

A New Tax System (Goods and Services Tax) Regulations 1999 1999 No. 245

EXPLANATORY STATEMENT

Statutory Rules 1999 No. 245

Issued by authority of the Assistant Treasurer

The Governor-General may make regulations under section 177-15 of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act) for the purposes of that Act.

The regulations consist of three sets of provisions:

- the first set deals with the information requirements for tax invoices. Section 29-70 of the GST Act permits the information requirements for tax invoices to be specified in the regulations;
- the second set identifies whether a supply is, or is not, a financial supply. Section 40-5 of the GST Act provides that financial supply has the meaning given by the regulations; and
- the third set identifies acquisitions that are eligible for the reduced input tax credit under the GST Act (to be known as reduced credit acquisitions) and specifies the percentage to which the input tax credit is reduced for the reduced credit acquisitions. Section 70-5 of the GST Act permits the reduced credit acquisitions and the rate of the reduced input tax credit to be specified in the regulations.

Purpose of the regulations

A. Tax periods - tax invoices

The purpose of this part of the regulations is to prescribe the additional information that is required to be contained in tax invoices issued for the purposes of the goods and services tax (GST). The information that is to be shown on tax invoices (other than that prescribed in the GST Act) has not previously been specified.

B. Financial supplies

This part of the regulations gives meaning to the *term financial supply*. Financial supplies are input taxed under the GST Act. These regulations will identify those supplies that are financial supplies, and input taxed, for the purposes of the GST Act.

C. Reduced input tax credits

This part of the regulations sets out a list of reduced credit acquisitions that give rise to an entitlement to reduced input tax credits. The regulations also specify the percentage of the reduction of the input tax credits to which the financial supply provider is entitled.

Explanatory Statement

Background

GST is effectively a tax on final consumption in Australia and is ultimately borne by consumers. To ensure GST is effectively borne by consumers, registered entities will generally be entitled to input tax credits for the GST on acquisitions made for the purpose of their enterprises. Input tax credits are to be offset against the GST payable on taxable supplies made in order to determine an entity's net GST liability for a tax period.

A. Tax periods - tax invoices

A GST-registered entity must hold transaction documents that satisfy the tax invoice requirements of the GST Act in order to substantiate creditable acquisitions over \$55. An entity must hold a tax invoice for such acquisitions in order to attribute the input tax credit to a tax period.

To satisfy the tax invoice requirements, section 29-70 of the GST Act requires a document to show:

- * the Australian Business Number (ABN) of the entity issuing the document;
- * the GST-inclusive price of the taxable supply; and
- * other information as specified in the regulations,

as well as complying with any requirements as to the form of the document approved by the Commissioner of Taxation.

Part 2-6 of the regulations prescribe the additional information that is required to be contained in tax invoices.

A detailed explanation of the information requirements is contained in Attachment A to this Statement.

B. Financial supplies

Under the GST Act, financial supplies are input taxed. This means that no GST is charged on the financial supply and that the financial supply provider is not entitled to any input tax credits for any GST included in the price of anything acquired or imported to make the supply.

The regulations follow the general rule that where a financial supply provider is able to earn a return on a financial product, the supply of a financial product will be a financial supply and input taxed. A financial supply provider is generally able to earn a return by way of a margin where they hold a legal interest in the financial product before it is supplied. For example, Company A is able to earn a return by way of a margin by buying shares from Company B and then selling them to Company C. The regulations overcome difficulties in identifying the value added margin on individual transactions. Input taxation does not require the valuation of a financial service.

All other financial services, including agency services, are generally not capable of being charged for by way of a margin. This is because the facilitator of such financial services do not hold a legal interest in a financial product before it is supplied. All other financial services will therefore be taxable. For example, fees or commissions relating to agency services are easily identified and valued and are taxable.

Exports of financial supplies remain GST-free.

Part 3-1 of the regulations will give meaning to the term financial supply.

A detailed explanation of Part 3-1 of the regulations is contained in Attachment B to this Statement.

C. Reduced input tax credits

Division 70 of the GST Act allows a reduced input tax credit for certain acquisitions made by financial suppliers. Generally, input tax credits are not available where the acquisition or importation is used for making financial supplies.

However, Part 70 of the regulations allows the financial supply provider to claim a reduced input tax credit for certain acquisitions. The acquisitions eligible for the reduced input tax credit and the rate of the reduced input tax credit are specified in Part 70 of the regulations.

A detailed explanation of Part 70 of the regulations is contained in Attachment C to this Statement.

Date of effect

The regulations will commence from 1 July 2000, the commencement of the GST Act.

New Tax System (Goods and Services Tax) Act 1999

New Tax System (Goods and Services Tax) Regulations

ATTACHMENT A TO THE EXPLANATORY STATEMENT

Why are tax invoices needed?

An entity that acquires goods or services with a GST exclusive value of more than \$50 will need to hold a tax invoice in order to claim an input tax credit for the acquisition. In situations within classes to be determined by the Commissioner of Taxation, a recipient may issue a tax invoice instead of the supplier. A recipient created tax invoice may typically be issued in situations where the price of the supply is determined after delivery. Recipient created tax invoices will also have the function of informing suppliers of their GST liability. Details of more than one supply may be shown on a tax invoice.

What are the tax invoice requirements?

Section 29-70 of the GST Act requires a tax invoice to show:

- * the Australian Business Number (ABN) of the entity issuing the document;
- * the GST inclusive price of a taxable supply; and
- * other information as specified in the regulations.

