

EXPLANATORY STATEMENT

Select Legislative Instrument 2012 No.

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.)

Section 177-15 of the *A New Tax System (Goods and Services Tax) Act 1999* (the Act) provides that the Governor-General may make a Regulation 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 is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

Subsection 81-10(2) of the Act provides 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 section 9-5 of the Act are satisfied. In contrast, 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 for a supply, and therefore is exempt from GST.

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 the non-commercial activities of government would be outside the scope of the GST.

Under the *Intergovernmental Agreement on Federal Financial Relations* (Intergovernmental Agreement), the Parties agreed that Division 81 of the Act will 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 will be exempt from GST;
- regulatory charges that do not relate to particular goods or services will 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.

The Regulation is intended to ensure that the GST treatment of particular goods and services supplied by Australian government agencies is consistent with the principles

contained in the Intergovernmental Agreement. The Regulation, in conjunction with the provisions of Division 81 of the Act, is intended to maintain the GST treatment of particular classes of Australian taxes, fees and charges that are provided under the *A New Tax System (Goods and Services Tax) (Exempt taxes, fees and charges) Determination 2011 (No. 1)* (the determination).

The Regulation also extends the operation of the determination until 30 June 2013.

The Office of Best Practice Regulation advised that a Regulation Impact Statement was not required to be prepared in relation to this Regulation.

Formal public consultation was undertaken because the Regulation impacts on the operation of the GST law. Details of the Regulation are set out in the Attachment.

The Regulation constitutes a legislative instrument for the purposes of the *Legislative Instruments Act 2003*, and commences on the day after it is registered on the Federal Register of Legislative Instruments.

The Regulation commenced on 1 July 2012.

ATTACHMENT

Fees and charges of Australian government agencies subject to GST

The fees and charges specified in the Regulation do not fall within the principles contained in the Intergovernmental Agreement and are therefore not intended to be exempt from GST. The following fees or charges are prescribed under Regulation 81-10.01 for the purposes of subsection 81-10(2) of the Act:

Paragraph 81-10.01(1)(f) Fees and charges for the provision of information by an Australian government agency if the provision of the information is of a non-regulatory nature

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 replaced previous Regulation 81-10.01(f), which made potentially taxable 'a fee for the provision of information if the information is not required to be provided under an Australian law'.

This Regulation seeks to ensure that payments for commercial sales of information supplied by Australian government agencies, including supplies of books by a government bookshop, are consideration for a supply.

Paragraph 81-15.01(1)(g) A fee or charge for a supply of a non-regulatory nature

Consistent with the Intergovernmental Agreement, this Regulation seeks to ensure that the commercial activities of government are subject to GST.

Paragraph 81-10.01(1)(h) Fees and charges for a supply by an Australian government agency where the supply may also be made by a supplier who is not an Australian government agency

This Regulation seeks to ensure that the commercial activities of government are subject to GST.

The Regulation also seeks to ensure that, for competitive neutrality reasons, where the private sector is not prohibited from participating as a supplier, the supply is not exempt under Division 81 of the Act. This covers situations in which government agencies have authorised private agencies to perform activities that would otherwise be considered regulatory, for example, certain certification activities which are of a regulatory nature. Where government agencies have authorised private certifiers to perform those activities as well as government certifiers, these fees and charges will continue to be subject to GST to ensure competitive neutrality of such supplies made by government and non-government agencies.

Fees and charges of Australian government agencies exempt from GST

The following fees or charges are prescribed under Regulation 81-15.01 for the purposes of section 81-15 of the Act:

Paragraph 81-15.01(1)(a) Fees and charges for kerbside collection of domestic waste

Domestic waste fees are often, but not always, covered by general council rates. Some domestic waste fees are not optional for ratepayers. In some cases, certain domestic waste fees, such as domestic green waste fees, are optional. All fees for kerbside collection of domestic waste are exempt from GST regardless of whether they are compulsory or optional as they are a non-commercial activity of local government.

