# Understanding GST - Key Risk Areas and how to Mitigate them

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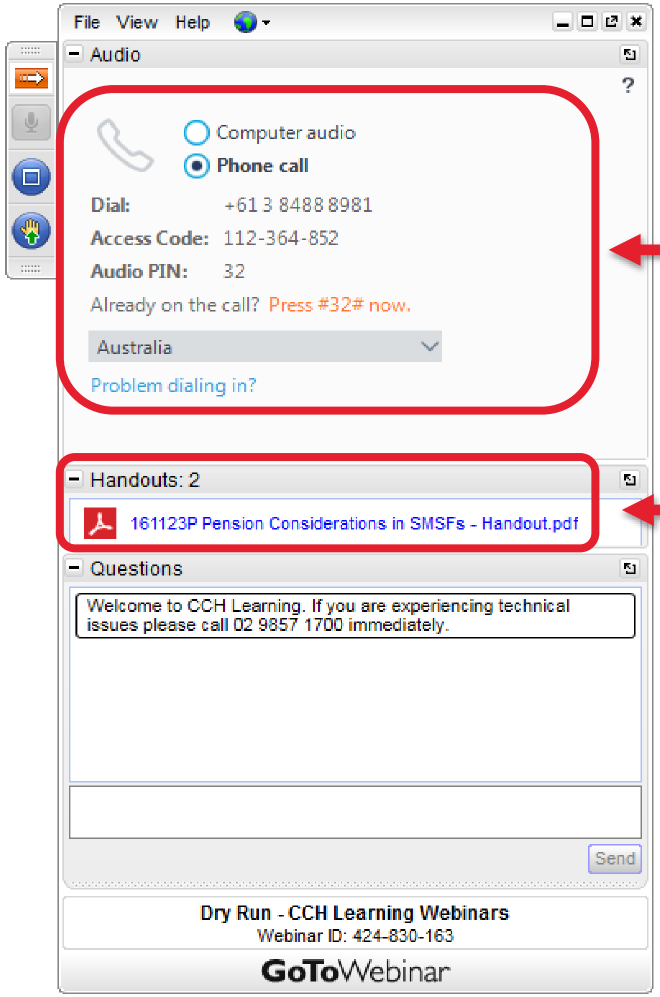


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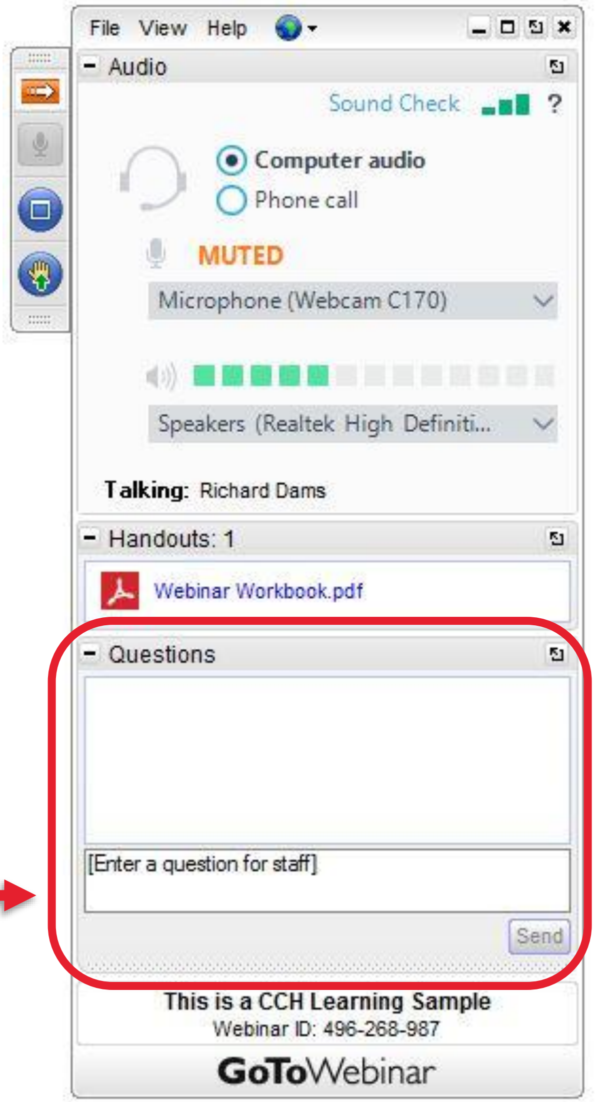

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# Your Presenter

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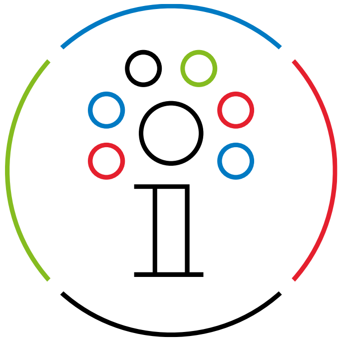
Crowe Australasia, an affiliate of Findex

# Today's session will cover

- Key risk areas
  - problems & pitfalls
  - worked examples
  - practical tips
- Top 10 common BAS errors
- Correcting GST errors



# ATO Compliance: Key Risk Areas

# Key GST Risk Areas: ATO Compliance

- ATO outlines the GST compliance risks in their GST administration annual reports
- GST Compliance Program returned $1.6 billion in GST revenue in 2024
- Compliance risk is the risk of clients' attitudes, behaviour and choices impacting on their ability to correctly meet GST obligations
- Key areas of risk include:
  - GST registration integrity
  - preventative action to minimise risk
  - improving GST lodgment outcomes
  - corrective engagement with non-compliant clients
  - reducing GST debt
  - industry and structural risks – real property transactions, financial services and insurance, refund integrity, international and cross-border, and evasion.