The regulations specify minimum information requirements for three types of tax invoices:

- (1) tax invoices where the total amount payable is \$1,000 or more;
- (2) tax invoices where the total amount payable is less than \$1,000; and
- (3) recipient created tax invoices.

Regulation 29-70 sets out the requirements for tax invoices other than recipient created tax invoices [**subregulation 29-70(1)**].

1 . Tax invoices where the total amount payable is \$1,000 or more

In addition to the issuer's ABN and the GST inclusive price of each taxable supply, a tax invoice where the total amount payable is \$1,000 or more is required by **subregulation 2970(2)** to contain:

- * the word 'tax invoice' stated prominently on the document;
- * the date of issue of the tax invoice;
- * the name of the supplier;
- * the name of the recipient;
- * the address or the ABN of the recipient;
- * a brief description of each thing supplied; and
- * for each description - the quantity of the goods or the extent of the services supplied.

2. Tax invoices where the total amount payable is less than \$1,000

Subregulation 29-70(3) specifies the basic information requirements for tax invoices where the total amount payable is less than \$1,000. These are essentially the same as described above with the exception of the following information:

- * the name of the recipient;
- * the address or the ABN of the recipient;
- * the quantity of the goods or the extent of the services supplied.

This information is to be required only if the total amount payable is \$1000 or more.

The 'abbreviated' tax invoice requirements (ie. where the total amount payable is less than \$1,000) are designed to accommodate smaller business transactions. For example, retail sales documents generally do not have details of the recipient or the quantity or volume of goods supplied. For these types of transaction a cash receipt may be used as the tax invoice (providing it satisfies the other information requirements).

Suppliers may, however, choose to show on all tax invoices the information that is required when the total amount payable is \$1000 or more, if it is convenient for them and their customers to do so.

Additional requirements for tax invoices

There are additional information requirements depending on whether the tax invoice relates to one or more taxable supplies only or relates to a combination of a taxable supply and other supplies. Supplies other than a taxable supply may either be GST-free, input taxed or a supply that was made before 1 July 2000.

The additional requirements are as follows:

Type of supply Additional requirements

Taxable supply or supplies only and Must show either:

the GST payable is 1/11th of the price (a) a statement to the effect that the total

[subregulations 29-70(4) and amount payable includes GST for the

29-71(2)] supply or supplies; or

(b) the total amount of GST payable

Taxable supply and the GST payable Must show the GST exclusive value of the

on it is less than 1/11th of the price supply and the amount of GST payable.

[subregulation 29-70(5)] Note: This will apply to the supply of long

term accommodation in commercial

residential premises (Division 87 of the GST Act).

A combination of taxable supply and other supplies Must clearly identify each taxable supply and show:

[subregulations 29-70(6) and 29-71(3)] (a) the total amount of GST payable; and

(b) the total amount payable.

3. Recipient created tax invoices

The requirements for recipient created tax invoices are essentially the same as for tax invoices where the total amount payable is \$1,000 or more *[paragraph 29-71(1)(b) and subregulations 29-71(2), 29-71(3)]*, but with the following differences:

- * the words 'recipient created tax invoice' must be shown prominently on the document instead of 'tax invoice' *[paragraph 29-71(1)(a)]*;
- * the ABN of the supplier must be shown in addition to the ABN of the issuer of the document *[paragraph 29-71(1)(c)]*; and
- * words to the effect that the GST shown is payable by the supplier must also be included *[subparagraphs 29-71(2)(b)(ii) and 29-71(3)(d)(iii)]*.

Rounding

If the total amount of GST payable on a tax invoice or recipient created tax invoice includes a fraction of a cent, the amount is to be rounded down to the nearest whole cent. *[subregulations 29-70(7) and 29-71 (4)]*

Name of the supplier or recipient

Paragraphs 29-70(2)(c), 29-70(2)(d), 29-70(3)(c) and 29-71(1)(b) require the name of the supplier and in some instances, the recipient, to be shown on a tax invoice or recipient created tax invoice. Including the trading name of the supplier or recipient would satisfy this information requirement.

A statement to the effect that the total amount payable includes GST for the supply or supplies

In addition to the other information requirements, where the tax invoice or recipient created tax invoice is wholly for a taxable supply and where the amount of GST payable on the supply is exactly 1/11th of the total price, the tax invoice or recipient created tax invoice must contain either:

- * a statement to the effect that the total amount payable includes GST for the supply or supplies *[paragraphs 29-70(4)(a) or 29-71(2)(a)]*; or

* the total amount of GST payable [*paragraphs 29-70(4)(b) or 29-71(2)(b)(i)*].

To satisfy the requirements of **paragraphs 29-70(4)(a) or 29-71(2)(a)**, the statement should refer to the relevant amount. Statements that would satisfy this requirement are "the total price includes GST for this supply", "GST included in the total" and "total includes GST".

However statements such as "includes GST" and "GST inclusive" alone would not be sufficient to satisfy the paragraphs as they do not directly relate to the amount payable for the supply.

Total amount of GST payable and total amount payable

The total amount of GST payable and the total amount payable on a tax invoice or recipient created tax invoice are aggregate amounts relating to the goods and/or services on the tax invoice. Although the regulations state the minimum information required on the transaction document for it to be a tax invoice or recipient created tax invoice, entities may choose to state the GST amount on a line item basis or show GST exclusive amounts if it is convenient for them to do so.

