Supplementary Submission
ACCI

As requested at my appearance before the Committee on 9 November, I am providing further details on the GST rulings that have raised concerns with ACCI members.

GST on commercial residential premises

Summary: A GST court case meant that some investors, acting in good faith, started claiming GST input tax credits after 25 November 2004. The Government announced that it would remove this entitlement on 27 February 2006, some 15 months later. This would disadvantage the investors who operated in good faith in the intervening period.

The relevant court case is the decision by the Full Federal Court in *Marana Holdings Pty Ltd v Commissioner of Taxation* [2004] FCAFC 307; 2004 ATC 5068; 57 ATR 521 (henceforth Marana). This decision was handed down on 25 November 2004. The decision is available from:
http://law.ato.gov.au/atolaw/view.htm?locid='JUD/2004ATC5068'

After this judgement, a number of property investors considered they could register for GST and claim input tax credits (previously they could not). We have no reliable data on the number of businesses who took this approach, although the Senate Economics Committee heard evidence that the numbers were low - see:
http://www.aph.gov.au/SEnate/committee/economics_ctte/tlab_3/index.htm

The ATO indicated that it would review its ruling on the GST treatment of residential property (GSTR 2000/20) to ensure consistency with the Marana decision - NTLG GST subcommittee meeting minutes of 8 March 2005, available at:
http://www.ato.gov.au/large/content.asp?doc=/content/60367.htm&page=15&H15

In those minutes, the ATO indicated that it had raised some issues relating to the ruling with Treasury; however, we are not aware of anyone from Treasury, ATO or Government suggesting that the law should be amended to deal with this issue, prior to 27 February 2006. The Senate Economics Committee was told that it was not until the draft ruling was in a "reasonably advanced stage" that Treasury became aware of the problems created by the Marana decision.

On 27 February 2006 the Government announced that it would amend the GST law to address concerns about the findings of this court case in relation to the GST definition of residential premises, arguing that the Marana decision "has resulted in a blurring of the lines between properties that are subject to GST and those qualifying for input taxed treatment". As a result, the Government would amend the GST law "to continue the tax treatment of property that existed prior to the Court's decision". The Government indicated that the change would be retrospective, effective from 1 July 2000. This would clearly disadvantage taxpayers who had, in good faith, claimed GST input tax credits as a result of the Marana decision.

The Government's announcement is available from:
http://assistant.treasurer.gov.au/pcd/content/pressreleases/2006/006.asp

The amendment was included as part of Tax Laws Amendment (2006 Measures No 3) Bill 2006. The Explanatory Memorandum to this Bill said that "The interpretation of the GST Act arising

from the Court's judgment represents a significant departure from the intended GST treatment of affected premises. As such it would create uncertainty as well as an advantage for some taxpayers and a disadvantage for others".

The Senate Economics Committee inquiry into this Bill is available from:
http://www.aph.gov.au/SEnate/committee/economics_ctte/tlab_3/report/index.htm
It raises a number of ACCI's concerns.

GST treatment of deposits

Summary: The ATO finalised a GST ruling before it had conducted adequate consultation with businesses on the ruling

Businesses that account for the GST on an accruals basis are generally required to pay GST to the ATO on the entire value of a sale, even if the business doesn't receive the full cost of the sale immediately. In most cases, a deposit of 10% or more of the cost means the GST on the full cost has to be remitted to the ATO.

The ATO issued a draft ruling stating this position GSTR 2005/D1 on 3 August 2005, available from: http://law.ato.gov.au/atolaw/view.htm?locid='DGS/GST2005D1/NAT/ATO'

The final GST ruling (GSTR 2006/2) was issued on 5 April 2006, available from:
http://law.ato.gov.au/atolaw/view.htm?docid=GST/GSTR20062/NAT/ATO/00002

My understanding is that the final ruling is substantially the same as the final ruling. The ruling has effect from 1 July 2000.

Subsequent to the issuing of the final ruling, a number of businesses, particularly in the tourism industry, raised concerns that the ruling had a detrimental effect on them - in particular that businesses need to remit GST to the ATO on the full sale price even if they have only received 11% of the sale price. The ATO is consulting with the tourism industry to address these concerns.

ACCI's main concern is that the ATO should have consulted with businesses, through organisations such as ACCI, before the ruling was finalised, not after it was finalised.

ACCI wrote to the Prime Minister, Treasurer and Minister for Small Business raising this as a concern.

I trust that this information is of assistance. I am happy to discuss these issues further with the Committee if required.

Regards

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