

EXPLANATORY STATEMENT

Select Legislative Instrument 2012 No. 215

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. 4)

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 Regulation is to amend the *A New Tax System (Goods and Services Tax) Regulations 1999* (the Principal Regulations) to restore access to a reduced input tax credit (RITC) for credit unions who rebrand as a bank but do not otherwise change their ownership structure.

The Regulation supports the policy intent behind the Government's *Competitive and Sustainable Banking System* reforms, which included a commitment to help build a new pillar in the banking system from the combined competitive power of mutual credit unions and building societies.

As part of these reforms, the Government is supporting credit unions to rebrand as 'banks' to enhance competition in the banking sector. However, a consequence of rebranding as a bank is that the institution will no longer be regulated as a credit union by the Australian Prudential Regulation Authority (APRA). This means that it will no longer be a credit union for the purposes of the Principal Regulations and therefore lose access to the RITC provided by item 16 in the table in subregulation 70-5.02(2).

In addition to this, where a credit union with an ownership share in an aggregator (an entity owned by two or more credit unions supplying services to credit unions) rebrands as a 'bank', then all supplies made by the aggregator to another credit union will also no longer be eligible for the RITC provided by item 16. This is because the aggregator is no longer wholly owned by credit unions given one has rebranded as a bank.

Consistent with the Government's policy, it is appropriate that access to the concession be restored for credit unions specified in the Regulation to ensure the rebranding from 'credit union' to 'bank' does not carry disincentives in relation to GST concessions.

The amendment to the Principal Regulations broadens the definition of 'credit union' to those that were listed by APRA as credit unions at 1 July 2011, and have subsequently rebranded (or will in the future) as a bank while retaining their mutuality.

Paragraphs (a) and (c) of the definition reflect the current definition of credit union but also include an update to the name of the Cairns Penny Bank Limited to reflect its current name, the Cairns Penny Savings & Loans Limited. Paragraph (b) extends the definition to also include Australian authorised deposit-taking institutions (ADIs) listed as Australian-owned banks that satisfy a three element test:

- the Australian ADI must have been listed on the APRA website as a credit union on or before 1 July 2011;
- the bank (which was previously a credit union) must retain its mutual structure. The Australian Securities and Investments Commission's Regulatory Guide 147 provides assistance in determining a company's mutuality; and
- the bank must have been listed as a credit union on the APRA website at all times in the period between 1 July 2011 and the time it was listed on the APRA website as an Australian-owned bank.

The Regulation ensures that the RITC concession is retained for any institution listed on the APRA website at 1 July 2011 as a 'credit union' which subsequently rebrands as a 'bank'.

Examples of how the new definition would operate, and a list of credit unions that were listed on the APRA website at 1 July 2011, 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 Regulation 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 an exposure draft regulation was conducted publicly via the Treasury website between 13 and 27 June 2012. In addition, targeted consultation was undertaken with Abacus in developing the Regulation. Treasury also received a confidential submission in relation to the Regulation and confidential discussions were held with those interested parties. 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 Regulation is taken to have commenced on 1 July 2011. The retrospective application does not cause detriment to any person or contravene subsection 12(2) of the *Legislative Instruments Act 2003* (LIA).

Details of the A New Tax System (Goods and Services Tax) Amendment Regulation 2012 (No. 4)

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. 4)*.

Section 2 – Commencement

This section provides that the Regulation is taken to have commenced on 1 July 2011.

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

Item [1] inserts a new definition into the Dictionary to define ‘APRA’ as the Australian Prudential Regulation Authority.

Item [2] broadens the existing definition of ‘credit union’ to also include Australian-owned banks which were listed on the APRA website as credit unions on or before 1 July 2011 and have retained their ownership structure, including mutuality.

Item [2] also updates the name of the Cairns Penny Bank Limited to its current name, the Cairns Penny Savings & Loans Limited.

The effect of the amendment is that the reduced input tax credit available under item 16 in the table in subregulation 70-5.02(2) is now available to a broader range of institutions covered by the definition.

