

A NEW TAX SYSTEM (GOODS AND SERVICES TAX) (EXEMPT TAXES, FEES AND CHARGES) DETERMINATION 2004 (NO. 2)

EXPLANATORY STATEMENT

Issued by Authority of the Minister for Revenue and Assistant Treasurer

Purpose

The purpose of the *A New Tax System (Goods and Services Tax) (Exempt Taxes, Fees and Charges) Determination 2004 (No. 2)* [Determination 2004 (No. 2)] is to list those taxes, fees and charges that are excluded from the scope of the goods and services tax (GST) base.

Background

Division 81 of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act) provides that the GST applies to payments of taxes, fees and charges, except those taxes, fees and charges that are excluded from the GST by a determination of the Treasurer. Specifically, Section 81-5 of the GST Act deems all payments of taxes, fees or charges to be consideration for a supply except for those specified in a written determination of the Treasurer. This section is designed to allow taxes, fees and charges to be excluded from the scope of the GST base.

Parallel to the legislative implementation of the GST package, the Intergovernmental Agreement on the Reform of Commonwealth-State Financial Relations (IGA) was signed in June 1999. This document outlined a process for deciding the taxes, fees and charges to be included in the determination under Division 81 of the GST Act. The IGA provided that it would be the role of the Ministerial Council (the Commonwealth, State and Territory Treasurers) to compile the list of taxes and other compulsory charges that would be outside the scope of the GST. This would require on-going review and adjustments as necessary.

The Commonwealth, States and Territories decided that the following taxes, fees and charges should be included on the list:

- taxes that are in the nature of a compulsory impost for general purposes; and
- regulatory charges that do not relate to particular goods or services.

As part of the on-going review and adjustment process, Determination 2004 (No. 2) was made. The Ministerial Council compiled and agreed to the determination that was made by the Minister for Revenue and Assistant Treasurer on 7 December 2004 and notified in a *Special Gazette* on 21 December 2004.

Determination 2004 (No. 2) revoked the *A New Tax System (Goods and Services Tax) (Exempt Taxes, Fees and Charges) Determination 2004* (Determination 2004) and replaced it with a comprehensive new determination.

Explanation of the determination

The determination has five sections:

Section 1: specifies the name of the determination as the *A New Tax System (Goods and Services Tax) (Exempt Taxes, Fees and Charges) Determination 2004 (No. 2)*;

Section 2: specifies that the determination commences on 1 January 2005;

Section 3: defines 'Act' as meaning the *A New Tax System (Goods and Services Tax) Act 1999*;

Section 4: is the operative provision. It provides that the taxes, fees and charges listed in Schedule 1 will not be consideration for the purposes of the GST.

Section 5: specifies that Determination 2004 is repealed.

Schedule 1

Schedule 1 lists the taxes, fees and charges that meet the general principles set out in the IGA and that have been agreed by the Ministerial Council to be outside the scope of the GST.

Schedule 1 is divided into the nine relevant jurisdictions: the Commonwealth, the six States and two Territories. Local government taxes, fees and charges are included in the appropriate State or Territory list. Within each jurisdiction, the taxes, fees and charges have been classified according to the relevant portfolio. The taxes, fees and charges are identified by their name, the relevant statute and, where necessary, a more detailed description.

Accordingly, taxes, fees and charges specified in Schedule 1 will not be regarded as consideration for the purposes of the GST. Therefore, they will not be levied inclusive of GST. A government charge that is not included in Schedule 1 could be subject to GST where it constitutes consideration for a taxable supply.

Determination 2004 (No. 2) took effect from 1 January 2005.