



Tax Laws Amendment (2010 GST Administration Measures No. 2) Bill 2010

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Contents

Glossary	2
Purpose.....	3
Background.....	4
Position of significant interest groups/press commentary	5
Financial implications	7
Main provisions	7
Schedule 1—GST groups and GST joint ventures	7
Part 1—Forming, changing and dissolving GST groups and GST joint ventures.....	7
Part 2—Indirect tax sharing agreements.....	9
Schedule 2—Rulings.....	10
Schedule 3—Tax invoices.....	10

Glossary

<i>Abbreviation</i>	<i>Definition</i>
ABN	Australian Business Number
ATO	Australian Taxation Office
BAS	business activity statement
Commissioner	Commissioner of Taxation
Excise Act	<i>Excise Act 1901</i>
GST	goods and services tax
GST Act	<i>A New Tax System (Goods and Services Tax) Act 1999</i>
GST Regulations	<i>A New Tax System (Goods and Services Tax) Regulations 1999</i>
ITAA 1997	<i>Income Tax Assessment Act 1997</i>
LCT	luxury car tax
TAA 1953	<i>Taxation Administration Act 1953</i>
WET	wine equalisation tax

Source: Tax Laws Amendment (2010 GST Measures No. 2) 2010 Bill, Explanatory Memorandum, p. 1.

Tax Laws Amendment (2010 GST Administration Measures No. 2) Bill 2010

Date introduced: 18 March 2010

House: House of Representatives

Portfolio: Treasury

Commencement: The formal provisions commence on the day of Royal Assent. The measures in Schedule 1 and 3 also commence on the day of Royal Assent. The measures in Schedule 2 commence on 1 July 2010.

Links: The [links](#) to the Bill, its Explanatory Memorandum and second reading speech can be found on the Bills page, which is at <http://www.aph.gov.au/bills/>. When Bills have been passed they can be found at ComLaw, which is at <http://www.comlaw.gov.au/>.

Purpose

The Bill has three Schedules. The purposes of the measures in each Schedule are briefly set out below.

Schedule 1—GST groups and GST joint ventures

- a) The *A New Tax System (Goods and Services Tax) Act 1999* (GST Act) and the *Taxation Administration Act 1953* (TAA 1953) will be amended to allow entities to self-assess their eligibility to form, change and dissolve a goods and services tax (GST) group or GST joint venture and to do so at any time during a tax period, and
- b) the GST Act and the TAA 1953 will be amended to allow members of a GST group and participants in a GST joint venture to enter into an indirect tax sharing agreement with a representative member or a joint venture operator respectively in relation to their indirect tax law liabilities.

Schedule 2—Rulings

The TAA 1953, the GST Act, the *Excise Act 1901* (the Excise Act) and the *Income Tax Assessment Act 1997* (ITAA 1997) will be amended to bring indirect tax rulings and excise advice within the general rulings regime.

Schedule 3—Tax invoices

The GST law will be amended to simplify the requirements for a document to qualify as a tax invoice by stating the requirements on the basis of broad principles only.

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Background

This Bill implements improvements to GST laws in line with recommendations from the Board of Taxation's review of GST administration. The report of the Board of Taxation's *Review of the Legal Framework for the Administration of the Goods and Services Tax* was released on 12 May 2009 by the then Assistant Treasurer.¹ At that time, the Assistant Treasurer agreed to implement 41 of the Board's 46 recommendations.²

Recommendation 9 involved changes to ensure minor errors do not invalidate tax invoices.³

Recommendation 17 involved adopting the income tax ruling system for the GST, luxury car tax and wine equalisation.⁴

Recommendation 32 involved simplifying the GST grouping membership rules and self-assessment of eligibility to form a GST group and GST joint venture.⁵

According to the media release, all three of these recommendations were supported and changes were to be put in place by 1 July 2010.

