



TOPIC:

"GST – 21 years old but still a troubled teen?"

Presenter:

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Presentation Overview



It's important to ensure relevance to YOU, the 1000 plus participants, but are you advisors, businesses, authorities, government, academics, consumer representatives, ... ? You all have a stake in and are all impacted by GST. Just imagine GST going up to 20%: I'm sure you'd all have something to say

There's been 21 years of seminars on property issues, going concerns, refunds, financial services, penalties, etc. Each single topic could take up a whole day of seminars, and none would be relevant to more than some of you

So, I was pleased to be asked to explore with you the broad topic of "GST: 21 years old but still a troubled teen?" BTW, that's a question, not a statement



Is our 21 year old GST troubled?



I'm fortunate (I think) to have been directly and intimately involved in GST's entire journey, and I consider I have the credentials to at least express a view:

- consummation and birth (Treasurer's GST Technical Advisory Committee 1998 - 2000)
- early life, learning to walk and talk (ATO Public Rulings Panel 2000 -2008)
- early school, examinations and challenges (advisor to private sector and other advisors, including numerous ATO and court challenges 2000 to ...)
- tertiary lens, graduation and now a real test of the future (continuous ATO and Treasury engagement with law amendments and the ATO's GST Stewardship Group)
- GST exclusive consultancy practice (post Andersen and PwC) since 2010



I have my view- what is yours?



I've also had a great deal of experience in:

- Seeking views about what others think about our GST (everything from the best tax reform we've had in generations to the total destruction of our society) and
- hearing what we should now do about it (everything from taxing everything at 20%, or 12.5% so you can divide by 8 [actually .11347518% of the price] to having multiple rates based on the purchasers' incomes)

So, I'm now going to provide a number of different perspectives, saving my perspective about what we should now do, for last



1. Charities



Charities (contrast with not-for-profits) are deemed to be carrying on an enterprise, and can claim GST input tax credits if GST registered (if only accountants would stop telling them to not register if their turnover is less than the concessional \$150,000 threshold applying to them)

Special concessions exist for:

- sales made for less than 75% (accommodation) or 50% (all else) of market value, or less than 75% of cost
- second-hand goods
- fund-raising activities
- Other administrative benefits, eg accounting methods, branches, etc



2. Travelers heading overseas



Overseas airfares, including domestic legs, are GST-free

Taking goods out of Australia (special GST definition of Australia) are GST-free:

- exports, but special conditions (eg 60 day rule)
- with you (tourist concessions DO apply to Australians, and immediate refunds, levy free)

Goods and services acquired overseas are 'out of scope'

But beware potential GST when bringing goods into Australia (including what you took out)



3. People with or avoiding Covid



Businesses

- Proposed business tax deduction and FBT exemption (GST credits should already mostly exist if registered for GST)

Private consumers

- Despite my very public 'call to action' in December 2021 to the Federal Minister for Health to use his GST statutory powers (the ones he quite rightly used to make feminine hygiene products GST-free in 2019) to grant GST-free status to what we have to pay for under mandatory Public Orders, we still have to pay GST on:
 - RATs, masks, tests, quarantine in hotels, PPE, etc (to me, that's JUST NOT RIGHT!)



4. Buyers of new homes



New residential premises supplied by an entity or person carrying on an enterprise (can be a private home-owner subdividing private land for gain) is subject to GST. Possible mitigation can include GST only being payable on the 'margin' being the gain from when it was purchased, or the gain based on what it was worth when it was decided to develop.

Studies by UDIA indicate that the full price of a moderate new home in middle suburbs of Melbourne comprises up to over 30% of government charges. That includes the 10% GST which is imposed on top of all of the many other government charges, levies and taxes, and that GST is then further taxed by stamp duty on top of the GST (ie taxes on taxes on taxes)



5. Owners of established homes



However, regarding established homes (already sold once), no GST payable when resold, whether owner occupied, or owned by an investor, SMSF or company etc.

It was reported that 1 million home-owners became millionaires during 2021 simply by owning their home due to significant escalation in cost of new homes that includes GST (see previous slide)

The family home (primary residence) largely escapes most taxation in Australia

Who really believes in 'housing affordability'?



