

Twenty years later: Australia's GST design, digitisation and disruption – old and new challenges

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Abstract

This article considers the impact of digitisation and disruption on Australia's goods and services tax (GST) and also sets out some areas of the GST policy and law that can be improved, including the rules relating to capital raisings and business expansion, financial services, changes in creditable use and vouchers. The article notes in conclusion that the government must ensure its laws, particularly revenue laws, are designed and managed in such a way that they can react and adjust to economic changes in a neutral manner, maintain coherence (ie, remain clear and simple), and keep compliance costs low.

Key words: Australian goods and services tax, digitisation, value added tax principles, principles based drafting, GST policy.

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1. INTRODUCTION

This year marks another milestone moment in the evolution of Australia's tax system. 9 July 2019 will mark the 20th anniversary of Australia's goods and services tax (GST) becoming law.

Milestone anniversaries are a time to celebrate, reflect, reassess and, if in a position to do so, resolve to improve. As we should with the GST system as it moves out of its teenage years.

The original theme proposed for this article was 'digitisation and disruption'. While these are important topics in the context of the GST system, for an article marking the 20th anniversary of the GST system becoming law, it seemed appropriate that we should also reflect on the design of Australia's GST law, particularly:

- the background to its introduction;
- the overarching principles that governed its design;
- key policy decisions that are features of the GST law;
- how the law has been amended to address various challenges, including the commercial impact of digitisation in a global marketplace; and
- whether it is still 'up to the job' as technology develops and the global marketplace evolves.

While digitisation is the latest economic and social 'disrupter', it is obviously not the first and it will certainly not be the last. The challenge for Treasury and the Australian Taxation Office (ATO) is to maintain the integrity of the GST law, ensuring it develops and grows with the economy and within a framework that keeps faith with the original design principles of a value added tax (VAT) or GST system.

The design principles of a GST or VAT system have been under pressure since the late 1970s. Recent changes to the Australian GST law, particularly relating to cross-border trade through electronic platforms, applying a reverse charge to domestic transactions involving gold, and the sale of residential property withholding provisions further challenge the design structure of a traditional VAT or GST system. This will inevitably lead to questions as to whether it is fit for purpose, or whether a different approach needs to be adopted.

Before this article considers some of these issues, it is appropriate to set out briefly how the GST was conceived, born and developed to where it is today.

2. BACKGROUND

In 1972, the then Treasurer, Sir Billy Mackie Sneddon established a Taxation Review Committee, chaired by Justice Kenneth Asprey, to review Australia's taxation system and make recommendations for future changes. The Asprey Committee released its report in January 1975.¹ This report became the base for many of the significant changes

¹ Taxation Review Committee (Justice Kenneth Asprey, chair), *Full Report* (1975).

to the Australian tax system during the following 25 years, including the adoption of capital gains tax (CGT), fringe benefits tax (FBT) and finally, the GST.

In 1985, Australia had its first attempt to significantly reform its indirect tax system. The Hawke government conducted a taxation summit at which several options to reform the Australian tax system were canvassed.² The government's preferred option ('Option C') included a broadening of the income tax base, a reduction in marginal income tax rates and a broad-based retail sales tax that would apply to most goods and services. Details on how the retail sales tax would apply were in short supply. Debate was heated, and the Tax Summit failed to reach consensus on Option C.

Following the summit, the government proceeded to implement an alternative option ('Option A') and reformed the income tax base, reduced personal income tax rates, and introduced CGT, FBT and dividend imputation. While many economists and practitioners in the indirect taxes area were disappointed at the time, the changes implemented following the 1985 Tax Summit were significant and were a direct consequence of the Asprey Report.

From an indirect tax perspective, the 1985 Tax Summit was important as a broad-based consumption tax was now in the public arena and would be (and still is) an important part of any future debate on the reform of Australia's tax system. The 1985 Taxation Summit marked the real beginning of Australia's path to a GST.

In 1985, the time for considering a broad-based consumption tax was right. The Australian economy was changing rapidly. In 1984, the Hawke government deregulated the financial markets, floated the Australian dollar, commenced a process to drastically reduce tariffs, commenced the privatisation of government-owned businesses including Qantas and the Commonwealth Bank, and significantly changed the industrial relations landscape (eventually including the wage accord). At the same time, consumer spending was starting to significantly shift from goods to services and intangibles. This was economic disruption that fundamentally changed the Australian economy and forms the base for much of the prosperity we enjoy today.

While Option C was consigned to history, and a retail sales tax was not seriously considered thereafter, personal computers, mobile phones, software products for private consumers and digitisation were not far away. If I recall, Ry Cooder recorded 'Bop Till You Drop' in late 1979 or early 1980. This was the first major label album recorded on a digital 32 track recording system. Music was digitised and the days of the record player were numbered. It took a bit of time for the technology to 'go retail' but it was always going to happen, and its impact would be profound for that industry (and our lives).

1993 was the year of 'Fightback!'.³ The Fightback tax reform package included a broad-based 15 per cent GST, and was central to the Coalition parties' election manifesto that year. Prior to the release of Fightback, the Coalition parties established a 'GST Planning and Coordination Office', also known as the Cole Committee (named after its

² See Australian Treasury, *Reform of the Australian Taxation System, Draft White Paper* (19 September 1985) (RATS Paper); Australian Treasury (circulated by Hon Peter Costello (Treasurer)), *Tax Reform: Not a New Tax, A New Tax System: The Howard Government's Plan for a New Tax System* (1998) 5, n167 (ANTS White Paper).

³ Liberal Party of Australia, *Fightback! Taxation and Expenditure Reform for Jobs and Growth: The Liberal and National Parties' Plan to Rebuild and Reward Australia* (November 1991) (Fightback!).

Chairman, Sir Robert William Cole). The Cole Committee delivered a report to the Coalition parties that would significantly shape the GST system we have today. However, the Coalition parties lost the 'unlosable' 1993 election.

During the 1996 election campaign, the then leader of the Liberal Party, John Howard, pledged never to introduce a GST if he became Prime Minister. Within 18 months of that pledge the Coalition government commenced work on a comprehensive reform of the Australian taxation system, including the introduction of a broad-based GST. The Howard government took this package of reforms to the 1998 election, was successfully elected in September 1998 and immediately set about implementing a GST, to commence on 1 July 2000.

The passage of the A New Tax System (Goods and Services) Bill 1999 (Cth) through Parliament was far from smooth. The GST-free treatment of food was the price the government paid to have the legislation passed, with the support of the Australian Democrats. The Australian Democrats would pay a far greater price.

