



5 April 2011

The General Manager  
Indirect Tax Division  
The Treasury  
Langton Crescent  
PARKES ACT 2600

By email: [Crossborder@treasury.gov.au](mailto:Crossborder@treasury.gov.au)

Dear Sir/Madam

#### **Discussion Paper – Application of GST to Cross-Border Transactions**

The Australian Financial Markets Association (AFMA) represents participants in Australian wholesale banking and financial services markets. Our members include Australian and foreign banks, stockbrokers, traders in the full range of financial markets and industry service providers. AFMA's members provide and receive large cross-border supplies relating to financial services in the ordinary course of their business. Furthermore, non-resident affiliates of AFMA members often provide services to Australian businesses in respect of global capital markets and transactions on global exchanges. In general, AFMA considers that achieving GST efficiency in cross-border financial services transactions is of great importance for the Australian economy as it will better enable Australian businesses to do business both within Australia and outside Australia.

Accordingly, AFMA welcomes the opportunity to comment on the proposals in the Discussion Paper, 'Implementation of the recommendations of the Board of Taxation's review of the GST on cross border transactions'. AFMA applauds the main thrust of the Discussion Paper and the Government's intent to make Australia an easier place for non-residents to do business by improving the design of the GST cross-border rules to ease unnecessary regulatory burdens that result in no net revenue gain to Australia. Members identified the issues raised by focus questions Q 1.4 – 1.6 of the Discussion Paper as being particularly relevant and important to achieving this objective. There is a common view that there are compelling reasons to adopt a meaning of "enterprise carried on in Australia" that is different to carrying on an enterprise in Australia through a GST permanent establishment (PE).

## Executive Summary

This section provides a summary of the key issues covered in this submission.

Our response to focus question 1.4 is that the broad scope of Australia's GST regime, which arises by virtue of the provisions specifying when an enterprise "is carried on in Australia" (specifically Section 9-25(6)(b) of the GST Act), causes significant uncertainty in the financial markets and, consequently, hinders the ability of Australian businesses to efficiently engage in financial transactions with the rest of the world. This approach is unique to Australia, is not consistent with OECD principles and it is not practical for business-to-business (B2B) transactions where the Australian recipient is registered for GST.

Ideally, the GST PE definition should be aligned with the income tax PE definition for all transactions. We recognise that the Government may wish to ensure that any amendment to the connected with Australia rules is revenue neutral. With this in mind, we accept that the current rules using the expansive GST PE concept may need to be retained for 'business to unregistered Australian consumer' (B2C) transactions but we note that the minimum viable option for reform is to align the GST and income tax PE concepts for B2B transactions. In our view, for B2B transactions, it should only be mandatory for the non-resident to register for GST if they have an income tax PE in Australia and the supplies made by that PE exceed the registration threshold for GST.<sup>1</sup>

In relation to focus question 1.5, we note that non-resident suppliers would encounter difficulty in ascertaining whether the recipient has a GST PE in Australia. We believe that the specific exception we recommend above for B2B transactions would adequately address this problem by providing more certainty for both the non-resident supplier and the Australian recipient. That is, for B2B transactions at least, it is easier to determine whether an income tax PE exists than a GST PE.

In this regard, we note that a useful, but not definitive, indicator of a PE presence in Australia is whether a company has an Australian Business Number (ABN). In order to receive an ABN, an entity must be carrying on an enterprise in Australia and having an ABN is necessary for the entity to operate within the GST system. We also note that while ASIC registration of an entity may be a useful indicator, it is not conclusive as many companies register for reasons other than the fact that they conduct business operations in Australia.

In practice, the burden of proof would rest with both parties to enquire at the time of contracting whether they are registered for GST or not. If the non-resident cannot confirm whether the recipient is registered for GST then it should not be able to take advantage of

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<sup>1</sup> In practical terms, the carve-out we suggest would be based on the GST registration status of both the non-resident supplier and the Australian recipient. If the non-resident is not registered for GST and does not have an income tax PE, and the Australian recipient is registered for GST, then the transaction would be taxable under Division 84 by the recipient.

the exception for B2B transactions and, instead, would need to determine its GST liability in accordance with the current “connected with Australia” rules. Similarly, if no GST has been charged on a supply by a non-resident and the GST registered recipient in Australia cannot confirm that the non-resident has an income tax PE in Australia that is registered for GST, then it should reverse charge the acquisition unless they suspect the non-resident PE of not complying with the law.