Electronic invoices

The information requirements for a tax invoice or recipient created tax invoice apply irrespective of the form of the document. If a tax invoice is included in an electronic message, both supplier and recipient are obliged to retain that message in a readily accessible form for five years in accordance with the GST record keeping requirements (section 70, *Taxation Administration Act 1953*).

Regulation Impact Statement

A Regulation Impact Statement is attached.

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New Tax System (Goods and Services Tax) Act 1999

New Tax System (Goods and Services Tax) Regulations

ATTACHMENT B TO THE EXPLANATORY STATEMENT

Part 3-1 What is and is not a financial supply

Object of Part 3-1

Subsection *40-5(2)* of the GST provides that *financial supply* has the meaning given by the regulations. Part 3-1 of the proposed regulations sets out those supplies that are financial supplies and those that are not. Section 9-10 of the GST Act defines supply. Subsection *9-10(2)* of the GST Act provides that a supply of money is only a supply if it is supplied as consideration for the supply. This means that trade credit provided by a supplier of goods should not be a financial supply. [*Regulation 40-5*]

Key concepts

Division 2 of Part 3-1 of the regulations sets out some key concepts to be used in the regulations.

Regulation 40-6 provides that an interest in relation to a financial supply is any form of property. For example:

- * A debt or a right to credit
- * A mortgage over land
- * A right under a contract of insurance or a guarantee
- * A right to receive payment under a derivative.

Allotment, creation, grant or issue of that interest is regarded as "provision" of that interest, and disposal of an interest includes assignment, transfer and surrender of the interest. Acquisition in relation to the provision or disposal of an interest includes acceptance and receipt of the interest. [**Regulations 40-7, 40-8 and 40-9**]

The definition of *financial supply provider* identifies the entity that is making a financial supply. [**Regulation 40-10**]

The definition of *financial supply provider* identifies an entity that is facilitating a financial supply made by another entity. [**Regulation 40-11**]

The definitions of *financial supply provider* and *financial supply facilitator* are used to avoid confusion between the provision of the actual financial supply and another supply made in connection with it (such as agency services). For example, if A sells shares to B but does so through X, an agent, A is making the financial supply of the shares to B and X is making the supply of agency services. The financial supply is input taxed, whilst the agency services are taxable.

Before determining if an entity is the financial supply provider in relation to any supply, you must first identify the interest being supplied. For example, a debenture.

An entity is the financial supply provider in respect of that interest if:

- * the interest was the entity's property immediately before the supply (for example, if an entity sells a debenture that it owns); or
- * the entity created the interest when making the supply (for example, if an entity issues a debenture). [*Regulation 40-10*]

In contrast, the financial supply facilitator is an entity that facilitates the supply of an interest without being the financial supply provider of the interest. Using the example above, if agent X sells an entity's debenture on that entity's behalf, agent X will be a financial supply facilitator in respect of the supply. [*Regulation 40-11*]

Financial products supplied by a financial supply facilitator are not financial supplies. However, a supply of an interest facilitated by a financial supply facilitator is a financial supply by the financial supply provider if the supply of the interest is one to which regulation 40-13 applies. (Proposed regulation 40-13 is explained below)

When a supply is a financial supply

Division 3 sets out what is, and what is not, a financial supply.

A supply is a financial supply only if it is specified as a financial supply in regulation 40-13 or an incidental financial supply under regulation 40-14. If something would be both a financial supply under regulation 40-13 and also not a financial supply under regulation 40-16, then regulation 40-16 prevails and it will be treated as not being a financial supply (unless it is also an incidental supply under regulation 40-14). [*Regulation 40-12*]

Supplies that: are financial supplies

In order to qualify as a financial supply, the provision, acquisition or disposal of an interest must be by a financial supply provider who is registered or required to be registered.

In addition, the provision, acquisition or disposal must be:

- * for consideration
- * in the course or furtherance of an enterprise; and
- * connected with Australia. [*Subregulation 40-13(1)*]

A financial supply must also be the supply of an interest in, or under, one of the categories set out in the table in *subregulation 40-13(2)*. The common element shared by the interests in these categories is that the supply of the interests is capable of being charged for by way of a margin by the financial supply provider.

These categories are as follows:

- * An account made available by an Australian ADI (authorised deposit-taking institution) in the course of its banking business or its State banking business.

This includes accounts with banks, building societies and credit unions authorised to carry on banking business under the *Banking Act 1959*. The interests in an account include not only the right to repayment of money but also rights to services in connection with the rights to repayment of the money, including the right to instruct the ADI to make payments from the

account and to provide access to information in respect of the account. For example, bill pay (B-pay) or electronic funds transfer (EFT) transactions. Account maintenance fees would also be input taxed under this provision.

An Australian ADI is defined in the Corporations Law and includes a body corporate who has authority under section 9 of the *Banking Act 1959* to carry on banking business in Australia. This may include a foreign corporation authorised to carry on banking business in Australia.

* A debt, credit or right to credit including a letter of credit.

This includes lending and borrowing, provision of credit generally and any right to the deferment of a debt.

A charge or mortgage over real or personal property.

This includes security taken over intangible personal property such as contractual rights or a debt.

While a charge or a mortgage is a financial supply within one of the items in the table, a deposit taken as security for a supply is dealt with in Division 99 of the GST Act. It is not intended to be treated as a financial supply.

