



# **A New Tax System (Goods and Services Tax Administration) Act 1999**

**No. 56, 1999**



# **A New Tax System (Goods and Services Tax Administration) Act 1999**

**No. 56, 1999**

**An Act to implement A New Tax System by providing for the administration of the goods and services tax, and for related purposes**

---

## Contents

1	Short title.....	1
2	Commencement.....	1
3	Schedule(s).....	2
	<b>Schedule 1—Taxation Administration Act 1953</b>	<b>3</b>





# **A New Tax System (Goods and Services Tax Administration) Act 1999**

**No. 56, 1999**

---

**An Act to implement A New Tax System by providing for the administration of the goods and services tax, and for related purposes**

*[Assented to 8 July 1999]*

The Parliament of Australia enacts:

## **1 Short title**

This Act may be cited as the *A New Tax System (Goods and Services Tax Administration) Act 1999*.

## **2 Commencement**

This Act commences on 1 July 2000.

---

---

### **3 Schedule(s)**

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## **Schedule 1—Taxation Administration Act 1953**

### **1 Subsection 3C(9) (at the end of the definition of *this Act*)**

Add “, and does not include Part VI”.

### **2 At the end of paragraphs 8C(1)(a) to (d)**

Add “or”.

### **3 After paragraph 8C(1)(f)**

Insert:

or (g) to apply for registration or cancellation of registration under the *A New Tax System (Goods and Services Tax) Act 1999*;

### **4 After paragraph 8J(2)(p)**

Insert:

(pa) paragraph 65(1)(c) of this Act; or

### **5 After paragraph 8J(10)(a)**

Insert:

(aa) made in a tax invoice, or adjustment note, (within the meaning of the *A New Tax System (Goods and Services Tax) Act 1999*) given to the person;

### **6 After subsection 14ZW(1)**

Insert:

(1AA) The person must lodge the taxation objection against a decision mentioned in item 1 or 2 of the table in subsection 62(3) of this Act before the end of whichever of the following ends last:

- (a) the 60 days after notice of the decision was served on the person;
- (b) the 4 years after the end of the tax period, or after the importation of goods, to which the decision relates.

### **7 At the end of the Act**

Add:

---

## Part VI—Administration of the GST

### Division 1—Introduction

#### 19 Overview

This Part sets out administrative provisions for the GST and should be read in conjunction with the *A New Tax System (Goods and Services Tax) Act 1999*.

Other provisions of this Act can also affect the way the GST is administered.

Example: It is an offence under section 8C to fail to notify the Commissioner of a change of address as required by subsection 67(2).

#### 20 Meaning of expressions

- (1) In this Part:

***GST Act*** means the *A New Tax System (Goods and Services Tax) Act 1999*.

***authorised officer***, when used in a particular provision, means a person the Commissioner has authorised to exercise powers or perform functions under that provision.

- (2) Other expressions in this Part have the same meaning as in the GST Act.

#### 21 Application of the *Criminal Code*

The *Criminal Code* applies to all offences against this Part.



## **Division 2—Assessments**

### **22 Commissioner may make assessment of GST**

- (1) The Commissioner may at any time make an assessment of your net amount for a tax period.
- (2) The Commissioner may at any time make an assessment of the amount of GST payable by you on an importation of goods.
- (3) The Commissioner may make an assessment under this section even if he or she has already made an assessment for the tax period or importation concerned.

Note: An assessment made under this section is a reviewable GST decision (see Division 7).

### **23 Request for assessment**

- (1) You may request the Commissioner in the approved form to make an assessment of your net amount for a tax period or of an amount of GST payable by you on an importation of goods.
- (2) The Commissioner must comply with the request if it is made within:
  - (a) 4 years after the end of the tax period or the time of the importation; or
  - (b) such further period as the Commissioner allows.

### **24 GST liabilities do not depend on assessment**

- (1) Your liability to pay GST, and the time by which a net amount or an amount of GST must be paid, do not depend on, and are not in any way affected by, the making of an assessment under this Division.
- (2) The Commissioner's obligation to pay a net amount under section 35-5 of the GST Act, and the time by which it must be paid, do not depend on, and are not in any way affected by, the making of an assessment under this Division.

Note: However, an assessment can be used as evidence of liability: see section 59.

## **25 Commissioner must give notice of the assessment**

- (1) The Commissioner must give you notice of an assessment as soon as practicable after the assessment is made. However, failing to do so does not affect the validity of the assessment.
- (2) The Commissioner may give you the notice electronically if you are required to lodge or have lodged your GST returns electronically.

## **26 Amendment of assessment**

The Commissioner may at any time amend an assessment. An amended assessment is an assessment for all purposes of the GST law.

Note: However, there is a time limit on the recovery of overpaid or underpaid GST: see sections 35 and 36.

## **27 Later assessment prevails in case of inconsistency**

If there is an inconsistency between assessments that relate to the same tax period or importation of goods, the later assessment prevails to the extent of the inconsistency.

## **Division 3—Recovery**

### **28 Recovery of unpaid GST and penalty**

- (1) The Commissioner or a Deputy Commissioner may, in his or her official name, sue for and recover in a court of competent jurisdiction a net amount or an amount of GST that remains unpaid after the time by which it must be paid, or an amount of penalty under this Part.
- (2) Section 8ZL (which deals with averments) applies in proceedings for the recovery of the amount in a corresponding way to the way in which it applies to a prosecution for a prescribed taxation offence within the meaning of Part III.
- (3) A notice under section 47 that the Commissioner gives to an entity is prima facie evidence of the matters stated in the notice.