In relation to focus question 1.6, AFMA believes the current modification of the income tax definition of PE for GST purposes has a significant negative impact on the efficiency and effectiveness of the GST system. Every time a transaction between a non-resident global financier and an Australian business is facilitated in Australia, the foreign financier needs to determine whether it is caught by both the income tax PE rules and the GST PE rules. The income tax PE rules are fairly standard throughout the world and most corporations are used to dealing with this concept; however, Australia’s unique GST PE rules are not well understood because they are unique and it costs time and money (eg to seek advice) to determine whether an entity in a particular transaction falls within them. This introduces inefficiency for non-resident entities doing business with Australian businesses and the added complexity is unnecessary when one considers the relatively small amount of services that are captured under the extended GST PE concept.

In relation to focus question 1.9 and paragraph 85 specifically, AFMA considers Division 84 does not need to be modified as it already deals with acquisitions of a private and domestic nature adequately and requires them to be reverse charged where they are acquired from a non-resident service provider.

Our views are consistent with the broad concern of the Government that the GST law as it currently stands potentially draws non-residents unnecessarily into Australia’s GST system. We expand upon our summary comments below.

#### **1. Focus Question 1.4: GST PE - When is an Enterprise is Carried on in Australia**

AFMA considers there are compelling reasons to adopt a new concept of PE for GST purposes to compliment Proposal 1 in the Discussion Paper. In our view, Proposal 1 will still cause uncertainty and will not work practically unless both Australian businesses and non-resident businesses can easily determine whether they have “a presence” in Australia under the GST Act and whether or not they need to register for GST.

Under the current expansive GST PE definition, it is often not clear whether a non-resident is carrying on an enterprise under the GST PE concept when that entity uses an independent Australian agent to facilitate a supply between the non-resident entity and an Australian business. Notwithstanding the supply is actually “done” outside Australia, a judgement needs to be made whether the non-resident is caught by subsection 9-25(6)(b) of the GST Act. The matter to be determined is whether the use of an Australian-based independent agent is sufficient to cause the non-resident to be required to register for GST in Australia because they are providing the service “through” the agent. In practice, if a

non-resident considers that it is not making a supply through an enterprise it carries on in Australia then it will not charge GST on the supply. Meanwhile, if the Australian recipient is registered for GST, they will assess the GST on the transaction acquired from the non-resident under Division 84.

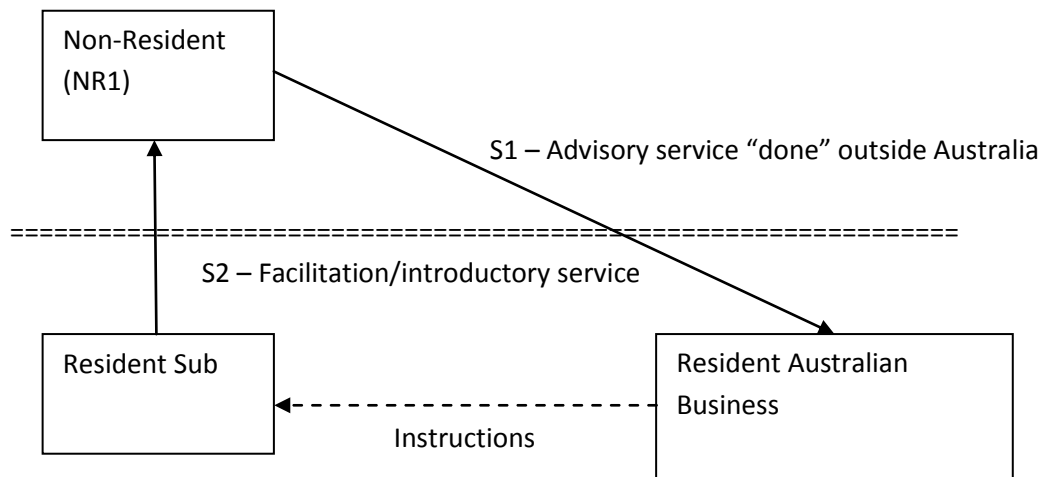
Under Proposal 1, this tension will still remain for all transactions “done” outside Australia. As suggested in paragraph 69 of the Discussion Paper, the Australian business recipients will still need to determine whether they are supposed to reverse charge the service or whether the onus was actually on the non-resident business to register for GST and charge GST. AFMA suggests, however, that this problem is easier to address where the definition of PE is less broad. In a well structured GST/VAT regime uncertainty on borderline issues should be avoided as much as possible by making rules that are easily complied with and generally place the burden of taxation on the party best suited to paying the tax (usually the local entity).

