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INFORMATION AND RESEARCH SERVICES

Bills Digest

No. 61 2000–01

Taxation Laws Amendment Bill (No. 8) 2000

ISSN 1328-8091

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Published by the Department of the Parliamentary Library, 2000

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No. 61 2000-01

Taxation Laws Amendment Bill (No. 8) 2000

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30 October 2000

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Glossary

Abbreviation	Definition
ABN	Australian Business Number
ANTS	Government's Tax Reform Document: <i>Tax Reform: not a new tax, a new tax system</i>
ATO	Australian Taxation Office
BAS	business activity statement
COIN	company instalments
Commissioner	Commissioner of Taxation
Customs Act	<i>Customs Act 1901</i>
Customs Tariff Act	<i>Customs Tariff Act 1995</i>
FBT	fringe benefits tax
FBTAA 1986	<i>Fringe Benefits Tax Assessment Act 1986</i>
FBTI	fringe benefits tax instalments
GST	goods and services tax
GST Act	<i>A New Tax System (Goods and Services Tax) Act 1999</i>
GST Regulations	A New Tax System (Goods and Services Tax) Regulations 1999
GST Transition Act	<i>A New Tax System (Goods and Services Tax Transition) Act 1999</i>
ITAA 1936	<i>Income Tax Assessment Act 1936</i>
ITAA 1997	<i>Income Tax Assessment Act 1997</i>

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LCT	luxury car tax
LCT Act	<i>A New Tax System (Luxury Car Tax) Act 1999</i>
PAYG(I)	pay as you go instalments
PAYG(W)	pay as you go withholding
RBA	running balance account
TAA 1953	<i>Taxation Administration Act 1953</i>
WET	wine equalisation tax
WET Act	<i>A New Tax System (Wine Equalisation Tax) Act 1999</i>
WET and LCT Transition Act	<i>A New Tax System (Wine Equalisation Tax and Luxury Car Tax Transition) Act 1999</i>
WST	wholesale sales tax

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Taxation Laws Amendment Bill (No. 8) 2000

Date Introduced: 12 October 2000

House: House of Representatives

Portfolio: Treasury

Commencement: The Act commences on the day on which it receives the Royal Assent. The date of commencement of the amendments in the various Schedules is indicated under Main Provisions in this Digest.

Purpose

The Bill has seven **Schedules** and due to the disparate measures proposed by the amendments in each **Schedule** the purpose of the amendments is indicated under Main Provisions. The Second Reading Speech states that this Bill effects minor and technical changes to the *A New Tax System (Goods and Services Tax) Act 1999* (the GST Act) and related legislation.¹

Background

The measures in the Bill were foreshadowed by the Treasurer in Press Release No 90 of 14 September 2000. The Second Reading Speech states that the Bill also gives effect to other issues that have been raised by tax practitioners, industry representatives, the Australian Taxation Office and some States and Territories.²

Basis of policy commitment

The various changes proposed to the operation of the GST indicate that the measures attempt to fine tune the New Tax System to achieve increased simplicity and compliance.

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Main Provisions

This Digest will comment on the significant changes in the Bill and will make reference to the outlines of the proposed measures which have been succinctly set out in the Explanatory Memorandum to the Bill.

Schedule 1 Amendments – GST-free supplies and input taxed supplies

The Explanatory Memorandum outlines the purpose of the amendments proposed in **Schedule 1** to this Bill as follows.³ The Bill amends the GST Act to:

- ensure that an entity will be able to claim an input tax credit on an acquisition or importation that it uses in making input taxed supplies through an enterprise, or part of an enterprise, that it carries on outside Australia
- update the provisions that relate to child care
- provide for the GST-free treatment of travel agent fees for arranging overseas supplies such as accommodation, rail transport, car hire, entertainment and sight-seeing tours
- provide that the supply of a freehold interest or long-term lease made after a short-term lease is also GST-free
- provide that the sale of residential premises that have been used as residential premises for at least 5 years will be input taxed
- clarify that reduced input tax credits are only denied to the extent that the entity is entitled to an input tax credit for that acquisition under another provision of the GST Act, and
- allow certain low-value supplies through coin-operated devices to be treated as input taxed.

Date of effect: Various.

Financial impact and Compliance cost impact

The Explanatory Memorandum adds that the financial impact is negligible and the compliance cost impact is minimal.⁴

The following comments are made on the significant amendments.