Key policy decisions made during 1998 and 1999 were either forced upon the government (such as the GST-free treatment of food), made after careful consideration of overseas experience (such as the 'place of supply' / 'connected with Australia' rules, and the treatment of land, government and charity, GST grouping, going concern and international transactions), or were uniquely Australian (such as the reduced input tax credit regime for financial services and aspects of the GST treatment of general insurance).

When it came to designing the Australian GST law, there were two other matters that are rarely discussed in public; the impact of the tax law improvement project (TLIP) and the Organisation for Economic Co-operation and Development (OECD) principles for designing a modern efficient tax system.

3. GST LAW DESIGN

3.1 The tax law improvement project

In 1993, the ATO and the Office of Parliamentary Counsel (OPC) commenced a project to simplify the drafting of Australia's income tax law. Changing income tax policy was not part of the brief. Rather, the aim of the project was to make the drafting of the Australian income tax law simpler, easier to understand and, as a consequence, improve compliance and reduce compliance and administration costs.

The TLIP model was adopted and modified for Australia's GST. It was not the only legislative model considered. The streamlined sales tax model (which is the design model for the Wine Equalisation Tax) was initially considered but did not suit the structural complexities of a GST.

The TLIP model is uniquely Australian, yet often taken for granted by administrators and practitioners. It has the following features:

- it is based on a pyramid approach where core concepts (or basic rules) form the apex of the pyramid. Below the core concepts resides a chapter for exemptions. Below the exemptions chapter resides a chapter for qualifications or variations to the basic rules. Underpinning these chapters is a dictionary that, where

possible, seeks to apply common definitions across a variety of Commonwealth taxes;

- it should use clear and simple language. Consequently, the GST law is drafted in the second person for readability;
- Divisions and Sub-divisions of chapters are based around principles or conceptual building blocks;
- Guides are provided that summarise the purpose or object of a Division, Sub-division or section;
- signposts are provided that direct a reader to other provisions;
- white space is used around text and diagrams, for readability;
- a numbering system is used that is simple, predictable, flexible and sufficiently robust to stand the test of time (and amendments).

It is easy to overlook and underestimate how these features shape the key provisions of Australia's GST law. In particular the desire to use clear and plain language and reduce compliance costs for taxpayers resulted in the GST law incorporating accounting concepts, where possible. This is the reason there is no 'time of supply' rule, it is why bad debt and voucher provisions so clearly link to accounting events, and why, until recently, provisions were in place to relieve non-residents of having a GST liability.

It is notable that the purity of the TLIP model was quickly tarnished when the Australian Treasury decided to move the financial supply provisions from the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* (GST Act) to the *A New Tax System (Goods and Services Tax) Regulations 1999 (Cth)* (GST Regulations) (which OPC was not responsible for drafting). For whatever reason, a financial supply became linked to the supply of a property interest, rather than a particular activity (as it is in most countries). This soon resulted in an acquisition of a financial interest being made a 'supply' for GST purposes, an outcome that could not be more at odds with the TLIP design.

In my opinion, the recent changes to the GST law, particularly in relation to the cross-border provisions, could have been drafted a simpler and equally effective manner. This issue is discussed further in sections 4.1 and 4.2 below.

The TLIP drafting principles were complemented by a series of policy principles. Most notably:

- the GST itself should not be a factor in businesses making a commercial decision;
- the supplier should not have to determine the status of the recipient when determining whether GST applies to a particular transaction;
- the cascading of GST should be avoided, where possible;
- GST rules should complement business and accounting practice; and
- the GST would be based on the "destination principle" with a credit invoice system.

3.2 OECD principles for designing a tax system

In 1998 the OECD released the Ottawa Framework conditions for electronic commerce.⁴ These framework conditions were consistent with the TLIP principles and were central to the design of Australian GST policy, legislation and the operations of the ATO in the years during and following its introduction. These conditions are as follows:

1. *Neutrality* – taxation should be neutral and equitable between forms of commerce. Business decisions should be motivated by economic rather than tax considerations. Taxpayers in similar situations carrying out similar transactions should be subject to similar levels of taxation.
2. *Efficiency* – compliance costs for taxpayers and administration costs for tax authorities should be minimised, as far as possible.
3. *Certainty and simplicity* – the tax rules should be clear and simple to understand so that taxpayers can anticipate the tax consequences in advance of a transaction.
4. *Effective and fair* – the taxation system should produce the right amount of tax, at the right time. The potential for tax evasion and avoidance should be minimised while keeping counter-acting measures proportionate to the risks involved.
5. *Flexibility* – the systems for taxation should be flexible and dynamic to ensure they keep pace with technology and commercial developments.

3.3 The evolution of VAT systems

The VAT/GST model has evolved significantly since its French origin.

All modern GST or VAT laws had their origins in the European Union VAT system. It is one of the key touchpoints for any country developing a GST or VAT system. However, the EU VAT system and, as a consequence, the Australian GST system in the year 2000 was very far from the model outlined in the European Union's (EU) Second VAT Directive of 11 April 1967 (Second Directive)⁵ which sought to harmonise various turnover taxes in place in EU Member States, at the time.

There were essentially two place of supply rules outlined in the Second Directive, one for goods (where the goods are dispatched, or if not dispatched the location at the time of supply) and one for services (where the services are performed). There was no reverse charge, nor many of the provisions which would now be described as special rules. It was a simple tax for a simpler economic time.

⁴ Committee on Fiscal Affairs, 'Electronic Commerce: Taxation Framework Conditions' (Report, OECD Ministerial Conference, 8 October 1998).

⁵ European Union, Second Council Directive of 11 April 1967 on the Harmonisation of Legislation of Member States Concerning Turnover Taxes, Structures and Procedures for the Application of a Common System of Value Added Tax 67/228/EEC.

It was the Sixth Directive in 1977 that introduced special place of supply rules for particular services and a reverse charge for those services covered by article 9(2)(e).⁶ The EU VAT was changing to reflect the economic times. That said, the changes made in 1977, and later in 1997 regarding telecommunications supplies,⁷ were largely consistent with a tax on final private consumption expenditure in a particular tax jurisdiction, collected and paid by GST registered businesses.

It is this model that was adopted and adapted by New Zealand, Canada, Singapore and Australia. Each jurisdiction shaped the EU model to suit their economy, geography, political, constitutional and legislative circumstances. As a consumption tax model, it has been remarkably robust. The latest challenge confronting it is whether it can appropriately address digitisation, more sophisticated global markets, new technology and payment systems such as 'blockchain' and cryptocurrencies, and organised fraud.

4. DIGITISATION, DISRUPTION AND THE GST LAW

In 2016 and 2018, the Australian GST law was significantly changed to bring within its scope 'inbound intangible consumer supplies' and 'offshore supplies of low value goods'.⁸ The government also introduced a new withholding regime relating to the sale of new residential premises in order to counteract fraud that was occurring in the property development and construction industry.

