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Dear Sir

KPMG Submission - A New Tax System (Goods and Services Tax) Amendment Regulations 2012 (No.)

KPMG welcomes the opportunity to comment on the exposure draft of *A New Tax System (Goods and Services Tax) Amendment Regulations 2012 (No.)* ("the draft Regulations").

This submission only concerns the proposed changes that introduce item 32 into the GST Regulations, and related changes.

In the following submission, KPMG limits its comments to technical points related to the specific provisions proposed in the draft Regulations, and points related to clarifying the practical application of the draft Regulations.

Amendments related to trustee and responsible entity services

We understand that the policy reasons behind the introduction of Item 32 into Subregulation 70-5.02 (2), and related amendments to the GST Regulations, are to target perceived GST advantages enjoyed by some trusts over other trusts engaged in equivalent activities, particularly where there is a 'bundling' of costs into a single 'trustee fee'. We also understand that the proposed changes are intended to introduce neutrality from a GST perspective between the choices to adopt 'bundled' or 'un-bundled' fee arrangements.

We also understand that the changes are intended to address uncertainty surrounding the capacity in which a trustee makes some acquisitions, which can have an impact on the GST treatment.

Our comments in relation to the draft Regulations are consistent with the above policy intentions.

Paragraph (a) of Item 32 - requirement for trustee to be carrying on an enterprise and making taxable supplies to the trust

It is not clear why there is a need for the proposed paragraph (a) under Item 32, or how this is consistent with the policy intentions of the proposed changes. We note that the Explanatory

Memorandum accompanying the draft Regulations does not provide any explanation in this respect.

We note that Item 32 will apply to services acquired by a recognised trust scheme. We also note that under the current rules it is not a pre-requisite for a trustee to be carrying on an enterprise in its own capacity or to be making taxable supplies to the trust, in order for the trust to be entitled to RITCs for acquisitions that it makes that qualify as reduced credit acquisitions. We are aware of several examples of large taxpayer trusts whose trustees are not registered for GST, however RITCs are claimed by the trust.

Paragraph (a) will impose a seemingly unnecessary administrative burden on trustee entities that are currently outside of the GST system to register for GST solely to come within Item 32.

We also note in this regard that if the intention of paragraph (a) is to exclude certain trusts (e.g. private trusts) we do not consider this to be an effective means of achieving this. That is, it is quite simple to voluntarily register a trustee for GST purposes and to introduce taxable supplies between the trustee and trust.

We suggest removing paragraph (a) as it has the potential to create confusion as to its purpose and intention, and we do not see paragraph (a) as being necessary. If however paragraph (a) is intended to serve another purpose, then its role should be clarified and the purpose clearly enunciated in the accompanying Explanatory Memorandum.

Paragraph (b) of Item 32 - services excluded from Item 32

The Explanatory Memorandum accompanying the draft Regulations states that the exclusions under paragraph (b) are to ensure that “Item 32 properly targets the bundling issue only”. Given this intention, we call for the inclusion of further items that should be excluded under paragraph (b), in addition to the existing items:

- acquisitions covered by item 27 – we consider that excluding acquisitions of facilitation services provided by financial advisers/planners from Item 32 would be appropriate and consistent with the stated policy intention.
- acquisitions covered by items 11, 12, 13, 14 and 15 – we consider that the current proposal will unfairly disadvantage mortgage funds and other recognised trust schemes that make loans when compared to lenders that are not recognised trust schemes. Under the proposed changes, mortgage funds will only be entitled to recover RITCs at the rate of 55% for acquisitions under these items whereas other lenders will continue to be eligible to RITCs at the rate of 75%. We submit that this is not consistent with the policy intention and should be addressed.

Confirmation of intention that single fee arrangements require ‘apportionment’

The current drafting of the draft Regulations suggests that single ‘bundled’ fee arrangements will require an ‘apportionment’ to identify the extent to which the services provided by the trustee represent services that are excluded under paragraph (b). We strongly support this interpretation and consider that this is the only way in which the neutrality objective may be achieved.

We consider that the final Regulations should clarify this application of item 32, which may be achieved by including the words “to the extent” at the beginning of paragraph (b).

In this respect we also consider that the Explanatory Memorandum should include further examples of the application of Item 32, in particular an example involving a ‘single fee’ trustee arrangement and a reasonable basis of apportioning the fee for the purposes of applying item 32.

Neutrality objective

As referred to above, we understand that a key objective of introducing item 32 is to achieve GST neutrality between different payment arrangements adopted by trusts.

On this basis, we consider confirmation should be provided that trusts that unbundle payment arrangements after the introduction of item 32 will not be challenged. For example, if a trust chooses to restructure or unwind current single fee payment arrangements, these decisions should not be challenged under Division 165 of the GST Act.

We consider that, consistent with the neutrality principle, if the application of item 32 results in one payment arrangement being favoured over another, trusts that choose to review and alter payment arrangements to ensure they are on a level playing field with other trusts and entities engaged in equivalent activities should not be challenged in respect of these decisions.

Yours faithfully



Nick Kallinikios
Partner

Yours faithfully



Anthony Versace
Director