* Specified superannuation arrangements.

These are regulated superannuation funds, approved deposit funds, pooled superannuation trusts, public sector superannuation schemes and retirement savings accounts.

* An annuity or allocated pension.

* A life insurance -contract or a related contract of reinsurance.

This is limited to those life insurance contracts to which section 9(1), 12A and 12(2) of the *Life Insurance Act 1995* applies. Reinsurance contracts entered into with respect to the risks under these contracts are also included.

* A guarantee, including an indemnity.

This includes agreements where a person agrees to act as surety for another, and related indemnity arrangements. This does not include agreements that are insurance contracts.

* Credit under a hire purchase agreement.

This is applicable where the charge for credit is separately charged for and disclosed.

* Australian currency or foreign currency or agreements to buy or sell these currencies.

This includes legal tender and agreements to buy or sell legal tender.

* Securities.

Securities is defined by reference to the Corporations Law definition so as to include shares, debentures and interests in managed investment schemes.

In addition, the following items which are explicitly excluded from the Corporations Law definition are also included as a security for the purposes of defining what is a financial supply:

- documents evidencing a debt excluded from the definition of the debenture in the Corporations Law, including cheques, promissory notes, payment orders and bills of exchange;
- documents issued by an individual which would be a debenture under the Corporations Law if they were issued by a body corporate;
- interests in schemes excluded from the definition of managed investment scheme in the Corporations Law, including an interest in a scheme operated by related bodies corporate and a barter scheme; and
- the capital of a partnership or trust.

* Derivatives.

Derivatives are defined by reference to their value being derived from the value of another asset, liability, rate, or index.

Derivatives include futures contracts, swaps, options and forwards.

Non-exhaustive examples for each of the categories are set out in Schedule 1. A financial product falling within one of the items in the table at subregulation 40-13(2) will be a financial supply even if it is not described in the examples in Schedule 1.

A supply made by a financial supply facilitator that would otherwise be a financial supply is not a financial supply by that entity. However, it is a financial supply by the financial supply provider. *[Subregulation 40-13(1)]*

Incidental financial supplies

If something is supplied by an entity directly in connection with a financial supply made to the same recipient of that first supply it is also a financial supply. The financial supply provider must also supply the incidental financial supply. *[Regulation 40-14]* For example, provision of advice by a bank in connection with the provision of a loan by that bank (a financial supply) would be an incidental financial supply and input taxed.

Examples of financial supplies

Schedule 1 sets out examples of the financial supplies listed as items in the table in regulation 40-13 or that are incidental supplies. These examples are not to be taken as exhaustive of all the types of financial supplies that might relate to those items. Furthermore, if an example in Schedule 1 is inconsistent with the description of the financial supply to which the item relates the description in regulation 40-13 prevails (and not the example in Schedule 1). *[Regulation 4015]*

Supplies that are not financial supplies

A range of supplies which are sometimes associated with financial transactions, and others which are themselves financial transactions, are excluded from being a financial supply and are therefore taxable rather than being input taxed.

Regulation 40-16 sets out categories of supplies that are not financial supplies regardless of whether a financial supply provider or a financial supply facilitator makes the supply.

Supplies that are not financial supplies and which are therefore taxable include:

- * Professional services, including information and advice in relation to a financial supply.

This category includes legal advice, accounting advice, taxation advice, actuarial advice as well as rating services for securitisation vehicles.

- * Payment facilities for transaction cards.

- * Payment facilities for transaction cards.

Amongst other supplies, this category includes:

- the fees charged by an electronic funds transfer terminal network owner to a card issuer for access to and use of the network;
- the fees charged between a card provider and a third party to a transaction with an account holder (that is, a merchant) regarding the transaction; and
- processing of transactions between a card account provider and the third party as above, such as a merchant. For example transactions relating to direct debit and credit, cheque, electronic funds transfer, ATM, B-pay, Internet banking and GiroPost.

- * Goods supplied in accordance with agreements under which the goods are leased, and;

(a) the lessors dispose of their rights in the goods to the lessees; or

(b) the lessees have no obligation or option of acquiring the rights of the lessors in the goods.

- * An option, obligation or right or obligation to make or receive a taxable supply.

Under this item GST is payable on any premium on a deliverable commodity option, such as a deliverable wool option or wheat option. However, the provision of margin in respect of exchange traded futures is input taxed and no GST is payable on those payments.

This item excludes a mortgage or charge mentioned in item 3 in the table in the regulation 4013.

- * A supply made as a result of the exercise of an option or right or performance of an obligation to make or receive a taxable supply.

Under this item, the supply of the taxable commodity when delivery takes place is not a financial supply and GST is payable on the basis of the settlement price. This means that GST is payable on the strike or exercise price when the commodity, such as wool or wheat, is delivered pursuant to the exercise of an option.

This item includes a mortgage or charge mentioned in item 3 in the table in the regulation 4013.

- * Contracts of insurance and reinsurance that have not been specified as financial supplies under item 6 of the table in 40-13.

This category includes insurance against loss, damage, injury or risk of any kind.

- * Broking services.

This category includes services provided by stock brokers and insurance brokers.

- * Management of the assets or liabilities of another entity.

This category includes managing the assets or liabilities of an entity, acting as the trustee of an entity, and investment portfolio administration.

- * Trustee services.

