

# ANGST UPDATE

## ANNUAL GST ADJUSTMENT RULES WONDERFUL CONCESSION – BUT USE WITH CARE!

### New recent amendments

Recently, practical and sensible amendments were made to the GST rules to assist small enterprises with turnovers less than \$2 million per annum. These changes allow these enterprises to claim the full GST upfront on acquisitions with a partial creditable purpose in the BAS which related to the period of the acquisition. Then, once the tax return is completed and the degree of tax deductibility and therefore creditable purpose is actually known, the over-claimed GST can be refunded to the ATO in the BAS completed when the tax return is lodged. Where no income tax return is needed to be lodged, this annual adjustment of input tax credits must occur by the 31<sup>st</sup> December BAS following the income year in which the acquisitions are made.

This concession on GST recoveries makes sense for the many small enterprises that complete their own BAS lodgements and then employ an accountant to complete their income tax return and/or prepare their financial statements. Most of these taxpayers will not know how much of the acquisition is tax deductible when they incur it and therefore how much GST to claim in their BAS.

Many of these corrections are currently being fixed up as “alleged” mistakes. However they are not technically mistakes as prior to this change, taxpayers were required to adjust for partial creditable purpose in the BAS relating to the acquisition. Therefore, technically the ATO could apply GIC and penalties to these BAS “errors” prior to this legislative change.

### Assists small businesses...

More importantly, this law change legitimised common practice where over-claims were rectified when the accountant prepared the accounts and lodged the tax returns. This legislation legitimises common practice for most tax advisers in relation to their small clients.

To access this concession the taxpayer must informally elect to use these rules. This election does not require lodgement and a suggested pro-forma is attached. The rules commenced from 1<sup>st</sup> October 2004 for quarterly registered



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### CONTENTS

- 1. Annual BAS Adjustment Rules – Wonderful concession - but use with care!**

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“Angst Update” is a registered business name in the State of Victoria.

## About the Editor

Tony Evans is a Chartered Accountant who has extensive tax consulting experience over 22 years working in the profession including overseas experience working with VAT in the UK. The founder and Managing Director of GuSTAX Consulting Pty Ltd, he was previously a partner with a boutique tax division in one of the mid-tier accounting firms in Melbourne. Tony's diverse tax specialisation's include: -

- GST
- Employment taxes
- Corporate Taxes
- CGT
- PAYG
- Expatriate Taxation

He is also recognised as an excellent communicator and trainer and has conducted numerous technical sessions for the ICAA and members of the profession. ♦

enterprises and 1<sup>st</sup> November 2004 for monthly registered enterprises provided they are below the \$2 million turnover threshold. The legislation became law on 13<sup>th</sup> December 2004 with retrospective effect to those dates.

The rules are perfect to apply to partially deductible expenses like motor vehicle expenses of a sole trader or partner in a partnership as the following example shows:-

*Joe Bloggs runs a newsagency in his own name. He uses his car in his business and has a logbook which shows 85% business usage. This means that Joe can recover 85% of the GST on all of the car running costs each BAS provided he holds tax invoices or other appropriate documentation. Under this new rule, Joe can recover 100% of the GST each BAS and give back the 15% GST over-claimed in the BAS referring to the tax period when the tax return is finalised. This saves enormous time for Joe who struggles with his book work. He no longer needs to worry about partial GST recoveries when he does his accounts and can get his accountant to fix the claims up at tax time.*

### Restrictions on use...

There are some restrictions on recovering all of the GST upfront on these acquisitions. These include:-

- The acquisition must be partially creditable.
- The acquisition cannot be a reduced credit acquisition.
- The acquisition cannot relate to input taxed acquisition like

repairs on a residential rental property.

- It must be an acquisition and cannot be an adjustment event.

In addition, the annual adjustments required in relation to certain acquisitions like those under Division 129 must still occur in the June BAS lodgements independent of these year end adjustments.

These restrictions are generally quite reasonable and most taxpayers should already correctly identify input taxed acquisitions and reduced credit acquisitions. This means that this rule cannot be used to recover GST on 100% non-deductible expenses covered under Division 69 of the GST legislation as well as 100% private expenses.

### Application to entertainment expenses

These new rules could equally apply to entertainment expenses and overrule the special rules in Division 69-B. Provided the acquisition has partial creditable purpose, all of the GST can be recovered up front and repaid in the BAS when the tax return is prepared. This saves small enterprises the problems of applying one of the following methods every time they spend money on entertainment:-

## TAX WORKSHOPS AT HOLMESGLEN

Tony Evans will be presenting 4 comprehensive workshops early in 2005. Topics covered will be:-

<b>FBT</b>	<b>18<sup>th</sup> March 2005</b>
<b>CGT Small Business Concessions</b>	<b>18<sup>th</sup> April 2005</b>
<b>Tax Planning</b>	<b>23<sup>rd</sup> May 2005</b>
<b>Loans to Shareholders</b>	<b>20<sup>th</sup> June 2005</b>

Each of these workshops will run from 8.30am to 1.00 pm (CPD 4 hours).

