

EXPLANATORY STATEMENT

Select Legislative Instrument 2012 No. 87

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 Regulation 2012 (No. 1)

Section 177-15 of the *A New Tax System (Goods and Services Tax) Act 1999* (the Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The purpose of the amending Regulation is to amend the *A New Tax System (Goods and Services Tax) Regulations 1999* (the Principal Regulations) to:

- treat all components of a hire purchase transaction as taxable supplies;
- extend the availability of reduced input tax credits (RITC) relating to life insurance, lenders mortgage reinsurance and transactional fraud monitoring services;
- modify access to a RITC for recognised trust entities; and
- clarify the language used in relation to guarantees and indemnities.

On 11 May 2010, the Government announced that the GST law would be amended to implement the recommendations arising out of Treasury's *Review of the GST Financial Supply Provisions*. The amending Regulation implements four of the seven recommendations agreed to by the Government. The other three recommendations have been implemented through amendments to the Act contained in Schedule 3 to the *Tax Laws Amendment (2011 Measures No. 9) Act 2012*.

The amending Regulation amends the list of supplies that are financial supplies in the table in subregulation 40-5.09(3), the list of supplies that are not financial supplies in the table in regulation 40-5.12 and the list of acquisitions that attract RITCs in the table in subregulation 70-5.02(2) to give effect to the recommendations.

The amending Regulation further prescribes the percentage by which input tax credits are reduced for certain supplies acquired by recognised trust schemes.

Details of the Regulation are set out in the Attachment.

The Act specifies no conditions that need to be met before the power to make the Regulation may be exercised.

A preliminary assessment of the compliance costs of the amending Regulations found the expected compliance costs for taxpayers to be low. Accordingly, a Regulation Impact Statement was not required and has not been prepared.

Consultation on the implementation of the amendments was conducted publicly via the Treasury website between 30 June 2010 and 30 August 2010, with a consultation meeting with interested stakeholders in Canberra on 19 October 2010.

Consultation on exposure draft regulations was conducted publicly via the Treasury website between 13 January 2012 and 24 February 2012. In addition, targeted consultation has been undertaken with interested stakeholders, including the Financial Services Council and the Property Council of Australia. A consultation summary is available on the Treasury website.

The Regulation commence on 1 July 2012.

ATTACHMENT

Details of the proposed A New Tax System (Goods and Services Tax) Amendment Regulation 2012 (No. 1)

Section 1 – Name of Regulation

This section provides that the name of the Regulation is the *A New Tax System (Goods and Services Tax) Amendment Regulation 2012 (No. 1)*.

Section 2 – Commencement

This section provides that the Regulation commences on 1 July 2012.

Section 3 – Amendment of A New Tax System (Goods and Services Tax) Regulations 1999

This section provides that the Regulation amends the *A New Tax System (Goods and Services Tax) Regulations 1999* (the Principal Regulations).

SCHEDULE 1 – AMENDMENTS

Background

Section 40-5 of the Act provides that a financial supply is input taxed and that ‘financial supply’ has the meaning given by the regulations. Regulation 40-5.09 in the Principal Regulations sets out what supplies are financial supplies. These supplies are input taxed and no input tax credits may be claimed in respect of acquisitions that relate to the making of these supplies.

Regulation 40-5.12 sets out which supplies are not financial supplies. These supplies are subject to the normal GST rules.

In an effort to reduce incentives to self-supply certain services from arising due to the input taxation of financial supplies, section 70-5 of the Act provides that acquisitions of a specified kind may give rise to an entitlement to a reduced input tax credit (RITC) despite being related to the making of input taxed financial supplies. These acquisitions are reduced credit acquisitions, and are specified in the table in subregulation 70-5.02(2) of the Principal Regulations.

The amount by which the input tax credit is reduced is specified by regulation 70-5.03 of the Principal Regulations, and section 70-15 of the Act provides the method for calculating the amount of the RITC that may be claimed.

The amending Regulation makes some changes to these financial supply provisions in the Principal Regulations.

