# APPENDIX 4

# INSTITUTE OF CHARTERED ACCOUNTANTS IN AUSTRALIA (ICAA) – SUGGESTED AMENDMENTS

## Option 1: Input taxing the supply of Australian tour packages by foreign tour operators to non-resident tourists

Under this option, non-resident suppliers of Australian tour packages or components thereof would not be able to claim input tax credits on acquisition of these. The ICAA suggests that this would be achieved by inserting into the GST Act the following provision:-

*40-XX Australian holidays supplied by non-residents*

(1) A supply of an *Australian holiday is ***input-taxed*** if:

(a) the supplier is a *non-resident; and

(b) the supplier is not *carrying on an *enterprise in Australia.

(2) For the purposes of subsection (1), the supply of an Australian holiday includes a right to any one or more of transport, accommodation, meals, attractions and other holiday-related supplies in Australia where:-

(a) the supplier will not be making to the person undertaking the Australian holiday the underlying supplies to which the right relates; and

(b) the underlying supplies will be used by the person undertaking the Australian holiday for purposes not connected with the *carrying on of an *enterprise by the recipient of the supply.

## Option 2: Limiting the existing GST registration requirements to entities carrying on (or intending to carry on) an enterprise within Australia

ICAA's Option 2 involves substituting the references to "carrying on an enterprise" in sections 23-1, 23-5 and 23-10 of the GST Act to "carrying on an enterprise in Australia". As the non-resident tour operators do not carry on enterprise in Australia, they would not be entitled to register. The result of this would be that foreign tour operators would cease to have a GST input tax credit entitlement.

In addition, to ensure that entertainers or sportsmen/women who perform in Australia will continue to be subject to GST, the ICAA suggest that a new sub-section be inserted after section 23-5 stating that:

> For the avoidance of doubt, you are *carrying on an *enterprise in Australia if you make supplies that are *connected with Australia within section 9-25(5)".

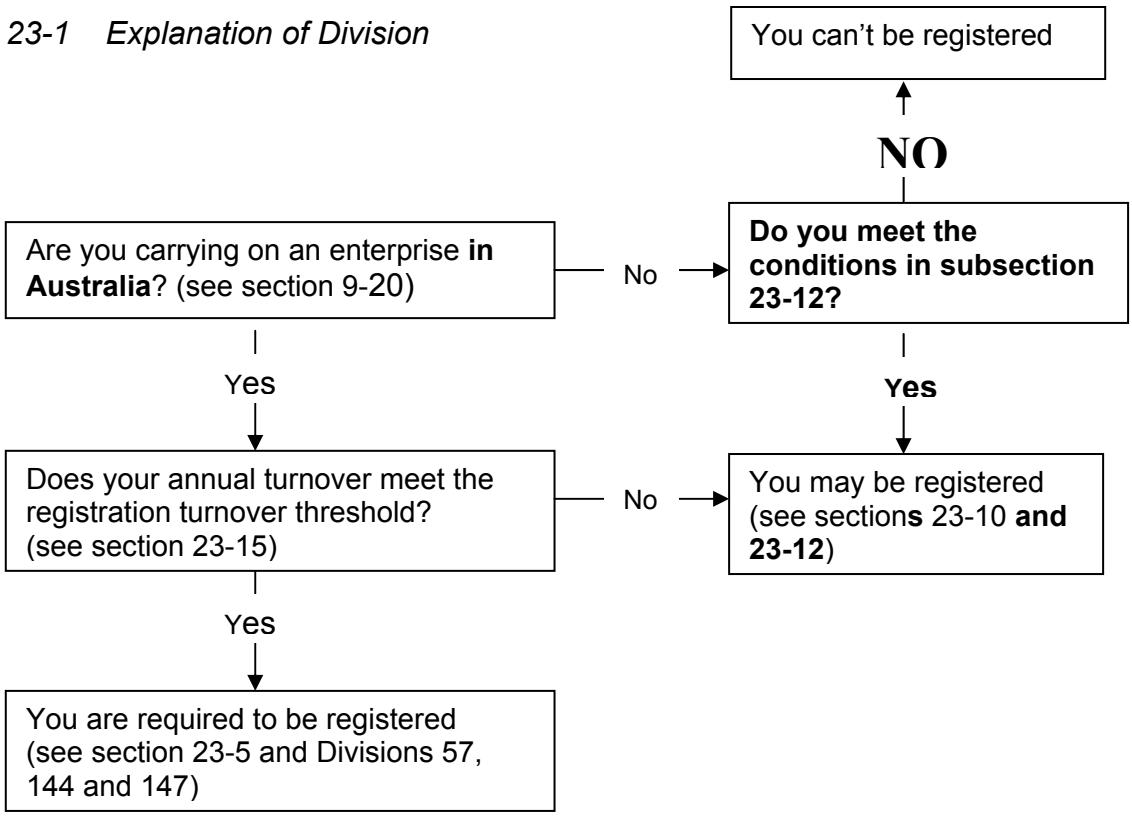
In order to allow entities which are considering investing in Australia or which do business in Australia (e.g. negotiating the acquisition of products to be exported from Australia) to claim input tax credits on qualifying business expenses incurred, the ICAA suggest that either:-

