

GOODS AND SERVICES TAX - 15 YEARS OF CASE LAW EXPERIENCE

By Professor Robert Deutsch

1. INTRODUCTION

Having passed the 15 year mark since the introduction of GST in Australia it seems an appropriate point at which to reflect on the formidable body of case law that has developed over that time frame.

In doing so I received a huge leg up with some assistance from the Australian Taxation Office in particular from Mr Doug Kelly who in large measure provided the key components of the Attachment.

As indicated the Attachment is a compilation of all the cases that have been decided at the Administrative Appeals Tribunal since the commencement of the GST on 1 July 2000. It also includes some Tables that seek to assist in the interpretation of some of that material.

2. ATTACHMENT

The Attachment is in essence a Table which lists in chronological order all the decisions of the AAT which directly involve GST.

Quite deliberately, the listing does not extend to include interlocutory applications or decisions which largely involve matters relating to practice and procedure. Thus, applications for extensions of time, dismissal and reinstatement of previously dismissed cases have been excluded. Applications regarding jurisdictional matters exclusively have also been excluded. Furthermore applications which have only involved penalties for failure to lodge have also been excluded.

Where applications have raised some of these matters but in conjunction with other more substantive matters the cases have been included.

As far as possible the list is exhaustive but obviously having regard to the list of exclusions, some judgement needed to be exercised in deciding what to include and what not to include.

Where a case has been appealed or a Decision Impact Statement (DIS) has been issued by the ATO in respect of a decision, this is noted in the Comments column with as much information as is possible being provided in the limited space available.

Decisions which are considered significant are marked with an asterisk.

The subject classifications are summarised in the first box below – the classifications are not based on any particular magic but simply reflect what are thought to be the commonly understood classifications for GST purposes.

Some important outcomes

There are a number of important themes that emerge from the record as reflected in the Attachment.

First, it is clear that a large percentage of the cases that are run before the AAT are ultimately won by the ATO : see Table 4. Over 75% of the cases run are resolved in favour of the ATO with only 7% for the taxpayer. Mixed results make up the balance of just over 16%. This clearly suggests that taxpayers need to consider settlement offers seriously and work their way through the ADR process diligently to see if an agreed outcome might be possible.

In this context it is worth noting that some cases at the AAT arise in circumstances where during the period running up to the hearing the taxpayer may provide additional evidence or new argument to support his/her case. On occasion some of that material or some of the revised argument may be accepted by the ATO so as to put the ATO in a position where it adopts a more concessionary stance vis-à-vis the taxpayer. If the taxpayer is still not satisfied and the matter proceeds to final hearing, the ATO will advise the AAT of the concessions made. The ATO will then argue his case at the final hearing based on the revised position. If that position is affirmed by the AAT then the ultimate decision will be noted as being in favour of the ATO. In such a case the comment is made in the comments column to the effect that “the Commissioner’s varied position argued at hearing was accepted.

Secondly, there seems to be a gradual decline in the cases being run with the zenith being in 2013 and a noticeable decline in the years since: see Table 2.. This seems to be in line with the ATOs settlement push but having regard to more recent statements this may change in the years that lie ahead.

Thirdly, in terms of the content of the cases run before the AAT:

- almost half of them relate to substantiation or penalties;
- in terms of the core issues relating to the basic requirements of what amounts to a taxable supply the biggest litigated issue by far relates to the concept of enterprise;
- in terms of classification issues there is not a great deal of litigation at the AAT with only a handful of cases on Food/Beverage and Financial Supplies;
- in terms of industry involvement the biggest area by far is Property and Construction;
- anti-avoidance cases are few and far between – only 2 cases considered the application of Division 165 namely VCE and Unit Trend;

- in percentage terms the taxpayer has succeeded either entirely or partially mainly in the context of penalties where almost a third of cases have been resolved at least partially in favour of the taxpayer, and
- very little arises on the international front at the AAT - only 3 cases considered the international/cross border situation.

(Tables 1 and 4)

Fourthly, as at 31 December 2016, 80% of all then current GST litigation cases involved taxpayers in the Small Business sector where annual turnover is less than \$2 million (Table 6).

Fifthly, as at 31 December 2016, an overwhelming 95% of all then current GST litigation cases were being conducted in the AAT with only 5% being conducted in the Federal Court (Table7).

3. SOME ISSUES AT THE AAT

3.1 Self – represented litigants

Although not forming part of the statistics available anecdotally it appears to be the case that the number of Applicants appearing in person at the AAT has grown over recent years. Consequently, the question as to the extent to which the Tribunal should assist an unrepresented person has become more pressing.

On this issue the point has been made that the degree of assistance which is to be provided to an unrepresented litigant will largely depend on the applicants ability and the nature of the issues that arise at the hearing: ***Nipperess v Military Rehabilitation and Compensation Commission (2006) FCA 943; (2006) 91 ALD 362 at para 50 -54; Xia v Wang and Bian (2009) ACAT 21.***

Essentially the Tribunal in considering the plight of the unrepresented applicant needs to balance:

- the need to ensure that all the relevant arguments are put by the applicant;
- with
- the need to ensure that the unrepresented applicant does not obtain positive advantages over the other parties to the litigation.

In the unreported decision of Mahoney JA in ***Rajski v Scitec Corporation Pty Ltd (Court of Appeal, NSW Full Court, No CA 146 of 1986 – 16 June 1986,*** the paramount consideration was to ensure

that “ the court will..... be careful to examine what is put to it by a party in person to ensure that he has not, because of the lack of legal skill, failed to claim rights or to put forward arguments which otherwise he might have done”. Admittedly this was said in judicial and not an administrative proceeding but there is no reason to assume that the comments would not have equal force in the context of proceedings before the AAT.

So let us hypothesise for a moment the position of a self-represented litigant who comes before the Tribunal and seeks to counter an argument put by the Respondent Commissioner of Taxation that certain supplies made were wrongly claimed to be non-taxable supplies because what the Applicant took to be GST-free supplies did not for various technical reasons fall into that category. The Applicant is likely to respond by asserting they are within the terms of the GST-free classification and forcefully argue that position.

What if the Applicant argues nothing else but the presiding tribunal member realises that based on the evidence presented there may be a cogent argument to support a proposition that there is no enterprise being carried on by the Applicant and accordingly there may be no GST payable of the supply in any event. Is the Tribunal member obligated to highlight this possibility and go on to explain to the unrepresented Applicant that there is an attendant downside to the alternative argument in that input tax credits that were otherwise claimed might fall by the wayside if the applicant were to be successful in pursuing that alternative argument. By doing so would the tribunal member cease to be the impartial decision maker and have become an advocate for the Applicant? Does the same issue arise if the Applicant is poorly represented as opposed to unrepresented?

Where procedural issues are at stake the commentary has been somewhat stronger in suggesting assistance be provided to unrepresented litigants. Thus, in **re Tang and the Minister for Immigration and Citizenship (2012) AATA 330; (2012) 132 ALD 105 at 137**, the AAT made special reference to its need to be “more actively engaged “ when dealing with the answer to a summons for production of information in circumstances where the applicant is unrepresented. Similarly, in **SZRUR v Minister for Immigration and Border Protection (2013) FCAFC 146** the court emphasised the need to have the niceties of procedure explained by the court to the applicant especially where there are serious negative consequences flowing from the failure to the Applicant.

3.2 Money at stake

Many of the cases pursued at the level of the AAT involve amounts which leave one pondering why the parties could not resolve the matters in question through an appropriate Alternative Dispute

Resolution (ADR) mechanism. Running cases at the AAT to hearing where the amounts in dispute involve less than \$5000 is usually a sign that one or perhaps both parties to the litigation have not made a realistic assessment of their case based on a rigorous well-considered cost/benefit analysis.

If the parties are represented, \$5000 in fees will be reached without too much effort if the case runs to a full hearing. Add to this the backdrop that the AAT is largely a no costs jurisdiction (see s60 AAT Act) and one can readily see why running such cases all the way is often foolhardy.

If the parties are unrepresented, opportunity costs are often not properly factored into the equation.

Running matters on principle along the lines of the oft quoted **Balmain New Ferries** case is perhaps laudable if somewhat eccentric, but it rarely amounts to a proper and useful application of private and public funds.

