1998-99

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

A NEW TAX SYSTEM (INDIRECT TAX AND CONSEQUENTIAL AMENDMENTS) BILL (NO. 2) 1999

REVISED EXPLANATORY MEMORANDUM

(Circulated by authority of the
Treasurer, the Hon Peter Costello, MP)

THIS MEMORANDUM TAKES ACCOUNT OF AMENDMENTS MADE BY THE HOUSE OF REPRESENTATIVES TO THIS BILL AS INTRODUCED

28071 Cat. No. 99 2026 X ISBN 0642 426112

Table of contents

Glossary 1

General outline and financial impact 3

Chapter 1 Amendment of the A New Tax System (Goods and Services Tax) Act 1999 13

Chapter 2 Non-profit sub-entities 47

Chapter 3 Insurance 53

Chapter 4 Amendment of the A New Tax System (Luxury Car Tax) Act 1999 67

Chapter 5 Amendment of the A New Tax System (Wine Equalisation Tax) Act 1999 69

Chapter 6 Indirect tax transition 71

Chapter 7 Commonwealth-State financial arrangements 77

Chapter 8 ABNs 79

Chapter 9 Income tax deductions for GST-related expenditure 81

Chapter 10 Diesel Fuel Rebate Scheme 91

Chapter 11 Amendments relating to international obligations 93

Chapter 12 Income tax consequences of GST 103

Chapter 13 Amendment of the Petroleum Resource Rent Tax Assessment Act 1987 107

Chapter 14 Reliance on the Commissioner's interpretation of the law 109

Chapter 15 Wool tax amendment 111

Glossary

The following abbreviations and acronyms are used throughout this Explanatory Memorandum.

Abbreviation	***Definition***
ABN	Australian Business Number
ABN Act	*A New Tax System (Australian Business Number) Act 1999*
AIA 1901	*Acts Interpretation Act 1901*
ATO	Australian Taxation Office
CGT	capital gains tax
Commissioner	Commissioner of Taxation
CP&I Act	*Consular Privileges and Immunities Act 1972*
CSFA Act	*A New Tax System (Commonwealth-State Financial Arrangements) Act 1999*
CTA 1995	*Customs Tariff Act 1995*
Customs Act	*Customs Act 1901*
DFRS Act	*Customs and Excise Amendment (Diesel Fuel Rebate Scheme) Act 1999*
DP&I Act	*Diplomatic Privileges and Immunities Act 1967*
Excise Act	*Excise Act 1901*
GIC	general interest charge
GST	goods and services tax
GST Act	*A New Tax System (Goods and Services Tax) Act 1999*
GST Transition Act	*A New Tax System (Goods and Services Tax Transition) Act 1999*
HIA 1973	*Health Insurance Act 1973*
HIV	human immunodeficiency virus
IO(P&I) Act	*International Organisations (Privileges and Immunities) Act 1963*
ITAA 1997	*Income Tax Assessment Act 1997*
LCT	luxury car tax
LCT Act	*A New Tax System (Luxury Car Tax) Act 1999*
OM(P&I) Act	*Overseas Missions (Privileges and Immunities) Act 1995*
PAYG	Pay As You Go
PRRT	Petroleum Resource Rent Tax

Abbreviation	***Definition***
PRRTAA	*Petroleum Resource Rent Tax Assessment Act 1987*
TAA 1953	*Taxation Administration Act 1953*
VAT	value added tax
WET	wine equalisation tax
WET Act	*A New Tax System (Wine Equalisation Tax) Act 1999*
WET and LCT Transition Act	*A New Tax System (Wine Equalisation Tax and Luxury Car Tax Transition) Act 1999*
WTAA 1964	*Wool Tax (Administration) Act 1964*

General outline and financial impact

Amendment of the A New Tax System (Goods and Services) Act 1999

Schedule 1 to this Bill makes a number of amendments to the GST Act. Most are minor policy and technical amendments, and include amendments to:

- ensure that payment of compensation and damages are subject to GST if the payment relates to an initial supply that is taxable;
- make it clear that contributions to mutual organisations by members are taxable where the organisation is registered or required to be registered;
- ensure that payments made from a government related entity to another government related entity are not subject to GST if the payment is specifically covered by an appropriation under an Australian law;
- clarify that the supply of a right to receive a supply that would be GST-free or input taxed will be GST-free or input taxed.
- clarify that the supply of a right to a non-resident that will be exercised in Australia is not GST-free;
- ensure that adjustments are calculated correctly when a change in creditable purpose or a bad debt occurs before an adjustment event;
- ensure that an adjustment for a bad debt will be made 12 months after a debt becomes overdue for payment rather than 12 months after it becomes owing;
- ensure the obligation to issue an adjustment note arises only if a tax invoice has been issued or requested in relation to the supply that is the subject of the adjustment;
- ensure that supplies of HIV detection tests are GST-free;
- ensure that supplies of all authorised pre-school courses are GST-free;

- provide that the delivery of foreign postal articles in Australia on behalf of foreign postal administrations will be GST-free;
- ensure that goods returning to Australia are only non-taxable in appropriate circumstances;
- ensure that a member exiting a GST group will become responsible for adjustments relating to transactions made to entities outside the group during the time the entity was a member of the GST group and that the group's representative member will not be responsible for these adjustments;
- ensure that an entity that ceases to be a participant in a GST joint venture will become responsible for adjustments relating to supplies or acquisitions that the joint venture operator made on its behalf during the time the entity was a participant of the joint venture;
- adjust the provisions dealing with second-hand goods so that:
  - the input tax credit on second-hand goods that are divided and sold as separate items can be offset against the GST that would otherwise be payable on those supplies;
  - the input tax credit on second-hand goods acquired for $300 or less can be claimed for the tax period in which they are acquired;
  - livestock, other animals and plants are expressly excluded from the scope of the provisions; and
  - record keeping requirements are appropriately established for acquisitions from persons not registered for GST purposes;
- ensure that telecommunications services that are used or enjoyed in Australia, are subject to GST regardless of whether the supplier is in Australia or offshore;
- provide that GST is payable on a voucher with a face value at the time it is redeemed for goods or services rather than at the time the voucher is purchased;
- provide consistency with other provisions in the GST Act in relation to the transport component of the value of a taxable importation for goods that were exported from Australia for repair or renovation;

- clarify that the adjustment period when disposal, loss or destruction occurs in the same year as that in which the acquisition or importation is made is the period ending 30 June in that year;
- ensure that an adjustment for a bad debt is calculated correctly when the debt is in respect of a mixed-purpose supply or acquisition;
- ensure that an adjustment is made when taxable goods are taken from stock and applied to a private or domestic purpose;
- allow a newly registered entity to obtain a credit for GST included in the purchase price of stock held for sale or manufacture at the date they become registered;
- permit, but not require, a government entity to register for GST and allow registered government entities to group with other registered government entities;
- insert interpretative rules that will give certain terms used in Commonwealth Acts the same meaning as those defined in the GST Act; and
- make it clear that unincorporated bodies are carrying on the enterprise and not the members.

Date of effect: 1 July 2000.

Proposal announced: Not announced.

Financial impact: Negligible.

Compliance cost impact: Negligible.

Non-profit sub-entities

Amendments to the GST Act, ABN Act and TAA 1953 will allow certain non-profit entities to treat separately identifiable units of their organisations as though they are separate entities for GST purposes.

Date of effect: 1 July 2000.

Proposal announced: Treasurer's Press Release No. 73 of 29 October 1999.

Financial impact: Negligible.

Compliance cost impact: Negligible.

Insurance

Schedules 1 and 2 to this Bill also make a number of amendments to the GST Act and the GST Transition Act in relation to the treatment of general insurance, including amendments that:

- remove the insured's GST liability on settlements;
- remove the insurer's input tax credit entitlement on settlements;
- provide for insurers to have an adjustment on settlements. That adjustment being equivalent to the difference between what would have been their input tax credits and what would have been the insured's GST liability;
- remove the requirement that insureds notify the Commissioner if they wish to claim input tax credits on the acquisition of insurance policies in the first 3 years of GST;
- ensure that State stamp duties on insurance premiums are not subject to GST;
- allow prescribed statutory compensation schemes to be brought within the operation of Division 78;
- allow certain government insurance schemes to be excluded from Division 78 through regulation; and
- deny input tax credits on premiums paid for compulsory third party insurance for the first 3 years of the GST.

Date of effect: 1 July 2000.

Proposal announced: Not announced.

Financial impact: Negligible.

Compliance cost impact: These amendments are expected to reduce compliance costs.

Amendment of the A New Tax System (Luxury Car Tax) Act 1999

Schedule 1 also makes minor policy and technical amendments to the LCT Act including a change to the definition of 'car'.

Date of effect: 1 July 2000.

Proposal announced: Not announced.

Financial impact: Nil. The amendments give effect to the measures as originally intended.

Compliance cost impact: Negligible.