This category includes management fees for acting as a trustee of a trust or other entity as well as fees for acting as a trustee under a will or settlement.

Reference should be made to regulation 40-16 for further categories of supplies (in addition to those listed above) that are not considered a financial supply. Examples for the categories are found at Schedule 2.

Examples of supplies that are not financial supplies

Schedule 2 sets out examples of the financial supplies listed as items in the table in regulation 40-16. These examples are not exhaustive and if there is inconsistency between the examples and the financial supplies described in regulation 40-16, the description in 40-16 prevails. *[Regulation 40-17]*

Merely calling something by a particular name will not guarantee the GST treatment for that financial product or transaction if in substance it is a different transaction or product.

Dictionary

Terms used in the Regulation are defined in the dictionary to the Regulation.

[Regulation 4]

New Tax System (Goods and Services Tax) Act 1999

New Tax System (Goods and Services Tax) Regulations

ATTACHMENT C TO THE EXPLANATORY STATEMENT

Part 4-2 - Reduced credit acquisitions

Object of Part

Part 4-2 of the regulations specifies:

- * those items that are reduced credit acquisitions; and
- * the percentage of the reduction of the input tax credits to which the financial supplier is entitled.

[Regulation 70-1]

Generally, no input tax credit is available for things acquired by an entity to the extent they are used to make financial supplies.

However, section 70-5 of the GST Act provides that certain acquisitions that relate to making financial supplies give rise to an entitlement to reduced input tax credits. These acquisitions are referred to as reduced credit acquisitions. When acquired by an entity other than a financial supply provider, these would be creditable acquisitions. Therefore, where items listed at regulation 70-2 are used to make taxable supplies full input tax credits may be available.

Some of the items giving rise to a reduced input tax credit within regulation 70-16 may also appear as things that are not financial supplies.

Any entity whose financial supplies meet or exceed the *de minimis* test at section 11 - 15 of the GST Act may claim reduced input tax credits if they make a reduced credit acquisition. This means that enterprises other than financial institutions, such as corporate treasuries, store and fleet card operators can also claim reduced input tax credits if they would otherwise be denied a full input tax credit.

Furthermore, reduced input tax credits may also be available where an entity is subject to a reverse charge. Under Division 84 of the GST Act, a reverse charge is applied to acquisitions that:

- * are imported; and
- * are used to make input taxed supplies. The reverse charge means that the enterprise must self-assess for the GST payable. Acquisitions subject to the reverse charge are eligible for a reduced credit if they are listed at subregulation 70-2(2).

Acquisitions that attract a reduced input tax credit

Regulation 70-2 sets out an exhaustive list of the acquisitions that are reduced credit acquisitions and therefore eligible for a reduced input tax credit.

The reduced credit acquisitions are divided under the following headings:

- * Transaction banking and cash management

- * Payment services and fund transfers
- * Securities transactions
- * Loans
- * Credit union services
- * Debt collection services
- * Asset based finance
- * Trade finance
- * Capital markets and financial instruments
- * Funds management services
- * Insurance
- * Services remunerated by commission and franchise fees
- * Trustee and custodial services

Reference should be made to the table at 70-2(2) for the complete list of reduced credit acquisitions.

It should be noted that something that is used for a reduced credit acquisition does not for that reason become a reduced credit acquisition. For example, while certain data processing services may qualify as a reduced credit acquisition, information technology services acquired to perform the same data processing functions do not qualify as a reduced credit acquisition. Similarly, labour contracted from a labour hire firm to be used as an input to a supply that is eligible for a reduced input tax credit does not qualify as a reduced credit acquisition. *[Subregulation 70-2(3)]*

Percentage to which input tax credits are reduced

For the purposes of subsection 70-5(2) of the GST Act, the percentage of reduced input tax credit for each kind of reduced credit acquisition is 75%. *[Regulation 70-4]*

Dictionary

Terms used in the Regulation are defined in the dictionary to the Regulation.

[Regulation 4]

New Tax System (Goods and Services Tax) Act 1999

New Tax System (Goods and Services Tax) Regulations

ATTACHMENT D TO THE EXPLANATORY STATEMENT

REGULATION IMPACT STATEMENT FOR A NEW TAX SYSTEM (GOODS AND SERVICES TAX) REGULATIONS 1999

Policy objective

The information that is to be shown on tax invoices (other than that prescribed in the *A New Tax System (Goods and Services Tax) Act 1999*) has not previously been specified. The policy objective of this measure is to prescribe the additional information that is required to be contained on tax invoices issued for the purposes of the goods and services tax (GST).

GST is effectively a tax on final private consumption in Australia and is borne by consumers. To ensure GST is effectively borne by consumers, a registered entity is generally entitled to an input tax credit for the GST on what they acquire for the purpose of their enterprise. Tax invoices substantiate creditable acquisitions over \$55. An entity must hold a tax invoice for such acquisitions in order to attribute the input tax credit to a tax period.

Implementation options

Tax invoices are a means of verifying an entity's entitlement to input tax credits. Countries which also have a broad-based transaction tax, such as Canada, Ireland, New Zealand and the United Kingdom, also use tax invoices to verify input tax credits claimed. The information required by these countries on their tax invoices was considered in developing alternative implementation options.

There are a number of similarities in the information required to be shown on tax invoices in Canada, Ireland, New Zealand and the, United Kingdom. All of these countries require the following information to be shown on tax invoices:

- * registration number of the supplier - corresponding to the Australian Business Number (ABN);
- * date of invoice; and
- * description of goods or services.