Guarantees and indemnities

Item [1] – Subregulation 40-5.09(3), table, items 7 and 7A

Item [3] – Regulation 40-5.12, table, item 21

Existing item 7 of the table in subregulation 40-5.09(3) suggests that indemnities, warranties, insurance and reinsurance are all forms of guarantees, when they are all legally distinct arrangements. Grouping these together has caused some confusion.

A guarantee is an agreement under which one entity (the guarantor) agrees to be liable for the obligations of another if the other entity defaults. An indemnity is an obligation to an entity (the creditor) assumed by another (the surety), under which the surety agrees to keep the creditor harmless from risks arising from dealings with a third party. A warranty for goods is also legally distinct from the concepts of guarantee and indemnity.

Item [1] separates existing item 7 of the table in subregulation 40-5.09(3) into two separate items 7 and 7A to clarify that guarantees and indemnities are legally distinct arrangements.

Item [3] inserts new item 21 into the table in regulation 40-5.12 to clarify that the supply of a warranty for goods is not a financial supply. Insurance and reinsurance business is already listed in existing item 10.

It is not intended that these amendments change the existing interpretation of the terms guarantee, indemnity or warranty as set out under item 7 of the table in subregulation 40-5.09(3). The amendments merely clarify the drafting and confirm the existing treatment.

Hire purchase agreements

Item [2] – Subregulation 40-5.09(3), table, item 8

Item [3] – Regulation 40-5.12, table, items 19 and 20

Under the existing law, the GST treatment of the supply of credit under a hire purchase agreement depends on whether the credit component is separately identified and disclosed to the recipient. Where the charge is separately identified and disclosed by the supplier, no GST is payable on the supply of credit, as it is an input taxed financial supply under existing item 8 in the table in subregulation 40-5.09(3).

On the other hand, where the charge for the supply of credit under a hire purchase agreement is not separately identified and disclosed by the supplier, the total consideration provided under the hire purchase agreement relates to the supply of the goods.

Item [2] amends existing item 8 of the table in subregulation 40-5.09(3) to specify that only supplies of credit made under hire purchase agreements entered into before 1 July 2012 are financial supplies.

Item [3] inserts new items 19 and 20 into the table in regulation 40-5.12, to make all supplies made under a hire purchase agreement entered into on or after 1 July 2012 supplies that are not financial supplies.

Amendments made on or after 1 July 2012 to an existing hire purchase agreement entered into before 1 July 2012 that do not amount to a new agreement are not impacted by this change. These supplies continue to be input taxed financial supplies if the credit component is separately identified and disclosed.

Example 1: Hire purchase agreements before and after 1 July 2012

Stacey owns an accounting business and is registered for GST. On 23 April 2012, Stacey enters into a hire purchase agreement with Tim's Financial Services (TFS) to purchase a new computer system for her business for \$22,000 (GST-inclusive), excluding the credit charges. The scheduled credit charges over the term of the hire purchase agreement are identified in the agreement as totalling \$4,000.

Under the existing regulations, the supply of credit made under the hire purchase agreement for \$4,000 constitutes a financial supply and is input taxed. TFS would be required to remit GST of \$2,000 to the Commissioner in respect of the supply of the computer system. No GST would be payable on the supply of the credit, and TFS would need to apportion its input tax credit entitlement for acquisitions that relate to both the supply of the computer system and the supply of credit.

On 25 August 2012, Stacey enters into another hire purchase agreement, this time with Equipment Finance Co. to purchase office equipment for \$11,000 (GST-inclusive), excluding the credit charges. The scheduled credit charges over the term of the hire purchase agreement total \$2,200 (GST-inclusive).

Under the amended regulations, the supply of credit under the hire purchase agreement for \$2,200 is not a financial supply. Equipment Finance Co. is required to remit a total of \$1,200 of GST to the Commissioner in respect of the supplies made under the hire purchase agreement, consisting of \$1,000 in respect of the supply of the equipment and \$200 in respect of the supply of credit.

