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Our ref NGRWNGR-05GDA
privateruling#3RCTI-0208-ATL

9 February 2005

Dear Mr King

**GST - Recipient Created Tax Invoice Agreements
National Grower Register Pty Ltd - ABN 89 095 857 266**

We have been authorised by National Grower Register Pty Ltd (“NGR”) to request a Private Ruling on its behalf from the Commissioner of Taxation (“the Commissioner”) to confirm that:

- Where growers enter into the proposed Recipient Created Tax Invoice (“RCTI”) arrangement they are entering into a valid RCTI agreement with the buyers listed in the application form; and
- The Commissioner will accept that the buyers have exercised reasonable care when the buyer issues an RCTI for supplies made by the grower if the buyer has relied upon the NGR information as set out in this ruling request.

These questions are set out later in this ruling request.

We ask that the private ruling, when issued, will be a “ruling” for the purposes of section 37 of the Taxation Administration Act 1953 (“TAA”). We note that the Commissioner is empowered to make rulings pursuant to section 63 of the TAA and will take into account comments made in GSTR 2000/10, which discusses the Determination¹ (“Determination”) that the Commissioner has made under subsection 29-70(3) of the GST Act².

We expect the Commissioner will also take account of his various practice statements relating to the imposition of the penalties under the New Tax System most notably PSLA 2004/5.

¹ A New Tax System (Goods and Services Tax) Act 1999 Classes of Recipient Created Tax Invoice Determination (No 1) 2000.

² A New Tax System (Goods and Services Tax) Act 1999.

Unless otherwise stated any legislative references are references to a provision of a New Tax System (Goods & Services Tax) Act 1999 (“GST Act”). Where we have referred to “grain” it also includes a reference to other commodities that might be supplied by growers including but not limited to legumes, seeds and pulses.

Applicant details

Applicant: National Grower Register Pty Ltd
Australia Business Number: 89 095 857 266
Contact number: C/-D Kuhne 08 8236 3140 or 0409 833 002

In accordance with GSTR 1999/1 we provide the following information:

- NGR has not previously asked for a ruling on the specific matters that are subject to this ruling request but it has asked questions on related matters. NGR has taken account of the Commissioner’s comments in his private ruling to the NGR issued on 24 October 2003 and amended its practice to conform with the ATO’s requirements.
- NGR is not currently and has not been subject to a GST audit in respect of this transaction; and
- The subject matter to this ruling is not subject to a dispute with the Australian Taxation Office (“ATO”).

Questions to be answered

We seek the Commissioner’s ruling to provide certainty that the RCTI arrangement is valid under the GST law and to ensure that the buyers relying upon these valid RCTI agreements are not made to duplicate costly administrative systems but can instead rely upon the NGR data when issuing RCTIs to the growers.

- Question 1 Does the RCTI arrangement described in this ruling request result in an actual written RCTI agreement between the buyers and growers such that a RCTI issued by a buyer named in the RCTI agreement will, prima facie, be accepted as valid under the GST Act?
- Question 2 If the answer to Question 1 is “Yes”, will the ATO accept that the buyer has acted with reasonable care if a shortfall has arisen but the buyer has relied upon the NGR information in good faith?

Question 3 If the answer to Questions 1 and 2 are “Yes”, will a full remission of the General Interest Charge be made available where the buyer has relied upon the NGR information in good faith and minor shortfalls have arisen?

We consider that there is little risk to the revenue and have set out the risk areas later in this ruling request. In asking these questions we acknowledge that if a grower is not registered and incorrectly advises NGR that it is registered, then the buyer is not entitled to any GST credit in the amount that it has paid the buyer for the grain because it has not made a creditable acquisition.

Does a valid RCTI Agreement exist between a buyer and a grower?

To create a valid RCTI agreement a supplier and a recipient need to enter into an agreement as set out in public ruling GSTR 2000/10.

To be a valid RCTI section 29-70(3) provides that the tax invoice must belong to a class of tax invoices that the Commissioner has determined in writing may be issued by the recipient of a taxable supply.

In addition the RCTI itself must contain the information as required by GST Act and regulations and be in the approved form. This ruling request does not seek to address this issue.