Amendment of the A New Tax System (Wine Equalisation Tax) Act 1999

Schedule 1 amends the WET Act to allow refunds of WET to persons who are taking wine with them out of Australia as accompanied baggage and to ensure that certain applications to own use of wine are not taxable.

Date of effect: 1 July 2000.

Proposal announced: Not announced.

Financial impact: Nil. The amendments give effect to the measures as originally intended.

Compliance cost impact: Negligible.

Indirect tax transition

Schedule 2 amends the GST Transition Act to:

- provide that the grant of a right under a voucher with a stated monetary value will not be taken to be supplied after 1 July 2000;
- ensure that the time limit for claiming the special credit for sales tax on goods held at 1 July 2000 is covered by the Commissioner's announced extension of time to lodge certain GST returns;
- clarify the situation for adjustments to the special credit claim resulting from later events which affect the amount of the claim;
- ensure that long term leases entered into between 2 December 1998 and 1 July 2000 are not subject to GST;
- ensure that the provisions relating to rights granted for life between 2 December 1998 and 1 July 2000 operate as intended;

- apply a special credit for certain alcoholic beverages held at 1 July 2000 that are not covered by the WET; and
- allow for a credit for certain petroleum products held at 1 July 2000.

Date of effect: The amendments will commence immediately after the commencement of Schedule 6 to the *A New Tax System (Indirect Tax and Consequential Amendments) Act 1999*, which is taken to commence immediately after the commencement of the GST Transition Act.

Proposal announced: Not announced.

Financial impact: Nil. The amendments give effect to the measures as originally intended.

Compliance cost impact: Negligible.

Commonwealth-State financial arrangements

Schedule 3 amends the CSFA Act to ensure that the calculation of GST revenue to be distributed to the States and Territories will include any general interest charge relating to GST and to ensure that any effect that the WET and LCT laws may have on GST revenue will not be included in the calculation.

Date of effect: The amendments will be taken to commence immediately after the commencement of the CSFA Act.

Proposal announced: Not previously announced.

Financial impact: Nil.

Compliance cost impact: Nil.

ABNs

Schedule 4 to this Bill amends the ABN Act to ensure that overseas businesses that are required to register for GST purposes are able to obtain an ABN.

Date of effect: Royal Assent.

Proposal announced: Not announced.

Financial impact: Nil.

Compliance cost impact: Negligible.

Income tax deductions for GST-related expenditure

Schedule 5 amends the ITAA 1997 to allow small and medium sized businesses an immediate income tax deduction for the cost of acquiring or upgrading plant or software to assist in:

- meeting existing or future obligations under the GST law; or
- exercising entitlements under the GST law.

To qualify for the immediate deduction the business must have an annual turnover of not more than $10 million and acquire or upgrade the plant or software during the period 1 July 1999 to 30 June 2000. The business must also be registered for GST purposes immediately before 1 July 2000.

Date of effect: The amendments will apply to plant or software that a business acquires or upgrades during the period 1 July 1999 to 30 June 2000.

Proposal announced: Treasurer's Press Release No. 51 of 19 August 1999.

Financial impact: The cost of the revenue of this measure has been estimated as $175 million for 2000-2001.

Compliance cost impact: Negligible.

Diesel Fuel Rebate Scheme

Schedule 6 amends the Customs Act, DFRS Act and Excise Act to change the reference from marine use to marine transport and set a diesel fuel rebate rate for marine and rail transport.

Date of effect: The amendments will commence immediately after the commencement of the DFRS Act, which is taken to commence immediately after the commencement of the GST Act.

Proposal announced: The expansion of the Diesel Fuel Rebate Scheme was announced by the Government on 28 May 1999.

Financial impact: The continuation of the current averaging provisions will provide savings of $60 million for 2000-2001.

Compliance cost impact: Negligible.

Amendments relating to international obligations

Schedule 7 to this Bill makes a number of amendments to the CP&I Act, the DP&I Act, the IO(P&I) Act, and the OM(P&I) Act. These include amendments to:

- ensure that Australia continues to meet its obligations in respect of taxation concessions for goods imported by diplomatic missions, consular posts, overseas missions, international organisations and their officials;
- provide for an indirect tax concession scheme for these bodies to allow Australia to provide taxation concessions for local purchases on a reciprocal basis; and
- make it clear that international organisations in Australia will not be able to register for GST purposes.

Schedule 7 also makes amendments to the GST Act, WET Act, LCT Act and TAA 1953 to ensure that following the introduction of the GST, WET and LCT, Australia meets its obligations in relation to visiting forces and other agreements.

Date of effect: 1 July 2000.

Proposal announced: Not announced.

Financial impact: Minimal. There will be a net financial gain to Australia.

Compliance cost impact: Negligible.

Income tax consequences of GST

Schedule 8 amends the ITAA 1997 to:

- apply transitional rules to exclude GST liabilities that relate to amounts derived as income before 1 July 2000 and to exclude an amount equal to input tax credits that relate to deductions incurred before 1 July 2000; and
- include amounts equal to special credits conferred by the GST Transition Act in assessable income.

Date of effect: Immediately after commencement of Schedule 3 to the *A New Tax System (Indirect Tax and Consequential Amendments) Act 1999.*

Proposal announced: Not announced.

Financial impact: Nil. The amendments reflect the intended benchmark for the income tax treatment of the relevant amounts.

Compliance cost impact: Minimal, as input tax credits will be ascertainable from documents provided by suppliers.

Amendment of the Petroleum Resource Rent Tax Assessment Act 1987

Schedule 8 will exclude GST from the tax base for calculating PRRT.

Date of effect: 1 July 2000.

Proposal announced: Not announced.

Financial impact: Nil. The amendment prevents a distortion in collections that would otherwise occur.

Compliance cost impact: Negligible. The GST component of receipts and expenditure are expected to be recorded for accounting and income tax purposes.

Reliance on the Commissioner's interpretation of the law

Schedule 8 also amends the TAA 1953 to extend the scope of rulings issued by the Commissioner on which taxpayers may rely.

Date of effect: 1 July 2000.

Proposal announced: Not announced.

Financial impact: Nil.

Compliance cost impact: Nil.

Wool tax amendment

Schedule 8 amends the WTAA 1964 to exclude GST from the tax base for calculating wool tax.

Date of effect: 1 July 2000.

Proposal announced: Not announced.

Financial impact: Nil. The amendment prevents a distortion that would otherwise occur.

***Compliance cost impact*:** Negligible. Suppliers will be aware of the GST component of sale prices as a consequence of meeting their GST obligations.

Chapter 1
Amendment of the A New Tax System (Goods and Services Tax) Act 1999

Outline of Chapter

1.1 This Chapter explains the amendments to the GST Act contained in this Bill. Most are minor policy changes and technical amendments and include amendments to:

- ensure that payments, acts or forbearance constituting compensation or damages will be treated as consideration irrespective of whether they are received in compliance with an order of a court, tribunal or other body or received from settlement out of court, tribunal or other body;
- make it clear that payments made by members of a body to that body can be consideration;
- ensure that appropriations between 'Government related entities' will not be subject to GST, and provide certainty to States and Territories with respect to the GST treatment of appropriations;
- ensure that adjustments are calculated correctly when a change in creditable purpose or a bad debt occurs before an adjustment event;
- ensure that an adjustment for a bad debt will be made 12 months after a debt becomes overdue for payment rather than 12 months after it becomes owing;
- ensure that HIV detection tests are GST-free;
- ensure that a pre-school course recognised by a State or Territory education authority, or body that has the responsibility for recognising pre-school curricula, will be GST-free;
- ensure that only the sale or long-term lease of farm land is GST-free;

- ensure that the sale of farm land is GST-free even if the entity supplying the land is different from the entity carrying on the farming business on the land;

- provide that a supply of services to a foreign postal administration will be GST-free where the services are for the delivery in Australia or transit through Australia of postal articles mailed outside Australia;

- clarify the conditions under which an importation of goods will be a non-taxable importation;

- ensure that the joint venture operator does not have to be party to the joint venture agreement;

- ensure that an entity that ceases to be a participant in a GST joint venture will become responsible for adjustments relating to supplies or acquisitions that the joint venture operator made on its behalf during the time the entity was a participant of the joint venture;

- clarify details about the valuation of improved Crown land;

- provide for an increasing adjustment where goods are applied solely to private or domestic use;

- ensure that an adjustment for a bad debt is calculated correctly when the debt is in respect of a mixed purpose supply or acquisition;

- detail rules for claiming input tax credits for newly registered entities;

- clarify the accounting rules for progressive supplies;

- attribute either a GST inclusive or a GST exclusive meaning to certain terms used in Commonwealth Acts;

- remove any doubt as to the status of supplies, acquisitions or importations made by or on behalf of a partner of a partnership in his or her capacity as a partner;

- provide that some vouchers will be subject to GST at the time of redemption;

- ensure that a supply to a non-resident that is effectively used and enjoyed in Australia is not GST-free; and

- ensure that the supply of a right to receive a supply that is GST-free or input taxed is also GST-free or input taxed.

