

# ***MT 2011/1EC - Compendium***



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The edited version of the Compendium of Comments is an Australian Taxation Office (ATO) communication that is not intended to be relied upon as it provides no protection from primary tax, penalties, interest or sanctions for non-compliance with the law. In accordance with PS LA 2008/3 it only affords level 3 protection.

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### **Ruling Compendium – MT 2011/1**

This is a compendium of responses to the issues raised by external parties to draft MT 3464 – Miscellaneous taxes: application of penalties and interest charges to the Commonwealth, States, Northern Territory and Australian Capital Territory.

This compendium of comments has been edited to maintain the anonymity of entities that commented on the draft ruling.

#### **Summary of issues raised and responses**

| <b>Issue No.</b> | <b>Issue raised</b>   | <b>ATO Response/Action taken</b>   |
|------------------|---|--|
| 1                | There are a number of state and territory bodies that do not have crown immunity - yet our definitions of state and territory bodies (paragraphs 19 and 22) include having crown immunity   | <p>This comment has been considered and relevant changes have been made to the Ruling.</p> <p>The reference to 'crown immunity' has been removed from the meaning of State body and Territory body set out in the definitions section of the Ruling.</p> <p>Also, paragraph 1 of the Ruling has been amended to make it clear that the Ruling applies to all Commonwealth, State or Territory bodies, regardless of whether or not they have crown immunity.</p> |
| 2                | The National Tax Equivalent Regime (NTER) entities are notionally liable for equivalent income tax (NTER tax). They are also notionally liable for equivalent administrative penalties (NTER penalties) and equivalent interest charges (NTER interest) in respect of their NTER tax. All of these notional liabilities are directly due and payable to the State or Territory Treasury owner of the NTER entity - they are not liabilities that are payable to the Commissioner/Commonwealth (compare paragraphs 16 and 87 of the draft MT). | <p>The NTER is outside the scope of the Ruling.</p> <p>A footnote has been added to paragraph 14 of the Ruling and an addition made to paragraph 33 of the Ruling which specify that the NTER is outside the scope of the Ruling.</p>  |

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| <b>Issue No.</b> | <b>Issue raised</b>  | <b>ATO Response/Action taken</b>  |
|------------------|--|---|
| 3                | Reading this ruling from an NTER perspective could be confusing (given that the NTER and GST intergovernmental regimes have different outcomes).   | The NTER is a separate notional scheme that applies to listed income tax exempt government bodies. As referred to at Issue No. 2 of this Compendium, the Ruling has been amended to make it clear that the NTER is outside the scope of the Ruling.   |
| 4                | Because of different treatment between different levels of government, particularly in relation to penalty and interest, there is a lack of competitive neutrality or equality of treatment and this is of concern. The GST and associated penalty and interest regimes should be applied uniformly. Greater consideration should be given to the principles of competitive neutrality between the States, Territories and the Commonwealth. | This is a policy issue outside the scope of the Ruling.   |
| 5                | There is a potentially significant compliance burden in determining whether individual GST liabilities are notional or legal liabilities. State entities may not have the appropriate accounting or reporting systems available to easily distinguish between legal and notional liabilities.  | The Ruling and the associated practice statement reflect the Commissioner's views of the application of the uniform penalty regime and interest to notional liabilities of a State. Publication of this view will provide guidance to affected taxpayers as to the Commissioner's views of the law and provide a basis for a consistent approach in this area.<br>The Commissioner has sought to reduce compliance costs in the approach adopted in the practice statement, as far as possible within the legal position outlined in the MT. In applying the principles in the practice statement, the Commissioner will be working collaboratively with the affected government entities with an aim of achieving a practical solution to minimise compliance costs. |
| 6                | Paragraph 26, last dot point – suggest 'failing' rather than 'refusing'.   | Agreed. The relevant paragraph has been amended accordingly.  |
| 7                | Paragraph 44, suggest replace 'there is no' with 'the notional liability does not contribute to a'.  | Agreed. The relevant paragraph has been amended accordingly.  |

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| <b>Issue No.</b> | <b>Issue raised</b>   | <b>ATO Response/Action taken</b>                             |
|------------------|---|--|
| 8                | Paragraph 94, missing word after 'impossible' in quoted passage – 'imposition'(?).  | Agreed. The relevant paragraph has been amended accordingly. |
| 9                | Paragraph 98, Should references to GST in 'GST liability', 'GST liabilities' and 'liability to pay the GST' in the paragraph be instead to 'GST net amount' which is what a taxpayer has a liability to pay under Division 33 of the <i>A New Tax System (Goods and Services Tax) Act 1999</i> ? If we make an assessment of a taxpayer's liability, it is an assessment of net amount not an assessment of GST. See section 105-5 to Schedule 1 of the Taxation Administration Act 1953. | Agreed. The relevant paragraph has been amended accordingly. |