

EXPLANATORY STATEMENT

Issued by authority of the Minister for Revenue and Financial Services

A New Tax System (Goods and Services Tax) Act 1999
Income Tax Assessment Act 1997

Treasury Laws Amendment (2017 Measures No. 2) Regulations 2017

The *Income Tax Assessment Act 1997* (the ITAA 1997) provides for the calculation of income tax that is payable by entities in relation to a financial year.

The *A New Tax System (Goods and Services Tax) Act 1999* (GST Act) establishes the goods and services tax (GST). The GST taxes the supply of goods and services in Australia and also importations. The GST does not generally apply to supplies where consumption occurs outside of Australia, including exports.

Section 990-1 of the ITAA 1997 and section 177-15 of the GST Act provide 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 *Treasury Laws Amendment (2017 Measures No. 2) Regulations 2017* (the Regulations):

- prescribe the MITRE Corporation (MITRE) to exempt it from income tax and make a number of other minor technical amendments; and
- streamline and improve the administrative efficiency of the tourist refund scheme. They ensure that passengers intending to claim a refund allow sufficient time for their refund to be processed and assist airlines and passenger ship operators to meet their scheduled departure times. They also provide passengers with another option to lodge their tourist refund scheme claims, such as where there are long queues at a tourist refund verification facility.

The purpose of Schedule 1 to the Regulations is to encourage MITRE to operate in Australia to benefit Australia's defence capabilities, the Australian defence industry and the Australian science and technology research community. This is done by prescribing MITRE to exempt it from income tax and also making a number of other minor technical amendments.

Division 50 of the ITAA 1997 exempts various entities from income tax. If Division 50 applies to an entity, its ordinary and statutory income are exempt from income tax if it meets the eligibility criteria and satisfies any special conditions.

For a registered charity to be exempt from income tax, it must satisfy one of the eligibility criteria in subsection 50-50(1) of the ITAA 1997, and both special conditions in subsection 50-50(2). The eligibility criteria in paragraph 50-50(1)(d) is

that an entity is a prescribed institution that has a physical presence in Australia, but which incurs its expenditure and pursues its objectives principally outside Australia.

The purpose of Schedule 2 to the Regulations is to amend the *A New Tax System (Goods and Services Tax) Regulations 1999* to streamline and improve the administrative efficiency of the tourist refund scheme by:

- providing for a pre-departure deadline for lodgment of claims at tourist refund scheme verification facilities; and
- permitting claims to be lodged by drop box (if they are provided) at tourist refund scheme verification facilities.

The tourist refund scheme also applies to the wine equalisation tax (WET) which adopts the GST tourist refund scheme rules for refunds of WET under the *A New Tax System (Wine Equalisation Tax) Act 1999* and the *A New Tax System (Wine Equalisation Tax) Regulations 2000*.

Public consultation on these Regulations was not considered necessary as Schedule 1 has limited application and Schedule 2 is administrative and machinery in nature. However, for Schedule 1 to the Regulations, targeted consultation was conducted with MITRE as part of its application to become a prescribed institution and also with other government agencies. Schedule 2 of the Regulations was also subject to targeted consultation with affected government agencies.

Details of the Regulations are set out in the Attachment.

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

The ITAA 1997 and the GST Act do not specify any conditions that must be met before the power to make the Regulations may be exercised.

The Regulations commenced on the day after the Regulations were registered.

Statement of Compatibility with Human Rights

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

Treasury Laws Amendment (2017 Measures No. 2) Regulations 2017

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 *Treasury Laws Amendment (2017 Measures No. 2) Regulations 2017* is to:

- Schedule 1 — encourage MITRE to operate in Australia to benefit Australia’s defence capabilities, the Australian defence industry and the Australian science and technology research community. This is done by prescribing MITRE to exempt it from income tax and also making a number of other minor technical amendments.
- Schedule 2 — amend the *A New Tax System (Goods and Services Tax) Regulations 1999* to streamline and improve the administrative efficiency of the tourist refund scheme by:
 - providing for a pre-departure deadline for lodgment of claims at tourist refund scheme verification facilities; and
 - permitting claims to be lodged by drop box (if they are provided) at tourist refund scheme verification facilities.

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.

Details of the *Treasury Laws Amendment (2017 Measures No. 2) Regulations 2017*

Section 1 – Name of Regulations

This section provides that the name of the Regulations is the *Treasury Laws Amendment (2017 Measures No. 2) Regulations 2017* (the Regulations).

Section 2 – Commencement

This section provides that the Regulations commence on the day after the instrument is registered.

Section 3 – Authority

This section provides that the Regulations are made under the ITAA 1997 and the GST Act.

Section 4 – Schedule

This section provides that each instrument that is specified in a Schedule to the Regulations is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1 – Exempt entities

Prescribing MITRE as an income tax exempt entity

Item 3 amends regulation 50-50.02 of the *Income Tax Assessment Regulations 1997* (ITAR 1997) by prescribing MITRE for the purpose of paragraph 50-50(1)(d) of the ITAA 1997. To be prescribed for the purpose of that paragraph the entity must be a registered charity and have a physical presence in Australia, but incur its expenditure and pursue its objectives principally outside Australia.

MITRE is a registered charity under the *Australian Charities and Not-for-profits Commission Act 2012*.

MITRE is a registered charity in the United States of America. It is a tax exempt organisation under subsection 501(c)(3) of the US Internal Revenue Code, which designates an organisation as being tax exempt by virtue of its research and scientific engagements.