1.2 The remainder of this Chapter explains these amendments in more detail.

Explanation of amendments

Court orders and out of court settlements

1.3 Payments, acts or forbearance constituting compensation or damages will be specifically included in the definition of consideration in the GST Act ***[item 1, new subsection 9-15(2A)]***. These payments, acts or forbearance will be treated as consideration irrespective of whether they are received in compliance with an order of a court, tribunal or other body ***[new paragraph 9-15(2A)(a)]*** or whether they are received from settlement out of court, tribunal or other body ***[new paragraph 9-15(2A)(b)]***.

1.4 Where a combined payment, act and forbearance is awarded, the combined payment, act and forbearance will be consideration. For example, where a payment of money and a right to use a certain logo is awarded, both the payment of money and right to use of the logo will be consideration.

1.5 Where the consideration relates to an underlying supply that was taxable, the consideration received will be subject to GST. An underlying supply is the subject matter of the claim of compensation or damages. If the claim relates to an enterprise carried on by a registered entity, the entity will be entitled to an input tax credit for the GST included in the consideration received.

1.6 Where the subject of the claim of damages or compensation was in respect of a GST-free or input taxed supply, the consideration will take on the same characteristic of the underlying supply (i.e. it will not be subject to GST).

1.7 Consideration in respect of claims of compensation or damages will only be subject to GST when the claim relates to a taxable supply of goods or services. For example, money received as a result of a court order for a non-payment of a taxable supply will be regarded as consideration and subject to GST.

Contributions by members of a mutual body

1.8 ***Item 1*** inserts ***new subsection 9-15(2B)*** to make it clear that payments made by members of a body to that body can be consideration. Section 9-20 of the GST Act and section 38 of the ABN Act provide the same definition of enterprise and both are amended accordingly to make it clear that an organisation can still be considered to be carrying on an enterprise even though it may only make supplies to members of the organisation.

Example 1.1

The owners of residential units form a body corporate to manage the affairs of the complex. Each owner contributes $1,100 per year to the body corporate. The body corporate engages third parties to provide services (e.g. lawn mowing, repairs, insurance etc.). The body corporate registers for GST purposes and is entitled to claim input tax credits for the GST included in the price of the services. It is required to pay GST on the supply of services to the members for which it receives the consideration of $1,100 per member. ***New subsection 9-15(2B)*** makes it clear that the $1,100 contributed by each of the members is consideration. ***New subsection 9-20(3)*** makes it clear that the body corporate is carrying on an enterprise even though it only makes supplies to its members.

If the contributions to the body corporate were not taxable and the body corporate claimed input tax credits, it would effectively obtain the services of the third parties free of GST. This is in contrast to the situation where individual owners of residential premises pay for services but cannot claim input tax credits.

1.9 This amendment also makes it clear that membership fees paid by members of a body in return for supplies are taxable where the body is registered or required to be registered. A non-profit body will be required to be registered where it is carrying on an enterprise and has an annual turnover of $100,000 or more. The amendment removes any doubt as to whether the body is considered to be carrying on an enterprise where it only provides supplies to its members.

Appropriations

1.10 Currently under the GST Act, a payment from one Australian government agency to another Australian government agency is not the provision of consideration if the payment is specifically covered by an appropriation. However, it is uncertain whether the definition of 'Australian government agency' will encompass government related entities that will register separately for GST. This may mean that payments from one government related entity to another that are covered by an appropriation under an Australian law may be subject to GST.

1.11 To correct this, ***item 2*** deletes the references to 'Australian government agency' in paragraph 9-15(3)(c) of the GST Act and replaces them with references to government related entities. This amendment will ensure that appropriations between government related entities will not be subject to GST, and provides certainty to States and Territories with respect to the GST treatment of appropriations.

1.12 Related amendments also ensure that appropriations to local governing bodies will also not be consideration for a supply, and hence not subject to GST. ***[Item 130]***

GST–free supplies

1.13 Section 13 of the GST Transition Act details instances where a supply is GST-free. For example, a supply under an agreement made before the date of Royal Assent (i.e. 8 July 1999), which identifies consideration for a supply to be made before 1 July 2005, is GST-free.

1.14 However, the GST Act, (in particular subsection 9-30(1)), does not refer to GST-free supplies made under section 13 of the GST Transition Act.

1.15 ***Item 4*** is a minor technical amendment to correct this anomaly. ***Item 4*** amends subsection 9-30(1) of the GST Act to ensure that GST-free transactions under a provision of another Act are also GST-free for the purposes of the GST Act.

Supply of rights to GST-free and input taxed supplies

1.16 Where a right is granted to receive a supply that is input taxed or GST-free, the supply of that right should also be input taxed or GST-free. This is not clear from the GST Act as currently drafted.

1.17 ***Item 4*** inserts ***new paragraph 9-30(1)(b)*** so that the supply of a right to receive a supply that would be GST-free will also be GST-free.

Example 1.2

> Mary pays $5,000 for the right to enter a nursing home which is covered by the GST-free provisions. The supply of this right is also GST-free.

1.18 ***Item 4*** also inserts ***new paragraph 9-30(2)(b)*** so that the supply of a right to receive a supply that would be input taxed will also be input taxed.

Supply of a right to a non-resident

1.19 Item 2 in the table in subsection 38-190(1) of the GST Act provides that a supply that is made to a non-resident who is not in Australia at the time of the supply is GST-free. There is potential for some supplies that are effectively used and enjoyed in Australia by another entity to be GST-free where the supply is actually made to an entity that is not in Australia at the time of the supply.

1.20 ***Item 46*** inserts ***new subsection 38-190(3)*** which provides a further qualification, in addition to that in subsection 38-190(2), to the circumstances where a supply will be GST-free under item 2. If the supply to the non-resident is to be effectively provided to another entity in Australia the supply will not be GST-free under item 2.

Example 1.3

> A school in Australia provides tuition to overseas students in Australia. However, it bills the overseas parents of the students directly. As the supply is being made to the students in Australia the supply will not be GST-free under item 2 in the table in subsection 38-190(1).

Allow the Commissioner to determine how the extent of creditable purpose is worked out

1.21 Entities that make financial supplies charge no GST on the supply and are not entitled to any input tax credits for acquisitions to the extent that they are used to make the financial supplies. However, not all supplies made by a provider of financial supplies are input taxed. Most suppliers of financial products will make taxable, GST-free and input taxed supplies. This creates difficulties in determining the extent to which a supplier will receive an input tax credit for GST included in the price of acquisitions.

1.22 To assist providers of financial supplies in determining the amount of input tax credits that they are entitled to, ***new subsection 11-30(5)*** allows the Commissioner to determine appropriate apportionment methodology for working out the amount of input tax credits the financial supply provider is entitled to for their acquisitions. ***[Item 7]***

1.23 For example, the Commissioner may allow the extent of input tax credits available to an entity making financial supplies to be based on a formula that takes into account the ratio of input taxed supplies to taxable supplies made by the entity. This will reduce compliance costs for affected entities.

1.24 The Commissioner will also be able to determine the apportionment methodology for importations ***[item 8, new subsection 15-25(4)]*** and for reduced credit acquisitions ***[item 84, new subsection 70-20(3)]***.

Interaction between adjustment Divisions

1.25 Adjustments under Division 19 of the GST Act currently take into account any prior adjustments under that Division. However, in situations where there have been adjustments under other Divisions, these cannot be taken into account when subsequently calculating a Division 19 adjustment. In these circumstances, the adjustment calculated will not properly reflect the change in GST payable or entitlement to input tax credits.

1.26 ***Items 13 and 14*** amend paragraphs 19-40(c), 19-45(b) and 19-45(c) to allow bad debts for a supply to be taken into account when calculating a subsequent adjustment under Subdivision 19-B.

1.27 Paragraphs 19-70(c), 19-75(b) and 19-75(c) are amended by ***items 15 and 16*** to allow bad debts and changes in creditable purpose for an acquisition to be taken into account when calculating a subsequent Subdivision 19-C adjustment.

1.28 ***Items 100 and 103*** make technical amendments to the adjustment provisions for a change in creditable purpose to correct minor drafting errors.

Timing of bad debt adjustments

1.29 Division 21 of the GST Act provides for an adjustment where debts are written off as bad or outstanding after 12 months. The Division requires that an adjustment will be made if a debt has been due for 12 months or more.

1.30 In the income tax law, the word 'due' in relation to a debt has frequently been interpreted by the courts to mean a debt that is owing, not a debt that is presently payable.

1.31 An anomalous result occurs when an entity makes a supply or acquisition with credit terms that extend beyond a period of 12 months. The legislation requires that the entity must make an adjustment for the part of the debt that is owing beyond the 12 month period, even though the debt clearly is not bad.