# ATO Compliance: Key GST Risk Areas

- ATO continue to focus on:
  - Cash economy (including illegal activities & ‘high-risk’ sectors) where incidence of cash-in-hand payments is high
    - Rationale is that businesses that use cash only have a higher risk of not correctly reporting sales - with ready access to cash - this is seen as a major risk indicator
  - Retail & Construction: Scrutiny of governance, online sales models, and use of electronic sales suppression tools.
  - Ride-Sourcing: Mandatory GST registration regardless of turnover; targeted outreach to non-compliant drivers.
  - Retirement Villages: Sector-wide review to address unique GST challenges.

# ATO Compliance: Key GST Risk Areas
# Firsthand Experience

- Firsthand experience of most tax advisers has shown the ATO continue to focus on:
  - property transactions
  - sale of business and the GST-free going concern
  - financial supplies, including the Financial Acquisitions Threshold
  - international and cross-border transactions
  - trusts & partnerships
  - correct reporting

# Property Transactions

# GST Risk Areas – Property Transactions Problems & Pitfalls

- Property transactions typically high value & can often involve higher level of risk
- With ATO's data matching capability becoming increasingly sophisticated – property transactions simple to audit / review
- Experience has shown that Office of State Revenue reviews can often be trigger point for generating enquiries from ATO
- Specific risk area is the characterisation of the supply for GST purposes – which could include:

# GST Risk Areas – Property Transactions
# Problems & Pitfalls

- Taxable supply
  e.g., supply of most types of property, whether or not under margin scheme

- Input taxed supply
  e.g., supply of residential premises, except new residential premises

- GST-free supply
  e.g., supply of property under the Going Concern Exemption or Farmland provisions

# GST Risk Areas – Property Transactions
# Problems & Pitfalls

- Mixed supplies

  e.g., any combination of taxable, input taxed and/or GST-free supplies

- Outside of scope of GST, for example:
  - land located outside Australia
  - land in Australia supplied by entity not registered / required to be registered

# GST Risk Areas – Property Transactions
# Practical Tips

- Vital to ensure property transactions are correctly characterised & guidance taken from the ATO GST rulings on:
    - residential premises : GSTR 2012/5
    - commercial residential premises : GSTR 2012/6
    - long-term accommodation in commercial residential premises: GSTR 2012/7
    - sale of new residential property: GSTR 2003/3
- A prudent approach will also involve examining the possibility of 'mixed supplies' taking place

# GST Risk Areas – Property Transactions Practical Tips

- Need to fully understand the exact nature of the property being sold – not always immediately apparent if factual position unclear
- Other assets (e.g., movable plant & equipment or immovable fixtures) may form part of the transaction & may be treated differently
- May need to fully investigate any changes of use that may have occurred over time – may impact treatment
- Ensure the terms of the sale contract are fully understood – especially timing, financing arrangements & impact on other taxes (e.g., duty / CGT)

# Margin Scheme

# Margin scheme

- Normally GST on a taxable supply of real property is calculated as 1/11th of the GST-inclusive price and the purchaser is entitled to claim an ITC
- Under the margin scheme, GST is calculated as 1/11th of the 'margin' and no ITC is allowed to the purchaser
- The margin is generally calculated as follows :

| | |
|---|---|
| | GST inclusive selling price |
| Less: | GST inclusive purchase price |

# Margin scheme - eligibility

- The margin scheme applies where [s 75-5 GSTA]:
  - there is a taxable supply of real property;
  - the supply of real property must be:
    - the sale of a freehold interest in land;
    - the sale of a stratum unit; or
    - the grant or lease of long-term lease (50 years or more)
  - the supplier and recipient must agree in writing that the margin scheme applies

# Margin scheme – written agreement

- Applies to contracts entered into on or after 29 June 2005
- Vendor and purchaser must agree in writing to apply margin scheme
- Agreement must be made by the time of supply, usually settlement
- Commissioner has discretion to allow further time (*PS LA 2005/15* sets out circumstances under which extension may be granted)

# Margin scheme - when not available

- The margin scheme is not available to a supply in following circumstances:
  - property acquired through a supply (i.e. to you) that was ‘ineligible for margin scheme’
  - property inherited from a deceased person whose acquisition ineligible for margin scheme
  - property acquired from a co-member of a GST group whose acquisition was ineligible
  - property acquired from co-joint venturer whose acquisition was ineligible

# Margin scheme - when not available

- Property acquired:
  - as a GST-free supply of a going concern, a farm, or subdivided farmland from a GST registered entity (or one that is required to be registered), and
  - that entity acquired the property through a taxable supply on which GST was worked out without applying the margin scheme.
- Property acquired for no consideration:
  - from an associate that was registered (or required to be);
  - the supply by the associate was not a taxable supply in the course of an enterprise; and
  - the associate acquired the property through a taxable supply on which the GST was worked out without using the margin scheme.

