



## THE TAX INSTITUTE

8 November 2018

The Miscellaneous Amendments Coordinator  
Law Design Office  
Treasury  
Langton Crescent  
PARKES ACT 2600

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

Dear Sir/Madam:

### Miscellaneous amendments to Treasury portfolio laws 2018

The Tax Institute welcomes the opportunity to make a submission to Treasury in relation to the *Treasury Laws Amendment (Measures for a later sitting) Bill 2018: Miscellaneous amendments* Exposure Draft (**Exposure Draft**).

The Tax Institute seeks to address one matter in the Exposure Draft in relation to the amendment to subparagraph 14-255(1)(b)(i) of the *Taxation Administration Act 1953* (Cth) (**TAA**).

Our understanding is that the proposed amendment to subparagraph 14-255(1)(b)(i) is directed at the situation where the entity issuing the notification under section 14-255 is not the same entity that has the GST liability on the supply. The example in the Explanatory Memorandum at paragraph 1.71 is where the entity issuing the notice is a member of a GST group. Other relevant examples might be GST registered Joint Ventures and mortgagee sales.

We consider that, while the proposed amendment may not be directly relevant to bare trusts (consistent with *Law Companion Ruling LCR 2018/4 Purchaser's obligation to pay an amount for GST on taxable supplies of certain real property*) that where there is a bare trustee acting for a bare beneficiary, the withholding notice is required to be issued by the bare beneficiary). There is a broader issue for bare trusts and potentially other arrangements where the question arises whether it is appropriate for the name of the bare beneficiary or the relevant taxpayer to be disclosed to the purchaser.

For example, with bare trusts, this approach appears at odds with WTI 2013/2, *A New Tax System (Goods and Services Tax) Waiver of Tax Invoice Requirement (Acquisitions from or Acquisitions by a Beneficiary of a Bare Trust) Legislative Instrument 2013*, which effectively provides that tax invoices issued by and to bare trustees are valid tax invoices (i.e. the tax invoices can reference the name and ABN of the trustee, rather than the beneficiary). Further, *Goods and Services Tax Ruling GSTR 2008/3 Goods and services tax: dealings in real property by bare trusts* recognises that bare trusts are often used for anonymity.

Consideration should be given by both Treasury and the Australian Taxation Office (ATO) to ways in which the taxpayer's name need not be disclosed to the purchaser where the name would not otherwise be disclosed to the purchaser, and in the case of a bare trust the bare beneficiary's name.

A proposed solution is that the relevant taxpayer could instead be required to lodge an application with the ATO to specify that it is the entity that has the GST liability on the sale but that the legal vendor should be eligible to issue the notice. In the case of a bare trust, the bare trustee could lodge an application with the ATO to issue the withholding notice to a purchaser on behalf of the bare beneficiary (with the trustee's details listed on the withholding notice). The ATO system could then allocate the GST credit to the relevant taxpayer.

It would be useful if subparagraph 14-255(1)(b)(i) provided the Commissioner with the ability to issue a Legislative Determination to set out how bare trustees/beneficiaries (and parties in other similar arrangements) could satisfy the notification requirements under this provision.

We note that Form 1<sup>1</sup> of the relevant ATO forms, when you get to the supplier details section there is a note which states "Where notification has been received advising a GST group representative or an entity other than the supplier is liable to pay the GST, then provide their details below." It appears the ATO has already tried to encourage purchasers to obtain and provide the relevant supplier details. The proposed amendments at least encourage consistency with how the ATO is trying to administer the current provisions, though we consider that they should go a step further and provide the Commissioner with the ability to issue Legislative Determinations for the reasons stated above.

### *Practical Matter*

For completion, from a practical perspective, members note they have had difficulty with GST Withholding amounts being paid to the ATO in the name of a GST Group member and needing to contact the ATO to request the withholding amount to be moved to the relevant GST Group representative. The proposed amendments assist the technical issue of whether a valid vendor notification has been issued. They do not address this

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<sup>1</sup> *GST Property Settlement Withholding Notification*  
(<https://www.ato.gov.au/gstpropertysettlementform1/>)

practical issue. However, this amendment will allow all Vendor notifications to be issued in the name of the relevant GST Group member so that should minimise, we hope, the practical issue of a purchaser putting down the incorrect GST member from the contract rather than from the Vendor notification.

It appears that a similar practical issue arises for bare trusts and bare beneficiaries.

The Tax Institute intends to raise these matters with the ATO separately.

If you would like to discuss any of the above, please contact either myself or Senior Adviser, Bruce Quigley on 02 8223 0011.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Tracey Rens', with a stylized flourish at the end.

**Tracey Rens**  
President