1.32 Parallel problems also arise in relation to the bad debt provisions in Division 15 of the LCT Act.

1.33 ***Items 18 to 25*** removes all references to the word 'due' from the bad debt adjustments provisions in the GST Act and substitutes 'overdue'. Similarly, ***items 163 to 166*** replaces references to the word 'due' with 'overdue' in the provisions for bad debt adjustments in the LCT Act.

1.34 The amendments insert a definition of 'overdue' for the purposes of the GST Act and the LCT Act ***[items 142 and 168]***. A debt will be considered to be overdue if there has been a breach of the debtor's obligations in relation to the debt by failure to discharge the debt.

Obligation to issue adjustment notes

1.35 If an adjustment event occurs in relation to a supply (thereby affecting the GST liability in relation to the supply) the supplier is obliged by section 29-75 of the GST Act to notify the recipient by issuing an adjustment note within 28 days of the earlier of the time the supplier became aware of the adjustment or the time the recipient requested the adjustment note.

1.36 The amendment to section 29-75 will ensure that the supplier is obliged to issue an adjustment note only if a tax invoice has been issued, or requested, for the taxable supply to which the adjustment relates. ***[Items 34 to 36]***

HIV detection tests

1.37 A supply of medical services is GST-free under section 38-7 of the GST Act. Specifically excluded from this exemption, are services listed in regulation 14 of the Health Insurance Regulations made under the HIA 1973. These services do not attract a Medicare rebate, and include detection tests for HIV.

1.38 ***Item 45*** will amend paragraph 38-7(2)(a) to ensure that HIV detection tests are GST-free. This amendment will restore the Government's original intention with regards to the GST treatment of HIV detection tests. HIV screening and checkups are GST-free under the GST Act.

Pre-school courses

1.39 Under the GST Act, a supply of an education course is GST-free (section 38-85). The definition of 'education course' in section 195-1 includes a 'pre-school course', which must be delivered in accordance with a curriculum recognised by the education authority of the State or Territory.

1.40 However, in certain States, the pre-school curriculum is recognised by an authority other than the State education authority. This creates a problem, in that a strict interpretation of the GST Act may result in several hundred pre-school courses in these States being subject to GST. This is contrary to the Government's original intention.

1.41 The definition of 'pre-school course' will be amended by ***item 146*** to ensure that a pre-school course recognised by a State or Territory:

- education authority; or
- body that has the responsibility for recognising pre-school curricula,

will be GST-free.

Precious metals

1.42 Following extensive consultation with industry it has been determined that the precious metal provisions do not reflect the way precious metals are mined and supplied in Australia. This Bill amends the precious metal provisions to reflect the following:

- where a precious metal producer retains title of the precious metal (the refiner is effectively an agent), the refiner does not make the first supply of the precious metal, and the transaction is not GST-free under the current provisions. ***Item 47*** amends section 38-385 of the GST Act to allow the first supply of precious metal to be provided by an entity on whose behalf the refining has been done;
- the current provisions restrict a GST-free supply to where a dealer acquires the precious metal for investment purposes. The restriction to investment purposes is unnecessarily restrictive and will be deleted ***[item 125]***;
- In order to ensure that the correct supply of precious metal is GST-free or input taxed, the definition of 'precious metal' has been amended to refer to sales of precious metals 'in an investment form'. Investment form means precious metal sold in a wafer bar or other tradeable form which has an internationally accepted hallmark. In the case of gold, this means a hallmark that has been approved by the London Bullion Market and means that the gold can be traded on the international bullion market. ***[Items 144 and 145]***

1.43 The amendments will ensure that the precious metal provisions contained in the GST Act better reflect the way the precious metals industry currently operates.

Supply of farm land

Sale or long-term lease of land

1.44 Currently, the supply of farm land is GST-free as a sale of a going concern if the supplier and recipient satisfy certain conditions. A supply of farm land by way of a lease would also be caught under this

provision. However, the GST-free treatment was only intended to apply to sales of farm land.

1.45 ***Items 48 and 49*** amend Subdivision 38-O so that only the sale or long-term lease of the land is GST-free.

Supplier of farm land is not the entity that carries on farming business on the land

1.46 Currently, the GST-free treatment of supplies of farm land require the supplier to have carried on a farming business on the land for 5 years. However, this provision does not reflect farming industry practice. In Australia, it is common for the entity which carries on the farming business to be different from the entity or entities who are the owner or owners of the farm land.

1.47 ***Items 48 and 49*** ensure that the sale of the farm land is GST-free even if the entity supplying the land is different from the entity carrying on the farming business on the land. That is, the supply is GST-free provided that farming business has been carried on the land for 5 years. In addition, the recipient of the farm land must intend that the land be used for carrying on a farming business.

International mail

1.48 The Universal Postal Convention provides that each country which receives postal articles from another country, has the right to collect from that country reimbursement for the cost of delivering the postal articles. Under the GST Act, such a charge to a foreign postal administration would be taxable. However, under the terms of the Convention the GST cannot be passed on to the foreign postal administration.

1.49 ***Item 50*** adds ***new Subdivision 38-Q***. It provides that a supply of services to a foreign postal administration will be GST-free where the services are for the:

- delivery in Australia; or
- transit through Australia,

of postal articles mailed outside Australia.

Financial supplies

1.50 Subdivision 40-A of the GST Act provides that all financial supplies are input taxed. Subsections 40-5(2) and (3) contain tables that set out broad categories of supplies that are financial supplies as well as supplies that are not financial supplies. Subsection 40-5(4) allows

regulations to be made that have effect despite subsections 40-5(2) and (3). These regulations are intended to clarify whether a particular supply is, or is not, a financial supply.

1.51 To provide greater certainty to entities making financial supplies and to avoid potential inconsistency between the regulations and the principal Act, subsections 40-5(2) and 40-5(3) are repealed. ***New subsection 40-5(2)*** provides that 'financial supply' will have the meaning given by the regulations *[item 52]*. The regulations will, therefore, specify those supplies that are financial supplies and those that are not. ***Item 52*** also repeals subsection 40-5(4).

1.52 ***Item 51*** amends section 40-1 to reflect the amendments to section 40-5 and ***item 128*** makes a related amendment to the definition of financial supply in section 195-1.

Non-taxable importations

1.53 Subsection 41-5(1) provides that an importation of goods is a non-taxable importation if the goods are covered by one of the listed items in Schedule 4 to the CTA 1995. Item 17 of Schedule 4 allows in certain circumstances goods that have been exported from Australia to be imported free of duty. One of the conditions of item 17 is that the goods must be returned to Australia in an unaltered condition.

1.54 ***Item 54*** clarifies the conditions under which an importation of goods covered by item 17 will be a non-taxable importation by inserting ***new subsection 42-5(1B)***. The conditions are:

- the importer is the manufacturer of the goods (this will cover, e.g. goods that a manufacturer has sent overseas and then brought back into Australia in an unaltered condition);
- the importer has previously acquired the goods for a GST inclusive price; or
- the importer has previously imported the goods, and GST was payable on that importation.

GST groups – adjustments after ceasing to be a member of a GST group

Purpose of the amendments

1.55 The amendments ensure that an entity that ceases to be a member of a GST group will become responsible for adjustments relating to transactions made with entities outside the group during the time the entity was a member of the GST group.

Background

1.56 Division 48 of the GST Act provides special rules that enable certain companies and non-profit associations to form a GST group. A GST group is effectively treated as a single entity and as such supplies and acquisitions made wholly within a GST group are taken out of the GST system. Supplies and acquisitions that are made outside the GST group fall within the central concepts. One member of the group (the representative member) becomes responsible for paying all the GST and is entitled to all the input tax credits that the members of the GST group have that relates to supplies and acquisitions made outside the group.

1.57 Where an entity is a member of a GST group, any adjustments that the member has is made by the representative member. Adjustments may occur where a representative member has accounted for GST or input tax credits, but subsequent events may result in that GST or those input tax credits being incorrectly accounted for.

1.58 When a member of a GST group ceases to be a member of the GST group, it was intended that the exiting member would become responsible for accounting for all of its own adjustments, including those relating to transactions made to entities outside the group during the time it was a member of the group. The GST law, as currently drafted, does not give effect to this intention.

Explanation of the amendments

1.59 ***New Subdivision 48-D*** provides rules in relation to adjustments for an entity that ceases to be a member of a GST group ***[item 57]***. The Bill inserts a definition of when an entity will cease to be a member of a GST group ***[item 118]***.

1.60 ***New section 48-110*** describes how adjustments in relation to a supply or acquisition by a group member to a non-group member will be treated when the entity subsequently ceases to be a member of the GST group. ***New subsection 48-110(1)*** stipulates that in the circumstances described, the entity exiting the group will be responsible for the adjustment and the representative member of that group will no longer be responsible. However, if the exiting entity is the representative member, the representative member will be responsible for any such adjustments.