We consider that a valid RCTI will exist between the growers and buyers who register with NGR. We have set out below the background to the registration process and then demonstrated how the growers and buyers satisfy the legal requirements for a valid RCTI agreement.

Background

NGR is an entity that deals with many grain buyers throughout Australia. The entity is owned by ABB Grain Ltd and Graincorp Operations Ltd.

The prime purpose of NGR is to administer a grower registration system on behalf of grain buyers. The buyers include entities such as ABB Grain, the Australian Wheat Board, Grain Corp and many others.

There are currently 58 grain buyers registered on the system and some 51,000 growers across Australia. This system aims to streamline the registration of growers and the delivery of grain to the buyers. Because many of the growers deliver to more than one of the buyers in any given grain season retaining the records in a readily accessible system ensures some economies for the buyers and provides the opportunity for growers to update their details with NGR which in turn makes these changes available to all of its buyers.

We consider the NGR system provides more data integrity and enables the Australian Taxation Office to better administer grower's compliance with the GST laws. NGR has made changes since applying for its last ruling to ensure that it can enter into RCTI agreements on behalf of its registered buyers and to strengthen the integrity of its data collection.

The NGR system issues a unique grower number to each grower entity and holds the growers' details including ABN, GST status, address, name, contact and payment details.

The growers' details are collected by means of an application form and stored in the NGR's central database which can be accessed to by the registered marketers ("buyers") upon request at an agreed fee under the Registered Party Deed ("RPD"). The buyers' request for details is subject to the Privacy law and growers' authority.

NGR Registration Process

When new growers join NGR, they complete a registration form (Attachment A) which can be downloaded from the NGR website. If an unregistered grower attends a silo to deliver grain, they would be given a form when they make their first grain delivery. Once the grower completes and signs the form, it is returned to NGR for processing of the application which involves the following steps:

Step 1: Process Principal (main contact) Details

When a completed application is received, NGR creates a new unique Customer ID number. All of the growers details will be attached to this unique number and the number can be used to search the grower's details on the system (Attachment B – Screen Print 1). After a search on the ID number is completed, this brings up a next screen showing the name of the grower, the type of entity, gender (for individuals) and payment terms. (Attachment B – Screen Print 2). When the grower is yet to be registered, the system status at the top of each screen is shown as Nil Status. This status will change to Pending then to Registered as the NGR registration is processed.

NGR staff input the contact details such as contact numbers, address and contact persons in accordance to the information provided on the registration form to the database as illustrated on Screen Print 3, 4 and 5 in Attachment B.

Step 2: Process payee details

This process involves inputting the grower's bank accounts details into the system (Attachment B – Screen Print 6, 7, 8 and 9). Once this is completed, the grower's business details are then entered, including their ABN, GST status and registration date, whether to accept RCTIs and whether withholding tax is applied (Attachment B – Screen Print 10 and 11). The buyers need these details for issuing RCTIs when the grower delivers grain.

Step 3: Create a PIN

For a security reason, a PIN is created for each applicant and the PIN is used to access details for those growers with which the buyers are doing business. (Attachment B – Screen Print 12 and 13).

Step 4: Define Partnership

If the NGR registrant is a partnership, step 4 is necessary. This step is to enter the partnership details including the partnership interest and other partnership members' details. The partnership data can be viewed under the Relation tab which is linked to the Partnership Record. (Attachment B – Screen Print 14 to 26).

The Relation tab shows the number of partners in the partnership and their percentage of share in the partnership as illustrated by Screen Print 15 and 25. In this example, the grower is not in a partnership, so only his details appear on the system with 100% of partnership interest. Screen Print 26 indicates that all partnership data has been entered into the system.

Step 5: Record Decision and Confirmation

Once all necessary data is stored in the system, the application is ready for approval (Attachment B – Screen Print 35 to 41). Once it is approved, a confirmation letter is then sent to the grower (Attachment C – copy of confirmation letter). Screen Print 41 shows that the applicant's status is now Registered.

The grower will also be issued with a NGR delivery card (Attachment D) which is used by the growers to identify themselves when grain or other commodities are delivered to buyers. The card shows the name of the grower and a unique number assigned to the grower.

