

## **The GST Rulings System – Is it Failing?**

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## **The GST rulings system – is it failing?**

‘Beyond the everyday world, both counsel have explained to us, lies the world of value added tax (VAT), a kind of fiscal theme park in which factual and legal realities are suspended or inverted.’ *Royal & Sun Alliance Insurance Group plc v Customs and Excise Commissioners* [2001] STC 1476 (CA) at [54] per Sedley LJ.

### **Overview**

The Australian fiscal theme park of GST has raised passion since its inception. While the political controversy has largely disappeared, the legal and administrative controversies are only just beginning. The limited purpose of this paper is to evaluate whether the GST rulings system is failing. This system has already generated its fair share of controversy with one commentator describing it as ‘farcical’.<sup>1</sup>

In answering the question whether the GST rulings system is failing I will cover:

- the criteria for evaluating the GST rulings system
- the nature of GST
- the protection afforded by GST rulings
- public GST rulings
- private GST rulings
- challenging GST rulings
- concluding remarks and recommendations

### **The criteria for evaluating the GST rulings system**

It could hardly be right to evaluate rulings on the tempting, but simplistic, basis that you disagreed with some or all of their contents, for you could simply ignore the contents and self-assess on a basis you considered correct. In a technical sense you are not obliged to

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<sup>1</sup> P Hill, *GST rulings – facts and fallacies*, paper presented at the ATAX 13<sup>th</sup> Annual GST Workshop, Noosa, 21-23 March 2001.

comply with a ruling. If you choose to rely upon a ruling, and the Commissioner later alters that ruling such that you have underpaid a net amount, or the Commissioner has overpaid certain amounts, then the underpaid tax ceases to be payable, or the overpaid amount is taken to have been payable in full.<sup>2</sup> This approach draws heavily from the sales tax rulings system which preceded the GST, rather than from the income tax rulings system.<sup>3</sup>

It also seems too easy to evaluate rulings on the basis that you disagree with the self-assessment regime generally, as any criticism should be directed towards that regime rather than the rulings which necessarily flow from it.<sup>4</sup>

And yet factors such as the accuracy of rulings and the context of self-assessment are not irrelevant in evaluating the rulings process.

Rulings play a key role in the self-assessment environment and are an integral part of the tax system. Taxpayers need to have a good understanding of their taxation obligations if they are to fulfil them, and the Commissioner understandably aims to maximise the level of voluntary compliance among that group.

In the light of the importance of the rulings system to the tax system generally, it seems to me appropriate to evaluate the rulings system by reference to the well known hallmarks of a good tax system: equity, efficiency and simplicity.<sup>5</sup>

Equity, or fairness, has two dimensions: horizontal equity, which means that people in similar economic circumstances should be treated similarly; and vertical equity, which means that people in different situations should be treated differently, with those who are

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<sup>2</sup> *Taxation Administration Act 1953* (Cth), s37, discussed in more detail later in this paper.

<sup>3</sup> Compare *Sales Tax Assessment Act 1992* (Cth), s77, and *Sales Tax Procedure Act 1934* (Cth), s 12D.

<sup>4</sup> For a critique of the self-assessment system generally, see Inglis, *Is Self-assessment Working? The Decline and Fall of the Australian Income Tax System*, (2002) 31 A T Rev 64.

<sup>5</sup> *Reform of the Australian Tax System (Draft White Paper)* (Canberra: AGPS, 1975), at paras 1.1 and 1.14.

better off bearing a greater share of the tax burden.<sup>6</sup> A tax which places significantly different burdens on a taxpayer in similar economic circumstances is manifestly unfair.<sup>7</sup>

An efficient tax system is necessary in order to improve Australia's economic performance. With a more efficient tax system, resources will be more likely to move into activities where they will generate the largest economic gains to the nation, rather than activities where they will simply yield the largest tax gains to investors.<sup>8</sup> Any tax will tend to discourage the activity on which it is imposed; it follows that the more comprehensive the tax system is the less distortion there will be of the relative rewards of different types of work, of the relevant attractions of work and leisure, of the relative returns from different types of investment, and of the relative prices of goods and services.<sup>9</sup>

