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GST in Australia

Issues for non-residents

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Take the guesswork out of tax >>> enhance your service offering and increase profit and productivity

Introduction

- GST has applied in Australia since 1 July 2000
- Australian GST rate is 10%
- It is a tax on 'supplies':
 - supplies of goods
 - supplies of real property
 - supplies of 'anything else'
- and importations:
 - importations of goods

Introduction

- An entity is liable for GST where it makes:
 - a ‘taxable supply’; or
 - a ‘taxable importation’
- A supply is not taxable to the extent it is:
 - a ‘GST-free’ supply; or
 - an ‘input-taxed’ supply
- An entity is entitled to GST credits (Input Tax Credits or ITCs) where it makes:
 - a ‘creditable acquisition’; or
 - a ‘creditable importation.’

Introduction

- GST applies to all stages of the supply chain and is ultimately borne by consumers
- ‘GST-free’ means:
 - no GST on supplies made;
 - ITCs available for acquisitions
- ‘input taxed’ means:
 - no GST on supplies made; BUT
 - no ITCs available for acquisitions that relate to making the input taxed supplies

Taxable Importation

- Definition of ‘taxable importation’
- An entity makes a taxable importation if:
 - goods are imported; and
 - the entity enters the goods for home consumption

The ‘owner’ for Customs purposes is treated as the entity that enters for home consumption – this does not need to be the legal owner of the goods; it could be the entity responsible for importing the goods

Taxable Supply

- Definition of ‘taxable supply’:
 - supply is made for consideration;
 - supply is made in the course or furtherance of carrying on an enterprise;
 - supply is connected with Australia; and
 - supplier is registered or required to be registered
- Key GST concepts are underlined

Consideration

- Consideration includes:
 - any payment, act or forbearance in connection with the supply, or inducement of a supply, of anything
 - does not matter whether payment etc is voluntary, or by the recipient of the supply
 - includes payments of money or in kind

Enterprise

- 'Enterprise' is 'an activity, or series of activities, done:
 - as a business;
 - as an adventure or concern in the nature of trade;
 - on a regular or continuous basis in the form of a lease, licence or other grant of an interest in property
- But excludes activities done:
 - as an employee;
 - as a private recreational pursuit or hobby;
 - by an individual not for profit or gain

Connected with Australia

- A supply is connected with Australia if:
- for goods:
 - if they are delivered, or made available to the recipient in Australia;
 - if it involves removing the goods from Australia;
 - involves goods brought to Australia if the supplier either imports the goods, or installs or assembles the goods, in Australia
- for real property:
 - if the real property or land is in Australia

Connected with Australia

- A supply is connected with Australia if:
- for anything else:
 - if the thing is done in Australia; or
 - the supplier makes the supply through an enterprise the supplier carries on in Australia; or
 - the above do not apply, and the thing is a right or option to acquire another thing; and the supply of that other thing would be connected with Australia

Connected with Australia

- An 'enterprise is carried on in Australia' if the enterprise is carried on through:
 - a permanent establishment (as defined in s6(1) of the Income Tax Assessment Act 1936); or
 - a place that would be such a PE (if paragraphs (e), (f) or (g) of that definition did not apply).

Permanent Establishment

- s6(1) ITAA 1936:

In relation to a person, means a place at or through which the person carries on any business and, without limiting the generality of the foregoing, includes:

- a) a place where the person is carrying on business through an agent;
- b) a place where the person has, is using or is installing substantial equipment or substantial machinery;
- c) a place where the person is engaged in a construction project; and
- d) where the person is engaged in selling goods manufactured, assembled, processed, packed or distributed by another person for, or at or to the order of, the first person and either of those persons participates in the management, control or capital of the other person or another person participates in the management, control or capital of both those persons – the place where the goods are manufactured, assembled, processed, packed or distributed;

Permanent Establishment

- s6(1) ITAA 1936:

BUT does not include:

- e) a place where the person is engaged in business dealings through a bona fide commission agent or broker in the ordinary course of such a business and does not receive remuneration other than at a rate customary for such dealings;
- f) a place where the person is carrying on business through an agent:
 - i. who does not have, or does not habitually exercise, a general authority to negotiate and conclude contracts on behalf of the person; or
 - ii. Whose authority extends to filling orders on behalf of the person from a stock of goods or merchandise situated in the country where the place is located, but who does not regularly exercise that authority;not being a place where the person otherwise carries on business; or
- g) a place of business maintained by the person solely for the purpose of purchasing goods or merchandise.