# Margin scheme

- Generally available where vendor acquires property as follows:

| Vendor's acquisition | Reason |
|---|---|
| Pre GST | Not a taxable supply |
| From vendor using margin scheme | Taxable supply, but margin scheme applied |
| From an unregistered vendor | Not a taxable supply |
| From a registered entity where supply was input taxed | Not a taxable supply |

# Margin scheme - special rules

- There are special rules for calculating the margin in the following situations:
  - property acquired from or supplied to an associate
  - inherited property
  - multiple acquisitions and amalgamated property
  - partition of co-owned land
  - GST groups and joint ventures
  - GST-free acquisitions of farmland or going concerns

# GST-Free Going Concern

# GST Risk Areas – Going Concern Problems & Pitfalls

- Under the going concern rules [Subdivision 38-J] supply of going concern GST-free if certain conditions met
- GST-free treatment attractive because of GST, cash flow , transfer duty & financing implications for purchaser
- Guidance from ATO in GSTR 2002/5 – can still be tricky to navigate to ensure all conditions satisfied
- Difficulties often encountered in this area in practice - serious consequences if relevant transactions not dealt with carefully
- Failure to meet strict legislative requirements [s 38-325] is a common problem – do not be fooled into thinking this is always 'straight forward'

# GST Risk Areas – Going Concern GSTR 2002/5

Note:

- GSTR 2002/5 specifically addresses the GST-free status of the disposal of tenanted commercial premises and applies the High Court's decision in *Federal Commissioner of Taxation v MBI Properties Pty Ltd [2014] HCA 49*
- Confirms the application of the going concern exemption to the sale of tenanted premises:
    - it is not necessary to consider whether management / services contracts must be transferred to purchaser to satisfy the supply of "everything necessary for the continued operation" condition,
    - includes examples, and
    - references to the High Court case.

# GST Risk Areas – Going Concern Problems & Pitfalls

- From firsthand experience the most common reason for failing to meet the going concern conditions involve situation where:
  - the assets transferred on the day of the supply do not amount to an ‘enterprise’
  - the arrangements for the sale have not been properly documented
  - an act or omission of the seller and/or buyer cause the supply not to meet the going concern provisions

# GST Risk Areas – Going Concern Problems & Pitfalls: Example 1

- InsuranceCo is based in Adelaide & owns the building from which it operates its insurance business.
- It enters into a contract to sell building to Landlord Unit Trust & agrees to enter into an agreement to lease building back.
- Whilst InsuranceCo carries on an enterprise of conducting an insurance business from premises, it does not at any time conduct an enterprise of leasing premises.
- It did not (& could not) conduct an enterprise of leasing to itself prior to the day of supply.

# GST Risk Areas – Going Concern Problems & Pitfalls: Example 1

- InsuranceCo merely supplied Landlord Unit Trust with an asset used in the conduct of its enterprise.
- Although recipient leasing enterprise after the day of supply, supply of premises not ‘supply of going concern’. No enterprise of leasing had been operated by the supplier.
- InsuranceCo could not satisfy requirement that enterprise be carried on the day of supply because there was no enterprise of leasing previously carried.
- InsuranceCo cannot supply all things necessary for continued operation of enterprise not carried before day of supply.

# GST Risk Areas – Going Concern Problems & Pitfalls: Example 2

- Angus is a computer programmer with Tech Com Ltd ('Tech Com' ), an entity that conducts a software business.
- Angus developed Tech Com's best-selling product, a virus checker, and is the only person who is capable of updating the software for new viruses, debugging it and providing technical support in relation to that product as part of Tech Com's after sale service.
- Tech Com agrees to sell its entire business to Digi Tech Pty Ltd ('Digi Tech'). Tech Com agrees that the sale of its entire business to Digi Tech is a 'supply of a going concern'.

# GST Risk Areas – Going Concern
# Problems & Pitfalls: Example 2

- Without the services of Angus, the enterprise cannot continue.
- An agreement by Angus to continue to work with the software business under Digi Tech is sufficient to enable the supply by Tech Com  to be the 'supply of a going concern'.
- The agreement may be for an indefinite period of time.
- Alternatively, Angus may agree to work for Digi Tech for a limited period of time which is sufficient to train new staff to perform the tasks normally carried out by him.

# GST Risk Areas – Going Concern Problems & Pitfalls: Example 3

- Wayne conducts a mobile mechanic business. He has a specially fitted out a van which carries all his tools and equipment.
- Wayne travels widely throughout the metropolitan area and carries out repairs at clients' premises. He does not have a workshop of his own where repairs can be performed.
- Wayne enters into an agreement with Big Shifter Pty Ltd 'Big Shifter', a company that owns several motor repair workshops, to sell his business.
- Under the arrangement between Wayne & Big Shifter, Wayne supplies his client list, the mobile telephone number, goodwill, together with all the equipment and tools.  His motor vehicle is inadvertently excluded.

# GST Risk Areas – Going Concern Problems & Pitfalls: Example 3

- Wayne’s motor vehicle is essential to the continued operation of his enterprise and is one of the things that must necessarily be supplied under the arrangement for the sale of his business to qualify as a ‘supply of a going concern’.
- Failing to transfer the motor vehicle resulted in the going concern conditions being failed.

# GST Risk Areas – Going Concern
# Practical Tips - General

- At a very basic level, the following questions must be addressed ‘upfront’:
  - is the purchaser registered for GST?
  - has a valid written agreement been entered into prior to settlement, confirming parties agree that supply is of a going concern?
  - will the supplier carry on the enterprise until the day of the supply?
  - are all things necessary for the continued operation of an enterprise being supplied?
  - will the going concern be used to any extent to make input taxed supplies?