In each of these countries there is no set format for the invoice but all the required information must be provided for the document to be a tax invoice. The tax invoices used in Canada, Ireland and the United Kingdom require more information to be provided than is considered necessary in the Australian GST context. This may be a consequence of the multiple GST rates that exist in those countries and the widespread circumstances for zero-rated supplies to be made.

The tax invoice options developed were based on the New Zealand's tax invoice model, as GST there is similar to that in Australia.

Preferred Option

In addition to the statutory requirements that the document contain:

- * the ABN of the entity issuing the document; and
- * the GST-inclusive price of the taxable supply,

the tax invoice should contain the following information:

- * the words 'tax invoice' stated prominently on the document;
- * the date of the issue of the tax invoice;
- * the name of the supplier;
- * the name of the recipient;
- * the address or ABN of the recipient;
- * a brief description of each thing supplied;
- * the quantity or volume of what was supplied; and
- * either:
 - if the tax invoice is for one or more taxable supplies only and GST payable is exactly 1/11th of the total price:
 - a statement to the effect that the total amount payable includes

GST; or

- the total amount *of GST* payable on the taxable supply or supplies.
- if the tax invoice is for a taxable supply but the GST payable is less than 1/11th of the total price: the amount, excluding GST, payable for the taxable supply, and the amount of GST payable on the taxable supply; or
- if the tax invoice is for one or more taxable supplies and a supply that is either GST-free, input taxed or made before 1 July 2000:
 - clearly identify each taxable supply;
 - in relation to the taxable supplies, the total amount *of GST* payable; and
 - the total amount payable *for* the supplies.

There is no requirement for a tax invoice to be held if the total GST-exclusive value of a taxable supply is less than \$50. However, an entity must still keep records showing the date, brief description, cost and supplier's name in order to substantiate claims for input tax credits for such supplies. Tax invoices for supplies less than \$1,000 require fewer details to be shown. Typically, receipts, which do not show the purchaser's name and address, or fully describe the supply would satisfy the requirements for abbreviated tax invoices.

In certain situations tax the recipient rather than the supplier may create invoices. The requirements for this type of invoice are essentially the same as for tax invoices, but with the following differences:

- * the words 'recipient created tax invoice' must be shown prominently on the document instead of 'tax invoice';
- * the ABN of the supplier must be shown in addition to the ABN of the recipient; and
- * the words 'The GST shown is payable by the supplier' must be included.

Alternative Options

Alternative approaches to the information to be shown on tax invoices were based on the same model as the preferred option, with the following modifications:

- * 'tax invoice' not stated prominently - it is considered that without these words stated prominently, compliance with the tax invoice requirements would be hindered.
- * 'trading name' of supplier - it is accepted that trading names of suppliers, and of recipients, are commonly used on transaction documents. Therefore, it is unnecessary to expressly provide in the regulations for 'trading names' or 4 registered business names'.
- * include the statement 'the total price includes GST for this supply' - this formulation is considered too long and inflexible. The object of indicating that the total amount payable includes GST of 1/11th of that amount can instead be achieved by providing a guideline for the form of words suppliers may choose to use.
- * include the 'amount, excluding GST, payable for each taxable supply' - suppliers may choose to show both the GST-exclusive and GST-inclusive amounts corresponding to each taxable supply shown on a tax invoice in order to satisfy the information needs of their customers. However, this data item was not considered essential to satisfy tax invoice requirements. The price of each taxable supply, the identification of each supply that is taxable, and the statement of the total GST payable together provide sufficient information to derive the additional information that may be needed by recipients. Although it may be desirable to show the GST-exclusive amount, it is considered that this data item should not be a requirement.

These alternative approaches were either embodied in the exposure draft regulations (see paragraph 28) or reflect suggestions received in response to the exposure draft regulations.

Transitional arrangements

The GST law requires a tax invoice to show the ABN of the issuer of the document, the price of the taxable supply and other information as specified in the regulations. However, entities now making supplies that span 1 July 2000 will not be able to produce documents that satisfy these requirements until they are issued an ABN.

Rather than requiring additional documents to be provided that meet the tax invoice requirements, the Commissioner of Taxation has indicated the circumstances in which a discretion will be exercised to allow a recipient of a taxable supply to claim an input tax credit without holding a tax invoice. The Commissioner has indicated that the discretion will be exercised if the document that was issued before 1 July 2000 contains the minimum information requirements as set out in GST Bulletin 1999/1.

Assessment of impacts

Impact group identification

Businesses

Businesses will incur some compliance costs, as they will need to adapt their transaction documentation systems to ensure that they can satisfy demands for tax invoice requirements from their customers.

Government

Government departments and agencies will be required to issue tax invoices for supplies they make to GST-registered entities.

Consumers

Generally, consumers are not impacted by this measure. Consumers can assume that 1/11th of the purchase price, other than for GST-free or input taxed supplies, represents GST. However suppliers may issue transaction documents, eg. receipts, to consumers that incidentally satisfy tax invoice requirements. This would be the case if it would be too costly to produce different documents for consumer and business customers.

Transitional

GST Bulletin 1999/1

The Commissioner of Taxation will exercise a discretion to allow a recipient of a taxable supply to claim an input tax credit without holding a tax invoice providing the transaction document that issued before 1 July 2000 contains the minimum information requirements as set out in GST Bulletin 1999/1.

