

# Allowing small businesses in a net refund position to access the GST instalment system

Consultation Paper  
7 June 2011

© Commonwealth of Australia 2011

ISBN 978-0-642-47413-6

### **Ownership of intellectual property rights in this publication**

Unless otherwise noted, copyright (and any other intellectual property rights, if any) in this publication is owned by the Commonwealth of Australia (referred to below as the Commonwealth).

### **Creative Commons licence**

This publication is licensed under a Creative Commons Attribution 3.0 Australia Licence.



Creative Commons Attribution 3.0 Australia Licence is a standard form licence agreement that allows you to copy, distribute, transmit and adapt this publication provided that you attribute the work. A summary of the licence terms is available from

<http://creativecommons.org/licenses/by/3.0/au/deed.en>. The full licence terms are available from <http://creativecommons.org/licenses/by/3.0/au/legalcode>.

The Commonwealth's preference is that you attribute this publication (and any material sourced from it) using the following wording:

*Source: Licensed from the Commonwealth of Australia under a Creative Commons Attribution 3.0 Australia Licence.*

*The Commonwealth of Australia does not necessarily endorse the content of this publication.*

## CONSULTATION PROCESS

### REQUEST FOR FEEDBACK AND COMMENTS

The Treasury is seeking your feedback and comments on the detailed design of a measure to amend the GST law to ensure it achieves the intended policy objective in relation to the GST instalment system and small businesses in a net refund position.

While submissions may be lodged electronically or by post, electronic lodgement is preferred. For accessibility reasons, please email responses in a Word or RTF format. An additional PDF version may also be submitted.

All information (including name and address details) contained in submissions will be made available to the public on the Treasury website, unless you indicate that you would like all or part of your submission to remain in-confidence. Automatically generated confidentiality statements in emails do not suffice for this purpose. Respondents who would like part of their submission to remain in-confidence should provide this information marked as such in a separate attachment. A request made under the *Freedom of Information Act 1982* (Commonwealth) for a submission marked 'confidential' to be made available will be determined in accordance with that Act.

### Closing date for submissions: 6 July 2011

Email: [gstpolicyconsultations@treasury.gov.au](mailto:gstpolicyconsultations@treasury.gov.au)

Mail: The General Manager  
Indirect Tax Division  
The Treasury  
Langton Crescent  
PARKES ACT 2600

Enquiries: Enquiries can be initially directed to Mr Richard Cook

Phone: 02 6263 3337



# CONTENTS

- CONSULTATION PROCESS ..... III**
  - Request for feedback and comments ..... iii
  
- INTRODUCTION AND OVERVIEW .....1**
  - Operation of the current law.....1
  - Government decision .....2
  - Proposal.....2



## INTRODUCTION AND OVERVIEW

1. The GST instalment system, contained in Division 162 of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act), was introduced to make it easier for small businesses to meet their tax reporting requirements.
2. The law allows an eligible entity (annual GST turnover <\$2million) to choose to pay GST by quarterly instalments worked out by the Australian Taxation Office (ATO) or an alternative amount nominated by the taxpayer. The taxpayer then lodges an annual GST return in which they account for any difference between the actual GST liability and the total GST instalments made for the year.
3. Currently, the GST legislation excludes a business from the GST instalments system if that business is in a net refund position. That is, the business is entitled to receive more input tax credits on its purchases than it is required to pay GST on its sales.
4. The Government will amend the GST law to allow small businesses in a net refund position to choose to access the GST instalment system if they wish.
5. The policy objective is to assist those taxpayers that temporarily move into a net refund position (for example because of a one-off acquisition), and those taxpayers normally in a net refund position who consider that the compliance cost advantages of submitting their BAS annually outweigh the cash flow cost of delayed refunds.

## OPERATION OF THE CURRENT LAW

6. In general, under Division 162 of the GST Act, small businesses can lodge GST returns annually and pay instalments of estimated GST quarterly, with annual reconciliation. The instalment amounts are generally based on the previous year's GST, however this amount may be varied by the taxpayer.
7. Section 162-5 of the GST Act provides that a taxpayer may elect to use the instalments system if they satisfy all of the following requirements. The taxpayer must:
  - be a small business entity in the income year in which the election is made, or one that is not carrying on a business and has a GST turnover that does not exceed \$2 million;
  - not be required to lodge on a monthly basis and not have elected to do so;
  - have a current lodgment record of at least 4 months;
  - have lodged all previous GST returns as required; and
  - not be in a net refund position.
8. To make the election to pay GST by instalments, section 162-15 of the GST Act provides that a taxpayer must notify the Commissioner of Taxation in the approved form. In practice, a

taxpayer will be taken to have exercised this option if they complete the relevant box on the Business Activity Statement (BAS).

9. The amount of each instalment will normally be notified to the taxpayer by the Commissioner, under section 162-135 of the GST Act. This will typically be calculated as 25 per cent of the previous year's GST, adjusted by a factor that reflects changes in Gross Domestic Product.
10. Under sections 162-105 and 162-110 of the GST Act, the annual GST amount is worked out based on the annual return. Any shortfall between this and the amounts already paid must be paid by the time for lodgment of that return. If there has been an overpayment, the Commissioner must give a refund (section 35-5 of the GST Act).
11. Instead of accepting the instalment amounts notified by the Commissioner, the taxpayer has the option of varying the instalments by using estimates. The variation is made by notifying the Commissioner on or before the due date for the instalment. A series of penalties apply if the varied estimates turn out to be too low, whereas no penalties apply where an underestimate results simply from the adoption of the Commissioner's notified instalments.
12. The instalment system was introduced in 2001 to make it easier for small businesses to meet their tax reporting requirements. In 2010, concerns were raised via the Taxation Issues Entry System (TIES) that exclusion of businesses from the instalment system because they move into a net refund position may make compliance with the GST law more difficult for these businesses, which runs counter to the intention of the instalments system.

## GOVERNMENT DECISION

13. In the 2011-12 Budget the Government announced that it will extend the current GST instalment system to allow access to small businesses that are in a net refund position.

## PROPOSAL

14. The GST Act will be amended to extend access to the GST instalment system to small businesses in a net refund position by providing these businesses with an instalment amount each quarter of zero. This means that any refunds due to the tax payer (or tax liability, should their position change) will be paid annually following their annual return.
15. This outcome will be achieved by relatively minor changes to the GST legislation, specifically amending subdivision 162-A of the GST Act allowing taxpayers in a net refund position to utilise the GST instalments system. It is likely that section 162-5 of the GST Act will be amended to remove paragraph (e), which excludes taxpayers in a net refund position from eligibility to elect to pay GST by instalments. Consequential amendments to paragraph 162-30(1)(d), subsection 162-30(6) and subsection 162-5(3) will also be required to give effect to the desired policy intent.
16. The ATO has advised that this proposal would require minor changes to its systems, while no changes will be required to the Business Activity Statement (BAS).
17. It is envisaged that this proposal would benefit those taxpayers that temporarily move into a net refund position (for example: because of a one-off acquisition) and those taxpayers



normally in a net refund position who consider that the compliance cost advantages of submitting their BAS annually outweigh the cash flow cost of delayed refunds.

#### **Focus questions**

Q1: Would the proposed changes to the law described above be the most effective way to implement the proposal? Is there a more effective way of achieving the intended policy outcome?

Q2: Could the above amendments give rise to any unintended consequences?

Q3: How would this proposed amendment be best communicated within the community?

Q4: Are there any further consequential amendments required?