The AAT has incorporated a full ADR mechanism into its processes and every case has the potential to be exposed to it. Importantly, the process is run independently of the final hearing of the matter if the case proceeds along those lines and if either of the parties would prefer not to have the presiding conciliator hear the matter at hearing they need only ask and the person is automatically excluded from hearing the matter. Even if they do not so ask, if the person presiding at the conciliation is him or herself of the view that they should not hear the matter they can and often do exclude themselves.

The whole process is designed to give the parties maximum confidence that what they say or do at the conciliation will not prejudice them in any way at a final hearing if the matter so proceeds.

Parties coming to a conciliation should do so with an open mind and without the pre-determined view that they will only go so far and no further. That kind of thinking tends to preclude one seeing something in the conciliation which had not been previously considered.

In most tax conciliations there are 3 layers of financial responsibility in dispute – the primary tax, penalties and interest. The tax office will but only rarely entertain discussion about reductions in primary tax but is often open to discuss penalties and depending on the circumstances interest.

Considering the statistics that are emerging on the comparative success rates as shown in the Attachment suggest that taxpayers need to carefully consider any reasonable offers made at the conciliation stage.

3.3 Extension of Time Applications

There are many and varied arguments that are presented to the AAT in regard to Extensions of Time. Much confusion has arisen as to the circumstances in which there may be a residual discretion to extend time where a stipulated time period has passed.

Generally it is important to distinguish procedural matters relating to the filings required at the AAT and GST specific time requirements. In relation to the former discretionary extensions of time are usually available but in relation to the latter they are not.

The main issue in relation to GST specific time frames seem to arise most commonly in relation to entitlements to input tax credits for creditable acquisitions. By virtue of section 93-5 of the GST Act, such entitlements cease unless they are included in the assessed net amounts within a limited time period which most commonly is within 4 years of the day on which the relevant taxpayer was required to give to the Commissioner a GST return for the tax period to which the ITC would be attributable under s29-10(1) or (2). There are 5 circumstances sequentially spelt out in s 93-10 sub-sections (1) to (5) which allow for longer periods in certain circumstances but importantly there is no general discretion to allow a longer period. This is made clear from the terms of the legislation itself but has been clarified and confirmed on at least 2 occasions before the AAT – see ***Re the Trustee for SBM Trust and Commissioner of Taxation 2015 AATA 174 and Sedgewick and Commissioner of Taxation (2015) AATA 690.***

That position however is very much in stark contrast to that which applies in relation to broader extension of time applications where the Commissioner and hence the AAT on review has a broad discretionary power to extend time having regard to various broadly recognised criteria.

Thus, in the context of the time to lodge a taxation objection in relation to income tax with the Commissioner, the normal rule is that the taxpayer has 2 years from the date of receipt of the relevant notice of assessment: see section 14ZW(1) Taxation Administration Act 1953. Similarly, for taxation objections relating to GST a similar rule applies but with provision for a 4 year period.

Failure to lodge within the designated time period is not necessarily fatal but a formal separate application for review of the decision of the Commissioner to not treat the application as having been filed within time (assuming that is the decision made by the Commissioner) needs to be made by the Applicant.

Thus, s 14 ZW (2) provides:

“If the period within which an objection by a person is required to be lodged has passed, the person may nevertheless lodge the objection with the Commissioner together with a written request asking the Commissioner to deal with the objection as if it had been lodged within that period.”

Section 14 ZX(1) then provides that:

After considering the request, the Commissioner must decide whether to agree to it or to refuse it”.

Further provisions then outline that:

- if the Commissioner agrees to the request then the objection is taken to have been lodged with the Commissioner within the required time; and
- if the Commissioner decides to refuse the request, the person may apply to the Tribunal for review of the decision.

Whether to agree or refuse such an application is clearly a discretionary matter.

The factors which are relevant to the exercise of that discretion are canvassed in a number of cases including **Hunter Valley Developments V Cohen, Minister for Home Affairs and Environment (1984) 3 FCR 344 at p348** and **Brown v FCT (1999) 42 ATR 118 at 131-132**.

From Hunter Valley Wilcox summarised the position as follows;

“It is the prima facie rule that proceedings commenced outside the prescribed period will not be entertained”

and then set out six principles to guide the decision-maker’s discretion to grant an extension of time. They are:

- (a) That the application for extension of time must show an acceptable explanation for the delay and that it is fair and equitable in the circumstances to extend the time;
- (b) Whether the applicant has rested on his or her rights and whether the respondent is entitled to regard the claim as being finalised;

- (c) Any prejudice that may arise to the respondent or any other person affected by the decision;
- (d) The mere absence of prejudice to the other parties is not enough to justify the grant of an extension. However any wider prejudice to the general public is a relevant factor;
- (e) The merits of the substantive application; and
- (f) Consideration of fairness between the applicant and other persons in a similar position

The decided authorities also make it clear that it is the Applicant who bears the onus of establishing why in a particular case the Tribunal should agree to grant the extension of time request: **Re Jones and FCT (2008) 73 ATR 227 at 230.**

In practice the longer the extension of time required the less likely it is to be granted. Recent cases I have considered have involved time delays of almost 2 years in one case and 5 years in another. Such time delays can rarely be justified especially having regard to the fact that in such cases where the Applicant has been largely silent throughout the relevant period the Respondent is entitled to assume that the matter is closed.

4. CONCLUDING REMARKS

The AAT had had a huge involvement in the development of the GST law as most litigious matters have originated at that level. Although difficult to predict with any certainty, it is unlikely that this will be any different in the next 15 years.

Far more likely is the possibility that the nature of the cases coming before the AAT will change – fewer penalties and substantiation cases and perhaps a growth in the cases involving the basis issues of enterprise and classification.

Taxpayers and the ATO alike may look at the statistics provided in this paper and seek to settle such matters with more enthusiasm through the ADR process. That would leave room for perhaps a broader range of more complex GST issues to be resolved at the AAT.

AAT decisions involving GST issues**1 July 2000 to 31 December 2015****Index**

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Table 1 - Schedule of subject classifications

Subject Classification	Description (primary issue/s)	Total Cases	Total as a percentage
1. Anti-avoidance	Cases involving issues arising under Division 165 of the GST Act	2	1.2%
2. Enterprise	Cases involving enterprise under the provisions of the GST Act (see sections 9-20 and 195-1). Whether entities are "carrying on an enterprise"?	17	9.9%
3. Financial Supplies	Cases directly or indirectly involving financial supplies under Subdivision 40-A of the GST Act	2	1.2%
4. Food/Beverage	Cases involving the GST classification of food and beverages. Are goods sold GST-free? (See Subdivision 38-A of the GST Act)	1	0.6%
5. International/Cross-border	Cases involving cross-border transactions generally or in relation to the operation of sections 38-185 and 38-190 of the GST Act	3	1.7%
6. Miscellaneous	This is a broad category including cases that do not clearly fall under other classifications. It also includes some supply and consideration issues. Additional comments are usually provided	11	6.4%
7. Motor Vehicles/Luxury Car Tax (LCT)	Cases involving motor vehicles, some of which also include issues arising under <i>A New Tax System (Luxury Car Tax) Act 1999</i> . Cases involving solely LCT issues are not included	3	1.7%
8. Penalty-only	Cases which involve penalty issues only	31	18.0%
9. Property & Construction	Cases involving dealings in real property and the building industry	32	18.6%
10. Second-hand Goods	Cases involving issues arising under Division 66 of the GST Act	2	1.2%
11. Substantiation	Cases which involve the under-declaring of taxable supplies, the over-claiming of input tax credits, default assessments etc. across a range of industry types. Onus cases	56	32.5%
12. TAA Issues	Cases involving issues arising under the <i>Taxation Administration Act 1953</i> e.g. sections 105-50, 105-55 and 105-65 of Schedule 1	10	5.8%
13. Transitional Issues	Cases involving issues arising under <i>A New Tax System (Goods and Services Tax Transition) Act 1999</i>	2	1.2%
Total		172	100%

**Table 2 - GST cases per year
as a percentage of total GST cases**

Year/s	Number of Cases	Percentage of Total
2003/04	5	2.9%
2005	6	3.5%
2006	9	5.2%
2007	11	6.4%
2008	21	12.2%
2009	13	7.5%
2010	18	10.5%
2011	15	8.7%
2012	17	9.9%
2013	27	15.7%
2014	18	10.5%
2015	12	7.0%
Total	172	100.0%

Table 3**Outcome of GST cases at the AAT**

Outcome in Favour of:	Number of cases	Percentage
ATO	132	76.7%
Mixed	28	16.3%
Taxpayer	12	7.0%
Total	172	100.0%

