



Tax Laws Amendment (2011 Measures No. 2) Bill 2011

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Glossary

| Abbreviation | Definition |
|---------------------|---|
| APRA | Australian Prudential Regulation Authority |
| AEI | Australian Educational International |
| ATO | Australian Taxation Office |
| CGT | capital gains tax |
| Commissioner | Commissioner of Taxation |
| DGR | deductible gift recipient |
| GST | goods and services tax |
| GST Act | <i>A New Tax System (Goods and Services Tax) Act 1999</i> |
| ITAA 1997 | <i>Income Tax Assessment Act 1997</i> |
| RSA | retirement savings account |
| RSA Act | <i>Retirement Savings Accounts Act 1997</i> |
| SIS Act | <i>Superannuation Industry (Supervision) Act 1993</i> |
| SMSF | self managed superannuation fund |
| TAA 1953 | <i>Taxation Administration Act 1953</i> |
| TFNs | tax file numbers |
| TIES | Tax Issues Entry System |

Tax Laws Amendment (2011 Measures No. 2) Bill 2011

Date introduced: 24 March 2011

House: House of Representatives

Portfolio: Treasury

Commencement: The formal sections of the Bill commence on Royal Assent. The commencement dates of the various Schedules and their application are indicated in the comments on each Schedule made in the main body of this Bills Digest.

Links: The links to the [Bill, its Explanatory Memorandum and second reading speech](#) can be found on the Bill's home page, or through <http://www.aph.gov.au/bills/>. When Bills have been passed and have received Royal Assent, they become Acts, which can be found at the ComLaw website at <http://www.comlaw.gov.au/>.

Purpose

This Bill makes amendments to various tax Acts by way of five separate Schedules. **Schedule 1** amends the list of deductible gift recipients (DGRs). **Schedule 2** makes changes to self managed superannuation fund (SMSF) investment in collectables and personal use assets. **Schedule 3** extends the use of tax file numbers (TFNs) to superannuation fund trustees and retirement savings account (RSA) providers in certain circumstances. **Schedule 4** allows entities to self assess the goods and services tax treatment (GST) of a payment of an Australian tax, fee or charge. **Schedule 5** makes miscellaneous technical and minor amendments.

Schedule 1—deductible gift recipients

Key Provisions

Items 1 to 3 of Part 1 of Schedule 1 to the Bill change the name of Guides Australia Incorporated to Girl Guides Australia in the list of DGRs in section 30-90 of the *Income Tax Assessment Act 1997* (ITAA 1997) from 1 January 2011.

Items 4 to 6 of Part 2 of Schedule 1 amend subsection 30-25(2) of the ITAA to enable taxpayers to claim income tax deductions for gifts to the Charlie Perkins Scholarship Trust and the Roberta Sykes

Indigenous Education Foundation for gifts made from 2 August 2010 to 2 August 2013. This measure was announced in the 2010–11 Mid-Year Economic and Fiscal Outlook (MYEFO).¹

Background

The Charlie Perkins Trust was formed in 2002 to assist in the health, education, welfare and status of Indigenous students and children, and in 2010 the Charlie Perkins Scholarship Trust was established to administer the Charlie Perkins Scholarships to Oxford and Cambridge universities.² The Roberta Sykes Indigenous Education Foundation was formerly known as the Black Women’s Action in Education Foundation and aims to assist Indigenous students with education.³

Financial impact

According to the Explanatory Memorandum, the loss to income tax revenue from the inclusion of these two entities on the list of DGRs will be:

| Organisation | 2010-11 | 2011-12 | 2012-13 | 2013-14 |
|---|-----------------|-----------------|-----------------|-----------------|
| Charlie Perkins Trust for Children & Students | -\$0.005m | -\$0.03m | -\$0.03m | -\$0.03m |
| Roberta Sykes Indigenous Education Foundation | -\$0.004m | -\$0.02m | -\$0.02m | -\$0.02m |
| Total | -\$0.01m | -\$0.05m | -\$0.05m | -\$0.05m |

Source: Tax Laws Amendment (2011 Measures No. 2) Bill 2011, Explanatory Memorandum, p. 3

Schedule 2—Self managed superannuation fund investment in collectables and personal use assets

Schedule 2 to this Bill makes changes to SMSF investment in collectables and personal use assets by amending the *Superannuation Industry (Supervision) Act 1993* (SIS Act) to enable regulations to make rules about these investments from 1 July 2011.

