

EXPLANATORY STATEMENT

Select Legislative Instrument 2012 No. 148

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. 2)

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 Regulation amends the *A New Tax System (Goods and Services Tax) Regulations 1999* to ensure that the goods and services tax (GST) treatment of particular goods and services supplied by Australian government agencies is consistent with the principles contained in the *Intergovernmental Agreement on Federal Financial Relations* (Intergovernmental Agreement). The Regulation, in conjunction with the provisions of Division 81 of the Act, provides the mechanism for entities to determine the GST treatment of Australian fees and charges.

The Regulation also extends the operation of the *A New Tax System (Goods and Services Tax) (Exempt taxes, fees and charges) Determination 2011 (No. 1)* (the Determination) until 30 June 2013.

When the GST was introduced, the Commonwealth, States and Territories agreed that the GST would apply to the commercial activities of government at all levels and that the non-commercial activities of government would be outside the scope of the GST.

Under the Intergovernmental Agreement, the Commonwealth, States and Territories agreed that Division 81 of the Act would exempt Australian taxes, fees and charges from GST in accordance with the following principles:

- taxes that are in the nature of a compulsory impost for general purposes and compulsory charges by way of fines or penalties should be exempt from GST;
- regulatory charges that do not relate to particular goods or services should be exempt from GST, including:
 - fees and charges levied on specific industries and used to finance particular regulatory or other activities in the government sector; and
 - licences, permits and certifications that are required by government prior to undertaking a general activity.

Division 81, including regulations made under the Division, provides the framework for determining when an Australian tax, fee or charge:

- is not consideration and therefore will not give rise to a taxable supply; or
- does constitute consideration for a supply and whether or not that supply is taxable will depend on the other conditions of a taxable supply, as provided in section 9-5 of the Act, being satisfied.

Under subsection 81-10(1) of the Act, Australian fees and charges of the kind covered by subsections 81-10(4) and (5) of the Act are not the provision of consideration. Subsection 81-10(4) of the Act covers fees and charges that are paid in relation to (or in relation to an application for) permissions, exemptions, authorities and licences. In addition, subsection 81-10(5) of the Act covers fees and charges related to government supplies of information. As these payments are not consideration, a supply to which they may relate will not be a taxable supply unless the payment is also of a kind covered by subsections 81-10(2) and (3) of the Act.

Subsections 81-10(2) and (3) of the Act narrow the operation of subsection 81-10(1) by providing that the payment of certain fees and charges prescribed by regulation is treated as the provision of consideration for a supply. These supplies will be taxable supplies where the other requirements of a taxable supply, as provided in section 9-5 of the Act, are satisfied. In this way, a regulation can be made to treat the payment of an Australian fee or charge, or a kind of payment, that would otherwise be covered by subsections 81-10(4) and (5) of the Act, as consideration for a supply, potentially making the impost subject to GST in accordance with the normal GST rules.

Conversely, section 81-15 of the Act provides that where a government fee or charge is prescribed by regulation, the payment of the fee or charge is not treated as the provision of consideration. Accordingly, a supply to which the fee or charge may relate will not be subject to GST. Thus, regulations made under section 81-15 add to the operation of subsections 81-10(4) and (5) of the Act to provide for the exempt status of Australian fees and charges that may not otherwise be covered under the Act. Details of the Regulation are set out in the [Attachment](#).

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

Four weeks of formal consultation on the exposure draft Regulation was conducted via the Treasury website between 2 May 2012 and 30 May 2012 and nine submissions were received. In addition, targeted consultation has been undertaken with State and Territory Treasuries. In general, submissions were supportive of the Regulation, and all issues raised during consultation were carefully considered. A consultation summary is available on the Treasury website.

The Regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

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

The Regulation commences on 1 July 2012.

ATTACHMENT**Details of the A New Tax System (Goods and Services Tax) Amendment Regulation 2012 (No. 2)****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. 2)*.

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*.

SCHEDULE 1 – AMENDMENTS*Item [1] – regulation 81-10.01*

This item inserts the number (1) in front of “For subsection 81-10(2)”, in order to add additional subregulations (see item [3]).

Fees and charges which constitute consideration

The Regulation amends regulation 81-10.01 by modifying paragraph 81-10.01(f) and inserting paragraphs 81-10.01(g) and (h). Payment of a fee or charge that is specified in regulation 81-10.01 will be treated as consideration for a supply made by the entity to which the fee or charge is made. Regulation 81-10.01 makes fees or charges that would otherwise be exempt from GST under the operation of subsections 81-10(4) and (5) of the Act potentially taxable.