A good tax system should be as simple as possible. A complex tax system makes it difficult for people to understand the law and apply it to their circumstances. Complexity imposes high compliance costs on the community and high administrative costs on the tax authorities. Complex tax laws also result in socially unproductive and costly tax litigation.<sup>10</sup>

The Government has previously recognised that a rulings system, binding on the Commissioner, gives taxpayers a greater measure of certainty and fairness. In introducing the private binding rulings system, the Minister assisting the Treasurer said: 'The new system of binding and reviewable rulings will promote certainty for taxpayers and thereby reduce their risks and opportunity costs. The new system will also be fairer because taxpayers will be able to object to private rulings and have the matter reviewed by an independent tribunal or court.'<sup>11</sup> This cannot be said for the GST rulings system.

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<sup>6</sup> Id, at para 1.2.

<sup>7</sup> Id, at para 1.3.

<sup>8</sup> Id, at para 1.1.

<sup>9</sup> Id, at para 1.7.

<sup>10</sup> Id, at para 1.8.

<sup>11</sup> P Baldwin, Minister for Higher Education and Employment Services and Minister Assisting the Treasurer, Second Reading Speech, Taxation Laws Amendment (Self-Assessment) Bill 1992, 26 May 1992, Vol H of R 184 at 2774-2775.

In the absence of a binding regime, a ruling will give little or no measure of protection as it will not give rise to an estoppel as against the statute,<sup>12</sup> though issues of procedural fairness might be relevant.<sup>13</sup>

## **The nature of GST**

The criteria of equity, efficiency and simplicity are often contradictory. Greater efficiency can lead to reduced equity, and so on. A balancing act is therefore required which inevitably turns upon matters of judgement. The context within which that judgement is made can be important in attaching more or less weight to each criterion. An understanding of the nature of GST is essential in providing that context.

‘Broadly speaking, the GST is a tax on private consumption in Australia’ which ‘taxes the consumption of most goods, services and anything else in Australia, including things that are imported’.<sup>14</sup> The expression ‘consumption’ is not defined in the GST Act<sup>15</sup> and is not one of the ‘basic rules’ contained in Chapter 2 of that Act. The expression appears in several places in the GST Act but invariably for a specific purpose, such as defining the boundaries of GST-free food,<sup>16</sup> GST-free drugs and medicines,<sup>17</sup> and GST-free exports and other supplies for consumption outside Australia.<sup>18</sup>

The taxing of private consumption in Australia is generally achieved by:

- imposing tax on supplies made by entities registered for GST; but
- allowing those entities to offset the GST they are liable to pay on supplies they make against input tax credits for the GST that was included in the price they paid for their business inputs.<sup>19</sup>

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<sup>12</sup> See *FC of T v Wade* (1951) 84 CLR 105 at 116-117.

<sup>13</sup> See *Bellinz Pty Limited v FC of T* (1998) 98 ATC 4634 at 4645; and *One.Tel Ltd & Ors v DFC of T* (2000) ATC 4229 at 4244.

<sup>14</sup> Explanatory Memorandum to the A New Tax System (Goods and Services Tax) Bill 1998, Executive Summary, at 6.

<sup>15</sup> *A New Tax System (Goods and Services Tax) Act* 1999 (Cth) (‘GST Act’).

<sup>16</sup> GST Act, subdivision 38A.

<sup>17</sup> GST Act, section 38-50.

<sup>18</sup> GST Act, subdivision 38E.

<sup>19</sup> Explanatory Memorandum to the A New Tax System (Goods and Services Tax) Bill 1998, Executive Summary, at 6.