## **29 Payment when multiple amounts owing**

- (1) This section applies if an entity must pay 2 or more of any of the following:
  - (a) net amounts;
  - (b) amounts of GST;
  - (c) amounts of penalty under this Part;and the total of those amounts is more than a payment that the entity makes to the Commissioner in respect of one or more of the amounts, or a net amount under section 35-5 of the GST Act that the Commissioner must pay to the entity.
- (2) The Commissioner may:
  - (a) apply the payment or amount in partial discharge of the total of the amounts payable by the entity, in the order in which they became payable unless the Commissioner determines a different order; and
  - (b) recover the remaining balance as a debt due to the Commonwealth.
- (3) The Commissioner may do those things despite any direction by or on behalf of the entity who is liable to pay the amounts or the entity who makes the payment.

## **30 Recovery of GST paid on behalf of another entity**

If you pay a net amount, amount of GST or amount of penalty under this Part for or on behalf of another entity you may:

- (a) recover the amount from the other entity as a debt (together with the cost of recovery) in any court of competent jurisdiction; or
- (b) retain or deduct the amount out of money in your hands that belongs to, or is payable to, the other entity.

## **31 Recovery of GST if joint liability**

- (1) If 2 or more entities are jointly liable to pay a net amount, amount of GST or amount of penalty under this Part, they are each liable for the whole of the amount.

- (2) However, any of them who has paid the amount may recover the following contribution from any other entity jointly liable to pay the amount:

$$\text{Amount paid} \times \frac{\text{Interest of contributor}}{\text{Total interests of all the persons jointly liable}}$$

where:

*interest* means:

- (a) if the amount is a net amount—interest in the taxable supplies, creditable acquisitions and creditable importations from which that amount is worked out; and
  - (b) if the amount is an amount of GST—interest in the taxable importation that gave rise to the amount; and
  - (c) if the amount is an amount of penalty—interest in the event, or unsatisfied obligation, that gave rise to the penalty.
- (3) The entity entitled to the contribution:
- (a) may recover it as a debt in any court of competent jurisdiction; or
  - (b) may retain or deduct it out of money in the entity's hands that belongs to, or is payable to, the contributor.

### **32 Recovery of GST from trustee of deceased estate**

- (1) This section applies if, at the time of a person's death, a net amount or amount of GST that the person must pay has not been paid.
- (2) The Commissioner has the same powers and remedies for the assessment and recovery of the amount from the trustee of the person's estate as the Commissioner would have had against the person if he or she were still alive.
- (3) The trustee must provide any GST returns and other information that the person was required to provide, or would have been required to provide if he or she had not died. The trustee must also provide any other GST returns or other information that the Commissioner requires.

- (4) If the trustee fails to provide any GST return or other information, the Commissioner may make an assessment of a net amount or amount of GST in relation to the deceased person.

Note: An assessment made under this subsection is a reviewable GST decision (see Division 7).

- (5) The trustee is liable to penalty under this Part for an unpaid net amount or unpaid GST to the same extent as the deceased person would be if he or she were still alive.
- (6) Any amount payable by the trustee is a charge on all of the deceased person's estate in the trustee's hands in priority to any other encumbrance (other than a charge in relation to a debt payable to the Commissioner).

### **33 Recovery of GST from unadministered deceased estate**

- (1) This section applies if neither of the following are granted within 6 months after a person's death:
- (a) probate of the person's will;
  - (b) letters of administration of the person's estate.
- (2) The Commissioner may make an assessment of a net amount or amount of GST in relation to the deceased person. If the person resided in a State or Territory at the time of death, the Commissioner must publish notice of the assessment twice in a daily newspaper circulating in the State or Territory.
- (3) Anyone who:
- (a) claims an interest in the estate; or
  - (b) is granted probate of the deceased person's will, or letters of administration of the estate;
- and who is dissatisfied with the assessment, may object in the manner set out in Part IVC. That Part applies in relation to the objection as if the person were the deceased person.

### **34 Recovery from third party**

- (1) The Commissioner may direct an entity (the *third party*) who owes, or may later owe, money (the *available money*) to another

entity that has a GST debt (the *GST debtor*) to pay some or all of the available money to the Commissioner in accordance with the direction.

- (2) The Commissioner must give a copy of the direction to the GST debtor.
- (3) The direction cannot require an amount to be paid to the Commissioner at a time before it becomes owing by the third party to the GST debtor.
- (4) The third party is guilty of an offence if the third party fails to comply with the direction, so far as the third party is able to do so.