GST Registration

- An entity is required to be GST-registered if:
 - it carries on an enterprise; and
 - exceeds the GST registration turnover threshold
- The GST registration turnover threshold is:
 - A\$75,000 per annum; or
 - A\$150,000 per annum for not-for-profit bodies

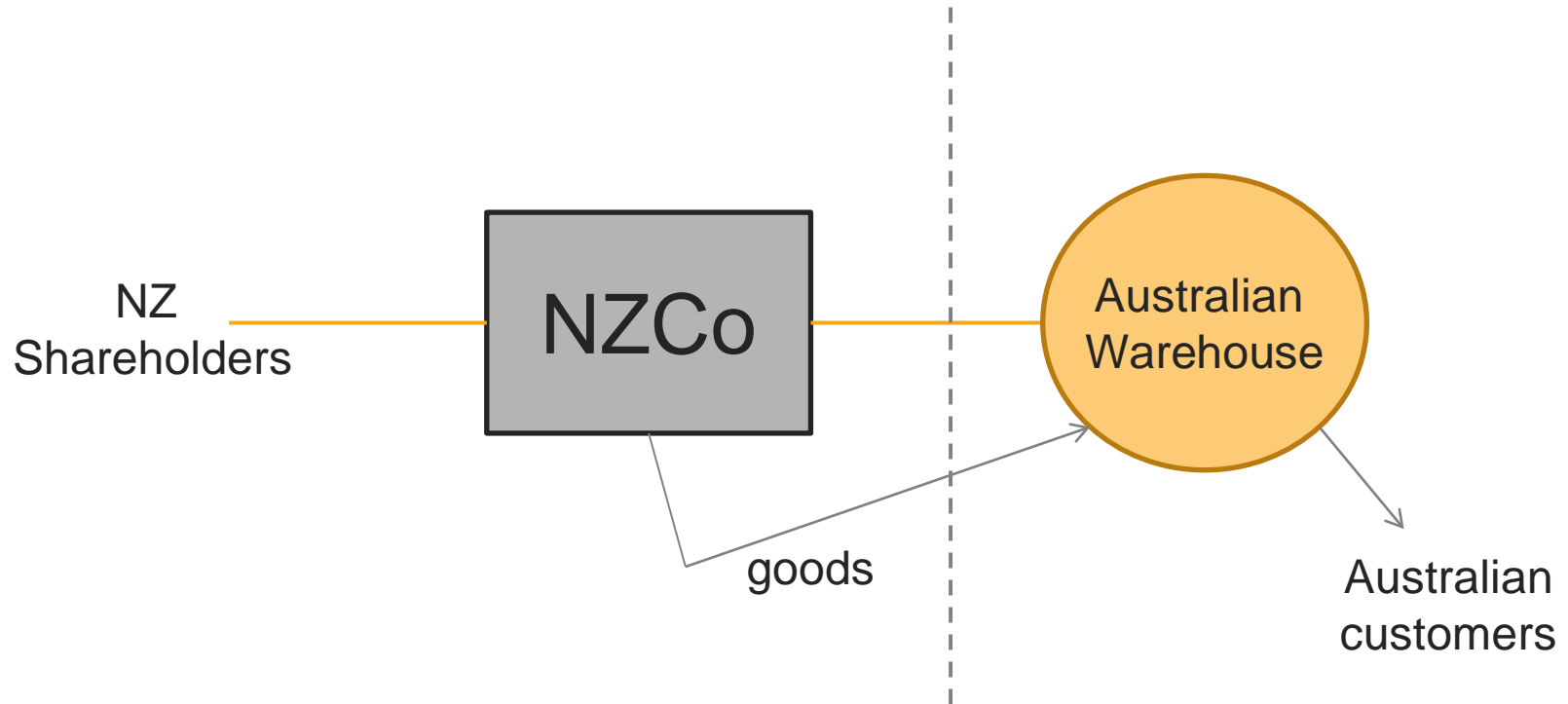
GST Registration

- An entity meets the GST registration turnover threshold if:
 - Its current GST turnover is at or above A\$75,000 per annum, and the ATO is not satisfied that the projected GST turnover is below the threshold; or
 - Its projected GST turnover is at or above the threshold
- Current GST turnover is:
 - sum of supplies made in current month and previous 11 months
 - Excluding: input taxed supplies, supplies for no consideration, and supplies not made in connection with an enterprise that the entity carries on

