

A New Tax System (Goods and Services Tax) Amendment Regulations 2000 (No. 2) 2000 No. 77

EXPLANATORY STATEMENT

STATUTORY RULES 2000 No. 77

Issued by 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. 2)

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 amend the *A New Tax System (Goods and Services Tax) Regulations 1999*. Further authority for the amendments to the regulations is as follows:

- * section 29-70 of the Act provides that the regulations may specify information to be contained in a tax invoice;
- * section 40-5 of the Act provides that the regulations may specify that a supply is or is not a financial supply;
- * section 51-5 of the Act provides that the regulations may specify the activities that may be approved as goods and services tax (GST) joint ventures;
- * section 70-5 of the Act permits the regulations to specify acquisitions that are reduced credit acquisitions; and
- * section 78-105 of the Act authorises regulations to specify schemes that are 'statutory compensation schemes'.

The purpose of the amendments to the Regulations is to:

- * ensure that the rounding rule for amounts of GST shown on a tax invoice and recipient created tax invoice is consistent with the rounding rule for GST liability in the Act;
- * clarify whether a supply is, or is not, a financial supply for the purposes of entitlements to input tax credits;
- * specify which activities other than mineral exploration and exploitation may be approved as GST joint ventures;
- * clarify what acquisitions are reduced credit acquisitions for the purposes of entitlements to reduced input tax credits; and
- * specify the schemes or kinds of schemes that are 'statutory compensation schemes' for the purpose of settlements of claims for compensation.

The Regulations will:

- * specify that the total amount of GST payable stated on a tax invoice should be rounded to the nearest cent, with 0.5 cents being rounded up (*new subregulations 29-70.01(7) and 2970.02(4)*);
- * clarify that an entity that acquires a financial supply is also making a financial supply and is a financial supply provider (*new subregulation 40-5.06(2)*);
- * ensure that imported financial supplies will be input taxed financial supplies and will not be subject to the reverse charge (*new subregulation 40-5.09*);
- * provide that where an Australian authorised-deposit taking institution (ADI) provides a service to a non-account holder for a fee of \$1,000 or less the supply will be treated as input taxed (*new subregulation 40-5.09(4)*);
- * clarify when a supply is an incidental financial supply (*new regulation 40-5.10*);
- * specify that the activities that may be approved as GST joint ventures include joint ventures for the purposes of research and development, general insurance, fishing, agriculture, forestry, building and construction, transportation, power generation, water transmission and distribution, receipt, storage and distribution of oil and gas products, refining and processing of oil and gas products, beneficiation of minerals and primary metal production and joint ventures for charitable purposes (*new regulation 51-5.01*);
- * clarify what acquisitions are reduced credit acquisitions and thus entitled to reduced input tax credits (*new regulations 70-5.01 to 70-5.03*);
- * specify the schemes or arrangements that are statutory compensation schemes for the purposes of section 78-105 of the Act. (*new regulation 78-105.01 and new Schedule 10*); and
- * make a number of minor technical amendments to clarify the operation of the regulations.

Details of the Regulations are provided in Attachment A to this Memorandum.

A Regulation Impact Statement for the amendments to the financial supply and reduced credit acquisition measures is contained at Attachment B to this Memorandum.

The regulations will commence on gazettal.

ATTACHMENT A

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

A New Tax System (Goods and Services Tax) Amendment Regulations (No. 2)

Tax Invoices - Rounding

Background

Subregulations 29-70(7) and 29-71(4) of the GST regulations currently provide a rounding rule for the total amount of GST payable on a tax invoice and recipient created tax invoice.

The Indirect Tax Legislation Amendment Bill 2000, currently before Parliament, amends the GST Act to include two new rounding rules for GST liability. The existing rounding rule in the GST regulations is inconsistent with the rounding rules in the GST Act, which provides for the rounding of an amount of GST on an invoice to the nearest cent.

The amendments to the regulations specify that the total amount of GST payable shown on a tax invoice should be rounded to the nearest cent, with 0.5 cents being rounded up.

