

2012

GST – ALLOWING BUSINESSES IN A NET REFUND POSITION TO CONTINUE
PAYING GST BY INSTALMENTS

EXPOSURE DRAFT - EXPLANATORY MEMORANDUM

(Circulated by the authority of the
Deputy Prime Minister and Treasurer, the Hon Wayne Swan MP)

Chapter X

GST – Allowing businesses in a net refund position to continue paying GST by instalments

Outline of chapter

1.1 Schedule # amends the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act) to enable those small business taxpayers who are paying their GST by instalments, and who subsequently move into a net refund position to continue to use the GST instalments option if they wish to do so.

1.2 The proposed amendments will also provide that taxpayers who move into a net refund position and who wish to continue to pay GST by instalments receive an instalment amount each quarter of zero.

1.3 Small business taxpayers who are currently not using the instalment option and are already in a net refund position will remain ineligible to pay their GST by instalments while they remain in a net refund position.

Context of amendments

1.4 The GST instalment option, contained in Division 162 of the GST Act, allows an eligible entity (annual GST turnover of less than \$2 million) to choose to pay GST by quarterly instalments worked out by the Australian Taxation Office (ATO) or an alternative amount nominated by the taxpayer. The taxpayer then lodges an annual GST return in which it accounts for any difference between the actual GST liability and the total GST instalments made for the year.

1.5 Currently, the GST legislation excludes a taxpayer from paying GST by instalments if that taxpayer is in a net refund position. Similarly, a taxpayer who moves into a net refund position while using the instalment option is no longer able to use this option. A net refund position is defined in subsection 162-5(3) of the GST Act and refers to the situation in which a business is entitled to receive more input tax credits on its purchases than it is required to pay GST on its sales.

1.6 In 2008, small businesses advised via the Taxation Issues Entry System (TIES 022/2008) that exclusion of businesses from the instalment system because they move into a net refund position may make compliance with the GST law more difficult for these businesses due to the increased compliance costs, which runs counter to the intention of the instalments system.

1.7 Taxpayers who use the instalment option and move into a net refund position will be able to choose to continue to pay GST by instalments and therefore retain the compliance cost advantages of reporting annually.

Summary of new law

1.8 Schedule # amends Division 162 of the GST Act to maintain access to the GST instalment option for those GST instalment payers who temporarily move into a net refund position. Specifically, Schedule # amends subsection 162-30(1), removing the requirement that the entity must not be in a net refund position.

1.9 Schedule # also amends subsection 162-135(1) and section 162-140 of the GST Act to provide that GST instalment payers who move into a net refund position and wish to continue to pay GST by instalments will receive a zero instalment amount each quarter.

1.10 This measure will apply to GST instalment quarters starting on or after the first 1 July that is on or after the commencement of this Schedule.

Comparison of key features of new law and current law

<i>New law</i>	<i>Current law</i>
Small business entities (annual GST turnover <\$2 million) that already pay GST by instalments will be allowed to continue using this option, if they move into a net refund position.	Currently, the GST Act excludes a business entity from paying GST by instalments if that business is in a net refund position or moves into a net refund position. This means that a GST instalment payer who moves to a net refund position must be excluded from the instalment option for a certain period of time.
GST instalment payers who move to a net refund position and choose to	GST instalment payers who move to a net refund position cannot choose to

<i>New law</i>	<i>Current law</i>
continue to use the instalment option will receive an instalment amount each quarter of zero (not less). Any refund due to the taxpayer will be paid annually following their annual return.	continue to pay their GST by instalments.

Detailed explanation of new law

1.11 The amendments to Division 162 enable small businesses that are already paying GST by instalments to choose to continue to use this option when and if they move into a net refund position. *[Schedule #, item 1, paragraph 162-30(1(d))]* This will enable those GST instalment payers to avoid the additional compliance costs associated with reverting to quarterly reporting.

1.12 The amendments also ensure that GST instalment payers that choose to continue to use the instalment option when they have moved to a net refund position will have an instalment amount each quarter of zero, and not less. *[Schedule #, items 3, 5 and 6 subsection 162-135(1) and subsections 162-140(4) and (6)]*

1.13 Business entities that are currently not paying GST by instalments and are already in a net refund position, remain ineligible to use the instalment option.

