

THE FIFTH ANNUAL GST SYMPOSIUM

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A two-day symposium for organised by
Television Education Network Pty Ltd and sponsored by
Sound Education in Taxation

Sheraton Mirage Resort & Spa, Main Beach, Gold Coast
Thursday 11 and Friday 12 February 2016

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Supply for consideration – the growing body of case law examined

Tripartite complication – identifying the recipient

Identifying supplies and apportioning value – the rules

Barter transactions and e-commerce

Common traps in property developments

GST and infrastructure

– managing GST liabilities and avoiding ITC leakage

Development lease arrangements

Creditable purpose after Rio Tinto

Future-proofing GST clauses

GST implications of the peer to peer model

Cross border transactions – GST and offshore supplies

Foreigners doing business in Australia – the GST minefield



The professional development specialists

DAY 1 – THURSDAY 11 FEBRUARY 2016

MORNING THEME: SUPPLY AND CONSIDERATION

9.00- 9.10 am Introduction and welcome

9.10 – 9.55 am

Session 1: Supply for Consideration: Piecing Together the Case Law Puzzle

The cornerstone of GST liability is that there must be a 'supply for consideration'. This session will take a look at the growing body of case law on the meaning of 'supply for consideration' and will then examine how to identify consideration for a supply in a range of circumstances. It includes:

- What is enough to be a supply?
- When is a supply "for" consideration?
- Who is the supplier and recipient?
- Consecutive acts involving more than one supply
- Some of the cases
- AP Group Ltd v Commissioner of Taxation
- Commissioner of Taxation v Qantas Airways Ltd
- Commissioner of Taxation v MBI Properties
- Falk and Commissioner of Taxation
- Financial grants, out of court settlements, subsidies and windfall gains

Speaker: Justice Jennifer Davies, Federal Court of Australia

9.55 – 10.05 am Panel Comments and Questions

10.05 – 10.50 am

Session 2: The Tripartite Complication: Stretching the Meaning of 'Recipient'

When you have only two parties in a transaction, it is not difficult to work out who is the recipient of a supply. However, it becomes much harder to identify the recipient of a supply in a tripartite arrangement. This presentation will analyse the supplies in the context of tripartite arrangements and assess the GST consequences of such arrangements. It includes:

- Tripartite arrangements:
 - Identifying the number of supplies
 - Importance of consideration
 - Is there a nexus between the supply and consideration?
 - Who was the supply made to?
- Structuring a GST neutral tripartite arrangement – what works and what doesn't?
- Aquatic Air Pty Limited v Siewart
- Ride sourcing arrangements: the Uber example

Speaker: Chris Sievers, Barrister, Victorian Bar, Melbourne

10.50 – 11.00 am Panel Comments and Questions

11.00 – 11.25 am Networking Break and Morning Tea

11.25 am – 12.10 pm

Session 3: What is in The Mix? Supplies and Apportionment

Characterising supplies is a difficult issue, particularly when you start analysing mixed and composite supplies. Understanding the difference and the GST consequences is crucial to accurately advise your clients. This presentation will outline the rules for identifying supplies and apportioning value. It covers:

- Identifying the types of supplies:
 - Mixed vs composite supplies – how do they differ in practice?
 - What are their relevant features and characteristics?
 - What rules apply?
- Ancillary supplies
- Valuation and apportionment in different types of supplies
- Identifying the legal and non-legal characteristics of the supplies
- Judicial consideration: ATS Pacific v Commissioner of Taxation and Luxottica
- Mixed supplies and retirement villages – the Living Choice case [2014] AATA 168

Speaker: Andrew Sommer, Partner, Clayton Utz, Sydney

12.10 – 12.20 pm Panel Comments and Questions

12.20 – 1.05 pm

Session 4: Barter Transactions and E-Commerce: I'll Scratch your Back . . .

Despite their complexity, barter transactions are an increasingly common aspect of commercial dealing today. Indeed most contracts involve both sides doing things as well as paying money. However, it can be difficult to unravel the GST implications of transactions where there is non-monetary considerations supplied by both sides. This presentation will cover:

- Capturing and recording transactions
- GSTR 2003/14
- GST treatment of Bitcoin
- GST treatment of business alliances in the online world
- GST treatment of loyalty programs
- "Shadow" supplies
- Determining agreed market value
- Safe harbour opportunities for barter transactions:
 - The ATO's Safe Harbour Steering Group

Speaker: Ken Fehily, Director, Fehily Advisory, Melbourne

1.05 – 1.15 pm Panel Comments and Questions

1.15 – 2.15 pm Luncheon

DAY 1 – THURSDAY 11 FEBRUARY 2016

AFTERNOON THEME: GST AND PROPERTY

2.15 – 3.00 p.m.