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

- Fees for kerbside collection of domestic green waste as part of the normal domestic waste stream; and
- Fees for supply, exchange or removal of bins or crates used in connection with kerbside waste, including recyclables.

Paragraph 81-15.01(1)(b) Royalties charged in relation to natural resources

Royalty fees, however calculated, from natural resources are exempt from GST.

This Regulation does not include commercial activities, such as royalties earned from joint development of intellectual property by government and private enterprise.

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

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

Paragraph 81-15.01(1)(c) Fees and charges imposed on industries and intended to finance regulatory or other activities of government connected with the industry

These fees and charges are exempt from GST because they are not consideration for the provision of specific supplies. Rather, they are a compulsory impost on specific industries for which no 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.

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

- Industry levies; and
- Business levies.

Paragraph 81-15.01(1)(d) Fees and charges imposed to compensate an Australian government agency for costs in undertaking regulatory activities

These fees and charges are for services provided on a cost recovery basis by government agencies, and not for commercial gain.

Examples of Australian fees and charges that will fall within this Regulation 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;
- Costs incurred by the Public Trustee in carrying out certain 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.

Paragraph 81-15.01(1)(e) Fees or charges imposed in relation to a court, tribunal, commission of inquiry or Sheriff's office

These are fees 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 will fall within this Regulation include, but are not limited to:

- Fees charged by the Sheriff's Office for the provision of certain services in their role of serving and executing documents and writs;
- Court and Tribunal related infringement fees and charges; and
- Court and Tribunal filing and hearing fees.

Paragraph 81-15.01(1)(f) Fees or charges for supplies of a regulatory nature made by an Australian government agency

This Regulation seeks to ensure that, consistent with the Intergovernmental Agreement, activities of government that are not for commercial gain should be exempt from GST.

Examples of Australian fees and charges that will fall within this Regulation 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 the process for the determination of 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.

Paragraph 81-15.01(1)(g) Fees and charges imposed before 1 July 2013 and specified in the A New Tax System (Goods and Services Tax) (Exempt Taxes, Fees and Charges) Determination 2011 (No. 1) as in force immediately before the commencement of Schedule 4 to the Tax Laws Amendment Act (2011 Measures No. 2) Act 2011

The Regulation ensures that the existing Determination applies to fees and charges until 30 June 2013.

Australian fees and charges that are, or are not, regulatory in nature

The term 'regulatory' is intended to capture those fees and charges imposed by a government agency, where that agency is legislatively empowered or required to make the relevant supply and the supply is to satisfy a regulatory requirement.

Activities and supplies that are regulatory in nature

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 that have a regulatory character:

- 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;
- Fees and charges relating to the regulatory functions required to provide, administer and maintain a land registry system operated by a government agency or agencies, including but not limited to the titling, surveying and valuation aspects; 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;
 - Costs associated with seizing and destroying goods that are not permitted to be imported into Australia;
 - Impounded animals where the council can recover from the owner the costs of feeding the animal and treating the animal for injuries;
 - Release fees where the council seizes abandoned shopping trolleys and imposes a release fee on the owner supermarket which is intended to compensate the council for its costs of seizing and storing the trolleys; and
 - Erecting a stock crossing sign on the side of a road that a farmer has stock regularly crossing.

Government regulation of prices, for example, electricity services, does not, of itself, mean that the fee or charge is regulatory in nature or make the fee exempt from GST.

Provision of information and supplies that are not regulatory in nature

In other instances, although it may be the sole responsibility of a government agency to supply the goods or services for which the fees are imposed, and in the public interest, the consumer is provided with something that lacks a regulatory character. 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;
- A fee payable by a person who chooses a personalised motor vehicle number plate (over and above the fee for a non-personalised number plate); and
- A fee charged for exclusive rights to a mausoleum or burial plot.

Establishing precedence

Tiebreaker provision

In the event of an inconsistency between an exempt Regulation and a taxable Regulation, the taxable Regulation takes precedence to apply to the extent of the inconsistency. This tiebreaker rule does not override the exempt status of items in the determination which applies up to 30 June 2013.