In its report to the Government on cross border GST in Recommendation 1, the Board of Taxation recognised this exact problem when it referred to “business presence”. It clearly recognised that the expanded version of a PE for GST purposes caused uncertainty. It also recognised that it is not best practice to expect non-residents to rely on an Australian Taxation Office (ATO) ruling to obtain comfort that the definition of GST PE does not and will not, in the future, apply to them (which is the current state of play). The Board of Taxation observed that Australia’s GST system is overly inclusive of non-residents which can place unnecessary compliance costs on non-residents. In AFMA’s view, a more practically defined concept of GST PE would assist in addressing this problem particularly for B2B transactions.

### **1.1. Example of the ‘Enterprise Carried on in Australia’ Problem**

Multinational corporations can have hundreds of entities located around the world and any one of these entities could potentially, at any point in time, provide a service to an Australian business. For instance, in a global capital markets environment, an Australian client could seek to raise debt or equity in a particular country or seek advice on doing so. Potentially, if the service provided by the non-resident entity is sufficiently facilitated or negotiated by people located in the Australian subsidiary of the multinational, then under the current GST PE rules the service may be considered to have been provided “through” the Australian subsidiary (notwithstanding the Australian subsidiary did not conclude the contract on behalf of the non-resident).

In practice, large financial transactions are sporadic, confidential and non-repetitive. The administrative burden of capturing these transactions, determining if it is necessary to register the non-resident entities making the supply and then deregistering them after the transaction is completed, is prohibitive. The problem is shown by way of the following example:



Under the expansive GST PE definition of ‘enterprises carried on in Australia’, subsection 9-25(6)(b) of the GST Act 1999 feeds into the definition of ‘supplies connected with Australia’. If Resident Sub is determined to be a “commission agent” or “broker” (both are undefined terms), then NR1 is essentially making a supply S1 “through an enterprise carried on in Australia” being Resident Sub (note Resident sub is not an “agent” for Division 57 purposes) to the Resident Australian Business. This is despite the fact that NR1 may have simply been introduced to Resident Australian Business by Resident Sub or instructions were relayed from Resident Australian Business to NR1 via Resident Sub and Resident Sub cannot bind NR1 contractually.

In this example, as advisory services are taxable, subsection 9-25(6)(b) of the GST Act results in NR1 being required to register for GST in relation to the transaction even though the actual service is performed/executed/“done” outside Australia and even though NR1 has no business presence in Australia for income tax purposes.

This problem arises because subsection 9-25(6)(b) broadens the concept of carrying on a business in Australia to include various agency activities that are specifically excluded from the income tax definition of PE (eg an agent that does not have a general authority to negotiate and conclude contracts on behalf of the principal can still cause a GST PE for a non-resident as can a commission agent/broker). Taken together with Australia’s narrow definition of financial supplies, this definition of GST PE is a major cause of uncertainty for non-residents supplying financial services to Australian businesses.

AFMA notes that this problem was recognised by the ATO in consultation with industry when GST was first introduced. The ATO illustrates the problem at paragraphs 46 and 47 of GSTR 2000/37 (attachment 1 contains an extract). These paragraphs outline two potential interpretations for making a supply through an agent. Currently, the financial services industry relies on the ATO’s view in GSTR 2000/37 that when a supply is made through an agent, it is necessary for the agent to make a supply for consideration on behalf of the principal and it can only do that if it has the authority of the principal. Nevertheless, the fact that the ATO recognises that an alternative interpretation is possible is a cause of uncertainty for industry. The financial services industry ideally would like legislative

clarification that an agent, through mediation or simply arranging the terms of a contract, is not sufficient to cause a non-resident to have to register for GST in Australia. AFMA considers that the guidance in the Explanatory Memorandum to the GST Act is not precise enough and there is an element of interpretative risk.<sup>2</sup> Unless this issue is addressed AFMA considers there will still be the possibility of future disagreement about the correct application of this concept even if Proposal 1 is enacted.