NGR Validation Check Procedures

NGR's validation check procedure is to minimise compliance risk for its buyers and to ensure the accuracy and completeness of the growers' information. NGR uses the ABN algorithm so the system can recognise if the ABN provided is a valid number. When an invalid ABN is entered into the NGR system, an error message is generated on the screen (Attachment E – Screen Print with an error message). The process of validating the growers' ABN includes:

- Conducting an advance search on the Australian Business Register (“ABR”) website to verify that a number matches the name on the application form;
- Confirming the correct ABN with the growers; and

- If the number provided was incorrect (through an incorrect number, a transposition error or the incorrect name and ABN combination) NGR will ask the grower to amend the details on the form. This normally done by NGR faxing the form back to the grower and the grower making the appropriate adjustment (Attachment F – Incorrect ABN amended by grower).

In July each year, NGR sends out letters to the growers to confirm the currency of their details and advise of any changes. When there is a change in the growers' GST status or tax details, a new registration is required so that supplies before and after the change are treated differently and correctly. This will involve a new card being issued and the cancellation of the old card so that no further deliveries can be made under the old card. Attachment F is an example where the grower has changed the ABN and re-registered with NGR. In this case, this particular grower has been issued with a new Customer ID number and delivery cards.

NGR is currently considering a history function to be incorporated within the NGR system so that buyers can check when the change occurred and determine whether to gross up the payment for GST.

NGR has also issued guidelines to its staff that deals with processing applications. This guideline sets out the circumstances where a new registration is required (Attachment G- NGR Business Rulings: Changes to Customer Data). This is to ensure the growers' details are accurate and up to date at all times.

NGR is currently considering a number of proposals aiming to further enhance the system integrity, including:

- Defaulting 'No' to RCTI Permission on the database when the grower is not registered for GST. This is to avoid clerical errors and to ensure the buyer cannot use NGR data to issue a RCTI and claim GST credit;
- Identifying non-GST registered growers by adding a suffix like 'R' or 'NR' on the NGR delivery card. This is to enable the buyers or the ATO to search the database for non-registered growers and determine whether input tax credits were incorrectly being claimed. The ATO also could use this for enforcement activities to determine whether any non-registered growers have annual supplies of greater than \$50,000; and
- Clarifying the PAYG withholding issue by changing the question asked in the application form in a way that would clarify whether there is an obligation on the buyers to withhold 48.5% from the payment.

Other information – statistical information

We consider that the risk areas for the ATO are:

- When a grower supplies an ABN that is not linked to the correct name of the supplier. This is an unusual occurrence and will not result in any GST leakage if the ABN and supplier's name are both GST registered. In this case the grain payment would be grossed up for GST and GST would be paid and credited. If the supplier was unregistered but using a false ABN then, upon discovering this fact, the buyer would repay the GST credit and seek reimbursement of the GST wrongly shown on the RCTI. To prevent this happening NGR will sample check new registration to ensure that the names match the ABNs; and
- When a grower's status changes from GST registered to non-GST registered. In this case the supplies the grower makes after the change should not be grossed up for GST and the buyer will not be able to claim any GST credit for those later supplies by an unregistered party. This risk is being addressed by the annual letters in July (between the growing seasons) to ask growers to confirm details and the ability for NGR to issue a new NGR registration once a grower ceases to be GST registered or becomes GST registered.

We have spoken to the NGR call centre manager and in the last 12 months she can recall less than 5 growers changing their GST registration status. This means that the risk to ATO revenue is small. In addition growers who do change status will invariably be smaller growers with supplies of less than \$50,000 per annum. The risk of revenue leakage is small.

According to the statistical information provided by NGR, there are about 51,000 growers currently registered with NGR. Among these less than 4000 growers are not registered for GST on the basis that they are either a charity or a hobby farmer with turnover less than \$50,000.

