

File Name: 2013/11

26 March 2013

## **REFUNDING EXCESS GST**

The ASFA submission on the Exposure Draft legislation to amend the *A New Tax System (Goods and Services Tax) Act 1999* and the *Taxation Administration Act 1953* relating to GST refunds focused on the practical application of the Exposure Draft in areas that have the potential to affect ASFA members.

While noting the improvement on the previous draft we are concerned that a number of undesirable consequences may flow from the current Exposure Draft.

ASFA is concerned that the Exposure Draft continues to prevent taxpayers from seeking refunds of GST in legitimate circumstances.

We request that further consideration be given to the following matters:

- There is no explicit statement that the extra GST is not only deemed to be always payable on a taxable supply, but deemed to also be consideration for an acquisition by the recipient.
- The Exposure Draft does not take account of the situation where the recipient is registered for GST but is not entitled to full ITCs on its acquisitions.
- Treating overpayments as always being payable until the other entity is reimbursed will increase the duty that may be payable under State and Territories duties legislation.
- The narrowness of the operation of the Commissioner's discretion to refund where the statutory requirements are not met.
- Treating a tax invoice as 'prima facie' evidence that GST has been passed on does not adequately take into account the way that supplies are priced as it assumes the price always includes a GST component.
- The lack of clarity of the provisions with respect to the adjustments that arise when extra GST is reimbursed to the recipient.
- Removing clause 142-10(2) as it will have the effect that an entity making input taxed supplies will continue to be liable for GST on overpaid amounts even though these are not treated as taxable supplies for the purposes of determining input tax credits such as when using an apportionment formula.