

EXPLANATORY STATEMENT

Select Legislative Instrument 2010 No. 209

Issued by authority of the Assistant Treasurer

A New Tax System (Goods and Services Tax) Act 1999
A New Tax System (Goods and Services Tax) Amendment Regulations 2010 (No. 2)

A New Tax System (Wine Equalisation Tax) Act 1999
A New Tax System (Wine Equalisation Tax) Amendment Regulations 2010 (No. 1)

Section 177-15 of the *A New Tax System (Goods and Services Tax) Act 1999* (the GST Act) and section 27-35 of the *A New Tax System (Wine Equalisation Tax) Act 1999* (the WET Act) provide that the Governor-General may make regulations prescribing matters that are required or permitted by the GST or WET Acts respectively to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to those Acts.

The Board of Taxation, in its review of the legal framework for the administration of the GST, recommended that a system be introduced under which residents of Australia's External Territories (such as Norfolk, Cocos (Keeling) and Christmas Islands) can claim refunds under the Tourist Refund Scheme on unaccompanied goods if they can show proof of shipping of exported goods to their External Territory (recommendation 31). The intention of extending the Tourist Refund Scheme is to provide a direct mechanism for Australian External Territory residents to obtain refunds of goods and services tax (GST) and wine equalisation tax (WET) on goods that are unable to be exported as accompanied baggage to an Australian External Territory.

The purpose of the Regulations is to amend the *A New Tax System (Goods and Services Tax) Regulations 1999* (the GST Regulations) and the *A New Tax System (Wine Equalisation Tax) Regulations 2000* (the WET Regulations) to support the legislation introducing an unaccompanied goods refund scheme for External Territories contained in *Tax Laws Amendment (2009 GST Administration Measures) Act 2010* (the Act) which received Royal Assent on 24 March 2010 and set out the conditions for lodging a refund claim including providing documentary evidence of export for unaccompanied goods.

This is achieved by including in the GST Regulations, for the purposes of subsection 168-5(1A) of the GST Act, the kinds of acquisitions and the circumstances required for export of goods from Australia to an External Territory to qualify under the refund scheme. In addition, for the purposes of subsection 25-5(1A) of the WET Act, the WET Regulations have been amended to include the kinds of acquisitions and the circumstances required for the export of the wine from Australia to an External Territory to qualify under the refund scheme.

The same rules applicable to goods subject to GST also apply to exports of wine and goods subject to WET. Accordingly, External Territory residents claiming a refund will first need to qualify for a refund of GST in order to be able to qualify for a refund of WET. This avoids the need for the same detailed requirements to be included in the WET Regulations as apply in the GST Regulations and therefore avoids unnecessary repetition.

The current Tourist Refund Scheme rules must also continue to be met for an Australian External Territory resident to qualify for a refund of GST or WET for accompanied baggage. This includes the need for Australian External Territory residents to present goods that are taken as accompanied baggage to an officer of the Australian Customs and Border Protection Service on request at the Tourist Refund Scheme facility.

Regulation 168-5.10C provides that Australian External Territory residents must present themselves at a tourist refund facility to claim and provide proof of an entitlement to a refund of any tax payable. When making the Tourist Refund Scheme claim, Australian External Territory residents must also show evidence of exportation (subparagraph 168-5.10C(1)(c)(i)), or evidence that they have put in place arrangements so that the goods will be exported from Australia to an Australian External Territory within the required period after the goods were acquired (subparagraph 168-5.10C(1)(c)(ii)). Regulation 168-5.10B provides that the goods must be exported within 60 days after they were acquired.

The documentary evidence includes a tax invoice that includes GST or GST and consequently WET (paragraph 168-5.10C(1)(a)), proof of Australian External Territory residence (paragraph 168-5.10C(1)(b)), and proof that the goods have been exported (subparagraph 168-5.10C(1)(c)(i)), or arrangements have been put in place for the goods to be exported, within 60 days after the day on which the goods were acquired (subparagraph 168-5.10C(1)(c)(ii)). This evidence must be presented at a Tourist Refund Scheme verification facility when leaving for an external Territory (subregulation 168-5.10C(2)).

If documentary evidence of actual export within 60 days after the day on which the goods were acquired is not provided at the time of making the Tourist Refund Scheme claim, it must be provided to the Australian Customs and Border Protection Service within 90 days after the day on which the goods were acquired (subregulation 168-5.10C(3)).

The GST and/or WET refund will be paid once all documentation has been received and processed by the Australian Customs and Border Protection Service on the Commissioner of Taxation's behalf.

The draft Regulations and draft Explanatory Statement were posted on the Treasury website on 1 December 2009 and were open for public comment until 29 January 2010.

The Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Regulations commenced on 1 July 2010 and have retrospective effect from that date. The Regulations needed to commence from 1 July 2010 to be consistent with the 1 July 2010 start date of the Act. The Regulations do not have any adverse impacts on a person covered by the new provision. Retrospective operation of the Regulations is therefore not prevented by subsection 12(2) of the *Legislative Instruments Act 2003*, which provides for a general rule that regulations may not have retrospective effect if they disadvantage a person's rights or impose liability on a person.