New item 20 of the table in regulation 40-5.12 does not require the credit to relate to the goods supplied under the hire purchase agreement. This ensures that credit supplied under a hire purchase agreement in relation to costs, other than the cost of the goods, are also treated as not being a financial supply. These costs could include stamp duty, registration and insurance costs.

Example 2: Financing associated costs

Kate is registered for GST. On 13 July 2012, Kate enters into a hire purchase agreement with YMG Finance Co to purchase a new car for her business. As part of the agreement, YMG Finance Co agrees to finance the cost of the car (\$33,000 including GST of \$3,000) as well as the cost of registration, stamp duty and compulsory third party insurance totalling \$2,900 (including GST of \$90). The scheduled credit charges over the term of the hire purchase agreement total \$3,850 (including GST of \$350).

The supply of credit under the hire purchase agreement includes the credit supplied to finance the cost of registration, stamp duty and insurance. Under the amended regulations, the supply of credit is not a financial supply. YMG Finance Co is required to remit a total of \$3,440 of GST to the Commissioner in respect of the supplies made under the hire purchase agreement.

Disclosed and undisclosed credit component

There is no longer the need to specifically require that the supply of credit be separately identified and disclosed for GST purposes. This is because where the credit component under a hire purchase agreement is not separately identified and disclosed, the consideration is treated as consideration for the supply of the goods and there is no consideration for the supply of the undisclosed credit component.

Where the credit component is separately identified and disclosed, the supply of credit is not an input taxed financial supply and the basic rules would apply to determine whether it is a taxable supply.

Where the credit component is undisclosed, the total consideration provided under the hire purchase agreement relates to the supply of the goods. The GST outcomes depend on the GST treatment of the goods supplied.

Interaction with luxury car tax

The amendments are not intended to affect the calculation of luxury car tax. In working out whether a car is a luxury car with respect to exceeding the luxury car tax threshold, only the price of the car is taken into account. The price includes GST and customs duty and does not include any luxury car tax, or any other Australian tax, fee or charge. The GST-inclusive price of the supply of credit is not relevant to the calculation.

The supply of the car and the supply of the credit continue to be treated as two separate supplies.

Example 3: Interaction with luxury car tax

Celia is registered for GST. On 30 September 2012, Celia enters into a hire purchase agreement with Magic Car Solutions, a finance company, to purchase a non fuel-efficient luxury car. The GST-inclusive price of the car is \$88,000 (excluding luxury car tax or any other Australian tax, fee or charge) and the scheduled credit charges over the term of the hire purchase agreement total \$7,700 (including GST of \$700).

The hire purchase agreement involves the supply of the luxury car and the supply of credit. In order to work out whether the car exceeds the luxury car tax threshold, Magic Car Solutions only includes the GST-inclusive price of the supply of the car, and does not include the GST-inclusive price of the supply of the credit.

Magic Car Solutions is required to remit a total of \$8,700 of GST to the Commissioner, which is 1/11th of the price of the car (excluding any amounts of luxury car tax that may be payable) and 1/11th of the price of the credit charges. Magic Car Solutions' liability for luxury car tax is \$9,160.

Item [10] – Schedule 7, Part 6, column 2

Item [10] amends the example for the supply of credit made under a hire purchase agreement by limiting it to supplies made under hire purchase agreements entered into before 1 July 2012. This reflects the change to item 8 of the table in subregulation 40-5.09(3).

Item [11] – Schedule 8, Part 7

Item [11] inserts the credit component of a hire purchase agreement entered into on or after 1 July 2012 as an example for item 20 in the table in regulation 40-5.12.

The example makes reference to the amount of consideration for the supply of credit being the amount of interest and associated fees and charges. Associated fees and charges can include late payment fees incurred under the terms of the hire purchase agreement.