Examples illustrating how item 16 applies following the amendments are set out below.

Example 1: existing credit union rebranding as a bank after 1 July 2011

Alligator Aggregator is wholly owned by Bandicoots Credit Union, Caterpillar Credit Union and Chameleon Credit Union. Alligator makes taxable supplies of a number of services, including data processing and IT services to credit unions.

Under the existing Regulations, the acquisition of these services by Bandicoots, Caterpillar and Chameleon are reduced credit acquisitions under item 16 of the table in subregulation 70-5.02(2) which gives rise to an entitlement to a reduced input tax credit (RITC).

On 1 October 2011, APRA approves Bandicoots Credit Union's application to rebrand as Bandicoots Bank. Bandicoots does not change its ownership structure, and its members remain the only shareholders.

Following APRA's approval, Bandicoots is removed from the list of credit unions regulated by APRA, and is added to the list of Australian owned banks regulated by APRA.

As a result, from 1 October 2011, Bandicoots is no longer a credit union for the purposes of item 16 and cannot claim any RITCs for acquisitions under that item. Any acquisitions made from Alligator Aggregator by Caterpillar and Chameleon will also no longer be a reduced credit acquisition under item 16 because Alligator is no longer wholly owned by credit unions.

To the extent that the acquisitions are covered by another reduced credit acquisition item, RITCs may still be claimed.

Bandicoots does not claim any RITCs for acquisitions made from Alligator on its GST return for the quarterly tax period ending 31 December 2011, or any tax periods after that.

Following these amendments, Bandicoots now meets the definition of a credit union for the purposes of item 16. This means that Bandicoots may either amend its GST returns or assessments (as applicable) for the relevant past tax periods to take into account the RITCs, or defer the RITCs to the GST return for the next tax period (provided that this is within the time limits for claiming credits under Division 93 of the Act and section 105-55 in Schedule 1 to the *Taxation Administration Act 1953* (TAA 1953), and the period of review in Division 155 in Schedule 1 to the TAA 1953).

The amendments also restore Alligator's position as an entity that is wholly owned by credit unions, and Caterpillar and Chameleon may also amend their GST returns or assessments for prior tax periods, or defer these credits to the current tax periods (within the time limits specified in the GST law).

Example 2: credit union created after 1 July 2011 rebranding as a bank

DMC aggregator is wholly owned by GRP credit union and CGC credit union, all of which formed on 1 February 2012. On the same day, APRA lists GRP and CGC on its website as credit unions. On 15 August 2012, GRP elects to rebrand from 'credit union' to 'bank' for commercial and competition reasons whilst retaining its mutuality. CGC retains its name and listing on APRA's website as a credit union.

During their first six months, GRP and CGC acquire supplies of IT services from DMC. Under the existing Regulations, the acquisition of these services by GRP and CGC are reduced credit acquisitions under item 16 of the table in subregulation 70-5.02(2) which give rise to an entitlement to a RITC.

GRP and CGC are both entitled to the RITC concession for the services DMC provide up until 15 August 2012. However, upon rebranding, GRP is no longer eligible for the concession. This is because after 15 August 2012, GRP does not satisfy the extended definition of credit union to be able to claim a RITC under item 16 as GRP is no longer a credit union (paragraph (a)), was not listed as a credit union on APRA's website at 1 July 2011 (paragraph (b)(i)), and is not the credit union specified at paragraph (c).

Any acquisitions made from DMC will also no longer be reduced credit acquisitions under item 16 because DMC is no longer wholly owned by credit unions.

To the extent that acquisitions from DMC are covered by another reduced credit acquisition item, RITCs may still be claimed for those acquisitions.