1. W Swan (Treasurer) and P Wong (Minister for Finance and Deregulation), ‘Appendix A: part 2: revenue measures’, *Mid-year economic and fiscal outlook*, 2010–11, Commonwealth of Australia, 2010, p. 225, viewed 6 May 2011, http://www.budget.gov.au/2010-11/content/myefo/html/appendix_a_31.htm
2. ‘The Charlie Perkins Trust’, The Charlie Perkins Trust for Children & Students website, viewed 6 May 2011, <http://www.perkinstrust.com.au/>
3. ‘The Roberta Sykes Indigenous Education Foundation’, The Aurora Project website, viewed 6 May 2011, http://www.auroraproject.com.au/roberta_sykes.htm

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Basis of policy commitment

This measure was announced by the Government as an election commitment during the 2010 election to take effect from 1 July 2011.⁴

The Super System Review (Cooper review) recommended that SMSFs that are not APRA regulated funds should be prohibited from investing in collectables and personal use assets (Recommendation 8.14). The Cooper review also recommended that SMSFs with such assets be allowed a five year transition period in which to dispose of them.⁵ While the Cooper review acknowledged that only a modest amount of SMSF sector assets are invested in such assets, it preferred for these types of investments to remain within prudentially regulated superannuation funds, or outside the superannuation system altogether. In particular, the Cooper review said:

The principal concern is that the cumulative regulatory and compliance complexities outweigh the potential benefits of allowing such a liberal investment menu to a sector that is not directly prudentially regulated.

...

Collectable investments pose particular issues in relation to the application of the sole purpose test. These assets lend themselves to personal enjoyment and a range of 'non-investment' factors and therefore can involve significant current day benefits being derived by those using or accessing the assets.⁶

However, rather than prohibit SMSFs from investing in collectables and personal use assets, the Government response to the review (known as 'Stronger Super') promised to introduce new legislative standards with which SMSFs must comply in order to continue to invest in such assets.⁷ As part of this announcement, the Government formed the SMSF Working Group, which published an issues paper on investment in collectables and personal use assets in March 2011.⁸

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4. C Bowen (Minister for Financial Services, Superannuation and Corporate Law) and P Garrett (Minister for Environment Protection, Heritage and the Arts), *New standards for storing collectables and personal use assets by self-managed superannuation funds*, media release, 30 July 2010, viewed 6 May 2011, <http://www.alp.org.au/federal-government/news/new-standards-for-storing-collectables-and-persona/>
 5. J Cooper and others, *Super System review: final report*, Part one, overview and recommendations, 30 June 2010, p. 50, viewed 6 May 2011, http://www.supersystemreview.gov.au/content/downloads/final_report/part_one/Final_Report_Part_1_Consolidated.pdf
 6. J Cooper and others, *Super System review: final report*, Chapter 8, self-managed super solutions, 30 June 2010, p. 246, viewed 6 May 2011, http://www.supersystemreview.gov.au/content/downloads/final_report/part_two/Part_2_Chapter_8.pdf
 7. B Shorten (Assistant Treasurer), *Stronger Super*, Commonwealth of Australia, 2010, p. 12, viewed 6 May 2011, http://strongersuper.treasury.gov.au/content/publications/government_response/downloads/Stronger_Super.pdf
 8. The Treasury, *Issues paper on investment in collectables and personal use assets*, Stronger Super, March 2011, viewed 6 May 2011,

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An Exposure Draft of the changes included in **Schedule 2** to this Bill was published on the Stronger Super website on 1 February 2011. Submissions closed on 15 February 2011 and 20 submissions were received.⁹ The Exposure Draft allowed regulations to prescribe rules in relation to collectables and personal use assets within the meaning of the ITAA 1997, whereas this Bill specifically lists the types of collectables or personal use assets the regulations may prescribe rules in relation to (**sub-sections 62A(a) to (m)**). This is in line with recommendations from the Association of Superannuation Funds of Australia (ASFA) and the Self-Managed Super Fund Professionals' Association of Australia (SPAA).¹⁰

Policy position of non-government parties/independents

Senator Christine Milne moved a motion on 10 February 2011 calling on the Government to 'ensure that any conditions do not act as a disincentive for DIY superannuation schemes to invest in Australian art' in light of 'a strong campaign by artists concerned that the local art market would be seriously damaged' by the Cooper review recommendation.¹¹