Item 2 of Schedule 1 amends Part 2-6 of the GST regulations to:

- * restructure and renumber the regulations in Part 2-6; and
- * amend the rounding rule for amounts of GST shown on a tax invoice and recipient created tax invoice.

New *subregulations 29-70.01 (7) and 29-70.02(4)* provide that the total amount of GST payable for a supply or supplies on tax invoice or recipient created tax invoice that includes a fraction of a cent should be rounded to the nearest cent (with 0.5 cents being rounded upwards). This approach is consistent with the rounding rules in the GST Act.

Financial supplies

Background

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.

Under Part 3-1 of the regulations the provision, acquisition or disposal by a financial supply provider of particular interests 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.

However, a financial supply facilitator does not generally hold a legal interest in a financial product before it is supplied. Services provided by a financial supply facilitator are not financial supplies and are generally taxable. Exports of financial supplies remain GST-free.

In some instances, the GST regulations do not operate as intended and it is not clear how the provisions will apply to a particular type of supply. The amendments give effect to the policy intent and clarify what is and what is not a financial supply. The amendments also clarify the operation of the circumstances when something supplied with a financial supply is an incidental financial supply.

What is and is not a financial supply

Subsection 40-5(2) of the GST Act provides *that financial supply* has the meaning given by the regulations. Part 3-1 of the GST regulations sets out those supplies that are financial supplies, and those that are not.

The amendments to the GST regulations are intended to clarify what supplies are financial supplies and what supplies are not.

The GST regulations have been renumbered to more closely align with the numbering used in the GST Act. The following table summarises the new numbering system for the provisions in this Part. What is and is not a financial supply

Subsection 40-5(2) of the GST Act provides *that financial supply* has the meaning given by the regulations. Part 3-1 of the GST regulations sets out those supplies that are financial supplies and those that are not.

The GST regulations have been renumbered to more closely align with the numbering used in the GST Act. *Item 1, 6-12, 14, 15, 19-21, 23-29, 31-34 and 36 in Schedule 1* amend references to particular regulations in notes and examples as a result of the renumbering. The following table summarises the new numbering system for the provisions in *new Part 3-1*.

NEW LAW OLD LAW

Part 3-1 Part 3-1

Division 40, Subdivision 40-A Division 1, Division 2

40-5.01 40-5

40-5.02 40-6

40-5.03 40-7

40-5.04 40-8

40-5.05 40-9

40-5.06 40-10

40-5.07 40-11

No equivalent Division 3

40-5.08 40-12

40-5.09 40-13

40-5.09(1) 40-13(1)

40-5.09(2) 40-13(2)

40-5.09(3) No equivalent

40-5.09(4) No equivalent

40-5.10 40-14

40-5.11 40-15

40-5.12 40-16

40-5.13 40-17

Item 3 of Schedule 1 amends Part 3-1 of the GST regulations to clarify what is and what is not a financial supply. *Item 3* also makes a number of amendments that are of a minor technical nature.

Financial supply provider

Subregulation 40-5.09(1) currently provides that the provision, acquisition or disposal of an interest mentioned in subregulation 40-5.09(3) is a financial supply if, amongst other things, it is supplied by a *financial* supply provider. Under regulation 40-5.06 an entity is the financial supply provider 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).

The policy intent is that the *acquisition* of interests specified in subregulation 40-5.09(2) will be a financial supply. It is not clear from regulation 40-5.06 that the entity that *acquires* one of the specified interests is a financial supply provider. *New subregulation 40-5.06(2)* clarifies that an entity that acquires an interest is also the financial supply provider of the interest.

For example, when X sells shares to Y it is making a financial supply. When Y buys those shares, Y is also making a financial supply. '

When A loans B money, A is making a financial supply. When B borrows that money, B is also making a financial supply.

Imported financial supplies (reverse charge)

To qualify as a financial supply under *new regulation 40-5.09*, the provision, acquisition or disposal of an interest (as defined at *new regulations 40-5.02 to 40-5.05*) 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.

Division 84 of the GST Act has the effect that imported financial supplies are subject to a reverse charge to the extent the supply is used for making input taxed supplies and is not GSTfree or not input taxed. This is contrary to the policy intent.