Maximum penalty: 20 penalty units.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

- (5) If an entity is convicted of an offence in relation to a refusal or failure of the third party to comply with subsection (4), the court may (in addition to imposing a penalty on the convicted entity) order the convicted entity to pay to the Commissioner an amount up to the amount involved in the refusal or failure.
  - (6) Any payment made by the third party under this section is taken to have been made with the authority of the GST debtor and of all other entities concerned, and the third party is indemnified for the payment.
  - (7) If the whole of the GST debt of the GST debtor is discharged before any payment is made by the third party, the Commissioner must immediately withdraw the direction and notify the third party that it has been withdrawn.
  - (8) For the purposes of this section, the third party is taken to owe money to the GST debtor if:
    - (a) money is due or accruing by the third party to the GST debtor; or
    - (b) the third party holds money for or on account of the GST debtor; or
-

- (c) the third party holds money on account of some other entity for payment to the GST debtor; or
  - (d) the third party has authority from some other entity to pay money to the GST debtor;
- even if the payment of the money to the GST debtor is dependent on a pre-condition that has not been fulfilled.
- (9) For the purposes of this section, money that has been paid by an entity to a building society for the issue of withdrawable shares in the capital of the society, but has not been repaid, is taken to be:
    - (a) if the money is repayable on demand—money due by the building society to the entity;
    - (b) if the money is not repayable on demand—money that may become due by the building society to the entity.
  - (10) In this section:
 

***building society*** means a society registered or incorporated as a building society, co-operative housing society or other similar society under the law in force in a State or Territory.

***GST debt*** means any of the following amounts payable by an entity (whether or not the amount has become due for payment):

    - (a) a net amount or amount of GST;
    - (b) penalty under this Part;
    - (c) a judgment debt, or costs, for GST or penalty under this Part;
    - (d) a fine, or costs, that a court has imposed for an offence against the GST law;
    - (e) an amount that a court has ordered the entity to pay to the Commissioner, following conviction of the entity for an offence against the GST law.

### **35 Time limit on recovering unpaid GST**

A net amount or an amount of GST that has not been paid within 4 years after the time when it became payable by you (together with any relevant penalty under section 40 for unpaid GST) ceases to be payable at the end of that period, unless:

- (a) within that period the Commissioner has required payment of the amount by giving a notice to you; or
- (b) the Commissioner is satisfied that the payment of the amount was avoided by fraud or evaded.

### **36 Time limit on credits and refunds**

You are not entitled to a refund under section 35-5 of the GST Act or an input tax credit, that is attributable to a particular tax period, unless:

- (a) within 4 years after the end of the tax period you notify the Commissioner (in a GST return or otherwise) that you are entitled to the refund or credit; or
- (b) within that period the Commissioner notifies you (in a notice of assessment or otherwise) that you are entitled to the refund or credit; or
- (c) in the case of a credit—the credit is taken into account in working out a net amount that the Commissioner may recover from you only because of paragraph 35(b) of this Act.

### **37 Reliance on Commissioner's interpretation of GST law**

- (1) This section 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 GST, or the Commissioner has overpaid an amount under section 35-5 of the GST Act, in respect of one or more taxable supplies or taxable importations that happened before the alteration.
  - (2) 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:
    - (a) the underpaid GST ceases to be payable; or
    - (b) the overpaid amount under section 35-5 of the GST Act is taken to have been payable in full;from when the previous ruling was made.
-



- (3) The following rules apply in deciding whether a ruling applies to you, or whether a ruling has been altered:
- (a) a private ruling applies only 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.

- (4) In this section:

***private ruling*** means a ruling given to a particular entity.

***public ruling*** means a ruling other than a private ruling.

***ruling*** means any ruling or advice given or published by the Commissioner, including one that has been previously altered, but not including:

- (a) one given orally; or
- (b) an assessment.

### **38 Refunds if earlier GST return not provided**

- (1) The Commissioner may withhold a net amount for a tax period that he or she must pay to you under section 35-5 of the GST Act, if you have not given the Commissioner:
- (a) a GST return for an earlier tax period that you must give to the Commissioner; or
  - (b) a further or fuller GST return for the first-mentioned tax period or an earlier tax period if the Commissioner has asked you to provide it under section 31-20 of the GST Act.
- (2) The Commissioner must pay the amount within 14 days after you give the Commissioner the GST return or further or fuller GST return (and no interest is payable on the amount in the meantime).

- (3) However, if the Commissioner makes an assessment of your net amount for the tax period to which the GST return relates, or further or fuller GST return relates, at any time before the GST return, or further or fuller GST return, is given to the Commissioner, he or she must pay the withheld amount to you when the assessment is made.

Note: The Commissioner may apply the amount against other liabilities that you have: see subsection 35-5(2) of the GST Act.

### **39 Refund of amounts overpaid by you or owing to you**

- (1) The Commissioner must refund to you:
- (a) so much of any net amount or amount of GST as you have overpaid; and
  - (b) so much of any net amount that is payable to you under section 35-5 of the GST Act as the Commissioner has not paid to you.
- (2) However, if you have a liability to the Commonwealth under a taxation law, the Commissioner may:
- (a) apply that amount against the liability; and
  - (b) pay to you any part of that amount not so applied.
- (3) The Commissioner need not give you the refund, or apply the amount under subsection (2), if:
- (a) you overpaid the amount, or the amount was not refunded to you, because a supply was treated as a taxable supply to any extent; and
  - (b) the supply is not a taxable supply to that extent (for example, because it is GST-free);
- unless:
- (c) the Commissioner is satisfied that you have reimbursed a corresponding amount to the recipient of the supply; and
  - (d) the recipient is neither registered nor required to be registered.