Alternative approach: No transitional measures

The prescription of information to be required on tax invoices without transitional arrangements would increase compliance costs of business that issue documents before 1 July 2000 relating to supplies after that date. Affected businesses would have been required to supply additional documents that meet the tax invoice requirements.

Analysis of costs / benefits

A feature of the current proposal is that it is optional to show either: the consideration (including GST) and the total amount of tax charged; or the consideration charged (including GST) and a statement that it includes an amount of GST - provided that the GST is the tax fraction (1/11th, given the GST rate of 10%).

The option of showing only the GST-inclusive price (together with a statement that it includes GST) simplifies, and hence minimises compliance costs in, the preparation of some transaction documentation that can be used as a tax invoice.

Another consideration in setting the information requirements for tax invoices is the usefulness of these documents to the recipients. The purpose of the tax invoice is to substantiate input tax credits entitlements. A function of tax invoices is, therefore, to inform recipients of the amount of input tax credit to which they are entitled on their acquisitions. Where the supply is only for taxable supplies (and the supplies are taxed at 1/11th of the price), this information can be easily worked out by the recipient.

However, where the supply is taxed at less than 1/11th of the price, or made with GST-free or input taxed supplies (that is, a mixed supply) extra information must be provided to inform recipients of the amount of input tax credit to which they are entitled. Therefore if the GST amount is stated on tax invoices, it reduces the risk, particularly for small businesses without automated systems, of arithmetic error in calculating input tax credits. It also reduces compliance costs to business as it avoids the need to separately re-calculate the GST component relating to each acquisition.

The specification of tax invoice requirements should not impose unnecessary costs in redesigning transaction documents. The current proposal is optimal in this respect, as it does not impose requirements that are not necessary. It also reduces the information required where the GST total amount payable for the supply is less than \$1000. This addresses situations where sales receipts are the only documents issued. Such documents ordinarily do not contain the name and address of the recipient.

Impacts common to both models

For either model, the greater the scope for mixed supplies, that is, a combination of taxable and input tax supplies or GST-free supplies, the less likely tax invoices will be designed to include less information. Entities that supply a combination of GST-free or input taxed supplies and taxable supplies will prefer to design their tax invoice documents in a way that satisfies the requirements for mixed supplies.

Both proposals feature abridged information requirements for tax invoices if the total amount payable is less than \$1,000 (including GST). The information omitted on 'abbreviated tax invoices' is the name and address or ABN of the recipient and details of the quantity or volume of what was supplied. This omitted information is considered either impractical or unnecessary for suppliers to record when the total amount payable is below the threshold amount of \$1,000.

The abridged information requirements for abbreviated tax invoices do not, of course, preclude suppliers from issuing 'full' tax invoices where it is convenient for them to do so.

Compliance costs

No separate estimate has been made for the cost of complying with the tax invoice information requirements. The compliance cost of the whole GST measure was included in the original Regulation Impact Statement for the introduction of a Goods and Services Tax.

Other issues - consultation

The general public was invited to comment on the draft regulations (the draft regulations were placed on the Australian Taxation Office's (ATO's) Tax Reform Internet site on 2 September 1999). The closing date for comments was 24 September 1999. During the three week period for comments the ATO received over 60 submissions. While the responses received were varied, all comments were taken into account when developing the preferred option.

Conclusion and recommended option

The current proposal is considered the optimal model for prescribing the additional information required on tax invoices. It provides the greatest scope for business in redesigning transaction documentation and allows business to provide less detail on the tax invoice when the invoice relates to wholly taxable supplies (that is, where the GST is 1/11th of the total amount payable).

The ATO will monitor this measure as part of the indirect taxation system on an ongoing basis. In addition the ATO has consultative arrangements in place to obtain feedback from professional and small business associations and through other taxpayer consultation forums.

New Tax System (Goods and Services Tax) Act 1999

New Tax System (Goods and Services Tax) Regulations

ATTACHMENT E TO THE EXPLANATORY STATEMENT

REGULATION IMPACT STATEMENT FOR A NEW TAX SYSTEM (GOODS AND SERVICES TAX) REGULATIONS 1999

Objective of the policy

This Regulation Impact Statement (RIS) will deal with the *A New Tax System (Goods and Services Tax) Regulations 1999*.

The purpose of a taxation RIS is to examine implementation options arising from a Government policy decision. Accordingly, the RIS is based on the policy design of the regulations.

Outline of the policy

The A New Tax System (Goods and Services Tax) Act 1999 provides for regulations to define the treatment of financial services under the GST.

The *A New Tax System (ANTS)* policy document released on 13 August 1998 announced that under the goods and services tax (GST) most financial services would be input taxed in line with international practice. That is, for those services, no GST would be payable on the supply, and no input tax credits would be allowed for any GST paid on purchases used to make the supply. The ANTS document stated that the precise range of services that would be input taxed would be determined in consultation with industry.

Legislation to enact the GST was introduced into Parliament on 2 December 1998. The legislation contains provision for regulations to provide greater clarity regarding the tax treatment of financial services at Division 40-5.

In May 1999, it was announced that a reduced input tax credit (RITC) would be made available on the acquisition of listed supplies used for making input taxed financial supplies. The RITC was designed to reduce the bias to insource and limit any pressure to extend input taxation up the supply chain through litigation. Where a financial institution purchases a service that is taxable and eligible for an RITC, the tax effect is similar to the situation where the purchased service is input taxed. Legislative amendments to provide for regulations to specify the rate and supplies eligible for the RITC at Division 70 were made in June 1999.

