



Tax Laws Amendment (2011 Measures No. 3) Bill 2011

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Tax Laws Amendment (2011 Measures No. 3) Bill 2011

Date introduced: 12 May 2011

House: House of Representatives

Portfolio: Treasury

Commencement: The formal provisions commence on Royal Assent. **Schedule 1** commences on 1 July 2011, and **Schedule 2** commences retrospectively on 1 July 2010 (immediately after the commencement of Schedule 1 to the *Tax Laws Amendment (Transfer of Provisions) Act 2010*).

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

The Bill has two unrelated purposes.

First, it amends the *A New Tax System (Goods and Services Tax) Act 1999* (the GST Act) to make the supply of a new recreational boat GST-free if the supplier or recipient exports the boat from Australia within 12 months of payment (or delivery) and the supply meets certain conditions.¹

Second, the Bill amends the *Income Tax (Transitional Provisions) Act 1997* (the Transitional Provisions Act) to allow the ongoing imposition of the general interest charge (or GIC) on unpaid income tax and associated liabilities.²

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1. Note that, somewhat inexplicably, both Craig Thompson, MP and Sharon Bird, MP referred to this measure at length in their second reading speeches for the Tax Laws Amendment (2011 Measures No. 2) Bill 2011. They referred to the measure as being 'Schedule 5' to that Bill, when in fact Schedule 5 to the Tax Laws Amendment (2011 Measures No. 2) Bill 2011 makes a number of minor technical amendments to a range of tax and superannuation laws and does not deal at all with recreational boats. See C Thompson, MP, 'Second reading speech: Tax Laws Amendment (2011 Measures No. 2) Bill 2011', House of Representatives, *Debates*, 11 May 2011, p. 157, viewed 18 May 2011, <http://www.aph.gov.au/hansard/reps/dailys/dr110511.pdf> and S Bird, MP, 'Second reading speech: Tax Laws Amendment (2011 Measures No. 2) Bill 2011', House of Representatives, *Debates*, 11 May 2011, p. 160, viewed 18 May 2011, <http://www.aph.gov.au/hansard/reps/dailys/dr110511.pdf>
 2. The 'general interest charge' (GIC) is a uniform interest charge imposed by the Commissioner of Taxation (the Commissioner) where a tax debt (including liabilities for income tax, notional amounts nominated by the Australian Taxation Office (ATO) and penalties on these amounts) is not paid on time. A person is only liable to pay the charge if a provision of an Act makes the person liable. It is calculated on a compounding daily basis. Subsection 8AAD(1) of the *Taxation Administration Act 1953* (the TAA 1953) defines the GIC rate for a day as 'the rate worked out by adding

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

Background and key provisions

Schedule 1—12-month export period for the GST-free supply of new recreational boats

Currently, in order for the supply of a boat to be GST-free, the purchaser must export the boat from Australia within 60 days (or such longer period as the Commissioner allows) of paying any part of the final instalment (if paying by instalments), or the issuing of an invoice for that payment, or the delivery of the boat (whichever occurs first).³

However, **Schedule 1** to the Bill extends the period in which the boat must be exported from 60 days to 12 months, apparently to overcome ‘a geographic disadvantage Australian boat builders face when competing in overseas markets’, but presumably for economic reasons too.⁴ The amendment means that a purchaser has a longer period in which to undertake any desired post-purchase customisation of the boat, and also allows him or her a greater opportunity to become more familiar with the boat (and perhaps develop greater sailing skills) within Australian waters, before exporting the boat.⁵ As is already the situation at present, the Commissioner may allow an extension of the 12-month period at his discretion.⁶ For example, if the crew becomes seriously ill or the boat is accidentally damaged and needs repair.

The supply will only be GST-free when certain conditions are met. First, the contract to supply the boat must be entered into on or after 1 July 2011 (and must not be made pursuant to rights or options granted before that date).⁷ Second, the boat must be a ‘*new recreational boat*’, which is defined in **proposed subsection 38–185(5)** of the GST Act to mean that the boat:

- must not have been substantially reconstructed⁸

7 percentage points to the base interest rate for that day, and dividing that total by the number of days in the calendar year’. For further details about the GIC, see Part IIA of the TAA 1953 at http://www.austlii.edu.au/au/legis/cth/consol_act/taa1953269/ (viewed 18 May 2011) and ATO, *General interest charge - fact sheet*, ATO website, 17 December 2008, viewed 18 May 2011, <http://www.ato.gov.au/taxprofessionals/content.aspx?doc=/content/41465.htm>