1.14 The GST instalment option, contained in Division 162 of the GST Act, was introduced to make it easier for small businesses to meet their tax reporting requirements.

1.15 The law allows an eligible entity (annual GST turnover <\$2 million) to choose to pay GST by quarterly instalments worked out by the ATO or an alternative amount nominated by the taxpayer. The taxpayer lodges an annual GST return in which they account for any difference between the actual GST liability and the total GST instalments made for the year.

1.16 Currently, the GST legislation (subsection 162-5(1)) excludes a business from the GST instalments option if that business is in a net refund position. That is, the business is entitled to receive more input tax credits on its purchases than it is required to pay GST on its sales.

1.17 In general, under Division 162 of the GST Act, small businesses can lodge GST returns annually and pay instalments of estimated GST

quarterly. These instalment amounts are generally based on the previous year's GST, however this amount may be varied by the taxpayer.

1.18 Section 162-5 of the GST Act provides that a taxpayer may elect to pay GST by instalments if they satisfy all of the following requirements. The taxpayer must:

- Be a small business entity in the income year in which the election is made, or one that is not carrying on a business and has a GST turnover that does not exceed the instalment turnover threshold, currently \$2 million;
- Not be required to lodge on a monthly basis and not have elected to do so;
- Have a current lodgment record of at least 4 months;
- Have lodged all previous GST returns as required by the Commissioner; and
- Not be in a net refund position.

1.19 Section 162-15 of the GST Act requires that, to make the election to pay GST by instalments a taxpayer must notify the Commissioner of Taxation in the approved form. In practice, a taxpayer will be taken to have exercised this option if they complete the relevant box on the BAS.

1.20 The amount of each instalment will normally be notified to the taxpayer by the Commissioner, under section 162-135 of the Act.

1.21 Section 162-30 of the GST Act outlines the duration of an election to pay GST by instalments. Subsection (1) provides that the taxpayer's election will cease to have effect if:

- The taxpayer revokes it, by notifying the Commissioner in the approved form; or
- The Commissioner disallows it under subsection (3); or
- In a case to which subparagraph 162-5(1)(a)(i) applied – the taxpayer is not a small business entity of the kind referred to in that subparagraph for an income year; or
- In a case to which subparagraph 162-5(1)(a)(ii) applied – on 31 July in a financial year the taxpayer does not satisfy the requirements of that subparagraph; or

- During the first tax period applying to the taxpayer in a financial year, that taxpayer is in a net refund position; or
- In a case where the taxpayer is the representative member of a GST group – the membership of the GST group changes.

1.22 The instalment option was introduced in 2001 to make it easier for small businesses to meet their tax reporting requirements. Subsequently, concerns were raised that excluding businesses from the instalment option because they move into a net refund position (as provided in paragraph 162-30(1)(d)) may make compliance with the GST law more difficult for those businesses.

Example 1

Ashley operates a shop selling home wares and is eligible to pay GST by instalments.

She has paid GST by instalments continuously from the quarter ending September 2010. Ashley made a large equipment purchase in August 2015. On 31 July 2016 she lodges her annual GST return and receives a refund because she is entitled to more input tax credits on her purchases than she is required to pay GST on her sales.

Ashley wants to continue paying GST by instalments from the quarter ending September 2016 despite being in a net refund position when she lodged her most recent annual GST return.

As she was paying GST instalments in the previous year she will be eligible to continue to use the GST instalment system because of the law change. She will be offered an instalment amount of zero in the quarter ending September 2016. Ashley may choose to vary the instalment amount upwards from zero to better reflect her trading conditions.

Application and transitional provisions

1.23 The amendments made by this Schedule apply in relation to GST instalment quarters starting on or after the first 1 July that is on or after the commencement of this Schedule. It commences at that time so as to coincide with the beginning of the financial reporting year for many small businesses that may be affected by these amendments.

Consequential amendments

1.24 There are no consequential amendments required elsewhere in the law.

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