Also on 12 May 2009, the Treasury released a discussion paper detailing the Government's response to the Board of Taxation's review.⁶ This discussion paper received 12 public submissions and one confidential submission.⁷ Of these submissions, 11 made

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1. Board of Taxation, *Review of the legal framework for the administration of the Goods and Services Tax*, report to the Assistant Treasurer and Minister for Competition Policy and Consumer Affairs, Australian Government, December 2008, p. 198, viewed 19 March 2010, http://www.taxboard.gov.au/content/GST_administration_review/downloads/Review_Legal_Framework_Admin_GST_Report_to_Minister.pdf
 2. C Bowen MP (then Assistant Treasurer), *Government response to Board of Taxation review of GST administration*, media release, 12 May 2009, viewed 19 March 2010, <http://assistant.treasurer.gov.au/DisplayDocs.aspx?doc=pressreleases/2009/042.htm&pageID=003&min=ceb&Year=&DocType=0>
 3. Board of Taxation, op. cit., p. 198.
 4. Ibid., p. 200.
 5. Ibid., p. 202.
 6. The Treasury, *Implementation of the recommendations of the Board of Taxation's review of the legal framework for the administration of the GST*, Discussion Paper, Treasury website, 12 May 2009, viewed 11 June 2010, http://www.treasury.gov.au/documents/1525/PDF/Review_of_the_legal_framework_3.pdf
 7. The Treasury, 'Submissions: Government response to the Board of Taxation Review of the legal framework for the administration of the GST First Discussion Paper', Treasury

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comments regarding GST grouping and joint ventures⁸, eight made comments regarding the rulings system⁹, and seven made comments in relation to the changes to tax invoices.¹⁰

The Treasury released an exposure draft of the Bill on 22 January 2010.¹¹ The exposure draft received 10 submissions.¹²

Position of significant interest groups/press commentary

In its submission to the Treasury Discussion Paper, the Australian Bankers' Association (ABA) supported the move to a broader rulings regime which includes the GST, the luxury car tax (LCT) and the wine equalisation tax (WET). However, it expressed some concern in regards to a default end date for existing private binding rulings:

By having a default end date for private binding rulings, our members, as well as the ATO, will have to unnecessarily commit time and resources every 12 months to review a supply that has not changed.¹³

website, viewed 11 June 2010,

<http://www.treasury.gov.au/contentitem.asp?ContentID=1578&NavID=037>

8. The Treasury, *GST Groups and GST Joint Ventures: self-assessment, intra-tax period grouping and indirect tax sharing agreements: summary of consultation process*, Treasury website, viewed 22 March 2010, http://www.treasury.gov.au/documents/1709/PDF/Consultation_Summary_GST_Groups_and_GST_Joint_Ventures.pdf
9. The Treasury, *Adopting the general rulings system for indirect taxes and excise: summary of consultation process*, Treasury website, viewed 22 March 2010, http://www.treasury.gov.au/documents/1709/PDF/Consultation_Summary_Indirect_taxes_and_excise.pdf
10. The Treasury, *Tax invoices: summary of consultation process*, Treasury website, viewed 22 March 2010, http://www.treasury.gov.au/documents/1709/PDF/Consultation_Summary_Tax_invoices.pdf
11. The Treasury, 'Exposure Draft: GST Administration Measures', Treasury website, viewed 19 March 2010, http://www.treasury.gov.au/documents/1709/PDF/ED_GST_Administration.pdf
12. The Treasury, 'Submissions: GST Administration – Grouping, rulings and tax invoices: Exposure Draft legislation and Explanatory Memorandum', Treasury website, viewed 22 March 2010, <http://www.treasury.gov.au/contentitem.asp?ContentID=1760&NavID=066>
13. Australian Bankers' Association, *Implementation of the recommendations of the Board of Taxation's review of the legal framework for the administration of the Goods and Services Tax (GST)*, submission to Treasury, 22 June 2009, p. 6, viewed 8 April 2010, http://www.treasury.gov.au/documents/1578/PDF/Australian_Bankers_Association.pdf

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In addition, the ABA also recommended that published views of the Commissioner which are currently binding on the Commissioner, as well as rulings made by the Commissioner and issued to industry bodies, should be transitioned over to the new rulings regime and remains binding.