# GST Risk Areas – Going Concern
# Practical Tips - Contractual

- From a practical perspective it is helpful for the sale agreement to contain :
  - a clause that clearly states the parties agree the sale of the property is a supply of a going concern
  - a written undertaking by the seller that between execution of the sale agreement & completion – they will continue to carry on the enterprise
  - a warranty that the buyer is registered or required to be registered for GST
  - an assurance that all things necessary for the continued operation of the business will be supplied
  - a 'pass-on' clause for GST, interest & penalties if the ATO determines the supply is not GST-free

# Sale of Property and Going Concern Exemption

# GST Risk Areas – Going Concern and Property Transactions

## GSTR 2002/5 GST: When is a 'supply of a going concern' GST-free?

- Refer to paragraph 18A onwards
- Ruling addresses the case of *Debonne Holdings Pty Ltd v Commissioner of Taxation*
- involved the sale of a hotel business under two interdependent contracts:
    - a contract for the sale of the business assets (the business contract); and
    - a contract for the sale of land (the land contract).

# GST Risk Areas – Going Concern and Property Transactions

## Facts:

- The business contract expressly stated that the sale of the business was the sale of a 'going concern'.
- The land contract was for the sale of the land on which the hotel stood and was silent on the question of 'going concern'. It provided that the purchase price included any GST liability for which the vendor might be liable.

## Issue:

- Whether the sale of the business was a GST-free supply of a going concern?

# GST Risk Areas – Going Concern and Property Transactions

## Decision:

- The Tribunal found that the parties had agreed under para 38-325(1)(c) that the whole subject of the sale, which comprised both the land and business, was the sale of a 'going concern'.
- It concluded that the totality of that sale was a GST-free supply of a going concern, notwithstanding that the business and the land were conveyed under separate instruments and the land contract was silent on the issue of 'going concern'.

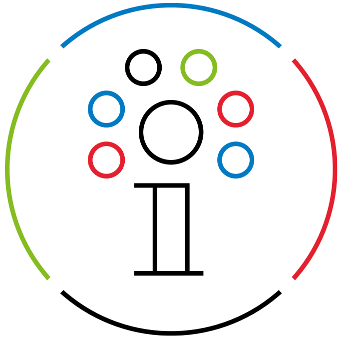
# GST Risk Areas – Going Concern and Property Transactions

## Decision:

- The Tribunal relied on the fact that the 'business contract' expressly used the term 'going concern' with the meaning it has for GST purposes.
- Although the term is not defined in the legislation, the Tribunal considered that the relevant 'going concern' for this purposes , the whole subject matter of the sale, being the business together with the land.
- The Tribunal also stated that had the parties' agreement been limited  to the extent of the 'business contract' it would have been ineffective for the purposes of s 38-325 because the 'business contract' alone did not amount to, or give rise to, a supply of a going concern.

# Poll Question 1

The ATO will request the following information in the course of a GST review if a commercial property is sold under the Going Concern Exemption:



a) Details of active leases
b) Other assets, plant & equipment
c) Historical records
d) A and B
e) A, B & C

# Financial Supplies

# GST Risk Areas – Financial Supplies Overview

- What constitutes a financial supply is specified in the Regulations [s 40-5(2)] - generally a financial supply occurs when:
  - money borrowed or lent
  - credit granted
  - shares or other securities are bought or sold
  - creation, transfer, assignment  or receipt of interest in or right under superannuation fund
- The financial acquisitions threshold (FAT) & reduced input tax credit (RITC) concessions can allow claiming of part or full input tax credits on purchases relating to making financial supplies.

# GST Risk Areas – Financial Supplies
# Reminder: Financial acquisitions thresholds

- An entity can claim ITCs for acquisitions relating to making financial supplies if total amount of credits from financial acquisitions does not exceed either or both of [s 189-5(1)]:
  - $150,000 or such other amount specified by the Regulations
  - 10% of the total input tax credits of the entity
- entity required to consider its position in any given month, taking account:
  - past acquisitions, by reference to financial acquisitions made or likely to be made in the current month & pervious 11 months; and
  - future acquisitions, by reference to ‘financial acquisitions made or likely to be made in the current month & succeeding 11 months

# GST Risk Areas – Financial Supplies
# Reminder: Financial acquisitions thresholds

- Taxpayers that make financial supplies below prescribed limits allowed to recover all ITCs on costs
- An acquisition is not treated as relating to making input taxed supplies if [s 11-15(4)]:
  - only reason acquisition would (apart from the de minimis provisions) be treated as related to making input taxed supplies is because it relates to making financial supplies; &
  - entity does not exceed the financial acquisitions threshold (FAT)

## Note

- ATO will request details of the FAT where a private company makes Division 7A loans
- Be prepared to support that the FAT has not been breached

# GST Risk Areas – Financial Supplies
# Reminder: Reduced input tax credits (RITC)

- 75% ITC allowed for certain types of services acquired by financial supply providers [s 70-1 & 70-5]
- 75% credit does not apply to extent supplier entitled to an ITC in any event under FAT or for borrowing expenses
- RITC calculated as 75% of credit otherwise have been available [s 70-15] - RITC reduced if recipient does not provide whole of consideration or acquisition partly for private purposes
- Commissioner provides guidance on RITC's in GST rulings GSTR 2004/1 & GSTR 2002/2

# GST Risk Areas – Financial Supplies
# Problems & Pitfalls

- Incorrectly assuming that ITCs on purchases relating to financial supplies will not be denied unless you are a financial institution or a large listed company
- Failing the FAT – because the primary & secondary tests have not been applied correctly
- Making the incorrect assumption that all financial acquisitions are reduced credit acquisitions on which 75% of the total ITC's may be claimed
- Not realising that financial supplies also include the acquisition of a relevant interest (as well as the provision / disposal of a relevant interest)

