

# **A New Tax System (Goods and Services Tax) Amendment Regulations 2000 (No. 1) 2000 No. 49**

## **EXPLANATORY STATEMENT**

### **STATUTORY RULE No. 49**

Issued by the Authority of the Treasurer

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

A New Tax System (Goods and Services Tax) Amendment Regulations 2000 (No. 1)

Section 177-15 of the *A New Tax System (Goods and Services Tax) Act 1999* (the 'GST Act') provides that the Governor General may make regulations prescribing matters required to give effect to the GST Act.

Division 48 of the GST Act enables companies, partnerships and trusts to form GST groups if they meet certain eligibility criteria. When a GST group is formed, the group will effectively be treated as a single entity for GST purposes and transactions between group members will not be subject to GST. Section 48-10 of the GST Act sets out the general membership requirements of a GST group. To form a GST group, entities must be GST registered, have the same tax periods and accounting basis as all the other entities in the group and not be members of any other GST group.

Companies must also satisfy further requirements that are set out in the legislation. If more than one entity in a group are companies, those companies must be members of the same 90% owned group, as described in Division 190 of the GST Act.

Subparagraph 48-10 (1)(a)(ii) provides for the regulations to specify the requirements for partnerships and trusts to be able to group for GST purposes. The purpose of the amendment regulations is to stipulate the requirements to enable partnerships and trusts to group for GST purposes.

In development of the regulations, entity arrangements relating to primary production businesses, small family businesses, medical practices and professional services organisations (such as accounting and legal firms) have been considered. The grouping rules for partnerships and trusts have taken into account the family connections that often exist in these arrangements.

The regulations will enable a broad range of entity arrangements to use the GST grouping rules for partnerships and trusts. These changes will help many small and medium businesses to substantially reduce their compliance costs by removing the need to charge GST and claim input tax credits, as well as create tax invoices for supplies between related entities.

A detailed explanation of the amendments is attached.

The Regulations commenced on gazettal.

## ATTACHMENT

### DETAILED NOTES OF THE AMENDING REGULATIONS

#### Name of Regulations

The amending regulations are called the *A New Tax System (Goods and Services Tax) Amendment Regulations 2000 (No. 1)*. [Regulation 1]

#### Commencement

The regulations commence on gazettal. [Regulation 2]

#### Amendment

The regulations specify the requirements for partnerships and trusts that wish to use the GST grouping provisions. The changes to the existing regulations are in Schedule 1 to the amending Regulations. [Regulation 3]

##### *Partnerships*

**New regulation 48-10.02** sets out the requirements that a partnership must satisfy to be a member of a GST group. The partnership must also satisfy other membership requirements, as specified in the *A New Tax System (Goods and Services Tax) Act 1999* (the 'GST Ad'). **[new subregulation 48-10.02(1)]**

A partnership will meet the requirements in the regulations if it satisfies specified relationships with either a company and/or a trust that is a member of the GST group **[new subregulation 48-10.02(2)]**. If it meets these requirements, the partnership will be able to join the GST group or proposed GST group in which the company and/or trust is a member.

A partnership will meet the required relationship with a company that is a member of a GST group if.

(a) the partnership has at least a 90% stake in a company that is a member of the GST group or proposed GST group; or

(b) all of the shareholders of a company that is a member of the GST group or proposed GST group are:

(i) for a single shareholder company - a partner in the partnership or a family member of that partner;

(ii) for a company with more than one shareholder - partners or family of partners, in a way that at least two partners are represented, either personally or by a family member.

#### **[New subregulation 48-10.02(3)]**

Restricting the relationship to situations where more than one shareholder is a partner was considered necessary to prevent entities that do not have a definitive relationship from grouping. For example, consider a large consultancy firm with 100 partners. It would be undesirable for the family companies of all of those partners to group with the partnership, as they are fundamentally unrelated to the business.