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Export of input taxed supplies

Currently input taxed credit can be claimed on an acquisition or importation that relates to the making of financial supplies through an enterprise that an entity carries on business outside Australia.

To extend this treatment to the acquisition or importation relating to other input taxed supplies which are exported in the same manner, **Items 1 and 2 of Schedule 1** replace subsections 11-15(3) and 15-10(3) of the GST Act with **proposed subsections 11-15(3) and 15-10(3)**.

Approved child care service

Certain supplies of child care are GST-free under the provisions in Subdivision 38-D of the GST Act. A new family assistance regime came into effect on 1 July 2000 under the *A New Tax System (Family Assistance) Act 1999* and the *A New Tax System (Family Assistance) (Administration) Act 1999*. The amendments in **Item 3 of Schedule 1** are intended to align the provisions in Subdivision 38-D of the GST Act with the provisions in the new family assistance laws instead of to the provisions in the *Childcare Rebate Act 1993* and the *Child Care Act 1972*.

International travel provisions

Under existing legislation travel agent fees that relate to overseas air transport are GST-free. Fees that relate to other overseas supplies such as accommodation, rail transport, car hire, meals, entertainment and sight seeing tours are taxable.

Item 4 of Schedule 1 inserts **proposed section 38-360** into the GST Act which makes GST-free the fees received by travel agents for arranging overseas supplies in connection with overseas travel where the effective use or enjoyment of the supply is to take place outside Australia.

Sales of Rented Housing

At present a sale of premises constructed on or after 2 December 1998 will be liable to GST and a claim could be made for the set off of input tax credits relating to the construction.

A problem arises where such premises are initially rented out and subsequently sold. A claim for the input tax credits on construction may not be made against the GST on sale because the sale may be too far away from the date of construction. In addition, the input tax credits on construction cannot be claimed against rents, as rents are input taxed under section 40-35.

To resolve this problem **Item 9 of Schedule 1** provides a new definition of 'new residential premises' which is included in **proposed section 40-75** so that premises rented

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out for a period of at least 5 years before sale are input taxed on sale. Item 16 repeals the old definition of 'new residential premises'.

Schedule 2 Amendments - Imports

The Explanatory Memorandum outlines the purpose of the amendments proposed in **Schedule 2** to the Bill as follows.⁵ The amendments are intended to:

- ensure that the conversion rate used for the international transport and insurance component of a taxable importation or re-importation is the same rate used for the customs value of the importation or re-importation
- ensure that the re-importation of goods that were acquired prior to 1 July 2000 and are returned to the original owner, without having being subject to any change since their export, are not subject to GST
- ensure that re-imported breeding livestock is only subject to GST on the increase in value
- exempt certain goods, imported temporarily into Australia without payment of Customs duty, GST and LCT from having to be exported from Australia, and
- ensure that the re-importation of goods that have been previously subject to WET or LCT is not subject to WET or LCT a second time.

Date of effect: 1 July 2000 except the conversion rate for international transport and insurance which applies from date of introduction of the *Taxation Laws Amendment Act (No 8) 2000*.

Financial Impact and Compliance Cost Impact

The Explanatory Memorandum adds that the financial impact is negligible and the compliance cost impact is nil.⁶

The following comments are made on the significant amendments.

Re-importation of breeding livestock

Division 117 of the GST Act provides that where goods have been exported and subject to repair or renovation before being re-imported, GST is payable on re-importation. However, the GST is only payable on the improved value of the goods in consequence of the repair or renovation.

Breeding animals that are sent overseas and serviced are under current legislation fully taxable as the animal is re-imported in an altered state. To ensure that only the increased

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value of the animal is subject to GST **Item 9** of **Schedule 2** inserts **proposed subsection 117-10** to Division 117.

Temporary importation concessions

Under sections 162 and 162A of the *Customs Act 1901* and the regulations thereunder the Collector of Customs may give permission to an importer to take delivery of goods temporarily imported into Australia if the importer gives a security or undertaking to pay the duty, GST and luxury car tax where applicable at a specified time in the future. If the goods are exported within the specified period no applicable duty, GST and luxury car tax is payable. However, duty will be payable on failure to export the goods within the specified period.

