

22 January 2006

Committee Secretary
Joint Committee of Public Accounts and Audit
Department of the House of Representatives
Parliament House
Canberra ACT 2600
AUSTRALIA

Dear Sir or Madam,

Inquiry reviewing "Certain Taxation Matters" within Australia

Here is my second submission to the Inquiry reviewing "Certain Taxation Matters" within Australia. In this submission I have addressed another part of the elements in Part A of the terms of reference concerning the impact of the interaction between self-assessment and complex legislation and rulings.

This submission seeks to raise the profile of the complex interpretational issues that arose with the introduction on 1 July 2000 of the New Tax System legislation related to the goods and services taxation (GST). It is considered that there is an ongoing requirement to address the significant complexities that arise when even the most basic GST legislation is sought to be interpreted in the light of the capital gains tax (CGT) regime that was introduced from 19 September 1985.

It is noted that numerous amendments addressed the impact of the GST in the CGT legislation. In contrast, not one reference is reciprocated, and it is contended that there is simply no acknowledgment in the GST legislation that the CGT regime exists. Why is this so? It is submitted that only vague references exist in the GST legislation to capital assets. These references must be relied upon to make inferences that seek to actually tax CGT capital gains as taxable supplies for GST purposes. With respect, a number of fundamental interpretational anomalies arise that cannot be resolved by GST legislation as it now stands. Here are some examples of matters that are potentially affected: the margin scheme, supply of a going concern, the requirement to register; the broad meaning attributed to many types of supplies including the definition of financial supplies in the regulations; capital losses; etc.

As a consequence, there is a risk that tax-planning opportunities have emerged with the introduction of the GST. A taxable supply of capital in GST legislation is potentially not a reference to a CGT asset at all. In the worst case scenario, under self assessment, this may mean that taxable supplies otherwise expected to be subject to CGT are open to an interpretation that concludes that both the GST and CGT is not applicable.

The absence of CGT references in the GST legislation could perhaps be remedied by a legislative acknowledgment in the GST legislation that the CGT regime exists. Please contact me if there is anything further you require in relation to this matter.

Sincerely,

Peter Schnall