In this way GST is effectively a tax on ‘final’ private consumption in Australia,<sup>20</sup> and is imposed on a registered supplier in respect of a supply made to a recipient. In my opinion there exists a strong case for stating that every supply has a corresponding acquisition within the context of the Australian GST, and that for every supply there exists both a supplier and a recipient. The correspondence between supply and acquisition is evident from the language used to define those concepts.

I also venture to suggest that the notion of consumption contemplated by the GST Act is to be found in the structure of the Act itself. Crucial to this is the notion that for every supply there is an acquisition and also a supplier and a recipient. Once this notion is accepted, it is reasonable to infer that consumption is defined by reference to it.

In other words, the fact that a supplier makes a supply to a recipient who has acquired it means that the recipient is the consumer of that supply and that consumption has taken place.

The following factors are therefore relevant in understanding the nature of GST:

- GST is a tax on final private consumption in Australia
- GST is imposed on a registered supplier in respect of a supply made to a recipient
- the fact that a supplier makes a supply to a recipient who has acquired it means that the recipient is the consumer of that supply and that consumption has taken place

It is a reality that most suppliers are unpaid tax collectors on whom the burden of the tax is not intended to fall, and that these suppliers must make judgements about the application of the tax to numerous transactions which occur on a day to day basis. Many suppliers would therefore value certainty and, hence, timeliness over most other factors. In my experience, many suppliers would prefer a taxable treatment that is certain to a

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<sup>20</sup> Ibid.

non-taxable treatment that is not, so that certainty is the primary concern rather than revenue outcome.

### **The protection afforded by GST rulings**

The only legislative reference to GST rulings is to be found in section 37 of the *Taxation Administration Act* 1953 (Cth). There is a common misconception that this provision is the source of the power to issue rulings.<sup>21</sup> However, GST rulings are issued pursuant to the Commissioner's general power of administration.<sup>22</sup> That distinction is of some importance if, for example, a taxpayer seeks to review, pursuant to the *Administrative Decisions (Judicial Review) Act* 1977 (Cth) ('the ADJR Act'), the decision of the Commissioner to issue a particular ruling, since it is unlikely that a decision made pursuant to a general power of administration is one made under an enactment.<sup>23</sup> This stands in contrast to the Commissioner's view that a decision not to issue a ruling is reviewable under the provisions of that Act.<sup>24</sup> Nevertheless, the remedies available pursuant to section 39B of the *Judiciary Act* 1903 (Cth) would still be available.

Section 37 applies to you if:

- (a) the Commissioner alters a previous ruling that applied to you; and
- (b) relying on the previous ruling, you have underpaid a net amount or an amount of indirect tax, or the Commissioner has overpaid an amount under section 35-5 of the GST Act, in respect of certain supplies and acquisitions made before the alteration.<sup>25</sup>

A previous ruling must have 'applied to you' if you are to obtain the protection afforded by the statute. It is therefore important that the facts on which the ruling was based be

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<sup>21</sup> See, for example, Australian National Audit Office ('ANAO'), *The Australian Taxation Office's Administration of Taxation Rulings* (2001), which states, at para 1.6: 'GST private rulings are issued under s37 of the TAA'.

<sup>22</sup> *Taxation Administration Act* 1953 (Cth), s63.

<sup>23</sup> See *Hutchins v DFC of T* (1994) 94 ATC 4,443.

<sup>24</sup> GSTR 1999/1, para 24.