1.61 In cases where the exiting entity becomes a member of another GST group section 48-50 will apply. That is, the representative member of the new group will be responsible for the adjustments of the new member. ***[New subsection 48-110(2)]***

1.62 ***New section 48-115*** describes how adjustments for a change in creditable purpose in relation to an acquisition or importation made by a member of a group to a non-group member will be treated when the entity

subsequently ceases to be a member of the GST group. ***New subsection 48-115(2)*** provides that, for the purposes of calculating the amount of adjustment for a change in creditable purpose, the exiting entity will be treated as though they were not a member of the GST group when the acquisition or importation took place.

1.63 To achieve this, the exiting entity will be taken to have been entitled to the full input tax credit on the acquisition or importation and therefore will be responsible for any adjustments in relation to that acquisition or importation. However, where the exiting entity becomes a member of another GST group the representative member of the new GST group will be responsible for the adjustment. ***[New paragraph 48-115(2)(c)]***

1.64 For the purposes of working out whether an entity has an adjustment for a change in creditable purpose under subsection 129-40, ***new subsection 48-115(1)*** provides that the intended or former application of something acquired or imported will be taken to be the creditable purpose last used to work out the amount of input tax credit to which the representative member was entitled or the amount of any adjustment the representative member had in relation to it.

Joint ventures

1.65 In the Australian minerals industry, the joint venture operator is not often a party to the joint venture agreement. It is also not unusual for the joint venture operator to be the joint venture operator for several joint ventures and not be a party to the joint venture agreement of any of them. This means that the requirement in paragraph 51-10(d) of the GST Act for all participants in the GST joint venture, including the joint venture operator, to be parties to the joint venture agreement makes Division 51 unavailable to many joint ventures. This is not the intended outcome.

1.66 ***Items 59 and 60*** amend subsection 51-5(1) to ensure that the joint venture operator does not have to be party to the joint venture agreement. ***Items 58 to 66*** make amendments consequential upon allowing a joint venture operator not to be party to the joint venture agreement. ***Item 138*** amends the definition of joint venture operator to take account of the above amendments.

Adjustments after ceasing to be a participant in a GST joint venture

1.67 Special rules in the GST Act allow certain entities to form GST joint ventures. In a GST joint venture, the joint venture operator is responsible for paying the GST and is entitled to input tax credits relating to transactions that the operator has made in relation to joint venture activities on behalf of participants in the joint venture.

1.68 If the joint venture operator has accounted for GST or claimed input tax credits on any of these transactions and a subsequent event results in that GST or input tax credits being incorrect, an adjustment will be required. While an entity is a participant in a GST joint venture, the joint venture operator will make any adjustments in relation to transactions that the operator has made on behalf of that entity for joint venture activities.

1.69 When an entity ceases to be a participant of a GST joint venture, it was intended that the entity would become responsible for accounting for all of its own adjustments, including those relating to supplies and acquisitions for joint venture activities that the joint venture operator made on its behalf. As currently drafted, the GST law does not give effect to this intention.

1.70 ***New Subdivision 51-D*** provides rules in relation to adjustments after an entity ceases to be a participant in a GST joint venture *[item 72]*. The amendment inserts a definition of when an entity will cease to be a participant in a GST joint venture *[item 119]*.

1.71 ***New section 51-110*** describes how adjustments in relation to a transaction that a joint venture operator has made on behalf of a participant for joint venture activities will be treated when the entity subsequently ceases to be a participant in that GST joint venture. ***New subsection 51-110(1)*** stipulates that in the circumstances described, the entity that ceases to be a participant in the joint venture will be responsible for the adjustment and the entity that is or was the joint venture operator at the time of the transaction will not be responsible for any such adjustments. Any supply by the joint venture operator to a participant in the joint venture in relation to joint venture activities will not give rise to an adjustment.

1.72 ***New section 51-115*** provides rules in relation to adjustments for a change in creditable purpose after an entity ceases to be a participant in a GST joint venture.

1.73 ***New subsection 51-115(2)*** specifies that for the calculation of an adjustment for a change in creditable purpose, an entity exiting a GST joint venture will be treated as though they were not a participant in the joint venture when they acquired or imported a thing through the joint venture operator. As a result of this treatment, the exiting entity will be taken to have been entitled to the input tax credits on the acquisition or importation and will therefore be responsible for any adjustments that arise in relation to those transactions.

1.74 In order to decide if the exiting entity has an adjustment for a change in creditable purpose, ***new subsection 51-115(1)*** stipulates how the intended or former application of a thing acquired or imported through the joint venture operator will be determined. In these circumstances, the

intended or former application used will be the extent of creditable purpose that was last used to work out the amount of input tax credit or the amount of any adjustment that the joint venture operator had in relation to the acquisition or importation.

1.75 ***Item 67*** provides that the company that is the joint venture operator at the time the adjustment arises actually has the adjustment.

Input tax credits for acquiring second-hand goods

1.76 ***Item 76*** amends section 66-5 to ensure that input tax credits for acquisitions of second-hand goods from unregistered suppliers can only be claimed where those goods are acquired as trading stock (excluding materials used in manufacture). This is not a substantial change because in most cases under the current provisions, a credit only arises when a taxable supply of the goods is made.

1.77 ***Items 78 and 79*** amend subsection 66-10(1) and insert ***new subsection 66-10(1A)*** to ensure that for acquisitions of $300 or less, the amount of input tax credit is not linked to the subsequent supply. For these acquisitions there is no reduction in the input tax credit if the price of the supply is less than the consideration for the acquisition. This eliminates the administrative burden of tracing supplies of small items of trading stock back to the acquisition of those items.

1.78 For most creditable acquisitions and for acquisitions of second-hand goods where the consideration is $300 or less, input tax credits can be claimed when the creditable acquisition is made. A different timing rule applies to acquisitions of second-hand goods where the consideration is more than $300. Broadly, the credit is not available until such time as a taxable supply of the goods is made. So that second-hand goods traders aren't required to use both of these methods to attribute credits for acquisitions of second-hand goods, ***item 80*** amends paragraph 66-15(1)(b) to allow traders to choose to account for credits for all acquisitions of second-hand goods, irrespective of the consideration, at the time a taxable supply of those goods is made. This means that the second-hand goods trader can elect to claim some credits later than otherwise entitled if it is convenient for them to do so.

1.79 ***Items 82 and 83*** insert ***new sections 66-17 and 66-55***, which require records for creditable acquisitions of second-hand goods and for acquisitions of second-hand goods that give rise to Subdivision 66-B credit amounts that are similar to the tax invoice requirements to be prepared. The record must include details of the supplier, a description of the goods, the date of the acquisition and the consideration paid. As the supplier is not a GST registered person, the record must be prepared by the second-hand goods trader.

Second-hand goods that are divided for re-supply

1.80 ***Item 83*** inserts ***new Subdivision 66-B*** which provides a global accounting method for acquisitions of second-hand goods that are divided for re-supply. In these cases, a matching of the credit on the acquisition with the GST on the subsequent supplies is impractical.

1.81 The global method can be used when it is reasonable to expect that more than one supply will be made from one acquisition ***[new paragraph 66-40(1)(c)]***. Situations where this may occur include where:

- component parts of an acquisition are physically broken down, for example, motor vehicle dismantlers; and
- an acquisition comprises several items, and one price is paid for the acquisition, rather than a separate amount for each item, for example, purchase of an auction lot, a collection, or the contents of a deceased estate.

1.82 The global method simply allows all of the input tax credits on acquisitions of second-hand goods that are to be divided for supply – worked out as if the acquisitions were creditable – to be offset against all of the GST on supplies made from this pool of acquisitions. No GST is payable on a supply until all of the credits have been absorbed. ***[New sections 66-45, 66-50 and 66-70]***

1.83 The fact that a supply covered by Subdivision 66-B may not be taxable is disregarded in determining whether the related acquisition is creditable. ***[New section 66-60]***

Example 1.4

A motor vehicle wrecker acquires a damaged car from an unregistered individual for $550. The Subdivision 66-B credit amount is worked out as if the acquisition is a creditable acquisition – the credit amount is $50. This credit cannot be claimed in a GST return, but is used to reduce the GST payable on any later supplies of goods made from Subdivision 66-B acquisitions.

The motor wrecker sells the car engine out of the car for $440. The Subdivision 66-B GST amount is worked out as if the supply is a taxable supply – the GST amount is $40. As this is less than the $50 credit that is available, the supply is not a taxable supply and no amount of GST is included in the wrecker's net amount. Although the supply is not a taxable supply, this does not affect the buyer's entitlement to an input tax credit.

Later the wrecker sells some of the car's body panels for $330. The GST amount of $30 is reduced by the credit that is still available, that is, by $10. So the GST on the supply is reduced to $20. If the buyer of

the panels is entitled to an input tax credit for the acquisition, the $30 credit is not reduced.

In a later tax period, the wrecker purchases another damaged car, and sells some more parts taken from the first car. The credit on the acquisition of the second car is offset against the GST on the supplies of parts taken from the first car – all of the credits and GST are pooled.