Buyers access to the NGR system

Buyers who are registered with NGR have access to the NGR system for the growers' details at a fee agreed under the RPD (Attachment H). By entering into the PRD, the buyers also agree that NGR will be acting as an agent on their behalf when entering into a RCTI agreement with the growers in accordance with Clause 6.10 of the RPD. This clause is as follows

“Goods and Services – Recipient Created Tax Invoices

- a) The Registered Party confirms that it is a registered entity for the purpose of a New Tax System (Goods and Services Tax) Act 1999 (“GST Act”).*
- b) The Registered Party agrees to advise **the Grower through NGR** if the **Registered Party** ceases to be registered under the GST Act.*

- c) *NGR agrees to provide the Registered Party with a Grower's Australian Business Number where that Grower supplies commodity to the Registered Party.*
- d) *The Registered Party agrees to issue the Grower with a recipient created tax invoice (RCTI) in accordance with the Act and A New Tax System (Goods and Services Tax) Regulations 1999 ("GST Regulations") within 28 days of the delivery of commodity by the Grower to the Registered Party or within 28 days of the determination of the value of that supply, which ever is the latter.*
- e) ***The Registered Party agrees not to issue a RCTI if any of the RCTI Agreement requirements are not met.***
- f) *The Registered Party agrees to provide the following statement on all RCTIs for Growers "This is a reminder that you agreed ~~in general~~ to allow us to issue ~~participate in~~ RCTIs when you signed ~~through your signing of the NGR Registration Form~~".*
- g) *The Registered Party appoints NGR as its agent to procure a "written **RCTI** agreement" for the purposes of the GST Act, the GST Regulations and any GST Ruling.*
- h) *The Registered Party and NGR expressly acknowledge and agree to read this clause with any other agreement entered between NGR, as the Registered Party's agent and any Grower.*

Those in bold are the proposed wording for the RCTI clause in RPD.

The growers normally acknowledge their acceptance of the RCTI agreement by completing and returning the signed application form. The RCTI Agreement requirements are set out in paragraphs 10 to 13 under the Terms and Conditions on the registration form (Attachment A) as follows:

*"Where a grower is registered for GST and supplies grain or other primary product to a marketer **listed in attachment 1**, the following shall apply: -*

- 10. ***The marketer through its agent NGR and the grower acknowledges that it is an entity registered ~~under the Act~~ for GST.***
- 11. *The grower consents to the provision of a Recipient Created Tax Invoice (RCTI) by a marketer in consequence of any supply of grain or primary product by the grower to the marketer.*
- 12. *The grower agrees to notify **the marketer through its agent, NGR**, as soon as it ceases to be a registered for GST ~~entity under the Act~~.*

13. *The grower agrees not to issue any tax invoices to the marketer in respect of any supply of grain or other primary product to the marketer.*
14. ***The marketer through its agent NGR agrees that the marketer will not issue an RCTI on or after the date when either the grower or the marketer is in breach of any Terms and Conditions under paragraph 10 to 13 or breach of any other requirements for issuing RCTIs.***

The words in bold are what NGR is proposing to include in its registration form.

On 3 June 2003 NGR requested for a separate private ruling dealing with the RCTI issues. On 24 October 2003 a private ruling was issued in this regard (Attachment I) and commented that a valid RCTI Agreement must be a written agreement between a particular buyer entity and particular grower entity.

NGR will list the names of all 58 buyers (marketers) as an attachment shown on the back of the written registration form and on its web based application form. In this way the RCTI agreement is between specified buyers (recipients) and a specified grower (supplier).

When completing the form, the growers will know which buyers are to issue them a RCTI.

Ruling request

GST law

Recipient Created Tax Invoices

Subsection 29-70(1) states:

“A tax invoice for a taxable supply:

- (a) must be issued by the supplier, unless it is a recipient created tax invoice (in which case it must be issued by the recipient); and*
- (b) must set out the ABN of the entity that issues it; and*
- (c) must set out the price for the supply; and*
- (d) must contain such other information as the regulations specify; and*
- (e) must be in the approved form.*

However, the Commissioner may treat as a tax invoice a particular document that is not a tax invoice.”

Subsection 29-70(3) provides a definition of a ‘recipient created tax invoice’ as follows:

“A recipient created tax invoice is a tax invoice belonging to a class of tax invoices that the Commissioner has determined in writing may be issued by the recipient of a taxable supply.”