Key provisions

Item 1 of Schedule 2 inserts **proposed section 62A** into the SIS Act to deal with SMSF investment in collectables and personal use assets. **Section 62A** allows the regulations to make rules in relation to the trustees of regulated self-managed superannuation funds making, holding and realising investments in the following types of assets, with maximum penalties of 10 penalty units for offences against the regulations:

- artwork (within the meaning of the ITAA)
- jewellery
- antiques

http://strongersuper.treasury.gov.au/content/working_groups/smsf/IP_smsf_assets/downloads/IP_SMSF_Investment_in_Collectables_and_Personal_Use_Assets.pdf

9. The Treasury, 'Exposure Draft – SMSF investment in collectables and personal use assets', Stronger Super website, viewed 6 May 2011, http://strongersuper.treasury.gov.au/content/Content.aspx?doc=consultations/smsf_investment/default.htm
10. ASFA, *Exposure draft – Tax Laws Amendment (2011 Measures No. 2) Bill 2011: SMSF investment in collectables and personal use assets*, submission to the Stronger Super exposure draft consultation, 15 February 2011, viewed 6 May 2011, http://strongersuper.treasury.gov.au/content/consultations/smsf_investment/downloads/submissions/Association_of_Superannuation_Funds_of_Australia.pdf; SPAA, *Exposure Draft – SMSF investment in collectables and personal use assets*, submission to the Stronger Super exposure draft consultation, February 2011, viewed 6 May 2011, http://strongersuper.treasury.gov.au/content/consultations/smsf_investment/downloads/submissions/SMSF_Professionals_Association_of_Australia.pdf
11. C Milne, 'Superannuation', Senate, *Debates*, 10 February 2011, p. 468, viewed 6 May 2011, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansards%2F2011-02-10%2F0081%22>

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- artefacts
- coins or medallions
- postage stamps or first day covers
- rare folios, manuscripts or books
- memorabilia
- wine
- cars
- recreational boats
- memberships of sporting or social clubs or
- assets of a particular kind, if assets of that kind are ordinarily used or kept mainly for personal use or enjoyment (not including land).¹²

Item 3(2) provides that regulations made for the purposes of **proposed section 62A** may apply to all or some of these types of investments.

Financial implications

According to the Explanatory Memorandum (page 4), this measure will have no financial impact. The Treasury costing undertaken as part of the 2010 election also found that the measure would have no financial impact.¹³

Commencement and application

Schedule 2 commences on 1 July 2011 as stated in **item 5** of the table in **clause 2** of the Bill.

Schedule 2 applies to investments made before, on or after its commencement as stated in **item 3(1)** of **Schedule 2**.

Schedule 3—Use of tax file numbers for superannuation purposes

Background

In 2010, the Australian Government announced its intention to allow superannuation fund trustees and retirement savings account providers to use TFNs to locate member accounts and consolidate multiple member accounts as part of its response ('Stronger Super') to the Cooper review. The use of TFNs by superannuation funds is part of the SuperStream initiative designed to enhance the 'back

12. The term 'penalty unit' is defined in section 4AA of the *Crimes Act 1914* as \$110. If the offender is a body corporate, the court may impose a fine of up to five times this amount: section 4B of the *Crimes Act 1914*.

13. The Treasury, *Release of costing of election commitment*, media release, no. GOV55, 17 August 2010, viewed 6 May 2011, http://electioncostings.gov.au/files/2010/08/GOV55-Storing_collectables_and_personal_use_assets_Release3.pdf

office' of superannuation.¹⁴ **Schedule 3** introduces amendments to the SIS Act and the *Retirement Savings Accounts Act 1997* (RSA Act) in line with recommendation 9.11 of the Cooper review.¹⁵

The Assistant Treasurer published an Exposure Draft of **Schedule 3** on 4 February 2011, with submissions closing on 17 February 2011.¹⁶ The differences between the Exposure Draft and **Schedule 3** as contained in the Bill are:

- the inclusion of **proposed subsection 137A(3)** in the RSA Act and **proposed subsection 299LA(3)** in the SIS Act which specify that the amendments relating to the use of TFNs to locate amounts held in RSAs or by certain superannuation trustees do not affect the operation of National Privacy Principle 7 in Schedule 3 to the *Privacy Act 1988* (the Privacy Act) and
- the separation of the amendments relating to account location (which are now in **Part 1** of **Schedule 3** and apply from 1 July 2011) and the amendments relating to account consolidation (which are now in **Part 2** of **Schedule 3** and apply from 1 January 2012) to allow for consultation in relation to the consolidation regulations.