Lenders mortgage reinsurance

Item [4] – Subregulation 70-5.02(2), table, item 12A

Under the current law, it is intended that lenders mortgage reinsurance falls within the scope of present item 12 of the table in subregulation 70-5.02(2) covering lenders mortgage insurance. Notwithstanding that the Commissioner has consistently treated lenders mortgage reinsurance as falling within the scope of item 12, concerns have been expressed that the present treatment is ambiguous.

Item [4] inserts lenders mortgage reinsurance into the table in subregulation 70-5.02(2) to confirm the treatment of lenders mortgage reinsurance.

It is not intended that the amendment changes the scope of existing item 12.

Processing and assessing claims under life insurance policies

Items [5] and [6] – Subregulation 70-5.02(2), table, item 24 (h), (i)

Currently a life insurance entity that also operates a superannuation fund is able to obtain a RITC for assessing services related to life insurance policies under item 26 of the table in subregulation 70-5.02(2). In contrast, where the same service is acquired by a superannuation fund, the fund is not entitled to a RITC because items 23 and 24 do not refer to ‘assessing’.

Items [5] and [6] insert processing and assessing claims under life insurance policies into the list of reduced credit acquisitions which attract RITCs.

This amendment allows non-life insurers providing life insurance products to access RITCs for the same acquisitions that give rise to RITCs for life insurers providing equivalent products. This applies to eligible acquisitions made on or after 1 July 2012.

Supplies to recognised trust schemes

Item [7] – Subregulation 70-5.02(2), table, item 32

Item [8] – Subregulation 70-5.02(4)

Item [9] – Regulation 70-5.03

Whilst there are many valid commercial reasons for having single fee trustee arrangements, the present GST treatment advantages some trusts over other entities

engaged in equivalent activities, including trusts that adopt different payment arrangements.

Bundling supplies into a single trustee service for a single 'trustee fee' allows these entities to claim a RITC of 75 percent for the acquisition, regardless of whether acquisitions of the individual components of the trustee service would otherwise be eligible for a RITC under an item in the table in subregulation 70-5.02(2).

In addition there has been considerable uncertainty surrounding the capacity in which some acquisitions by the trustee were being made, and these changes go some way to addressing that issue.

Item [7] reduces the advantages associated with bundling by inserting new item 32 into the list of reduced credit acquisitions. The new reduced credit acquisition covers certain supplies acquired by a 'recognised trust scheme' to the extent the supplies are acquired on or after 1 July 2012. Acquisitions covered by item 32 are subject to a RITC at a rate of 55 percent.

Item [8] inserts a new subregulation 70-5.02(4) to define a number of terms for the purposes of item 32 of the table.

Recognised trust schemes

Item 32 only applies to supplies that are made to a 'recognised trust scheme'. The definition requires that:

- the entity acting in the capacity as trustee or responsible entity of the trust be carrying on, in its own capacity, an enterprise which includes making taxable supplies to the trust; and
- the trust be one of the entities listed in paragraph (b) of the definition.

Where the trustee or responsible entity of the trust is not carrying on an enterprise in its own capacity, including making taxable supplies to the trust, the trust cannot claim a RITC for 'trustee services' supplied by the trustee. In these situations, there is no incentive to bundle supplies into a single trustee service, and it is appropriate that item 32 only applies where this requirement is satisfied.

Example 4: Trustee carrying on an enterprise in own capacity

Sean's Trustee Services Pty Ltd (STS) acts as a trustee of Pacific Investments. STS is registered for GST both in its capacity as trustee for Pacific Investments, and in its own capacity. STS makes taxable supplies to Pacific Investments. Pacific Investments makes input taxed financial supplies. For the purposes of this example, Pacific Investments is a trust that satisfies paragraph (b) of the definition of a recognised trust scheme.

As a recognised trust scheme, acquisitions made by Pacific Investments of supplies made on or after 1 July 2012 would be covered by item 32, unless an exception applies.

Example 5: Trustee not carrying on an enterprise in own capacity

Emma's Trustee Services Pty Ltd (ETS) acts as a trustee of AA Super Fund. ETS is only registered for GST in its capacity as trustee for AA Super Fund and is not otherwise carrying on an enterprise in its own capacity.