6. Crypto champions/crusaders



The laws were changed to make crypto type supplies treated, for GST purposes, the same as Australian currency

- If you sell something in a business for money (or crypto), it's subject to GST
- If you buy something in a business for money (or crypto), you might get a GST credit (if the vendor is in business)
- If you exchange money for money (or crypto for crypto) (and all cross combinations) the financial supply rules apply to deny GST credits for transaction costs

Not sure why so many seem to think 'if it's crypto, it's secret with no tax implications'.



7. Consumers of food



We've all heard about basic fresh food being GST-free, but what does mean, where is the line drawn and who was it supposed to help?

- Many of the rules are based on old Sales Tax rules, but were to be replaced by GST because they were out of date, inconsistent and not fit-for-purpose
- It's a highly charged emotional and moral debate, but many of the poorest in our nation (I've heard 3 million Australians live below the poverty line) find it cheaper to eat prepared foods (eg a taxable \$3 frozen pizza from a supermarket) than pay for GST-free fresh ingredients (that the wealthiest households throw out if not of the highest quality) to make a similar pizza
- Sometimes, all it takes is a picture or word on the label, or place in a supermarket, to cause a product to be 10% or GST-free



8. Start-ups and new businesses



It takes very little for an activity to constitute an 'enterprise', leading to entitlement to GST registration. Need not constitute a 'business'

While sales would normally be expected, in time, it's not essential to gain GST registration which allows GST credits to be claimed. Not a loophole. It was a very strategic intention of the GST regime to eliminate GST (essentially a 'consumption tax' to ultimately be borne by 'consumers') being borne by those carrying on an enterprise.

I regularly hear small or start-up businesses boasting they haven't had to register for GST yet, but they would be so much better off if they did. Disappointingly, it's normally based on the advice of their accountant. Note the potential for retrospective GST registration up to four years past, with GST credits able to be claimed in the current BAS



9. Accounting practices



GST is becoming more systematised and clients are less willing to pay for what they consider to be 'surely it's just 10% GST- it can't be that hard for you as an accountant'. We saw that with JobKeeper. In most cases they are right, and in most cases, integrated accounting systems are allowing efficiencies to make it work. It's critical to get costs down going forward.

However, in the limited circumstances where there's a non-standard transaction (eg property deals, changing or entering into partnerships and JVs, M&As, capital raisings) or a new business dealing (eg moving online, or from B to B, to B to C, offering a new product, transacting from a new platform potentially a non-resident) etc, you might not even find an ATO ruling or publication that fits right. It's important to 'train' clients to understand that 10% can be critical, and just like seeing a lawyer regarding a 5% stamp duty issue, it might in some cases be worth getting GST advice, or at the very least, Tax Audit insurance



10. The ATO



I say up front that I have no authority whatsoever to speak on behalf of the ATO about what it's leadership thinks about the GST that it's required to administer on behalf of the States and Territories.

However, I think that it's fair to say that they reasonably think that it's going pretty well on the basis that:

- The GST leadership no longer considers the need to have a separate GST business line
- It has a strong and productive working relationship with its GST Stewardship Group
- There seems to be little need for many new public rulings or other such products
- It maintains calm in the face of 'disasters' like floods, fires and Covid
- Most major disputes seem to be under control
- They have bedded down most recent legislative changes like the cypto/currency laws, low value threshold and Netflix taxes, residential premises withholdings, etc



10. ATO continued



Facts and Figures from the GST Administration Annual Performance Report 2020-21:

- Net GST collected was \$73.1 billion (21.3% higher than previous year) of which \$1.1 billion was from the relatively new 'Low Value Imports under \$1000' and the 'Netflix' and intangibles measures
- The 'strike rate' from GST audit activities was 86%, with \$2.3 billion collected from 'client engagement activities' (if the ATO calls, it's unlikely to be a hello to ask how you're going).
- Cost of GST Administration was \$538.2 million (down 6.5%) or \$0.71 per \$100 GST collected.
- Total GST outstanding at 30 June 2021 was \$10.7 billion (\$10.2 billion previous year)
- GST registrations at 30 June 2021 was 3.1 million (2.9 million previous year)
- On-time lodgement of BASs were as at 30 June 2021 was 78.5% for monthly lodgers and 67.3% for quarterly lodgers
- *Margin scheme elected for 70% of sales of new residential premises, and ATO considers this to still be a high risk issue*
- *There were 7 successful GST related prosecutions resulting in fines, reparation orders and prison sentences of 2 to 5 years*
- *614 completed Private Binding Rulings*
- *407 new Objection cases created, 49 per 1000 cases going to litigation with over 50% settled before the hearings. 813 were finalised (104 allowed in full and 97 allowed in part)*



11. NDIS participants and SDA



A provision was introduced in 2013 to create GST-free status for supplies of reasonable and necessary support to NDIS participants under their approved plans, including much needed Specialist Disability Accommodation.

While the actual supply of the accommodation to the participant is most often GST-free, the structure and corporate vehicles set up for many sound and reasonable commercial reasons further upstream are causing GST to be 'trapped' which economically defeats the GST-free status. This leads to some projects becoming financially unviable or much less viable (sometimes unknowingly, till too late), or reducing supply of much needed SDA and often resulting in the ATO issuing negative Private Binding Rulings



12. Contractors



We have recently seen numerous authoritative senior court decision regarding whether 'workers' (to use a neutral term) are employees or contractors.

Much is said about their rights regarding holidays, allowances, minimum pay, etc.

Accountants are then looking at income tax consequences

It won't be long before the GST consequences are considered, and the 4 years of retrospectivity is quite frightening



13. Are there cracks in our GST?



There are many views as to what can and should be done about our GST. Indeed, many have always thought and expected that many of these should have been done at least 15 years ago and since.

Why haven't they happened?

- The intra-government agreement requiring unanimous agreement
- GST sharing arrangements
- The Feds vs States and Territories
- Most changes would mean increases, so it comes down to votes, votes, votes



14. Structural cracks include ...



The GST-free provisions:

- Were they just to get past the 2000 political barriers, or meant to stay forever
 - Food
 - Health
 - Education?
- Should the GST-free categories be expanded or be removed or be refined (isn't the best tax always the tax that the other guy pays)

The GST rate:

- Was the 10% a forever rate?
- NZ also started at 10% in 1986, then 12.5% in 1989 and 15% by 2010
- Europe average VAT around 20%



15. Consequences of structural cracks



Quite simply, the GST is not delivering the dependable and growing revenue to the States and Territories that it expected. Not just the rate is an issue, but the unexpected move of our population towards consumption of untaxed supplies, including spending so much overseas

Then came the inevitable squabbling over how to carve it up (a good tax is what I get and a bad tax is what I pay). So we now have to take into account non-GST revenue sources like royalties (when it suits, but not when it doesn't suit) and of course the carve up is now based on something greater than \$1 in the \$1. Where will it stop?



16. Who will blink first?



I recall a previous PM not long ago publicly suggesting to the States and Territories that it you need more money:

- increase the GST that you want us (ie the ATO) to collect for you. Oh no, that won't look good
- so go back to collecting your own income taxes. Oh no, that won't look good.
- so where to? You the Feds collect more, and then give it to us!

So, who is willing to put their hand up to say they'll increase the tax- not great for winning votes



17. My pitch



Our society and economy are inextricably linked, and according to many, it's not delivering fairness and equity, and is not sustainable

So rather than start with what GST rate and base that we should go for:

- do a stock take of our current society, economy and overall tax system
- consider full and comprehensive tax reform involving an entirely new tax system (ANTS didn't deliver so let's this time try a BEAST- Best Ever Attempt At Sustainable Tax) that will move us towards the kind of society and economy we would like to have by 2040
- Integrate with welfare, other transfer payments, etc etc etc

Maybe that's a bit naïve, but we need to start with bold and courageous, and then work down from there, rather than start from an "it's just too hard a starting position" where we've been struck for 21 years. Now's time for GST and its other tax mates to grow up



Fehily Advisory



"Don't take chances by rolling the dice on GST"

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