Table 4 - Cases where the taxpayer has had some success

Case category	Number of cases	Number of cases favourable or partly favourable to taxpayer	Percentage for category
Substantiation	56	11	19.6%
Property & Construction	32	4	12.5%
Penalty-only	31	9	29.0%
Enterprise/Business	17	4	23.5%
Miscellaneous	11	3	27.3%
TAA Issues	10	3	30.0%
Motor Vehicles/LCT	3	2	66.7%
Financial Supplies	2	1	50.0%
Second-hand Goods	2	1	50.0%

Table 5 - The Cases
AAT decisions involving GST issues
1 July 2000 to 31 December 2015

No	Case Name (Taxpayer)	Date of Decision	AAT Reference	Issue/s	Subject Classification	Outcome in favour of:	Comments
2003-2004							
1.	Lancut (Aust) Pty Ltd	10/10/03	[2003] AATA 1019 QS2003/9	Asset purchase agreement – attribution issues. Operation of section 29-10(2) of the GST Act	Miscellaneous (attribution)	ATO	STCT
2.	Tony Saba	15/03/04	[2004] AATA 264 NS2003/70	Taxi driver – understated earnings, extent of taxable supplies. Penalty issue	Substantiation	ATO	STCT
3. *	Body Corporate, Villa Edgewater CTS 23092	29/04/04	[2004] AATA 425 QT2003/287	Whether body corporate separate legal entity distinct from members? Does a body corporate carry on an enterprise?	Enterprise	ATO	
4. *	Karmel & Co Pty Ltd as trustee for Urbanski Property Trust	14/05/04	[2004] AATA 481 NT2002/273-277	Characterisation of premises – boarding house. Were the premises commercial residential premises?	Property & Construction (characterisation of premises)	ATO	
5. *	The Recoveries Trust	15/10/04	[2004] AATA 1075 NS2003/35-37	Input tax credit claims by a taxpayer carrying on an enterprise of acquisition of debts for collection. Financial supplies – supplies that would be input taxed	Financial supplies (creditable purpose)	Mixed	STCT (taxpayer's appeal to the Full Federal Court dismissed – <i>HP Mercantile</i> decision). DIS issued in relation to the Full Federal Court decision ¹

2005							
6. *	Suzanne Midford	29/06/05	[2005] AATA 623 WT2004/325	Sale by taxpayer of commercial property subject to lease. GST-free going concerns – agreed in writing	Property & Construction (going concern)	ATO	
7.	“The Taxpayer”	21/07/05	[2005] AATA 696 NT2005/25	Penalty issue	Penalty-only	ATO	
8.	Thomas Davies	08/08/05	[2005] AATA 753 TT2004/9	Boot and shoe repair enterprise. Extent of taxable supplies. Evidentiary issues	Substantiation	ATO	
9.	“VT2004/246”	18/10/05	[2005] AATA 1028 VT2004/246	Penalty issue	Penalty-only	Mixed	
10.	Graham Docker and Associates Pty Ltd	01/12/05	[2005] AATA 1180 VT2004/289	Taxpayer’s challenge to Commissioner’s estimate of consideration received for taxable supplies made. Penalty issue	Substantiation	ATO	
11.	Tharwat Abdel Halim & Karima Abdel Halim	21/12/05	[2005] AATA 1274 NT2004/359	Penalty issue	Penalty-only	ATO	

2006							
12. *	Archibald Dixon as trustee for Dixon Holdsworth Superannuation Fund	17/02/06	[2006] AATA 130 QT2005/222 QT2006/48	Penalty issue - remission	Penalty-only	Mixed	Commissioner's appeal to the Federal Court allowed. Taxpayer's subsequent appeal to the Full Federal Court allowed in part. DIS issued in relation to the Full Federal Court decision ²
13.	BV & G Kelly	08/05/06	NS2005/92	GST-free going concerns – agreed in writing	Property & Construction (going concern)	ATO	STCT Oral bench decision – no citation
14. *	Reliance Carpet Company Pty Ltd	05/06/06	[2006] AATA 486 VT2005/345	Forfeiture of deposit on sale of land. Was the forfeited deposit consideration for a taxable supply? Nature of supply. Operation of Division 99 of the GST Act	Property & Construction (supply)	ATO	Taxpayer's appeal to the Federal Court allowed however its decision later overturned by the High Court. DIS issued in relation to the High Court decision ³
15.	Tenvoc Properties Pty Ltd	20/06/06	[2006] AATA 529 NT2005/253	Penalty issue	Penalty-only	ATO	
16.	Michael Christopher Vadasz	04/08/06	[2006] AATA 682 ST2005/55-57	Assessments of GST net amounts – decreasing adjustments	Substantiation	ATO	

17.	Peerless Marine Pty Ltd	08/09/06	[2006] AATA 765 QT2005/79-90, QT2005/96-97 QT2005/324-327	Income tax deductions, GST input tax credits. Conduct of taxpayer's business. Non-deductible expenses	Enterprise/Business	Taxpayer	DIS issued
18. *	"VCE"	26/09/06	[2006] AATA 821 VT2005/192	Application of GST anti-avoidance provisions – Division 165 of the GST Act	Anti-avoidance	ATO	
19. *	Debonne Holdings Pty Ltd	19/10/06	[2006] AATA 886 WT2004/382	GST-free going concerns – agreed in writing	Property & Construction (going concern)	ATO	DIS issued
20.	Noac Consultants Pty Ltd	01/12/06	[2006] AATA 1035 VT2005/636	Penalty issue	Penalty-only	ATO	

2007							
21.	Keitac Pty Ltd as trustee for McNamara Property Development Trust	04/04/07	[2007] AATA 1026 QT2006/329	Penalty issue	Penalty-only	Mixed	DIS issued
22.	Stephen Ajami	16/04/07	[2007] AATA 1231 NT2006/0307	Penalty issue - remission	Penalty-only	ATO	
23.	JG & JA Williamson Holdings Pty Ltd as trustee for John Williamson Family Trust	21/05/07	[2007] AATA 1344 TT2006/0004-05	Penalty issue	Penalty-only	ATO	
24.	DG Empire Pty Ltd as trustee for DG Empire Trust	29/06/07	[2007] AATA 1485 NT2006/032	Penalty issue - remission	Penalty-only	Mixed	DIS issued
25.	John and Gail Sgardelis	02/07/07	[2007] AATA 1499 NT2006/34	Entitlement to input tax credits – supporting documentation. Penalty issue	Substantiation	ATO	
26. *	“Food Supplier”	16/07/07	[2007] AATA 1550 NT2005/468	Supply of packaged food products. Promotional items “free”? Apportionment issues	Food/Beverage	ATO	DIS issued

27.	M Barakat, L Barakat, J Spooner and J Cooley	19/07/07	[2007] AATA 1564 NT2006/393	Penalty issue	Penalty-only	Taxpayer	DIS issued
28.	TSC 2000 Pty Ltd	03/08/07	[2007] AATA 1629 QT2005/0145-156	Were payments made consideration for gambling supplies? Penalty issue	Miscellaneous (gambling - consideration)	Mixed	
29. *	AGR Joint Venture	18/10/07	[2007] AATA 1870 WT2006/395	Characterisation of supply of coin blanks. Was there only one supply?	Miscellaneous (supply)	ATO	
30. *	M R Block & S L Block	26/10/07	[2007] AATA 1897 WT2006/754-778	Income tax and GST issues. Were the taxpayers' activities a business or recreational pursuit? (Horse breeding and racing)	Enterprise/Business	Taxpayer	DIS issued
31.	Keenhilt Pty Ltd as trustee for CHC Services Trust	21/12/07	[2007] AATA 2095 QT2006/0104-107	Was consideration received in connection with a supply? Promotion of schemes. Penalty issue	Miscellaneous (supply)	ATO	