The Government's policy intention is that imported financial services that would be *input taxed* financial supplies, if the criteria under regulation 40-5.09 were satisfied, should *not* be subject to a reverse charge. Conversely, where an imported *taxable* financial service is used in an input taxed activity in Australia, it should be subject to a reverse charge.

The GST regulations currently operate to subject all imported financial services to a reverse charge as imported financial services cannot meet the requirements of subregulation 405.09(1) to be classified as input taxed financial supplies.

Regulation 40-5.09 is amended to insert *new subregulation 40-5.09(2)* to give effect to the intended policy. Imported financial services, that would otherwise satisfy the criteria under regulation 40-5.09, will be *input taxed* financial supplies and will not be subject to a reverse charge, despite not being able to satisfy subparagraphs 40-5.09(1)(a)(iii) and (b)(i).

Non-account holders

The regulations currently operate so that services provided by an Australian approved deposit taking institution (ADI) to account holders are input taxed while similar supplies when provided to a non-account holder are taxable. This result arises intentionally out of the statutory distinction that is made between 'financial supply providers' and 'financial supply facilitators'. While this distinction is fundamental to the design of the financial service regulations, it could have inappropriate results on private consumers as well as causing compliance difficulties for suppliers of those services (ie ADIs).

Item 3 of Schedule 1 inserts *new subregulation 40-5.09(4)* so that where an Australian ADI provides a service and charges a fee of \$1,000 or less the supply will be treated as a financial supply if it would have been a financial supply if provided to an account holder. This will make it unnecessary for the provider of the service to determine whether the supply is being made to an account holder or a non-account holder. In both cases the supply will be input taxed.

Examples of the types of supplies covered include:

- * an application fee charged for a loan that is not approved or taken up;
- * a fee charged by a bank to a non-account holder for cashing a cheque or processing a payment; and
- * a fee charged by an ADI, to a person who does not hold an account in the ADI, for an electronic transfer to another ADI.

However, supplies not made in connection with an account that would be a taxable supply will not become financial supplies even if a fee less than \$1000 is charged. For example, some banks may provide processing of payroll for businesses. Amounts are deducted from a bank account held by the business (either with that bank or another bank) and paid into bank accounts held by employees of that business (either with that bank or another bank). The bank charges a fee to the business for this service, however the service provided is not in connection with an account.

Incidental financial supplies

Regulation 40-5.10 deals with transactions where an allocation of the purchase price between at least two supplies, supplied together (one of them being a financial supply) would be administratively cumbersome for the supplier. The burden would arise due to the necessity of allocating a price on the non-financial transaction that is small in absolute terms. The effect of regulation 40-5.10 is that all of the supplies making up the transaction will be input taxed.

The regulation was intended to relieve compliance difficulties rather than create restrictions. However, industry has expressed concern that the application of regulation 40-5.10 is unclear. The amendment clarifies when a supply is an incidental financial supply.

Something supplied by an entity to a recipient directly in connection with a financial supply will be an **'incidental financial supply' if.**

- * it is incidental to the financial supply;
- * it and the financial supply are supplied at or about the same time other than for separate consideration; and
- * it is the usual practice of the supplier to supply the two things together. **[New regulation 40-5.10]**

For example, provision of advice by a bank in connection with the provision of a housing loan by that bank would, in general, be considered an incidental financial supply and input taxed. Assuming that the value of the advice is incidental to the total value of the loan, there is no separate charge for the advice and that such advice is commonly provided by the bank in relation to such loans, it would impose an unnecessary burden on the bank to require it to allocate a value to the provision of the advice and then to remit GST on this supply.

The incidental financial supply provisions do not override the provisions of regulation 40-5.09. In other words, supplies of interests set out in 40-5.09 for which separate fees are charged remain input taxed. For example, fees in relation to an account at an Australian ADI, or credit card fees will always be input taxed. The *incidental financial supply* provisions simply relieve financial supply providers from allocating a value to supplies which meet the requirements of regulation 40-5.10 and which would otherwise be taxable.

