



Welcome to Ken Talks GST

These occasional emails will be brief updates of some of what's happening in the GST world that could be helpful for clients and other professional advisors to know about. They're not meant to be a substitute for newsletters and other reporting services that you may already receive. Feel free to drop me a line with your input or requests for topics to be covered in future editions.

### **ATO Trends**

- **The 'Covid party' is over: The ATO was very accommodating during 2020 in giving GST lodgement and payment extensions. As expected, the ATO is now actively following up. The ATO is experiencing a high level of co-operation, and when there are justifiable reasons the ATO will still willing to allow more breathing space, but only where the business is open and responsive. The take away: get yourself up-to-date, be seen to be trying your best and continue to seek ATO co-operation if needed.**
- **Cut out the middleman: The ATO is increasingly going directly to businesses instead of through tax agents. Eg. in following up debts and lodgements. The ATO is not trying to get around tax agents but is making sure that we know that the ATO has the right to go direct if it wishes. The ATO is also implementing many reforms to its on-line services, like its Portal and website, to allow more direct effective interaction. The take away: don't panic, do co-operate and at the very least keep your tax agent informed.**
- **The ATO's GST/Income Tax Conjoined Twins: The restructuring of the ATO to combine the GST and Income Tax review, audit and advisory teams continues. When engaging with the ATO, whether initiated by you or the ATO, on either GST or Income Tax, it will very often result in both taxes being considered by the ATO at the same time. Don't be surprised if the ATO calls for an explanation as to why turnovers in the BASs don't match turnover in the income tax return. Don't be surprised if the ATO, when reviewing whether your sale of property is on capital or revenue account for income tax purposes, also asks why you did/didn't disclose the supply for GST purposes. The take away: the ATO's left hand is getting much better at knowing what its right hand is doing. Remember there is only one Commissioner of Tax and you must have one story for both GST and income tax.**



- **The ATO knows what you're doing:** The powers and capabilities for ATO data capture, and even more importantly data-matching, is increasing at a very fast rate. We used to be surprised about the ATO knowing how much interest was received or what shares were sold, and pre-populating it in tax returns. The data the ATO now receives from so many sources, and not just government agencies, is mind-bogglingly massive. It was just announced that the ATO will acquire property management data from property management software providers for the 2019 to 2023 financial years, and expect more to come. The take away: that old saying should now be “you don't know what the ATO knows, and you still don't know what they know or don't know”.
- **The NCTCB (“National Commissioner of Taxation Commercial Bank”):** Delaying paying tax owed to the ATO has been an unofficial but somewhat reliable source of short and long term financing for a long time. However, the quantum of ‘undisputed tax’ has grown enormously, especially during 2020. While the ATO has been quite fair in the past, it's probably been taken advantage of in some cases. The ATO is now tightening up and trying its best to balance doing its statutory job of fairly administering the tax system. The take away: you won't be able to as easily ‘bank’ on the NCTCB being your lender in future.
- **GST Private Rulings Not a Breeze:** I wouldn't suggest that the ATO was lenient in the past when giving GST Private Binding Rulings, but where the possible answer to an issue was line-ball, the ATO sometimes took a reasonable and practical approach. However, recent ATO rulings indicate a ‘toughening up’ and a much stricter approach. The take away: the ATO is looking extremely closely at the GST law and you shouldn't hope to get a favourable PBR based on a loose approach about what the GST law means- look carefully before you leap and even reconsider whether you should ask for a PBR at all.



## Courts and GST Law

- **ATO recovering disputed debts:** It's been longstanding practice that the ATO won't take recovery action if 50% of disputed debt, and all undisputed debt, is paid to the ATO while a disputed matter is being resolved. Sounds simple, but there are many variables and much subjectivity (what is 'disputed' debt, is the delay for short term funding by serially disputing debts, is either party purposely causing delays, possible existence of debt-defeating actions, flow on consequences of enforcing collection of even 50%, etc?). It has just been announced that action will be able to be taken in the AAT which will now be empowered to pause or modify ATO debt recovery action. The take away: this AAT recourse will normally be the last resort, as negotiations with the ATO should normally result in a fair outcome.

- **GST evaders can go to jail:** There continues to be a limited number of cases that result in evaders of GST being sent to jail. However, these seem to be the result of very overt and fraudulent actions that serve no purpose other than evasion of GST. The take away: simply making mistakes that result in GST being underpaid is not a good position to be in, but only the most egregious actions to simply not pay GST could result in incarceration.

## TIPS

The links between GST and other taxes are often missed. For example:

- The FBT valuation rules, and GST rules for claiming GST credits and paying GST, are very intertwined. Eg. Entertainment expenditure, FBT exemptions, contributions for the personal use, valuations and apportionment issues. The FBT elections being made at the start of each new FBT year, 1 May, can significantly effect GST- be careful.

- Expenditure that is non-deductible for income tax purposes (eg entertainment, luxury vehicle threshold limits) is often not creditable for GST purposes.

- Changed use events (Eg. deciding to permanently or temporarily lease new residential premises instead of immediately selling them) can require GST adjustments to previously claimed GST input tax credits in activity statements ending every June. The GST consequences of a change of intent on 30 June can be significantly different if instead made on 1 July. This should be considered at the same time as all other income tax year end matters are being thought about and documented.



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- **Confusion often arises between Stamp Duty and GST. There are some Stamp Duty concessions for dealings between associated persons that are incorrectly assumed to mean not taxable for GST purposes.**

### **LinkedIn Posts**

**In case you missed my LinkedIn posts since the start of 2021, it's not too late to review them (they each take less than a minute to read):**

**Is the Tax Office Knocking on your Door?:**

**Are You a Not For Profit Charity?**

**Health Care Products Should be GST Free**

**Special Accommodation Disability: Win or Lose**

**Property Developers: Potential Tax Refunds For Sales Incentive Programs**

**Food & Beverage: Losing Sales and Profits by Overpaying Tax?**