The fees and charges are specified in regulation 81-10.01 because they do not fall within the principles contained in the *Intergovernmental Agreement on Federal Financial Relations* (Intergovernmental Agreement), and therefore supplies to which they relate are not intended to be exempt from GST.

Government supplies of information that are not regulatory in nature*Item [2] – paragraph 81-10.01(1)(f)*

A fee for the provision of information provided by an Australian government agency, if the provision of information is of a non-regulatory nature, is consideration for a supply.

This regulation modifies paragraph 81-10.01(1)(f), which previously made ‘a fee for the provision of information if the information *is not required to be provided under an Australian law*’ potentially taxable. The modified paragraph ensures that where an Australian government agency provides information that is not regulatory in nature for consideration, that supply is treated as a taxable supply.

For example, a payment for a commercial sale of books by a government bookshop is treated as consideration for a supply, and if the other conditions of section 9-5 are met, it will be a taxable supply.

Supplies that are not regulatory in nature

Item [2] – paragraph 81-10.01(1)(g)

This paragraph ensures that the non-regulatory activities of government are subject to GST. This paragraph applies to supplies of goods and services for which fees are imposed where the consumer is provided with something that lacks a regulatory character. That is, the fee or charge does not arise under an Australian law which is intended, for example, to regulate behaviour, ensure consumer protection and ensure compliance with certain standards. The paragraph applies even though it may be the sole responsibility of a government agency to supply the goods or services for which the fees are imposed, and such supplies are in the public interest.

The following are examples of fees and charges that do not have a regulatory character:

- A fare charged for travel on a transportation service;
- A fee paid by the media to a council for immediate access to traffic information; and
- A fee charged for exclusive rights to a mausoleum or burial plot.

Note: some fees and charges covered by this regulation may also be covered by other regulations made for subsection 81-10(2) of the Act.

Fees and charges for a supply by an Australian government agency where the supply may also be made by a supplier that is not an Australian government agency

Item [2] - paragraph 81-10.01(1)(h)

This paragraph ensures that the regulatory activities of government made in competition with the private sector are subject to GST where the other requirements of section 9-5 of the Act are satisfied.

Fees and charges in this category are not excluded from being consideration for a taxable supply. This is consistent with the National Competition and Consumer Policy guidelines and ensures that a government entity is not given a competitive advantage over a private sector supplier making the same type of supply.

This covers situations in which government agencies have authorised private agencies to perform activities that form part of a regulatory process, for example, certification activities which are required for a regulatory process to be followed. Where government agencies, as well as government certifiers, have authorised private certifiers to perform certification activities these fees and charges will continue to be consideration for a supply that is subject to GST. This ensures competitive neutrality between supplies made by government and non-government agencies.

This paragraph applies only where a government agency is providing a supply in a competitive market, or where private suppliers have been accredited or authorised to make a supply over which the agency would otherwise have a monopoly.

This paragraph does not cover supplies of information that are regulatory in nature and can only be supplied by government agencies, notwithstanding that the public may obtain such information through a private sector supplier acting as a conduit for the information from the government agency. The supply is only a taxable supply where the private sector entity charges for the supply in its own right.

Fees and charges which do not constitute consideration

Item [4] – regulation 81-15.01

Regulation 81-15.01 prescribes fees and charges for the purposes of section 81-15 of the Act. The fees and charges prescribed in regulation 81-15.01 are regulatory in nature and are considered to fall within the principles contained in the Intergovernmental Agreement and are therefore intended to be exempt from GST.

The payment of fees and charges of a kind prescribed by regulation 81-15.01 are not the provision of consideration and therefore do not give rise to a taxable supply. The regulation adds to the kinds of fees and charges that are already made exempt from GST under the operation of subsections 81-10(4) and (5) of the Act.

The term ‘regulatory’ captures those supplies made by a government agency, where that agency is legislatively empowered to make the relevant supply and the supply is to satisfy a regulatory purpose.

In some instances, although the consumer acquires something that may be of intrinsic value to the consumer, the acquisition is made in the context of satisfying a regulatory requirement of an Australian law. The following are examples of fees and charges for supplies that have a regulatory character:

- A fee or charge for providing a copy of a birth, death or marriage certificate;
- A compulsory inspection fee for checking that the foundations of a building comply with a building code;
- A fee for reviewing a film to give it an appropriate audience rating before it can be exhibited at a public cinema;
- A fee for the supply and fitting by a government department of a compulsory device to limit the speed of a heavy road transport vehicle;

- A fee for land registry services such as titling, valuation or surveying, undertaken by a government agency in providing those services; and
- Fees and charges imposed by an Australian government agency associated with:
 - Towing and impounding a vehicle where the driver has committed a traffic offence;
 - Seizing and destroying goods that are not permitted to be imported into Australia;
 - Impounding animals;
 - Releasing seized abandoned shopping trolleys; and
 - Erecting a stock crossing sign on the side of a road that a farmer has stock regularly crossing.