Position of major interest groups

There were 16 submissions to the Exposure Draft. Importantly, the Commonwealth Ombudsman raised concerns about increasing the risk of compromising taxpayers' TFNs:

This proposed extended use of TFNs by superannuation trustees will reinforce the need for strong oversight and effective systems to ensure the integrity and security of TFNs in the superannuation industry as well as the ATO.

...

The potential benefits to the superannuation industry and their clients from the extended use of TFNs should be balanced with the need for strong governance policies, process and procedures and an equally robust complaints mechanism.¹⁷

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14. B Shorten (Assistant Treasurer), 'Attachment – Government response', *Stronger Super*, Commonwealth of Australia, 2010, p. 15, viewed 6 May 2011, http://strongersuper.treasury.gov.au/content/publications/government_response/downloads/Stronger_Super.pdf
 15. J Cooper and others, *Super System review: final report*, Chapter 9, SuperStream, 30 June 2010, p. 292, viewed 6 May 2011, http://www.supersystemreview.gov.au/content/downloads/final_report/part_two/Part_2_Chapter_9.pdf
 16. The Treasury, 'Exposure Draft – Using tax file numbers as an identifier and to facilitate account consolidation', Stronger Super website, viewed 6 May 2011, http://strongersuper.treasury.gov.au/content/Content.aspx?doc=consultations/tfn_account_consolidation/default.htm
 17. A Asher (Commonwealth Ombudsman), *Response to exposure draft: Stronger Super: using tax file numbers as an identifier and to facilitate account consolidation*, submission to the StrongerSuper exposure draft consultation, 18 February 2011, viewed 6 May 2011, http://strongersuper.treasury.gov.au/content/consultations/tfn_account_consolidation/downloads/submissions/Commonwealth_Ombudsman.pdf

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AMP supported the amendments, provided that a member's consent is necessary before consolidation. AMP also mentioned that there may need to be some consideration of how the amendments interact with the Privacy Act, the *Taxation Administration Act 1953* (TAA 1953) and the *Corporations Act 2001*.¹⁸

The Office of the Australian Information Commissioner also recommended that the amendments should take into account the interaction between the use of TFNs and the National Privacy Principles.¹⁹

ASFA supports the amendments, although it considers that further thought should be given as to whether the arrangement should be an 'opt out' scheme, rather than an 'opt in' scheme, and whether enhancements could be made to communication between the ATO and superannuation funds regarding verification of TFNs.²⁰

Key provisions

Part 1—Amendments commencing on 1 July 2011

Currently, TFNs may only be used by a RSA provider or a trustee of a superannuation fund to locate member balances only if other methods have failed to locate such amounts or to confirm amounts identified by the use of other methods, such as using account or membership numbers.

The amendments proposed in **Part 1** of **Schedule 3** will enable RSA providers and superannuation fund trustees to use TFNs to locate member balances without the need to use other methods first.

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18. A Kinloch (Director of Government Affairs, AMP), *Re: Exposure Draft – Tax Laws Amendment (2011 Measures No. 2) Bill 2011: use of TFNs for superannuation purposes*, submission to the StrongerSuper exposure draft consultation, AMP, 17 February 2011, viewed 6 May 2011, http://strongersuper.treasury.gov.au/content/consultations/tfn_account_consolidation/downloads/submissions/AMP.pdf
 19. Office of the Australian Information Commissioner (OAIC), *Exposure Draft – Using tax file numbers as an identifier and to facilitate account consolidation*, submission to the StrongerSuper exposure draft consultation, February 2011, viewed 6 May 2011, http://strongersuper.treasury.gov.au/content/consultations/tfn_account_consolidation/downloads/submissions/OAIC.pdf
 20. D Graus (General Manager, Policy and Industry Practice, ASFA), *Re: Exposure draft Tax Laws Amendment (2011 Measures No. 2) Bill 2011: use of TFNs for superannuation purposes*, submission to the StrongerSuper exposure draft consultation, ASFA, 17 February 2011, viewed 6 May 2011, http://strongersuper.treasury.gov.au/content/consultations/tfn_account_consolidation/downloads/submissions/ASFA.pdf

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Amendments to the *Retirement Savings Accounts Act 1997*

Subsection 137(1) of the RSA Act refers to TFNs held by a RSA provider where those TFNs have been quoted by a holder or a person applying to be a holder of an RSA account in connection with the operation or future operation of the RSA Act and certain specified superannuation Acts.

