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Dear Sir or Madam

## Submission to the Commonwealth Treasury on Improving the Integrity of GST on Property Transactions

Hall & Wilcox welcomes the opportunity to make a submission on the amendments to the *Taxation Administration Act 1953 (Cth) (TAA)*, and consequential amendments to the *A New Tax System (Goods and Services) Act 1999 (Cth) (GST Act)* and the *Income Tax Assessment Act 1997 (Cth) (ITAA97) (Proposed Amendments)*.

Hall & Wilcox supports the Federal Government's efforts to increase the integrity of the Australian Taxation system in a manner that is efficient, practical and has regard to keeping Australia economically competitive in a global context.

This submission relates to the following specific aspects of the Exposure Draft for the *Treasury Laws Amendment (2017 Measures No. 9) Bill 2017 (Draft Bill)*:

- circumstances where there are multiple types of supplies made under a contract;
- the inclusion of 'potential residential premises' in the amendments to Administrative penalties; and
- amendments to allow for refunds where sales have occurred under the margin scheme provisions.

### Multiple supplies

We note that the Explanatory Memorandum (EM) for the Draft Bill outlines that, in circumstances where there are multiple different types of supplies under a single agreement and the contract is expressed as a single amount that covers all taxable supplies, it may not be possible to determine (at the time of consideration being provided) the proportion of the consideration to which the withholding obligation applies<sup>1</sup>. We understand that the Proposed Amendments require the purchaser to withhold GST from the whole of the price unless it is possible to ascertain the specific GST amount that is attributable to the supply to which the withholding obligation applies.

<sup>1</sup>Refer to Draft Bill at Schedule # item 1 subsection 14-250(8) and paragraphs 1.22 and 1.25 of the EM

In instances where apportionment or attribution is not fully precise, there should be some leniency to encourage parties to make a reasonable effort to utilise an attribution method. In GST<sup>2</sup> and other areas of Taxation<sup>3</sup> the Commissioner of Taxation has set out guidelines where there are 'safe harbor' thresholds on apportionment matters. The Proposed Amendments should be drafted clearly enough to ensure that the Commissioner is able to do this if he chooses.

### **Administrative Penalty for notification by suppliers to help purchasers comply with the obligation to withhold an entity**

Under the Proposed Amendments, suppliers are required to notify the purchaser within 14 days before making supply.<sup>4</sup> Further, an Administrative Penalty may apply if you fail to notify the purchaser.<sup>5</sup> This is an administrative penalty for which the defence of honest and reasonable mistake of fact does not apply (as acknowledged in the EM)<sup>6</sup> and on this basis the Proposed Amendments include an exception to the administrative liability. According to subsection 14-255(5) in the Draft Bill, the exception will apply where the supplier reasonably believed that the premises were 'not new residential premises'. In its current form, the Proposed Amendments only include an exception for 'new residential premises' and do not provide an exception for 'potential residential premises' whereas 'potential residential premises' are specified in the relative operative provision under s 14-255(1).

Further, the Proposed Amendments should ensure that the 'reasonable belief' exception also applies to 'potential residential premises' on the basis that there is a degree of judgement that must be exercised in circumstances where suppliers are determining whether property constitutes 'potential residential premises'.

### **Provisions for sales under the Margin Scheme**

We acknowledge the efforts made to address cash flow implications for suppliers resulting from the reduced ability to recover GST from purchasers. In particular, we refer to the Draft Bill's process for applying for refunds contained in Schedule #, item 4, subsections 18-85(1) and (3) and we note that the Proposed Amendments outline that a refund will be requested from the ATO if the requirements are met. Amongst the other criteria that needs to be satisfied, the request needs to be made at least 14 days before the end of the relevant tax period and the Commissioner has a discretion that must be exercised with respect to specific factors before the refund is granted.

We have some concern that 14 days is not a realistic amount of time for the Commissioner to review and process an application, particularly given the factors that the Commissioner must have regard to when determining what is 'fair and reasonable'<sup>7</sup>. Additionally, we consider that it is worth reviewing whether the current drafting is appropriate in the context of the Commissioner's ability to police entities double dipping – that is, applying for a refund and then claiming the credit in the BAS (as may be the case in a self-assessment regime). Before the Proposed Amendments are finalised, Treasury should have regard to whether there are the appropriate integrity measures in place. If there is no proactive integrity measure, this may mean that the Commissioner will be burdened with the task of scrutinizing Business Activity Statements for every entity that has been granted a

<sup>2</sup> By way of example, refer to *Practical Compliance Guideline - PCG 2017/15: GST on Customer Owned Banking Institutions* where the Commissioner has provided a 'safe harbor' of 18% relating to credit recovery on Customer Owned Banking Institutions.

<sup>3</sup> By way of example, refer to *Practical Compliance Guideline - PCG 2017/D11: Tax Treatment of payment for use and exploitation of a professional sportsperson's 'public fame or image'* where the Commissioner has provided a 'safe harbor' for characterisation of payments made for image rights use.

<sup>4</sup> Draft Bill at Schedule #, item 1, subsection 14-255(1) and EM at 1.28

<sup>5</sup> Draft Bill at Schedule #, item 1, subsection 14-255(4) and EM at 1.36

<sup>6</sup> EM at 1.38

<sup>7</sup> EM at 1.54

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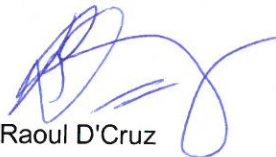
refund. This will be an additional burden to the property transaction process for all parties (in particular, the Vendor).

We trust the above is clear. We are happy to discuss further with your office if required.

Yours sincerely



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