1.84 The global method does not always apply where an acquisition comprises more than one item:

- where amounts are agreed for each item acquired, and these are separately itemised, the normal rules in Subdivision 66-A apply as it is possible to determine the credit that is attributable to each later supply. ***[New subsection 66-40(2)]***

Example 1.5

A second-hand goods dealer purchases a box of watches and jewellery which is offered at an auction as a single lot. The dealer intends to place the items into his trading stock and sell them separately. This is an acquisition of second-hand goods that are divided for future supply. Subdivision 66-B applies.

If the same items were purchased in an acquisition from an unregistered supplier with prices negotiated for each piece, this transaction is not an acquisition of second-hand goods that are divided for re-supply. Subdivision 66-A applies.

- where the consideration is $300 or less, Subdivision 66-A applies as the credit is available upon acquisition rather than upon a supply being made. However, so that a second-hand goods dealer can apply the global method to all acquisitions that will be divided, the dealer can choose to use Subdivision 66-B where the consideration for the acquisition is less than $300. ***[New paragraph 66-40(1)(b)]***

Example 1.6

A motor vehicle wrecker buys car wrecks for various prices. For those cars acquired for less than $300, the wrecker is entitled to Subdivision 66-A credits at the time of acquisition. However, if the Subdivision 66-A credit is claimed, then any supplies of parts made from those acquisitions are taxable, and are excluded from the Subdivision 66-B global account. The wrecker can choose to instead apply Subdivision 66-B to wrecks acquired for less than $300, rather than have to separately identify that trading stock for which a credit has already been claimed.

- where an acquisition to which Subdivision 66-B applies is made, but all of those goods are subsequently supplied in a

single supply, then Subdivision 66-A, and not Subdivision 66-B would apply to that supply. ***[New paragraph 66-40(1)(d)]***

1.85 ***Item 149*** amends the definition of 'second-hand goods' to exclude all animals and plants. It was not intended that animals or plants be regarded as second-hand goods. ***Items 5 and 33*** make other consequential amendments.

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

1.86 ***Item 16 of Schedule 2*** amends section 18 of GST Transition Act to ensure that second-hand goods credits and global accounting will be available even if the goods were acquired prior to 1 July 2000, provided that the goods are held as trading stock on that day, and have not been held other than as trading stock.

Sale of unimproved Crown land

1.87 Where a government holds unimproved land at 1 July 2000 that is subsequently improved before supply, GST is intended to be charged on the difference between the sale price and the value of the unimproved land at the date of sale. The effect is that the value of the unimproved land is not subject to GST and that only the value of the improvements will be taxed. This is consistent with Subdivision 38-N that provides that grants of freehold interests in unimproved land by governments are GST-free. However, the existing provisions do not achieve this because they do not specify that it is the unimproved land that is to be valued at the date of sale.

1.88 ***Item 87*** inserts ***new subsection 75-10(3A)*** to clarify that it is the unimproved land that is to be valued at the date of sale.

Telecommunication supplies

Overview

1.89 The Australian GST system is designed to tax consumption of goods, services and other things in Australia. In the case of telecommunication supplies, consumption is taken to occur where the recipient of the supply effectively uses and enjoys the supply. Telecommunication services that are provided by an overseas supplier and are used or enjoyed in Australia may currently fall outside the scope of the GST system.

1.90 This amendment will ensure that telecommunications services that are used or enjoyed in Australia are subject to GST regardless of whether the supplier is in Australia or offshore. This is consistent with the

treatment of telecommunication services in a number of other GST/VAT countries.

1.91 As the effect of the amendment is to make offshore telecommunication supplies 'connected with Australia', Division 84 of the GST Act (the reverse charge) will not apply where those supplies are subject to GST under the new Division 85.

1.92 The amendments provide a definition for the term 'telecommunication supply'.

Telecommunication supplies connected with Australia

1.93 Under the general rules, a supply of anything other than goods or real property is 'connected with Australia' if it is either done in Australia or made through an enterprise that the supplier carries on in Australia.

1.94 ***Item 95*** inserts ***new Division 85 – Telecommunication supplies***, to the GST Act. This Division provides an additional criterion for 'connected with Australia' specifically for telecommunication supplies. That is, if the effective use or enjoyment of a telecommunication supply is in Australia the supply will be 'connected with Australia'. This is of particular relevance to the application of section 9-5. ***[New subsection 85-5(1)]***

1.95 For example, where an offshore telecommunication provider supplies Internet access to a customer in Australia, the supply will be 'connected with Australia', even though the supply is not done in Australia or made through an enterprise that the supplier carries on in Australia.

1.96 In some circumstances a telecommunication supply may be connected with Australia as a result of the application of the new Division, but for administrative reasons it is not feasible for the Commissioner to collect the GST. ***New subsection 85-5(2)*** allows the Commissioner to determine that in these circumstances the telecommunication supply (or a class of supplies) will not be connected with Australia.

1.97 For example, the Commissioner may decide to use this discretion in relation to mobile telephone calls made by an overseas tourist visiting Australia using a mobile roaming service provided by their overseas telecommunication supplier.

1.98 ***New subsection 85-5(3)*** provides that the rules set out in ***new Division 85*** are in addition to the general rules about 'connected with Australia' in section 9-25.

1.99 ***Item 120*** modifies the definition of 'connected with Australia' in section 195-1 (Dictionary) to also refer to section 85-5.

1.100 ***Item 6*** inserts a new entry in the table in section 9-39 (Special rules relating to taxable supplies) and ***item 43*** adds a new entry to the table in section 37-1 (Checklist of special rules).

Meaning of telecommunication supply

1.101 ***New section 85-10*** provides a definition of telecommunication supply. This definition is consistent with the definition recently enacted by the European Council. The definition is designed to capture the means of communication but not the content, where that content is clearly a different type of supply. The treatment of the content depends on the nature of the service provided.

1.102 Telecommunication supplies include the supply of:

- telephone calls;
- transmission element of international data exchange;
- call back services;
- the provision of leased lines, circuits and global networks;
- e-mail and Internet access; and
- satellite transmissions.

1.103 Telecommunication supplies do not include the following supplies delivered through telecommunication mediums:

- licences to use intellectual property such as computer software; and
- consultancy services provided via the Internet.

1.104 ***Item 155*** inserts a new definition, 'telecommunication supply' in section 195-1 which refers to the ***new section 85-10***.

Supplies partly connected with Australia

1.105 ***Item 96*** includes a telecommunication supply as a different kind of supply for the purposes of Division 96. This recognises that a supply consisting of both a service and a telecommunication supply, may be treated as separate supplies for the purposes of this Division.

Vouchers

1.106 A gift voucher once purchased creates a right to acquire something when the voucher is presented. The purchase of a voucher would generally be a taxable supply. A later supply of goods or services to

which the voucher relates would also be a taxable supply. However, subsection 9-15(3)(a) of the GST Act currently operates so that there is only GST on the first supply of the right – that is at the time the voucher is purchased. When the voucher is redeemed, consideration on the second supply is limited to the additional amount of consideration provided for the thing supplied. This treatment creates difficulties where the voucher is used to buy goods that are GST-free or input taxed.

1.107 ***Item 97*** inserts ***new Division 100*** so that a supply of a voucher is not a taxable supply if on redemption the holder of the voucher is entitled to supplies up to a monetary value stated on the voucher and the consideration provided for the voucher does not exceed that monetary value. Instead, GST will payable at the time the voucher is redeemed for goods or services.

1.108 If the consideration for the voucher exceeds its stated monetary value, then Division 100 only applies to the extent of the stated monetary value. The consideration in excess of the monetary value is the consideration for a taxable supply at the time the voucher is purchased. ***[New subsection 100-5(2)]***

Example 1.7

> Owen pays $61 for a limited edition Olympic Moments phone card with a face value of $50. The additional consideration for that phone card will be $61 – $50, which is $11, and GST of $1 is payable at the time of purchase. On redemption of the voucher the consideration is the face value of $50.

1.109 When a voucher covered by Division 100 is redeemed, paragraph 9-15(3)(a) will not apply ***[new subsection 100-10(3)]***. On redemption the normal rules will apply and the consideration for the supply will be the value stated on the voucher. If a voucher is redeemed for goods or services of a lesser value and cash is refunded, the consideration for the supply will be the value stated on the voucher less the amount refunded.

Vouchers defined

1.110 A ***voucher*** will include a voucher, token, stamp, coupon or similar article which when redeemed entitles the holder to receive supplies in accordance with its terms. However, a postage stamp is not a voucher. ***[New section 100-25]***

1.111 Only vouchers that entitle the holder to supplies up to the monetary value stated on the voucher come within Division 100. The types of things contemplated are vouchers etc. which entitled the holder to goods or services from a particular provider up to the value stated (e.g. a gift voucher). A phone card would fall under this provision as it entitles the holder to make telephone calls up to a certain value. This could involve one call or a number of calls.