A partnership will meet the required relationship with a trust that is a member of a GST group if that trust has beneficiaries that include partners in the partnership, or family members of those partners, in a way that at least two partners are represented: (a) either personally or by a family member; and (b) either directly or indirectly through one or more interposed trusts. **[New subregulation 48-10.02(4)]**

## Trusts

**New regulation 48-10.03** sets out the requirements that a trust must satisfy to be a member of a GST group. The trust must also satisfy other membership requirements, as specified in the GST Act **[new subregulation 48-10.03(1)]**

**New subregulation 48-10.03(2)** specifies that a trust (including a unit trust, discretionary trust, hybrid trust or a superannuation fund operated through a trust structure) can be a member of a GST group if the trustee of that trust meets either of the following tests: (a) it has at least a 90% stake in a company that is a member of a GST group or proposed GST group; or (b) it does not distribute any income or capital of the trust to a beneficiary that is not a *Permitted beneficiary*.

If the trust deed of a trust allows distributions to beneficiaries other than permitted beneficiaries, the trust may still meet the requirements of **new paragraph 48-10.03(2)(b)** as long as there is no actual distribution to beneficiaries that are not permitted beneficiaries. If, at any time, a trustee makes a trust distribution to a beneficiary that is not a permitted beneficiary, it will no longer meet the requirements in the regulations. The representative member of the GST group must notify the Commissioner within 21 days that the approval of that trust as a group member must be revoked as required by section 48-80 of the GST Act.

Each of the following is a *permitted beneficiary*: (a) a company that is a member of the GST group or proposed GST group; (b) shareholders or family of shareholders of a company that is a member of the GST group or proposed GST group if.

- (i) for a single-shareholder company - that shareholder, or a family member of that shareholder is a beneficiary of the trust, either directly, or indirectly through one or more interposed trusts;
- (ii) for a company with more than one shareholder - at least two of the shareholders of the company are represented as beneficiaries:
  - \* either personally or by a family member; and
  - \* either directly or indirectly through one or more interposed trusts.
- (c) partners or family of partners in a partnership that is a member of the GST group or proposed GST group if at least two partners of the partnership are represented as beneficiaries:
  - \* a either personally or by a family member; and
  - \* either directly or indirectly through one or more interposed trusts;
- (d) a charitable institution, a trustee of a charitable fund, or a gift-deductible entity.

## **[New subregulations 48-10.03(3), 48-10.03(4) and 48-10.03(5)]**

### *Examples*

The following are examples of situations where the regulations will apply to enable grouping of specified partnerships, trusts and companies for GST purposes.

*Example 1:* A company, whose shareholders are 2 individuals, runs a small business.

A discretionary trust only makes distributions to the shareholders and members of the shareholders' families. Both of the entities are GST registered, account on the same basis, have the same tax periods and are not members of other GST groups.

The company meets the membership requirements as specified in the GST Act. The trust meets the general membership requirements in the GST Act. It also meets the specific requirements for trusts in the regulations as it only makes distributions to permitted beneficiaries. Thus, the trust and the company can be members of the same GST group.

*Example 2:* A primary production business is run by a husband and wife partnership. The business uses a discretionary trust, the trustee of which only makes distributions to the husband and wife and their children and a charity. Both of the entities are GST registered, account on the same basis, have the same tax periods and are not members of other GST groups.

The partnership and trust both meet the general membership requirements specified in the GST Act. They also meet the specific requirements as set out in the regulations as more than one partner are beneficiaries of the trust and the trust only makes distributions to permitted beneficiaries. Thus, the trust and the partnership can be members of the same GST group.

### *Definitions*

**New regulation 48-10.01** outlines the definitions specific to the regulations for GST groups.

'Family' of an individual referred to in the regulations will be any of the following:

- (a) parent, grandparent, brother, sister, nephew, niece, child, or child of a child of the individual, or the individual's spouse;
- (b) the spouse of the individual, or any of the spouses of the individuals listed in (a).

This definition is based on section 272-95 of Schedule 2F to the *Income Tax Assessment Act 1936*.

The term 'GST group', when referred to in the regulations, includes a proposed GST group.

Items 2, 3, 4 and 5 insert definitions of company, gift-deductible entity, member of a GST group and partnership respectively into the general dictionary in the GST regulations. These definitions will have the same meaning as those given in Part 6-3 of the GST Act.