Items 21 and **22** of **Schedule 2** amend section 162 so that duty, GST and luxury car tax is not payable if:

- the provisions of the regulations are complied with, and
- the goods are either exported from Australia within the specified time or one or more of the circumstances or conditions specified in the regulations apply to those goods.

Items 23 and **24** of **Schedule 2** amend section 162A so that applicable duty, GST and luxury car tax will not be payable on goods delivered under that section unless:

- the goods have been dealt with in contravention of that section, or
- the goods are not exported within the specified time and none of the circumstances or conditions specified in the regulations apply in relation to those goods.

Schedule 3 Amendments – Fringe benefits

The Explanatory Memorandum outlines the purpose of the amendments proposed in **Schedule 3** to the Bill in relation to fringe benefits as follows.⁷ The amendments to the GST Act are intended to:

- extend Division 71 to operate to deny input tax credits for acquisitions or importations that are provided as fringe benefits on which FBT will be payable and where the acquisition or importation also relates to making input taxed supplies
- ensure that entities can only claim input tax credits to the extent that an acquisition or importation in relation to entertainment is deductible under income tax law
- allow entities to make a GST election in relation to their meal entertainment and entertainment leasing expenses and include a new adjustment event for these expenses to minimise an entity's compliance costs caused by the timing differences between GST and FBT, and

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- extend the application of Division 111 so that an entity can claim input tax credits for all expense payment benefits that are fringe benefits.

Date of effect: Various.

Financial Impact and Compliance Cost Impact

The Explanatory Memorandum adds that the financial impact is negligible and the compliance cost will be reduced substantially by the measures in Schedule 3.⁸

The following comments are made on the significant amendments.

Fringe benefits provided by input taxed suppliers

Division 71 of the GST Act denies input taxed credits for things acquired or imported for the purpose of providing fringe benefits to employees of a financial supplier that is partially denied input tax credits on its acquisitions. In consequence the lower FBT gross up rate applies to such fringe benefits. However, Division 71 does not apply to entities which make other input taxed supplies such as residential premises, precious metals, school tuckshops and canteens as well as fund raising events conducted by charitable institutions.

Items 14 and 16 of Schedule 3 repeal subsections 71-5(1) and (2) and subsections 71-10(1) and (2) respectively and substitute **proposed subsections 71-5(1) and (2)** as well as **proposed subsections 71-10(1) and (2)** to extend Division 71 to input taxed supplies that are not financial supplies.

Schedule 4 Amendments - Adjustments

The Explanatory Memorandum outlines the purpose of the amendments proposed in **Schedule 4** to the Bill in relation to Adjustments as follows.⁹ The amendments to the GST Act are intended to:

- ensure that a decreasing adjustment will be available where an entity makes a taxable supply, in the course of carrying on its enterprise, of a thing that has been used solely or partly for a private or domestic purpose
- provide special rules for adjustments for bad debts that are not fully taxable or creditable
- provide an increasing adjustment to the recipient of a going concern where the going concern is used to make solely input taxed supplies, and
- provide rules for adjustments occurring after a representative has been appointed but relate to supplies made by the incapacitated entity.

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Date of effect: 1 July 2000.

Financial Impact and Compliance Cost Impact

The Explanatory Memorandum adds that the financial impact of the measures in **Schedule 4** is negligible and the impact on compliance cost will be minimal.¹⁰

The following comments are made on the significant amendments in **Schedule 4**.

Sale of assets used partly for a creditable purpose

At present when an entity acquires an asset used partly for making taxable supplies and partly for private or domestic use, the acquisition is only partly creditable. However, when the entity disposes of the asset in the course of carrying on its enterprise GST is applied on the full value of the asset, except where the supply is an input taxed or GST-free supply.

To enable such an entity to claim any input tax credits it has been denied on the asset because of its private or domestic use, **Item 9** of **Schedule 4** amends section 132-5 to allow a decreasing adjustment .