1. a provision be inserted to allow registration in these limited circumstances; or

2. a system similar to the VAT Reclaim system utilised in some overseas countries, be set up to permit businesses which do not carry on an enterprise in Australia to claim back GST on qualifying business expenses which they incur in Australia.

***Method 1***

If the issue is resolved under the first of these methods, the ICAA suggest that section 23-1 be amended as indicated below in bold and that a provision be inserted as indicated below:




*23-12 Entities not carrying on enterprise in Australia which may be registered*

(1) You may be *registered under this Act if you are a non-resident and you make or intend to make *qualifying acquisitions in Australia in the course of carrying on an enterprise (whether or not your turnover is at, above or below the *registration turnover threshold).

(2) For the purposes of subsection 23-12(1), qualifying acquisitions means acquisitions which:

(a) are effectively used and enjoyed by you; and

(b) are not supplied by you to another entity.

The ICAA notes an unresolved problem associated with this option, noting that FTOs could use this to get registered and then claim ITCs, unless ITCs are also limited for non-residents who are not carrying on enterprise in Australia to qualifying expenses. The ICAA advised that time pressures had not permitted them to draft provisions appropriate for this purpose.

***Method 2***

Alternatively, if the issue is resolved under the second of those methods, the ICAA suggest a new Division "*Division 169 – Non-Resident Business Refund Scheme*" with the following provisions:-

*169-1 What this Division is about*

If you are a non-resident and you carry on an enterprise but not in Australia, you may be entitled to a refund of the GST that was payable on certain acquisitions made by you in Australia.

*Non-Resident Business Refund Scheme*

(1) If:

(a) you are a non-resident; and

(b) you do not carry on an enterprise in Australia; and

(c) you make a *qualifying acquisition in Australia in the course of carrying on an enterprise; and

(d) the supply to you of the qualifying acquisition is a *taxable supply;

the Commissioner must, on behalf of the Commonwealth, pay to you an amount equal to:

(e) the amount of the GST payable on the supply; or

(f) such proportion of that amount of GST as is specified in the regulations.

(2) The amount is payable within the period and in the manner specified in the regulations.

(3) For the purposes of subsection 169-5(1), a qualifying acquisition means an acquisition which:

(a) is effectively used and enjoyed by you; and

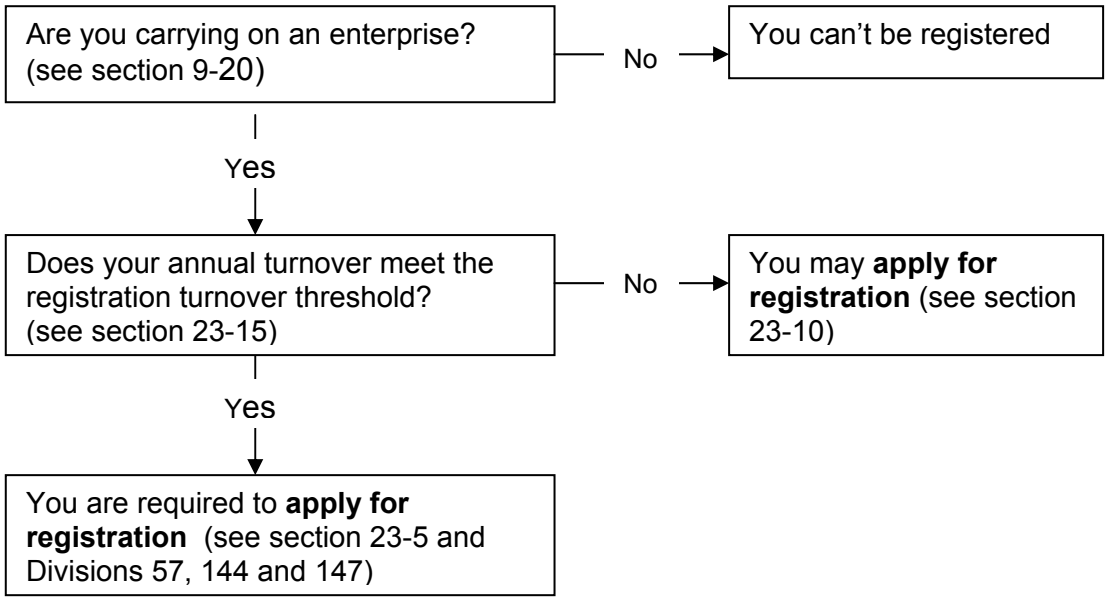
(b) is not supplied by you to another entity.

