

TRADE PRACTICES ACT 1974

**UNDERTAKING TO THE AUSTRALIAN COMPETITION AND CONSUMER
COMMISSION GIVEN FOR THE PURPOSE OF SECTION 87B**

BY

TONY AMODIO

PERSON GIVING UNDERTAKING

- 1 This Undertaking is given to the Australian Competition and Consumer Commission ("Commission") by Tony Amodio of 40 William Street, Toronto, in the State of NSW under section 87B of the *Trade Practices Act 1974* ("Act").

BACKGROUND

- 2 Tony Amodio is the principal of the business "Accounting for GST", which offers various goods and services to individuals and small businesses to assist them in understanding the Goods and Services Tax ("GST"), including:
 - (i) lodgement of applications for Australian Business Numbers ("ABNs") and GST registration ("Registration Services")
 - (ii) provision of training seminars dealing with GST-related issues ("GST Workshops"); and
 - (iii) providing manuals and guides relating to the GST ("GST portfolios").
- 3 From at least February 2000, Accounting for GST promoted its goods and services by telephoning individuals and businesses from mailing lists which it had purchased. These telephone calls were generally made by independent contractors retained by Accounting for GST on a temporary basis. The telephone calls were followed up by letters explaining Accounting for GST's services where the recipient of the telephone call expressed some interest in the services.
- 4 Accounting for GST's representatives sent the details of businesses they had called to Accounting for GST, which would lodge applications on behalf of those businesses to register for ABNs and for the GST. Accounting for GST would also prepare GST portfolios for the businesses.
- 5 The Australian Taxation Office ("ATO") issues a "GST Start-up Assistance Certificate" to businesses when they register for an ABN. The Certificate may be used by the business to purchase GST-related goods or services to the value of \$200 from suppliers registered with the GST Start-up Assistance Office ("GSAO"). Registered suppliers can redeem the certificates with the GSAO. Accounting for GST is a registered supplier.
- 6 The Commission received several complaints from individuals and businesses to the effect that representatives of Accounting for GST had made representations including:

- (i) that Accounting for GST is affiliated with the GSAO and/or the ATO;
- (ii) that Accounting for GST provides Registration Services free of charge;
- (iii) that Accounting for GST will provide places at GST workshops in connection with the Registration Services free of charge; and
- (iv) that all persons and entities carrying on a business require an ABN under the GST Legislation.

- 7 The Commission wrote to Tony Amodio on 28 April 2000 expressing concern that the representations described in paragraph (iii) above were not true and seeking his comments by 17 May 2000. Subsequently, the Commission received further complaints in relation to this matter and in relation to the representations in paragraphs (i), (ii) and (iv). The Commission's solicitors wrote to Tony Amodio on 11 May 2000 seeking his comments and certain undertakings by the next day.
- 8 Tony Amodio provided written undertakings but denied that he or Accounting for GST's representatives had engaged in conduct in breach of the Act.
- 9 The Commission commenced proceedings in the Federal Court on 15 May 2000.
- 10 The parties have agreed to resolve this matter by the giving and accepting of undertakings in the terms contained herein.

COMMENCEMENT OF UNDERTAKING

- 11 This Undertaking comes into effect when:
- (i) the Undertaking is executed by Tony Amodio; and
 - (ii) the Commission accepts the Undertaking so executed.

UNDERTAKINGS

- 12 Tony Amodio on behalf of himself and Accounting for GST gives the following undertakings to the Commission for the purposes of section 87B of the Act.

Admissions

- 13 Tony Amodio admits that certain of the representations made by Accounting for GST in promotional letters and by staff employed by Accounting for GST in telephone conversations may have misled some consumers into believing that:
- (i) Accounting for GST was part of, or closely affiliated with, the ATO or the GSAO;
 - (ii) all businesses are legally required to apply for an ABN and register for the GST; and / or
 - (iii) Accounting for GST's services are supplied without any cost to the user.