Attachment 2 provides two additional examples to illustrate the nature of the practical problems that providers of financial services with international operations may encounter as a consequence of the current GST rules.

### **1.2. International Consistency**

AFMA believes that the approach taken in the Australian GST law, through subsection 9-25(6)(b), to when an enterprise is carried on in Australia, is inconsistent with the approach adopted in other key GST regimes. Attachment 3 provides relevant extracts from the GST law in the UK, Canada and Singapore. It is apparent that the international norm is to adopt a more practical jurisdiction test that, for example, looks to the establishment “most directly concerned with the supply” particularly for B2B supplies. In application, this aligns much more closely with the income tax law approach to permanent establishments and the OECD model. In AFMA’s view, these jurisdictions have more efficient and lower compliance cost GST regimes than Australia and because of the legislative certainty around business presences they are more attractive hubs for financial services.

AFMA believes that the certainty of law and consistency with international practice provided by alignment of the GST law to the income tax approach to ‘permanent establishment’ would make Australia a more attractive place for global financial services firms to do business. This reform would essentially be revenue neutral if limited to B2B transactions (in conjunction with Division 84 for non-creditable transactions) and it would complement the Government’s objective to promote Australia as a global and regional financial centre.

### **1.3. Rationale for the Current Law**

The Explanatory Memorandum to the GST Act provides little guidance on the rationale for the broader definition of ‘permanent establishment’ in s.9-25. Two factors that we think may have been considered relevant in establishing the tax policy in this area were a desire to place similar compliance obligations on all providers no matter where they are located and a desire to capture taxable supplies provided to consumers that are made through commission agents or brokers (since the reverse charge mechanism in the GST Act would have captured the B2B supplies).

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<sup>2</sup> GST Act Explanatory Memorandum, Paragraph 6.277 - If you make supplies through agents the general law of agency applies. That is, a thing done by your agent as agent for you is a thing done by you.

We believe that the compliance obligations and the uncertainty generated by the expanded definition of GST PE exceed the associated marginal revenue benefit. At the time that Australia's unique approach was adopted, there was an incomplete understanding of the likely cost of adopting this approach. With the benefit of hindsight, it is clear that the incremental compliance costs incurred by non-residents to determine if they are caught under the section, the likely compliance costs incurred in the Australian businesses that acquire services from international businesses (to determine whether they should reverse charge or not) and, ultimately, the risk that neither the supplier nor the Australian recipient will in the end fail to assess the GST because of the confusion, are significant disadvantages. Taking these factors into account, we believe there is a sound case to amend the law to bring greater certainty to s.9-25 and to align it more closely with the international norm.

If Treasury is concerned that there may be tax revenue leakage, which would seem to be the more determinant factor, we acknowledge that a failure to tax a supplier that is not established in Australia but provides their services to unregistered consumers through a commission agent arrangement may potentially result in some revenue leakage. However, we maintain that it is inefficient to create enormous uncertainty in B2B transactions simply to have the ability to tax the non-resident's transactions with unregistered consumers. Ultimately, the GST regime should not cause a disproportionate burden on business and it should take account of the practical compliance and enforcement issues in setting rules in this area; the threshold approach to determining GST liability on direct consumer imports is a topical example of this point.

If the Government is concerned that a tightening of the scope of the 'permanent establishment' concept in s.9-25 to align with the Income Tax Act presents an unacceptable risk of reducing the GST base, then AFMA suggests this should be resolved by directing subsection 9-25(6)(b) to apply only to B2C transactions.