2008							
32.	Van Lam Huynh and Minh Thi Ngoc Nguyen	15/04/08	[2008] AATA 305 QT2006/438 QT2006/450	Taxi services – extent of taxable supplies	Substantiation	ATO	
33.	R Chalmers and The Lynton Chalmers Superannuation Fund	15/04/08	[2008] AATA 308 2007/717	Penalty issue	Penalty-only	ATO	
34.	Alexander Drysdale	14/05/08	[2008] AATA 393 2007/0772	Entitlement to input tax credits – enterprise issue (boat promotion). Reasonable expectation of profit or gain	Enterprise	ATO	DIS issued
35.	Allan Winkler	16/05/08	[2008] AATA 401 2007/1822	Acquisition of property – entitlement to input tax credits. Attribution issues	Property & Construction (creditable purpose)	ATO	
36.	“Confidential”	21/05/08	[2008] AATA 415 VT2006/358	Penalty issue	Penalty-only	ATO	
37. *	“The Taxpayer”	28/05/08	[2008] AATA 461 WT2006/0907	Was the taxpayer carrying on an enterprise? Activities involving artworks and antiques	Enterprise	Taxpayer	Commissioner’s appeal to the Federal Court dismissed. DIS issued in relation to the Federal Court decision ⁴

38.	Ali Kalintas	29/05/08	[2008] AATA 444 NT2006/0368-371	Default assessment – onus issues	Substantiation	ATO	Commissioner's varied position argued at hearing accepted. DIS issued
39.	Australian Pasture Seeds Pty Ltd	23/06/08	[2008] AATA 520 2007/2892	Entitlement to input tax credits. Attribution issues. Penalty issue	Substantiation	ATO	
40.	Pier Loren as trustee for Loren Family Discretionary Trust	09/07/08	[2008] AATA 631 2008/0811	Penalty decision	Penalty-only	ATO	STCT – oral decision
41.	Gregory D'Arcy	13/08/08	[2008] AATA 709 2007/1838	Enterprise issue – horse breeding activities	Enterprise	ATO	
42.	"VCF"	21/08/08	[2008] AATA 731 VT2006/0141	Entitlement to input tax credits – purchase of second-hand goods. Penalty issue	Second-hand Goods	Mixed	DIS issued
43.	The trustee of the Amabalad Family Trust	11/09/08	[2008] AATA 809 2007/0460	Extent of taxable supplies. Entitlement to input tax credits. Penalty issues	Substantiation	Mixed	DIS issued
44. *	Archibald Dixon as trustee for Dixon Holdsworth Superannuation Fund	16/09/08	[2008] AATA 825 QT2006/0048	Penalty – remission issues	Penalty-only	ATO	This matter remitted to the AAT from the Full Federal Court. DIS issued in relation to the Full Federal Court decision ⁵

45. *	Sunchen Pty Ltd as trustee for the Sunchen Family Trust	19/09/08	[2008] AATA 838 2007/3678	Entitlement to input tax credits – purchase of a residence. Was the supply to the taxpayer an input taxed supply?	Property & Construction (characterisation of premises)	ATO	Although a favourable decision the reasoning of the AAT was contrary to the ATO view. The taxpayer's appeals to the Federal Court and the Full Federal Court were dismissed. ⁶ DIS issued in relation to the Full Federal Court decision ⁷
46.	Tavco Group Pty Ltd	22/09/08	[2008] AATA 843 2007/6119	Penalty issue	Penalty-only	Mixed	DIS issued
47.	Hua-Aus Pty Ltd	17/11/08	[2008] AATA 1033 2007/0403	Extent of taxable supplies – escort services. Penalty issue	Substantiation	ATO	Commissioner's varied position argued at hearing accepted. Taxpayer's appeal to the Federal Court allowed ⁸
48.	Alexander Goldberg and IFH Pty Ltd	20/11/08	[2008] AATA 1045 2007/1331 2007/1329	Entitlement to input tax credits – enterprise issues, book publishing activities. Penalty issues	Enterprise	ATO	
49.	Barcia Pty Ltd (as trustee for Barcia Trust)	24/11/08	[2008] AATA 1073 WT2006/1025	Entitlement to input tax credits – was acquisition made under the margin scheme? Penalty issue	Property & Construction (margin scheme)	ATO	

50. *	Hornsby Shire Council	26/11/08	[2008] AATA 1060 2007/5657	Meaning of supply – did the taxpayer make a creditable acquisition when it compulsorily acquired certain real property?	Property & Construction (supply)	Taxpayer	DIS issued
51.	Nitram Consulting Pty Ltd	16/12/08	[2008] AATA 1119 2007/4526	Penalty issue	Penalty-only	Mixed	DIS issued
52. *	Touram Pty Ltd as trustee for the GKA Family Trust	23/12/08	[2008] AATA 1167 2008/0365	Entitlement to input tax credit. Was the supply of land made to the purchaser part of an enterprise carried on by the vendor?	Property & Construction (enterprise)	Taxpayer	DIS issued

2009							
53.	TG & A Martinazzo	30/01/09	[2009] AATA 62 2007/3528	Did partnership own items supplied? Did the partnership make a taxable supply? Penalty issues	Substantiation	ATO	
54.	Rendyl Properties Pty Ltd	18/03/09	[2009] AATA 177 2007/6008	Was the importation and use of a boat part of the taxpayer's enterprise?	Enterprise	ATO	
55.	Derrick Edward Butler	27/04/09	[2009] AATA 283 ST2006/0331-334	Entitlement to input tax credits. Appropriate accounting basis. Penalty issue	Substantiation	ATO	Commissioner's varied position argued at hearing accepted. Taxpayer's appeal to the Federal Court struck out
56.	Queensland Harvesters Pty Ltd	15/05/09	[2009] AATA 351 2008/11 2008/2780	Entitlement to input tax credits. Failure to withhold issues. Penalty issues	Substantiation	ATO	This decision is essentially favourable to the Commissioner however the AAT was critical of the Commissioner's approach in some respects. DIS issued
57.	Employee Investment Company Pty Ltd	20/05/09	[2009] AATA 367 2007/1401	Entitlement to input tax credits. Whether taxpayer received consideration? Penalty issue	Substantiation	Mixed	DIS issued

58. *	Braith Vidler	01/06/09	[2009] AATA 395 2008/1300 2008/4628	Was the sale by the taxpayer of vacant land the supply of residential premises and therefore input taxed?	Property & Construction (characterisation of premises)	ATO	The taxpayer's appeals to the Federal Court and the Full Federal Court were dismissed. DIS issued in relation to the Full Federal Court decision ⁹
59. *	Waverley Council	19/06/09	[2009] AATA 442 2008/2920	Was GST payable on a credit card administration fee charged by the taxpayer?	Miscellaneous (government – consideration)	ATO	DIS issued
60.	Pinot Nominees Pty Ltd and Vicwal Pty Ltd	24/06/09	[2009] AATA 466 2007/5676-5682 2007/5698-5704	Were certain rental payments correctly included in the taxpayer's GST assessments? Penalty issue	Substantiation	ATO	
61.	ANL & F Khoury	31/07/09	[2009] AATA 612 2007/6279	Penalty issue	Penalty-only	ATO	
62.	"GXCX"	31/07/09	[2009] AATA 569 2008/2901	Change in creditable purpose - input tax credits claimed on construction of residential apartments. Increasing adjustments under Division 129 of the GST Act	Property & Construction (change in extent of creditable purpose)	ATO	Commissioner's varied position argued at hearing accepted. DIS issued

63.	Michael Hutson	31/07/09	[2009] AATA 574 2008/1253	Whether taxpayer liable for GST as trustee of a trust? Penalty issue	Substantiation (entity issue)	ATO	
64.	"YXFP"	21/10/09	[2009] AATA 805 2007/4650	Was the sale by the taxpayer of certain real property a supply of a GST-free going concern? Agreed in writing? Penalty issue	Property & Construction (going concern)	ATO	
65. *	"The Electrical Goods Importer"	06/11/09	[2009] AATA 854 2008/4523	Consideration – cash- back payments. "Fiscal neutrality". Whether cash-back payments are an adjustment?	Miscellaneous (consideration- adjustments)	ATO	DIS issued

2010							
66. *	Luxtottica Retail Australia Pty Ltd	15/01/10	[2010] AATA 22 2007/3489-3490 2009/4027	GST treatment of the supply of spectacles which have both GST-free and taxable elements. One supply or two? Apportionment issues	Miscellaneous (supply, consideration, apportionment)	Taxpayer	Commissioner's appeal to the Full Federal Court dismissed. DIS issued in relation to the Full Federal Court decision ¹⁰
67.	Intevox Pty Ltd	28/01/10	[2010] AATA 57 2009/3316	Penalty issue	Penalty-only	ATO	
68.	Linda Addoug	03/02/10	[2010] AATA 79 2007/5020	Extent of taxable supplies and taxable income. Penalty issue	Substantiation	Mixed	DIS issued
69.	Sogo Duty Free Pty Ltd	12/02/10	[2010] AATA 111 VT2003/0211-0213 VT2004/0047 2009/1459	Extent of taxable supplies and assessable income. Liability of taxpayer for GST on sales of cigarettes to crew members of visiting ships – lack of documentation	International/Cross-border	ATO	Taxpayer's appeals to the Federal Court and to the Full Federal Court were dismissed - appeals did not relate to GST issues. DIS issued in relation to Full federal Court decision
70.	Paul Douglass	25/02/10	[2010] AATA 138 2008/4872	Entitlement to input tax credits. Penalty issue	Substantiation	ATO	
71.	Angela Andrinopoulos	01/03/10	[2010] AATA 148 2009/0663	Penalty issue	Penalty-only	ATO	