Representation undertakings

- 14 Tony Amodio and persons acting on his behalf will not make representations to the effect that:
- (i) Accounting for GST has any sponsorship, approval or affiliation with the GSAO or the ATO generally provided that this undertaking will not prevent representation that Accounting for GST is a registered supplier in the terms of the GST Legislation for the purposes of implementation of the GST;
 - (ii) Accounting for GST's Registration Services are provided free of charge, unless this is correct;
 - (iii) Accounting for GST's GST workshops are provided free of charge, unless this is correct;
 - (iv) an ABN is required for the purposes of the GST Legislation for anything, other than creating an entitlement to claim input tax credits within the terms of the GST Legislation; or
 - (v) persons or entities who make use of Accounting for GST's services are required to attend any seminars in relation to Registration Services or otherwise.

Offer of Refunds

- 15 Tony Amodio will send a letter in the form of **Annexure A** to all persons who have acquired and paid for Accounting for GST's Registration Services or places at GST Workshops ("**Refund Letters**"). The Refund Letters are to be sent by mail or facsimile by no later than **7 July 2000**. No other material is to be sent with the Refund Letters.
- 16 Tony Amodio will send a letter in the form of **Annexure D** to all persons who have acquired, but not paid for, Accounting for GST's Registration Services or places at GST Workshops ("**Confirmation Letters**"). The Confirmation Letters are to be sent by mail or facsimile by no later than **7 July 2000**. No other material is to be sent with the Confirmation Letters.
- 17 Tony Amodio will provide refunds to all persons and businesses who respond in writing by 31 August 2000 stating that they were misled by the representations described in the Refund Letter describing the basis on which they consider themselves to have been misled and the amount which they paid for the services. Tony Amodio will cancel the services without cost of all persons and businesses who respond in writing by 31 August 2000 stating that they were misled by the representations described in the Confirmation Letter and describing the basis on which they consider themselves to have been misled. Tony Amodio will forward a copy of each response received by Accounting for GST to the Commission within one week of receiving the response.
- 18 On 7 July 2000 Tony Amodio will send to the Commission a list of the names, addresses and telephone numbers of all persons and businesses to whom Refund Letters and Confirmation Letters have been sent. Tony Amodio acknowledges that the Commission

may contact persons or businesses named on the list for the purpose of checking that those persons or businesses have received Refund Letters and Confirmation Letters.

Corrective Advertisements

19 Tony Amodio will, at his own expense, place corrective advertisements ("Corrective Advertisements") in the main section of at least one local newspaper published in each of the following areas:

- (i) Newcastle;
- (ii) Wollongong;
- (iii) the Gold Coast; and
- (iv) north-eastern New South Wales.

The Corrective Advertisements are to appear on the weekend of 1-2 July 2000 or during the following week. The content, form and approximate size of the Corrective Advertisements is at Annexure B.

Trade Practices Compliance Program

20 Tony Amodio will implement a trade practices compliance program in accordance with Annexure C.

ACKNOWLEDGMENTS

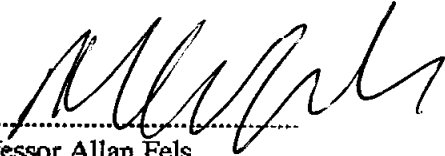
- 21 Tony Amodio acknowledges that the Commission will make this Undertaking available for public inspection.
- 22 Tony Amodio further acknowledges that the Commission will, from time to time, publicly refer to this Undertaking.
- 23 Tony Amodio acknowledges and accepts that this Undertaking in no way derogates the rights and remedies available to any person arising from the conduct of Tony Amodio or Accounting for GST.
- 24 Tony Amodio further acknowledges that the information referred to at Annexure B and the trade practices compliance program, as in force from time to time, will be held with this Undertaking on the public register.