<sup>25</sup> *Taxation Administration Act* 1953 (Cth), s37(1).

clearly identified.<sup>26</sup> As with the income tax rulings system, a distinction might well be drawn between the way in which the law applies to a particular set of facts, and ‘the principles or reasoning’ stated in the ruling.<sup>27</sup>

As Merkel J has commented: ‘By making a ruling that states that it is binding “to the extent it is capable of being a public ruling”, or that a particular arrangement is “likely to be regarded as a hire purchase arrangement”, or that tax treatment of a particular arrangement is to be “generally” as outlined the Commissioner is not providing the certainty that binding public rulings are intended to provide. Further, rulings in such terms obviously have a tendency to mislead which is antithetical to the system of certainty and fairness intended to be provided to taxpayers by the public rulings system.’<sup>28</sup>

This criticism remains valid under the GST rulings regime. In GSTR 2001/6, for example, dealing with non-monetary consideration, there is a discussion of *Naturally Yours Cosmetics Ltd v Customs and Excise Commissioners*<sup>29</sup> and *Rosgill Group Ltd v Customs and Excise Commissioners*,<sup>30</sup> followed by the statement: ‘We consider that the principles on which these cases were decided are applicable in Australia’.<sup>31</sup> It would be a brave taxpayer who relies on these ‘principles’ without the protection of a private GST ruling.

Note also that you must have ‘relied’ upon a GST ruling to obtain protection,<sup>32</sup> which is quite different to the income tax rulings system.

Unless the Commissioner is satisfied that you contributed to the giving, or continuing in force, of the earlier ruling by a misstatement or by suppressing a material fact, the

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<sup>26</sup> See *Bellinz Pty Limited v FC of T* (1998) 98 ATC 4399 at 4405; and (1998) 98 ATC 4634.

<sup>27</sup> Id, at 4413 per Merkel J.

<sup>28</sup> Id, at 4417 per Merkel J.

<sup>29</sup> (1988) 3 BVC 428.

<sup>30</sup> [1997] BVC 388.

<sup>31</sup> GSTR 2001/6, para 79.

<sup>32</sup> See *Magna Stic Magnetic Signs Pty Ltd & Ors v FCT* (1989) ATC 5000.

underpaid indirect tax ceases to be payable, or the overpaid amount is taken to have been payable in full, from when the previous ruling was made.<sup>33</sup>

There are rules for deciding whether a ruling applies to you, or whether a ruling has been altered:

- (a) a private ruling only applies to the entity to whom it was given;
- (b) so far as a private ruling conflicts with an earlier public ruling, the private ruling prevails;
- (c) so far as a public ruling conflicts with an earlier private ruling, the public ruling prevails;
- (d) an alteration that a later ruling makes to an earlier ruling is disregarded so far as the alteration results from a change in the law that came into operation after the earlier ruling was given.<sup>34</sup>

There are likely to exist numerous cases where a taxpayer with a private ruling will be unaware that a later public ruling has altered the previous ruling. In my opinion the Commissioner needs to do more to educate taxpayers about this. A practical means of doing so might be to issue a quarterly note to taxpayers highlighting new public rulings that have issued together with any changes in the law.

The nature of GST is such that compliance is heavily dependent upon taxpayers' systems. When a ruling is altered it often takes time to alter these systems. The date of effect of a later ruling is therefore a very important issue for such taxpayers. Under the former sales tax regime, a rule of practice had developed whereby taxpayers were given three months to change their systems before an adverse ruling applied to them. While there should be no general dispensation, it would be highly desirable for the Commissioner to issue a practice statement setting out the factors he might consider relevant in extending the date of effect for systems-dependent taxpayers.

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<sup>33</sup> *Taxation Administration Act 1953 (Cth)*, s37(2).

<sup>34</sup> *Taxation Administration Act 1953 (Cth)*, s37(3).

## Public GST Rulings

A ‘public ruling’ means a ruling other than a private ruling; and a ‘ruling’ means any ruling or advice given or published by the Commissioner, including one that has previously been altered, but not including one given orally, or an assessment.<sup>35</sup>

The definition of ‘public ruling’ is much broader under the GST regime than under the income tax regime. The Commissioner accepts that it encompasses GST public rulings and determinations, GST bulletins, GST Product Rulings, general information booklets, guides and fact sheets, but not GST Practice Statements and GST Case Decision Summaries.<sup>36</sup>

I should state at the outset that the overall standard of public GST rulings is high, and that nothing I say below should be taken to diminish that conclusion. While I do not always agree with the conclusions expressed in public GST rulings, nor the reasons advanced in support of those conclusions, the rulings demonstrate a high level of technical expertise and clarity.