# GST Risk Areas – Financial Supplies
# Problems & Pitfalls: Example

- PMG Services Ltd (PMG) issues shares to the Green Family Trust (GFT) through a broker.
- PMG has made a financial supply of the shares & the broker has made a supply of brokerage services.
- The financial supply is input taxed & the brokerage services are taxable.
- PMG would not be entitled to an input tax credit for the brokerage services.
- PMG & the company's advisers should consider:
  - the availability of an input tax credit if the FAT is satisfied; or
  - the availability of a RITC

# GST Risk Areas – Financial Supplies Problems & Pitfalls: Example

- PMG calculates that its total acquisitions & importations (including financial acquisitions) from 1 July 2021 – 30 June 2022 is $19.0 m.
- $1.6 m related to financial acquisitions made for a creditable purpose.
- PMG's ITCs for its total acquisitions & importations are $1,727,273 [1/11th x $19.0 m].
- The company's ITCs on its financial acquisitions are $145,456 [1/11th x $1.6 m].
- The $145,456 does not exceed $150,000 (under 1st test) & does not exceed $172,727 (under 2nd test).
- This means PMG can claim 100% of the ITCs on the financial acquisitions for the year.

# GST Risk Areas – Financial Supplies
# Problems & Pitfalls: Example

- While PMG does not exceed the current FAT – it still must work out whether it exceeds the future FAT.
- It calculates its total acquisitions & importations for the period 1 July 2022 – 30 June 2023 will be $12.89 m.  $1.384 m will relate to financial acquisitions.
- PMG’s ITCs for the year will be $1,171,818 [1/11th x $12.89 m].  The company’s ITCs on its financial acquisitions will be  $125,818 [1/11th x $1.384 m].
- The $125,818 does not exceed $150,000  - but it does exceed 10% of the total ITCs of $117,182.
- This means PMG fails the FAT & cannot claim ITCs for its acquisitions relating to financial supplies.  It may be able to claim RITC’s.

# GST Risk Areas – Financial Supplies
# Practical Tips

- Many of the ambiguities & uncertainties that arise in this area - stem from definition of 'financial supply' itself – important to have working knowledge
- Accurately applying the FAT & RITC tests requires good record keeping & a full understanding of the nature of the supplies
- Mixed supplies & composite supplies may exist – may be necessary to 'unbundle' mixed supplies
- Particular attention needs to be paid when claiming ITCs associated with M&A costs

# Cross Border Transactions

# GST Risk Areas – Cross border transactions
# Overview

- To deal with cross-border arrangements it is necessary to adequately consider:
  - the ‘connected with the indirect tax zone’ provisions [s 9-25]
  - the GST-free export rules [s 38-185 / s 38-190]
- The sheer volume & complexity of the legislative provisions are a challenge to navigate:
  - Subdivision 38-K [GST-free transport]
  - Subdivision 38-Q [GST-free international mail]
  - Subdivision 38-R [GST-free  global roaming for telecommunications]
  - Subdivision 38-S [eligible emission units]

# GST Risk Areas – Cross border transactions
# Overview

- The sheer volume & complexity of the legislative provisions are a challenge to navigate:
    - Division 57 [resident agents acting for non-residents]
    - Division 83 [reverse charge agreements]
    - Division 84 [reverse charge]
    - Division 85 [telecommunication supplies]
    - Division 96 [supplies partly connected with Australia]
- There are over 20 public GST rulings & determinations on cross border issues – resulting in 1,000 + pages of material

# GST Risk Areas – Cross border transactions Problems & Pitfalls

- Many cross-border transactions (especially imports & exports) can be difficult & risky to deal with:
  - incorrectly treating the export of goods or services is as GST-free by supplier - then supplier unable to recover GST from overseas customer
  - failing to appreciate compliance obligations & cash flow implications associated with taxable importations
  - not understanding the operation of Division 83 reverse charge mechanism to simplify GST compliance obligations for non-residents
  - not realising other GST-free provisions [other than s 38-185 & s 39-190] for other cross-border transactions exist (e.g., lease of goods for use outside Australia & international transport, travel & mail)

# GST Risk Areas – Cross border transactions Problems & Pitfalls:

## Example 1: Taxable Importation

- Bob's Sporting Goods (BSG) is a sporting goods wholesaler & registered for GST. BSG imports golf clubs on 6 January.
- The customs value of the golf clubs is $20,000, the customs duty payable for the goods is $1,000 and the transport and insurance costs are $2,000. Therefore, the taxable value of the importation is $23,000.
- When BSG imports the golf clubs, it pays Customs GST of 10% of the value of the importation or $2,300 (10% x 23,000).
- That is, GST is payable on the taxable value of the importation (which includes transport, insurance & duty).

# GST Risk Areas – Cross border transactions
# Problems & Pitfalls:

## Example 2: GST free Export

- Aldo, an Australian wine merchant, supplies wine to a large retailer in England.
- Also exports the consignment of wine from Australia 20 days after giving the retailer an invoice for the supply.
- The supply is GST-free because Aldo (the supplier) exports the wine from Australia within 60 days of giving the English retailer an invoice for the supply.

# GST Risk Areas – Cross border transactions Problems & Pitfalls:

## Example 3: Service used outside Australia

- Tom, an Australian freelance writer, is engaged by an English company to write a chapter of a book that will be published in England.
- He writes the chapter in Australia and sends it to the publisher. His service has been exported for use outside Australia, so he does not include GST in his invoice to the publisher.