3. Section 38–185 of the GST Act, which is available electronically at http://www.austlii.edu.au/cgi-bin/sinodisp/au/legis/cth/consol_act/antsasta1999402/s38.185.html (viewed 18 May 2011). Currently the GST Act does not refer specifically to a ‘boat’; instead it refers only to the more generic term ‘ship’, which is defined in section 195–1 of the GST Act as ‘any vessel used in navigation, other than air navigation’.
4. B Shorten, MP (Assistant Treasurer and Minister for Financial Services and Superannuation), ‘Second reading speech: Tax Laws Amendment (2011 Measures No. 3) Bill 2011’, House of Representatives, *Debates*, 12 May 2011, p.15, viewed 18 May 2011, <http://www.aph.gov.au/hansard/reps/dailys/dr120511.pdf>
5. *Ibid.*
6. **Proposed condition (b)** in relation to **proposed table item 4A** in existing subsection 38–185(1) of the GST Act. See **item 1** of **Schedule 1** to the Bill.
7. See **item 4** of **Schedule 1** to the Bill, which sets out when the amendments made by Schedule 1 apply.
8. For example, a second-hand boat that is simply remodelled or renovated will not qualify as a ‘new recreational boat’.

- must not have been sold, leased or used since the completion of construction (except, essentially, for delivery to a dealer or where the boat has otherwise been used as trading stock)
- must be designed and fitted out principally for private recreational purposes, and
- must not be a commercial ship.⁹

The supply will not be GST-free if (apart from the supplier using the boat in connection with the supply to the recipient) the boat is used:

- as security for the performance of an obligation unrelated to the acquisition of the boat
- in carrying on an enterprise in Australia
- in Australia in carrying on an enterprise outside Australia (except where the ship is used in a way that is private or domestic in nature or in an activity that is done as a private recreational pursuit or hobby), or
- for consideration (unless the consideration involves the provision of services by an employee of an enterprise carried on by the recipient outside Australia, or is offered as a prize for competing in a race or other sporting event).¹⁰

For example, the supply will be GST-free even if the supplier uses the boat as security for the purchase of the boat. However, the supply will not be GST-free if he or she uses it as security for any other loan or mortgage. The supply will also not be GST-free if the supplier lends the boat to a third party (such as scuba diving instructor) who uses the boat to ferry passengers as part of his or her scuba diving business. Further, the supply will not be GST-free if the purchaser sells the boat for consideration during the 12-month export period.

Public consultation

The measure was announced in the 2010–11 Budget, when the Rudd Government said:

The Government will allow eligible supplies of boats used for recreational purposes to be GST-free if the boats are exported from Australia within 12 months, with effect from 1 July 2011. The current limit is 60 days.

Further details of the measure will be determined after consultation. This measure will have an ongoing unquantifiable revenue impact and an ongoing unquantifiable impact on GST payments to the States and Territories.

The measure is subject to the unanimous agreement of the States and Territories.¹¹

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9. See **item 2 of Schedule 1** to the Bill. The Explanatory Memorandum for the Bill states (at pp. 10–11) that a boat ‘that is constructed and fitted out for large scale commercial fishing (a fishing trawler with the capability of storing large volumes of fish and with other related processing facilities)’ would be regarded as a commercial ship, even if it has ‘elaborate sleeping quarters and a designer galley included to enhance crew comfort’.
 10. **Proposed subsection 38–185(6)** of the GST Act. The term ‘*consideration*’ is defined in section 9–15 of the GST Act and essentially means a payment, act or ‘forbearance’ (that is, an agreement to do, or refrain from doing something, such as foreclosing on a mortgage) in relation to the supply of a good or service.

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On 20 October 2010, the Gillard Government released a consultation paper on the implementation and proposed design of the measure for public comment.¹² Submissions closed on 16 November 2010. It is not clear how many persons or organisations commented on the paper, or indeed what the content of their submissions is, because the Treasury has not yet made any of the submissions available to the public.

On 1 February 2011, the Treasury released an exposure draft of the Bill for public comment.¹³ Submissions closed on 18 February 2011. It is not clear how many persons or organisations commented on the exposure draft, because the Treasury has not yet made any of the submissions available to the public. Nonetheless, it seems that the Law Council of Australia (the Law Council) made a submission, which it has made available to the public on its own website.¹⁴ Among other things, the Law Council raised concerns about whether the proposed definition of the term '*new Australian-made recreational boat*' was too narrowly drafted.¹⁵ It particularly suggested that the phrase 'has not been renovated since the completion of its construction' (being one of the proposed criteria for a boat to meet the definition of '*new Australian-made recreational boat*') needed to be reconsidered to allow the supply to be GST-free even if the supplier undertakes a fit-out of (or modifications to) the new boat according to a purchaser's specifications after the purchase is complete.¹⁶ The Law Council also queried the logical sequence of **proposed subsections 38–185(5) and (6)**, suggesting that the order should be reversed. These suggestions have been adopted in the current Bill (apparently in response to the concerns raised by the Law Council, if not also in response to other submissions).