4.1 Imported supplies of digital products and services

One of the fundamental requirements for a taxable supply is that the supply is connected with the Australian indirect tax zone. This provision secures the territoriality of the tax. That is, it sets the boundaries to ensure the GST taxes, to the extent possible, final private consumption expenditure in Australia.

The phrase 'to the extent possible' in the previous sentence is important. It has long been accepted by governments, academics and tax professionals that a GST seeking to tax final private consumption by imposing the relevant liability on a supplier will never achieve 100 per cent of its purpose. There will always be some leakage.

The design of a GST or VAT system has effectively traded the potential for 100 per cent coverage (eg, if it made the consumer liable to pay tax on the value of that consumer's domestic consumption) for marginally less coverage but an administratively simpler and politically palatable solution (ie, requiring most businesses to register and pay the GST on the value of private consumption undertaken by its unregistered domestic customers).

Even when the GST was introduced, tax authorities throughout the developed world, including Australia, were aware of the potential impact electronic commerce (and the

⁶ European Union, Sixth Council Directive 77/388/EEC of 17 May 1977 on the Harmonization of the Laws of the Member States Relating to Turnover Taxes - Common System of Value Added Tax: Uniform Basis of Assessment.

⁷ European Commission, 'Proposal for a Council Directive amending Directive 77/388/EEC as regards the Value Added Tax Arrangements Applicable to Telecommunications Services', COM (97) 4 final, 29 January 1997.

⁸ *Treasury Laws Amendment (GST Low Value Goods) Act 2017* (Cth).

Internet specifically) may have on GST and VAT collections.⁹ In July 2000, the government's view was to monitor the impact of electronic commerce on consumer spending and act when necessary. Clearly, the government has decided that the time is right to apply GST to the inbound, cross-border trade in services, intangibles and low value goods.

The 2016 and 2018 GST law changes relating to the inbound, cross-border trade in services, intangibles and low value goods, demonstrate the difficulty GST and VAT systems have in effecting compliance, protecting domestic suppliers from unfair competition and maintaining 'simplicity' in the tax system.

4.1.1 The 2016 amendments

The 2016 amendments were extensive and profound.

When GST commenced, the 'connected with Australia'¹⁰ rules were generally fairly straightforward. Prior to the 2016 series of amendments affecting these rules, a supply was connected with Australia in the following circumstances:

- the supply of goods – if the goods are supplied wholly in Australia, brought to Australia or taken from Australia;¹¹
- the supply of real property – if the property is located in Australia;¹²
- the supply of anything else (such as services and intangibles) – the 'thing' supplied had to be:
 - done in Australia;¹³ or
 - supplied through an enterprise carried on in Australia.¹⁴ Section 9-25(6) of the GST Act provided (it has since changed) that an enterprise is carried on in Australia where it is conducted through a permanent establishment. For this purpose, the definition of permanent establishment in section 6(1) of the *Income Tax Assessment Act 1936* was modified (but only for GST purposes) to broaden it; or
 - the supply:
 - is neither done in Australia or made through a permanent establishment in Australia; and
 - is the right to acquire something else; and

⁹ In February 1999 the OECD's Working Party 9 on consumption taxes established a sub-group to consider the challenges electronic commerce presents to consumption tax systems.

¹⁰ The phrase 'connected with Australia' is now referred to in the GST law as 'connected with the indirect tax zone'. For the purposes of this article, and for the ease of comprehension, the original description has continued to be used here – 'connected with Australia'.

¹¹ GST Act, ss 9-25(1), (2), (3).

¹² Ibid s 9-25(4).

¹³ Ibid s 9-25(5)(a).

¹⁴ Ibid s 9-25(5)(b).

- on redemption of the relevant right would be connected with Australia.¹⁵

The 2016 amendments contained the following changes to the GST law. These changes go to the heart of the most fundamental provision in the law, the issue of the territoriality of the tax. The changes to the GST Act include the following:

- a new subsection 9-25(5)(d) and a related definition of ‘Australian consumer’ at subsection 9-25(7);
- a new subsection 9-25(6) dealing with goods imported into Australia and installed or assembled in Australia;
- a new section 9-26 to remove from the scope of the GST certain transactions involving non-residents;
- a new section 9-27 to change the definition of when an enterprise is carried on in the Australian indirect tax zone. This has resulted in a shift from a ‘permanent establishment’ rule to a ‘fixed establishment’ rule;
- what is effectively a complete redraft of Division 84, which prior to the 2016 amendments consisted of a few sections (ss 84-5 to 84-25) relating to the reverse charge of services and intangibles supplied from offshore, to GST registered recipients not making the acquisition wholly for a creditable purpose;
- Division 84 now contains three sub-divisions and pages of mind-boggling complexity. Division 84 is now a reverse charge provision and taxable supply provisions for entities (including electronic platform operators) supplying ‘inbound intangible consumer supplies’ and ‘offshore supplies of low value goods’; and
- a new Division 146 dealing with a limited registration regime for non-resident suppliers of ‘Inbound intangible consumer supplies’ and low value goods.

Not all of these changes relate to digitisation. Some of these provisions, particularly sections 9-26 and 9-27, directly relate to recommendations of the Board of Taxation following its 2010 report to the Assistant Treasurer on the application of GST to cross-border transactions.¹⁶ This article will not address the changes to sections 9-25(6), 9-26 or 9-27. Rather, it will focus on the changes affecting ‘inbound intangible consumer supplies’ and ‘offshore supplies of low value goods’.

With effect from 1 July 2016 supplies of services or intangibles delivered electronically by overseas enterprises to Australian consumers came within the scope of Australia's GST regime. Legislation to affect this change was contained in the *Tax and Superannuation Laws Amendment (2016 Measures No. 1) Act 2016* (Cth) (2016 Measures No. 1 Act). These changes were expected to raise AUD 150 million in the 2016 financial year and AUD 200 million in the next.¹⁷

¹⁵ Ibid s 9-25(5)(c).

¹⁶ Board of Taxation, *Review of the Application of GST to Cross-Border Transactions: A Report to the Assistant Treasurer* (2010).

¹⁷ Australian Treasury, *Budget 2015-16: Budget Measures – Budget Paper No. 2* (May 2015).

The 2016 Measures No. 1 Act included an additional paragraph 9-25(5)(d) such that a supply of anything other than goods or real property is connected with the Australian indirect tax zone if 'the recipient is an Australian consumer'.

An Australian consumer is defined to be an Australian resident who is either:

- not registered for GST purposes,¹⁸ or
- if so registered, does not make the acquisition solely or partly for the purposes of an enterprise it carries on.¹⁹

Consequently, any resident or non-resident supplier of services or intangibles is making a supply that is connected with the Australian indirect tax zone if the recipient is an Australian consumer. Such supplies will be subject to Australian GST if the other conditions for making taxable supplies are present. However, a non-resident supplier may escape the requirement to register and account for GST if it makes a supply through an electronic distribution platform.