The Auditor-General has recently found that the processes for the production of public rulings of high technical quality operate effectively overall.<sup>37</sup> He concluded that ‘the mechanisms in place for public rulings substantially provide for consistent and fair treatment for taxpayers’.<sup>38</sup> One area of concern identified by the Auditor-General was the time taken to produce some types of public rulings, which inhibited their usefulness. He nevertheless concluded that ‘the public rulings system, overall, provides taxpayers with increased certainty regarding the Commissioner’s application of the tax law.’<sup>39</sup>

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<sup>35</sup> *Taxation Administration Act* 1953 (Cth), s37(4).

<sup>36</sup> GSTR, 1999/1, para 11.

<sup>37</sup> Australian National Audit Office (‘ANAO’), *The Australian Taxation Office’s Administration of Taxation Rulings* (2001), para 12.

<sup>38</sup> *Id.*, at para 17.

<sup>39</sup> *Id.*, at para 26.

The timeliness of public rulings continues to be an issue. The Auditor-General noted that the ATO's 'Rulings Manual provides an ideal of six months from commencement of drafting to finalisation of public rulings, including a period of three months between draft and final public ruling for public rulings which are relatively complex, including a review by the Public Rulings Panel. He commented that a more realistic target might be six months between draft and final public ruling.<sup>40</sup>

Given the need for certainty by unpaid tax collectors with numerous day to day transactions, it is in my opinion far preferable to issue a ruling, and then subsequently amend it, than to issue a ruling in draft for a lengthy period, or not at all. An example of where this has worked well was the timely issue of GSTR 2001/5, dealing with supplies of going concerns, and its recent replacement with GSTR 2002/5. The notice of withdrawal gave detailed reasons for the changes that were made in the manner of an explanatory memorandum. The Commissioner is to be commended for this practice.

An example of poor practice is GSTR 2000/D22, dealing with vouchers, which issued as a draft ruling on 22 November 2000, and is expected to issue in final form in November 2002. The extended period of uncertainty, and the unfair burden this places on the unpaid tax collector, hardly needs elaboration. I readily accept that the GST treatment of vouchers, especially in relation to phone cards, is a difficult issue. But therein lies the problem for the unpaid tax collector self-assessing on a day to day basis. It is precisely because the issue is complex that a measure of certainty is required. It is cold comfort for the taxpayer who gets it 'wrong' to be told that the Commissioner will take this into consideration in remitting penalties. The primary liability is in practice irrecoverable from the consumer, and the unpaid tax collector suffers a very real loss. This lack of certainty and inherent unfairness has the capacity to bring the tax system into disrepute, with potentially negative consequences for co-operative compliance.

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<sup>40</sup> Id, at paras 3.23 – 3.24.

In relation to review rights, the Auditor-General in his report recognised that a framework for public rulings which is based in law and includes formal rights, including provision for judicial review, are worthwhile features of a public rulings system supporting taxpayers in a self-assessment environment.<sup>41</sup> He noted, however, that the ‘application of GST public and private rulings to completed transactions can be challenged only through the structure of the assessment process under the GST’.<sup>42</sup> While that statement is not quite correct, as I will discuss below under the heading ‘challenging a GST ruling’, it is difficult to understand why, in the context of GST, formal review rights would not help support taxpayers in a self-assessment environment.

### **Private GST Rulings**

A ‘private ruling’ means a ruling given to a particular entity.<sup>43</sup> In the calendar year 2000, the Commissioner issued 89,779 private rulings. Of these, 84,287 were GST rulings. In some respects that might be expected in the year in which GST was introduced, but it is a staggering number nevertheless.