## **Division 4—Penalties**

### **40 Penalty for unpaid GST**

- (1) If a net amount or an amount of GST that is payable by you remains unpaid after the day by which it must be paid, you are liable to a penalty at the rate of 16% per year on the unpaid amount.
- (2) The penalty is calculated from:
  - (a) the day on which the amount becomes due to be paid, ignoring any extension of time to pay the amount given by the Commissioner under section 33-20 of the GST Act; or
  - (b) a later day determined by the Commissioner if the Commissioner has extended the time to pay the amount, or permitted it to be paid by instalments, under that section.
- (3) The fact that a judgment is entered or given in a court for the payment of a net amount or amount of GST, or of a composite amount that includes a net amount or an amount of GST, does not of itself cause the net amount or amount of GST to stop being unpaid for the purposes of this section.
- (4) If the judgment debt bears interest, the penalty payable under this section is reduced (but not beyond nil) by the following amount:

$$\text{Interest on judgment debt} \times \frac{\text{Net amount or GST component}}{\text{Judgment debt}}$$

where:

***net amount or GST component*** means the net amount, or GST, component of the judgment debt.

### **41 Penalty for failing to make electronic payment**

If you must pay a net amount by electronic payment under subsection 33-10(2) of the GST Act and you pay it in some other way, you are liable to a penalty of 5 penalty units.

Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

## 42 Penalty for failing to register or cancel registration

If you fail to apply for registration, or to apply for cancellation of registration, as required by the GST Act, you are liable to a penalty of 20 penalty units.

Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

## 43 Penalty for failing to give GST return or other information

- (1) You are liable to a penalty if you fail to give the Commissioner on time a GST return that you are required to give by Division 31 of the GST Act. The penalty is \$10 for each week (or part of a week) in the period that:
  - (a) starts on the day by which you must give the GST return to the Commissioner; and
  - (b) ends on the day before you give the GST return to the Commissioner.

However, the penalty for a particular GST return cannot exceed \$200.

- (2) You are liable to a penalty if you fail to give the Commissioner on time any information (other than information you are required to give in a GST return) on a taxable supply or taxable importation that you are required to give under the GST law. The penalty is equal to double the amount of GST payable on the taxable supply or taxable importation.
- (3) You are liable to a penalty if:
  - (a) you fail to give the Commissioner on time any information (other than information you are required to give in a GST return) on a creditable acquisition or a creditable importation; and
  - (b) the net amount for the tax period concerned, worked out without knowing that information, is less than it would be if the information had been known.

The penalty is equal to double the difference.

**44 Penalty for failing to issue tax invoice or adjustment note**

- (1) If you fail to issue a tax invoice as required by section 29-70 of the GST Act, you are liable to a penalty of 20 penalty units.
- (2) If you fail to issue an adjustment note as required by section 29-75 of the GST Act, you are liable to a penalty of 20 penalty units.

Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

**45 Penalty for both principal and agent issuing certain documents**

An entity is liable to a penalty if both the entity and its agent issue:

- (a) separate tax invoices relating to the same taxable supply, contrary to subsection 153-15(2) of the GST Act; or
- (b) separate adjustment notes for the same decreasing adjustment, contrary to subsection 153-20(2) of that Act.

The penalty is 20 penalty units.

Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

**46 Penalty for making false statements**

- (1) You are liable to a penalty if you make a false statement:
  - (a) to a tax officer; or
  - (b) to another entity who is not a tax officer, for a purpose in connection with the operation of the GST law;(whether or not you know that it is a false statement) and either of these cases applies:
  - (c) the net amount or amount of GST properly payable by you, or by the other entity, exceeds the net amount or amount of GST that would have been payable if the statement was not false;
  - (d) the net amount or amount of GST that would have been payable, if the statement was not false, to you or to the other entity exceeds the net amount or amount of GST properly payable to you or to the other entity.
- (2) The amount of the penalty is double the excess.

- (3) In this section:

**false statement** means a statement (whether made orally, in a document or in any other way) that:

- (a) is false or misleading in a material particular; or
- (b) omits any matter or thing without which the statement is misleading in a material particular;

but does not include a statement made in a document produced under paragraph 65(1)(c).

**tax officer** means a person who is exercising powers, or performing functions, under or in connection with the GST law.

#### **47 Notification of penalty and due date for payment**

- (1) The Commissioner must notify an entity that is liable to a penalty under this Part (other than a penalty under section 40 for unpaid GST) of the amount of the penalty.
- (2) The notice may be included in any other notice the Commissioner gives to the entity.
- (3) Unless the Commissioner has extended the time to pay the penalty, or permitted it to be paid by instalments, the penalty becomes due for payment on the day specified in the notice, which must be at least 14 days after the notice is given to the entity.

Note: The Commissioner may extend the time to pay, or allow payment by instalments, under section 33-20 of the GST Act.

#### **48 Remission of penalty**

- (1) The Commissioner may remit some or all of the penalty that an entity is liable to under this Part if the Commissioner is satisfied that it is fair and reasonable to do so.

Note: A refusal to remit an amount of penalty under this section may be a reviewable GST decision (see Division 7).

- (2) The Commissioner must decide whether to do this before notifying the entity of the amount of the penalty, and state the decision in the notice.

- (3) The Commissioner may also remit penalty under subsection (1) at any time after giving the notice.

#### **49 Relationship with offence provisions**

Nothing in this Division makes it an offence to do or omit to do anything.

Note: However, some of the conduct covered by this Division might constitute an offence against a provision outside this Division. An entity that is prosecuted for such an offence is not liable to pay any penalty under this Division: see section 8ZE.