Where there is government regulation of prices in an area, for example, in respect of electricity services, this does not of itself mean that the fee or charge is for supply that is regulatory or for a supply that is exempt from GST.

Fees and charges for kerbside collection of waste

Item [4] – paragraph 81-15.01(1)(a) and subregulation 81-15.01(2)

This paragraph and subregulation ensure that fees and charges for the kerbside collection of waste are not treated as the provision of consideration, and therefore do not give rise to a taxable supply under Division 81.

Kerbside waste collection fees are often, but not always, covered by general council rates. It is intended that all fees and charges for kerbside collection of waste are not consideration for a supply, so that these services are exempt from GST. This is regardless of whether the fees paid in relation to the service are compulsory or optional as kerbside collection of waste is a basic activity of local government.

Kerbside collection includes a regular waste collection service conducted by an Australian government agency where, for practical reasons, the waste must be collected from inside the property boundary of the ratepayer, such as a waste service for residents of a high-rise residential complex. However, additional waste collection undertaken by a commercial entity is not considered to be kerbside collection even though it may be collected from the kerbside in some circumstances.

Examples of Australian fees and charges that will fall within this paragraph include, but are not limited to:

- Fees for kerbside collection of green waste as part of the normal kerbside waste collection stream;
- Fees for supply, exchange or removal of bins or crates used in connection with kerbside waste, including recyclables; and
- Fees for removal of waste from high rise residential apartments where residents have paid for this on their rates notice.

Royalties charged in relation to natural resources

Item [4] – paragraph 81-15.01(1)(b)

The paragraph ensures that royalty fees relating to natural resources, however calculated, are not treated as the provision of consideration and therefore do not give rise to a taxable supply.

This paragraph does not include royalties earned from joint development of intellectual property by government and private enterprise.

Examples of Australian fees and charges that fall within this paragraph include, but are not limited to:

- Mining of minerals;
- Extraction of marine and wildlife resources; and
- Felling of timber.

Fees and charges imposed on industries and intended to finance regulatory or other government activities connected with the industry

Item [4] – paragraph 81-15.01(1)(c)

This paragraph ensures that fees and charges imposed on industries to finance related regulatory or other government activities are not treated as the provision of consideration and therefore do not give rise to taxable supplies.

These fees and charges are not paid for the provision of specific supplies. Rather, they are a compulsory impost on particular industries for which no specific supply is provided in return. This treatment is consistent with the Intergovernmental Agreement as they are regulatory charges that do not relate to particular goods or services.

Fees and charges imposed to compensate an Australian government agency for costs in undertaking regulatory activities

Item [4] – paragraph 81-15.01(1)(d)

This paragraph ensures that fees and charges which are for services provided on a cost recovery basis by government agencies, and relate to activities that are regulatory in nature, are not treated as the provision of consideration and therefore do not give rise to a taxable supply.

Examples of Australian fees and charges that fall within this paragraph include, but are not limited to:

- Capital contributions to finance government activities, such as electricity distributor's non-contestable augmentation charges (relating to

augmentation of existing shared network) for connection to the distributor's network;

- Fees charged by the Public Trustee in carrying out statutory duties;
- Fees for false fire alarms;
- Fees for uninsured fire attendance;
- Fees and charges collected by the police and local councils from the public in relation to towing and storage of impounded vehicles; and
- Fees and charges in relation to hazardous material incidents.

Fees or charges imposed in relation to a court, tribunal, commission of inquiry or Sheriff's office

Item [4] – paragraph 81-15.01(1)(e)

This paragraph ensures that fees and charges imposed in relation to courts, tribunals, commissions of inquiry and Sheriff's offices are not treated as the provision of consideration, and therefore do not give rise to taxable supplies. These are fees and charges associated with the right to access the legal system and with the enforcement of court decisions, which is important to the integrity of the justice system.

Examples of Australian fees and charges that fall within this paragraph include, but are not limited to:

- Fees charged by a Sheriff's Office related to serving and executing documents and writs;
- Court and Tribunal related infringement fees and charges; and
- Court and Tribunal filing and hearing fees and charges.