The classes of tax invoices that can be issued by the recipient are set out in Clause 3 of the Determination which is included as part of GST ruling GSTR 2000/10. We consider the classes of tax invoices provided under subclause 3(a) and 3(c) are relevant to our client’s ruling request:

3. “A recipient of a taxable supply may issues a tax invoice that belongs to a class of tax invoices specified in each of the following paragraphs:

(a) a tax invoice for a taxable supply of agricultural products where the recipient:

- (i) determines the value of those products after the supply is made using a qualitative or quantitative process; and*
- (ii) satisfies the requirements set out in Clause 4.*

(c) a tax invoice for a taxable supply where:

- (i) in respect of the recipient, either:*
 - (A) a determination under section 27-15 of the Act is in effect; or*
 - (B) a determination under section 27-15 of the Act would have been in effect if paragraphs 188-15(1)(a), 188-15(2)(b), 188-20(1)(a) or 188-20(2)(b) did not apply; and*
- (ii) the recipient satisfies the requirements set out in Clause 4.”*

Clause 4 of the Determination broadly sets out the RCTI requirements as follows:

The requirements must be respectively satisfied by recipients and suppliers:

(a & b) the supplier and the recipient must be registered for GST when the invoice is issued and the RCTI must show the ABN of the supplier;

- (c) *the recipient must issue the original or a copy of the RCTI to the supplier within 28 days of the making, or determining of the value, of the taxable supply and must retain the original or a copy;*
- (d) *the recipient must issue the original or a copy of an adjustment note to the supplier within 28 days of the adjustment and must retain the original or a copy;*
- (e) *the recipient must reasonably comply with its obligations under the taxation laws;*
- (f) *the recipient and the supplier must have a written agreement specifying the supplies to which it relates, that is current and effective when the RCTI is issued, agreeing that:*
 - (i) *the recipient can issue tax invoices in respect of the supplies;*
 - (ii) *the supplier will not issue tax invoices in respect of the supplies;*
 - (iii) *the supplier acknowledges that it is registered for GST when it enters into the agreement and that it will notify the recipient if it ceases to be registered;*
 - (iv) *the recipient acknowledges that it is registered when it enters into the agreement and that it will notify the supplier if it ceases to be registered for GST or if it ceases to satisfy any of the requirements of the determination; and*
 - (v) *the recipient must not issue a document that would otherwise be an RCTI, on or after the date when the recipient or the supplier has failed to comply with any of the requirements of the determination."*

All of the NGR's clients satisfy the conditions set out in Clause 3(a)(i) because they are dealing with agricultural products that need to be weighted or graded before a value is ascertained. In some cases the value is not known because of grain pool arrangements. In addition a large number of the buyers would have a turnover of greater than \$20m and would thus be able to issue RCTIs because of clause 3(c)(i) of the determination.

Do the arrangements lead to a valid RCTI agreement?

Our first question in this ruling request deals with a valid RCTI agreement. The question reads:

- (1) Does the RCTI arrangement described in this ruling request result in an actual written RCTI agreement between the buyers and growers such that a RCTI issued by a buyer named in the RCTI agreement will, prima facie, be accepted as valid under the GST Act?**

Suggested answer – Yes. The arrangement described in the private ruling request gives rise to a valid RCTI agreement between the particular grower named in the application form and all of the buyers named in the application form at the time it is completed.

Reasons for the decision

We consider a RCTI agreement is valid when it meets all the requirements set out in subclause 4(e)(i) through to subclause 4(e)(v) of the Determination and specifies the buyers from whom the growers will receive RCTIs.

Clause 6.10(g) of Registered Party Deed between NGR and the specified buyer appoints NGR as its agent for entering into RCTI agreements.

The Terms and Conditions section of the NGR registration form sets out the RCTI agreement that NGR enters on behalf of the growers set out in the attachment to the registration form. The growers' acceptance of the agreement is signified by signing the registration form. The RCTI agreement will remain effective until the grower advises that they have ceased to be registered for GST or when either the buyer or the grower ceases to satisfy one of the conditions in the agreement.

NGR's new registration form will incorporate a list of buyers registered with NGR so when completing the form, the growers will know who they have entered the RCTI agreement with. This information will also be available on the NGR website. Only buyers whose name is listed on the registration form at the time the grower signs the application form or the NGR website can issue RCTIs to the growers under the NGR. This is to ensure that the growers will only receive RCTIs from the buyers who they have entered into the agreement with.