In response, the Government modified the proposal by ensuring that existing indirect tax or excise rulings which do not specify an end-date will continue to apply indefinitely. Also, products which have been gazetted or labelled as public rulings will remain public rulings, but products such as fact sheets and forms will become guidance products.¹⁴

The Australian Securitisation Forum (ASF) mentioned in both of its submissions to the Discussion Paper and the Exposure draft that there was a deficiency in the GST grouping rules for warehouse and securitisation trusts:

Urgent legislative clarification is needed to correct a clear deficiency in the GST grouping rules that currently precludes warehouse and securitisation trusts, as wholly owned but insolvency remote special purpose vehicles, from being members of GST groups.¹⁵

In particular, the ASF recommended changes to subsections 444-90(2) and (3) of the TAA 1953 in order to apply them to insolvency remote entities that are not permitted to be exposed to joint and several liability.¹⁶ However, there are limited changes between the exposure draft legislation in this area and the current Bill.¹⁷

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14. The Treasury, *Adopting the general rulings system for indirect taxes and excise: summary of consultation process*, Treasury website, pp. 1–2, viewed 22 March 2010, http://www.treasury.gov.au/documents/1709/PDF/Consultation_Summary_Indirect_taxes_and_excise.pdf
 15. Australian Securitisation Forum, *Submission – Treasury Discussion Paper – “Implementation of the recommendations of the Board of Taxation’s review of the legal framework for the administration of the GST”*, submission to Treasury, 19 June 2009, p. 1, viewed 9 April 2010, http://www.treasury.gov.au/documents/1578/PDF/Australian_Securities_Forum.pdf
 16. ASF, *Treasury review of GST administration – Exposure Draft*, submission to Treasury, 24 February 2010, p. 4, viewed 9 April 2010, http://www.treasury.gov.au/documents/1760/PDF/Australian_Securitisation_Forum.pdf : Section 444-90 of the TAA 1953 deals with GST groups.
 17. See The Treasury, ‘Exposure Draft: GST Administration Measures’, Treasury website, pp. 24–25, viewed 19 March 2010, http://www.treasury.gov.au/documents/1709/PDF/ED_GST_Administration.pdf

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Financial implications

The Explanatory Memorandum states that the amendments in **Schedule 1** in relation to self-assessment and intra-tax period grouping and de-grouping will have no impact on revenue, and the **Schedule 1** changes to indirect tax sharing agreements will have a negligible cost to GST revenue.¹⁸

Schedule 2 amendments to the rulings system are expected to have an unquantifiable but small impact on the GST, the wine equalisation tax, the luxury car tax and excise revenue.¹⁹

Schedule 3 amendments to tax invoices are expected to have an unquantifiable but small cost to GST revenue.²⁰

Main provisions

Schedule 1—GST groups and GST joint ventures

Schedule 1 to this Bill amends the GST Act and the TAA 1953 to simplify GST groups and GST joint ventures requirements. First, the amendments allow entities to self-assess their eligibility to form, change and dissolve a GST group or GST joint venture, and to do so at any time during a tax period. Second, the amendments allow members of a GST group and participants in a GST joint venture to enter into an indirect tax sharing agreement in relation to their indirect tax law liabilities.

Part 1—Forming, changing and dissolving GST groups and GST joint ventures

Section 48-1 of the GST Act states:

Companies within a 90% owned group, and in some cases other entities (such as non-profit bodies), can be approved as a GST group. One member of the group then deals with all the GST liabilities and entitlements (except for GST on most taxable importations) of the group, and (in most cases) intra-group transactions are excluded from the GST.