AA Super Fund would therefore not be a recognised trust scheme and acquisitions made to AA Super Fund would not be covered by item 32.

Further, the trust must be a managed investment scheme (or part of a managed investment scheme) as defined in the *Corporations Act 2001*, or an approved deposit fund, pooled superannuation trust, public sector superannuation scheme or regulated superannuation fund (other than a self managed superannuation fund) within the meaning of the *Superannuation Industry (Supervision) Act 1993*.

'Managed investment scheme' is defined in the *Corporations Act 2001*. Examples of managed investment schemes include managed investment funds and investor directed portfolio services.

However, in recognition of the broad scope of the definition of 'managed investment scheme', certain types of trusts are specifically carved out of the definition of 'recognised trust scheme'. The incentives to bundle are not as prevalent for these arrangements, and their inclusion would have adverse impacts on their RITC entitlements.

Acquisitions by a mortgage scheme or a securitisation entity are not covered by item 32. 'Mortgage scheme' and 'securitisation entity' are terms which taxpayers that are engaged with those schemes or entities should already be familiar with.

A mortgage scheme is a managed investment scheme that has at least 50 percent of its non-cash assets invested in mortgage loans or mortgage schemes. This definition is based on ASIC Regulatory Guide 45, however no distinction is made between listed and unlisted mortgage schemes for the purposes of the GST law.

A securitisation entity is a trust that satisfies the same conditions in subsection 820-39(3) of the *Income Tax Assessment Act 1997* (ITAA 1997), which provides a carve out from the thin capitalisation rules in Division 820 of the ITAA 1997 for special purpose entities that undertake securitisation arrangements.

To be a securitisation entity, the trust must have been established for the purpose of managing some or all of the economic risk associated with assets, liabilities or investments, and the total value of the debt interests in the trust is at least 50 percent of the trust's assets. The trust must also be an insolvency-remote special purpose entity according to the criteria of an internationally recognised rating agency. Consistent with subsection 820-39(4) of the ITAA 1997, the rating agency does not have to determine that the trust satisfies the criteria.

These carve outs means that mortgage schemes and securitisation entities are not able to claim a RITC under item 32, but can continue to claim a RITC where the acquisition is covered by another item in the table in subregulation 70-5.02(2).

Example 6: Supply to securitisation entity

Will's Trustee Services Pty Ltd (WTS) acts as trustee for JL Securitisation Trust (JL), a trust that undertakes securitisation arrangements. WTS is registered for GST both in its capacity as trustee for JL, and in its own capacity. JL makes input taxed financial supplies. JL meets all the criteria set out in the definition for securitisation entity.

Even though WTS is registered in its capacity as trustee for JL and in its own capacity, JL is not a recognised trust scheme and therefore, supplies made to JL would not be covered by item 32. However, JL would be able to claim a RITC of 75 percent for the GST paid on acquisitions that are covered by another item of the table in subregulation 70-5.02(2).

Supplies covered by item 32

Item 32 covers supplies irrespective of whether the supplies are acquired from the trustee or responsible entity, or from another supplier. This will reduce the uncertainty surrounding the need to identify the capacity in which some acquisitions are being made.

Item 32 does not cover supplies by way of sale of goods or supplies of real property made by selling a freehold interest in land, selling a stratum unit or granting or selling a long-term lease. Acquisitions of these supplies are not currently reduced credit acquisitions under any of the items in the table in subregulation 70-5.02(2).

However, to ensure that item 32 does not unnecessarily impact on existing arrangements, paragraph (b) also excludes acquisitions to the extent that the acquisitions are covered by the following items:

- brokerage services covered under items 9 or 21;
- investment portfolio management functions under item 23 excluding acting as a trustee or single responsible entity under paragraphs (c) and (d) of that item;
- administrative functions in relation to investment funds under item 24 excluding services under paragraph (h) of that item;
- custodial services covered under item 29;
- master custody services covered under item 30;
- monitoring and reporting services (other than taxation and auditing services) under item 33.