This does not preclude the growers from entering into the RCTI agreements directly with other buyers. However, where a buyer is listed with NGR and the grower has signed the application form the buyer does not need to hold a separate RCTI agreement because NGR, as its agent, will hold the application form.

Where there are new buyers joining NGR, NGR will update the form, the website and other relevant documents and advise the existing growers of the new buyers. We consider this arrangement should meet the Commissioner's requirement that an RCTI agreement needs to specify a particular buyer. We understand that new buyers are likely to join NGR in between grain seasons and this should allow NGR to seek further approvals from growers.

The Commissioner also requires an RCTI agreement to specify a particular grower so that the buyers know the grower to which a RCTI can be issued. The specific grower signs the RCTI agreement and will present the unique card at the time of delivering grain. After receiving deliveries, buyers will access to NGR system for the growers' details, and check whether RCTI

permission is given. Where a new grower makes a delivery, the buyers would not issue RCTIs until they have confirmed with NGR that the new grower has agreed to the RCTI agreement.

Thus if a grower has a NGR card the system will inform the buyer whether that particular grower has consented to the buyer issuing RCTIs.

We consider this proposed approach has satisfied the RCTI Agreement requirements and does result in an actual written RCTI agreement between the growers and buyers. The Commissioner should consider the fact that given the numbers of growers that the buyers have contracts with, it is almost impractical for the buyers to enter into a separate RCTI agreement with each grower. The objective of this proposed RCTI arrangement is to streamline the use of RCTI agreements and therefore will speed up payments and avoid further paperwork for the growers.

The fact that NGR entering into the RCTI agreement on behalf of the buyers with the growers as an agent should not affect the validity of the agreement so long as the buyers acknowledge in writing its agency relationship with NGR in respect of this. NGR acknowledges its obligation to retain records of the RCTI agreements.

Have the buyers acted with reasonable care?

Question 2 and 3 deal with the concept of whether a buyer will be accepted as having exercised reasonable care when using the NGR data. This is an important concept and, if accepted, will lead to a greater acceptance of the system and will aid ATO compliance efforts within the industry. Question 2 reads as follows:

Question 2: If the answer to Question 1 is "Yes", will the ATO accept that the buyer has acted with reasonable care if a shortfall has arisen but the buyer has relied upon the NGR information in good faith?

Suggested Answer: Yes. In the absence of indicators to the contrary, where a buyer uses the information contained on the NGR system and prepares an RCTI in accordance with that information and a shortfall occurs, the ATO will accept that the buyer has acted with reasonable care.

Reasons for the decision

There are a number of principles that can be drawn from ATO publications that indicate a person should not be subject to penalties when they have acted with reasonable care and were not aware that the information they possessed was incorrect.

The basic principle of awareness is discussed in GSTR 2000/29 which deals with a supplier who needs to rely upon information supplied by others. In paragraphs 133 to 143 of the ruling the

ATO accepts that where a supplier relies upon an agent then the supplier will attribute the GST to the period in which the information is provided to it.

When applying the basic rule in GSTR2000/29, buyers should not be penalised for relying on the NGR information in establishing the grower's GST status, even where the information is subsequently found to be incorrect.

The reasonable care test is found in paragraph 6 of Taxation Ruling TR 94/4. The paragraph reads:

The reasonable care test requires a taxpayer to take the care that a reasonable, ordinary person would take in all the circumstances of the taxpayer to fulfil the taxpayer's tax obligations. Provided that a taxpayer may be judged to have tried his or her best to lodge a correct return, having regard to the taxpayer's experience, education, skill and other relevant circumstances, the taxpayer will not be liable to pay penalty.

In paragraph 14(e) of TR 94/4 the Commissioner deals with errors that may be made in a taxpayer's books. The Commissioner comments:

a failure to maintain adequate records of income and expenditure will be a major reason for finding that a taxpayer has failed to take reasonable care. But this does not mean that a penalty is attracted every time an error is made in the taxpayer's books that leads to a tax shortfall, provided the taxpayer can show that its procedures are reasonably designed to prevent such errors from occurring. What is reasonable will depend, among other things, on the nature and size of the business, but could include, for example, frequency of internal audits, sample checks of claims made, adequate training of accounting staff and instruction manuals for staff (our underlining)

We consider that the current NGR system has sufficient checks to ensure that reasonable care is taken when buyers use the NGR information in determining the GST status of a grower and consequently deciding whether to claim the GST credit within a RCTI that it issues.