Tony's renowned practical presentation style is complemented by a comprehensive set of notes which will be emailed to all participants at least a week before the workshop to ensure you get the most out of the training. Case studies and solutions will also be provided during the workshop.

Workshop prices (GST inclusive) are:-

Details	Individual Delegate	Additional persons from the same firm	
		Second	Additional Participants
Price per individual workshop	\$165.00	\$154.00	\$143.00
Package ticket – For all 4 workshops	\$625.00	\$585.00	\$550.00

Numbers will be **limited** to ensure you receive maximum benefit.

For those firms wishing to enjoy the workshops in the “comfort of their own office”, we can arrange one or all of these workshops to be conducted at your premises at a mutually convenient time. The cost of an in-house workshop for suburban practices is \$1,250.00 plus GST, or \$4,500.00 plus GST if you wish to book all 4 workshops. We are more than happy to present the workshops to country and interstate practitioners, and pricing is available on application.

**Contact Tony Evans to find out more on: -**

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- Adopting the 50/50 method for meal entertainment across the board
- Claiming on a percentage based on a log for 12 weeks only to make later adjustments
- Claiming based on the actual portion of deductibility of the expense.

Instead, a wash up adjustment can occur when the accountant finalises the taxation return.

### Problems with the change in law

Like all good things, the drafters of the law stuffed up this change. To use this annual adjustment method, you must have a partial creditable purpose at the time you make the acquisition. If there is no creditable purpose, no GST can be recovered and fixed up later. This would seem to be fair until you look at entertainment expenses.

Where the entertainment is not “meal entertainment”, you do not have access to the three choices above. You can only use specific allocation for income tax deductibility and therefore for FBT liability and GST recovery purposes as well. Under specific allocation, the acquisition will either be deductible in full, partially deductible or not deductible at all. Where it is deductible in full or partially deductible, these new rules can be used. However where the expense is non-deductible in full, no GST can be recovered upfront as it is no longer a partially creditable acquisition. This means that these small businesses must have an

expert knowledge of the difference between meal entertainment and general entertainment and must also know the tax deductibility rules for entertainment expenses as well. This is not what was intended by the legislation!

The situation is just as bad for meal entertainment. These rules work well where the 12 week log or 50/50 method for meal entertainment is used. Every meal entertainment expense will be partially deductible and partially creditable in these cases. However, should the taxpayer use the specific allocation method, some meal entertainment expenses may now have no creditable purpose as they will be fully non-deductible. Again, in this

case the GST cannot be recovered in full upfront. However, you will not know this until after the event when the tax return is prepared and the method chosen.

The only other alternative is to never use specific allocation for meal entertainment but this would be an unreasonable restriction on the taxpayer. Again the taxpayer must be a tax expert in order to correctly complete his BAS under these new rules. This is not the intention of this law change!

### **Clarification must be provided by the ATO**

The ATO needs to issue some guidance notes on what is acceptable practice here in the form of a ruling or determination. In relation to entertainment and meal entertainment expenses, a full recovery should be allowed regardless of the eventual level of creditable purpose determined when the tax return is completed and the refund of the over-claimed GST is made. Anything less than this is just unworkable and defeats the object of the legislation. We acknowledge that these rules will affect a lot of taxpayers and will involve significant dollars. However it is purely a timing matter and will still be immaterial when the total GST tax collections are taken into account.

### **Where to from here**

Until we obtain clarification from the ATO, advisors need to tread carefully. They should put elections in place to use these annual adjustment rules as soon as possible. After all, most of these enterprises will have been claiming the GST on these expenses upfront incorrectly anyhow. This will legitimise most of these claims as long as they are subsequently fixed up. Secondly, advisors preparing tax returns will need to calculate these adjustments and put them through the BAS lodgements when the tax returns are completed. Again, this is already occurring in most cases.

If we hear that the law has been fixed for this error or the Commissioner issues an acceptable ruling, we will inform you in a later Angst Update. In the mean time, this is just another demonstration of our simplified tax system. Again, it demonstrates that the boffins in Treasury and Parliament are completely out of touch with reality!

## **TAX TRAINING FOR YOUR PRACTICE**

*With the complexity of taxation laws, it is now essential that you and your staff undertake regular taxation training. Gustax Consulting offers significant benefits in providing training including:-*

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# GST ANNUAL ADJUSTMENT ELECTION

**GST / ABN REGISTRATION No:-** \_\_\_\_\_

I / We \_\_\_\_\_

hereby elect to use the GST annual adjustment rules which allow us to claim all of the GST on acquisitions made which have a partial creditable purpose (except reduced credit acquisitions and input taxed acquisitions) in the BAS referable to the acquisition.

We hereby confirm that we meet the qualifying requirements:-

- Our annual GST turnover is less than \$2 million;
- We will pay back the excessive input credits claimed in the BAS referable to the tax period in which the associated tax return is lodged.

This election is to take force from \_\_\_\_\_

\_\_\_\_\_  
Name of Taxpayer

\_\_\_\_\_  
Date