The 2016 Measures No. 1 Act includes a new Subdivision 84-B of the GST Act which provides that an electronic distribution platform operator (and not the non-resident supplier) is liable for GST on an 'inbound intangible consumer supply' made through the relevant platform. An 'inbound intangible consumer' supply is defined as a supply of anything other than goods or real property if the recipient is an Australian consumer, unless:

- the supply is done in the Australian indirect tax zone,²⁰ or
- the supplier makes the supply through an enterprise the supplier carries on in the Australian indirect tax zone.²¹

A service is defined as an electronic distribution platform if:

- the service allows entities to make supplies available to end users;²² and
- the service is delivered by means of electronic communication;²³ and
- the supplies are made by electronic means.²⁴

'Tie breaker' rules operate where a supplier supplies 'inbound intangible consumer supplies' through two or more platform operators.

Subdivision 84-C applies to offshore supplies of low value goods. Subdivision 84-D sets out the circumstances in which entities are not Australian consumers. Division 146 provides a limited registration regime for non-resident suppliers and platform operators.

¹⁸ GST Act, s 9-25(7)(b)(i).

¹⁹ Ibid s 9-25(7)(b)(ii).

²⁰ Ibid s 84-65(1)(a).

²¹ Ibid s 84-65(1)(b).

²² Ibid s 84-70(1)(a).

²³ Ibid s 84-70(1)(b).

²⁴ Ibid s 84-70(1)(c).

This is quite a bit for non-resident suppliers and platform operators to understand, and make appropriate systems and business process changes for to effect compliance. What is critical is that Australia's rules mirror those adopted by other tax jurisdictions.

4.1.2 Observations

The consequence of this amendment is that the reach of Australian GST has been extended to entities which may have no physical presence in Australia. With this change, the Australian GST became extraterritorial. The success of these provisions will essentially rely on taxpayers without a physical presence in Australia voluntarily complying with their obligations, knowing the Commissioner of Taxation's ability to effectively enforce the provisions is limited.

However, given that many of the suppliers caught by these provisions operate on a global stage with a desire to maintain a reputation as a good corporate citizen, it is likely that compliance from large suppliers and electronic platform operators will be high. On the other hand, undoubtedly there will be many others who may be ignorant of, or not enthusiastic about complying with, the taxation laws of a foreign country. It has been tacitly recognised that a level of revenue leakage must be accepted because it is either not possible, or not economic, to collect it.

These amendments are complex and far-reaching. In fact, the provisions are so far-reaching the Commissioner will never know who should be within the scope of the provisions once the large online retailers and platform operators have been identified and registered. Many non-resident online suppliers of services and intangibles may have a potential Australian GST liability without ever being aware of it.

Furthermore, determining whether a recipient is an Australian consumer can be difficult. The comments below in relation to the offshore supply of low value goods²⁵ are equally relevant to 'inbound intangible consumer supplies'.

What is still not clear is how the Commissioner proposes to administer these provisions. Does he:

- continue to seek to identify non-residents with an obligation to register, and ensure those taxpayers comply with that obligation?
- continue to attempt to educate non-residents of the peculiarities of the Australian GST law?
- invest ATO resources elsewhere once he has registered large suppliers and platform operators?
- accept that he cannot ensure compliance with these provisions on an ongoing basis?
- engage foreign tax authorities to conduct Australian GST audits of taxpayers residing in their jurisdiction?

²⁵ See paragraph 4.2.3.

- seek retrospective adjustments where he finds an entity that was required to register did not?

Education and ensuring compliance are significant issues here. Does the Commissioner intend to invest significant ATO resources in administering these provisions? If not, it might be preferable to raise the GST registration turnover threshold for non-resident suppliers of services and intangibles to Australian consumers from the present AUD 75,000.

4.1.3 *How do these provisions rate under the TLIP and OECD model standard?*

While these provisions are designed to achieve neutrality, the means through which this has been achieved is unnecessarily complex, particularly if the expected revenue gain is a relatively modest AUD 200 million per year.

Notwithstanding the simplified registration process for non-residents, the compliance costs and risks relating to identifying the status of the Australian recipient are very high. Furthermore, if the ATO is to administer these provisions in any serious manner, administration costs will also be very high.

In this author's view, these rules are far from clear, the drafting is unnecessarily complex and the risk of evasion or avoidance is high.

4.2 **Imported low value goods**

Since GST was introduced most goods that had a value of AUD 1,000 or less were not subject to GST when imported. This threshold was set at a time when there were comparatively few private importations of goods and it was thought that collecting GST on values at or below this level would be uneconomic. At the time, and it is probably still the case, most low value importations are less than AUD 250. Taxing these transactions results in less than AUD 25 per transaction/import.

That said, low value importations are now made in vast numbers as electronic commerce (and electronic platforms, in particular) are more commonly used by consumers.

4.2.1 *Consumer importations and the 'Connected with Australia' rules*

From 1 July 2018, goods with a value of AUD 1,000 or less ('low value goods') that are supplied to an Australian consumer by a supplier who imports the goods, or procures, facilitates or arranges the importation of the goods, will be taxed in the hands of the supplier, an electronic distribution platform (discussed above) or a re-deliverer.²⁶

A consumer is defined to be an entity that is not registered or, if registered, does not acquire the goods imported solely or partly for the purposes of the enterprise it carries on in Australia.

If a GST registered entity imports low value goods not solely for a creditable purpose, it will be required to reverse charge pursuant to Division 84.²⁷

²⁶ *Treasury Laws Amendment (GST Low Value Goods) Act 2017* (Cth) ss 84-73 to 84-105.

²⁷ GST Act, s 84-5(1) Item 4.

4.2.2 *Who makes the supply?*

Where a supply is made through an electronic distribution platform, the operator of the distribution platform is treated as the supplier for GST purposes and the actual supplier is treated as not being the supplier.²⁸

If an arrangement with the recipient of the supply involves the goods being delivered to an entity that is outside the Australian indirect tax zone and that entity (the re-deliverer) delivers (or procures, arranges or facilitates delivery of) the goods into the indirect tax zone (to the recipient), the re-deliverer is liable for the GST on the goods.²⁹ This is subject to the proviso that the re-deliverer:

- does this in the course of an enterprise;³⁰ and
- either provides an address outside Australia to which the goods are delivered, purchases the goods, or facilitates the purchase of the goods.³¹

4.2.3 *Observations*

As with the regime to tax 'inbound intangible consumer supplies', the regime to tax imported low value goods will impose a GST liability on entities that have no physical connection with Australia, and expect them to comply with laws that they have little or no exposure to. The scheme to tax electronic distribution platform operators and offshore re-deliverers may restrict the number of potential non-resident registrants, but it comes with considerable complexity and a lack of clarity in its application.