Once a buyer takes reasonable care we consider that no administrative penalties will be imposed for a shortfall that results. This is supported in Practice Statement PS LA 2004/5. In paragraph 7 the Commissioner states:

.... a penalty for a false or misleading statement will generally be remitted where a shortfall amount arises in circumstances where a taxpayer's overall level of compliance is sound, and in all the circumstance of the case it is clear that:

- *the shortfall is not a material amount; or*
- *the taxpayer has made an honest mistake.*

In paragraph 24 of the Practice Statement, the Commissioner goes on to say:

For the purposes of determining whether a penalty is imposed under subsection 284-75(1) of the TAA 1953 for making a false or misleading statement, a shortfall amount is taken not to exist where a taxpayer has taken reasonable care.

This paragraph goes on to explain that both the taxpayer and the agent will need to take reasonable care. In this ruling request we consider that both the buyer (the taxpayer) and the agent (NGR) have taken reasonable care because of the checks NGR has in place and the fact that both entities need to rely upon information supplied by the grower.

The possible errors that we are aware of include:

1. the name of the supplier not matching the ABN the supplier has quoted;
2. a grower stating that they are registered for GST when they are not;
3. a grower becoming registered and not advising NGR;
4. a grower ceasing to be registered and not informing NGR.

The results of these mistakes would be as follows:

- i. The buyer has still grossed up the grain payment for GST, GST has still been paid and the buyer has made a creditable acquisition and is entitled to an input tax credit. PL SA 2004/6 would allow the credit and therefore there should be no net shortfall by either party.
- ii. The buyer would have grossed up the payment for GST, the grower will not have returned the GST and the buyer will not be entitled to the GST credit. The buyer will attempt to recover the GST amount from the grower and will back out the GST credit previously claimed. The buyer will report a minor shortfall but will have acted with reasonable care in relying upon the grower's information.
- iii. The buyer will not have increased the payment for GST and the grower will have short paid GST if the grower relies solely on the recipient created remittance advice (because a RCTI would not be prepared). The GST law provides that the buyer has paid GST of 1/11th of its payment to the grower but is not able to attribute the GST credit because the buyer does not have an RCTI or tax invoice. There is no GST shortfall amount for the buyer.
- iv. The buyer will continue to pay GST to the grower and similar to situation 2 above the buyer will have a minor GST shortfall amount. The buyer is likely to recover this shortfall amount from the grower.

We consider these mistakes will be rare. NGR statistics show that there is less than 5% of the growers not registered for GST and their deliveries are insignificant in terms of the total value of the grain pools and purchases. Even there was an error we consider this would not result in a material shortfall and cause any substantial financial risk to the government.

The validation check procedures set out in the background facts show that NGR has acted with reasonable care when dealing with the growers' details. NGR regularly verifies and updates the information to ensure its accuracy, currency and completeness. It also monitors and reviews the registration process and validation procedures to improve the system reliability and efficiency. On this basis, we believe the NGR system should have sufficient integrity that the buyers can confidently rely upon for the growers' details.

Nonetheless, when the buyers have a reason to suspect that the information is incomplete or inaccurate (for example where pool payments are greater than \$50,000 in a 12 month period to an unregistered grower) they can also conduct a validation check. In this case, the buyers could make enquiries to the ATO, the ABR or NGR to ensure that the growers have satisfied the RCTI requirements and correctly disclosed their GST status.

While NGR is diligent to ensure the accuracy and completeness of the growers' information, it is possible where there may be some growers, who fail to notify the NGR when they cease being registered for GST, or there is a change in their details, such as the name, address or ABN. The failure to notify of the change could result in incorrect information shown on the RCTIs issued by the buyers or RCTIs being incorrectly issued to growers who are no longer registered for GST. The implication is that the buyers could be administratively penalised for any incorrectly claimed GST credits because of the invalid RCTIs.

