



GST Specialists

14 April 2015

Mr. Peter Morgan  
Manager Finance & Governance  
Ballina Shire Council  
40 Cherry Street  
BALLINA NSW 2478

Dear Peter,

**Refunds of overpaid GST on all asset sales**

Since GST started councils have been paying GST on asset sales (including real estate), taxable fees and charges and some government grants. We believe that councils should not pay GST on asset sales, as the federal government cannot tax the property of a state. Councils are a state for GST purposes, as recognised in the 2011 case of Melton Shire Council v Commissioner of Taxation. In that case the Federal Court issued a Consent Order declaring that no tax under the GST law is imposed on property of any kind belonging to Melton.

The ATO has accepted the Consent Order and allowed councils to take advantage of certain concessions previously only available to the state and the Commonwealth. These concessions mean reduced GST payable on certain real estate sales. Melton Council used this Consent Order for the purposes of applying these concessions and obtained refunds of overpaid GST.

In our project councils have the opportunity to take the Melton decision to its next level i.e. to seek refunds of all GST paid on all sales of assets, for at least the last 6 years. Assets include land and buildings, motor vehicles, trucks, graders, street sweepers and other plant and equipment.

GST continues to be payable on taxable fees and charges and government grants, other than appropriations. The project does not affect council's ability to claim input tax credits on purchases, past or in the future; the framework of the GST Act separates purchases from sales and imposes entirely different regimes on each. We quantify the refund claim amount from real estate sales information obtained from a property sales database and we expect to be able to gather most of the information on other asset sales from your published accounts.

Our fees are based on achieving a successful outcome for council, calculated at 25% (plus GST) of the refund claim amount. This project requires a reasonably quick decision because of the need to identify the participating group of councils, in a similar way to a class action. We are aiming to finalise the councils that will be included in the class action during April 2015 so that the proceedings can commence during July 2015.

Yours sincerely,

A handwritten signature in blue ink that reads 'Pat McCarthy'.

Pat McCarthy  
Director

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20 March 2015

Mr. Peter Morgan  
Manager Finance & Governance  
Ballina Shire Council  
40 Cherry Street  
BALLINA NSW 2478

Dear Peter,

**Engagement letter – Claim for refund of GST in connection with assets**

In line with current Institute of Chartered Accountants Professional regulations our work for you is confirmed with an engagement letter. The conduct of our tax work performed is in accordance with Australian Accounting Standards.

**Who is our client?**

Ballina Shire Council (Council) is our client. Except as required by law or professional standards, or as expressly contemplated for us to perform this agreement, we must not disclose any information relating to Council's affairs to a third party without prior consent.

**Terms of Engagement**

We will be responsible for the following tasks for Council:

1. Analyse past transactions concerning property and other relevant assets and extract pertinent data in order to assess the amount of the claim to be made for refunds of overpaid GST including, if appropriate, interest (Refund Claim). The analysis includes the identification of sales that will be ineligible for a refund.
2. Prepare a spreadsheet of past transactions with various calculations, including calculation of the Refund Claim.
3. Compile support package of information such as contracts, valuations etc to support the Refund Claim.
4. Prepare submission in support of the Refund Claim including, as appropriate, providing support for a claim that the refunds should not be denied and that the Commissioner should exercise his discretion under s105-65 of the Taxation Administration Act 1953, Division 142 of the GST Act or any replacement legislation dealing with Council's ability to receive refunds.
5. The submission may be by way of private ruling or requesting the Commissioner to issue an assessment in relation to each of the relevant tax periods or objecting to self-

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assessments. We may wish to make the request in such a way to be able to review or appeal the Commissioner's decision in the event he declines part or all of the Refund Claim. We will determine what we consider to be the best approach closer to the time of lodgement. On your behalf, we may elect as we consider necessary or appropriate, to proceed to determine your entitlement by review or appeal under the Taxation Administration Act or, instead of such submission, give instructions on your behalf and seek other declarations or orders to establish your entitlement.