Signed by Tony Amodio



.....
This 28 day of June 2000

ACCEPTED BY THE AUSTRALIAN COMPETITION AND CONSUMER COMMISSION
PURSUANT TO SECTION 87B OF THE TRADE PRACTICES ACT 1974


.....
Professor Allan Fels
Chairman

This 22 day of 6 2000

Annexure A

REFUND LETTER

[on Accounting for GST letterhead]

As you are aware, Accounting for GST ("AFG") offers assistance to individuals and small businesses in preparing for the introduction of the GST. In promoting our services, AFG or its representatives have made statements which may have caused some people to believe that:

- (a) AFG was part of, or closely affiliated with, the Australian Tax Office or the GST Start Up Office;
- (b) all businesses are legally required to apply for an Australian Business Number and register for the GST; and/or
- (c) AFG's services (including workshops) are supplied without any cost to the user.

The Australian Competition and Consumer Commission ("ACCC") has raised concerns with AFG that the representations made by AFG, or its agents, were likely to mislead consumers. AFG is a registered supplier with the Government's GST Start-up Office but is otherwise not affiliated with government agencies. Further AFG's services are not offered without cost, but are often paid for by users redeeming a GST Start-up Assistance Certificate.

AFG apologises for any misconception that may have arisen as a result of the statements in its promotional letters or by its representatives. It was always AFG's intention that prospective clients understood the nature of the services it offered. AFG was in the practice of sending confirmation letters and allowing cancellation by customers within 7 days.

Nevertheless this may have not been clear to some people and AFG has agreed with the ACCC to provide a full refund to the users of our services who were misled by the representations made by AFG or its agents. If you have suffered loss as a result of AFG's representations, please write to AFG at the address which appears above by **31 August 2000**. In your letter, please describe the circumstances in which you were misled by one or all of the statements outlined in (a)-(c) above, the amount which you paid for AFG's services and how you paid that amount (i.e., GST Start-Up Assistance Certificate, cash or cheque). Whilst a refund will be provided in cash, you should note that, if you have paid us using a GST Start Up Assistance Certificate, the intention of the GST Direct Assistance Scheme is that these Certificates be only used for payment of GST related goods and services.

You should also return any documents or other goods that we have provided to you along with your written request for a refund.

AFG has agreed with the ACCC not to repeat these (or similar) claims. We will also implement a trade practices compliance program to ensure our promotional activities will not mislead consumers in the future.

Please note that you may be contacted directly by the ACCC to confirm that you have received this letter from AFG and to confirm the accuracy of any statements that you have made.

Annexure B

CORRECTIVE ADVERTISEMENT

CORRECTIVE ADVERTISING

**An apology from
Accounting for GST**

[AFG logo]

Accounting for GST ("AFG") offers assistance to individuals and small business in preparing for the introduction of the GST. In promoting its services, AFG or its representatives have made statements which may have caused some people to believe that:

- AFG was part of or closely affiliated with the Australian Tax Office or the GST Start Up Office;
- all businesses are legally required to apply for an Australian Business Number and register for the GST; and/or
- AFG's services are supplied without any cost to the user.

The Australian Competition and Consumer Commission (ACCC) has raised concerns with AFG that the representations made by us or our agents, were likely to mislead consumers. AFG is a registered supplier of ~~GST accounting services~~ but is otherwise not affiliated with government agencies. Further AFG's services are not offered without cost but are often paid for by users redeeming a GST Start-up Assistance Certificate.

AFG apologises for any misconception that may have arisen as a result of the representations. If you have suffered loss as a result of AFG's representations please contact us on the number at the foot of this advertisement.

AFG has agreed with the ACCC not to repeat these (or similar) claims. We will also implement a trade practices compliance program to ensure our promotional activities will not mislead consumers in the future.

[ACCC logo]

This corrective advertisement has been paid for by Accounting for GST and placed at the request of the ACCC.

[AFG contact details]

with the governments GST Start-Up Assistance Office.

Annexure C

TRADE PRACTICES COMPLIANCE PROGRAM

The Trade Practices Compliance Program ("Program") to be undertaken by Tony Amodio will be implemented as follows:

General

- 1 Tony Amodio will, within one (1) month of receipt of the Commission's acceptance of the undertaking implement the following Program at its own expense.
- 2 Tony Amodio will appoint an appropriately qualified Solicitor or compliance professional as a Trade Practices Compliance Officer ("Compliance Officer"). The Compliance Officer will be appointed at the time the Program is implemented.