The Commissioner should accept that the buyers has acted with reasonable care and consequently will not impose administrative penalties and the general interest charge that would otherwise be imposed on any incorrectly claimed GST credits by the buyers. This view is in accordance with subsection 284-215(2) of the TAA providing that:

“ For the purposes of determining whether you are liable to an administrative penalty, you do not have a shortfall amount as a result of statement that is false or misleading in a material particular to the extent that you and your agent (if any) took reasonable care in making the statement. ”

The Commissioner should also acknowledge that the law imposes an obligation on the growers to notify of the change in their status or circumstances to the buyers (or NGR as agent), so any errors as a result of the growers' failure to notify the buyers should not be penalised. We emphasise that any of these mistakes should be rare.

We consider that NGR is assisting the ATO's compliance efforts by operating a single system for the buyers and will ultimately make compliance easier for both the buyers and the growers.

General Interest Charges

We are aware that the General Interest Charge (“GIC”) is designed to recompense the ATO for the time value for money when a tax debt is paid late. In this ruling we have indicated that NGR and its buyers have used reasonable care in determining the GST status of a grower. With this in mind we have asked whether GIC should apply where minor shortfalls arise. Our question is set out below:

Question 3: If the answer to Questions 1 and 2 are “Yes”, will a full remission of the General Interest Charge be made available where the buyer has relied upon the NGR information in good faith and minor shortfalls have arisen?

Suggested Answer: Yes. In the absence of indicators to the contrary, where a buyer uses the information contained on the NGR system and prepares a RCTI in accordance with that information and a shortfall occurs, the ATO will remit the General Interest Charge. However, where the shortfall has arisen from a lack of reasonable care the GIC will not be remitted.

Reasons for the decision

We consider that the matter of awareness is most important in determining whether GIC should be remitted in full. While we acknowledge that the grower’s supply of grain is not through an agent, the supply of information about the grower’s GST status is supplied by NGR as agent of the buyer. GSTR 2000/29 deals with the question of awareness of matters through an agent.

Where a principal becomes aware of an adjustment through an agent or becomes aware of an error in the agent’s previous advice, the principles in GSTR 2000/29 are that the GST for the error is attributed to the tax period in which the principal becomes aware of the error.

Thus we consider that if a shortfall arises from an error caused through the NGR data, the buyer should be entitled to a full remission of the GIC. We accept that the GST shortfall should be attributed to the tax periods in which the shortfall arose but in the spirit of the agency rules, the principal should not be penalised by an interest charge.

Remission of GIC is set out in the ATO’s Receivables Policy. Section 93.5.8 acknowledges that it would be more appropriate to consider remission where the circumstances are outside of the control of the debtor. In the case of a buyer, the shortfall is likely to arise where the grower has incorrectly advised NGR of its tax status. We consider this satisfies the reasoning in 93.5.8.

Clause 9.5.13 of the policy indicates that remission can be granted where it is fair and reasonable to do so and such remission would not result in an unfair advantage over others. We

consider that, since the buyers have acted with reasonable care they should not be penalised by the full GIC.

Clause 93.5.63 deals with wash transactions. The clause recognises that where the other party to the transaction would have received an input tax credit then, all other things being equal, where GST is not charged a lower general interest charge of around 4% to 5% rather than 12% to 13% will apply. Even though a shortfall is more likely to occur where a buyer is wrongly informed that a grower is registered the same principal should apply. Consequently we consider that if a full remission of GST is not warranted then the maximum GIC that buyers should be charged is the wash rate.

Summary

The RCTI arrangement between the growers and buyers as illustrated previously does result in an actual written agreement that satisfies the RCTI Agreement requirements set out in the Determination made under subsection 29-70(3) of the GST Act. We consider this arrangement is more than a mere expression of the parties' willingness to enter into the agreement because the parties to the RCTI agreement are specified and the obligations in respect to RCTI are clearly understood by the parties.

Under the given circumstances, the administrative penalties and the general interest charge that would be otherwise imposed on any shortfall arising from incorrectly claimed input tax credits by the buyers as a result of invalid RCTIs should not be imposed. This is because the buyers have relied on NGR information in a good faith and they should not be penalised.

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Should you have any question in relation to any aspect of this request please contact me on 08 8236 3140.

David Kuhne
Director

cc:
Mr Peter Cash - National Grower Register