Technical Amendments

Regulation 40-5.02 currently provides that an interest in relation to a financial supply is anything that is recognised at law or in equity as property in any form. This includes both statutory and proprietary interests. **Item 3 of Schedule 1** amends **regulation 40-5.02** to **add** an example **of an interest conferred under a private or public sector superannuation scheme** to the examples currently listed in the regulation. The amendment makes it clear that this is an interest of the type contemplated by the GST regulations.

Minor technical amendments are also made to the items set out in the table at subregulation 405.09(2) as follows:

- * *insert new table item 2* to reflect that an interest in or under credit is more accurately described as an interest in or under a *credit arrangement* rather than in credit itself;
- * *insert new table item 6* to correct a reference to declarations under subsection 12(2) and section 12A of the Life *Insurance Act* 1995. The declaration is made under one of the provisions not both;

* *insert new table item 7* to clarify that a warranty of goods is not a financial supply as it is excluded from the scope of a guarantee or indemnity in subregulation 405.09(2); and

* *insert new table item 9* to clarify that the item (the supply of an interest in currency) applies equally to Australian and foreign currency.

Under the current GST regulations, an interest in a time-sharing scheme is inadvertently treated as a financial supply although it is more akin to an interest in real property, which is taxable. It is treated as a financial supply because it currently comes within item 10 of regulation 40-5.09. Specifically, the definition of security in the regulations uses the meaning in section 92 of the Corporations Law, which includes a managed investment scheme. The definition of managed investment scheme in section 9 of that Act includes a time-sharing scheme. *Table item 10* of subregulation 40-5.09(2) is amended to exclude a time-sharing arrangement from being a security under the item. [*New paragraph 10(b) in subregulation 40-5.09(2)*]

Item 13 of Schedule 1 proposes a new example for table item 8 (credit under a hire purchase agreement) in subregulation 40-5.09(2). The amount of interest, and associated fees and charges, in respect of the credit component under a hire purchase agreement is an example of an interest in credit under table item 8. The new example will appear in Schedule 1 of the regulations.

Supplies that are not financial supplies

Regulation 40-15.12 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. A number of amendments are made to items in that regulation to clarify the supplies that are not financial supplies.

Supplies of special forms, etc by an ADI

New table item 2 in regulation 40-15.12 makes it clear that the item applies to supplies of special forms, etc made *by* an ADI *to* the requirements of particular account holders. (*New table item 2 in regulation 40-15.12*)

Payment facilities

Table item 4 of regulation 40-5.12 currently provides that the supply of payment facilities for transaction cards for account providers is not a financial supply. There is doubt whether the item as currently drafted covers all the payment facilities it was intended to cover. For example, payment facilities and transactions often occur between entities that are not "account providers" in a particular transaction.

New table item 4 achieves the policy intent. Under *new table item 4* the supply of, or an interest in or under, a payment system will not be a financial supply. The *Dictionary* is amended to insert a definition of *payment system*. The definition provides that a payment system is a funds transfer system that facilitates the circulation of money, and includes any procedures that relate to the system. The dictionary is also amended to define a *participant* to be a person who is a participant in the system in accordance with the rules governing the operations of the system. [*Items 3 and 35 of Schedule 1*] As a consequence of the amendments to table item 4, *table item 11* is no longer required and it is deleted from the table.

Consequential amendments are also made to regulation 70-5.02, table items 6, 7 and 8 and to the examples in Part 2 of Schedule 2. [*Item 22 of Schedule 1*]

Currency

New table item 18 of regulation 40-5.12 clarifies that the supply of Australian or foreign currency with a market value greater than its stated value as legal tender, or an agreement to buy or sell currency of that type, is not a financial supply. [New table item 18 in regulation 40-5.1]

Options and futures

Note 4 to regulation 40-5.12 incorrectly refers to items 8 and 9. The reference should be to table items 7 and 8. The note also currently provides that "GST is payable on any premium on a deliverable commodity derivative..." Not every deliverable commodity derivative is taxable, therefore a premium is not payable on "any premium". New note 4 corrects this reference and would provide that "GST is payable on the premium (if any) on a taxable deliverable commodity derivative and the price on settlement when the commodity is delivered." Item 16, 17 and 18 of Schedule make consequential amendments to the examples for this item in Schedule 1 of the GST regulations.

