broad-based consumption tax levied at the rate of 10%. Put simply, it is a tax which consumers ultimately pay when they purchase various goods and services. However, its actual operation is more complicated because GST is also going to be collected at every stage in the production and distribution of goods and services. In order to avoid a situation in which the producer, distributor, retailer and consumer all pay 10% GST and provide the government with GST of say 80% of the retail value of the goods or services, the legislation provides for businesses to be eligible for tax credits to offset GST already paid on the goods or services.

In this way, GST does not "stick" to business and it "flows through" the stages of production before it reaches the consumer. Through the system of tax credits and appropriate pricing, businesses normally will pass on their GST liability to purchasers of their goods or services. Many businesses and individuals are having a hard time coming to grips with this fundamental concept.

In a way, the GST is a "clever tax" for Government because it makes manufacturers, distributors and

retailers co-dependent and thus makes tax avoidance difficult. In addition, while a GST is supposed to simplify the overall tax system, it would appear to shift much of the administrative burden on to businesses.

The scope of GST

The first thing to note about GST is that it applies to just about anything. Without being too cynical, this is not an insignificant reason why the Government is attracted to the concept of a GST. The main piece of legislation which sets out the GST framework is known as A New Tax System (Goods and Services) Act 1999. A number of ancillary Acts have also been passed which deal with specific GST issues.

Under the legislation GST will generally be paid on what is known as a "taxable supply". This is defined as a supply (of goods or services):

- (i) made for consideration;
- (ii) made in the course or furtherance of an enterprise;
- (iii) connected with Australia; and
- (iv) made by a person registered or required to be registered.

Readers will appreciate that the elements in this definition are untested. However, if you are advising anyone who conducts a business in Australia, there is not much doubt that the transaction will be caught and prima facie will be required to pay GST!

Registration is compulsory for any individuals or companies running a business with a turnover of \$50,000 or more. However, individuals or companies with lower turnovers can register voluntarily.

Exclusions

Some goods and services are known as "GST free". The basic categories of GST free goods and services are:

- Educational and child care services;

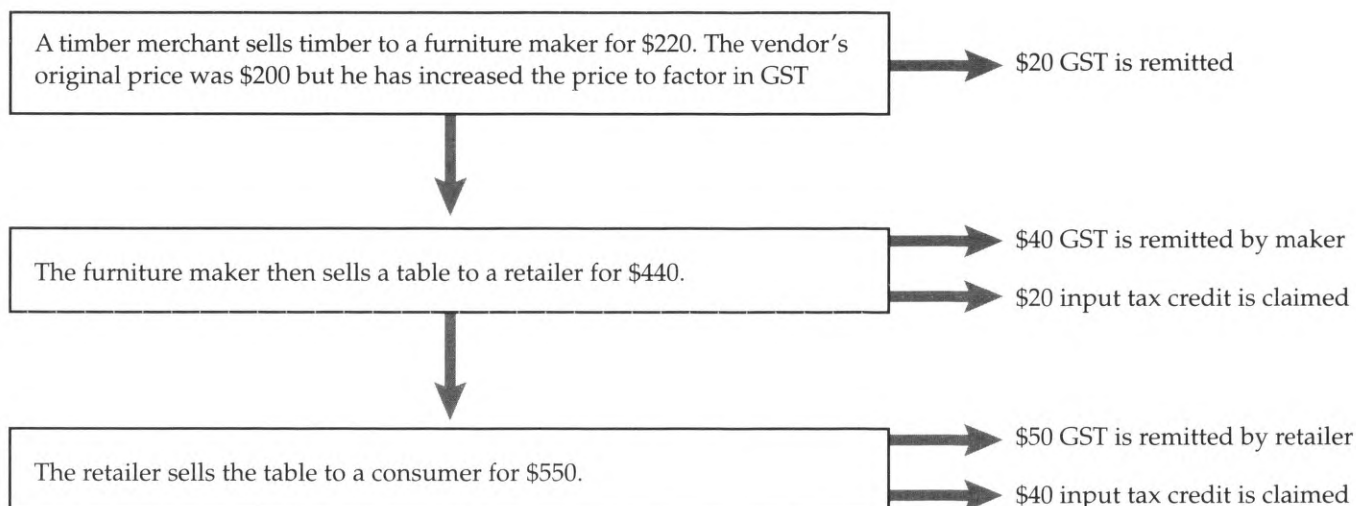
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- Charitable activities;
- Health services;
- Exports of goods and services;
- Religious services;
- Taxes and charges imposed by all levels of government (such as local Government rates and water charges);
- Basic food items.