Accordingly, a recognised trust scheme that makes a single acquisition of services from a trustee is entitled to a RITC at a rate of 55 percent for the acquisition unless it can identify individual components of the acquisition that satisfy the exceptions in paragraph (b). Individual components that are covered by these exceptions are subject to a RITC rate of 75 percent where they are covered by another item. Where individual components of the supply can be identified and the trustee charges a single trustee fee for the supply, it will be necessary for the fee to be apportioned on a fair and reasonable basis.

Similar to the carve out for some mortgage schemes and securitisation entities, the exclusions proposed in paragraph (b) are also aimed at minimising the impact of the adopted approach by continuing to ensure that impacted entities will continue to receive the current level of RITC entitlements for the listed types of acquisitions.

Example 7: Supplies to recognised trust schemes covered only by item 32

Jessie's Trustee Services Pty Ltd (JTS) acts as the trustee of Infinity Superannuation Fund (Infinity). Infinity is a regulated superannuation fund within the meaning of the *Superannuation Industry (Supervision) Act 1993* but is not a self managed superannuation fund. Infinity makes input taxed financial supplies.

JTS carries on an enterprise in its personal capacity that includes making taxable supplies to Infinity. The taxable supplies it makes to Infinity include managing Infinity's investment portfolio as well as administrative functions and other services in performance of its duties as trustee of Infinity. The taxable supplies are made from 1 July 2012.

Under the terms of the trust deed, JTS is entitled to be remunerated for acting as trustee. JTS charges a single fee for its services. In calculating this fee, JTS takes into account input costs in carrying on its enterprise which include rental, electricity, leasing equipment, information technology, telephone, and stationery.

Infinity is a recognised trust scheme as it is a trust that is a regulated superannuation fund and JTS is carrying on, in its own capacity, an enterprise that includes making taxable supplies to Infinity.

If Infinity is not able to identify individual components of the supply it acquires from JTS, it is entitled to a RITC at the rate of 55 percent for the acquisition. However, if Infinity is able to identify individual components of the supply JTS makes to it that fall within the exceptions listed in item 32(b), the individual components will not be covered by item 32 and Infinity will be entitled to a RITC where the components are covered by another item. For example, the individual components of the supply may be investment portfolio management functions that fall within items 23(a), (b) or (e) or administrative functions that fall within item 24 (other than 24(h)).

Infinity is entitled to a RITC at a rate of 55 percent for the remaining components of the acquisition, including other trustee and administrative services. Infinity may apportion the single fee to the different components of the acquisition using any fair and reasonable methodology.

Example 8: Exclusion to item 32

Bron's Trustee Services Pty Ltd (BTS) acts as the trustee of Fortune Investment Fund (Fortune), a recognised trust scheme established on 1 July 2013. Fortune makes input taxed financial supplies.

BTS carries on an enterprise in its personal capacity that includes making taxable supplies to Fortune. These taxable supplies include supplying services to Fortune to administer the trust in performance of its duties as trustee of Fortune. The services do not fall within the exceptions listed in item 32(b).

Under the terms of the trust deed, BTS is entitled to be reimbursed for expenses incurred in its capacity as trustee of Fortune for acquisitions made by Fortune.

In the course of carrying on its enterprise, Fortune leases premises from which the enterprise is carried on. The lease over the premises is not a long-term lease as defined in the *A New Tax System (Goods and Services Tax) Act 1999*. It acquires licences to use software and purchases office furniture and computers. Fortune acquires investment management functions and administrative functions in relation to the investment of its funds from third parties.

The acquisitions made by Fortune in respect to the services provided by BTS, leasing the premises, and acquiring the software licence are covered by item 32 and subject to a RITC at the rate of 55 percent. The acquisition of the office furniture and computers is not subject to a RITC as they are an acquisition of goods and are therefore excluded from item 32. Those acquisitions are not covered by another item. The acquisition of the investment management functions and administrative functions are not covered by item 32 to the extent they are covered by items 23 (a), (b) or (e), or item 24 (excluding 24(h)). To the extent that the acquisitions fall within these exceptions, they are subject to a RITC at the rate of 75 percent. To the extent that the acquisitions do not fall within the exceptions, they are subject to a RITC at the rate of 55 percent.

