



Department of Treasury and Finance

1 Treasury Place
GPO Box 4379
Melbourne Vic 3001
Australia
Telephone: (+61 3) 9651 5111
Facsimile: (+61 3) 9651 5298
DX 210759

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

19 DEC 2011

Dear Ms Berkeley

VICTORIAN DEPARTMENT OF TREASURY AND FINANCE SUBMISSION - GST TREATMENT OF APPROPRIATIONS

Thank you for the opportunity to comment on the GST treatment of appropriations.

The Victorian Department of Treasury and Finance considers that the draft legislation brings more certainty to the operation of the GST exemption of appropriations. Due to recent judicial interpretation, the current exemption for payments "specifically covered by appropriation" can no longer be applied in a manner reflecting the original policy intent. However, the proposed legislative amendment of the term 'specifically covered' with 'covered' will remove the need for public sector agencies to refer to the TT Line decision. In addition, the introduction of the 'not commercial in nature' limb to section 9-15(3)(c) should provide greater certainty to the public sector when relying on the exemption.

There also appear to be opportunities to further clarify the meaning of the legislative amendment, as follows.

1. Commercial in nature

In explaining the meaning of 'commercial in nature', paragraph 1.20 of the draft Explanatory Memorandum (EM) appears to go closer to providing a clear line of delineation than any other part of the legislation or EM:

'A supply is considered to be commercial in nature where the price charged goes beyond recovering the anticipated cost of making the supply.'

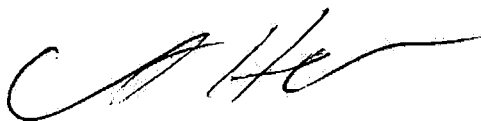
Subject to the further considerations set out below, the Department of Treasury and Finance suggests that the text in paragraph 1.20 should be included as early as possible in the EM. Paragraph 1.20 clarifies the meaning of the new criterion set out in 9-15(3)(c)(iii) and, given appropriate prominence, would enable public sector agencies to apply the law with greater certainty. Further, it may be worthwhile incorporating the text of paragraph 1.20 into the legislation (in some way) to allow the GST law to be read independently of the EM.

2. Meaning of 'anticipated cost of making the supply'

Paragraph 1.21 provides that "'cost' means the actual costs of making the supply". In addition, it specifically excludes opportunity costs and forgone revenue from the meaning of 'cost'. However, the definition does not provide any scope as to what costs are to be included. For example, are 'actual costs' restricted to the direct, variable costs associated with a particular supply? Alternatively, are fixed costs and other indirect costs, such as depreciation, to be included in determining the cost of making the supply? Anticipated costs may include contingencies for unlikely circumstances that do not eventuate. The Department of Treasury and Finance is seeking the inclusion in the EM of further guidance around the meaning of 'cost of making the supply'.

The Department of Treasury and Finance looks forward to receiving your follow-up communications in relation to the above issues. Should you wish to discuss the above matter, the appropriate contact in the Department of Treasury and Finance is Mr Daniel Tofler (ph: 03 9651 2418).

Yours sincerely

A handwritten signature in black ink, appearing to read 'G Hehir', written in a cursive style.

Grant Hehir
Secretary