We can all anticipate a significant amount of litigation in the future concerning the classification of goods or services into the above categories. This will particularly be so with the final category dealing with food. In general terms, food that is not GST-free includes take away and restaurant food and most beverages. The whole thing gets more interesting with regard to food that is a combination of one or more foods. These types of goods and services are not GST-free and would include things such as prepared food, bakery and biscuit products. There may be fun and games down the track which give credence to Kim Beasley’s comment about thermometers in chickens. There have been some bizarre cases fought in the United Kingdom, Canada and New Zealand about classification. In one United Kingdom case known as the Jaffa Cake case, it was a question of whether the item was a biscuit (which attracted VAT) or a cake (which did not). In fairness, there will no doubt be taxation rulings and fine tuning of the regulations governing GST in the future which will over time put to rest much of the controversy.

How will GST work?

The following chart has been utilised by many in explaining the way in which GST applies to transactions.



The furniture maker remits \$40 or 10% of the sale price in GST. However, only \$20 represents the value added at that stage of production. Therefore, the maker is entitled to receive a tax credit, known as an “input tax credit” for \$20. This represents the GST already paid on the goods by the merchant (which the merchant has passed on to the maker). The same thing occurs when the retailer sells the table to the consumer for \$550. The retailer can obtain an input tax credit of \$40. The consumer, however, pays \$50 being the whole 10% GST on the retail price.

As can be seen from the example above, the use of input tax credits is integral to the operation of the GST. Input tax credits can only be claimed where a person or company is registered for GST purposes. Most small businesses will register in order to be able to claim the tax credits. In order for a purchaser to claim tax credits the supplier must provide a tax invoice to the purchaser which identifies the GST component of the transaction. In reality, this will simply be an extra column in a normal commercial invoice.

Where the consideration of a good or service changes, for example, by reason of the supplier issuing a rebate or offering a discount, then the supplier must issue what is known as an adjustment note to take into account the change in consideration. This is really a further tax invoice to record a change in the value of the transaction.

The area in which accountants and computer geeks are having a field day is in the setting up of systems which enable the tracking of how much GST needs to be paid and the value of tax credits which a business may be eligible for. Timing and cash flow issues are critical issues which businesses are looking at in this regard.

Input taxed supplies

The GST legislation provides for certain supplies known as “input taxed supplies” on which GST is not payable.



The main categories of these supplies are supplies of certain financial services and of residential accommodation under long-term lease or rental arrangements. While businesses or individuals selling these supplies cannot charge GST, they also cannot claim any tax credits to offset GST they have paid on business inputs (such as overheads, equipment, contractor's fees). This may result in the need to increase the price of these goods and services. This is obviously important to keep in mind when acting for banks and other financial institutions or parties to residential leases.

Transitional Provisions

There are complex transitional provisions relating to the implementation of GST which are beyond the scope of this article. It is important to note that these special transitional rules may apply to contracts or agreements which span the "cut-over" date of 1 July 2000. It is important to take this into account when reviewing any contracts or agreements. There are also special provisions by which businesses shall be entitled to sales tax credits representing the amount of sales tax already paid for stock held as at 30 July 2000.

Where will GST become relevant in providing legal advice?

Contracts

GST advice will most obviously have to be given in the case of written agreements for the ongoing supply of goods or services. It sounds trite but the fundamental question to ask when advising the client is whether the client is giving or receiving the goods or services that are the subject of the contract. If you are acting for the supplier then it is important to draft clauses into the contract that will allow the supplier to pass the GST on to the purchaser. The situation for a purchaser of goods or services is more complicated. Purchasers, if possible, should have clauses in contracts which ensure that GST is only passed provided certain minimum conditions are met including:

- That the supplier issues a tax invoice or an adjustment note where applicable that will enable the purchaser to claim input tax credits.
- That the supplier is registered for GST purposes (for the same reason as above).
- That any costs savings associated with the abolition of other taxes (such as wholesale sales tax) will be passed on to the purchaser in compliance with the new Part VB of the Trade Practices Act 1974.

To the benefit of both parties would be a clause which enables the supplier to recover extra GST from the purchaser or to provide a refund to the purchaser in circumstances where the consideration for the goods or services increases or decreases as the case may be. (This is known as an adjustment event).