GST Joint ventures

Background

Division 51 of the GST Act enables companies to be approved as a GST joint venture if they meet certain eligibility criteria. When approved as a GST joint venture, the joint venture operator will deal with the GST responsibilities arising from its dealings on behalf of the participants in the joint venture.

Section 51-5 of the GST Act sets out the requirements for companies involved in joint venture arrangements to be approved as a GST joint venture. To utilise the joint venture provisions, the arrangement between the parties involved must constitute a true joint venture, not a common law partnership or an arrangement where parties are in receipt of income jointly. One of the requirements for approval as a GST joint venture is that the joint venture must be either 'for the exploration or exploitation of mineral deposits, or for a purpose specified in the regulations' - paragraph 51-5(1)(a). The amendments to the GST regulations specify which activities other than mineral exploration and exploitation may be approved as GST joint ventures.

In development of the regulations, consideration has been given to a wide range of industries where joint venture arrangements are common. The regulations will allow GST joint ventures to be approved for a diverse range of activities including infrastructure projects, power generation, general insurance, forestry and research and development. These changes will help many companies involved in joint venture arrangements to substantially reduce the administrative costs associated with accounting for the GST on joint venture transactions.

Item 4 of Schedule 1 inserts new regulation 51-5.01, to provide which activities will be approved purposes for GST joint ventures. A joint venture undertaken for a purpose specified in the new regulation will be able to apply to the Commissioner for approval as a GST joint venture under Division 51 of the GST Act.

New subregulation 51-5.01 (1) lists the activities that may be approved as GST joint

ventures. These activities are:

* joint ventures undertaken for the purpose of research and development [*new paragraph 51-5.01 (1) (a)*](such as a joint venture undertaken for the development of intellectual property);

* a joint venture activity where parties come together for the provision of insurance (except for the provision of life insurance) [*new paragraph 51-5.01(1)(b)*];

- * fishing joint ventures [*new paragraph 51-5.01 (1) (c)*] For example, joint ventures where fishermen, boat operators and boat owners come together to fish, and the catch is shared may be approved as a GST joint venture under this category;
- * joint ventures for an agricultural purpose [*new paragraph 51-5.01(1)(d)*]. A joint venture in this category may include the joint care of a flock of sheep, where the wool clip is shared amongst the participants;
- * forestry joint ventures, undertaken for the purposes of cultivation and/or exploitation of timber [*new paragraph 51-5.01 (1) (e)*];
- * building and construction joint ventures that involve the design, building and/or maintenance of residential and commercial premises [*new paragraph 51-5.01(1)(f)*]; or the design, construction and/or maintenance of roads, bridges, dams, ports and other similar installations [*new paragraph 51-5.01 (1) (g)*];
- * joint ventures for the generation, transmission and/or distribution of electricity [*new paragraph 51-5.01 (1) (h)*]; or the transmission and/or distribution of water [*new paragraph 51-5.01(1)(i)*];
- * a joint venture activity for the receipt, storage and/or distribution of oil and gas products [*new paragraph 51-5.01 (1) (j)*]. A joint venture in this category might include the operation of a joint facility for storing and distributing aviation fuel;
- * refining and/or processing of oil and gas products [*new paragraph 51-5.01 (1) (k)*];
- * joint ventures for the beneficiation of minerals and primary metal production, including alloy production [*new paragraph 51-5.01 (1) (1)*]; and
- * charitable joint ventures [*new paragraph 51-5.01(1)(m)*].

It should be noted that a joint venture may be approved as a GST joint venture if it is for more than one of the above purposes, or any of these purposes in conjunction with the purpose of exploration or exploitation of mineral deposits [*new subregulation 51-50.0-1(2)*].

Reduced credit acquisitions

Background

Input tax credits are generally not available where an acquisition or importation is used for making financial supplies. However, Division 70 of the GST Act allows a 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 Division 70 of the GST regulations.

The amendments to the regulations clarify what acquisitions are eligible for reduced input tax credits, and make minor technical amendments to Division 70 of the GST regulations.