Session 5: Common Traps in Property Developments

The GST issues associated with property development are often challenging and complex. This presentation will look at a number of situations which face property developers and includes:

- Joint venture v partnerships – what are the GST implications of each business structure?
- De-registering for GST - no longer carrying on an enterprise or winding down?
- Going concern and margin schemes
- Change of purpose in property developments and Division 129
- What are the GST consequences?
 - Subdividing and selling off part of a main residence
 - Partitioning of land
 - Demolishing and rebuilding
- Avoiding bad GST clauses

Speaker: John Haig, Principal, HF Partners, Melbourne

3.00 – 3.10 p.m. Panel Comments and Questions

3.10 – 3.55 pm

Session 6: The Development Lease Arrangement – Have You Got it Covered?

This session covers the GST treatment of transactions arising in the context of development lease arrangements between government agencies and private developers. We will discuss the impact of GSTR2015/2 and cover:

- Development leases arrangements – identifying and characterising various supplies for consideration under a development lease agreement
 - Grant of a development lease
 - Undertaking works on land
 - Valuation of non-monetary consideration
- Margin schemes
- Double and triple taxation
- Case study: student, social and remote housing outsourced under PPP arrangements

Speaker: Rhys Guild, Partner, Minter Ellison, Sydney

3.55 – 4.05 pm Panel Comments and Questions

4.05 – 4.25 pm Networking Break and Afternoon Tea

4.25 – 5.10 pm

Session 7: GST Private Rulings Under the Microscope

Asking for a private ruling from the ATO can often be a good way to obtain the Commissioner's views on an arrangement, especially if there is any uncertainty as to the tax position. Private rulings are valuable in that they legally bind the Commissioner to a position, affording the recipient of the private ruling a degree of protection. But how far does the protection extend and what happens if the Commissioner changes his mind? This presentation will cover:

- The utility of private rulings
- The mechanics of applying for a private ruling – getting the "scheme" right
- What happens if the Commissioner changes his view?
- The meaning and scope of a taxpayer's "reliance" on a private ruling
- Who else is bound by a private ruling?
- Private rulings and Part IVC disputes
- Private rulings and contentious property issues – case studies and war stories

Speakers: Gina Lazanas, Partner, and Robyn Thomas, Senior Associate, Balazs Lazanas & Welch LLP, Sydney

5.10 – 5.20 pm Panel Comments and Questions

DAY 2 – FRIDAY 12 FEBRUARY 2016

MORNING THEME: CURRENT TECHNICAL GST ISSUES

9.00 – 9.45 am

Session 8: Creditable Purpose After Rio Tinto

The Federal Court's analysis of 'creditable purpose' in *Rio Tinto Services v Commissioner of Taxation* has raised a number of questions. The concept of creditable purpose is fundamental to claiming of input tax credits. This session covers:

- How do you determine creditable purpose?
Understanding the changes to the creditable purpose test post Rio Tinto
- What is the effect of section 11-15(2) of the GST Act?
- What does "to the extent that" mean? Making sense of the qualifying and disqualifying purposes
- Is the acquisition for a creditable purpose?
 - Wholly, partly or not creditable?
 - What credit are you entitled to?
- Apportionment – what are the relevant factors
- Adjustments – when are they needed?

Speaker: Kevin O'Rourke, Principal and Australian Practice Leader, Ryan, Sydney

9.45 – 9.55 am Panel Comments and Questions

9.55 – 10.40 am

Session 9: Future-proofing GST Clauses

Structuring GST clauses into agreements to deal with all relevant issues for today and the future, in particular:

- Drafting tips, tricks and traps
- Dealing with increasing and decreasing adjustments
- Refunds (the passing on and reimbursement tests and the Commissioner's discretion) and adjustment events under Division 142/Division 19
- Division 134 and third party payment adjustments
- Broadening the GST base
- Changing the GST rate
- Changing the liable party
- Other law changes

Speaker: Geoff Mann, Partner, Ashurst, Sydney

10.40 – 10.50 am Panel Comments and Questions

10.50 – 11.10 am Networking Break and Morning Tea

11.10 - 11.55 am

Session 10: Disruptive Technologies and Financial Services: The GST Implications of the Peer to Peer Model

Technology is causing constant change to our ways of doing business. Disintermediation presents many new opportunities and challenges for businesses. This presentation will cover peer to peer online services, with a focus on the following:

- Financial supplies – what is the impact in our global, digital economy
- Creditable purpose – the fundamentals for determining the creditable purpose
- Concept of "enterprise" in the new economy
- New economy trading, including:
 - Peer to peer lending
 - Crowd funding
 - Uber
 - Air BnB
- Recent cases and how they affect financial supplies
 - MBI Properties and Rio Tinto

Speaker: Stephen Howlin, Assistant Commissioner, International, Digital and Financial Services, Indirect Tax, Australian Taxation Office

11.55 – 12.05 pm Panel Comments and Questions

12.05 – 1.05 pm Lunch

DAY 2 – FRIDAY 12 FEBRUARY 2016

AFTERNOON THEME: CROSS BORDER TRANSACTIONS

1.05 – 1.50 pm

Session 11: Crossing the Border: GST and Taxing Consumption of Services and Intangibles in Australia

In our fast paced economy, GST struggles to keep up. Advisers face a range of issues when considering offshore supplies and whether the supply is in fact connected to Australia. The Internet and cross-border transactions have opened a whole new can of worms when we think about GST and taxing consumption in Australia. This presentation will cover:

- Amendments to the place of taxation rules for Imported services and digital products
- Foreign suppliers navigating Australia's rules - connection (including GST fixed place), GST-free, and threshold
- Who's liable - B2B, B2C and market platform
- Key new terms - Australian consumer, potentially chargeable entity and inbound intangible consumer supply
- The OECD Guidelines for place of taxation and recommended collection mechanisms
- What other countries are doing

Speaker: Josephine Drum, Senior Technical Specialist, Technical Leadership and Advice, Indirect Tax, Australian Taxation Office

1.50 – 2.00pm Panel Comments and Questions

2.00 – 2.45 pm

Session 12: Crossing the Border Again: GST and Taxing Goods Sold to Australians by Non-residents - Navigating the GST Minefield

A number of complex issues arise when non-residents want to do business with Australians. Chief among them is who is on the hook for GST on the import of goods and whether the sale of goods is connected with Australia. This presentation will cover:

- Making sense of the low value threshold
- Customs getting their cut:
 - Is the duty imposed on the person or goods?
 - Do customs have a discretion to recover?
 - Pursuing Australian recipients of goods for underpaid duty
 - Studio Fashion (Australia) Pty Ltd v CEO of Customs
- Protecting the Australian buyer from an overseas seller under-declaring the value of goods
- Credit for GST paid on taxable importations – who can claim it?
- Law changes
 - Calculating the value of a taxable importation
 - Vendors becoming liable for GST on low value consignments
- Foreign suppliers and the payment of GST:
 - Who makes the supply and to whom?
 - Determining whether they are making taxable supplies
 - Should they register?
 - What issues do non-residents face when registering for GST

Speaker: Suzanne Kneen, Director, PricewaterhouseCoopers, Melbourne

2.45 – 2.55 pm Panel Comments and Questions

2.55 pm Conference Close

ABOUT THE FACULTY

Justice Jennifer Davies, Federal Court of Australia

Jennifer Davies was appointed to the Federal Court of Australia in July 2013. Prior to her appointment she was a Judge of the Supreme Court of Victoria in the trial division.

Justice Davies graduated from Monash University with a Bachelor of Jurisprudence and Bachelor of Laws in 1978 and was admitted as a barrister and solicitor to the Supreme Court of Victoria in 1980.

She was appointed Senior Counsel for Victoria in 2004 and while at the Bar Justice Davies practiced in corporations, revenue, commercial and administrative law. She is a former President of the Tax Bar Association, Chair of the Ethics Committee of the Victorian Bar and Assistant and Secretary Convener of the Women Barristers' Association.

Justice Davies is a Senior Fellow at University of Melbourne lecturing in post graduate courses.

Chris Sievers, Barrister, Victorian Bar, Melbourne



Chris practices primarily in revenue law, with a particular focus on indirect taxes including GST and stamp duty.

Since being called to the Bar in 2001, Chris has developed a substantial advice practice and has appeared on

behalf of taxpayers and the Revenue in numerous disputes in Federal and State jurisdictions, including as Counsel for the taxpayer in two of the first three GST cases to be heard by the High Court.

Chris recently acted as counsel for the successful applicant in Chamber of Commerce and Industry of Western Australia [Inc] and Commissioner of State Revenue [2012] WASAT 146 where the President of the State Administrative Tribunal found that the Chamber was a charitable organisation and was entitled to an exemption from payroll tax - the Revenue did not appeal the decision.

Chris left the Bar for a little over three years to head the Melbourne Tax Controversy Group at PricewaterhouseCoopers and to lead a national focus on indirect tax controversy matters. During that time, Chris acted on behalf of clients in a wide range of taxation disputes, ranging from risk reviews and audits to litigation.