### **Division 5—Special rules for certain entities**

#### **50 Liability of partners**

- (1) Obligations that are imposed under the GST law on a partnership are imposed on each partner, but may be discharged by any of the partners.
- (2) The partners are jointly and severally liable to pay any amount that is payable under the GST law by the partnership.
- (3) Any offence against the GST law that is committed by a partnership is taken to have been committed by each of the partners.
- (4) In a prosecution of an entity for an offence that the entity is taken to have committed because of subsection (3), it is a defence if the entity proves that the entity:
  - (a) did not aid, abet, counsel or procure the relevant act or omission; and
  - (b) was not in any way knowingly concerned in, or party to, the relevant act or omission (whether directly or indirectly and whether by any act or omission of the entity).

#### **51 Liability of participants in GST joint ventures**

- (1) The participants in a GST joint venture are jointly and severally liable to pay any amount that is payable under the GST law by the

joint venture operator of the joint venture, to the extent that the amount relates to the joint venture.

- (2) Any offence against the GST law that:
  - (a) is committed by the joint venture operator of a GST joint venture; and
  - (b) relates to the joint venture;is taken to have been committed by each of the participants in the joint venture.
- (3) In a prosecution of a person for an offence that the person is taken to have committed because of subsection (2), it is a defence if the person proves that the person:
  - (a) did not aid, abet, counsel or procure the relevant act or omission; and
  - (b) was not in any way knowingly concerned in, or party to, the relevant act or omission (whether directly or indirectly and whether by any act or omission of the person).

## **52 Liability related to unincorporated associations or bodies of persons**

- (1) Obligations that would be imposed under the GST law on an unincorporated association or body of persons are imposed on each member of the committee of management of the association or body, but may be discharged by any of those members.
- (2) Any offence against the GST law that is committed by the association or body is taken to have been committed by each member of its committee of management.
- (3) In a prosecution of an entity for an offence that the entity is taken to have committed because of subsection (2), it is a defence if the entity proves that the entity:
  - (a) did not aid, abet, counsel or procure the relevant act or omission; and
  - (b) was not in any way knowingly concerned in, or party to, the relevant act or omission (whether directly or indirectly and whether by any act or omission of the entity).



**53 Liability of members of GST groups**

- (1) The members of a GST group are jointly and severally liable to pay any amount that is payable under the GST law by the representative member of the group.
- (2) Any offence against the GST law that is committed by the representative member of a GST group is taken to have been committed by each of the members of the group.
- (3) In a prosecution of an entity for an offence that the entity is taken to have committed because of subsection (2), it is a defence if the entity proves that the entity:
  - (a) did not aid, abet, counsel or procure the relevant act or omission; and
  - (b) was not in any way knowingly concerned in, or party to, the relevant act or omission (whether directly or indirectly and whether by any act or omission of the entity).

**54 Liability of representatives of incapacitated entities**

- (1) If there are 2 or more representatives of the same incapacitated entity, the representatives are jointly and severally liable to pay any amount that is payable under the GST law by any of the representatives in relation to that same incapacitated entity.
- (2) If there are 2 or more representatives of the same incapacitated entity, any offence against the GST law that is committed by one of the representatives is taken to have been committed by each of the representatives.
- (3) In a prosecution of a person for an offence that the person is taken to have committed because of subsection (2), it is a defence if the person proves that the person:
  - (a) did not aid, abet, counsel or procure the relevant act or omission; and
  - (b) was not in any way knowingly concerned in, or party to, the relevant act or omission (whether directly or indirectly and whether by any act or omission of the person).

## 55 Obligations of liquidator or receiver

- (1) This section applies to a person (the *asset holder*) who:
  - (a) becomes a liquidator of a company; or
  - (b) in the capacity of a receiver, or a receiver and manager, for debenture holders of a company, takes possession of assets of the company.
- (2) The asset holder must, within 14 days after becoming liquidator or taking possession of the assets, give written notice of that fact to the Commissioner.
- (3) The Commissioner must as soon as practicable notify the asset holder of the amount (the *notified GST amount*) that the Commissioner considers is enough to cover any net amount, amount of GST and penalty under this Part that the company is liable to pay or may become liable to pay.
- (4) The asset holder must not, without the Commissioner's permission, part with any of the company's assets before receiving the notice from the Commissioner. However, this does not prevent the asset holder from parting with the company's assets to pay debts of the company that are not ordinary debts.
- (5) After receiving the Commissioner's notice, the asset holder must set aside, out of the assets available for paying the company's ordinary debts, assets with a value calculated using the following formula:

$$\begin{array}{l} \text{Total value of} \\ \text{assets available} \\ \text{to pay} \\ \text{ordinary debts} \end{array} \times \left[ \frac{\text{Notified GST amount}}{\text{Notified GST amount} + \text{Notified other taxes} + \text{Sum of other ordinary debts}} \right]$$

where:

*notified other taxes* means the total of any amounts that the Commissioner has notified in relation to the company under another section of this Act, or a section of another Act, that corresponds to this section.

- (6) The asset holder is liable as trustee to pay the net amounts, amounts of GST and penalties under this Part payable by the company, to the extent of the value of assets that the asset holder is required to set aside.
- (7) If the asset holder contravenes this section or fails as trustee to pay the net amounts, amounts of GST or penalties for which the asset holder is liable under subsection (6), the asset holder:
  - (a) is personally liable to pay the net amounts, amounts of GST or penalties, to the extent of the value of the assets that the asset holder is required to set aside under subsection (5); and
  - (b) is guilty of an offence punishable on conviction by a fine of no more than 10 penalty units.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

- (8) This section does not reduce any obligation or liability of the asset holder that arises outside this section.
- (9) In this section:

*ordinary debt* means a debt that is unsecured and is not required, by a law of the Commonwealth or of a State or Territory, to be paid in priority to some or all of the company's other debts.