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. Item 4 of the regulations seeks to amend Division 70 of the GST regulations to clarify acquisitions that are reduced credit acquisitions.

The GST regulations have also been renumbered to more closely align with the numbering used in the GST Act. The following table summarises the new numbering system for the provisions in this Division.

NEW LAW OLD LAW

Part 4-2 Part 4-2

Division 70 No equivalent

70-5.01 70-1

70-5.02 70-2

70-5.02(1) 70-2(1)

70-5.02(2) 70-2(2)

70-5.02(3) 70-2(3)

70-5.03 70-3

Regulation 70-5.02 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 13 headings. Reference should be made to the table at 705.02(2) for the complete list of reduced credit acquisitions.

Clarification of acquisitions that are reduced credit acquisitions

Item 5 corrects minor technical errors in Division 70 of the GST regulations and clarifies acquisitions that are reduced credit acquisitions under some of these headings.

Paragraph 70-5.01(b) is amended to change an incorrect reference to "financial supplier" to "financial supply provider".

Subregulation 70-5.02(1) is amended to remove a reference to the words "of a kind". The amendment clarifies that the acquisitions mentioned in subregulation *70-5.02(2)* are generally an exhaustive list of acquisitions. Items that are termed "including" are inclusive within the context of the item as a whole. The other items are intended to be exhaustive.

New subregulation 70-5.03 clarifies that the rate of the reduced input tax credit for the purposes of subsection 70-5(2) of the GST Act is 75%.

Payments and fund transfers services

Table item 6, 7, and 8 in regulation 70-5.02 are amended to align with the amendment to item 4 in regulation 40-5.12. Reduced acquisitions under this item are:

- * fees charged by the operator of a payment system to a participant in the system;
- * fees charged by a participant in a payment system to a third party (such as a merchant) in relation to access to the system; and

* fees charged between participants in a payment system. *[New table items 6,7 and 8 in subregulation 70-5.02(2)]*

A third party will generally be a party such as a merchant and does not refer to a consumer.

Credit Unions

Table item 16 of regulation 70-5.02 currently provides that a supply to a credit union by an entity that is wholly owned by 2 or more credit unions is a reduced credit acquisition. It was intended that this item would apply to wholly owned subsidiaries of entities owned by 2 or more credit unions. *New item 16* gives effect to this intention.

An amendment is also made to add a definition of credit union to the *Dictionary* so that for the purposes of the regulation, the term "*credit union*" would include the Cairns Penny Bank. This amendment is only relevant for item 16 of regulation 70-5.02(2) and only for the purposes of the GST regulations. *[Item 30 of Schedule 1]*

Trustee and custodial services *New paragraph 29(h)* in subregulation 70-5.02(2) amends table item 29 to include nominee services in relation to financial supplies as a reduced credit acquisitions.

Other technical amendments

Item 5 of Schedule 1 makes other technical amendments to subregulation 70-5.02(2).

Paragraph 2(a) is amended so that archive storage and retrieval also includes "destruction". A similar amendment is also made to *paragraphs 24(f) and 26(f)*.

Table item 9 (securities transaction services) is amended to clarify that a supply under that item is a reduced credit acquisition when made by a financial supply facilitator.

New paragraphs 24(h) and 26(h) correct a drafting error and also clarify the scope of the item. An acquisition is a reduced credit acquisition under that paragraph if it is acquired for compliance with *industry regulatory requirements, excluding taxation and auditing services*. This means that costs incurred for preparation of tax returns or Business Activity Statements are not reduced credit acquisitions. These services are excluded as they are not principally or specifically acquired to comply with a regulatory requirement related to providing funds management services (item 24) or life insurance services (item 26).

Insurance

Background

Division 78 of the GST Act provides for the treatment of a settlement of a claim made under an insurance policy. There are various statutory schemes established under laws of the Commonwealth, States and Territories that are either insurance at law or, whilst not being insurance at law, provide the same sort of coverage as insurance. Some schemes in different States that are of the same type are within the definition of insurance while others are not (such as some State workers' compensation schemes). All such schemes are to be treated similarly for GST as they perform the same function. Subdivision 78-E of the GST Act provides for the application of Division 78 to a "statutory compensation scheme".