Advertising Reviews

- 3 Tony Amodio will require the Compliance Officer to review standard promotional material that is proposed to be sent to five or more of Accounting for GST's customers or prospective customers ("Advertising Review") of Accounting for GST to ensure that it complies with the *Trade Practices Act 1974* ("Act"), prior to its publication, broadcast or other use.
- 4 Tony Amodio will maintain a documentary record of the Advertising Reviews. Such documentary record will include:
 - (i) a copy of the advertisement or promotional material;
 - (ii) a description of the publication (including name, date, page(s) and publisher);
 - (iii) written advice that the advertisement had been reviewed and cleared by the Compliance Officer (including the date on which the advertisement was reviewed); and
 - (iv) written advice of any possible contraventions of the Act that were identified by the Compliance Officer and the action taken to address these possible contraventions.
- 5 Tony Amodio will ensure that the documentary records of the Compliance Reviews are available to the Commission to be reviewed from time to time. Such records are to be available from one week after the date of publication of the advertisement for a period of 2 years after that date. Such records shall be provided to the Commission within 5 working days of a written request for those records.

Complaints Handling

- 6 Tony Amodio will ensure that the Program incorporates an appropriate complaints handling mechanism.

Education

- 7 Tony Amodio will develop and implement an education program calculated to ensure that sales and marketing staff are conversant with the Part V provisions of the Act to a level where:

- (i) they can avoid obvious contraventions and can identify more complex trade practices problems for referral to the Compliance Officer;
- (ii) the Compliance Officer can carry out their responsibilities; and
- (iii) the Compliance Officer can address more complex trade practices issues or, if not legally qualified, Tony Amodio's legal adviser.

- 8 Tony Amodio will ensure that training sessions covering all aspects of Part V of the Act be given to sales and marketing staff on two occasions within the twelve months after the implementation of the Program. The first of these training sessions is to be completed within 3 months of the Program being implemented, and the remaining one between 8 to 9 months later.

Review

- 9 Tony Amodio will ensure that an independent external auditor, with expertise in trade practices law, conducts an audit ("Audit") of the Program with a view to improving its effectiveness. The Audit will be conducted between 11 to 12 months after the implementation of the Program. The Audit will identify deficiencies and make recommendations as to possible improvements to the Program.

Reporting

- 10 Tony Amodio will provide the Commission with the following:
- (i) Within 10 working days of the implementation of the Program, notice of the appointment of the Compliance Officer including name, position and contact details;
 - (ii) Within 10 working days after each of the training sessions, notice of completion of that seminar including an outline of the session, details of the presenter(s) and details of attendees; and
 - (iii) Within 10 working days of the completion of the Audit, a copy of the Audit together with advice as to what changes Tony Amodio intends to incorporate in the Program as a result of the Audit.

11

- 11 Tony Amodio will make changes to the Program as reasonably requested by the Commission having considered the documentation referred to at paragraph 11 (iii) above. Such changes are to be implemented within 2 weeks of the Commission's request.

Duration

- 12 The Program will remain in effect for two years following the Undertaking coming into effect.

Annexure D

CONFIRMATION LETTER

[on Accounting for GST letterhead]

As you are aware, Accounting for GST ("AFG") offers assistance to individuals and small businesses in preparing for the introduction of the GST. In promoting our services, AFG or its representatives have made statements which may have caused some people to believe that:

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Nevertheless this may have not been clear to some people and AFG has agreed with the ACCC to allow users of our services who were misled by the representations made by AFG or its agents but who have yet to pay for the services, to cancel the services and return any documents or other products to us without cost. If, as a result of AFG's representations, you wish to cancel our services, please write to AFG at the address which appears above by **31 August 2000**. In your letter, please describe the circumstances in which you were misled by one or all of the statements outlined in (a)-(c) above

You should also return any documents or other goods that we have provided to you along with your letter cancelling our services.

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