72.	Yong Harrison	02/03/10	[2010] AATA 155 2008/4659 2009/3587	Extent of taxable supplies – brothel owner. Whether taxpayer supplied room only? Penalty issue	Substantiation	ATO	
73.	Tracy Marshall	23/04/10	[2010] AATA 293 2009/3068	Extent of taxable supplies – taxpayer claim that a victim of fraud	Substantiation (fraud allegation)	ATO	
74.	Terry Kenneth Day	28/04/10	[2010] AATA 300 2007/2955	Default assessments – extent of taxable supplies and assessable income. Turnover threshold. Penalty issue	Substantiation	ATO	Commissioner's varied position argued at hearing accepted. DIS issued
75.	Corymbia Corporation Pty Ltd	31/05/10	[2010] AATA 401 2008/4882	Was the taxpayer's application for review frivolous or vexatious? Margin scheme – agreed in writing?	Property & Construction (margin scheme)	ATO	Although this is a decision dealing with a dismissal application the decision does deal with important margin scheme issues
76.	"LBYY"	28/06/10	[2010] AATA 2008/1115 2008/5167	Extent of taxable supplies	Substantiation	ATO	No complete citation available
77. *	Unit Trend Services Pty Ltd	02/07/10	[2010] AATA 497 2009/5952-5955	Application of the GST general anti-avoidance provisions under Division 165 of the GST Act. Grouping and margin scheme issues	Anti-avoidance	Mixed	Taxpayer's appeal to the Full Federal Court partly successful. Commissioner's appeal to the High Court allowed. DIS issued in relation to the High Court decision ¹¹

78. *	Australian Leisure Marine Pty Ltd	20/08/10	[2010] AATA 620 2010/0916	Entitlement to input tax credits – four year rule issues	TAA Issues (section 105-55)	ATO	
79.	QFP Professional Tomato Project 98 & Ors	04/11/10	[2010] AATA 864 2008/1565-1567	Entitlement to input tax credits. No evidence of payment in 12 months – increasing adjustments. Penalty issues	Substantiation (increasing adjustments)	ATO	
80.	“Trustee of the Family Trust”	09/11/10	[2010] AATA 876 2009/5748	Entitlement to input tax credits – enterprise issue	Substantiation (enterprise, financial supplies?)	ATO	
81.	“Applicants 1, 2 and 3”	10/11/10	[2010] AATA 883 2008/6049 2008/6214-6216	Extent of taxable supplies – GST treatment “free drinks”. Onus issues. Penalty issue	Substantiation (supply, consideration)	ATO	
82. *	Qantas Airways Limited	06/12/10	[2010] AATA 977 2009/5513	Supply – did the taxpayer make a taxable supply regarding non-refunded cancellations and “no shows”? GST refund issues	TAA Issues (supply)	ATO	Taxpayer’s appeal to the Full Federal Court upheld. Commissioner’s appeal to the High Court allowed. DIS issued in relation to the High Court decision ¹²
83.	Clontarf Development Pty Ltd	24/12/10	[2010] AATA 1065 2010/0431	Entitlement to input tax credits – contract for building services. Four year rule issues – late GST refund claims. Penalty issue	Property & Construction (four-year rule issues)	ATO	

2011							
84. *	"The Taxpayers"	21/01/11	[2011] AATA 33 2007/1955 2007/1956-1961 2007/1964 2007/1966-1969 2007/2905-2910	Extent of taxable supplies and taxable income. Penalty issues	Substantiation (onus)	ATO	Commissioner's varied position argued at hearing accepted. Taxpayer's appeal to Federal Court dismissed. Taxpayer's appeal to Full Federal Court allowed. DIS issued in relation to the Full Federal Court decision ¹³
85.	"SXGX"	18/02/11	[2011] AATA 110 2010/3506	Was the taxpayer liable for GST on the sale of land expected to be compulsorily acquired under statute?	Property & Construction (supply)	ATO	
86. *	Cyonara Snowfox Pty Ltd	25/02/11	[2011] AATA 124 2008/3493-4	When can the taxpayer make a choice to apply the margin scheme? Was the sale of property a GST-free going concern? Was the Commissioner prevented from recovering GST?	Property & Construction (margin scheme and going concerns)	ATO	Commissioner's varied position argued at hearing accepted. Taxpayer's appeal to the Full Federal Court dismissed. Taxpayer's application for special leave to appeal refused by the High Court. DIS issued in relation to the Full Federal Court decision ¹⁴

87.	"A Taxpayer"	10/03/11	[2011] AATA 160 2010/2430	Change in extent of creditable purpose – methodology for required adjustments. Whether "effective life" a reasonable basis	Property & Construction (change in extent of creditable purpose)	ATO	
88.	"Clothing Importer"	29/04/11	[2011] AATA 281 2009/3404	Supplies made to Australian customers. Were supplies connected with Australia?	International/Cross-border (connected with Australia)	ATO	
89.	A & C Sliwa Pty Ltd	06/06/11	[2011] AATA 390 2009/5232	Property development, attribution of GST – set-offs. Sale outside ordinary course of business? Market value. Penalty issue	Property & Construction (attribution)	Mixed	DIS issued
90.	Educational Pty Ltd	27/06/11	[2011] AATA 445 2010/5166	Enterprise issue – education and accommodation centre	Property & Construction (enterprise)	ATO	
91.	Print Applied Technology Pty Ltd	12/08/11	[2011] AATA 555 2010/4592	Penalty issue	Penalty-only	ATO	
92.	"The Taxpayer"	26/08/11	[2011] AATA 593 2009/4899-901 2009/4921	Export of hunting trophies. Were supplies GST-free? Record keeping requirements	International/Cross-border (exports)	ATO	Decision is considered favourable. Some matters which arose late in the proceedings were remitted to the Commissioner to further consideration

93.	Zed Badaoui and Elisabeth Konig	29/09/11	[2011] AATA 672 2010/2378	Entitlement to input tax credits. Tax invoice issues. Whether acquisitions made and consideration paid? Penalty issue	Substantiation	Mixed	DIS issued
94. *	National Jet Systems Pty Ltd	31/10/11	[2011] AATA 766 2010/1994 2010/3764 2010/3765	Transitional issues - section 13 of the Transition Act. Review opportunities. GST refund issues	Transitional Issues (review opportunities)	ATO	DIS issued
95. *	MTAA Superannuation Fund (RG Casey Building) Property Pty Ltd	31/10/11	[2011] AATA 769 2010/3083	Transitional issues - section 13 of the Transition Act. Review opportunities. GST refund issues	Transitional Issues (review opportunities)	ATO	Taxpayer's appeal to the Full Federal Court dismissed. DIS issued in relation Full Federal Court decision ¹⁵
96.	Clive Craddon	09/11/11	[2011] AATA 790 2011/1351	Penalty issue	Penalty-only	ATO	
97.	Stephen Mold and CE & SG Mold	18/11/11	[2011] AATA 823 2008/1691 2009/0559-60	Entitlement to input tax credits. Lost invoices. Penalty issue	Substantiation	Mixed	DIS issued
98.	The trustee for Naidu Family Trust	19/12/11	[2011] AATA 910 2011/0421	Sale of real property by mortgagee in possession. Time of supply	Property & Construction (mortgagee sale, timing of supply)	ATO	Commissioner's varied position argued at hearing accepted