Schedule 5 Amendments - Administration

The Explanatory Memorandum outlines the purpose of the amendments proposed in **Schedule 5** of the Bill to the GST Act and the *Taxation Administration Act 1953* (TAA 1953) in relation to administration as follows.¹¹ The amendments are intended to:

- allow the Commissioner, in certain circumstances, to cancel an entity's GST registration where it has applied to the Commissioner for cancellation before it has been registered for 12 months
- allow the Commissioner, in certain circumstances, to revoke an entity's one month tax period election before 12 months after it came into effect and the entity requests it to be revoked
- make minor technical amendments to the provisions on reviewable decisions relating to GST, wine tax and indirect tax
- ensure that those persons responsible for the management of a non-profit sub-entity are jointly and severally liable for amounts payable under the GST law by that sub-entity
- extend the indirect tax record-keeping requirements to special transitional credits
- ensure that where an entity has delayed claiming their entitlement to an input tax credit (see Chapter 6), the entity must keep records relating to that acquisition for 5 years from the date it lodged its GST return, and

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- give the Commissioner the discretion to be able to refund an RBA surplus or credit rather than apply it against a tax debt, other than a BAS amount, that is due but not yet payable.

Date of effect: On Royal Assent except for **Items 12-17** which apply from tax periods starting on or after 1 July 2000.

Financial Impact and Compliance Cost Impact

The Explanatory Memorandum adds that the financial impact of the measures in **Schedule 5** is negligible and compliance costs are likely to be reduced.¹²

The following comments are made on the significant amendments in Schedule 5.

Application of an RBA surplus or a credit to a tax debt

The legislative framework for a taxpayer accounting system to establish a Running Balance Account (RBA) to account for debts due to the Commissioner was introduced by *Taxation Laws Amendment Act (No. 3) 1999* with effect from 1 July 1999.¹³

Under section 8AAZL in Division 3 of Part IIB of the TAA 1953 the Commissioner is required to apply any payment, credit or RBA surplus to either an RBA or a non RBA tax debt. The Commissioner can refund an amount of a payment, credit or RBA surplus only after the allocation process is completed and all tax debts are extinguished. Section 8AAZA defines a tax debt to include an amount due to the Commonwealth under a taxation law, including an amount that is not yet payable.

Some entities may lodge income tax returns and have assessments made early in the lodgment cycle with the result that there may be several months between the establishment of a tax debt and the date when the tax is due for payment. Where these entities are registered for GST and lodge a BAS claiming a net credit in the intervening period, the Commissioner cannot issue a refund but must apply it to the assessed income tax debt, even though it may not be payable for several months. This may result in cash flow problems for businesses.

BAS amounts are all credits and debts that relate to GST, LCT, WET, PAYG(W), PAYG(I), FBTI, deferred COIN and sales tax credits.

Item 4 of Schedule 5 amends section 8AAZL to give the Commissioner a discretion not to treat a payment, credit or RBA surplus in accordance with Division 3 of Part IIB of the TAA 1953. That discretion will only apply to debts other than BAS amounts that are due but not yet payable. In consequence the Commissioner will be able to refund any BAS credit if a non-BAS debt is due but not yet payable.

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Schedule 6 Amendments – Other Amendments

The Explanatory Memorandum outlines the purpose of the amendments proposed in **Schedule 6** to the Bill in relation to adjustments as follows.¹⁴

Schedule 6 contains a number of GST related minor policy and technical amendments to the GST Act, GST Transition Act, LCT Act, WET and LCT Transition Act and the ITAA 1997. These amendments will:

- treat returnable containers as second-hand goods
- allow an entity to attribute input tax credits to a tax period later than one in which it holds a tax invoice
- ensure that an entity is able to claim its correct entitlement to input tax credits where it leases or hires a car, acquires a GST-free or partly GST-free car or acquires a car only partly for a creditable purpose
- ensure the definitions of ‘representative’ and ‘incapacitated entity’ are aligned with the *Corporations Law* and *Bankruptcy Act 1966*
- ensure that a car manufacturer is subject to the correct amount of LCT where they supply a luxury car by way of lease or hire
- align the time to claim special credits provided for under the WET and LCT Transition Act with other special credits in the GST Transition Act
- treat the special credits provided for under the WET and LCT Transition Act as assessable income
- ensure that an entity that has a GST branch or branches cannot become a member of a GST group
- allow partnerships, trusts and individuals to apply to be approved as additional members of existing GST groups
- ensure that all partnerships, trusts and individuals, that satisfy the membership criteria in relation to a particular GST group, are not required to apply to be members of that GST group
- stipulate that all partnerships, trusts and individuals, that are GST group members, must have the same tax periods and accounting basis as all other members of the GST group
- ensure that companies cannot form GST groups with
- ensure that the associates provisions operate in relation to non-profit sub-entities