Example 1.8

Rachael buys a $40 gift voucher from Lovely Skin Salon. The voucher can be used to buy $40 worth of any of the goods or services sold by Lovely Skin (which includes cosmetics, manicures and facials). Division 100 applies to this type of voucher and no GST is payable at the time the voucher is purchased from Lovely Skin. GST will be payable by Lovely Skin when the voucher is redeemed.

1.112 Division 100 will not cover things which are for a specified good or service but which may also state a price or value of the good or service, such as a bus ticket, a movie ticket, or an airline ticket. These types of supplies entitle the holder to a specified service such as a set number of trips on a bus or travel on a particular date or over a particular period (e.g. a monthly bus pass). These types of supplies are subject to the normal rules and subject to GST at the time of the supply of the ticket etc. Some types of vouchers will not fall under Division 100. These are vouchers which entitled the holder to a specific good or service rather than an entitlement to supplies up to a stated value.

Example 1.9

Andre buys a gift voucher for his wife from Lovely Skin. He pays $110 for a *super deluxe one hour pamper pack.* There is no monetary amount shown on the voucher but $110 is the standard price for that treatment at the salon. Division 100 does not apply to this type of voucher and GST is payable by Lovely Skin in the tax period in which Andre buys the voucher. The amount payable is 1/11 of the price Andre pays for the voucher. On redemption of the voucher no GST is payable.

Example 1.10

Roger purchases a bus ticket which entitles him to 10 trips. The cost of the ticket is $11 and is printed on the ticket. This is not the supply of a voucher within the terms of Division 100 and GST is payable by the seller at the time the ticket is sold.

1.113 Vouchers that do not entitle the holder to supplies up to a stated monetary value will be subject to GST when supplied. On redemption the price of the voucher is excluded when working out the GST on the supply for which the voucher is redeemed. GST is only payable on any additional consideration which is provided at the time of redemption. ***[Paragraph 9-15(3)(a)]***

Vouchers purchased and not redeemed

1.114 If a voucher is supplied for consideration but not redeemed, the retailer will need to make an increasing adjustment. This would occur at the time that reserves for the voucher are written back to current income and will be 1/11 of the amount written back. No such adjustment is

needed for vouchers that have been donated or given away for no consideration. ***[New section 100-15]***

Vouchers sold to persons outside Australia

1.115 Division 100 does not apply to vouchers supplied to non-residents for a supply that would not be GST-free as a result of the application of subsection 38-190(3). This would include, for example, the sale to a person in another country, of a voucher that could only be redeemed in Australia. ***[New section 100-20]***

No supply for the person making the redemption

1.116 ***New subsection 100-10(1)*** makes it clear that the act of redeeming a voucher is not treated as a supply by the person redeeming the voucher. This will prevent the redemption of a voucher by a registered person from being treated as a taxable supply (i.e. the supply of giving up the rights attached to the voucher). However, the supply for which the voucher is redeemed is a supply. ***[New subsection 100-10(2)]***

Consequential changes

1.117 ***Items 6, 12 and 44*** make consequential amendments to sections 9-39, 17-99 and 37-1 of the GST Act, to add vouchers as an additional item in the tables of special rules for taxable supplies, net amounts and adjustments. Consequential amendments are also made to the section 195-1 to insert a definition for 'vouchers' and to amend the notes at the end of the definitions of 'consideration', 'increasing adjustment' and 'taxable supply'. ***[Items 121, 134, 154 and 161]***

Vouchers – transitional provisions

1.118 Subsection 11(1) of the GST Transition Act operates so that the supply of a right granted on or after 2 December 1998 is taken to be a supply after 1 July 2000 if it could reasonably be expected to be exercised on or after 1 July 2000. ***Item 2 of Schedule 2*** inserts ***new paragraph 11(1B)(b)*** so that this rule will not apply if a voucher purchased before 1 July 2000 entitles the holder to supplies up to a monetary value stated on the voucher.

1.119 This provision mirrors those of Division 100. Therefore, a voucher that will be covered by Division 100 and taxable on redemption will not be subject to GST where sold before 1 July 2000. If the voucher is redeemed for taxable goods after 1 July 2000, GST will be payable at that time. There would normally be no additional amount paid at redemption by the person redeeming the voucher if they were obtaining goods or services to the value stated on the voucher.

1.120 Vouchers that are not of the type covered by Division 100 would be covered by section 11 of the GST Transition Act. Any vouchers of this

type sold before 1 July 2000 would be subject to GST if there was a reasonable expectation that they would be redeemed on or after 1 July 2000.

Importations of goods that were exported for repair or renovation

1.121 ***Item 98*** amends subparagraph 117-5(1)(b)(i) in relation to the transport component of the value of a taxable importation for goods that were exported from Australia for repair or renovation. The amendment refers to the international transport of the goods. This change is consistent with changes made to sections 13-20 and 38-355 proposed by the A New Tax System (Indirect Tax and Consequential Amendments) Bill 1999.

Timing of adjustments under Division 129

1.122 Entitlement to an input tax credit depends on the extent to which an acquisition or importation is made for a creditable purposes. Division 129 provides for adjustments to reflect a change in creditable purpose if the actual application differs from the intended or former application of the thing. Adjustments are attributed to adjustment periods, as defined in section 129-20. This section provides that an adjustment period for an acquisition or importation is at least 12 months after the acquisition or importation was made. The adjustment period is the tax period that ends on 30 June, or the closest to 30 June aligned with the taxpayer's income tax year.

1.123 Section 129-25 provides that the adjustment period immediately after something acquired or imported is lost, stolen, destroyed, expired or disposed of is the last adjustment period for the acquisition. An amendment to the section will make clear that the adjustment period will be 30 June (or the closest to 30 June aligned with the taxpayer's income tax year) of the year in which the acquisition was made if the disposal, loss or theft occurs in the same year. ***[Item 101]***

Adjustments for bad debts on mixed purpose supplies or acquisitions

1.124 When an entity makes a taxable supply or a creditable acquisition, they will account for the GST payable or input tax credits. However, if a debt relating to a supply or acquisition becomes bad, the amount of GST or input tax credits accounted for will be incorrect. In these circumstances, an adjustment will be required under Division 21 to correct the amount of GST or input tax credits.

1.125 Division 21 requires that the calculation of the bad debt adjustment is to be based on the amount of the debt that has been written off or the amount of the debt that has been due for 12 months or more.

1.126 An unintended result arises when a debt is in respect of a transaction that is partly taxable or partly creditable. Currently, the adjustment will be calculated on the entire debt, not just that part of the debt attributable to the taxable extent of the supply or the creditable extent of the acquisition. In these cases the adjustment will be too large.

1.127 If an entity subsequently recovers an amount that has been written off, an adjustment is required that is calculated on the basis of the amount recovered. If the debt that has been recovered is in respect of a partly taxable or creditable transaction, the adjustment will also be too large and will not reflect the mixed purpose.

1.128 Similar problems also arise for bad debt adjustments that relate to reduced credit acquisitions or to motor vehicles and similar items to which phased in input tax credits apply.

1.129 ***Item 105*** inserts ***new Division 136***, which provides rules for bad debts relating to transactions that were partly taxable or partly creditable. If an entity has a bad debt adjustment under Division 21 in respect of a supply that was partly taxable or an acquisition that was partly creditable, that adjustment will be reduced through the application of the rules under Division 136 ***[new section 136-1]***.

1.130 ***New section 136-5*** prescribes how a Division 21 adjustment will be reduced if it relates to a bad debt for a partly taxable supply that is written off or recovered. In these circumstances, the amount of the adjustment normally calculated under Division 21 will be reduced to the proportion of the supply that is taxable.

1.131 ***New subsection 136-10(1)*** prescribes the treatment for an adjustment relating to a partly creditable acquisition that has been written off or recovered. In these situations, the adjustment calculated under Division 21 will be reduced to the proportion of the acquisition that is for a creditable purpose. The extent of creditable purpose used to calculate the reduction will be the extent of creditable purpose last used to work out either the input tax credit for the acquisition or an adjustment for a change in creditable purpose. The adjustment will be further reduced to the extent to which the entity provided or was liable to provide consideration for the acquisition.

1.132 For reduced credit acquisitions wholly for a creditable purpose under Division 70, any bad debt adjustment in relation to that acquisition will be reduced in accordance with ***new subsection 136-10(2)***. The bad debt adjustment under Division 21 in respect of a reduced credit acquisition will be decreased to the percentage of reduced input tax credit prescribed in the regulations for that type of acquisition. The adjustment will be further reduced to the extent to which the entity provided or was liable to provide consideration for the acquisition.

1.133 Similarly, any change in creditable purpose adjustment in relation to a reduced credit acquisition that was acquired wholly for a creditable purpose under Division 70, will be reduced in accordance with ***new subsection 129-40(3)***. ***New subsection 129-40(3)*** provides that for the purposes of calculating the intended or former application of the thing, the extent to which the acquisition was acquired for a creditable purpose is the reduced input tax credit percentage prescribed in the regulations for that type of acquisition. ***[Item 102]***

1.134 ***Items 26 and 39*** insert references to ***new Division 136*** – 'Bad debts relating to partly taxable or creditable transactions' in the *Checklist of Special Rules* in Divisions 21 and 37.