2012							
99.	Brian Climo	13/06/12	[2012] AATA 350 2009/2548	Failure to lodge GST returns. Did taxpayer supply goods personally or as agent for another?	Substantiation (agency)	ATO	Commissioner's varied position argued at hearing accepted
100. *	Madeline Yacoub and Maroun Yacoub	29/06/12	[2012] AATA 401 2011/5138-39	Liability for GST – were taxpayers a partnership or a non-entity joint venture?	Property & Construction (entity issue)	ATO	This case is related to a Federal Court case of the same name ¹⁶
101. *	"Confidential" (two separate entities)	29/06/12	[2012] AATA 407 [2012] AATA 408 2011/3714 2011/4808	Objection to private ruling. Entitlement to input tax credits – second hand goods (aircraft). Goods acquired before commencement of GST. Grouping issues	Second-hand Goods (transitional issues)	ATO	DIS issued
102. *	A.P. Group Limited	02/07/12	[2012] AATA 409 2011/1981	Characterisation of motor vehicle incentive payments – are they consideration for a supply? Nature of supply for which consideration received. GST refund issues	Motor Vehicles (characterisation – consideration for supply)	Mixed	Taxpayer's appeal to the Full Federal Court allowed in part. DIS issued in relation to the Full Federal Court decision ¹⁷
103.	Samir Bani	12/07/12	[2012] AATA 440 2009/2447-50	Extent of taxable supplies – taxi business. Use of industry benchmarks. Record keeping issues. Penalty issue	Substantiation (cash economy – benchmarks, onus)	ATO	
104.	Catherine Campbell	25/07/12	[2012] AATA 473 2011/1169	Entitlement to input tax credits. Was the taxpayer carrying on an enterprise? Penalty issue	Enterprise	ATO	

105.	Matthew Trnka	30/07/12	[2012] AATA 492 2008/4769 2011/0872	Entitlement to input tax credits. Substantiation of claims – tax invoice issues. Penalty issue	Substantiation (onus)	ATO	Commissioner's varied position argued at hearing accepted
106.	Vita Hot Bread Pty Ltd	29/08/12	[2012] AATA 570 2011/1472	Extent of taxable supplies – hot bread shop. Use of industry benchmarks. Penalty issue	Substantiation (cash economy – benchmarks, onus)	ATO	Commissioner's varied position argued at hearing accepted
107.	Mohammed Siddiqi	31/08/12	[2012] AATA 589 2011/5274 2011/5648-49	Omitted income, extent of taxable supplies. Lack of business records. Onus of proof. Penalty issue	Substantiation (onus)	ATO	Commissioner's varied position argued at hearing accepted. DIS issued
108. *	Wynnum Holdings No 1 Pty Ltd and FD Dunn & JW Dunn and the trustee for MAM Sky Super-annuation Fund & Ors	14/09/12	[2012] AATA 616 2008/5986 2011/5618	Entitlement to input tax credits. Extent of creditable purpose. Whether property was commercial residential premises? Enterprise issues. Bare trust issues. TAA issues	Property & Construction (characterisation of premises, entity issues, TAA issues)	ATO	DIS issued
109.	J&M Hirezi and H&I & N&R & R&R Nasrawi	08/10/12	[2012] AATA 688 2011/5003	Penalty issue	Penalty-only	ATO	
110.	Subloo's Investments Pty Ltd and Daryl James Subloo and Sandy-Marie Subloo	11/10/12	[2012] AATA 703 2012/1069 2012/4374-75	Penalty remission issue	Penalty-only	ATO	
111. *	SDI Group Pty Ltd	02/11/12	[2012] AATA 763 2012/0733	Going concern – requirement for an agreement in writing	Property & Construction (going concerns)	Taxpayer	DIS issued

112.	ML Chen & ZT Cui	19/11/12	[2012] AATA 884 2012/1585	Margin scheme – requirement for an agreement in writing. Penalty issue	Property & Construction (margin scheme)	ATO	
113.	Outbound Logistics Pty Ltd	19/12/12	[2012] AATA 899 2011/5198	Penalty issues. Income tax and GST – R&D offset claims	Penalty-only	Mixed	
114.	Trevor Parrish	21/12/12	[2012] AATA 909 2010/1824-25 2011/1158	Extent of taxable supplies. Penalty issue	Substantiation	ATO	Commissioner's varied position argued at hearing accepted
115. *	The trustee for Dandenong Motors Unit Trust	24/12/12	[2012] AATA 920 2011/4452	Motor vehicle hold-back payments. Was taxpayer entitled to claim negative net amounts outside the four year period?	TAA Issues (section 105-55 of Schedule 1 to the TAA)	ATO	

2013							
116.	John Tom	22/01/13	[2013] AATA 28 2011/4699	Was the taxpayer entitled to a GST refund outside the four year period?	TAA Issues (section 105-55 of Schedule 1 to the TAA)	ATO	
117. *	Bayconnection Property Developments Pty Ltd and Ors	29/01/13	[2013] AATA 40 2011/1678 2011/1684 2011/5084 2011/5089 2011/1679	Entitlement to input tax credits. Was the taxpayer carrying on an enterprise? Did the taxpayers acquire anything? Tax invoice issues. Penalty issue	Enterprise	ATO	Taxpayer's appeal to the Federal Court was dismissed ¹⁸
118. *	"The Private Tutor"	14/03/13	[2013] AATA 136 2012/0114	Was the taxpayer carrying on an enterprise? Cancellation of GST registration. Whether a taxpayer not carrying on an enterprise can have a positive net amount?	TAA Issues (positive net amounts)	Mixed	DIS issued
119.	Kaye Carter	14/03/13	[2013] AATA 141 2012/3130	Default assessments – extent of taxable supplies. Use of industry benchmarks. Penalty issue	Substantiation (cash economy – benchmarks, onus)	ATO	
120. *	Brookdale Investments Pty Ltd (case #1)	20/03/13	[2013] AATA 154 2012/0427	Was the taxpayer's sale of real property a GST-free supply of a going concern? Was there an agreement in writing? Validity of the Commissioner's section 105-50 notice. GST neutrality issue	Property & Construction (going concerns)	ATO	

121. *	Brookdale Investments Pty Ltd (case #2)	27/03/13	[2013] AATA 186 2012/3132	What was the correct amount of consideration for the taxpayer's supply of real property? Meaning of "price" and "money". When was the taxable supply made? Evidentiary issues	Property & Construction (consideration)	ATO	
122.	GOL-HUT Pty Ltd as trustee for the Helensvale Unit Trust	05/04/13	[2013] AATA 199 2012/3670	Taxpayer did not claim input tax credits on purchase of land, then ceased GST registration. Was the taxpayer entitled to a decreasing adjustment for change of use after its GST registration ceased? Did tax periods apply?	Property & Construction (change in creditable purpose adjustments)	ATO	
123.	Sanctuary Australasia Pty Ltd	04/06/13	[2013] AATA 371 2013/2071	Was the taxpayer "a person dissatisfied" with a reviewable objection decision when considering the Commissioner's retention of a refund claimed by the taxpayer?	Miscellaneous (refund retentions)	ATO	Although the AAT in this matter decided it could not hear the taxpayer's application it is an important decision on the question of standing
124.	Simon Clayton and Monica Clayton	25/06/13	[2013] AATA 428 2012/4010	Entitlement to input tax credits. Was the taxpayer carrying on an enterprise? Cancellation of GST registration	Enterprise	ATO	

125. *	E Naidoo and RK Naidoo	28/06/13	[2013] AATA 443 2012/0101 2012/0111	Entitlement to input tax credits. Was the taxpayer carrying on an enterprise? Cancellation of GST registration – date of effect. Net amounts for tax periods when no enterprise was carried on. Refunds of GST – does the AAT have jurisdiction to review a decision made pursuant to section 105-65 of Schedule 1 to the TAA? Penalty issue	TAA Issues (net amounts where no enterprise, jurisdiction issue under section 105-65)	Mixed	DIS issued
126. *	Rod Mathiesen Truck Hire Pty Ltd as trustee for Mathiesen Family Trust	15/07/13	[2013] AATA 496 2013/0341-42	What was the total amount of consideration received by the taxpayer in relation to the sale of real property under a vendor finance arrangement?	Property & Construction (consideration – “mortgage back”)	ATO	DIS issued
127.	AJJJ’s Emporium Pty Ltd	16/07/13	[2013] AATA 501 2012/5106	Penalty issue	Penalty-only	ATO	
128. *	“The Hotel Apartment Purchaser”	13/08/13	[2013] AATA 567 2012/2123-24	Was the taxpayer liable to an increasing GST adjustment under Division 135 of the GST Act? Was the supply to the taxpayer a GST-fee supply of a going concern? Was the Commissioner out of time to recover?	Property & Construction (increasing adjustments under Division 135 of the GST Act.	ATO	The decision in this case raised similar issues to those raised in the Full Federal Court decision in <i>South Steyne Hotel Pty Ltd</i> ¹⁹