While I have seen much criticism of ATO rulings, and of the introduction of GST generally, too little praise has been directed towards the Commissioner and his officers for an outstanding effort in even coping with the magnitude of the transition. Perhaps it is now time to do so.

The overall standard of private GST rulings will never be as high as that of public GST rulings, which is a reflection of the different processes and resources employed for each. It is my experience that most private GST rulings demonstrate a fair level of technical expertise and clarity.

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<sup>41</sup> Id, at para 3.3.

<sup>42</sup> Id, at 3.9.

<sup>43</sup> *Taxation Administration Act* 1953 (Cth), s37(4).

In recent times there has been a great deal of scrutiny of the private rulings system. An internal review conducted by Tom Sherman QC recommended the ATO should:

- Develop, as a matter of urgency, a single corporate IT system for ATO technical work that encompasses both management information and authorship requirements.
- Issue all private rulings through a central exit registry with each ruling given an identifying number in the one series of numbers for each year.
- Publish all private rulings (with taxpayer identifiers deleted) on a public database.
- Only allow authorised officers (with the necessary skills and experience) to prepare and issue private rulings.<sup>44</sup>

The subsequent report of the Auditor-General was not as positive for private rulings as it was for public rulings where, at the time of audit, ‘the lack of integration of systems and inadequate systems controls undermine certainty, fairness and consistency of treatment for taxpayers.’<sup>45</sup> The main weaknesses in the production and management of private rulings were:

- There were many information systems in the production of private rulings, and these systems lacked integration.
- The ATO had limited controls over data quality making the analysis and examination of private ruling information difficult.
- Only in early 2001 did the ATO introduce a search engine to allow case officers to perform free text searches on private rulings that had issued.
- The IT systems did not generate adequate, timely or useful information for management to make informed decisions.<sup>46</sup>

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<sup>44</sup> Sherman, *Report of an Internal Review of the Systems and Procedures relating to Private Binding Rulings and Advance Opinions in the Australian Tax Office*, August 2000.

<sup>45</sup> Id, at para 17.

<sup>46</sup> Id, at para 34.

In my opinion the constant scrutiny of the private rulings system has resulted in major improvements to that system, and the Commissioner should be commended for agreeing to implement every recommendation of the Auditor-General.

### **Challenging GST rulings**

As discussed earlier in this paper, the Government has previously recognised that a rulings system, binding on the Commissioner, is fairer because taxpayers are able to object to private rulings and have the matter reviewed by an independent tribunal or court.<sup>47</sup> The Auditor-General in his report also recognised that a framework for rulings with formal review rights is a worthwhile feature of a rulings system supporting taxpayers in a self-assessment environment.<sup>48</sup>

However, no formal appeal rights exist in relation to private GST rulings. The issue of a private GST ruling does not give rise to an appealable objection decision, nor does it give rise to rights under the ADJR Act.<sup>49</sup>

One means of challenging a private ruling is to invoke the assessment process by requesting a special assessment, and then proceed to objection and appeal.<sup>50</sup> Another means is to seek declaratory relief.

Declaratory proceedings were a common feature of sales tax disputes. For many years these proceedings were commenced in the state Supreme Courts or the High Court but not in the Federal Court. The first cases were replete with jurisdictional issues.<sup>51</sup> This prompted the Commissioner to issue Sales Tax Ruling ST 2454. This ruling dealt with sales tax objection and appeal procedures; jurisdiction and standing in declaratory

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<sup>47</sup> P Baldwin, Minister for Higher Education and Employment Services and Minister Assisting the Treasurer, Second Reading Speech, Taxation Laws Amendment (Self-Assessment) Bill 1992, 26 May 1992, Vol H of R 184 at 2774-2775.

<sup>48</sup> Australian National Audit Office ('ANAO'), *The Australian Taxation Office's Administration of Taxation Rulings* (2001), at para 3.3.

<sup>49</sup> See *Hutchins v DFC of T* (1994) 94 ATC 4,443.

