

## GST on incentives update

September 2012

**As most of you are aware, the AP Group Ltd (AP) have had their claim for GST on Incentives heard in the Administrative Appeals Tribunal (AAT). The AAT is not part of the Courts system, rather a Tribunal set up for matters to be heard and deliberated upon between the taxpayer and the ATO. It should be noted that the decisions made in the Tribunal are not final and can be appealed through the Courts.**

On Friday 14 September 2012, the AAT set aside its early objection decision and substituted a decision that the GST on Incentive objection by AP be allowed in part. The decision affected the following incentive payment types:

- Holden transit allowance,
- Ford drive for success retail incentive payment, and
- Subaru VFOS wholesale target incentive payment.

The AAT found that these payments were not considered as a supply and therefore GST did not apply. The decision allows for the net amounts of three of the incentives considered in the hearing to be reduced. Curiously, the previous interim decision – where the AAT raised the issue of whether the Commissioner could rely on the discretion to refuse the refunds and whether the AAT had the jurisdiction to review such a decision – did not appear to be considered in this substituted finding.

At this stage we do not know whether the ATO will appeal this decision nor are we in a position to determine the Commissioner's views on paying any refunds. The result confirms a taxpayer win but we caution any premature successful outcome. In the meantime we will continue to keep you informed of developments as they arise in regard to this GST on Incentives matter.

If you have any questions, please do not hesitate to contact a member of the Fordham Motor Dealer Services Team:

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