Andrew Sommer, Partner, Clayton Utz, Sydney



Andrew is acknowledged as one of Australia's best tax lawyers. He is an expert in indirect taxation, with a particular specialty in complex GST issues.

He is called upon to advise on all aspects of the GST for any major projects or transaction. He advises clients on financial structuring (including securitisation), property dealings and commercial transactions. Andrew has particular experience in conducting and managing disputes with revenue authorities.

Although Andrew's practice is primarily focussed on GST, he is a notable expert on various tax issues including income tax, payroll tax, fringe benefits tax and R&D tax incentives. Before joining Clayton Utz, Andrew worked at a major accounting firm.

Andrew was voted by peers as one of Australia's Best Lawyers in Tax (2008-2014)

Ken Fehily, Director, Fehily Advisory, Melbourne



Fehily advisory is regarded as one of Australia's most experienced and effective advocates in GST matters. Established by its Principal, Ken Fehily, Fehily Advisory's focus is consistently directed to clients

achieving optimal commercial outcomes and GST refund approvals from the ATO; protecting clients' positions during ATO audits and disputes, contractual negotiations and major deal transactions; and mitigating negative impacts arising from acting on less than optimal GST advice from others.

Ken has over 20 years experience specialising in GST in Australia and internationally, including having personally assisted the Australian government write the GST law and having advised the ATO on how GST is meant to work to the benefit of businesses.

Ken has a proven track record as an effective advocate for clients, with his technical expertise, approach and business acumen being highly regarded and respected by clients, other professionals and the ATO.

ABOUT THE FACULTY

John Haig, Principal, HF Partners, Melbourne



John is an indirect tax adviser specialising in the more complex issues in GST, wine tax and luxury car tax. He is a longstanding member of the national indirect taxes sub-committee of the Institute of Chartered

Accountants in Australia and New Zealand, a Certified Practising Accountant and a fellow of the Tax Institute.

John commenced his own indirect tax consultancy in 2003. He has conducted many seminars and presentations on the major issues in GST, which inevitably involves a strong focus on real property transactions. Since the inception of the New Tax System he has written many papers on GST and is a regular presenter for the Television Education Network.

Rhys Guild, Partner, Minter Ellison, Sydney



Rhys Guild is the Head of Sydney Tax group and also the firm's national GST leader. He is recognised as one of Australia's foremost GST/VAT practitioners.

Rhys advises leading corporations and public entities on GST, PAYG and customs duty, focused on the financial services, property and construction, energy, telecommunications and government sectors.

In addition to advisory work, Rhys assists clients with ATO audits, disputes and applications for binding rulings. He also represents clients before the Federal Court, the Full Federal Court and the High Court of Australia.

Some long-standing clients include American Express, Brookfield, Charter Hall, Transfield Holdings and Westpac, as well as various Commonwealth and NSW State government entities.

Consistently recognised by his peers as one of Australia's Best Lawyers in tax in 2010, 2011, 2012 and 2013. Rhys is a regular commentator and speaker on diverse GST-related issues and developments.

Gina Lazanas, Partner, Balazs Lazanas & Welch LLP, Sydney

Gina is amongst the mostly highly regarded practitioners in GST, a fact attested to by her appointment as the Chairperson of the Taxation Institute's GST Subcommittee which liaises with the Government and the Australian Taxation Office (ATO) on the development of the GST law.

Before joining Baker & McKenzie as a partner, Gina was a partner at PricewaterhouseCoopers and before that at Firmstone & Feil.

Gina's extensive experience with the old sales tax, where litigation was a common way of resolving disputes with the ATO, has translated well into the GST environment and Gina has found herself at the forefront of a number of complex cases that are testing the limits of the GST.

Robyn Thomas, Senior Associate, Balazs Lazanas & Welch LLP, Sydney



Robyn specialises in goods and services tax, tax litigation and tax administration. She advises clients on a wide range of domestic and international indirect tax issues, including in respect of global

supplies, property, anti-avoidance and the resolution of disputes with the Australian Tax Office.

Prior to joining BLW, Robyn was employed by Baker & McKenzie and Ernst & Young.

Robyn is a graduate of the University of Technology, Sydney and has been awarded a Bachelor of Laws and a Bachelor of Arts in Communication.

Kevin O'Rourke, Principal and Australian Practice Leader, Ryan, Sydney



Kevin specializes in providing goods and services tax consulting pertaining to wine equalization and luxury car taxes.

Prior to joining Ryan, Kevin was Partner and National Goods and

Services Leader, of a national accounting firm and Chief Executive Officer of a national legal firm.