For example, in many instances it will be difficult for non-resident suppliers, electronic platform operators and re-deliverers to determine whether the recipient of a particular supply is an Australian consumer. The legislation effectively recognises this and addresses the matter in Sub-division 84-D. This Sub-division essentially requires non-resident suppliers, electronic platform operators and offshore re-deliverers to undertake reasonable steps to obtain information about the recipient and, after taking those steps, they must reasonably believe the recipient was not an Australian resident consumer.

Making subjective assessments of the status of a recipient is incompatible with the operation of an electronic platform. Determining how to address this matter is further complicated when non-resident suppliers, platform operators and re-deliverers are contemplating GST registration.

If a non-resident supplier, electronic platform operator or re-deliverer registers for GST purposes under the 'limited registration model', it will not be entitled to receive an Australian Business Number. As a result it cannot issue tax invoices. A GST-registered recipient who acquires offshore low value goods or 'inbound intangible consumer supplies' from an entity that is registered under this model, and is treated as an 'Australian consumer', will not be entitled to an input tax credit for the GST so charged.

²⁸ Ibid s 84-81(3).

²⁹ Ibid s 84-81(4).

³⁰ Ibid s 84-77(3).

³¹ Ibid s 84-77(4).

This potentially makes the limited registration model unattractive for some and is an added layer of unnecessary complication for taxpayers with limited understanding of Australia's taxation laws, and access to ATO information.

4.2.4 *How do these provisions rate under the TLIP and OECD model standard?*

The comments made in section 4.1.3 above in relation to 'inbound intangible consumer supplies' apply equally to the provisions relating to low value goods. That is, in the author's view, these rules are far from clear, the drafting is unnecessarily complex and the risk of evasion or avoidance is high.

4.3 **Digital platforms – ride share and accommodation**

The now ubiquitous uptake in the use of electronic platforms such as Uber and AirBNB continues to challenge GST policy and fair competition.

Division 84 should not apply to Uber, AirBNB and similar platforms where the service acquired is performed in Australia, or the property acquired under licence or lease is situated in Australia.

The question to be considered is whether the basic GST rules and exemptions provide the appropriate outcome for services supplied through Uber, AirBNB and other similar platform operators?

In the case of Uber's ride share arrangements with passengers, the Federal Court of Australia has effectively settled drivers' GST registration obligations – that is, Uber driver services are to be treated, for GST purposes, in the same manner as traditional taxi services.³² Consequently, Uber drivers who transport passengers for a fare are required to register for GST purposes. The provisions of Division 144 of the GST Act apply equally to them and taxi drivers.

One assumes that drivers who do not transport passengers but only food, via Uber Eats, are in a different position and can remain outside the GST system if their GST turnover does not exceed the GST registration threshold.

In the case of AirBNB, the outcome is more debatable.

AirBNB accommodation may be provided in a number of ways; as a bed only, room only, room and breakfast, house or apartment rental, or a variety of these. Periods of residence may vary from a day to weeks. Some are available all year round, others for specific periods of time. Some operators have a 'stable' of properties, others just the family home, available for lease for limited time.

People providing accommodation through AirBNB are invariably carrying on an enterprise. The issue for many accommodation providers under the GST law is whether the supply of accommodation is an input taxed supply of residential premises or a taxable supply of commercial residential premises. If it is the former (as it is generally accepted to be), the policy issue governments need to contemplate is whether this outcome is appropriate where the accommodation provided through AirBNB is

³² *Uber BV v Commissioner of Taxation* [2017] FCA 110; 104 ATR 901.

effectively competing with operators of premises that clearly qualify as commercial residential accommodation, such as hotels.

Currently, few providers of accommodation through AirBNB are registered for GST purposes. It is also likely hotels have accepted the new market 'options' available for sourcing accommodation and have adapted their business models accordingly, focusing on consumers looking for a 'hotel' experience.

Regardless, there is little doubt many providers of accommodation through AirBNB are carrying out activities in a business-like manner, are receiving income that would, in many cases, exceed the GST registration threshold and are a serious competitor to hotels, motels, hostels and boarding houses. There seems little reason why a government looking for revenue would not look at this 'market' as a ready-made source of GST revenue. It would also be hard for operators to contend that such an outcome was unfair. In fact, it sounds very fair.

5. A TAX ON CONSUMERS – WITHHOLDING RULES FOR SALE OF NEW RESIDENTIAL PREMISES

While not related to digitisation, I have included some comments in this paper on the withholding rules relating to the sale of new residential property, primarily because the Government has sought to provide an element of disruption into the property market in order to counteract GST fraud by a few.

Treasury Laws Amendment (2018 Measures No.1) Act 2018 (Cth) (2018 Measures No. 1 Act) amended the *Taxation Administration Act 1953* (TAA) by inserting new Sub-division 14-E into Schedule 1 of that Act. These provisions take effect from 1 July 2018.

In the second reading speech relating to the bill, the Minister for Revenue and Financial Services, Ms Kelly O'Dwyer said 'that the bill tackles tax evasion by companies that phoenix'.³³

In its simplest form, 'phoenixing' in a tax context typically involves:

- a company disposing of certain assets or providing certain services to third parties and incurs a tax related debt;
- the company enters into liquidation holding no assets, but maintains an unpaid tax liability on its books;
- the individual(s) who effectively derived the economic benefits from the insolvent company, emerge 'from the ashes' to start anew through a direct or indirect involvement with a separate company, with no existing debts with the ATO (yet); and
- this new company will follow the path of its predecessor (or associate), and so it goes on.

It is clear the Commissioner believed he either required further powers to act on such individuals, or the relevant tax legislation (in this case the TAA and GST Act) required

³³ Hon Kelly O'Dwyer (Minister for Revenue and Financial Services), 'Legislation to Combat Illegal Phoenix Activity Released for Consultation', *Media Release* (16 August 2018).

changes to remove the ability for so minded individuals to enter into phoenix company arrangements. The 2018 Measures No. 1 Act sets out the changes for the latter of these two options.

5.1 Business structures and property

It is common for property developers to segregate properties under development in separate legal entities. This may be done for many reasons, including asset protection. Sometimes these entities may be unable to meet their financial obligations including taxation obligations and insolvency occurs. It is important to note that this is very much the exception rather than the rule.

It is difficult to overlook the fact that this withholding regime is effectively a 'back door' means of giving the Commissioner priority for property-related GST debts over all creditors (ie, including secured creditors) where a company becomes insolvent. Currently, the Commissioner ranks above secured creditors only in relation to certain Pay-As-You-Go (PAYG) withholding and superannuation debts.