However, time delays in obtaining approval from the Commissioner of Taxation can result in uncertainty.

18. Explanatory Memorandum, Tax Laws Amendment (2010 GST Administration Measures No. 2) Bill 2010, p. 3.

19. Ibid., p. 4.

20. Ibid.

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This Bill makes amendments to the GST Act to remove the need for the Commissioner to approve two or more entities as a GST group. Instead, entities wishing to form a GST group must notify the Commissioner of the formation of the group (**proposed sections 48-5 and 48-7**).

Schedule 1 to the Bill also inserts three new sections into the GST Act to introduce consequences for being a member of a GST group for part of a tax period (**proposed section 48-51**), change in membership during a tax period (**proposed section 48-52**), and changing a representative member during a tax period (**proposed section 48-53**). These sections ensure that provisions relating to GST groups only apply to members and representative members during the parts of the tax period in which they are members of the GST group (allowing for intra-tax period grouping and de-grouping). Likewise, members of the group no longer need to apply for changes to occur, but must instead notify the Commissioner (**proposed sections 48-70 and 48-71**).

Notification takes effect from the day specified in the notice, unless the notice was given to the Commissioner after the day the GST group was required to submit a GST return for the period in which the day specified in the notice occurs. In the latter instance, the Commissioner may approve the date specified in the notice or another day the Commissioner deems appropriate. **Proposed section 48-71** allows the Commissioner to approve the date of effect of notifications under **proposed sections 48-5 and 48-70**.

Under **proposed subsection 48-70(6)** a GST group is taken to be dissolved if the representative member is no longer a member of the group and no other member becomes the representative member. The group is dissolved from the date the representative member ceases to be a member of the group. Notification of another member of a GST group becoming the representative member of the group must be given to the Commissioner within 21 days of that member becoming the representative member (**proposed subsection 48-70(7)**).

Item 20 of the Bill repeals sections 48-75 (revoking the approval of GST groups), 48-80 (notification by representative members), 48-85 (date of effect of approvals and revocations), and 48-90 (notification by the Commissioner) of the GST Act, and inserts a **new section 48-75** which outlines the effect of a representative member becoming an incapacitated entity. This section provides that if the representative member of a GST group becomes an incapacitated entity and is still a member of the group; the entity ceases to be the representative member of the group unless all other members of the group are incapacitated entities (**proposed subsection 48-75(1)**). Conversely, if all the members of the GST group are incapacitated entities (including the representative member) and one of the members ceases to be an incapacitated entity, the representative member loses that status (**proposed subsection 48-75(3)**).

This Bill also proposes amendments to Division 51-1 of the GST Act to make similar amendments to GST joint venture formation, change and dissolution as to those proposed

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for GST groups. According to section 51-1 of the Act, Division 51-1 is about the following:

Entities engaged in a joint venture can have it approved as a GST joint venture. The joint venture operator then deals with the GST liabilities and entitlements arising from the joint venture operator's dealings on behalf of the participants in the joint venture.

Items 21 to 30 of Schedule 1 to the Bill amend the GST Act so that entities wishing to form a GST joint venture need only notify the Commissioner, rather than seeking approval. The Bill also includes the same provisions for the date of effect as for the notification arrangements for GST groups (**proposed subsections 51-5(3) and (4); proposed subsections 51-70(2) and (3); proposed section 51-75**). The joint venture operator must notify the Commissioner within 21 days when a participant no longer satisfies the participation requirements for a GST joint venture (**proposed subsection 51-7(3)**). The Bill also inserts a **new subdivision 51-C** to introduce similar arrangements for changing the participants of GST joint ventures as those proposed for GST groups.

Items 43 and 44 also include some transitional provisions for GST groups and joint ventures which were in existence before the commencement of the Bill, or which had applied to the Commissioner before commencement but had not been approved.