Details of the scheme should be set out in GST Regulations in terms similar to those of regulations 168-5.04, 168-5.05, 168-5.11 to 168-5.17 (inclusive).

## Option 3: Commissioner's discretion to not register non-residents that do not carry on an enterprise within Australia

Under this option, the Commissioner would be granted a discretion to not register or to de-register non-residents who do not carry on an enterprise in Australia. The exercise of this discretion would result in the non-resident not being able to claim input tax credits. To implement this option, the ICAA suggest that Division 23 be amended as indicated in **bold** below and insert provisions into Subdivisions 25-B and 25-C as set out below:-

*Explanation of Division*




*Who is required to **apply to** be registered*

Insert "to apply" before the words "to be registered" in the title and in the body of the section.

*23-10 Who may **apply to** be registered*

Insert "to apply" before the words "to be registered" in the title and both subsections 23-10(1) and (2).

*25-8 When the Commissioner has a discretion to not register you*

(1) The Commissioner has a discretion to not *register you if:

(a) you are a *non-resident; and

(b) you are not *carrying on an *enterprise in Australia.

(2) In exercising the discretion in subsection 25-8(1), the Commissioner must have regard to:

(a) whether you intend to *carry on an *enterprise in Australia;

(b) whether you are making supplies to non-residents where the use and enjoyment of the supplies or, if the supplies are rights, the underlying supplies to which the rights relate takes place in Australia; and

(c) any other relevant matters.

(3) The Commissioner must notify you in writing of any decision he or she makes in relation to you under this section. If the Commissioner decides to register you, the notice must specify the following:

(a) the date of effect of your registration;

(b) your registration number; and

(c) the tax periods that apply to you.

*25-58 When the Commissioner has a discretion to cancel your registration*

(1) The Commissioner has a discretion to cancel your *registration if:

(a) you are a *non-resident; and

(b) you are not *carrying on an *enterprise in Australia.

(2) In exercising the discretion in subsection 25-58(1), the Commissioner must have regard to:

(a) how long you have been *registered;

(b) whether you previously *carried on an *enterprise in Australia, the nature of that enterprise and the length of time for which it was carried on;

(c) whether you intend to *carry on an *enterprise in Australia;

(c) whether you are making supplies to non-residents where the use and enjoyment of the supplies or, if the supplies are rights, the underlying supplies to which the rights relate takes place in Australia; and

(d) any other relevant matters.

(3) The Commissioner must notify you in writing of any decision he or she makes in relation to you under this section. If the Commissioner decides to cancel your *registration, the notice must specify the date of effect of the cancellation.

## Option 4: Leaving the amendments in their present form, but providing to the non-resident supplier the right to elect that its supplies of Australian tour packages be input-taxed

While this option was not articulated in the ICAA's submissions to the Committee, it was subsequently raised by an ICAA member and is considered by the ICAA to have merit. It is a variation on Option 1 and has a precedent in Subdivision 40-E of the GST Act in relation to supplies made by school tuckshops.

If this option is adopted, the ICAA suggests that subsection 9-25(5), as currently drafted, should be extended as follows:

A supply of anything other than goods or * real property is *connected with Australia* if:

(a) the thing is done in Australia; or

(b) the supplier makes the supply through an *enterprise that the supplier *carries on in Australia; or

(c) all of the following apply:

(i) neither paragraph (a) nor (b) applies in respect of the thing;

(ii) the thing is a right or option to acquire another thing;

(iii) the supply of the other thing would be connected with Australia.

Example: A holiday package for Australia that is supplied overseas might be connected with Australia under paragraph (5)(c).

The ICAA considered that in addition, a new Subdivision will need to be inserted into Division 40:

*Subdivision 40-G – Non-resident suppliers of rights*

*40-180 Non-resident suppliers of rights*

(1) A supply connected with Australia under section 9-25(5)(c) is input taxed if:

(a) the supply is made by a non-resident through an enterprise that is not carried on in Australia; and

(b) the recipient of that supply is a non-resident; and

(c) the supplier chooses to have all supplies it makes through that enterprise that are connected with Australia under section 25(5)(c) treated as input taxed.

(2) A non-resident supplier may make the choice referred to in subsection 40-180(1)(c) at any time prior to the lodgment of a GST return in which the supplies are reported.

(3) However, the non-resident supplier:

(a) cannot revoke the choice within 12 months after the day on which the non-resident made the choice; and

(b) cannot make a further choice within 12 months after the day on which the non-resident revoked the previous choice.