129.	"Confidential"	14/08/13	[2013] AATA 569 2011/2873-77 2011/2879-88	Extent of taxable supplies and assessable income. Evasion. Substantiation and onus issues. Penalty issue	Substantiation (evasion, onus)	ATO	
130.	Unit Trend Services Pty Ltd	19/08/13	[full citation unknown] 2009/5952-5955	Penalty issue - remission	Penalty-only	ATO	Bench decision. This case is related to the High Court decision in the case of <i>Unit Trend Services</i> discussed above
131.	"Confidential"	30/08/13	[2013] AATA 624 2012/2949	Entitlement to input tax credits. Was a supply made to the taxpayer? Penalty issue	Substantiation	Mixed	
132.	"Confidential"	30/09/13	[2013] AATA 701 2012/5543	Entitlement to input tax credits. Was the taxpayer carrying on an enterprise?	Enterprise	ATO	
133.	Alexander Lakatos	04/10/13	[2013] AATA 712 2011/5209-5213	Entitlement to input tax credits. Penalty issue	Substantiation	ATO	
134.	Zare Zarev	30/10/13	[2013] AATA 777 2012/0341-0345	Entitlement to input tax credits – various categories of acquisitions discussed. Evidentiary issues. Penalty issue	Substantiation (onus)	ATO	Commissioner's varied position argued at hearing accepted
135.	The Trustee for the Grewal Property Trust	08/11/13	[2013] AATA 788 2012/2831	Entitlement to input tax credits – record keeping issues. Onus. Penalty issue	Substantiation (onus)	ATO	Commissioner's varied position argued at hearing accepted

136. *	Snugfit Australia Pty Ltd	13/11/13	[2013] AATA 802 2013/0711	Was the supply of a product made by the taxpayer a GST-free supply of a medical aid? Essential character test. (Objection to private ruling)	Miscellaneous (characterisation of health related products)	Taxpayer	DIS issued
137.	Australian Style Investments Pty Ltd as Trustee for the Australian Style Investments Unit Trust	29/11/13	[2013] AATA 847 2011/4356	Was the supply made by the taxpayer by way of a deed a financial supply under the GST Act? Interests in managed investments scheme – proxies. Penalty issue	Financial Supplies	ATO	
138.	“VGGL”	05/12/13	[2013] AATA 867 2012/0694 2013/0363	Entitlement to input tax credits – property development enterprise. Was the sale of real property to the taxpayer a taxable supply? Penalty issues	Substantiation (evidentiary issues)	Mixed	
139.	“The Married Couple”	13/12/13	[2013] AATA 888 2011/5071 2012/2132	Entitlement to input tax credits. Was the taxpayer a partnership carrying on an enterprise? Cancellation of GST registration. Were premises commercial residential premises? Penalty issue	Enterprise (agriculture and accommodation)	ATO	

140. *	Swanbat Pty Ltd	13/12/13	[2013] AATA 891 2013/2025	Was the taxpayer entitled to a refund of GST in relation to supplies it made that were ultimately determined to be GST-free? Payment of refund made to taxpayer after four year period expired. Refunded monies included in net amount in order to recover, contrary to known facts. Administrative over-payments	TAA Issues (meaning of net amount, four year rule issues, refund issue)	Taxpayer	DIS issued
141.	Mathoura Property Pty Ltd as Trustee for the Mathoura Property Trust	20/12/13	[2013] AATA 922 2012/3606	Penalty issue	Penalty-only	ATO	Commissioner's varied position argued at hearing accepted
142.	Simon Harland as Trustee for the PCS Global Discretionary Trust	20/12/13	[2013] AATA 930 2013/0417	Entitlement to input tax credits. Did the taxpayer acquire rights under a contract? Was the taxpayer the entity making the acquisition? Was consideration paid for the supply? Penalty issue	Substantiation (entity issue, onus issue)	ATO	

2014							
143.	Cartesian Capital Pty Ltd	31/01/14	[2014] AATA 49 2013/0685	Penalty issue	Penalty-only	Mixed	
144.	"The Taxpayers"	05/03/14	[2014] AATA 572 2007/1955-1961 2007/1964 2007/1966-1969 2007/2905-2910	Re-hearing of matter. Extent of taxable supplies assessable income. Agency issues. Penalty issues	Substantiation	Mixed	DIS issued
145.	R.V. Investments (Aust) Pty Ltd as Trustee for the RV Unit Trust	21/03/14	[2014] AATA 158 2012/3282	Entitlement to input tax credits. Whether acquisitions for a creditable purpose? Were supplies to the taxpayer taxable supplies? Did the taxpayer provide consideration? Was the taxpayer liable to provide consideration? Penalty issue	Substantiation	ATO	Commissioner's varied position argued at hearing accepted. Taxpayer's appeal to the Federal Court dismissed. ²⁰ DIS issued in relation to the Full Federal Court decision
146. *	Living Choice Australia Limited	28/03/14	[2014] AATA 168 2012/3250	Construction and operation of retirement villages. Characterisation of premises, extent of creditable purpose. Do input tax credits claimed relate to making supplies that are input taxed?	Property & Construction (retirement villages – creditable purpose)	ATO	

147.	Donald Yates	30/04/14	[2014] AATA 279 2013/2651	Entitlement to input tax credits. Substantiation. Penalty issue	Substantiation	ATO	Commissioner's varied position argued at hearing accepted
148. *	Lighthouse Financial Advisers (Townsville) Pty Ltd	15/05/14	[2014] AATA 301 2013/5469	Entitlement to input tax credits. Was the taxpayer entitled to claim input tax credits as a result of entering into a deed of settlement to resolve a court dispute? Did the other party make a taxable supply to the taxpayer? (Objection to private ruling)	Miscellaneous (settlements, nature of supply)	ATO	
149.	Davsa Forty-Ninth Pty Ltd as Trustee for the Krongold Ford Business Unit Trust	29/05/14	[2014] AATA 337 2011/1945	Did the taxpayer acquire various vehicles as part of carrying on an enterprise? Tax invoice issues. LCT issues. Penalty issue	Motor Vehicles (enterprise)	Mixed	DIS issued
150.	Dotrac Pty Ltd and George & Lila Ioannidis	29/05/14	[2014] AATA 336 2013/1392 2013/1397	Entitlement to input tax credits. Was the taxpayer carrying on an enterprise? What was the real nature of the taxpayer's activities? Whether promissory notes constitute consideration? Penalty issues	Substantiation (enterprise)	ATO	
151. *	North Sydney Developments Pty Ltd	06/06/14	[2014] AATA 363 2013/4756	Entitlement to input tax credits. Sufficiency of taxpayer's notification of entitlement to input tax credits. Specificity of notice (Objection to private ruling)	TAA Issues (taxpayer notices under section 105-55 of Schedule 1 to the TAA)	Taxpayer	DIS issued

152. *	Advent 7 Pty Ltd	10/06/14	[2014] AATA 365 2012/4690-4691	Entitlement to input tax credits. Were the taxpayer's acquisitions creditable? Were supplies actually provided to the taxpayer? Was consideration paid? Alternative arguments of sham and no intention to create legal relations. Attribution and tax invoice issues. Penalty issue	Substantiation (were services provided?)	ATO	
153.	Ahmad Nassar	04/07/14	[2014] AATA 445 2013/2957-2959	Extent of taxable supplies and entitlement to input tax credits. Onus and evidentiary issues. Penalty issue	Substantiation (onus)	ATO	
154.	Giuseppe Caporale Structural Engineers Pty Ltd	25/07/14	[2014] AATA 507 2012/1156	Entitlement to input tax credits. Was the taxpayer carrying on an enterprise? Attribution of input tax credits. Tax invoice issues. Penalty issue	Substantiation (enterprise)	Mixed	STCT
155.	David Moore	02/09/14	[2014] AATA 631 2013/2632	Penalty issue	Penalty-only	ATO	
156.	K.A. Hicks & Associates Pty Ltd and Keith Hicks & Helen Rule	11/09/14	[2014] AATA 668 2012/5517-5520 2012/5496-5499 2012/5504-5507	Extent of taxable supplies and taxable income. Were funds received by the taxpayer repayment of loans? Evidentiary issues. PAYG and penalty issues	Substantiation (onus)	ATO	

