

DRAFT EXPLANATORY MEMORANDUM

Minute No. _____ of 2012 – Assistant Treasurer

Subject - *A New Tax System (Goods and Services Tax) Act 1999*

*A New Tax System (Goods and Services Tax) Amendment Regulation
2012 (No.)*

Section 177-15 of the *A New Tax System (Goods and Services Tax) Act 1999* (the Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The purpose of the proposed Regulation is to amend the *A New Tax System (Goods and Services Tax) Regulations 1999* (the Principal Regulations) to restore access to a reduced input tax credit (RITC) for credit unions who rebrand as a bank but do not otherwise change their corporate structure.

The proposed Regulation would support the policy intent behind the Government's *Competitive and Sustainable Banking System* reforms, which included a commitment to help build a new pillar in the banking system from the combined competitive power of mutual credit unions and building societies.

As part of these reforms, the Government is supporting credit unions to rebrand as 'banks' to enhance competition in the banking sector. However, a consequence of rebranding as a bank is that the institution will no longer be regulated as a credit union by the Australian Prudential Regulation Authority (APRA). This means that it will no longer be a credit union for the purposes of the Principal Regulations and therefore lose access to the RITC provided by item 16 in the table in subregulation 70-5.02(2).

In addition to this, where a credit union with an ownership share in an aggregator (i.e. an entity owned by two or more credit unions supplying services to credit unions) rebrands as a 'bank', then all supplies made by the aggregator to another credit union will also no longer be eligible for the RITC provided by item 16. This is because the aggregator is no longer wholly owned by credit unions given one has rebranded as a bank.

Consistent with the Government's policy, it is appropriate that access to the concession be reinstated for credit unions specified in the proposed Regulation to ensure the rebranding from 'credit union' to 'bank' does not carry disincentives in relation to GST concessions.

The proposed amendment to the Principal Regulations would broaden the definition of credit unions. It would include those listed on the APRA website as a credit union at 1 July 2011, who have already rebranded as a 'bank', while maintaining their mutuality, would have their access to the RITC concession reinstated. Those listed as a credit union at 1 July 2011 that rebranded between that date and the commencement of the Regulation will have their access to this concession restored.

The Regulation would have retrospective effect from 1 July 2011. This would ensure that credit unions who have already rebranded would be eligible to seek to recover the RITCs previously denied.

Paragraphs (a) and (c) reflect the current definition of credit union. Paragraph (b) extends the definition to also include Australian authorised deposit-taking institutions (ADIs) listed as Australian-owned banks that satisfy a three element test.

Firstly, the Australian ADI must have been listed on the APRA website as a credit union on or before 1 July 2011.

Secondly, the bank (which was previously a credit union) must retain its mutual structure. The Australian Securities and Investments Commission's Regulatory Guide 147 provides assistance in determining a company's mutuality.

Thirdly, the bank must have been listed as a credit union on the APRA website at all times in the period between 1 July 2011 and the time it was listed on the APRA website as an Australian-owned bank.

The Regulation would ensure that the RITC concession is retained for any institution listed on the APRA website at 1 July 2011 as a 'credit union' which subsequently rebrands as a 'bank'.

Examples of how the new definition would operate are set out in the Attachment.

The Act specifies no conditions that need to be met before the power to make the proposed Regulation may be exercised.

The proposed Regulation would be a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The proposed Regulation would be taken to have commenced from 1 July 2011.

The Minute recommends that the Regulation be made in the form proposed.

Authority:

Section 177-15 of the
*A New Tax System (Goods and
Services Tax) Act 1999*

Details of the proposed A New Tax System (Goods and Services Tax) Amendment Regulation 2012 (No.)

Regulation 1 – Name of Regulation

This proposed section would provide that the name of the Regulation is the *A New Tax System (Goods and Services Tax) Amendment Regulation 2012 (No.)*.

Regulation 2 – Commencement

This proposed section would provide that the Regulation commence on 1 July 2012.