Credit unions listed on the APRA website as at 1 July 2011

Alliance One Credit Union Ltd
Allied Members Credit Union Ltd
Australian Central Credit Union Ltd
Australian Defence Credit Union Limited
AWA Credit Union Limited
Bananacoast Community Credit Union Ltd
Bankstown City Credit Union Ltd
Berrima District Credit Union Ltd
Big Sky Credit Union Ltd
CAPE Credit Union Limited
Central Murray Credit Union Limited
Central West Credit Union Limited
Circle Credit Co-operative Limited
Coastline Credit Union Limited
Collie Miners Credit Union Ltd
Community Alliance Credit Union Limited
Community CPS Australia Limited
Community First Credit Union Limited
Country First Credit Union Ltd
Credit Union Australia Ltd
Credit Union SA Ltd
Defence Force Credit Union Limited
Dnister Ukrainian Credit Co-operative Limited
ECU Australia Ltd
EECU Limited
Encompass Credit Union Limited
Family First Credit Union Limited
Fire Brigades Employees' Credit Union Limited
Fire Service Credit Union Limited
Firefighters & Affiliates Credit Co-operative Limited
First Choice Credit Union Ltd
First Option Credit Union Limited
Fitzroy & Carlton Community Credit Co-Operative Limited
Ford Co-operative Credit Society Limited
Gateway Credit Union Ltd
Geelong & District Credit Co-operative Society Limited
Goldfields Credit Union Ltd
Goulburn Murray Credit Union Co-operative Limited
Heritage Isle Credit Union Limited
Holiday Coast Credit Union Ltd
Horizon Credit Union Ltd
Hunter United Employees' Credit Union Limited
Industries Mutual Credit Union Limited
Intech Credit Union Limited
La Trobe University Credit Union Co-Operative Limited
Laboratories Credit Union Limited
Latvian Australian Credit Co-operative Society Limited
Lithuanian Co-operative Credit Society "Talka" Limited

Lysaght Credit Union Ltd
MacArthur Credit Union Ltd
Macquarie Credit Union Limited
Manly Warringah Credit Union Limited
Maritime, Mining & Power Credit Union Limited
MCU Ltd
MECU Limited
Melbourne University Credit Union Limited
MemberFirst Credit Union Limited
MyState Financial Limited
New England Credit Union Ltd
Newcom Colliery Employees Credit Union Ltd
Northern Inland Credit Union Limited
Nova Credit Union Limited
Old Gold Credit Union Co-operative Limited
Orange Credit Union Limited
Police & Nurses Credit Society Limited
Police Association Credit Co-operative Limited
Police Credit Union Limited
Pulse Credit Union Limited
Qantas Staff Credit Union Limited
Quay Credit Union Ltd
Queensland Country Credit Union Limited
Queensland Police Credit Union Limited
Queensland Professional Credit Union Ltd
Queensland Teachers' Credit Union Limited
Queenslanders Credit Union Limited
Railways Credit Union Limited
Resources Credit Union Limited
R.T.A. Staff Credit Union Limited
Select Credit Union Limited
Service One Credit Union Limited
SGE Credit Union Limited
Shell Employees' Credit Union Limited
South West Slopes Credit Union Ltd
Southern Cross Credit Union Ltd
South-West Credit Union Co-Operative Limited
Summerland Credit Union Limited
Sutherland Credit Union Ltd
Swan Hill Credit Union Limited
Sydney Credit Union Ltd
Tartan Credit Union Ltd
Teachers Credit Union Limited
The Broken Hill Community Credit Union Ltd
The Capricornian Ltd
The Gympie Credit Union Ltd
The Police Department Employees' Credit Union Limited
The University Credit Society Limited
Traditional Credit Union Limited
TransComm Credit Co-operative Limited
Victoria Teachers Credit Union Limited
Wagga Mutual Credit Union Ltd
Warwick Credit Union Ltd
WAW Credit Union Co-Operative Limited
Woolworths Employees' Credit Union Limited
Wyong Council Credit Union Ltd

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. 4)

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

The purpose of the Legislative Instrument is to amend the *A New Tax System (Goods and Services Tax) Regulations 1999* (the Principal Regulations) to restore access to a reduced input tax credit for specified credit unions who rebrand as a bank but do not otherwise change their corporate structure.

Human rights implications

The Regulation does not engage any of the applicable rights or freedoms.

Conclusion

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