

---

---

# GST and the Mining Industry

**Lynne Oats and Prafula Fernandez**

School of Business Law  
Curtin University of Technology

---

## Abstract

The introduction of a Goods and Services Tax (GST) in Australia will have ramifications for the mining industry. This article explores some of the GST issues that may affect mining businesses. By planning ahead, mining operations can take advantage of the opportunities arising from the implementation of GST.

## Introduction

If the political processes are sorted out, a Goods and Services Tax (GST) will be introduced in Australia from 1 July 2000. The GST is a multistage tax that is collected on the supply of both goods and services. It is collected at virtually all stages of production and distribution of a mining business.

The GST effectively applies only to the value added component of goods and services. The way in which the system taxes the value added component is reasonably simple - registered persons are entitled to claim an input tax credit for the tax paid on their purchases from registered suppliers against any tax paid to them by their customers, called output tax. This avoids the cumulative effect of adding on tax on tax. In other words, it avoids cascading. This also means that no part of the GST represents a cost to business.

## The operation of the GST<sup>1</sup>

Mining businesses will have to register for GST if they carry on an enterprise<sup>2</sup> and the annual turnover exceeds

\$50,000. A registered mining business will then have to charge GST on the taxable supply of goods and services in Australia as well as goods imported into Australia. The GST collected will be accounted for to the Australian Taxation Office (ATO) when the mining business submits a GST return.

The mining entity will need to pay GST on purchases of goods and services. The GST suffered can then be claimed back as an input tax credit in the GST return.

The mining business will not have to charge GST on goods and services it supplies if those goods and services are either input taxed or GST-free. If a supply is input taxed, no GST can be charged on that supply by the entity, but no input tax credit can be obtained for all acquisitions relating to that supply. If a supply is GST-free, then once again no GST can be charged on that supply, but input tax credit can be obtained for all acquisitions relating to that supply. All exports of goods and services will be GST-free.

Since a large number of mining entities export their goods and services, the next section considers the nature of an export under the GST bill that has been proposed by the Government, but not yet passed.

---

<sup>1</sup> Extracted from *A New Tax System (Goods and Services Tax) Bill 1998*.

<sup>2</sup> An enterprise is defined as an activity in the form of a business or an adventure or concern in the nature of trade. However an enterprise does not include wages received by employees, the private recreational pursuit of a hobby, or Non-commercial activities of government.

## **Exports**

For a mining business to claim the export of the goods to be GST-free, the bill provides for a 60 day time limit to export the goods. The 60 day period commences from the earlier of the date when the mining company receives any consideration for that export, or the date when the mining entity provides an invoice. An invoice does not necessarily mean a tax invoice. It includes any document that notifies the party to whom the mining entity is exporting, the obligation to make the payment.

All mining entities should be aware of this 60 days period, or they may risk the export not being qualified for GST-free status. For example, a mining business enters into a contract to supply a Japanese company with a particular machinery. The contract is signed in Japan, for which the Japanese company provides a small deposit. Since the Australian mining entity has received consideration for that export, it has 60 days from the date of that consideration to build and export the machinery to Japan in order to claim GST-free status on that export.

It is not clear in the bill whether a deposit and one final payment amounts a contract under which payment is by installments. If it does, then the 60 day period runs from the earlier of the date when the mining entity receives the final installment payment or the date the invoice for the final installment was given.

## **Mining Residential Premises**

A large number of mining entities in Australia operate in rural areas, and either own or lease residential accommodation for provision to staff and subcontractors.

The GST bill provides that the supply of accommodation to be occupied as a residence will be input-taxed, unless the premises are commercial residential premises. A commercial residential premises is defined as including hotels, motels, inns, hostels,

boarding houses or camping grounds and also includes accommodation provided in connection with schools. It also includes the supply of cleaning and maintenance, electricity, gas, air conditioning, telephone, television, radio and other similar things.

When a mining business pays rent to obtain a rental lease of less than 50 years in order to provide accommodation to its employees and subcontractors, it will not be charged GST since the residential rent is input taxed. If the mining business enters into a lease of more than 50 years, the supply of long term residential lease is also input taxed, but not as residential rent.

If the mining entity owns freehold residential premises and provides short term accommodation to its subcontractors who are charged daily or weekly rent for accommodation, this may be classified as commercial residential premises and therefore subject to GST. However, it seems there will be concessional treatment if the commercial accommodation is let for a long period. GST is payable on the full value of the supply for the first 27 days, and there after one half is subject to GST.