Section 78-105 of the GST Act provides that:

"A *statutory compensation scheme* is a scheme or arrangement:

- (a) that is established by an *Australian law; and
- (b) under which compensation is payable for particular kinds of injury, loss or damage; and
- (c) that is specified in the regulations, or that is of a kind specified in the regulations."

Item 5 inserts new regulation 78-105.01. New regulation 78-105.01 provides that the schemes or arrangements listed in new Schedule 10 are statutory compensation schemes for the purposes of section 78-105 of the GST Act.

Item 23 inserts new Schedule 10. New Schedule 10 lists the schemes or arrangements that are statutory compensation schemes for the purposes of 'section 78-105 of the GST Act.

ATTACHMENT B

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

A New Tax System (Goods and Services Tax) Amendment Regulations 2000 (No. 2)

Regulation Impact Statement - GST Regulations

Financial supplies and reduced credit acquisitions

Outline of the policy

Incidental financial supplies

Part 1 - Specify the policy objective

The incidental financial supply provision is relieving in nature. The intent of the concept of incidental financial supply is to deal with transactions where an allocation of the purchase price between at least two items (one of them being a financial supply) which are supplied together would be administratively cumbersome for the supplier. The burden would arise due to the necessity of allocating a price on the nonfinancial transaction that is small in absolute terms.

Part 2 - Identify the implementation options

Three implementation options were considered.

The first was to specify a limit on the value of the incidental financial supply in relation to the main financial supply.

The second was to list those supplies that would or would not be considered incidental financial supplies.

The third was to more clearly define the characteristics of what constitutes an incidental financial supply.

Part 3 - Assess the impacts of each implementation option

The first option raises practical difficulties in valuing financial services for the purposes of specifying monetary or percentage limits. Financial supplies are input taxed due to the difficulty of identifying, for individual transactions, the value added in a financial intermediary's margin.

The second option would have required the listing of particular supplies. This approach would be administratively complex as such lists would have to be continually changed to take account of market developments and might not appropriately take into account the differing practices of financial service suppliers in offering financial services.

The third option relies on specifying the nature of a supply that is incidental to a financial supply. The circumstances of the supply of a financial service that might be incidental to a financial supply would determine the GST treatment of the supply, rather than arbitrary guidelines.

Part 4 - Conclusion and recommended option

The third option was considered to best meet the objective of the incidental financial supply provision to be relieving in nature.

Non-Account Holders

Part 1 - Specify the policy objective The objective is to allow financial services provided to non-account holders by an Australian ADI to be input taxed where they would be input taxed if provided to account holders. Financial services provided to account holders as part of supplying an account are input taxed as the provider can charge for the services in the margin on the account.

Part 2 - Identify the implementation options

Three options were considered The first option was to input tax all activities of ADIs

The second option was to tax financial services offered by an ADI only where an Australian Business Number (ABN) is quoted (ie tax businesses who can claim an input tax credit and input tax consumers)

The third option was to take a de minimus approach whereby fees charged by an ADI below a threshold of \$1000 do not have to be taxable.

Part 3 - Assess the impacts of each implementation option

Option one would increase tax cascading for business. ADIs would be less competitive for services to business that can be also provided by non-ADIs as there would be embedded taxation that could not be removed. In the longer term there would be increased pressure from ADIs for the expansion of input taxation to moderate this competitive disadvantage and pressure for changes to the reduced input tax credit list.

Option two would ensure that most financial services to consumers would be input taxed. ADIs would be required to implement compliance systems (at the counter and back office) to track ABNs. Some businesses may not quote an ABN to avoid GST, however this would seem to be unlikely as business would probably find it easier to be fully taxable and claim input credits.

Option three would effectively input tax all consumer fees without the need for an ADI to determine the consumers account status or whether an ABN was quoted. An incentive may exist for larger fees to be broken down into amounts below the threshold, but businesses should generally prefer fees to be fully taxable as they can claim input credits.

Part 4 - Conclusion and recommended option

The third option is preferred. The option will result in the least distortion of the financial services industry with the least compliance costs.