<sup>50</sup> See *Taxation Administration Act* 1953 (Cth), ss 22-23.

<sup>51</sup> See *Kodak (Australasia) Pty Ltd v Commonwealth* (1989) 89 ATC 4010; *In Re the Totalisator Administration Board of Queensland* (1988) 88 ATC 4178; and *FC of T v Biga Nominees Pty Ltd* (1988) 88 ATC 4270.

proceedings; and disputing sales tax liability generally. The Commissioner indicated in the ruling that he would not continue with jurisdiction and standing challenges to declaratory proceedings. The original jurisdiction of the Federal Court was expanded in 1997 to include, among other things, any matter arising under any laws made by the Parliament, other than in respect of certain criminal matters.<sup>52</sup>

We should learn from the sales tax experience. Despite the 1997 changes in relation to the jurisdictional basis for declaratory relief, it would in my opinion be worthwhile for the Commissioner to issue a practice statement dealing with the issues likely to arise under GST.

One very real consequence of a lack of appeal rights is that it becomes very difficult to obtain certainty in relation to proposed transactions. You cannot enliven the objection and appeal process by requesting a special assessment as there is nothing to assess in relation to a proposed transaction. It would also be difficult to obtain a declaration in relation to a proposed transaction as it is not the role of the courts to provide advisory opinions.

### **Concluding remarks and recommendations**

As stated at the outset, the limited purpose of this paper is to evaluate whether the GST rulings system is failing. It should be evident from what I have said above that the GST rulings system is not failing, though improvements to it can and should be made.

Rulings play a key role in the self-assessment environment and are an integral part of the tax system. A good rulings system will aid in promoting co-operative compliance among taxpayers. It is appropriate to evaluate the rulings system by reference to the well known hallmarks of a good tax system: equity, efficiency and simplicity, though equity and simplicity, in the guise of certainty, appear the main considerations.

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<sup>52</sup> *Judiciary Act* 1903 (Cth), s 39B(1A).

The reality that most suppliers are unpaid tax collectors on whom the burden of the tax is not intended to fall, and that these suppliers must make judgements about the application of the tax to numerous transactions which occur on a day to day basis, means that many suppliers would value certainty and, hence, timeliness over most other factors.

In the light of these factors, and in the interests of certainty and fairness, I respectfully offer the following recommendations to improve the GST rulings system.

1. The Government should amend the GST law to provide formal review rights in respect of private GST rulings as a means of supporting taxpayers in a self-assessment environment, especially in relation to prospective transactions. The simplest path is to extend the private binding rulings regime to GST.
2. The Commissioner should make greater efforts to educate taxpayers that private rulings can be altered by a later public ruling. A practical means of doing this might be to issue a quarterly note to taxpayers re-iterating this point and highlighting new public rulings that have issued together with any changes in the law.
3. The Commissioner should issue a practice statement, along the lines of former Sales Tax Ruling ST 2454, dealing with GST objection and appeal procedures; jurisdiction and standing in declaratory proceedings; and disputing GST liability generally.
4. The Commissioner should issue a practice statement setting out the factors he might consider relevant in extending the date of effect for systems-dependent taxpayers whose position changes after an adverse ruling is issued.

5. The Commissioner should issue a ruling, and then subsequently amend it where necessary, in preference to issuing a ruling in draft for a lengthy period, or not at all. An example is the timely issue of GSTR 2001/5, dealing with supplies of going concerns, and its recent replacement with GSTR 2002/5.
6. The Commissioner should take greater care in making general pronouncements in public GST rulings, as such pronouncements have a tendency to mislead. This point is illustrated by the statement in GSTR 2001/6 at paragraph 79: ‘We consider that the principles on which these cases were decided are applicable in Australia.’
7. The Commissioner should withdraw and re-issue GSTR 1999/1, correcting the statement at paragraph 24 that a decision not to issue a ruling is reviewable under the provisions of the ADJR Act.