Part 2—Indirect tax sharing agreements

The amendments in Part 2 of **Schedule 1** allow participants of a GST joint venture and members of a GST group to enter into an indirect tax sharing agreement with their joint venture operator and representative member respectively in relation to their indirect tax law liabilities. These amendments are aimed at reducing compliance costs by increasing certainty.

Schedule 1 to the Bill introduces a **new Subdivision 110-A** and a **new Subdivision 110-B** into the GST Act to include indirect tax sharing arrangements for GST groups and GST joint ventures as tax-related transactions²¹. It also inserts provisions for indirect tax sharing arrangements into the TAA 1953 after the current subsection on GST joint ventures (**proposed subsections 444-80(1A)-(1E)**) and the current subsection on GST groups (**proposed subsections 444-90(1A)-(1E)**) in the subdivision on indirect tax specific entities.

The amendments proposed by **Schedule 1** apply to tax periods starting on or after 1 July 2010 (**items 45 and 63**).

21. See items 54 and 55 of Schedule 1 to the Bill. The heading to Division 110 has also been amended to make it clear it deals with tax-related transactions (see **item 52 of Schedule 2**).

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Schedule 2—Rulings

Schedule 2 to the Bill amends the GST Act and the TAA 1953, as well as the Excise Act and the ITAA 1997 in order to apply the general rulings regime to indirect tax rulings and excise advice.

GST, wine equalisation tax and luxury car tax rulings are currently under the Commissioner's power of general administration of indirect tax laws, and excise is only subject to administratively binding advice. The proposed amendments will include these taxes and excise duty under the general rulings regime which currently applies to income tax, fringe benefits tax, petroleum resource rent tax, fuel tax credits, the Medicare levy, mining withholding tax, franking tax and grants or benefits under the products grants legislation.

These amendments allow the Commissioner to make legally binding rulings in relation to the GST, wine equalisation tax, luxury car tax and excise duty, and will apply to all rulings on or after 1 July 2010. Transition provisions have also been included to ensure the changes will apply retrospectively to private indirect tax rulings that have been applied for or are in operation immediately before 1 July 2010, as well as public indirect tax rulings that are gazetted or labelled as public rulings and are in operation immediately before 1 July 2010 (**item 46** of **Schedule 2**).

Schedule 3—Tax invoices

Schedule 3 to the Bill repeals the current requirements for a document to be a tax invoice and replaces them with more flexible arrangements.

In particular, **item 1** replaces **subsection 29-70(1)** of the GST Act and enables documents that are clearly intended to be a tax invoice to be treated as such if the following details can be ascertained (**proposed paragraph 29-70(1)(c)**):

- the supplier's identity and ABN
- the recipient's identity and ABN (if the price of the supply is above \$1000, or if the document was issued by the recipient)
- what is supplied (including the quantity and price)
- whether the supply is a taxable supply
- the date the document is issued
- the amount of GST payable in relation to each supply the document covers
- that the GST is payable by the supplier (if the document was issued by the recipient and GST is payable in relation to the supply), and
- other matters as specified by the regulations.

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Proposed subsection 29-70(1A) allows for a document which is missing some of the above information to be treated as a tax invoice if it would otherwise comply with the requirements for a tax invoice and the missing information can be clearly ascertained from other documents. The Commissioner may also treat a document which would otherwise not meet the requirements for a tax invoice as a tax invoice under **proposed subsection 29-70(1B)**.

In relation to GST groups, **proposed section 48-57** allows a document to be treated as a tax invoice even if it does not identify the recipient as long as the document contains enough information to ascertain the identity of the GST group, the representative member of the GST group or a member of the GST group that was a member of the group at the relevant time of supply (**proposed subsection 48-57(1)**). However, a recipient of a supply can still require a supplier to provide a tax invoice which identifies the recipient of the supply, rather than just the GST group (**proposed subsection 48-57(2)** and/or **29-70**).

According to **Schedule 3** of the Bill (**item 5**), these amendments would apply in relation to net amounts from tax periods starting on or after 1 July 2010.

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