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- ensure that an input tax credit is available to a GST group where the reverse charge rules have applied to make supplies within the group taxable
- provide that an entity will not be required to provide a tax invoice to a recipient, where the supply is a taxable supply of real property
- ensure that there is no denial of input tax credits for acquisitions or importations made by insurers directly for the purpose of settling claims under policies that would have been subject to GST if supplied after 1 July 2000 that were supplied before 1 July 2000
- ensure that the denial of input tax credits for acquisitions or importations made by insurers directly for the purpose of settling claims under GST-free policies applies to things other than goods
- correct the notification requirement in relation to insurance policies acquired by members of GST groups
- clarify the application of the treatment of settlements made to third parties injured or damaged by the insured
- provide for an increasing adjustment for insurers in relation to the excess paid to them in certain circumstances
- remove the GST reverse charge from payments in relation to the provision of an employee share scheme by a non-resident entity
- remove the GST registration requirement for a non-resident entity that is only making supplies of employee services to a wholly-owned subsidiary in Australia;
- extend the concessional treatment of long-term accommodation to accommodation provided at marinas; and
- in relation to the GST Transition Act, ensure that the correct amount of GST is calculated on the supply of a construction project in progress at 1 July 2000.

Date of effect: Various.

Financial impact and Compliance cost impact

The Explanatory Memorandum states that the financial impact of the measures in **Schedule 6** is negligible and that the impact on compliance costs is minimal.¹⁵ **Schedule 7** Amendments – Technical corrections

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Schedule 7 Amendments – Technical Corrections

Technical corrections

Schedule 7 to this Bill contains a number of minor technical corrections to:

- the GST Act,
- the *A New Tax System (Indirect Tax and Consequential Amendment)*,
- the *A New Tax System (Indirect Tax and Consequential Amendments) Act (No. 2) 1999*,
- the *A New Tax System (Tax Administration) Act (No. 2) 2000*,
- the *Indirect Tax Legislation Amendment*, and
- the *Taxation (Interest on Overpayments and Early Payments) Act 1983*.

Date of effect: Various

Financial impact and Compliance cost impact

The Explanatory Memorandum states that the financial impact of the measures in **Schedule 7** of the Bill is nil and so is the impact on the cost of compliance.¹⁶

Concluding Comments

The Bill includes a number of minor policy and technical changes which amount to fine tuning the GST legislation. The most significant change intended to assist business is giving the Commissioner the discretion to refund amounts due to a taxpayer as indicated by a Business Activity Statement (BAS) without the need to offset against other debts due to the Commissioner but not yet payable. This will assist business to overcome cash flow problems that might otherwise arise.

The Explanatory Memorandum states that the financial impact of the measures is negligible. This may partly be due to the fact that it may not be possible to estimate the impact on revenue of the concessions arising from the measures in the Bill.

The measures relating to input tax credits on certain fringe benefits are estimated in the Explanatory Memorandum to substantially reduce compliance costs and the measures relating to the administration of the GST are expected to decrease compliance costs. The other changes are expected to have a minimal impact on the cost of compliance.

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Questions will always arise whether any changes to the GST legislation amount to fine tuning it or rolling it back. Whilst the demarcating line lies in a grey area, on balance it may be concluded that the measures in the Bill fall on the side of fine tuning the GST legislation.

Endnotes

- 1 Second Reading Speech, *House Hansard*, 12 October 2000.
- 2 *ibid.*
- 3 Explanatory Memorandum to the Taxation Laws Amendment Bill (No 8) 2000; Chapter 1, p. 11.
- 4 *ibid.*, p. 3.
- 5 *ibid.*, Chapter 2; p. 17.
- 6 *ibid.*, p. 4.
- 7 *ibid.*, Chapter 3; p. 25.
- 8 *ibid.*, p. 5.
- 9 *ibid.*, Chapter 4; p. 39.
- 10 *ibid.*, p. 5.
- 11 *ibid.*, Chapter 5; p. 47.
- 12 *ibid.*, p. 6.
- 13 Please refer to [Bills Digest no 110 1998–99](#) for further details on the operation of RBAs.
- 14 Explanatory Memorandum to the Taxation Laws Amendment Bill (No 8) 2000; Chapter 6; pp. 53 and 54.
- 15 *ibid.*, p. 8.
- 16 *ibid.*, p. 9.

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