#### **1.4. Solution**

When considering the difficulties with the current 'connected with Australia' test, the Board of Taxation recommendation did not clearly enunciate their position where services are "done" outside Australia but facilitated by an agent in Australia other than to recommend that in order for a non-resident to be subject to GST it must have a "business presence" in Australia. AFMA considers that for the recommendation to be workable, it is necessary to align the concept of permanent establishment for GST purposes with the income tax definition of what constitutes a permanent establishment and then applying the Board of Taxation's recommendation as follows:

Supplies of services and intangibles by a non-resident will not be connected with Australia if:

- The supply is made to a business that is registered for GST; and
  - The non-resident supplier has no permanent establishment in Australia; or

- |  |
|--|
| <ul style="list-style-type: none"><li>○ The non-resident supplier has a permanent establishment in Australia but does not use that permanent establishment to make the supply.</li></ul> |
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In this way, a non-resident entity will know that if it is making a supply for income tax purposes, then it is also making a supply for GST purposes and ABN withholding purposes etc.

Re-focussing the connected with Australia rules for services in this manner would satisfy the following objectives set by the Board of Taxation:

- Fewer non-residents would be drawn into Australia's GST system reducing the costs of compliance;
- The same GST would be collected for B2B and B2C transactions; and
- Administration would be far simpler for the ATO as it does not have to seek compliance from a non-residents operating outside Australia's jurisdiction.

## 2. Other Issues

### 2.1. Focus Question 1.5 - Indicators of an Australian GST PE

The Discussion Paper at paragraph 69 suggests that for Proposal 1 to apply, the non-resident supplier will need to determine if the recipient is carrying on an enterprise through a GST PE in Australia and if the recipient is a foreign company a strong indicator of Australian GST PE would be if the foreign company is registered with ASIC. AFMA disagrees with this proposition and suggests the test should be based on an income tax PE whether or not the recipient is actually registered for GST.

AFMA suggests that PE for income tax purposes is a better proxy that is more in line with OECD principles than using a unique concept such as the GST PE. The income tax PE proxy is less likely to cause uncertainty because it is better understood throughout the world. In order for Proposal 1 to apply, AFMA considers that the test should simply be whether or not the non-resident recipient has a PE for income tax purposes in Australia and, whether or not the recipient is registered for GST.

Obviously, if the non-resident supplier itself has an income tax PE in relation to a specific transaction then it will come under the normal registration rules if it makes the supply through that PE. If the income tax PE does not make the transaction in question (but instead makes the supply from a PE outside Australia) and the Australian recipient is registered for GST then the B2B carve-out should apply and the Australian recipient will need to determine whether it should reverse charge the acquisition under Division 84. In AFMA's view, the burden of identifying whether the recipient of the service is registered for GST should rest with the non-resident at the time of making the supply.

It is also worth noting at this point that the Discussion Paper at paragraph 69 places undue reliance on ASIC registration as a strong indicator of the existence of an Australian PE.

While ASIC registration is a useful indicator, it cannot be relied upon to always indicate the presence of either a GST or an income tax PE.

The Corporations Act 2001 at section 911D provides for an expansive jurisdictional reach for Australia's financial services regulatory system that is based on the concept of inducing people in Australia to use financial services, rather than looking to where the business activity is actually conducted. Whether a body is carrying on business in Australia will depend on certain legal principles and on the circumstances of the case. Court cases indicate that the degree to which a body corporate's activities in Australia are conducted with system, regularity and continuity generally determines whether the activities can be characterised as carrying on a business in Australia. However, ASIC advises that system, repetition and continuity are not essential; a one-off transaction, if substantial, could also be seen by the courts as carrying on a business in Australia.<sup>3</sup>

So for example, a company that makes a one-off offer of securities to Australian investors who are wholesale clients, where it has not previously undertaken such activity in Australia and is unlikely to do so again, may be considered to be carrying on a business in Australia.<sup>4</sup> Another example is a broker in the UK that directly contacts and encourages a small number of people in Australia to buy parcels of shares on the London Stock Exchange – it may need an Australian Financial Services Licence, which generally involves registration.<sup>5</sup> We have also been told that, in some cases, a foreign company may register with ASIC for logistical reasons, rather than because they have a business presence in Australia.

Consequently, members have expressed concern about compliance costs associated with undue reliance on ASIC registration as an indicator of the presence of a GST PE and suggest that the test should simply be to determine whether or not the recipient has an income tax PE in Australia and is registered for GST.