# GST Risk Areas – Cross border transactions
# Problems & Pitfalls:

## Example 4: Advice provided to overseas recipient

- Elise is a sole practitioner lawyer. She prepares a legal opinion in Australia & provides that opinion to an offshore recipient in Norway.
- The provision of that opinion is connected with the indirect tax zone because the opinion is prepared in Australia.
- The provision of advice or information like this is the same as the provision of a service which is done where the service is performed. The supply may be GST-free [s 38-190(1)].

# GST Risk Areas – Cross border transactions
# Practical Tips

- GST payable by importer & this applies whether or not the importer registered & whether or not they are carrying on an enterprise
- GST on imports payable on the taxable value of the importation, which is the sum of:
    - customs value of the imported goods
    - any duty payable
    - amount paid to transport goods to Australia & insure goods for transport
    - any  WET payable, if applicable

# GST Risk Areas – Cross border transactions
# Practical Tips

- Use of deferred GST scheme can be of significant advantage & it is also possible to access the temporary importation rules
- Be aware of non-taxable importations (e.g., imports of GST-free or input taxed goods)
- Timing is crucial with GST exports – have to be in a position to produce documents that evidence export & timing [GSTR 2002/6]
- Some supplies of things other than goods or real property, that are for consumption outside Australia are GST-free [s 38-190]

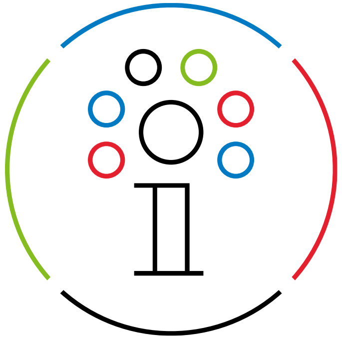
# GST Risk Areas – Cross border transactions
# Practical Tips

- Understand the basics of s 38-190 & use GSTR 2018/1, GST 2018/2 and GSTR 2019/1 for guidance for supplies in the following categories:
  - supplies connected with property outside Australia
  - supplies to non-residents outside Australia
  - supplies used or enjoyed outside Australia
  - supplies or rights used outside Australia or to non-residents
  - supplies that are repairs, etc, of goods whose destination is outside Australia

# Poll Question 2

When applying the Financial Acquisitions Threshold, it is necessary to consider financial acquisitions made in:

a) the current month
b) the previous 11 months
c) the next 11 months
d) all of the above
e) none of the above



# Trusts & Partnerships

# ATO Compliance: GST Risk Areas
# Trusts & Partnerships

- A number of practical GST issues arise for  trusts & partnerships including:
  - the correct treatment of dealings:
    - between partners
    - between the trustee in their own right
    - between the trustee as trustee for the trust, the beneficiaries & third parties
  - the entitlement of partnerships & trusts to register for GST
  - the effect of changes to the trust or partnership

# GST Risk Areas – Partnerships
# Problems & Pitfalls – Example 1

## In kind capital acquisition relates to taxable supply by partnership

- Wayne & Sue form a partnership to run a coffee shop. Wayne is registered for GST in respect of a wholesale restaurant supplies business he conducts.
- He has an espresso coffee machine which he contributes as an in-kind capital contribution. The market value of the coffee machine is $6,600. The supply of the espresso coffee machine is a taxable supply by Wayne.
- The consideration provided by the partnership for the coffee machine is the interest in the partnership.
- Although the coffee machine is consideration for the supply of the partnership interest, the acquisition relates to the taxable supplies of coffee in the coffee shop. The partnership is able to claim an input tax credit of $600.

# GST Risk Areas – Partnerships
# Problems & Pitfalls – Example 2

## Supply by a partnership to a partner for no consideration

- Sharp & Partners, a firm of solicitors, supplies conveyancing services to clients in the course of the enterprise it carries on. The partnership does the conveyancing for Erica, a partner, on her purchase of a private residence.
- She provides no consideration to the partnership for the supply of the conveyancing services. The GST exclusive market value of the services supplied is $10,000.
- The supply of the conveyancing services to Erica attracts the application of Division 72 because the supply was made in the course or furtherance of the partnership's enterprise without consideration, she is an associate of the partnership, and the acquisition is not for a creditable purpose.
- The partnership is liable for GST of $1,000.

# ATO Compliance: GST Risk Areas – Trusts

- Trusts are treated as separate entities for GST (albeit a trust is not a legal entity)
- Supplies or acquisitions made by a trustee in their capacity as trustee (as opposed to their personal capacity) - treated made by the trust entity
- GST registered trust has separate ABN & GST registration to trustee
- Historically - GST payable by a trust entity treated as being recoverable from trust only (i.e., from trust assets) with ATO having no recourse against trustee personally

# ATO Compliance: GST Risk Areas – Trusts

- Where trustee retires - practice has been to treat new trustee as liable for GST payable by ongoing trust entity (including for pre-appointment liabilities)
- No new trust entity created by change in trustee – existing ABN & GST registrations remain
- ATO has stated it considers trustees to be personally liable for GST payable by a trust entity
- Where change in trustee - ATO consider  former trustee remains personally liable for GST relating to tax periods prior to retirement
- Trustee at the end of the income year or tax period is the entity that has the tax-related liability

# GST Risk Areas – Trusts
# Problems & Pitfalls – Example 1

- The Orchid Family Trust accounts for GST on a quarterly basis.
- For the tax period ending 30 June 2022, it has a net amount payable & accordingly a tax-related liability arises at that time.
- Daffodil Pty Ltd is the trustee of the trust at the end of the tax period but retires on 1 July 2022 & is replaced by Bluebell Pty Ltd.
- Daffodil Pty Ltd is the trustee liable for the net amount for the tax period ending 30 June 2022, even though the net amount is not due and payable until 28 July 2022.