5.2 The amendments

The broad effect of these amendments is to make the purchaser responsible for withholding the GST that is payable by a developer on:

- the sale of new residential premises (as defined in the GST Act), other than premises created through substantial renovation or commercial residential premises; or
- the sale of 'potential residential land' where:
 - the property is included in a property sub-division plan;
 - the property does not contain any building that is in use for commercial purposes; and
 - the purchaser is not registered for GST or does not purchase the property for a creditable purpose.³⁴

The new provisions will apply to sales or long-term leases under contracts entered into on or after 1 July 2018. For the purposes of this article, a reference to a purchaser includes a reference to a long-term (greater than 50 years) lessee of property. The provisions have the following features:

- for contracts that are entered into before 1 July 2018, the withholding rules will not apply if any of the consideration is paid prior to 1 July 2020.³⁵ For contracts entered into before 1 July 2018 and settled on or after 1 July 2020, the withholding regime will apply despite the fact that the contract may have been signed before the start date of the withholding regime;³⁶

³⁴ TAA, Sch 1, ss 14-250(1) and (2).

³⁵ See *Treasury Laws Amendment (2018 Measures No. 1) Act 2018* (Cth) ss 26-28.

³⁶ *Ibid* s 27.

- the amount of GST to be withheld is to be paid to the Commissioner on or before the payment of any of the consideration to the supplier;³⁷
- the payment of a deposit does not constitute part payment of the consideration payable for the supply of the property, and as such does not trigger an obligation on the purchaser to withhold at the time the deposit is paid.³⁸ Furthermore, there is no withholding obligation where a deposit is forgone;
- however, where a purchaser acquires a property and the consideration is payable by instalments, the purchaser is required to pay to the Commissioner GST on the full purchase price of the property at or before the time the first instalment payment is made;³⁹
- pursuant to section 14-250(6) of Schedule 1 of the TAA, the amount to be withheld is 1/11 of the contract price, unless the margin scheme applies. If the margin scheme applies, the amount to be withheld is 7 per cent of the contract price;
- if the contract specifies a price that is subject to adjustments, the amount to be withheld is determined on the above basis, without the need to take into account any adjustments. If the consideration is not specified in this way then the amount to be withheld is calculated by reference to the total amount payable under the contract;⁴⁰
- where there are multiple recipients of a supply, the amendments treat each of them as receiving a separate supply and independently responsible for the withholding obligation in respect of their share of the original supply;⁴¹
- joint tenants are treated as if they were a single recipient. This means that joint tenants would be jointly liable for the withholding obligation, but tenants-in-common would have a separate obligation to withhold;⁴²
- suppliers of property are required to notify the purchaser of the following:
 - whether the supply will be subject to the withholding regime and, if so, that GST is to be withheld;
 - the Australian Business Number (ABN) of the supplier;
 - the amount to be withheld; and
 - when it is expected that it will need to be paid by the recipient of the supply;⁴³
- failure to do so exposes the supplier to court or administrative penalties of 100 penalty units (AUD 210,000). However, the failure of the supplier to notify the

³⁷ TAA, Sch 1, s 14-250.

³⁸ Ibid, Sch 1, s 14-250(4).

³⁹ Ibid, Sch 1, s 14-255(1)(a)(ii).

⁴⁰ Ibid, Sch 1, s 14-250(7).

⁴¹ Ibid, Sch 1, s 14-250(11).

⁴² Ibid.

⁴³ Ibid, Sch 1, s 14-255(1).

recipient does not impact on the obligation of the recipient to withhold GST if otherwise required to do so;⁴⁴

- the supplier is entitled to a credit for the amount that has been withheld and paid over to the Commissioner by the recipient;
- in cases where the margin scheme applied to the supply, this could mean that the supplier is credited with a greater or a smaller amount than the actual amount of GST payable under the margin scheme;
- the recipient of a supply who fails to withhold GST on the acquisition of a relevant property is liable for a penalty equal to the amount that the entity fails to withhold and pay the Commissioner.⁴⁵

5.3 Observations

5.3.1 *A question of property*

As mentioned above these provisions effectively give the Commissioner a priority over all other creditors of a property developer. This includes secured creditors. This is inconsistent with the general priority given to tax debts and will add further financial stress to small business suppliers to insolvent developers.

5.3.2 *Cash flow*

One of the consequences of this regime is the impact on cash flow for developers. Many businesses, including developers, rely on their payment terms with the Commissioner as a source of cash flow. These new measures will deprive all property developers of a cash flow advantage that is available to taxpayers in other industries.

Managing cash flow is a difficult exercise for property developers with a number of projects at various stages of completion. The time gap between incurring a development expense and realising the consideration for the finished 'product' is invariably large and requires careful financial management. It is common for developers to 'stretch' their terms of trade to pay suppliers in order to manage their cash flow. It will almost be inevitable that small business suppliers to property developers will have to wait longer to receive payment as a consequence of these measures.

5.3.3 *Lack of precision*

The distinction between premises that are residential premises and those that are not has not always been clear. There have been a number of cases that have considered whether a particular property is residential premises or not.⁴⁶ If the property consists of new residential premises and is not either created through substantial renovation or commercial residential premises, it will be subject to the withholding regime. If it is new but not residential premises, it will not be subject to it.

⁴⁴ Ibid, Sch 1, s 14-255(3).

⁴⁵ Ibid, Sch 1, s 16-30.

⁴⁶ See, eg, *Sunchen Pty Ltd v Commissioner of Taxation* [2010] FCAFC 138, 78 ATR 197; *Vidler v Commissioner of Taxation* [2009] FCA 1426, 74 ATR 520.

Residential premises can remain new for five years or more after they are constructed. For GST purposes, residential premises are not 'new residential premises' if the premises have only been used to make input taxed supplies for a period of at least five years. The Commissioner's view is that the relevant five-year period must be continuous. If the premises have been used for any purpose other than making input taxed supplies, the five-year period starts again. Perversely, a property may be considerably more than 15 years old and still be considered new residential premises because it has not been used to make input taxed supplies for a continuous five-year period. How is a purchaser (who is generally unregistered) to know, with certainty, whether a property is new?

Where land is sold that comprises new residential premises and/or potential residential land and commercial premises, farming land or residential premises that is not regarded as 'new', an apportionment exercise will need to be undertaken. Who is responsible for this exercise, and how exposed a purchaser is in these circumstances, will give many purchasers cause for concern.