Regulation 3 – Amendment of A New Tax System (Goods and Services Tax) Regulations 1999

This proposed section would provide that the Regulation amend the *A New Tax System (Goods and Services Tax) Regulations 1999* (the Principal Regulations).

SCHEDULE 1 – AMENDMENTS

Example 1: existing credit union rebranding as a bank after 1 July 2011

Alligator Aggregator is wholly owned by Bandicoots Credit Union, Caterpillar Credit Union and Chameleon Credit Union. Alligator makes taxable supplies of a number of services, including data processing and IT services to credit unions.

Under the existing Regulations, the acquisition of these services by Bandicoots, Caterpillar and Chameleon are reduced credit acquisitions (RCA) under item 16 of the table in subregulation 70-5.02(2) which give rise to an entitlement to a reduced input tax credit (RITC).

On 3 August 2011, APRA approves Bandicoots Credit Union's application to rebrand as Bandicoots Bank. Bandicoots does not change its ownership structure, and its members remain the only shareholders.

Following APRA's approval, Bandicoots is removed from the list of credit unions regulated by APRA, and is added to the list of Australian owned banks regulated by APRA.

As a result, from 3 August 2011, Bandicoots is no longer a credit union for the purposes of item 16 and cannot claim any RITCs for acquisitions under that item. Any acquisitions made from Alligator Aggregator by Caterpillar and Chameleon will also no longer be a RCA under item 16 because Alligator is no longer wholly owned by credit unions.

To the extent that the acquisitions are covered by another RCA item, RITCs may still be claimed.

Bandicoots does not claim any RITCs for acquisitions made from Alligator on its GST return for the quarterly tax period ending 30 September 2011, or any tax periods after that.

Once the amendments come into effect, Bandicoots will satisfy the definition of credit union for the purposes of item 16. This means that Bandicoots can either amend its GST returns or assessments (as applicable) for the relevant past tax periods to take into account the RITCs, or defer the RITCs to the GST return for the next tax period (provided that this is within the time limits for claiming credits under Division 93 of the Act and section 105-55 in Schedule 1 to the *Taxation Administration Act 1953* (TAA 1953), and the period of review in Division 155 in Schedule 1 to the TAA 1953).

This will also restore Alligator's position as an entity that is wholly owned by credit unions, and Caterpillar and Chameleon can also amend their GST returns or assessments for prior tax periods, or defer these credits to the current tax periods (within the time limits specified in the GST law).

Example 2: credit union created after 1 July 2011 rebranding as a bank

DMC aggregator is wholly owned by GRP credit union and CGC credit union, all of which formed on 1 February 2012. On the same day, APRA lists GRP and CGC on its website as credit unions. On 15 August 2012, GRP elects to rebrand from 'credit union' to 'bank' for commercial and competition reasons yet it retains its mutuality. CGC retains its name and listing on APRA's website as a credit union.

During their first six months, GRP and CGC were provided supplies of IT services from DMC. Under the existing Regulations, the acquisition of these services by GRP and CGC are reduced credit acquisitions (RCA) under item 16 of the table in subregulation 70-5.02(2) which give rise to an entitlement to a reduced input tax credit (RITC).

GRP and CGC were both entitled to the RITC concession for the services DMC provided up until 15 August 2012. However, upon rebranding, GRP will no longer be eligible for the concession. This is because after 15 August 2012, GRP will not satisfy the extended definition of credit union to be able to claim the RITC at item 16 as GRP is no longer a credit union (paragraph (a)), was not listed as a credit union on APRA's website at 1 July 2011 (paragraph (b)(i)), and is not the credit union specified at paragraph (c).

Any acquisitions made from DMC will also no longer be a RCA under item 16 because DMC is no longer wholly owned by credit unions.

To the extent that acquisitions from DMC are covered by another RCA item, RITCs may still be claimed for those acquisitions.