## **2.2. Focus Question 1.9 - Compulsory Reverse Charge**

AFMA is uncertain about the intent of the commentary in paragraph 85 of the Discussion Paper. If a recipient is registered for GST and acquires a supply from a non-resident 100% for a private or domestic purpose then the acquisition would not be for a creditable purpose and the recipient (being the entity purchasing the service) would generally be required under Division 84 to reverse charge the acquisition, thus, resulting in no revenue leakage. In AFMA's view, Subsection 84-5(c) of the GST Act activates a requirement to reverse charge an acquisition where the acquisition is not solely for a creditable purpose. Section 11-15 defines what acquisitions have a creditable purpose and specifically states that you do not acquire a thing for a creditable purpose to the extent that it is private or domestic. Therefore, anything acquired by a registered recipient that is applied for a

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<sup>3</sup> ASIC Regulatory Guide 121 - Doing financial services business in Australia. See the following link [RG121](#).

<sup>4</sup> ASIC Guide 121, table 1.

<sup>5</sup> If the entity is not a foreign company registered under the Corporations Act but is a licensee, then it is obliged to have a local agent at all times who is authorised to accept service of process and notices on their behalf.

private or domestic purpose is not solely for a creditable purpose and as such the acquisition would need to be reverse charged. In AFMA's view, Division 84 would not need to be modified for private and domestic acquisitions as it already sufficiently deals with them.

### **2.3. Proposal 5 - Supplies Made to a Non-Resident but Provided to a Registered Business in Australia**

AFMA supports Elements 5.1 and 5.2 and Element 5.3 in principle. The essential point is that Australia's GST regime should seek to prevent non-resident corporations unnecessarily having to register for GST in order to recover GST charged to them on acquisitions. In general, most corporations will not be concerned about trivial amounts of GST on taxi fares etc rather they will look at large transactions that have a significant GST impost. Accordingly, alternative 2 (paragraph 197) may be preferable to alternative 1 (paragraph 195).


### **2.4. Proposal 8 - Non-resident Registration under the Agency Provisions**

AFMA supports Proposal 8 where the service is provided to an Australian consumer that is not registered for GST. Division 57 should not apply where the non-resident service provider has satisfied itself that the service is provided to an entity that is registered for GST. Where the service is provided to an entity that is not registered for GST then AFMA confirms that it should be unnecessary to require the non-residents to register for GST if they are acting through a resident agent under Division 57.

## **3. Concluding Comments**

Thank you for the opportunity to provide feedback on the proposals in the discussion paper. This is an important piece of work that we expect will result in significant and welcome improvements to the efficiency and operation of Australia's GST regime. We would be happy to discuss our submission with you or to answer any queries you may have in relation to it.

Yours sincerely



**David Lynch**  
**Head of Policy & Markets**

## **Attachment 1**

### **Extract from:**

### **GSTR 2000/37 - Goods and services tax: agency relationships and the application of the law**

#### **Transactions made through an agent**

45. Divisions 57 and 153 apply when a principal makes a relevant transaction (i.e., taxable supply, taxable importation, creditable acquisition or creditable importation) through an agent. The word 'make' and its derivatives, such as 'made', are used in the GST Act, inter alia, to connect the thing being transacted in the course of an entity's enterprise with the paying or receiving of consideration. When an agent is authorised to undertake a transaction on behalf of the principal, thereby binding the principal to the legal effects of the transaction, then the transaction is made by the principal through the agent.

46. An alternate view, based on the UK decision in *National Mortgage and Agency Company of New Zealand Limited v Gosselin and Another* (1922) 38 TLR 832, is that the agent does not have to have the authority of a principal to bind the principal to satisfy the requirement that the contract is made through the agent. The Supreme Court Rule that was considered in this case provided that when a contract is made 'by' or 'through' an agent in the jurisdiction, a writ of summons could be served on a defendant outside of the jurisdiction for a breach of that contract. Hence, it was necessary for the Court to decide whether 'by' and 'through' had different meanings. It was decided that 'by' meant the agent had power to bind the principal while 'through' meant it was enough for the agent, through mediation, to arrange the terms of the contract.