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11. Australian Government, *Budget measures: budget paper no. 2: 2010–11*, Commonwealth of Australia, Canberra, 2010, p. 26, viewed 18 May 2011, http://cache.treasury.gov.au/budget/2010-11/content/bp2/download/bp2_v2.pdf
 12. Treasury, *Consultation Paper - GST free supply of boats used for recreational purposes when exported within 12 months of supply*, Treasury website, 20 October 2011, viewed 18 May 2011, <http://www.treasury.gov.au/contentitem.asp?Navid=037&ContentID=1889> An electronic copy of the consultation paper is also available at http://www.treasury.gov.au/documents/1889/PDF/20101019_GST_free_supply_boats_recreational_purposes.pdf (viewed 18 May 2011).
 13. Treasury, *Exposure Draft - GST-free export of boats*, Treasury website, 1 February 2011, viewed 18 May 2011, <http://www.treasury.gov.au/contentitem.asp?ContentID=1946&NavID=037> An electronic copy of the exposure draft is also available at http://www.treasury.gov.au/documents/1946/PDF/Exposure_draft_legislation_gst_free_export_boats.pdf (viewed 18 May 2011).
 14. Law Council of Australia, 'Export of new recreational boats – comments on Exposure Draft', Submission to the Treasury, 18 February 2011, viewed 18 May 2011, http://www.lawcouncil.asn.au/shadomx/apps/fms/fmsdownload.cfm?file_uid=45ABE147-F79A-92A7-A2AF-BB629A54E44C&siteName=lca
 15. This term does not appear in the current Bill, having been replaced with the term '*new recreational boat*' (see **proposed subsection 38–185(5)**, which is to be inserted by **item 2** of **Schedule 1** to the current Bill.)
 16. Law Council of Australia, 'Export of new recreational boats – comments on Exposure Draft', op. cit.

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Schedule 2—General interest charge

As mentioned earlier in this Digest, the ‘*general interest charge*’ (GIC) is a uniform interest charge imposed by the Commissioner of Taxation (the Commissioner) where a tax debt (including liabilities for income tax, notional amounts nominated by the ATO and penalties on these amounts) is not paid on time. A person is only liable to pay the charge if a provision of an Act makes the person liable. It is calculated on a compounding daily basis.¹⁷

Schedule 2 amends the Transitional Provisions Act to correct a technical defect that prevents the ongoing imposition of the GIC on income tax and shortfall interest charge (SIC) liabilities due on or after 1 July 2010 that relate to financial years ending on 30 June 2010 or earlier. As the Minister’s second reading speech explains, the amendment ‘ensures that all unpaid amounts of income tax and shortfall interest charge will be treated equally under the law and that the Commissioner’s ability to collect the general interest charge will remain uninterrupted’.¹⁸ Following the amendments, the GIC will apply to all unpaid income tax and shortfall interest charge liabilities, regardless of the financial year to which the liability relates or the date when the liability is due for payment.¹⁹

The amendments will apply from 1 July 2010, which is the date when the transfer of the GIC rules from the *Income Tax Assessment Act 1936* to the *Income Tax Assessment Act 1997* took effect.²⁰

The amendments in **Schedule 2** were announced as part of the 2011–12 Budget.²¹

Committee consideration

At the time of writing, the Bill has not been referred to any committee. However, given that Schedule 2 is to operate retrospectively, it is likely (as a matter of routine) that the Bill will be considered by the Senate Scrutiny of Bills Committee.

17. See footnote 2.

18. B Shorten, MP (Assistant Treasurer and Minister for Financial Services and Superannuation), ‘Second reading speech’, op. cit.

19. **Proposed section 5–15** of the Transitional Provisions Act, as inserted by **item 3** of **Schedule 2** to the Bill.

20. See item 3 in the table in **clause 2** of the Bill. See also items 2 and 3 of Schedule 1 to the *Tax Laws Amendment (Transfer of Provisions) Act 2010* (being Act no. 79 of 2010), which is available electronically at http://www.austlii.edu.au/au/legis/cth/num_act/tlaopa2010452.txt (viewed 18 May 2011). Schedule 1 to that Act commenced on 1 July 2010: see section 2 of that Act.

21. Australian Government, *Budget measures: budget paper no. 2: 2011–12*, Commonwealth of Australia, Canberra, 2011, p. 24, <http://www.aph.gov.au/budget/2011-12/content/download/bp2.pdf>

Financial implications

The Explanatory Memorandum for the Bill states that a reliable estimate of the financial impact of allowing the GST-free supply of new recreational boats 'cannot be provided' but is expected to be small.²² It also states that the financial impact of the amendments in **Schedule 2** relating to the ongoing imposition of the GIC is nil.²³

22. Explanatory Memorandum, Tax Laws Amendment (2011 Measures No. 3) Bill 2011, p. 3.

23. *Ibid.*, p. 4.

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