

**Senate Economics Legislation Committee**

Inquiry into the Tax Laws Amendment (2005 Measures No. 1) Bill 2005

**ANSWERS TO QUESTIONS ON NOTICE**

**Australian Taxation Office**

26 April 2005

**Topic: Foreign Tour Operators**

**Hansard Page: E54**

**Senator Watson asked: Do deposits constitute security deposits? Most packages are sold on the basis of a deposit and are followed up by another big instalment. Under section 99, do such deposits for these sorts of arrangements constitute a security deposit?**

**Answer:**

Division 99 of the *A New Tax System (Goods and Services Tax) Act 1999* provides, in section 99-5, that a deposit held as security for the performance of an obligation is not treated as consideration for a supply, unless the deposit:

- (a) is forfeited because of a failure to perform the obligation; or
- (b) is applied as all or part of the consideration for a supply.

Additionally, section 99-10 provides that the GST payable on a taxable supply for which the consideration is a deposit that was held as security for the performance of an obligation is attributable to the tax period during which the deposit:

- (a) is forfeited because of a failure to perform the obligation; or
- (b) is applied as all or part of the consideration for a supply.

We understand that customers commonly make bookings for international travel and/or associated supplies on condition that, in the event of the customer cancelling the booking, the customer:

- forfeits his or her deposit; and/or
- is required to pay a cancellation fee.

For example, if the travel is cancelled any time up to 30 days before departure, the customer may forfeit any deposit paid. If the booking is cancelled within 30 days of departure, a cancellation fee may also be payable.

The Tax Office considers that a deposit paid by a customer on these terms is 'a deposit held as security for the performance of an obligation' in terms of Division 99. It follows that it is our view that such a deposit is not treated as consideration for a

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supply unless it is forfeited or applied as part of the consideration for a supply. However, whether a particular payment constitutes a 'deposit' may require consideration of the facts in the particular case, including relevant contractual terms and the amount paid relative to the obligation secured.

There is a separate issue as to whether such a forfeited deposit is consideration for a taxable supply in terms of section 99-10 or, for example, liquidated damages. The Tax Office is currently examining this issue, together with the related issue of the GST treatment of cancellation fees. A draft Ruling on security deposits has been prepared for consideration by the Indirect Taxes Rulings Panel and the Panel is scheduled to consider cancellation fees on 19 May 2005.

**Senator Watson asked: Whether the sale of rights or options would be a supply pursuant to section 156.**

**Answer:**

Division 156 applies only to entities that do not account for GST on a cash basis (section 156-25). It has no application in relation to supplies of rights by entities accounting on a cash basis.

In relation to entities accounting other than on a cash basis (commonly referred to as accounting on an accruals basis), Division 156 provides, in sections 156-5 and 156-10, special attribution rules for the GST on taxable supplies and input tax credits on creditable acquisitions that are made:

- (a) for a period or on a progressive basis; and
- (b) for consideration that is to be provided on a progressive or periodic basis.

The special rules are that the GST on such supplies, and the input tax credits for such acquisitions, are attributable, in accordance with the basic attribution rules in sections 29-5 and 29-10, as if each progressive or periodic component of the supply or acquisition were a separate supply, or separate acquisition, respectively.

But for these special attribution rules, GST on these supplies and input tax credits for these acquisitions would be attributed to an entity's tax period in accordance with the basic attribution rules. In particular, the whole of the GST on a supply of a right by a supplier accounting for GST on the accruals basis would be attributed to the tax period in which the supplier issues an invoice, or receives any of the consideration for the supply, whichever occurs earlier.

Supplies of rights or options are not ordinarily made for a period or on a progressive basis in circumstances where the consideration is to be provided on a progressive or

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periodic basis. Having said that, there are some circumstances in which rights are provided for a period where the consideration is also provided periodically; royalty agreements, for instance, may involve such supplies.

In some cases, rights may be supplied for a period, but the consideration is not provided on a progressive or periodic basis. To take an example in the current context, a right to holiday accommodation could be provided for a period, such as 5 days, and that period could straddle two tax periods. However, Division 156 could not apply in those circumstances unless the consideration for the accommodation is also provided on a progressive or periodic basis (and the relevant entity accounts for GST on the accruals basis). In that regard, security deposits covered by Division 99, that have not been forfeited or applied as consideration, are not treated as consideration – see further, answer to first question above.