## **56 Public officer of a company**

- (1) The person who is the public officer of a company for the purposes of the *Income Tax Assessment Act 1936* is also the public officer of the company for the purposes of the GST law. The public officer's address for service under that Act is also the public officer's address for service for the same purposes.
- (2) The public officer is answerable for doing everything required to be done by the company under the GST law, and in case of default is liable to the same penalties.
- (3) A proceeding under the GST law that is brought against the public officer is taken to have been brought against the company, and the

company is liable jointly with the public officer for any penalty imposed on the public officer.

- (4) Everything done by the public officer that the public officer is required to do in that capacity is taken to have been done by the company.
- (5) Service of a notice or other document on the public officer or at the public officer's address for service is sufficient service on the company for the purposes of the GST law. If at any time there is no public officer, service on a person who is acting or appears to be acting in the business of the company is sufficient.
- (6) This section does not, by implication, reduce any of the obligations or liabilities of the company.

### **57 Liability of directors etc. of a company**

- (1) Any notice, process or proceeding that may be given to, served on or taken against a company or its public officer under the GST law may, if the Commissioner considers it appropriate, be given to, served on, or taken against an entity (the *representative*) who is:
  - (a) a director, secretary or other officer of the company; or
  - (b) an attorney or agent of the company.
- (2) The representative has the same liability in respect of the notice, process or proceeding as the company or public officer would have had if it had been given to, served on or taken against the company or public officer.
- (3) This section does not, by implication, reduce any of the obligations or liabilities of the company or public officer.

### **58 Obligations of agent winding up business for non-resident**

- (1) This section applies to an agent for a non-resident principal who is affected by the GST law and has instructed the agent to wind up so much of the principal's business as is carried on in Australia.
- (2) The agent must give written notice to the Commissioner of the instruction, within 14 days after receiving the instruction.

- (3) The Commissioner must as soon as practicable notify the agent of the amount that the Commissioner considers is enough to cover any net amount, amount of GST and penalty under this Part that the principal is liable to pay or may become liable to pay.
  - (4) The agent must not (without the Commissioner's permission) part with any of the assets of the principal before receiving the Commissioner's notice.
  - (5) After receiving the Commissioner's notice, the agent must set aside, out of the assets available for paying the net amounts, amounts of GST and penalties under this Part, assets to the value of the amount notified, or the whole of the assets so available if they are less than that value.
  - (6) The agent is liable as trustee to pay the net amounts, amounts of GST and penalties under this Part payable by the principal, to the extent of the value of assets that the agent is required to set aside.
  - (7) If the agent contravenes this section or fails as trustee to pay the net amounts, amounts of GST or penalties for which the agent is liable under subsection (6), the agent:
    - (a) is personally liable to pay the net amounts, amounts of GST or penalties, to the extent of the value of the assets that the agent is required to set aside under subsection (5); and
    - (b) is guilty of an offence punishable on conviction by a fine of no more than 10 penalty units.
- Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.
- Note 2: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.- (8) If 2 or more agents are instructed by the same principal to wind up the business, the obligations and liabilities under this section apply to all of those agents jointly.
- (9) In a prosecution of an entity for an offence that the entity is taken to have committed because of subsection (8), it is a defence if the entity proves that the entity:
  - (a) did not aid, abet, counsel or procure the relevant act or omission; and

---

- (b) was not in any way knowingly concerned in, or party to, the relevant act or omission (whether directly or indirectly and whether by any act or omission of the entity).
- (10) This section does not reduce any obligation or liability of the agent that arises outside this section.

## **Division 6—Evidence**

### **59 Production of assessment or declaration is conclusive evidence**

The production of a notice of assessment under this Part or of a declaration under section 165-40 or subsection 165-45(3) of the GST Act is conclusive evidence:

- (a) that the assessment or declaration was properly made; and
- (b) except in proceedings under Part IVC on a review or appeal relating to the assessment or declaration—that the amounts and particulars in the assessment or declaration are correct.

### **60 Certificate of amount payable is prima facie evidence**

The presentation of a certificate signed by the Commissioner or a Deputy Commissioner certifying that, from the time specified in the certificate, an amount was payable under the GST law (whether to or by the Commissioner) is prima facie evidence:

- (a) that the amount is payable from that time; and
- (b) the particulars stated in the certificate are correct.

### **61 Signed copies are evidence**

- (1) The production of a document signed by the Commissioner or a Deputy Commissioner that appears to be a copy of, or extract from, any document made or given by or to an entity for the purposes of the GST law is evidence of the matters set out in the document to the same extent as the original document would have been evidence of those matters.
- (2) To avoid doubt, subsection (1) applies to a copy or extract of a document that was given by or to the Commissioner on a data

processing device or by way of electronic transmission, unless it is shown that the document was not authorised.

**Division 7—Review**

**62 Reviewable GST decisions**

- (1) If you are dissatisfied with a reviewable GST decision relating to you, you may object against the decision in the manner set out in Part IVC.

Note: Subsection (2) lists reviewable GST decisions under the GST Act and subsection (3) lists reviewable GST decisions under this Part.

