



## Australian Government

### The Treasury

## GST TREATMENT OF APPROPRIATIONS

### SUMMARY OF CONSULTATION PROCESS

On 23 November 2011 the Government announced, by releasing exposure draft legislation for comment, that it will amend the goods and services tax (GST) law to ensure that the non-commercial activities of government related entities are not subject to GST.

This measure was included in Schedule 2 of the Tax and Superannuation Laws Amendment (2012 Measures No. 1) Bill 2012, which was introduced into Parliament on 1 March 2012.

#### Consultation process

- Consultation on a discussion paper for the proposed measure was conducted in mid-2011 with Commonwealth, state and territory officials.
- Public consultation on the draft legislation was conducted between 23 November 2011 and 21 December 2011. Three submissions were received. There were two public submissions and one confidential submission.

The public submissions can be viewed on the [Treasury website](#).

#### Summary of key issues

##### *Discussion paper*

##### *Issues raised*

*In general, stakeholders agreed that a legislative amendment was necessary and that the proposed approach in the discussion paper would restore the policy intent of the law.*

##### *Response*

*The Government agreed to amend the GST law to restore its intended operation that the non-commercial activities of government should not be subject to GST, following the Full Federal Court's decision in *TT-Line Co Pty Ltd v FCT* [2009] FCAFC 178.*



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#### **Draft legislation**

##### *Issues raised*

*In general, stakeholders welcomed the proposed legislative amendments.*

*Stakeholders suggested that the test for determining whether a payment under an appropriation is of a commercial nature could be included in the proposed legislation rather than in the explanatory material. It was also suggested that the costs taken into account in the commercial nature test should be clarified.*

*Stakeholders also asked for clarification of the GST treatment of some health related funding.*

*Stakeholders suggested that the proposed legislation should apply to funding arrangements rather than payments made from 1 July 2012 as otherwise funding arrangements may need to be re-negotiated.*

##### *Response*

*The Government incorporated the test for determining whether a payment is of a commercial or non-commercial nature into the legislation. Additional explanation of the costs to be taken into account and illustrative examples were included in the Explanatory Memorandum.*

*The Government extended the measure to include payment arrangements contemplated under the National Health Reform Agreement (NHRA). Although not always directly authorised under an appropriation, from a policy perspective the Government will apply the same approach as if the payment was made directly under an appropriation. In addition, the legislation provides for a new regulation making power to exempt from GST payments between government related entities. This is to ensure that any government payments made under future arrangements which are of a non-commercial nature, such as those similar to the NHRA, can be made not subject to GST.*

*The legislation is to apply to payments under funding arrangements made after 1 July 2012, broadly consistent with the interpretation of the law that has applied until 30 June 2012 under GSTR 2006/11.*

#### **Feedback**

Feedback on the consultation process for this measure can be forwarded to [consultation@treasury.gov.au](mailto:consultation@treasury.gov.au). Alternatively, you can contact Marek Mania on (02) 6263 4469.

Thank you to all participants in the consultation process.