A Consultation Document titled *The Application of Goods and Services Tax to Financial Services (Consultation Document)* was released on 17 August 1999. The document followed targeted industry consultations and provided a focus for broader industry and community feedback on the application of the GST to financial services. Approximately 80 submissions were received from interested parties.

POLICY ISSUES

Scope of input taxation

The fundamental reason for input taxing financial services is that it is difficult to value most financial services as they are often charged by way of a margin. Where supplies are input taxed, it is not necessary to value the service.

Most financial services to consumers will be input taxed in line with international practice. In particular, no explicit GST will be charged on fees and charges relating to savings, cheque,

deposit and loan (including home mortgage) accounts. Fees associated with credit cards and charge cards will also not be subject to GST.

A greater proportion of financial service providers' purchases will be either input taxed, or eligible for an RITC, than would be input taxed in overseas jurisdictions. However, for compliance and simplicity reasons, a broader range of services is taxable than is generally taxed in overseas jurisdictions. Where the scope of taxation has been increased from what is generally input taxed in overseas jurisdictions, an RITC will usually apply. Many overseas jurisdictions input tax a range of fee or commission based financial services that can be valued (and therefore taxed). In particular, overseas jurisdictions often input tax services that involve 'arranging' financial supplies. This approach has been adopted as these services are often purchased by financial suppliers who are denied input tax credits. International evidence suggests that the concept of 'arranging' has led to substantial difficulties. This has led to pressure, both through lobbying and litigation, to reduce the net tax burden by input taxing these services.

By making these types of services taxable and allowing an RITC to the purchasing financial service provider, the tax burden can be relieved without extending the scope of input taxation. For example, custodial services (which are a form of asset management service provided to fund managers) will be taxable, but a registered purchaser will be entitled to either a full input tax credit for a business that does not supply financial services, or reduced input tax credit for a financial service provider.

In accordance with the policy announced in *A New Tax System*, GST will apply to a number of financial services, including general insurance (but not life insurance); financial advice; and accounting services (including services provided by tax agents).

Definition of life insurance

The *GST Act* states that life insurance is to be input taxed. The *GST Act* defines an input taxed life insurance policy as 'a policy of insurance on the life of an individual'. The practical application of this definition requires clarification in regulations. In the *Consultation Document* it was proposed to define input taxed life insurance as 'premiums for investment and death cover, and other risk components below a *de minimis* threshold'.

The industry has argued that such a definition would raise little revenue and impose considerable compliance costs. A slightly broader definition of a life policy written under the *Life Insurance Act 1995* is being included in the Regulations. This definition removes the proposed *de minimis* threshold, and extends input taxation to disability insurance products written by life insurers that are unrelated to investment and death cover policies. Adopting the approach has a small revenue cost but provides certainty for the industry.

Apportionment of trustee services

The *GST Act* treats a trust as an entity and recognises that a trustee can act in a number of different capacities. In particular, the same person often acts as trustee and also provides a range of portfolio management services. Without an amendment, business would need to apportion the value of certain fees according to the capacity in which the trustee is acting. An amendment will be made to deem the whole fee to be consideration for the provision of the management services. This approach has been sought by industry and will be welcomed as it significantly reduces compliance costs.

Benefits of the proposed system compared to overseas jurisdictions

The RITC approach - which is unique to the Australian GST - has a number of benefits over the general approach of broader input taxation taken in overseas jurisdictions. These include reduced bias to insource; lower compliance costs for smaller entities; greater legislative certainty; and a better competitive position for domestic service providers.

Removal of the insourcing bias for listed supplies

In the absence of special rules, financial institutions would have a bias to insource supplies. Where a product is outsourced, unrecoverable GST is levied on the full value of the purchase. If the product is produced internally, then GST is only payable on the inputs used to make that product. The RITC removes this bias to insource by giving the purchaser of an eligible supply a credit on part of the GST paid - reducing or possibly removing any tax difference between insourcing and outsourcing.

Compliance costs

The approach in the Regulations will have a beneficial impact on more than ten thousand suppliers to the financial sector. The RITC means that many suppliers to the financial sector will be taxable, rather than (fully or partially) input taxed, as they would be in overseas jurisdictions. GST compliance is much simpler for wholly taxable businesses. For example, most financial planners will only supply taxable services. In contrast, most financial planners in New Zealand make a combination of taxable and input taxed supplies and are required to apportion their input tax credits.

Greater legislative certainty

The proposed approach provides a higher level of legislative certainty than is the case in overseas jurisdictions. Overseas jurisdictions have needed to rely on broad concepts such as 'arranging' and have also had to distinguish between management and other professional services. The RITC removes the need for supplies to be classified as input taxed in order to be offered relief from the insourcing bias. Over the medium to long term, this will substantially reduce the pressure to expand the definition of input taxed financial supplies.

Reverse charge mechanism

The *GST Act* applies GST to services imported by entities making financial supplies, if these services would be taxable if sold in Australia. The financial supplier is required to self-assess for the additional GST that would have been liable had the supply been purchased domestically. As the proposed approach makes more supplies taxable, the scope of the reverse charge is increased. As a result, the competitive position of domestic suppliers providing services to financial suppliers is enhanced.