- (2) Each of the following decisions is a *reviewable GST decision* under the GST Act:

<b>Reviewable GST decisions under GST Act</b>		
<b>Item</b>	<b>Decision</b>	<b>Provision of GST Act under which decision is made</b>
1	refusing to register you	subsection 25-5(1)
2	registering you	subsection 25-5(2)
3	deciding the date of effect of your registration	section 25-10
4	refusing to cancel your registration	subsection 25-55(1)
5	cancelling your registration	subsection 25-55(2)
6	deciding the date on which the cancellation of your registration takes effect	section 25-60
7	determining that the tax periods that apply to you are each individual calendar month	subsection 27-15(1)
8	deciding the date of effect of a determination	subsection 27-15(2)
9	refusing to revoke a determination under section 27-10	subsection 27-25(1)
10	deciding the date of effect of a revocation	subsection 27-25(2)
11	determining that a specified period is a tax period that applies to you	section 27-30
12	refusing a request for a determination	section 27-37
13	revoking a determination under section 27-37	subsection 27-38(1)

<b>Reviewable GST decisions under GST Act</b>		
<b>Item</b>	<b>Decision</b>	<b>Provision of GST Act under which decision is made</b>
14	deciding the date of a revocation	subsection 27-38(2)
15	refusing to permit you to account on a cash basis	subsection 29-45(1)
16	deciding the date of effect of your permission to account on a cash basis	subsection 29-45(2)
17	revoking your permission to account on a cash basis	subsection 29-50(3)
18	deciding the date of effect of the revocation of your permission to account on a cash basis	subsection 29-50(4)
19	refusing an application for approval	section 48-5
20	refusing an application for approval or revocation	subsection 48-70(1)
21	revoking an approval under Division 410	subsection 48-70(2)
22	refusing an application for revocation	subsection 48-75(1)
23	revoking the approval of a GST group	subsection 48-75(2)
24	deciding the date of effect of any approval, or any revocation of an approval, under Division 410	section 48-85
25	refusing an application for approval	section 51-5
26	refusing an application for approval or revocation	subsection 51-70(1)
27	revoking an approval under Division 411	subsection 51-70(2)
28	refusing an application for revocation	subsection 51-75(1)
29	revoking the approval of a GST joint venture	subsection 51-75(2)
30	deciding the date of effect of any approval, or any revocation of an approval, under Division 411	section 51-85
31	cancelling the registration of an Australian resident agent	subsection 57-25(1)
32	cancelling the registration of a representative of an incapacitated entity	subsection 147-10(1)
33	refusing an application for registration	section 54-5
34	deciding the date of effect of registration as a GST branch	section 54-10
35	refusing to cancel the registration of a GST branch	subsection 54-75(1)
36	cancelling the registration of a GST branch	subsection 54-75(2)



---

**Reviewable GST decisions under GST Act**

<b>Item</b>	<b>Decision</b>	<b>Provision of GST Act under which decision is made</b>
37	deciding the date of effect of the cancellation of the registration of a GST branch	section 54-80
38	making a declaration to negate a GST benefit	section 165-40
39	making a declaration to negate or reduce a GST disadvantage	subsection 165-45(3)
40	deciding whether to grant a request for a declaration to negate or reduce a GST disadvantage	subsection 165-45(5)

(3) Each of the following decisions is a *reviewable GST decision* under this Part:

---

**Reviewable GST decisions under this Part**

<b>Item</b>	<b>Decision</b>	<b>Provision of this Part under which decision is made</b>
1	making an assessment	section 22
2	making an assessment where there is a trustee of a deceased estate	subsection 32(4)
3	refusing to any extent to remit an amount of penalty (other than penalty under section 40 for unpaid GST), but only if the amount of penalty payable after the refusal is more than \$200	subsection 48(1)

Note: In cases where there is an unadministered deceased estate, certain persons may object against an assessment made in relation to the deceased person: see subsection 33(3).

**Division 8—Other administrative provisions**

**63 Commissioner has general administration of GST law**

The Commissioner has the general administration of the GST law.

**64 Commissioner must prepare annual report**

- (1) As soon as practicable after 30 June in each year, the Commissioner must prepare and give to the Minister a report on the working of the GST law during the year ending on that 30 June.
- (2) The report must include a report on any breaches or evasions of the GST law that the Commissioner knows about.
- (3) The Minister must cause a copy of the report to be laid before each House of the Parliament within 15 sitting days of that House after the day on which the Minister receives the report.

**65 Commissioner may direct a person to provide information**

- (1) The Commissioner may direct a person to do all or any of the following:
  - (a) to give the Commissioner any information that the Commissioner requires;
  - (b) to attend and give evidence before the Commissioner or an authorised officer;
  - (c) to produce to the Commissioner any documents in the custody or under the control of the person;for the purpose of enabling the Commissioner to apply the GST law in relation to the person or any other person.

Note: Failing to comply with a direction can be an offence against section 8C.
- (2) The Commissioner may direct that:
  - (a) the information or answers to questions be given either orally or in writing (as the Commissioner requires); or
  - (b) the information or answers to questions be verified or given on oath or affirmation.
- (3) The Commissioner or an authorised officer may administer the oath or affirmation.
- (4) The regulations may prescribe scales of expenses to be allowed to persons who are required to attend under this section.