Subsection 137(4) provides that an RSA provider may use TFNs quoted to it under subsection 137(1) to locate in the records of the RSA provider amounts held in the RSAs provided by it. Subsection 137(4) is subject to the provisions of subsection 137(5).

Subsection 137(5) states that if an RSA provider needs to identify the RSAs held by a particular person with the RSA provider:

- (a) the RSA provider must use information, other than tax file numbers, to identify the RSAs and
- (b) the RSA provider may only use the TFN quoted by the RSA provider if the use of other methods have failed.

Item 1 of Schedule 3 repeals subsections 137(4) and (5) and inserts **proposed section 137A** to provide enhanced use of TFNs to locate multiple accounts of RSA holders.

Proposed subsection 137A(2) provides that an RSA provider may, subject to any conditions contained in regulations, use TFNs to locate in the records of the RSA provider all funds that an account holder has in multiple accounts held with the same RSA provider.

Amendments to the SIS Act

Item 12 of Part 1 of Schedule 3 similarly inserts **proposed section 299LA** into the SIS Act to mirror the changes proposed by **proposed section 137A(2)** to the RSA Act to facilitate the location of multiple accounts of beneficiaries of superannuation funds.

Part 2—Amendments commencing on Proclamation

Currently, TFNs cannot be used in the first instance by RSA providers and trustees of superannuation funds to consolidate member balances. The amendments in **Part 2 of Schedule 3** will enable RSA providers and superannuation fund trustees to use TFNs to locate amounts held in accounts and consolidate balances in the first instance.

Amendments to the RSA Act

Item 16 of Schedule 3 repeals **subsection 137A(2)** of the RSA Act (which is to be inserted by **Item 2 of Schedule 3** and commence on 1 July 2011) and substitutes a revised version of **subsection**

137A(2) in its place. The revised version will commence on the later of 1 July 2011 or a date to be fixed by proclamation (occurring on or before 1 January 2012).²¹ The revised version of **subsection 137A(2)** provides that an RSA provider may, subject to conditions contained in regulations, use TFNs in the following circumstances:

- (a) to locate, in the records or accounts of the RSA provider, amounts held in RSAs provided by it or
- (b) to facilitate the consolidation of any of the following in relation to a particular person, namely:
 - (i) the RSAs provided by one or more RSA providers and held by the person or
 - (ii) interests of the person in eligible superannuation entities or regulated exempt public sector superannuation schemes.

Proposed subsection 137A(2A), which is also inserted by **item 16** of **Schedule 3**, states that regulations made for the purpose of **proposed subsection 137A(2)** may contain conditions relating to:

- (a) a person consenting to the use of a TFN
- (b) procedures to be followed in a consolidation including procedures to safeguard the integrity of the consolidation or
- (c) the disclosure by one RSA provider of a TFN to another RSA provider, or to a trustee of an eligible superannuation entity or a regulated exempt public sector superannuation scheme.
- (d) Paragraph 3.25 of the Explanatory Memorandum adds that the details of the regulations will be finalised following consultation with relevant stakeholders.

The reason for the two different versions of **proposed subsection 137A(2)** is to allow sufficient time for the making of regulations, under **proposed subsection 137A(2A)**, setting out the conditions to which RSA providers will be subject in using TFNs.

Amendments to the SIS Act

Item 17 in **Part 2** of **Schedule 3** similarly repeals subsection 299LA(2) and inserts **proposed subsection 299LA(2)** and **proposed subsection 299LA(2A)** into the SIS Act to mirror the changes proposed by **proposed section 137A(2)** and **137A(2A)** to the RSA Act to facilitate the location of multiple accounts of beneficiaries of superannuation funds and the consolidation of member accounts.

21. See item 7 of the Table in clause 2 of the Bill.

Financial impact

According to the Explanatory Memorandum (page 5), this measure will have no financial impact.

Commencement and application

Item 6 in the table in **clause 2** of the Bill states that the amendments made by **Part 1** of **Schedule 3** will commence on 1 July 2011. The effect of **item 13** of **Schedule 3** is that the amendments made by **Part 1** apply to the use of TFNs on or after 1 July 2011, regardless of whether the TFNs were quoted before or after 1 July 2011.

