



## EXPOSURE DRAFT REGULATIONS HIRE PURCHASE TRANSACTIONS

Members of the Australian Finance Conference and the Australian Equipment Lessors Association (membership lists attached) appreciate the opportunity to comment on the draft regulations released on 13 January 2012. Our members support these hire purchase reforms, and our comments are framed in the context of ensuring that the reforms operate smoothly in practice, and that there is a consistent interpretation of their operation.

### Background

Under the existing GST law the separate character of the supply of “goods” and “credit” is achieved by item 8 of subregulation 40-5.09(3) the *A New Tax System (Goods and Services Tax) Regulations 1999* (the Regulations).

Item 8 includes with the definition of an input taxed “financial supply”:

“Credit under a hire purchase agreement in relation to goods, if:

- (a) the credit for the goods is provided for a separate charge; and
- (b) the charge is disclosed to the recipient of the goods.”

As confirmed by the Australian Taxation Office (ATO), under the GST law the supply under a “disclosed credit hire purchase agreement” is two supplies:

- A supply of the goods that are hired under the agreement; and
- The supply of credit.

The “disclosed credit charge” is not taxable (being consideration for an input taxed supply). The supply of goods is taxable supply.

The “taxable value” of the supply of goods is the GST exclusive price paid by the financier to acquire the asset (see for example ATO private rulings to AFC/AELA of 6 April 2000 and 15 November 2000).

Amounts are sometimes paid by the financier on behalf of the hirer (for example stamp duty, registration, insurance and dealer’s commission). While such amounts are included in the “total amount financed” as a part of the hire purchase arrangements<sup>1</sup>, the rulings confirm that they are **not** consideration for the taxable supply of the goods.

Equally, on some occasions (such as where a trade in or deposit is paid by the hirer) the total amount financed is less than the cost to the financier of purchase of the asset. In such cases, the ATO has

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<sup>1</sup> Disclosed finance charges are payable on these amounts

ruled that the taxable value of the supply of an asset under a hire purchase agreement is the cost of the asset to the financier.

### **Exposure draft regulations**

The Government's proposal to reform the GST treatment of hire purchase as announced in the 2010-11 Budget included to "simplify the treatment of hire purchase by making it fully taxable", and not partly input taxed under item 8 of subregulation 40-5.09(3).<sup>2</sup>

This change is to be effected by three amendments to the GST Regulations:

- Firstly, an amendment to item 8 of subregulation 40-5.09(3) to specify that input taxation of the credit component of a hire purchase agreement is limited to an agreement entered into before 1 July 2012.
- Secondly, an amendment to regulation 40-5.12 to include new items 19 and 20 as follows:  
 "For subsection 40-5 (2) of the Act, the supply of something, or an interest in or under something, that is mentioned in an item in the following table is not a financial supply:"

"19 Goods supplied under a hire purchase agreement entered into on or after 1 July 2012:

20 Credit under a hire purchase agreement entered into on or after 1 July 2012 in relation to goods if:

- (a) the credit for the goods is provided for a separate charge; and
- (b) the charge is disclosed to the recipient of the goods"

- Thirdly, an amendment to Schedule 8 of the Regulations which contains examples of supplies that are not financial supplies, as follows – as an example of item 20 of regulation 40-5.12:

"1 The credit component under a hire purchase agreement entered into on or after 1 July 2012 where the consideration is the amount of interest and associated fees and charges."

### **Operation of the proposals**

Our objective is to ensure that the proposed amendments are clear in their intended operation where the total amount financed is less or greater than the value of the asset.

The particular concern is that the supply that is to be excluded from input taxation (under item 20) is "credit under a hire purchase agreement in relation to goods".

We would like to avoid any interpretation that the present wording would either:

- treat the total payments made under a hire purchase agreements as being consideration for a taxable supply of goods and services – that is potentially subjecting to tax an amount financed in excess of the value of the asset; or
- regard the excess amount financed as a credit arrangement and the finance charges as partly taxable (for the goods) and partly input taxed (for the additional amount financed).

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<sup>2</sup> See section 2.2 of "Implementation of the recommendations of Treasury's review of the GST financial supply provisions, Discussion paper, June 2010"

Either is complex and we believe inconsistent with the policy objectives, and extremely difficult from a financier's and hirer's compliance perspective.

If GST is calculated on the "price" of the asset and the total finance charges, the result will be easy to administer and communicate via a tax invoice.

The Exposure Draft Explanatory Memorandum includes the following example:

"Example 2

Celia is registered for GST. On 30 September 2012, Celia enters into a hire purchase agreement with Magic Car Solutions, a finance company, to purchase a non fuel-efficient luxury car. The GST-inclusive price of the car is \$88,000 and the scheduled credit charges over the term of the hire purchase agreement total \$7,700 (including \$700 of GST).

The hire purchase agreement involves the supply of the luxury car and the supply of credit. In order to work out whether the car exceeds the luxury car tax threshold, Magic Car Solutions only includes the GST-inclusive price of the supply of the car, and does not include the GST-inclusive price of the supply of the credit. Magic Car Solutions would be required to remit a total of \$8,700 of GST to the Commissioner, which is 1/11th of the price of the car (excluding any amounts of luxury car tax that may be payable) and 1/11th of the price of the credit charges."

The reference in this example to the "price of the car" implies that the GST (and LCT) on the supply of the asset under the hire purchase agreement is calculated by reference to the "disclosed" price of the car.

To ensure consistency with the policy intent, we suggest the proposed regulations could be amended to read:

- Regulation 40-5.12
  - 19 Goods supplied under a hire purchase agreement entered into on or after 1 July 2012.
  - 20 Credit under a hire purchase agreement entered into on or after 1 July 2012 to the extent that the consideration for the credit is:
    - (a) provided for as a separate charge; and
    - (b) the charge is disclosed to the recipient of the goods."
- Schedule 8 of the Regulations which contains examples of supplies that are not financial supplies, as follows:
  - As an example for item 19
    - 1 The supply of goods under a hire purchase agreement where the consideration for the goods is the amount charged for the goods."
  - As an example for item 20
    - 1 The credit component under a hire purchase agreement entered into on or after 1 July 2012 where the consideration is the amount of interest and associated fees and charges.

Further, or as an alternative, we believe it would be helpful for the distinction to be illustrated in an example in the Explanatory Memorandum, such as:

“Example 3

Paul is registered for GST. On 30 September 2012, Paul enters into a hire purchase agreement with Magic Car Solutions, a finance company, to purchase a car. The GST-inclusive price of the car is \$33,000 and Magic Car Solutions pays registration, stamp duty, CTP insurance and other amounts on Paul’s behalf totalling \$4,060. The total amount financed is \$37,060.

The scheduled credit charges on the total amount financed over the term of the hire purchase agreement are made up of an establishment fee and interest \$3,850 (including GST).

The hire purchase agreement involves the supply of the car and the supply of credit.

- In calculating GST on the supply of the car, Magic Car Solutions only includes the GST-inclusive price of the car (\$33,000), and does not for example include the other amounts paid on Paul’s behalf.
- In calculating GST on the supply of credit, Magic Car Solutions includes the disclosed finance charges on the total amount financed - \$3,850.

Magic Car Solutions would be required to remit a total of \$3,350 of GST to the Commissioner, which is 1/11th of the price of the car (\$33,000) and 1/11th of the price of the credit charges (\$3,850).”

We suggest that the changes to the regulations as well as the Explanatory Memorandum would be preferable. Thank you again for the opportunity to comment on the exposure draft regulations, and we would be pleased to provide further information as required.

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