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### **Landmark GST Decision for Industries Remitting GST to the ATO for Cancelled and 'No Show' Bookings**

#### **The Qantas Decision**

Qantas has recently won its case against the Australian Taxation Office (ATO) in *Qantas Airways Limited v Commissioner of Taxation* [2011] FCAFC 113. The Full Federal Court has handed down a landmark decision in relation to the GST status of funds retained by Qantas when domestic passengers cancel their booking, miss their flight or simply don't show and no refund was available or claimed.

Qantas and its subsidiary Jetstar Airways Limited sold domestic air travel, subject to terms and conditions or carriage, including fully refundable pre-paid fares and non-refundable pre-paid fares.

On 30 June 2008, Qantas lodged a GST refund notification with the Commissioner of Taxation, claiming that it incorrectly paid GST in respect of pre-paid fares for unused travel. In other words, where a passenger had failed to board or cancelled their booking and was not entitled to a refund or failed to claim a refund.

The Full Bench of the Federal Court held that GST is not payable in these instances. While the decision gives clear guidance to domestic transport operators it also gives guidance to other GST registered entities in similar industries that take bookings, hold fees and have cancellations and no shows.

The decision of the Full Federal Court hinged on the fact that a relevant supply only occurred when the customer was carried by Qantas. Therefore, if the customer was not carried, then a supply had not occurred and as GST is a supply based tax, there was no supply and hence no GST liability.

#### **Opportunities for GST refunds in similar industries**

There is a potential opportunity for GST refunds from prior periods in industries such as accommodation in hotels, motels and caravan parks, where fees are retained if a booking is cancelled or a customer does not show. This will depend on the quality of the accounting records, along with other factors that will need to be considered.

Going forward, it may be prudent to consider the above facts in light of your business operations and the Qantas decision and review how you treat the GST on cancelled or no show bookings.

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It is not yet known if the ATO will seek leave from the High Court to appeal the Full Federal Court's decision, however, the decision does oppose the ATO's current view on cancelled bookings and the GST status of these.

### **What you should do**

We recommend you seek assistance to review the contractual terms under which you receive cancellation fees or full fees where a supply has not occurred, in order to determine your GST status in light of the Qantas Decision.

Qantas sold domestic air travel subject to terms and conditions of carriage, including fully refundable pre-paid fares and non-refundable pre-paid fares and sought a refund on the GST of non-refundable pre-paid fares and refundable fares for which no refund was sought.

It would seem if the terms and conditions of your contract stipulate the supply (for example in the caravan park industry, that of accommodation) must occur and it does not and the bookings are non refundable or a refund is not sought, then you may have a case to not remit any GST to the ATO, by treating the receipt as not GST applicable as a supply did not occur.

On a practical level, for those in the accommodation industry, you may need to create an account (possibly a liability account) which records deposits and prepaid fees and from which amounts are only transferred to income once the supply occurs. Unclaimed deposits and 'no shows' would be transferred to a separate income account on which no GST is recorded.

For more information, please contact Mark Rogerson of Rogerson Kenny Business Accountants on (03) 9802 2533 or [mark.rogerson@rogersonkenny.com.au](mailto:mark.rogerson@rogersonkenny.com.au)