Item 7 in the table in **clause 2** of the Bill states that the amendments made by **Part 2** of **Schedule 3** will commence at the later of:

- (a) immediately after the commencement of the provisions in **Part 1** of **Schedule 3** (that is, 1 July 2011) and
- (b) the start of a single day to be fixed by Proclamation.

However, if any of the provision(s) do not commence before 1 January 2012, they commence on that day.

The effect of **item 18** of **Schedule 3** is that the amendments made by **Part 2** apply to the use of TFNs on or after 1 July 2011, whether the TFNs were quoted before or after 1 July 2011.

Schedule 4—GST: payments of taxes, fees and charges

Background

In the 2010–2011 Budget handed down on 11 May 2010, the Rudd Government announced that a principles-based legislative exemption would replace the current provision in Division 81 of the *New Tax System (Goods and Services Tax) Act 1999* (the GST Act) for ensuring the exemption of Australian taxes, fees and charges from GST.²²

22. Australian Government, 'Part 1: revenue measures', *Budget measures: Budget paper no. 2: 2010–11*, Commonwealth of Australia, Canberra, 2010, p. 25, viewed 6 May 2011, http://cache.treasury.gov.au/budget/2010-11/content/bp2/download/bp2_revenue.pdf

The exemption of Australian taxes, fees and charges from GST was part of the *Intergovernmental Agreement on the Reform of the Commonwealth–State Financial Relations* between the Commonwealth and the states and territories on the introduction of the GST.²³

Currently, subsection 81-5(2) of the GST Act requires the Treasurer to specify by a Determination, which is a legislative instrument, that the payment, or the discharging of any liability to make a payment, of any Australian tax, fee or charge is not the ‘provision of consideration’ for a taxable supply under the GST Act. This exemption covers all Australian Government and state and territory Government taxes, fees and charges listed in the Determination.

The Determination is made twice a year to include all Australian Government and state and territory taxes, fees and charges, and has grown to over 680 pages. The amendments in **Schedule 4** will replace the requirement to list exempt taxes, fees and charges with a system whereby Australian Government agencies will have to self-assess the GST treatment of taxes, fees and charges.

The current Determination is the A New Tax System (Goods and Services Tax) (Exempt Taxes, Fees and Charges) Determination 2011 (No. 1).²⁴

Key provisions

Item 2 of Schedule 4 repeals Division 81 of the GST Act and substitutes **proposed Division 81**.

Proposed Division 81 introduces a self-assessment regime under which entities will self-assess the GST treatment of a payment of an Australian tax, fee or charge in accordance with certain principles.

Proposed subsection 81-5(1) states that the payment of, or the discharging of a liability to make a payment of, an Australian tax is not the ‘provision of consideration’. In consequence, such a payment will not be subject to GST. However, **proposed subsection 81-5(2)** provides for regulations to prescribe certain payments of Australian tax as the provision of consideration for GST. **Proposed subsection 81-5(3)** provides that for the purposes of **proposed subsection 81-5(2)** the consideration is taken to be provided to the entity to which the tax is payable, for a supply that the entity makes to the payer.

Similarly **proposed subsection 81-10(2)** provides for regulations to prescribe certain payments of Australian fees and charges as the provision of consideration for GST. **Proposed subsection 81-10(3)** provides that for the purposes of **proposed subsection 81-10(2)** the consideration is taken to be provided to the entity to which the fee or charge is payable, for a supply that the entity makes to the payer.

23. Council of Australian Governments (COAG), ‘Intergovernmental agreement on the reform of Commonwealth-State financial relations’, COAG website, viewed 6 May 2011,

http://www.coag.gov.au/intergov_agreements/docs/reform_of_comm-state_financial_relations.cfm

24. The current Determination is available at: <http://www.comlaw.gov.au/Details/F2010L03352> (viewed 6 May 2011).

The Assistant Treasurer released draft regulations of those referred to in **proposed subsection 81-5(2)** and **proposed subsection 81-10(2)** on 19 April 2011. Submissions close on 17 May 2011.²⁵ The draft regulations list the following fees and charges as those which constitute the provision of consideration and therefore attract GST:

- (a) a fee for parking a motor vehicle in a ticketed or metered parking space
- (b) a toll for driving a motor vehicle on a road
- (c) a fee for transporting a motor vehicle on a car ferry
- (d) a fee for hire, use of, or entry to a facility, except for an entry fee to a national park
- (e) a fee for the use of waste disposal facilities
- (f) a fee for pre-lodgment advice if:
 - (i) the advice relates to an application to which subsection 81-10 (4) of the Act applies, and
 - (ii) it is not compulsory to seek the advice
- (g) a fee for the sale of maps and related products and
- (h) a subscription fee for access to a database.