157. *	Guru 4U	14/10/14	[2014] AATA 740 2013/1343-1344	Entitlement to input tax credits. Was the taxpayer carrying on an enterprise? Cancellation of GST registration – date of effect? What is net amount in circumstances where taxpayer not carrying on an enterprise?	Enterprise	ATO	Commissioner's varied position adopted at hearing. The AAT view in the <i>Naidoo</i> case, discussed above, was applied. Taxpayer cannot have a positive net amount if not carrying on an enterprise
158.	Dewheath Pty Ltd	15/10/14	[2014] AATA 743 2012/5650	Penalty issue - remission	Penalty-only (remission)	ATO	
159.	Steven Cronan	15/10/14	[2014] AATA 745 2013/4298-4300	Extent of taxable supplies and assessable income. Was the taxpayer carrying on an enterprise? Default assessments issued to taxpayer – eBay trading. Cash economy - industry benchmarks applied. Onus and record keeping issues. Penalty issue	Substantiation (cash economy benchmarks)	ATO	
160.	Phillip Ryan	31/10/14	[2014] AATA 818 2012/0497	Entitlement to input tax credits. Private use – apportionment issues	Substantiation (private use, apportionment)	Mixed	

2015							
161.	Raschta Coatings Pty Ltd as trustee for the Raschta Coatings Trust	23/01/15	[2015] AATA 34 2013/3338-3341	Extent of taxable supplies and assessable income. Default assessments. Use of industry standards. Methodologies used to calculate assessments. Onus issues. Penalty issue	Substantiation (calculation methodologies)	Taxpayer	DIS issued
162.	Tommaso Caporale	30/01/15	[2015] AATA 49 2013/0096-0101 2013/3536-3537 2013/3552-3554	Entitlement to input tax credits. Was the taxpayer carrying on an enterprise? Income tax issues. Penalty issues	Enterprise	Mixed	
163.	Bryxl Pty Ltd as Trustee for the Kypu Trust	19/02/15	[2015] AATA 89 2012/2912 2014/2838-2839 2014/2912	Entitlement to input tax credits. Was the taxpayer carrying on an enterprise of land development? Was the taxpayer entitled to be registered for GST? Evidentiary issues. Penalty issue	Enterprise	ATO	
164. *	Stephen Anderson [The trustee for The Anderson Family (No 2) Trust]	23/03/15	[2015] AATA 167 2014/2653	Was the taxpayer trust liable for GST on the sale of real property? Entity issues – was the trustee an incapacitated entity? GST implications of retirement of a trustee	Property & Construction (trusts, entity issues)	ATO	Commissioner's varied position adopted at hearing

165. *	The Trustee for SBM Trust	26/03/15	[2015] AATA 174 2013/4747	Entitlement to input tax credits – four year rule issues. Amendments restricting taxpayer's entitlement to input tax credits. Operation of Division 93 of the GST Act	TAA Issues (four year rule issues)	ATO	DIS issued
166.	Andrew Garrett in his capacity as an Authorised Officer of the OenoViva (Australia & New Zealand) Plant & Equipment Trust No 2 and Ors	24/04/15	[2015] AATA 247 2014/4068 2014/4070 2014/4071	Taxpayer's application for an extension of time. Did the taxpayer have standing to seek a review of a reviewable objection decision?	Miscellaneous (standing to seek a review)	ATO	Although the AAT in this matter decided it could not hear the taxpayer's application it is an important decision on the question of standing
167.	John Sharratt	01/05/15	[2015] AATA 293 2014/3797-3798	Extent of taxable supplies. Substantiation and onus issues. Penalty issue	Substantiation	ATO	Commissioner's varied position adopted at hearing
168.	Criterion Prestige Pty Ltd	30/06/15	[2015] AATA 468 2014/3372	Entitlement to input tax credits on purchase of a luxury car. LCT and trading stock issues. Penalty issue	Motor Vehicles/ Luxury Car tax	ATO	
169.	S. E. & Y. E. Sedgwick	10/09/15	[2015] AATA 690 2014/0034	Entitlement to input tax credits. Was the taxpayer out of time to claim input tax credits by revising activity statements? Operation of Division 93 of the GST Act. Allegations of fraud	TAA Issues (four year rule issues)	ATO	

170.	"Taxpayer-1 & Taxpayer-2"	22/09/15	[2015] AATA 737 2014/0978-0979	Entitlement to input tax credits. Was the taxpayer carrying on an enterprise? Substantiation issues. Penalty issue	Enterprise	ATO	
171.	Sunraysia Harvesting Contractors Pty Ltd as trustee of the Sunraysia Harvesting Contractors Trust and S & H Erdogan	30/09/15	[2015] AATA 764 2014/5565 2014/5566-5567 2014/5568-5569	Entitlement to input tax credits – labour hire arrangements. Did the taxpayers enter into sham arrangements? Intention to create legally enforceable obligations. Evidentiary issues. Income tax trust issues. Penalty issue	Substantiation (sham arrangements)	ATO	The taxpayers have lodged an application for leave to appeal this decision to the Federal Court
172.	Crown Estates (Sales) Pty Ltd and Crown Estates Pty Ltd as trustee for Crown Estates Unit Trust	10/12/15	[2015] AATA 949 2015/2154 2015/2266	Entitlement to input tax credits – property management enterprise. Did the taxpayer acquire services in its own right or were they acquired as agent for property owners? Penalty issue	Substantiation (entity issue, agency)	ATO	The taxpayers have lodged an appeal against this decision in the Federal Court

¹ *HP Mercantile Pty Ltd v Commissioner of Taxation* [2005] FCAFC 126

² *Archibald Dixon as trustee for the Dixon Holdsworth Superannuation Fund v Commissioner of Taxation* [2008] FCAFC 54

³ *The Commissioner of Taxation v Reliance Carpet Co Pty Ltd* [2008] HCA 22

⁴ *The Commissioner of Taxation v Swansea Services Pty Ltd* [2009] FCA 402

⁵ *Archibald Dixon as trustee for the Dixon Holdsworth Superannuation Fund v Commissioner of Taxation* [2008] FCAFC 54

⁶ The reasoning of the Full Federal Court decision supported the ATO view.

⁷ *Sunchen Pty Ltd v Commissioner of Taxation* [2010] FCAFC 138

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- ⁸ *Hua-Aus Pty Ltd v Commissioner of Taxation* [2010] FCA 341
- ⁹ *Braith Vidler v Commissioner of Taxation* [2010] FCAFC 59
- ¹⁰ *The Commissioner of Taxation v Luxottica Retail Australia Pty Ltd* [2011] FCAFC 20
- ¹¹ *The Commissioner of Taxation v Unit Trend Services Pty Ltd* [2013] HCA 16
- ¹² *The Commissioner of Taxation v Qantas Airways Limited* [2012] HCA 41
- ¹³ *LVR(WA) Pty Ltd v Administrative Appeals Tribunal* [2012] FCAFC 90
- ¹⁴ *Cyonara Snowfox Pty Ltd v Commissioner of Taxation* [2012] FCAFC 177
- ¹⁵ *MTAA Superannuation Fund (RG Casey Building) Property Pty Ltd v Commissioner of Taxation* [2012] FCAFC 89
- ¹⁶ *Yacoub v Commissioner of Taxation* [2012] FCA 678
- ¹⁷ *AP Group Limited v Commissioner of Taxation* [2013] FCAFC 105
- ¹⁸ *Bayconnection Property Developments Pty Ltd v Commissioner of Taxation* [2013] FCA 440
- ¹⁹ *South Steyne Hotel Pty Ltd v Commissioner of Taxation* [2009] FCAFC 155
- ²⁰ *R.V. Investments (Aust) Pty Ltd as Trustee for the R.V. Investment Unit Trust v Commissioner of Taxation* [2014] FCA 1169

Table 6
Current GST litigation cases by Market Segment
- at 31 December 2015 -

Market Segment	Percentage of Total
Large Businesses (annual turnover \$250m or more)	2.6%
Medium-sized Businesses (annual turnover between \$2m and \$250m)	17.4%
Small Businesses (annual turnover less than \$2m)	80.0%
TOTAL	100.0%

Table 7**Current GST litigation cases by Venue
- at 31 December 2015 -**

Venue	Percentage of Total
Administrative Appeals Tribunal (including STCT)	94.7%
Federal Court (Single Judge)	5.3%
Full Federal Court	0.0%
High Court	0.0%
TOTAL	100.0%