It is important to note that agreements currently on foot may be affected by the transitional measures which are mentioned briefly above. These transitional measures set out the broad parameters of when (if at all) GST is going to be payable in relation to a contract and the circumstances in which GST is payable.

Leases

The above principles concerning contracts will obviously also apply to commercial leases. However, leases are often going to be more complicated to advise on for a number of technical reasons. By way of example, often the rent payable under a lease may be calculated by reference to the Consumer Price Index or by reference to the value of business sales over a particular period. These indicia are themselves subject to distortion by the impact of GST. Accordingly, a lessee (being a purchaser of property services) may want to exclude from any CPI rent increase or volume of sales calculation, the change in the CPI or sales revenue attributable to the introduction of GST. There are of course a whole host of lease specific issues to consider.

Sale of Business

Sale of Business is another area where lawyers will need to think about GST issues. The supply of a going concern will generally be GST-free provided that certain conditions are met. These conditions include that the vendor and purchaser state in writing that the supply is of a going concern and that the purchaser be registered. It is important to ensure that agreements for the sale and purchase of a business meet these conditions so that there is no requirement to pay GST. Agreements will often have fall back clauses to cover the situation where there is deemed to have been a taxable supply and GST must be paid. There will no doubt be some large litigation arising out of what is meant by a going concern under the legislation. As in the case of leases there are specific issues that are peculiar to sale of business transactions.

Litigation

Litigation will also often have GST consequences. When suing for a debt or for damages, it will be necessary to consider whether GST should be claimed. For debts, GST

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will normally be claimed as part of the transaction price that is said to be owing. For damages, the relevance of GST will have to be looked at more carefully. Where a proceeding has been commenced and has been settled, then the act of settlement may constitute a new taxable supply or an adjustment event to an old supply. Therefore, it is likely that there will be a GST implication and this will have to be factored into the terms of settlement.

Trade Practices

Large corporations will no doubt be seeking regulatory advice on how not to fall foul of the ACCC's new pricing guidelines which, in general terms, require that any cost savings associated with the introduction of GST (in conjunction with the abolition of other taxes) have to be passed on to consumers. As mentioned above, this is governed by Part VB of the Trade Practices Act 1974 (Cth).

Conclusion

The above, of course, represents a mere sprinkling of the legal issues associated with GST. However, I am convinced that if the fundamental concepts are understood then any legal adviser will have a better chance of making sure the client is not adversely affected in its business dealings by the introduction of GST.

I have not even got around to mentioning GST consequences of franchise arrangements or licences or other intellectual property related agreements. There is also going to be a lot of general advice initially on when and how GST is going to be payable in relation to various transactions. For example: importers will need to know how and when GST will be levied on imports. Employers are going to want to know how GST is to be levied on fringe benefits. The possibilities are endless and no doubt there is plenty of work around for young lawyers!

The Copyright Amendment (Digital Agenda) Bill – An Overview

Craig Doolan

HISTORY AND OBJECTIVES

The reforms introduced by the Bill stem from proposals in the 1997 *Copyright Reform and the Digital Agenda* Discussion Paper, which arose out of the changes recommended by the Copyright Convergence Group in 1994.

The *Copyright Amendment (Digital Agenda) Bill* seeks to implement changes which will bring Australia's Copyright Act 1968 (Cth) ("the Act") into line with the 1996 World Intellectual Property Organisation (WIPO) Copyright Treaty and Performances and Phonograms Treaty.

The rationale behind the amendments is that copyright owners' rights should subsist irrespective of the medium or means of reproduction/publication. The aim of the amendments is to preserve the traditional rights of copyright owners in the context of developments in technology which have occurred over the last thirty years.

The gap between modern technology and the Act was highlighted in the decision in the case of *Telstra v APRA* (1997) 71 ALJR 1312 where Telstra was held liable for the infringement by its subscribers (who were illegally playing music as 'hold' music over Telstra's lines) of copyright in musical works. In its judgement the High Court acknowledged its decision posed significant difficulties for Internet Service Providers (ISPs) and carriers such as Telstra, but stated that it was bound to decide the case on the existing legislation and that changes to the legislation was the realm of the legislature, not the courts.

REFORMS

The right of communication

The main reform is the introduction of a new technology-neutral right to "communicate" copyright material to the