---

**66 Access to premises etc.**

- (1) For the purposes of the GST law, an authorised officer:
  - (a) may at all reasonable times enter and remain on any land or premises; and
  - (b) is entitled to full and free access at all reasonable times to any documents, goods or other property; and
  - (c) may inspect, examine, make copies of, or take extracts from, any documents; and
  - (d) may inspect, examine, count, measure, weigh, gauge, test or analyse any goods or other property and, to that end, take samples.
- (2) An authorised officer is not entitled to enter or remain on any land or premises if, after having been requested by the occupier to produce proof of his or her authority, the officer does not produce an authority signed by the Commissioner stating that the officer is authorised to exercise powers under this section.
- (3) If an authorised officer enters, or proposes to enter, land or premises under this section, the occupier must provide the officer with all reasonable facilities and assistance for the effective exercise of powers under this section.
- (4) An occupier who contravenes subsection (3) is guilty of an offence.

Maximum penalty: 10 penalty units.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

**67 Address for service**

- (1) An entity's address for service for the purposes of the GST law is:
  - (a) if the entity is registered in the Australian Business Register—the address shown in the Register as the entity's address for service; or

- (b) if the entity is not registered in that Register—the address last notified by the entity in a GST return, application for registration or any other document under the GST law; or
- (c) if the entity has not notified an address in a GST return, application or other document under the GST law—the entity’s Australian place of business or residence last known to the Commissioner; or
- (d) any other address that the Commissioner reasonably believes to be the entity’s address for service.

Note: In the case of a company, see also section 56.

- (2) If an entity that is liable to pay GST changes its address for service, the entity must notify the Commissioner in writing of the new address within 28 days after the change.
- (3) If an entity on whom a notice or other document must be served under the GST law, or in proceedings for recovery of a net amount, amount of GST or penalty under this Part, has notified the Commissioner of an Australian address for service, the Commissioner may serve the notice or document by post to that address.
- (4) However, if an entity that must lodge or has lodged GST returns electronically notifies the Commissioner of an address for effecting service by way of electronic transmission, the Commissioner may serve a notice of assessment, or notice of penalty under this Part, on the entity by electronic transmission to that address.

## 68 Protection of confidentiality of information

- (1) This section restricts what a person (the *entrusted person*) may do with protected information, or protected documents, that the person has obtained in the course of official employment.
- (2) The entrusted person:
  - (a) must not make a record of protected information; and
  - (b) must not disclose it to anyone else;if the recording or disclosure is not in accordance with subsection (3).

Maximum penalty: Imprisonment for 2 years.

---

---

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

- (3) It is not an offence against subsection (2) if any of the following apply to the recording or disclosure:
- (a) the recording or disclosure is for the purposes of the GST law;
  - (b) the recording or disclosure happens in the course of the performance of the duties of the entrusted person's official employment;
  - (c) the entrusted person is the Commissioner or a Deputy Commissioner and the disclosure is to:
    - (i) the Chief Executive Officer of Customs; or
    - (ii) the Australian Statistician and is of information to be used for the purposes of the *Census and Statistics Act 1905*; or
    - (iii) another person for the purpose of that other person carrying out functions under a taxation law; or
    - (iv) the Administrative Appeals Tribunal in connection with proceedings under a taxation law;
  - (d) the disclosure is by a person authorised by the Commissioner or a Deputy Commissioner to disclose the information and the disclosure is to:
    - (i) the Chief Executive Officer of Customs; or
    - (ii) the Australian Statistician and is of information to be used for the purposes of the *Census and Statistics Act 1905*; or
    - (iii) another person for the purpose of that other person carrying out functions under a taxation law.
- (4) Subsection (3) does not authorise the disclosure of information to a Minister.
- (5) Unless it is necessary for the purposes of the GST law, the entrusted person is not to be required:
- (a) to produce any protected document to a court; or
  - (b) to disclose protected information to a court.
- (6) In this section:
-

**disclose** means divulge or communicate.

**official employment** means:

- (a) appointment or employment by the Commonwealth, or the performance of services for the Commonwealth; or
- (b) the exercise of powers or performance of functions under a delegation by the Commissioner.

**protected document** means any document made or given under, or for the purposes of, the GST law (for example, a GST return).

**protected information** means information that meets all the following conditions:

- (a) it relates to the affairs of a person other than the entrusted person;
- (b) it was obtained by the entrusted person, or by any other person, in the course of official employment;
- (c) it was disclosed or obtained under the GST law.

## **69 Notices etc. by Commissioner must be in writing**

- (1) Any notice, approval, direction, authority or declaration that the Commissioner may give, or must give, to you under the GST law must be in writing.
- (2) However, this does not prevent the Commissioner giving any of those things to you by electronic transmission if a provision of the GST law allows the Commissioner to do so.

## **70 Keeping records of GST transactions**

- (1) If you make a taxable supply, taxable importation, creditable acquisition or creditable importation you must:
  - (a) keep records that record and explain all transactions and other acts you engage in that are relevant to that supply, importation or acquisition; and
  - (b) retain those records for at least 5 years after the completion of the transactions or acts to which they relate.
- (2) The records must be:

- (a) in English, or readily accessible and easily convertible into English; and
  - (b) such as to enable your liability under the GST law to be readily ascertained.
- (3) However, it is not necessary to retain records:
- (a) if the Commissioner notifies you that you do not need to retain them; or
  - (b) for a company that has been finally dissolved.
- (4) If you contravene this section, you are guilty of an offence.

Maximum penalty: 30 penalty units.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

---

*[Minister's second reading speech made in—  
House of Representatives on 2 December 1998  
Senate on 10 December 1998]*

(221/98)

---