GST Registration

- Projected GST turnover is:
 - sum of supplies made in current month and likely to be made in the future 11 months
 - Excluding: input taxed supplies, supplies for no consideration, and supplies not made in connection with an enterprise that the entity carries on
- Also excluded are supplies that are not connected with Australia
- If turnover is below the threshold, an entity can still voluntarily register for GST

Example



Example

- Need to determine if NZCo is required to be registered
- NZCo is carrying on an enterprise.
 - It does not matter that NZCo carries on its enterprise outside Australia - the test does not limit where this enterprise is carried on
- GST registration turnover?
 - Exclude: supplies not connected with Australia
 - Goods brought to Australia – connected with Australia - included

Example

- If value of goods supplied to Australian customers over A\$75,000 pa = required to be GST-registered
- If value of goods supplied below A\$75,000 pa = no requirement to register – but may want to voluntarily register

Creditable Importations

- An entity makes a ‘creditable importation’ if:
 - It imports goods solely or partly for a creditable purpose; and
 - The importation is a taxable importation; and
 - The entity is registered or required to be registered

Creditable Acquisition

- An entity makes a ‘creditable acquisition’ if:
 - it acquires anything solely or partly for a creditable purpose; and
 - the supply of the thing to the entity is a taxable supply; and
 - the entity provides, or is liable to provide, consideration for the supply; and
 - the entity is registered or required to be registered

Creditable Purpose

- An entity makes an importation or acquisition for a ‘creditable purpose’:
 - to the extent the acquisition/importation is made in carrying on an enterprise

However, the acquisition/importation is not made for a creditable purpose to the extent that:

- the acquisition/importation relates to making supplies that are input taxed; or
- the acquisition/importation is of a private or domestic nature

Example

- Assume value of supplies of goods made in Australia by NZCo is > A\$75K
- Are these 'taxable supplies' to Australian customers?
 - supply for consideration: ✓
 - supply made in course of carrying on enterprise: ✓
 - connected with Australia: ✓
 - registered or required to be registered: ✓

Example

- Is the import of goods 'taxable importations' of NZCo?
 - goods are imported: ✓
 - NZCo enters the goods for home consumption: ✓

Example

- Is NZCo making a ‘creditable importation’?
 - NZCo imported the goods: ✓
 - Solely or partly for creditable purpose: ✓
 - Importation is a taxable importation: ✓
 - NZCo is registered or required to be registered: ✓
- ITCs will also be available for other ‘creditable acquisitions’ made by NZCo in Australia

Compliance

- Registered entities required to lodge GST returns – called Business Activity Statements (BASs)
- BAS required quarterly or monthly (annual BAS also available if conditions are met)
- Cash or accruals basis
- If turnover >\$20m compulsory for monthly BAS and electronic lodgement

Compliance

- To claim ITCs must hold Tax Invoice
- No tax invoice required for taxable importations (but Customs documentation will include GST)
- Penalties for:
 - Failure to register
 - Failure to lodge BAS
 - Failure to pay GST

Other

- Special Rules:
 - Attribution – when GST and ITCs are included in particular BASs
 - GST-free exports from Australia – subject to meeting various conditions
 - Agents acting on behalf of non-residents
 - Reverse charge rules

Practical Matters

- Non-resident registration – onerous requirements regarding proof of identity of entity, including associates (e.g. directors, shareholders, partners, etc)
- Copies of documents need to be certified by Australian Consulate or Embassy – originals of documents need to be sighted for certification
- For GST refunds to be paid, entity must have a valid Australian bank account

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Thank You

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