Fees or charges for supplies of a regulatory nature made by an Australian government agency

Item [4] – paragraph 81-15.01(1)(f)

This paragraph ensures that fee or charges that relate to activities of government that are regulatory in nature are not treated as the provision of consideration and therefore do not give rise to taxable supplies.

Examples of Australian fees and charges that fall within this paragraph include, but are not limited to:

- Emergency response charges;
- Fees associated with the adoption of children;
- Developer contribution fees, including contributions required to be paid under planning agreements and local infrastructure contributions;
- Probate online advertising system application fees;

- Fees for valuation services where the valuation will form part of a land register or where the valuation is required for rating, taxing or other related regulatory purposes;
- A fee paid for a licence to operate a childcare facility;
- Fees for determining accurate land boundaries to be included in land registers; and
- Fees imposed for the examination of documents prior to lodgment to ensure compliance with legislative requirements. Where advice related to the examination of such documents is given in relation to an application for a permission, and is not of a compulsory nature, regulation 81-10.01(e) operates to make these supplies taxable.

Note: some fees and charges covered by this paragraph may also be covered by other regulations made for section 81-15 of the Act, or by subsections 81-10(4) or (5) of the Act.

Fees or charges for entry to a national park

Item [4] – paragraph 81-15.01(1)(g)

This paragraph ensures that fees and charges for entry into a national park are not treated as the provision of consideration and therefore do not give rise to taxable supplies. This paragraph is consistent with the exception for ‘an entry fee to a national park’ in regulation 81-10.01(1)(c).

Transitional arrangements

Item [4] – paragraph 81-15.01(1)(h)

This paragraph ensures that fees and charges that are listed in the *A New Tax System (Goods and Services Tax) (Exempt Taxes, Fees and Charges) Determination 2011 (No. 1)* remain exempt from GST until 30 June 2013.

A fee or charge is taken to have been imposed at the time when the liability arises to pay the fee or charge.

Example

A building certification fee is covered by the *A New Tax System (Goods and Services Tax) (Exempt Taxes, Fees and Charges) Determination 2011 (No. 1)*. The building certification services are also able to be provided by entities that are not Australian government agencies.

Dan engages an Australian government agency to provide a building certification service in respect of a building. The liability to pay that building certification fee arises on 2 July 2013. The fee will not be an exempt fee or charge due to paragraph 81-10.01(1)(h) as the supply may also be made by a supplier who is not an Australian government agency.

However, Ann engages an Australian government agency to provide that service and the liability to pay the building certification fee arises on 29 June 2013 and payment is due on 17 July 2013. In this case, the fee will be an exempt fee or charge even though the amount is not actually paid until after 30 June 2013. This is due to the operation of paragraph 81-15.01(1)(h) and subregulation 81-15.01(2).

In addition, a fee payable by a person who chooses a personalised motor vehicle number plate continues to be exempt from GST under the Determination until 1 July 2013.

GST treatment of appropriations

Item [3] – subregulation 81-10.01(2)

Subregulation 81-10.01(2) ensures that payments covered by subsection 9-17(3) or (4) of the Act are not treated as the provision of consideration and therefore do not give rise to a taxable supply. This ensures that payments between government related entities covered by these subsections are not subject to GST, even though the payments are not confined to a particular government related entity or class of government related entities.

Fees and charges covered by both regulations 81-10.01 and 81-15.01

Item [4] – regulation 81-15.02

Regulation 81-15.02 determines which regulation prevails in the event of a fee or charge being prescribed both as being consideration under regulation 81-10.01 and as not being consideration under regulation 81-15.02.

Subregulation 81-15.02(1) provides that if the fee or charge is covered by both regulation 81-15.01 and paragraph 81-10.01(1)(g), then the former prevails and the payment of the fee or charge is not to be treated as the provision of consideration.

Subregulation 81-15.02(3) similarly provides that if the fee or charge is covered by both regulations 81-10.01 and 81-15.01, then the payment of the fee or charge is not to be treated as the provision of consideration if it was imposed before 1 July 2013 and is covered by the Determination.

Conversely, subregulation 81-15.02(2) provides that if the fee or charge is covered by both regulation 81-10.01 and paragraphs 81-15.01(1)(a), (b), (c), (d), (e), (f) or (h), then the former prevails and the payment of the fee or charge is to be treated as the provision of consideration.

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. 2)

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 clarify the GST treatment of Australian taxes, fees and charges.

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.