If the mining business sells freehold premises that it owns, the sale will be subject to GST. It would be unfair to pay GST on the full value of the supply, since part of the supply may relate to the increase in value of the property before GST was introduced. Thus there will be provision for a margin scheme, which the mining business can elect to apply. GST is then only charged on the margin between the sale price less the value of the real property at 1 July 2000. If the margin is negative, no GST will be payable.

This requires obtaining a valuation of its freehold residential premises as at 1 July 2000. It is probably advisable for mining entities to obtain a valuation of all freehold residential properties at 1 July 2000 even if not anticipating a sale. This is because it may not be

possible to obtain accurate valuation as at 1 July 2000 once that date has passed.

### **Long Term Contracts**

Mining entities may have entered into contracts of supply or purchases that will straddle the GST implementation date of 1 July 2000. The question is whether GST will have to be charged for supplies under this contract.

Under the bill, if a mining business enters into a contract of supply prior to the passing of the legislation, with a customer who is registered for GST and is entitled to input tax credit, and there is no opportunity to review the contract, supplies after 1 July 2000 but before 1 July 2005 will be GST-free. If the customer is not entitled to input tax credit, then the supply after 1 July 2000 will only be GST-free if consideration for the supply was paid in full prior to 2 December 1998.

Mining entities ought to bear this in mind when entering into contracts prior to the bill's assent, especially if the price under the contract is fixed with no opportunity to review the terms of the contract. If there is an opportunity to review the terms of the contract, then supplies after 1 July 2000 will only be GST-free prior to the opportunity for review date.

Supplies after 1 July 2000, under contracts entered into after assent of GST legislation will be subjected to GST.

Mining entities should therefore review all contracts that might straddle the introduction of the GST to ensure they allow for the passing on of the new tax.

A mining lessee may need to examine the basis on which its lease rentals are calculated. When the lease rental is based on "turnover" or "gross sales", these terms may be defined in the lease in a way that inadvertently include the associated GST. This would

result in a higher value on which to base the primary lease obligation, which in turn will be subject to GST.

### **Cash-Flow Planning**

Most mining businesses will be registered for GST. If it is mainly an exporter and thus does not have taxable supplies, it should still register for GST, since an export is GST-free and the registration will entitle the mining entity to obtain a refund from the ATO on the input tax credits.

If the mining entity is both an exporter as well as supplying its products in Australia, it will be able to recoup all its input tax, but will only have to charge GST on sales within Australia. This is because exports are GST-free. Mining entities could restructure before implementation of GST, so that a separate entity conducts export sales. The export entity can then elect to lodge its return on a monthly basis. This will enable the export entity to receive a refund three times faster than the entity making the quarterly GST payments. Under the bill, a registered entity has to lodge a return with the ATO on either a monthly or quarterly tax period (due 21 October, 21 January, 21 April and 21 July) depending on the size of the business. Entities with total value of sales more than \$20,000,000 must remit a payment electronically on a monthly basis.

Mining companies that are part of 90% group of companies, will be allowed to group the GST returns. In this case inter-company charges will not attract GST. If grouping is not possible for a mining company since it is not part of a 90% group, or the entity is not a company, then that mining company or entity should match the return period with its associated companies or entities to minimise cash flow impact arising from inter-company/entity charges.

### **Planning for GST**

Mining entities should start planning now by identifying the effect GST will have on their business. As a tax

collector for the government, the mining entity should consider the initial as well as the on-going compliance cost of the GST on the business. It will need to set up a system of record keeping to comply with the GST requirements. This may involve purchasing appropriate software and training of staff.

It is advisable for mining entities to appoint a person to take charge of the conversion to GST. This person can then gather information and implement changes in the affected areas, such as business contracts, staff training requirements, pricing products, and putting into place a GST efficient structure of the entity. The purchasing policy of the mining entity should be reviewed since certain items will be cheaper after the GST is introduced and other items will become more expensive. The timing of the purchases should be reviewed, since large purchase items can result in a considerable amount of savings for the mining entity.

## **Conclusion**

The GST will be a major new initiative for Australia. The genuine broad base and low income tax rate tax reform will mean economic resources will be used more efficiently as it reduces what economists call the “deadweight costs” of taxation. As resources are used to their maximum potential, mining entities will be equipped to compete in the world. However, in the short run, mining businesses will have to brace themselves for the costly implementation of the GST, which should be planned carefully.