5.3.4 *Fraud prevention v keeping compliance costs low*

The withholding provisions are designed to counteract individuals entering into phoenix arrangements. Such arrangements are fraudulent, yet the provisions enacted are not aimed at punishing fraud and the perpetrators. Rather, the new provisions apply to all property developers and their unregistered customers. In other words, the vast majority of honest developers, their customers and legal advisers must pay for the sins of the fraudulent few.

To make matters worse, the application of GST to real property is arguably the most complex area of the GST law. These GST provisions must be navigated by the largest taxpayers in the country and the smallest.

To impose a complex withholding regime over an already complex set of rules, to be interpreted by small businesses and unregistered individuals who often do not have access to expert advice, and to potentially expose those entities to a tax administration that is presumably frustrated with tax leakage in the property sector, is a recipe for mistrust, fear, suspicion and dispute.

These provisions must be administered sensitively by the Commissioner, with a liberal application of common sense. It remains to be seen what happens. That said, I cannot help but think there must be a better way.

5.3.5 *The design of a GST*

A GST is a tax on final private consumption expenditure. It is imposed on the price charged by GST-registered suppliers of taxable goods, services (including intangibles) and real property and is complemented by a credit invoice system for GST-registered recipients. Where a recipient is unregistered, no credit applies, and GST is effectively imposed on the value of the relevant supply consumed. By design, GST collections are not imposed on unregistered consumers.

While the legislators may argue that the withholding amendments do not 'impose' the tax on unregistered consumers, but rather apply an obligation on those individuals to collect and remit, it is a moot point.

If the Commissioner cannot administer the GST system so that it appropriately applies to GST-registered entities only, perhaps it is time to consider whether a GST system is appropriate for Australia as we move towards the third decade of the new millennium. Then again, perhaps the government has overreacted to tax evasion by a few.

6. REVISITING THE PAST

This article does not seek to imply that the recent amendments have started some sort of erosion of the initial TLIP design. As mentioned earlier, that erosion started before 1 July 2000 when the financial services provisions were moved to the GST Regulations and were exacerbated when some other changes were made over the ensuing 20 years.

In the spirit of reviewing this 20-year journey, it is worth pointing out some areas of the GST policy and law that can be improved.

6.1 Capital raising and business expansion through the acquisition of shares

Where an entity raises capital through the issue of shares to Australian residents, the entity is potentially denied full input tax credits for the GST component of costs incurred to make the share issue. However, if the shares are sold to a non-resident of Australia, the supply would be GST-free as an 'exported' service and any GST incurred on business inputs should be fully recovered as input tax credits. Alternatively, if the same entity raised capital through borrowings and those borrowings are used to make taxable or GST-free supplies (which is what most entities supply), no denial of input tax credits ensues. This is hardly a neutral outcome and the reason for differing treatment is not evident.

Furthermore, if an entity making fully taxable supplies acquires shares in another entity making fully taxable supplies, both entities are potentially denied input tax credits for the GST incurred on transaction costs. However, no 'GST cost' would ensue if the assets of the business were sold in fully taxable circumstances (the GST-registered recipient would get a full input tax credit) or the business was sold as a GST-free going concern. Once again, an outcome that is not neutral.

One of the underlying strengths of a well-designed GST system is the neutrality of its application. A well-designed GST system should tax final private consumption expenditure and should not be a tax on business inputs (with a few notable exceptions). Denying an entity making fully taxable supplies input tax credits results in GST forming part of its cost base. One would expect that business to seek to recover its costs (including unrecovered GST) in the selling price of its taxable or GST-free goods and services.

In the author's view, in the 20th year of the Australian GST, the Australian Treasury should review the GST treatment of capital raising and merger and acquisition activity with a view to amending the GST law to provide a neutral outcome that avoids a cascading of GST.

6.2 Financial services

Australia's GST financial supply provisions are unique. Some may say, uniquely complicated. The Australian approach to applying GST to financial services has been studied by many countries implementing a GST or VAT system and adopted by none. On the occasion of the 20th anniversary of Australia's GST becoming law, it seems

appropriate to question whether Australia's approach to input taxing financial services is the right approach.

Input taxing financial services is the common GST/VAT international treatment. However, such a system is inherently flawed insofar as the GST cost incurred by the financial institution is embedded (in a non-recoverable form) in the price of its services. Where those services are acquired by an entity making fully taxable supplies, GST will be embedded in the price of those services and will cascade through the commercial chain. This was recognised by the New Zealand government. Since 1 January 2005, the New Zealand GST law has zero-rated financial supplies made to GST-registered businesses.

The drafting of the financial supply provisions in the Australian GST law is inelegant, repetitive, complex, and the antithesis of principles based drafting.

Most GST and VAT systems deny input tax credits for GST incurred on business inputs acquired to make certain financial services. Financial services are generally defined as a reference to certain activities, such as the borrowing and lending of money, the sale and purchase of shares, etc. In Australia, it was decided to define a financial supply as being a property interest in a particular thing, such as an interest in an account, an interest in a credit arrangement, etc. An unwelcome consequence of this approach was to treat an acquisition of an interest in a financial supply as a 'supply' for GST purposes.

It is unclear why those drafting the financial supply provisions did this but it is notable that this drafting was the basis of *Travellex's* argument in the High Court that the supply of an interest in Fijian currency was a right for use outside Australia and was GST-free.⁴⁷

Supplies by financial intermediaries are not included in the definition of financial supplies and are taxable. To mitigate the financial impact of this decision on financial institutions, the government developed the reduced credit acquisition (or reduced input tax credit) regime. The financial supply provisions contain lengthy lists of what is and is not a financial supply and reduced credit acquisition, with few interpretive principles to assist. In the author's experience both administering and advising on the application of tax (primarily indirect tax), the longer the legislative list, the greater the scope for dispute, unless both sides (the ATO and financial institutions in this case) work together to agree an appropriate outcome.

That was the case for the first 15 or 16 years of the GST. The relationship between the ATO and financial institutions during the last three to four years is noticeably strained.

In the author's view, the time has come for the government to re-evaluate how GST applies to financial supplies. The Commissioner has announced he is considering issuing a legislative determination, compelling financial institutions to apply a mandated apportionment methodology (effectively mandating a GST recovery rate) for acquisitions relating to the credit card issuing business of financial institutions.⁴⁸

⁴⁷ *Travellex Limited v Commissioner of Taxation* [2010] HCA 33; 241 CLR 510.

⁴⁸ See Australian Taxation Office, 'Goods and Services Tax: Determining the Creditable Purpose of Acquisitions in a Credit Card Issuing Business', GSTD 2008/D1.

If the Commissioner is openly contemplating by-passing sections 11-5 and 11-15 of the GST Act for credit card issuing businesses, in my opinion, the time has come for the government to completely reconsider these provisions. To the author, as a tax professional of 40 years, it is astounding that the Commissioner would consider the use of a legislative instrument for this purpose as an appropriate use of his powers.