New rate at which input tax credits are reduced

Section 70-5 of the Act provides that the regulations must specify a percentage to which the input tax credit is reduced.

Item [9] prescribes a new percentage of 55 percent at which the input tax credit is reduced for supplies that are covered by item 32. While a range of acquisitions that previously may have been eligible for a reduced rate of 75 percent are now only be eligible for a lower rate of 55 percent, new item 32 expands the entitlement to provide a RITC for a broader range of acquisitions made by the trust such that acquisitions previously denied any RITCs may now be eligible for the lower rate of 55 percent.

Where an acquisition is covered by item 32 and is also covered by another item of the table in subregulation 70-5.02(2), the input tax credit is reduced to 55 percent to the extent that the acquisition is covered by item 32.

This ensures that if an acquisition is only partly covered by item 32 of the table in subregulation 70-5.02(2), the acquisition is a reduced credit acquisition only under item 32 to that extent. The acquisition may then be a reduced credit acquisition under another item to the extent it is not covered by item 32.

Example 9: Acquisition covered by item 32 and another item of the table

Golden Egg Super Fund (Golden Egg) is a recognised trust scheme which makes input taxed financial supplies. Golden Egg makes an acquisition which is a reduced credit acquisition that is covered by item 32. The acquisition is also covered by item 27.

Even though the acquisition is covered by item 27, Golden Egg may only claim a RITC of 55 percent for the acquisition because it is covered by item 32. Golden Egg cannot claim a RITC of 75 percent under item 27.

Monitoring services

Item [7] – Subregulation 70-5.02 (2), table, item 33

Since the introduction of the GST, there have been a number of developments in the regulation of the financial sector. One new area of regulation has resulted in increases in the obligations on financial institutions to undertake measures to monitor and report on certain transactions.

Item [7] also inserts a new item 33 to allow a RITC for monitoring and reporting services required for compliance with the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth). Generally speaking, the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* requires a reporting entity (including, but not limited to, a bank, building society or credit union) to:

- enrol with AUSTRAC;
- establish and maintain an anti-money laundering and counter-terrorism financing program;
- identify customers and verify customer identities;
- keep records of transactions and customer identification procedures;
- perform ongoing customer due diligence;
- report on international funds transfer instructions, threshold transactions, and suspicious matters;
- submit regular compliance reports to AUSTRAC;
- provide originator information in all electronic funds transfers; and
- adhere to obligations relating to correspondent banking relationships.

On this basis, monitoring and reporting services acquired by a reporting entity to directly fulfil the abovementioned obligations will typically qualify for a RITC under this item. The new item does not include the acquisition of taxation or auditing services. The item only covers the acquisition of monitoring and reporting services supplied to the reporting entity and not acquisitions that provide the reporting entity with the capability to undertake monitoring and reporting activities itself.

Example 10: Monitoring services

RDC Bank is registered for GST. As part of its monitoring and reporting obligations under the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*, RDC Bank establishes an anti-money laundering and counter-terrorism financing program.

RDC Bank will be entitled to recover 75 percent of the GST paid on acquisitions of the monitoring and reporting services.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

A New Tax System (Goods and Services Tax) Amendment Regulation 2012 (No. 1)

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The purpose of the Legislative Instrument is to amend the *A New Tax System (Goods and Services Tax) Regulations 1999* (the Principal Regulations) to treat all components of a hire purchase transaction as taxable supplies, extend the availability of reduced input tax credits (RITC) relating to life insurance, lenders mortgage reinsurance and transactional fraud monitoring services, limit access to a RITC for bundled trustee and responsible entity services (trustee services) and clarify the language used in relation to guarantees and indemnities.

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.