



## Australian Government

### The Treasury

## GST TREATMENT OF AUSTRALIAN TAXES FEES AND CHARGES

### SUMMARY OF CONSULTATION PROCESS

The Regulation amends the *A New Tax System (Goods and Services Tax) Regulations 1999* 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 on Federal Financial Relations*. The Regulation, in conjunction with the provisions of Division 81 of the *A New Tax System (Goods and Services Tax) Act 1999*, provides a mechanism for entities to determine the GST treatment of Australian fees and charges. In addition, the Regulation extends the operation of the *A New Tax System (Goods and Services Tax) (Exempt taxes, fees and charges) Determination 2011 (No. 1)* until 30 June 2013.

This measure is contained in the [A New Tax System \(Goods and Services Tax\) Amendment Regulation 2012 \(No. \)](#), which was registered on the Federal Register of Legislative Instruments on 29 June 2012.

#### Consultation process

Public consultation on the draft Regulation and accompanying explanatory statement was conducted between 2 May 2012 and 30 May 2012. Seven public submissions and three confidential submissions were received. In addition, targeted consultation with the States and Territories was undertaken.

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

#### Summary of key issues

##### *Key issues*

*Submissions were generally supportive of the draft Regulation. The main issues that submissions raised were the uncertainty about the meaning of 'regulatory' and the application of the Regulation to specific fees and charges identified by stakeholders.*

*Stakeholders were supportive of the regulation concerning kerbside collection of waste. However, submissions identified possible confusion around the treatment of residential and non-residential premises due to the use of the word 'domestic' in characterising the types of supplies intended to be exempt from GST.*

*Concerns in relation to specific supplies, for example, entry to national parks and the provision of certain documents, were identified in several submissions. The specific wording of some regulations and their explanations in the accompanying explanatory statement were also raised as an issue.*

*A key issue raised by stakeholders was the treatment of personalised number plates under the draft Regulation. Stakeholders were concerned that government agencies would be faced with significant compliance costs in calculating the GST payable on the amount over and above the normal price for a non-personalised licence plate.*

*In addition, a potential conflict was identified between the draft Regulation and recent amendments to the GST Act regarding appropriations, with the result that supplies under an appropriation could be treated as a taxable supply under the draft Regulation.*

*Submissions also identified possible ambiguity with respect to the application of the tiebreaker provision where the supply for which the fee or charge was imposed is not clearly regulatory or non-regulatory in nature.*

*Additionally, submissions were concerned that the interaction between the existing provisions of the GST Act and the draft Regulation was uncertain.*

#### *Response*

*It is considered that a definition of 'regulatory', in either the Regulation or the explanatory statement, would be problematic due to the possibility of being too prescriptive, and would cause confusion for Australian government agencies if a fee or charge does not clearly fit within the definition of regulatory, even if the fee or charge is for a supply that is regulatory in nature. Instead, the explanations and examples provided in the accompanying explanatory statement to the Regulation are intended to provide guidance without being definitive.*

*In relation to waste collection, the Regulation and explanatory statement were amended by removing the word 'domestic'. This amendment clarifies the intended operation of the Regulation to cover fees and charges for regular kerbside waste collection, which is a basic activity of local government and is not intended to be subject to GST.*

*In addition, both the Regulation and the explanatory statement were amended to clarify the application of the Regulation where the wording was not sufficiently clear. A regulation was added to provide that entry fees to national parks are not the provision of consideration, and therefore not subject to GST. Further examples were provided in the explanatory statement regarding the provision of certain documents and certificates for births, deaths and marriages. It is considered that this will assist Australian government agencies in correctly applying the principles outlined in Division 81 of the Act and the Regulation.*

*In some instances, fees and charges relating to specific supplies raised by stakeholders were considered to already be covered by Division 81 and the draft Regulation, and no action was taken. For example, fees and charges for the sitting of supplementary exams prior to admission to the legal profession was considered to already be sufficiently covered by section 81-10(4) of the Act.*

*The explanatory statement was further amended to clarify that fees for personalised licence plates will continue to be treated as not being the provision of consideration, and therefore not a taxable supply, under the grandfathered Determination until 30 June 2013. The appropriate GST treatment of personalised number plates will be given further consideration prior to this date.*

*To address concerns raised in relation to recent amendments to the GST Act regarding*

*appropriations, an additional regulation was added at 81-10.01(2) to ensure that payments covered by subsection 9-17(3) or (4) are not affected by the Regulation in such a way that treats those payments as consideration for a supply.*

*Additionally, the tiebreaker provision in regulation 81-15.02 was redrafted to restrict its operation to ensure that there is no unintended conflict between exempt and taxable supplies. Specifically in the event of a fee or charge being potentially specified as being not consideration and as being consideration as 'a fee or charge for a supply of a non-regulatory nature', the former prevails.*

*The introductory section of the explanatory statement was also amended to provide further guidance on the interaction between Division 81 of the Act and the Regulation. The additional explanation is intended to provide clarification for taxpayers in interpreting Division 81 and the accompanying Regulation.*