6. Negotiate with the ATO and keep you informed of progress along the way.
7. Review possible entitlement to GST refunds in connection with the operation of section 114 of the Constitution and if, in our reasonable opinion, a refund is available and it is economic to pursue, analyse property transactions, compile support packages, prepare submissions to the ATO or otherwise proceed as above to determine the Refund Claim and negotiate amounts to be reimbursed to Council as above.
8. Assisting Council to prepare amended BAS, if required.

Subject to any agreement to the contrary our work is limited to the above, and does not include any other specific advice, auditing or other work. Whilst we expect the tasks, as described above, to be within the knowledge and skills available to us it is possible we will encounter issues which are beyond those skills which may cause the scope of work to be amended. If so we will propose a variation to the scope of works on suitable terms.

Our procedures use accounting and tax expertise to collect, classify and summarise the financial information which you provide. Our procedures generally oblige us to ask you to provide documentary evidence to support the Refund Claim. We will liaise with you on the data gathering process and ask you to check and verify information we obtain from third parties and from our analysis of your published financial statements. We will need you to provide, at times, detailed analysis of some transactions.

**Fees**

Council is only liable to pay a fee if successful in establishing the entitlement to a payment or Council otherwise agrees to compromise, settle or resolve its entitlement for a lesser sum. The fee for the work set out above will be based on a percentage of the Refund Claim. The fee is our standard fee of 25% of the Refund Claim plus GST. Payment of our fee is due within 30 days.

**Review or appeal etc**

If Council's entitlement is established after commencement of a review or appeal or other proceeding as we consider necessary or appropriate, the fee will be not be increased from 25%. The further work involved and the associated costs and expenses will be absorbed by us as part of our fee. To achieve this, Genesis will require particular specialised lawyers to be engaged and instructed day to day by us on your behalf.

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**Timing**

Subject to your availability to provide information, we aim to lodge a submission as soon as possible. However, given that we do not know precisely when we will receive from you all the information we require, given the unknown complexity of the task until information is received and analysed and given that we may have to issue several requests for information, we are not liable for delay in lodgement or commencement.

**Tax Agent**

We will need to be appointed as the Council's tax agent to represent you in submissions and negotiations with the ATO. We do this electronically on the Tax Agent's Portal. We will receive into our trust account any cash refund and pay Council the balance after deduction of our fee. We deal with the ATO on the technical aspects of the refund process and the necessary procedures to have the refund paid after the refund entitlement has been established.

**Disclosure**

You must provide all relevant information and documents and sign any documents necessary for the proper performance of the work during the engagement, for example, an authority to act as your tax agent. This letter sets out the whole of our agreement. We have not relied on anything you have disclosed or said, nor you on anything us or our advisers have disclosed or said, when deciding to enter this agreement. Some events may give rise to a conflict of interest, potential conflict or disagreement regarding the engagement. If this occurs we will immediately try to resolve the issue and otherwise appoint a mutually agreed person to decide the issue.

**Good faith**

Genesis and Council will always act in good faith in connection with this agreement.

**Review of files**

Our client files may be subject to review as part of the quality control review program of the Institute of Chartered Accountants which monitors compliance with professional standards by its members. We advise you that by signing this letter you acknowledge that, if requested, our client files will be made available under this program. Should this occur, we will advise you. The same strict confidentiality requirements apply under this program as apply to us.

**Lien on Documents**

In relation to any subsequent termination of our services we shall be entitled to retain all documents belonging to you and any related parties we act for until payment is received in full for all outstanding fees.

**Limitation of Liability**

Our liability is limited by a scheme approved under Professional Standards legislation. Further information on the scheme is available from the Professional Standards website:

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[www.professionalstandards.gov.au](http://www.professionalstandards.gov.au).

Please sign, scan and return this letter to indicate that it is in accordance with your understanding of the arrangements. If you would like to discuss any matters about our terms of engagement please do not hesitate to contact us.

Yours sincerely,

A handwritten signature in blue ink that reads 'Pat McCarthy'.

Pat McCarthy  
Director

I agree to the above terms in this engagement letter.

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Signed by an authorised representative of Council

Date

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