

EXPOSURE DRAFT

EXPOSURE DRAFT EXPLANATORY MATERIAL

A New Tax System (Goods and Services Tax) Act 1999

A New Tax System (Goods and Services Tax Transition) Act 1999

*A New Tax System (Goods and Services Tax) Amendment (Transition)
Regulations 2019*

The *A New Tax System (Goods and Services Tax Transition) Act 1999* (the GST Transition Act) sets out transitional goods and services tax (GST) rules including for long-term contracts entered into prior to the enactment of the GST. The *A New Tax System (Goods and Services Tax) Act 1999* (the GST Act) provides the administrative framework for the GST law.

Section 25 of the GST Transition Act provides that the Governor-General may make regulations prescribing matters required or permitted by the GST Transition Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the GST Transition Act. Section 177-15 of the GST Act provides that the Governor-General may make regulations prescribing matters required or permitted by the GST Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the GST Act.

The purpose of the *A New Tax System (Goods and Services Tax) Amendment (Transition) Regulations 2019* (the Amending Regulations) is to remake provisions in the *A New Tax System (Goods and Services Tax Transition) Regulations 2000* (GST Transition Regulations) that may continue to have some operation. Rather than remaking the GST Transition Regulations, the provisions which may have some further operation have been included in the *A New Tax System (Goods and Services Tax) Regulations 2019*. As a result, the Amending Regulations also repeal the GST Transition Regulations from 1 October 2019.

The *Legislation Act 2003* provides that all legislative instruments, other than exempt instruments progressively sunset according to the timetable in section 50 of that Act. Legislative instruments generally cease to have effect after 10 years (other than some transitional arrangements) unless their operation is extended such as by remaking the instrument.

The Amending Regulations prescribe a number of bodies and the members of those bodies as arbitrators for the purposes of the GST Transition Act. The Amending Regulations also prescribe other changes to Commonwealth, State and Territory laws that can only be taken into account in working out an arbitrated offer concerning price agreements to account for GST and other related tax system reforms.

The prescribed arbitrator and the prescribed additional taxes and charges that can be taken into account in determining price changes for arbitrated offers have been replicated from the GST Transition Regulations with only minor changes to numbering, notes and updating to account for name changes by prescribed arbitrator bodies.

EXPOSURE DRAFT

Further details of the Amending Regulations are set out in Attachment A.

The GST Transition Act and GST Act do not specify any conditions that need to be met before the power to make the Amending Regulations may be exercised.

The Amending Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

The Amending Regulations commence on 1 October 2019.

Details of the *A New Tax System (Goods and Services Tax) Amendment (Transition) Regulations 2019*

This attachment sets out further details of the *A New Tax System (Goods and Services Tax) Amendment (Transition) Regulations 2019* (the Amending Regulations). All references are to the Amending Regulations unless otherwise stated.

Chapter 1—Introduction

Part 1—Preliminary

Section 1 – Name of Regulations

This section provides that the title of the Regulations is the *A New Tax System (Goods and Services Tax) Amendment (Transition) Regulations 2019*.

Section 2 - Commencement

This section provides that the Amending Regulations commence on 1 October 2019.

Section 3 - Authority

This section provides that the Amending Regulations are made under the *A New Tax System (Goods and Services Tax Transition) Act 1999* (the GST Transition Act).

Section 4 - Schedules

This section provides that the instrument specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule and that any other item in the Schedule to this instrument has effect according to its terms.

Schedule 1: Amendments to the *A New Tax System (Goods and Services Tax) Regulations 2019*

Authority

Section 3 of the *A New Tax System (Goods and Services Tax) Regulations 2019* (GST Regulations) is amended to provide that, whilst the GST Regulations are made generally under the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act), the provisions included by the Amending Regulations are made under the authority of the GST Transition Act.

EXPOSURE DRAFT

Arbitrated prices for certain contracts entered into prior to GST enactment

From 1 July 2005, suppliers and recipients of supplies under long-term non-reviewable contracts entered into prior to the date of Royal Assent of the GST law were required to:

- agree to price adjustments under the contract to account for GST and tax system reforms made at a similar time to the introduction of the GST; or
- accept an arbitrated revision to the contract price.

If no agreement was reached or the arbitrated price was not accepted by the recipient of the supply under the long-term contract then the recipient became liable to pay the GST to the Australian Taxation Office rather than the supplier.

Where a long-term contract was entered into prior to the date of Royal Assent of the GST Transition Act and the full consideration was paid before this time, then supplies made under it are GST-free until the first opportunity to review the contract arises, whether this is before or after 1 July 2005.

Meaning of arbitrator

Section 220-1.01 of the GST Regulations replicates the corresponding provision in the former GST Transition Regulations to prescribe the bodies and persons belonging to those bodies that satisfy the definition of arbitrator in the GST Transition Act. These bodies and persons can arbitrate with suppliers and recipients that have entered into long-term contracts prior to the enactment of the GST.

The names of bodies that are prescribed arbitrators have been updated because of name changes to the arbitrators that were prescribed in the former GST Transition Regulations and also the merger of two of the previous bodies. The prescribed arbitrators are now the Resolution Institution, the Australian Disputes Centre and CIArb Australia. The drafting of the provision has also been updated to avoid duplication.

Meaning of new tax system changes

Sections 220-5.01 to 220-5.14 of the Amending Regulations replicate the corresponding provisions in regulations 9 to 22 of the former *A New Tax System (Goods and Services Tax Transition) Regulations 2000* (GST Transition Regulations). The sections prescribe the additional changes to relevant taxes and charges that can be taken into account in working out the arbitrated change to the price of supplies made under long-term contracts entered into prior to the enactment of the GST. The prescribed changes to taxes and charges are:

- certain tobacco excise and excise-equivalent customs duty increases (section 220-5.02);
- the introduction and imposition of luxury car tax (section 220-5.03);
- the introduction and imposition of wine equalisation tax (section 220-5.04);

EXPOSURE DRAFT

- the abolition of accommodation levy in NSW in 2000 (section 220-5.05);
- certain alcohol excise and excise-equivalent customs duty increases (section 220-5.06);
- certain petroleum excise and excise-equivalent duty increases (section 220-5.07);
- certain diesel fuel rebate changes (section 220-5.08);
- the introduction of the diesel and alternative fuels grants scheme (section 220-5.09);
- the introduction of fuel sales grants (section 220-5.10);
- wholesale sales tax equivalency payments—liability to pay abolished for certain government business enterprises (section 220-5.11);
- the abolition of Northern Territory tourism marketing duty (section 220-5.12);
- the abolition of state and territory financial institutions duty (section 220-5.13); and
- the abolition of liability to pay stamp duty on quoted marketable securities (section 220-5.14).

These sections replicate the corresponding provisions in the former GST Transition Regulations that have been remade, but with some minor formatting changes and renumbering, and updating of notes to the regulations that identify where the relevant legislation referred to in the provisions can be accessed.

Schedule 2: Repeal of the *A New Tax System (Goods and Services Tax Transition) Regulations 2000*

Schedule 2 of the Amending Regulations repeals the GST Transition Regulations effective from 1 October 2019.