Schedule 4 also states that certain types of fees and charges will be exempt from GST including:

- a fee or charge that relates to the provision, retention or amendment of a permission, exemption, authority or licence (**proposed subsection 81-10(4)**)
- a fee or charge paid to an Australian government agency for the agency recording, copying, modifying, allowing access to, receiving, processing or searching for information (**proposed subsection 81-10(5)**) and
- any other fee or charge prescribed by the regulations (**proposed section 81-15**).

The regulations will be made through the procedures agreed to by the Commonwealth and the states and territories under the *A New Tax System (Managing the GST Rate and Base) Act 1999*.²⁶

Item 5 of Schedule 4 inserts the term '*Australian fee or charge*' into section 195-1 of the GST Act and defines it to mean 'a fee or charge (however described), other than an Australian tax, imposed under an Australian law and payable to an Australian government agency'.

25. The Treasury, 'Exposure Draft – Replacing the current mechanism for exempting Australian taxes, fees and charges from the GST', Treasury website, viewed 6 May 2011,

<http://www.treasury.gov.au/contentitem.asp?NavId=037&ContentID=2012>

26. Explanatory Memorandum, p. 32.

Item 6 of Schedule 4 inserts the term ‘*Australian tax*’ into section 195-1 of the GST Act and defines it to mean ‘a tax (however described) imposed under an Australian law’. Under section 195-1 of the GST Act, ‘*Australian law*’ has the meaning given by section 995-1 of the ITAA 1997. There it is defined to mean ‘a Commonwealth law, a State law or a Territory law’.

‘Australian government agency’ is also defined in section 995-1 of the ITAA 1997 to mean ‘the Commonwealth, a State or a Territory or an authority of the Commonwealth or of a State or a Territory’.

Financial impact

According to the Explanatory Memorandum (page 5), this measure will have no financial impact.

Commencement and application

Schedule 4 commences on the day the Act receives Royal Assent, as stated in **item 8** in the table in **clause 2** of the Bill.

Sub-item 16(1) of **Schedule 4** provides that the amendments made by **Schedule 4** apply to the payment, or the discharge of a liability to make a payment, relating to an Australian tax, fee or charge imposed on or after 1 July 2011.

However, **item 16(2)** of **Schedule 4** provides that the amendments do not apply to any payment of an Australian tax, fee or charge of a kind specified by legislative instrument made for the purposes of section 81-5(2) of the GST Act (a Division 81 determination) which was immediately in force before the commencement of **Schedule 4**.

Thus, Division 81 determinations made under the existing section 81-5(2) of the GST Act will continue to have effect until 30 June 2012, despite its repeal.

Schedule 5—Other amendments

Schedule 5 to the Bill makes a number of miscellaneous amendments to tax laws to ensure that tax laws operate as intended. These changes involve:

- the correction of technical or drafting defects
- the removal of anomalies and
- addressing unintended outcomes.

The amendments were presented as an Exposure Draft on 28 January 2011 and submissions closed on 18 February 2011.²⁷ The majority of the amendments are the product of input from members of the public and tax professionals via the Tax Issues Entry System (TIES).²⁸

A comprehensive list of the amendments and their intended effects is available on pages 37–80 of the Explanatory Memorandum.

Financial impact

The Explanatory Memorandum (page 6) states that the amendment to allow the nomination of controllers of discretionary trusts for the purposes of capital gains tax small business concessions is expected to result in a small cost to revenue, with an upper bound of \$10 million per annum. The amendments are dealt with in **Part 19 of Schedule 5** to the Bill, comprising **items 91 to 105**.

The Explanatory Memorandum adds that the other amendments are expected to have nil to minimal revenue impacts.

Commencement and application

Items 9 to 23 in the table in **clause 2** of the Bill give various dates of commencement for the amendments proposed in the various parts and items of **Schedule 5**.

27. The Treasury, 'Exposure Draft –Minor amendments to tax laws', Treasury website, 28 January 2011, viewed 6 May 2011, <http://www.treasury.gov.au/contentitem.asp?NavId=&ContentID=1952>

28. Australian Government, 'Making the tax system work better for everyone', Tax Issues Entry System website, 2008, viewed 6 May 2011, <http://www.ties.gov.au/default.asp?sid=42>

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