# GST Risk Areas – Trusts
# Problems & Pitfalls – Example 2

- Jenny Smith is the trustee of the Smith Family Trust (a discretionary trust) during the 2021-22 income year. She, as trustee, has derived interest income.
- Jenny does not appoint any of the income to any objects of the trust (and there are no beneficiaries who benefit as takers in default of appointment).
- Given there were no beneficiaries presently entitled to the income of the trust for the 2021-22 income year, the net income of the trust will be assessed to the trustee.
- On 2 July 2022, after the end of the 2021-22 income year, Jenny retires as trustee and Smith Pty Ltd becomes the trustee of the trust.
- The liability for tax in respect of the net income of the trust estate for the 2021-22 income year rests with Jenny, although it only becomes payable at a time when she is no longer trustee.

# GST Risk Areas – Trusts & Partnerships Practical Tips

- Much of the risk associated with trust & partnership dealings can be mitigated by following the ‘reasonable care’ guidelines in the TPB’s Code of Professional Conduct, including:
  - asking clients appropriate questions, based on your professional knowledge & experience
  - making reasonable enquiries as to completeness, correctness & accuracy of information, where appropriate
  - ensuring further enquiries are made if information supplied seems implausible or inconsistent

# Top 10 Common BAS Errors

# Top 10 Common BAS Errors

- The incorrect completion of a BAS can often be the trigger for an ATO review – common errors include:
  1. Claiming ITCs on non-GST expenses e.g. bank fees, ASIC charges, directors' fees
  2. Incorrect GST codes in accounting software
  3. Double-claiming GST e.g., hire purchase agreements where ITCs claimed upfront and again on repayments
  4. Incorrectly classifying GST free or Input taxed supplies e.g. food, medical services, education, financial products
  5. Missing or invalid Tax Invoices e.g. no valid tax invoice for purchases over $82.50 (including GST)

# Top 10 Common BAS Errors

6. Incorrectly reporting wages and superannuation at label G11
7. Transposition and manual calculation errors e.g. simple data entry mistakes
8. Incorrect GST on foreign currency transactions e.g. not claiming ITCs on AUD equivalent
9. Claiming ITCs on private or mixed-use expenses e.g. mobile phone bills, motor vehicle expenses where partly used for private purposes
10. Failing to adjust for returned goods or discounts – requires a GST Adjustment, not a correction

# Common BAS Errors – Notable Mentions

- Incorrect attribution of GST payable on supplies, e.g., cash v accruals
- Failing to identify & properly value non-monetary barter arrangements
- Failing to properly identify full amount of consideration relating to a supply, e.g., cash sales
- Incorrectly treating a supply of goods or services as a GST-free export
- Failing to meet all necessary requirements of GST-free supply of going concern
- Errors relating to residential premises - failing to properly characterise supplies as input taxed or taxable

# Common BAS Errors - Consequences

- Most common penalties for GST errors - penalties for making false statements e.g., incorrect BAS disclosure
- If false statements result in shortfall – GIC for failing to pay a GST liability on time
- Penalties for false statements - not necessary for false statements to result in underpayment for penalties to apply
- Key requirement is that false statement material

# Common BAS Errors - Penalties

- Where the false statement results in a shortfall:
  - intentional disregard - 75% of the shortfall amount
  - recklessness - 50% of the shortfall amount
  - failure to exercise reasonable care- 25% of the shortfall amount
  - reasonable care - no penalty

# Common BAS Errors - Penalties

- Where the false statement does not result in a shortfall:
  - intentional disregard - 60 penalty units (currently $19,800)
  - recklessness - 40 penalty units (currently $13,200)
  - failure to exercise reasonable care - 20 penalty units (currently $6,600)
  - reasonable care - no penalty

# Common BAS Errors – Penalty units

| When infringement occurred | Penalty unit amount ($) |
|---|---|
| On or after 7 November 2024 | 330 |
| 1 July 2023 to 6 November 2024 | 313 |
| 1 January 2023 to 30 June 2023 | 275 |
| 1 July 2020 to 31 December 2022 | 222 |
| 1 July 2017 to 30 June 2020 | 210 |
| 31 July 2015 to 30 June 2017 | 180 |
| 28 December 2012 to 30 July 2015 | 170 |
| Up to 27 December 2012 | 110 |

# Correcting BAS Errors

- Where error made in a BAS - should be corrected by amending the BAS in which error originally made
- Will normally trigger penalties & GIC - may also result in ATO review or audit
- Under GSTE 2013/1 - error made in earlier BAS may be corrected in subsequent BAS where certain conditions met
- If GST errors are corrected in next BAS to be lodged in accordance with requirements of GSTE 2013/1 - no penalties or general interest charges apply

# Correcting BAS Errors – Debit & Credit Errors

- GSTE 2013/1 recognises that you can make either a debit error or a credit error:
  - a debit error is mistake made in working out net amount for a tax period & as a result - net amount or assessed net amount understated (i.e., reporting or paying not enough GST);
  - a credit error is mistake made in working out net amount for a tax period where net amount or assessed net amount is overstated (i.e., reporting or paying too much GST).