MITRE partners several United States of America agencies and allies and provides technical advice to the Royal Australian Air Force (RAAF). This work strengthens Australia's defence and adds to the protection and safety of the Australian community, thus providing a public benefit. MITRE also possesses expertise and networks in a number of other technical fields including cybersecurity and infrastructure that is of benefit to Australian researchers.

MITRE is an independent, non-stock Delaware corporation in the United States.

MITRE is a prescribed institution from 1 July 2016 until 30 June 2022, which covers the period in which it has and will continue to provide technical advice to the RAAF. This has been achieved by inserting a new column 'ending date' in the table, which provides the date on which MITRE will cease to be a prescribed institution.

The period for which MITRE is prescribed begins before the commencement of the Regulations, and is therefore retrospective in application. Subsection 12(2) of the *Legislation Act 2003* provides that a legislative instrument does not apply in relation to a person if it commences before the day the instrument is registered, to the extent that the person's rights as at that day would be affected so as to disadvantage the person.

As being a prescribed institution is beneficial to MITRE there are no adverse consequences as a result of the retrospective application, and therefore subsection 12(2) does not affect the operation of the Regulations.

Minor technical amendments

Section 50-50 of the ITAA 1997 was recently amended, which inserted a second subsection. As a result, items 1 to 4 of Schedule 1 to the Regulation make necessary amendments that update the numbering and referencing in Regulations 50-50.01, 50-50.02 and 50-50.03 of the ITAR 1997, reflecting that the section now has two subsections.

A number of entities that were prescribed in Regulation 50-50.02 of the ITAR 1997 have ceased to have operations in Australia or have changed their legal name. Accordingly, the table in 50-50.02 has been updated to remove these entities, or incorporate the name changes as appropriate. As a result of the removal of some entities, the table items have been renumbered.

Schedule 2 – Tourist refund scheme

Schedule 2 to the Regulations streamline and improve the administrative efficiency of the tourist refund scheme by:

- providing for a pre-departure deadline for lodgment of claims at tourist refund scheme verification facilities; and
- permitting claims to be lodged by drop box (if they are provided) at tourist refund scheme verification facilities.

The pre-departure deadline for lodgment of claims for flights is 30 minutes before their scheduled departure time and 60 minutes before their scheduled departure for shipping voyages (allowing for the longer boarding time for ships). This ensures that passengers intending to claim a refund under the tourist refund scheme allow sufficient time for their refund to be processed, and assists airlines and passenger ship operators to meet their scheduled departure times.

A claim for a refund has been lodged when it has either been presented to a Customs officer at a counter or placed into a drop box by a passenger at a tourist refund scheme verification facility.

The pre-departure deadline for lodgment of claims is determined at the point in time when a tourist refunds scheme claim is about to be made. If, at that time, the time for making claims has passed, then the claim cannot be accepted.

However if the scheduled departure time for the passenger's flight or voyage is later changed and, based on the new scheduled departure time, the pre-departure deadline for lodgment of claims has not passed, then tourist refund scheme claims for passengers on that flight or voyage can once again be accepted.

For example if the scheduled departure time for a flight is 9:00am then tourist refund scheme claims can be accepted from passengers on that flight until 8:30am. Assume a delay is announced at 8:50am with a revised scheduled departure time for the flight of 12:15pm. Following the rescheduling of the flight at 8:50am passengers on that flight will once again be able to lodge tourist refunds scheme claims until the new pre-departure lodgment time limit of 11:45am.

Passengers will be able to lodge claims by drop box (if they are provided) at tourist refund scheme verification facilities. This will give them the choice of either:

- queuing at the tourist refund scheme verification facility to have their refund processed at the time of departure; or
- if available, lodging their claim in the drop box and having it processed as soon as is practical.

Drop boxes will be made available for lodgment of claims at tourist refund scheme verification facilities where it is considered suitable to do so. Factors that may be taken into account in determining if a drop box should be provided include the frequency of flights and voyages and numbers of passengers departing an airport or seaport, the occurrence of instances of congestion and the numbers of claims made and expected to be made at a tourist refund verification facility. Previously passengers could only lodge claims by drop box where it had been determined by a manager of a tourist refund facility that there were exceptional circumstances (such as when there was exceptionally high demand or for power or computer outages).

Schedule 2 to the Regulations also makes an amendment to the timing rule for payment that applies to claims lodged. The payment must now be made by the later of 60 days after the day the claim is lodged and, if any information is requested from the claimant in relation to the claim, when that information is provided. This ensures that the officer making the payment is fully informed about the circumstances of the payment (including having had sufficient time to receive and consider any additional information that has been provided by the claimant).

Schedule 2 to the Regulations applies on and after the first day of the month following the commencement of this instrument (start day) in relation to tourist refund scheme claims for payment made:

- on or after that start day; or
- made, but not finally dealt with, before that start day.

Schedule 2 to the Regulations applies to tourist refund scheme claims lodged, but not finally dealt with, before their commencement. However this will not adversely affect a person's rights or impose liabilities retrospectively. This is because the Regulations provide a refund of GST paid and enable a refund of WET paid and therefore do not impose any liability on any entity (other than the Commonwealth or an authority of the Commonwealth).

Schedule 2 to the Regulations also does not impose any new requirements on claims that have been made before they commence. This means that applicants who had lodged tourist refund scheme claims prior to these Regulations commencing will continue to be entitled to refunds on the same basis as if these Regulations had not commenced ensuring that they are not disadvantaged in any way.