47. The Commissioner believes this case can be distinguished because the provisions of the GST Act require, inter alia, that you 'make' a supply or an acquisition if it is made for consideration. When the supply is made through an agent, it is necessary for the agent to make a supply for consideration on behalf the principal and it can only do that if it has the authority of the principal. Also, the Explanatory Memorandum to the GST Act explains that the principles of the general law of agency are to be followed in applying GST law to agency relationships.

## **Attachment 2**

These examples illustrate two practical problems presented to financial services providers under the current GST concept of "enterprises carried on in Australia" that cause uncertainty. Other examples of various cross border issues involving global custody, global payments services and global banking were provided in AFMA's submission to the Board of Taxation, available via this link - [AFMABoTsub](#).

### ***1. Cross-border underwriting***

The provision of underwriting services is an example of a commonly used international financial service that is impacted by the current law. For example, say, an Australian company observes an opportunity to raise low cost funds from Japanese investors and decides to raise debt finance by issuing securities in Japan. The Australian company may look to have its offering underwritten on a best endeavours basis by, say, a Japanese securities company. Often in these situations, an Australian financial services company would have introduced the Australian company to the Japanese securities company through relationship bankers employed by the Australian financial services company. The Australian financial services company may be paid a fee or commission by the Japanese securities company for introducing and arranging the underwriting deal between the Japanese securities company and the Australian company.

Under a strict interpretation of the current s.9-25(6)(b) of the GST Act, the Japanese entity would be required to register for GST assuming its fee earned from the Australian company exceeds the GST registration turnover threshold (and the service is not considered to be in relation to rights used or enjoyed outside Australia). This would be the case even though the underwriting service is done and provided in Japan to the Australian company. For Australia to require the Japanese securities company to register for GST would be nonsensical and contrary to OECD principles, and yet based on the current wording of s.9-25(6) it is not beyond doubt. The Japanese securities company must currently rely on GSTR 2000/37 to treat the underwriting service as not being connected with Australia.

### ***2. Global Broking***

Global brokerage/execution services provide a third example of how the "enterprise carried on in Australia" test, particularly with respect to the broad reading of "agent", may inappropriately bring non-residents into the GST system.

A frequent trade flow is for an Australian institution to engage an offshore broker or dealer entity to execute trades on a Foreign Securities Exchange. The Australian institution may provide its instructions/orders to a person employed by an Australian related entity of the offshore broker. That person inputs trades directly into the offshore brokers trading system and the offshore broker then execute and clears the transaction on the overseas exchange.

Notwithstanding the Australian institutional investor contracts directly with the offshore broker and the execution of the trade is "done" outside Australia, under a strict

interpretation of s. 9-25 the offshore broker potentially may be viewed as acting through a commission agent or broker located in Australia and a literal interpretation under the current rules, could lead to the conclusion that the offshore broker has technically made the supply of brokerage through an enterprise it carries on in Australia. Given that if GST were charged to the institutional investor, the institutional investor would generally be able to recover it in full, it would clearly be an unnecessary compliance burden to require either the offshore broker or the Australian affiliate to have to register for GST and charge GST to the institutional investor.

### **Attachment 3**

#### **UK: Value Added Tax Act 1994**

s9(2) The supplier of services shall be treated as belonging in a country if –

- (a) he has there a business establishment or some other fixed establishment and no such establishment elsewhere; or
- (b) he has no such establishment (there or elsewhere) but his usual place of residence is there; or
- (c) he has such establishments both in that country and elsewhere and the establishment of his which is most directly concerned with the supply is there.

#### **Canada: Excise Tax Act 1985**

**132.** (1) For the purposes of this Part, a person shall be deemed to be resident in Canada at any time

- (a) in the case of a corporation, if the corporation is incorporated or continued in Canada and not continued elsewhere;

#### **Singapore: Goods and Service Tax Act Chapter 117A**

s.15(3) The supplier of services shall be treated as belonging in a country if —

- (a) he has in that country a business establishment or some other fixed establishment and no such establishment elsewhere;
- (b) he has no such establishment in any country but his usual place of residence is in that country; or
- (c) he has such establishments both in that country and elsewhere and the establishment of his which is most directly concerned with the supply is in that country.