Kevin is a highly sought after speaker on goods and services tax.

Geoff Mann, Partner, Ashurst, Sydney



Geoff advises on indirect tax with particular emphasis on goods and services tax, stamp duty, land tax and human resources taxes (for example, fringe benefit tax, payroll tax, workers' compensation premiums, superannuation guarantee charge and PAYG).

Geoff's tax experience spans over nineteen years. He has advised on a wide range of transactions and issues and across all states and territories duties legislation. During the early 1990s he was a senior member of a

ABOUT THE FACULTY

major chartered accounting firm's team responsible for preparations for a Hewson Fightback! GST proposal.

Geoff's broad practice enables him to consult in relation to overall tax management strategies and review programs as well as due diligence exercises. Clients value his ability to provide them with integrated tax solutions, as well as effective outcomes for the tax issues involved with mining and manufacturing, financing transactions (including leasing and structured finance and securitisations), real property-based transactions and mergers and acquisitions.

Suzanne Kneen, Director, PricewaterhouseCoopers, Melbourne



Suzanne has advised on all aspects of GST for a range of industries since its introduction in 2000. Suzanne's experience includes seven years in a national law firm . Suzanne also spent two years in London specialising in VAT in the financial services industry.

Suzanne has co authored several papers that have been presented at industry conferences and seminars on GST issues. She has presented at the ICAA Business Forum, ATAX GST Workshop, Legalwise seminars and Television Education Network audio and video productions.

Suzanne is a member of the Tax Institute's GST technical subcommittee.

GENERAL INFORMATION

Conference Registration Fee

The conference registration fee includes attendance at the conference, a copy of the conference papers, refreshment breaks and lunch on both conference days.

The registration fee does not include any travel or accommodation. Delegates are advised to make their own travel arrangements.

CPD Hours/Units/Points

Accountants: 11 CPD/Training hours

Solicitors (except WA): 7 CPD units (substantive law) (for specialists - total session time excluding breaks = 11 hours)

Solicitors in WA: 6 CPD points

The Conference Venue

Sheraton Mirage Resort & Spa Gold Coast

71 Sea World Drive, Main Beach, Queensland

The Sheraton Mirage is located in the heart of Main Beach on the Gold Coast, Queensland.

Conference Delegate Rate at the Sheraton Mirage

Television Education Network has negotiated a special conference delegate rate with the Sheraton Mirage. These rates are strictly subject to availability. Delegates are advised to make their own accommodation arrangements directly with the Sheraton Mirage.

THE SHERATON MIRAGE HAS ADVISED THAT THEY DON'T HAVE A LOT OF VACANCIES AT THIS TIME.

IF YOU WANT TO STAY AT THE SHERATON WE SUGGEST THAT YOU BOOK EARLY.

Standard room with buffet breakfast for 1 person	\$295
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Hotel Reservations: Phone: (07) 5591 1488 www.sheratonmiragegoldcoast.com

Other accommodation option – Palazzo Versace

We have organised an **alternative deal with Palazzo Versace** – situated directly across the road from the Sheraton.

Delegates are advised to make their own accommodation arrangements directly with the Palazzo Versace.

Standard room with buffet breakfast for 1 person	\$339
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Hotel Reservations: Palazzo Versace: (07) 5509 8000 www.palazzoversace.com.au

Travelling to the Conference Venue

Delegates are advised to make their own travel arrangements.

The Gold Coast is easily accessed via Coolangatta Airport - 20 kms away and Brisbane Airport is an easy 1 hour drive. There are also rail and coach services from Brisbane into the Gold Coast.

Rental Cars

All of the major rental car companies have agencies at both Coolangatta and Brisbane airports.

Conference Dress

Smart casual attire is suitable. (note: the temperature in the conference room varies depending on where you are sitting. Short sleeves/summer tops are generally OK, but it is advisable that you bring a jacket/long sleeved top in case you need it.)

Cancellation Policy

Cancellations must be received in writing at least 10 days prior to the Conference for a 85% refund. Substitute delegates accepted at any time.

Conference Terms

Program subject to change without notice. The information and views presented in the conference are not necessarily those of TEN and participants rely on these at their own risk. TEN is not responsible for any financial or other losses incurred by delegates or for injury or damage to persons or property. TEN's maximum liability for conference cancellation or any other loss or liability is the refund of the registration fee paid.

TEN is not responsible for financial loss incurred by you as a result of the cancellation or postponement of the conference as a result of strikes, natural disasters, and other Acts of God such as volcanic ash clouds in Australian airspace. We therefore strongly advise you to take out travel insurance if your attendance plans involve air travel or other significant travel to the conference venue.