# Correcting BAS Errors – Credit Errors

- Credit errors are not subject to value or time limits & may be corrected in the next BAS lodged provided:
  - the errors are corrected within the applicable 4-year review period;
  - the errors have not been corrected in another BAS; and
  - the tax period in which the error was made is not subject to ATO compliance activity
- ATO compliance activity includes reviews, audits, verification checks, record-keeping reviews/audits & similar activities

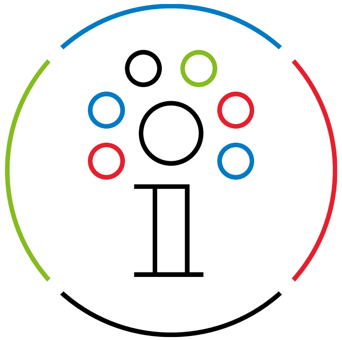
# Correcting BAS Errors – Debit Errors

- A debit error can be corrected in the current BAS providing the following conditions are satisfied:
  - the tax period in which error made is not subject to ATO compliance activity;
  - the error has not been corrected in another BAS;
  - the error was not a result of recklessness as to operation of a GST law or intentional disregard of a GST law;
  - the error was made within debit error time limit that corresponds with taxpayer's GST turnover; and
  - the debit error or net sum of debit errors is within the debit error value limit.

# Correcting BAS Errors
# Debit Error Value & Time Limits

| GST Turnover | Debit Error Value Limit | Debit Error Time Limit |
|---|---|---|
| Less than $20m | Less than $10,000 | The debit error must be corrected in BAS that is lodged within 18 months of the due date of the BAS in which the error was made. |
| $20m – less than $100m | Less than $20,000 | The debit error must be corrected in BAS that is lodged within 12 months of the due date of the BAS in which the error was made. |
| $100m – less than $500m | Less than $40,000 | AS ABOVE |
| $500m – less than $1b | Less than $80,000 | AS ABOVE |
| $1b and over | Less than $450,00 | AS ABOVE |

# Key Takeaways from today's session

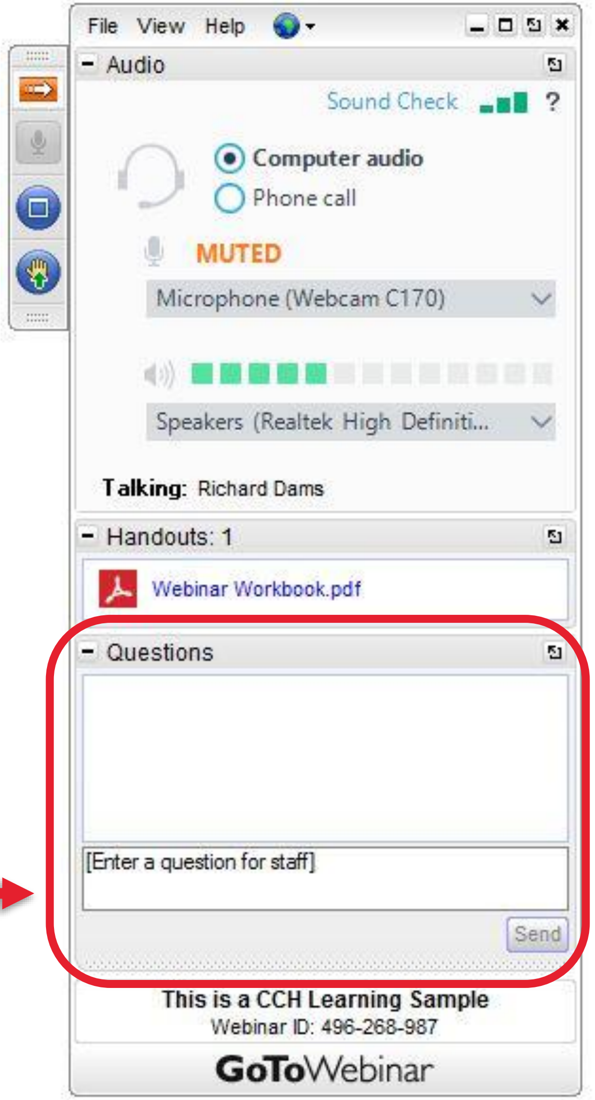


- ATO is actively reviewing and auditing GST returns
- Many BAS errors are preventable and are considered 'low hanging fruit'
- Take extra precautions when applying the Going Concern Exemption to business sales – the risk is always with the seller, not the buyer of a business
- Property transactions are high on the ATO's hit list – have discussions with clients early in the property sale process to get the GST right

# Questions?

**Alison Wood**
**CCH Learning Moderator**

Type your question and click Send



# Upcoming Webinars

- 12 November – FBT 2025 – Festive Fun and Record Keeping
- 13 November – Tax Fundamentals – Tax Reconciliations
- 18 November – From Zero to Hero: Preparing Your Firm for AI Implementation
- 18 November – Dealing with Stress, Difficult People, Overwhelm and Unrealistic Requests
- 19 November – Major Developments in Tax Administration
- 19 November – Starting a Business - Structuring, Registrations and Concessions

View all Webinars

# Questions?

You can type in the “Questions” box now,
Or contact me via:

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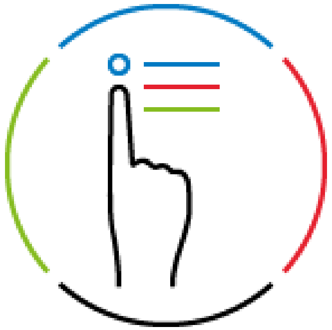
# Next Steps

Please complete the Feedback Survey.

Within 24-48 hours you will receive an email when the following is ready;



- E-Learning Recording
- Verbatim Transcript
- CPD Certificate
- PowerPoint Presentation

# Thank you for attending