Perhaps it is the canary in the coal mine and the Commissioner and his team of advisors believe sections 11-5 and 11-15 are unworkable in relation to financial supplies and they have taken the matter into their own hands. If this is the path the Commissioner is heading down, it is not possible for the government to ignore this issue any longer.

In the author's view, the time has come for the government to openly embrace making margin based financial supplies GST-free. All other financial supplies should be taxable or GST-free. This will dispense with apportionment issues, the reduced credit regime and ensure GST does not become a cost for GST-registered Australian businesses and non-resident businesses. At least from an indirect tax perspective, it will assist in making Australia more attractive as a financial services centre for the region. The amount of revenue forgone may be a small price to pay for greater economic output, and for certainty in the GST system.

6.3 Changes in creditable use

The adjustment provisions designed to reflect changes in the extent of creditable purpose (over time) are unacceptably complicated, particularly when compared to similar provisions in other GST or VAT laws. The fact is, the Division 129 adjustment rules are 'more honor'd in the breach than the observance'.⁴⁹

Division 129 of the GST Act requires an entity to make an adjustment of the GST claimed as an input tax credit where:

- the entity has acquired (or imported) goods and services that are not wholly used for a creditable purpose; and
- the acquisition (or importation) relates to the entity:
 - making financial supplies and the value of the acquisition (or importation) is greater than AUD 10,000 (excluding GST); or
 - not making financial supplies and the value of the acquisition (or importation) is greater than AUD 1,000 (excluding GST); and
- the use of the relevant acquisition or importation has changed during the adjustment period.

The adjustment period will be one period, five periods or ten periods, depending upon the value of the acquisition or importation.

It seems remarkable that a country which, through GST design, restricts the number of entities making input taxed supplies (when compared to most other countries with a GST or VAT system) requires affected businesses to make adjustments where the value of an acquisition is as small as AUD 1,000. It is little wonder many businesses ignore

⁴⁹ William Shakespeare, *Hamlet* (Simon and Schuster, 2012) Act 1, Scene IV.

their responsibilities in this area. It is cheaper to do so and manage the consequences (if any) later. This does not go well for the integrity of the tax and the original intent to complement business practice and reduce compliance costs, to the extent possible.

In the author's view, it is time to redesign Division 129 and take a practical approach. First, the thresholds should be increased substantially. Secondly, a *de minimis* threshold should be considered such that if the change of use is less than 10 per cent of the original estimate, no adjustment is required.

6.4 Vouchers

The voucher rules in the Australian GST law, and the Commissioner's interpretation of these rules, is a minefield of complexity.

Vouchers come in many forms and, in some circumstances, can be redeemed for taxable and GST-free supplies. Vouchers are often sold through a distribution chain (including at the retail level) at a discount to their face value. It is also common for vouchers to be sold by a retailer and redeemed from the originator who is also a wholesale distributor.

Division 100 of the GST Act provides that certain vouchers are not subject to GST when they are sold, but are treated as consideration for goods and services acquired upon redemption. GST is payable on the face value of the voucher when redeemed, in these circumstances. If a voucher covered by Division 100 is not redeemed, GST will be payable on the face value of the voucher when it is taken up as income in the originator's accounts.

The GST treatment of vouchers exposes a number of issues, including the following:

- the GST treatment is not neutral as different forms of voucher have different GST treatments that affect not just the timing of the payment of GST, but also quantum;
- upon redemption, GST is often applied to an amount (the face value) which is greater than the amount of money any person in the supply chain has received. In other words, GST is payable on an effective tax rate in excess of 10 per cent;
- businesses that acquire vouchers for use in their business (such as those who operate loyalty programs) do not get a credit for the GST embedded in the voucher; and
- the legislative provisions are complex and, in many instances, need to be read with the Commissioner's view set out in his GST ruling GSTR 2003/5.⁵⁰ It is not an exaggeration to suggest that, in part, this ruling is almost incomprehensible.

In the author's view, it is time for the government to consider amending the GST law to provide:

1. an option to tax vouchers (many are only ever redeemed for taxable supplies);

⁵⁰ ATO, 'Goods and Services Tax: Vouchers', GSTR 2003/5.

2. a decreasing adjustment for GST-registered businesses that acquire vouchers covered by Division 100 for use in their business; and
3. a simplified approach similar to those adopted by other tax jurisdictions.

7. CONCLUSION

Technology and digitisation are the great disrupters of the 21st century. They are the latest in a long line of disrupters that extends from the time humans first walked out of the Rift Valley. However, it is the pace and impact of change since the start of the Industrial Revolution that has been phenomenal. In one sense, digitisation is just another in a long line of post-Industrial Revolution disrupters that include the steam engine and the related automation across manufacturing industries, the Bessemer steel process, the internal combustion engine, the jet engine, personal computers, mobile phones and many other forms of technology. What is unique about digitisation is that the speed of change is increasing, not slowing.

People and economies have an amazing ability to adapt to new technology and it is incumbent upon governments to react appropriately. While digitisation is a direct consequence of the inventions and 'disrupters' that preceded it, globalisation is a consequence of technology (including digitisation), economic policy and the political will to embrace it.

It is incumbent upon the government to ensure its laws, particularly revenue laws, are designed and managed in such a way as to ensure they can react and adjust to economic changes in a neutral manner, maintain coherence (ie, remain clear and simple), and seek to have a light touch on taxpayer businesses (ie, keep compliance costs low).

Once tax law becomes complex and impenetrable, it quickly becomes antiquated. Redesigning an outdated law is difficult. Developing and gaining support for a new tax is very difficult, as the road to Australia's GST clearly illustrates.

In the author's view, reducing complexity and compliance costs for taxpayers when developing and drafting law changes is key to maintaining control and integrity over the tax system. Complexity in tax law is too often a result of:

- not properly thinking through solutions that lead to legislative change; or
- poorly thinking through interpretations of existing provisions that eventually leads to a change in the law, often adding more complexity, rather than less.

Both of these have occurred with the GST law over the past 20 years.

As technology develops, new and more efficient forms of indirect tax may emerge. However, it is worth remembering that the road to a GST took Australia 25 years and it was a torturous journey. While some economists may dream of a broad-based, flat-rate, no-exemptions indirect tax model, that model has been found to be elusive – destroyed at the ballot box.

Some of the alternative indirect taxes proposed (such as cash flow taxes) appear to rely on few or no exemptions. It is difficult to see community support for a no-exemption indirect tax.

There is much to be learnt from the past, and things we should repair. However, we must also look to the future and plan for change. What is certain is that technology will continue to develop, challenges will continue to arise and we should expect the GST, with careful management, to continue to roll on for many years to come.