1.135 Section 20 of the GST Transition Act provides that entitlement to input tax credits for the acquisition of motor vehicles, bodies and certain trailers for use in carrying on your enterprise will be phased in. ***New subsection 20(5)*** provides that where a person is not entitled to input tax credits in the first year of operation (1 July 2000 to 30 June 2001) a person will not be eligible to make a bad debt adjustment in relation to that acquisition. Where the input tax credit to which you are entitled is reduced by 50% (in the second year of operation 1 July 2001 to 30 June 2002) then the bad debt adjustment is reduced by 50% before any reduction under Division 136 ***[new subsection 20(6)]***.

Goods applied solely to private or domestic use

1.136 Some acquisitions made by an individual in the course of carrying on their business may be used for private or domestic purposes. An input tax credit can only be claimed if things are acquired for a creditable purpose. The meaning of creditable purpose is set out in section 11-5 and states that something is not acquired for a creditable purpose to the extent that the acquisition is of a private or domestic nature. This means, for example, that if an individual acquires something in the course of their business which will be used for private or domestic purposes, they cannot claim an input tax credit in respect of that acquisition.

1.137 If at the time an acquisition is made, it is known that it will be used for a private or domestic purpose, an input tax credit will not be claimed in respect of the acquisition. However, there will be situations where something acquired for a creditable purpose is later applied for a private or domestic purpose. An example would be where an individual who owns a supermarket takes taxable goods off the shelf for consumption at home. This amendment inserts a new Division which will provide for an adjustment in these situations to effectively claw back the input tax credit claimed.

1.138 ***Item 104*** inserts ***new Division 130*** which provides for an increasing adjustment where goods are applied solely to private or domestic use. An increasing adjustment will arise where:

- you make a creditable acquisition or creditable importation of goods;
- the acquisition or importation was solely for a creditable purpose; and
- you apply the goods solely to private or domestic use.

1.139 The amount of the adjustment is the amount of the input tax credit to which you were entitled to claim taking into account any previous adjustments in relation to the acquisition or importation (e.g. volume rebates).

Example 1.11

> Andrea owns a hardware store and on occasions takes stock home for private use. In August 2000, Andrea purchases 10 drills costing $550 in total, for inclusion in her stock for sale. In her GST return for August, she claims an input tax credit of $55. In November 2000, Andrea takes one of the drills off the shelf for use at home. Andrea will have an increasing adjustment under Division 130 of $5 in her GST return for November 2000.

1.140 An adjustment cannot arise under ***new Division 130*** if you have previously had an adjustment under Division 129. Similarly, an adjustment cannot arise under Division 129 if you have had an adjustment under Division 130 for the acquisition. ***[Item 99]***

1.141 In broad terms Division 129 applies to situations where your actual use of a thing is different from your intended extent of creditable purpose and the thing acquired cost more than $1,000. This covers situations, for example, where a business asset is intended to be used 75% for business and 25% private but the actual usage is 85% business and 15% private.

1.142 Division 130 will only cover situations where something is acquired solely for a creditable purpose but is then applied solely to private or domestic use. This situation would be otherwise caught by Division 129 but for the $1,000 threshold (in cases where the item has a value of less than $1,000) and the operation of ***new section 129-15***.

1.143 ***Items 9 and 40*** insert new items into the tables in sections 17-99 and 37-1 respectively. ***Item 135*** adds a new item into the table in the definition of 'increasing adjustment' in section 195-1.

Input tax credits for newly registered entities

1.144 An entity that is not required to be registered may choose at a later date to become registered. At that date, it may hold stock for resale or for use as raw materials. If this stock has been purchased at GST inclusive

prices, the entity will not have been entitled to claim input tax credits. Any supply of this stock after the entity becomes registered will be subject to GST. If an input tax credit is not allowed, GST will effectively be paid twice on the same item.

1.145 ***Item 106*** inserts ***new Division 137. New section 137-5*** provides for a decreasing adjustment if the following conditions are met:

- the entity becomes registered or required to be registered;
- at that time the entity holds stock for the purpose of sale or exchange, or for use as raw materials, in carrying on the enterprise; and
- the entity had acquired the stock solely or partly for a creditable purpose.

1.146 This section does not apply to other acquisitions that the entity has made before it became registered (e.g. plant and equipment).

1.147 The amount of the decreasing adjustment is equal to the amount that would have been the previously attributed input tax credit amount (defined in section 19-75) for the acquisition if the entity had been registered at the time of the acquisition. This reflects the input tax credit the entity could have claimed at the time of acquisition plus any adjustments that may have resulted (e.g. because of a volume rebate received). ***[New subsection 137-5]***

Example 1.12

> Alex conducts a small business with an annual turnover of less than $50,000 per year. He chooses not to register for GST and therefore cannot claim input tax credits for his acquisitions. At a later date his business expands and he decides to register for GST. At that date he holds an item of stock for sale which he originally purchased for $220 (including GST). At the time that he becomes registered he will be able to make a decreasing adjustment equal to $20 (1/11 of the purchase price). This will be claimed in the first GST return that Alex lodges after becoming registered.

1.148 ***New subsection 137-5(2)*** covers a situation where an entity may have been previously registered and claimed an input tax credit for the acquisition which has not been subject to an increasing adjustment under Division 138.

1.149 ***Item 127*** inserts an additional item into the table of the definition of 'decreasing adjustment' in section 195-1.

1.150 ***Items 11 and 42*** insert new items into the tables in sections 17-99 and 37-1 respectively.

Government entities

Registration of government entities

1.151 Currently the definition of entity in the GST Act and the ABN Act are different. Under the GST legislation, all government organisations would effectively be part of a single State, Territory and Commonwealth registration and each Government would decide which sub-entities it would treat as separate branches for GST purposes. The ABN Act includes a definition of 'government entity' which allows for separate registration of government entities at a lower level.

1.152 ***Item 129*** inserts a definition of 'government entity' into section 195-1 of the GST Act to allow (but not require) for the separate registration of government entities. Under this definition, a government entity has the same meaning given by section 41 of the ABN Act.

1.153 ***Item 107*** inserts ***new Division 149*** which is about registration and grouping of government entities. The main rules that deal with registration of government entities are as follows:

- ***new section 149-5*** provides when a government entity may register for GST. Note that a government entity may apply to be registered even if it is not an entity and it is not carrying on an enterprise;

- ***new section 149-10*** provides that a government entity is not required to register separately. This would apply where a government entity is part of another entity's registration and does not need to be separately registered in its own right;

- ***new section 149-15*** ensures that a government entity that is separately registered will be treated as if it were a separate legal entity and an entity for the purposes of the GST law; and

- ***new section 149-20*** ensures that section 25-50 and subsection 25-55(2) (which are about cancelling registration) do not apply to government entities.

1.154 ***Items 27, 28, 30, 40 and 56*** insert references to ***new Division 149*** in the GST Act.

Government entities and GST groups

1.155 Division 48 of the GST Act contains the rules that apply to GST groups. Section 48-5 provides that the Commissioner must approve 2 or more entities as a GST group if, amongst other things, the entities jointly apply in the approved form and each of the entities satisfies the membership requirements for that GST group. Section 48-10 contains the membership requirements of a GST group.

1.156 Currently, the grouping provisions only apply to a company, a partnership or trust that satisfies the requirements specified in the regulations and certain non-profit bodies. ***Item 107*** amends the GST Act to allow government entities to form GST groups in certain situations where the government entities satisfy the membership requirements for a GST group.

1.157 Under ***new section 149-25***, a government entity (including a government related entity – refer to paragraph 1.158) will satisfy the membership requirements for a GST group, or a proposed GST group, of government entities if:

- it is registered;
- it is not a member of any other GST group;
- it has the same tax periods applying to it as the tax periods applying to all the other members of the GST group or proposed GST group;
- it accounts on the same basis as all those other members; and
- all those other members are government entities (or government related entity).

[Items 107, 129, 140 and 148]

1.158 The grouping provisions outlined in paragraph 1.157 apply to a 'government entity' and a 'government-related entity'. A government related entity includes an entity that would be a government entity but for subparagraph (e)(i) of the definition of government entity in the ABN Act. ***[Item 130]***

Supplies for a period or progressively over a period

1.159 Division 156 of the GST Act provides special attribution rules in relation to supplies and acquisitions that are made for a period or progressively over a period where the consideration for the supply is made progressively or periodically. The special rule provides that those kinds of supplies and acquisitions, are accounted for as if each progressive or periodic component were a separate supply. That is, the general attribution rules in Division 29 apply to each component of the supply. In some circumstances it may not be clear what the components are.

1.160 ***Items 111 to 114*** clarify the accounting rules for such supplies and acquisitions. The components of the supply or acquisitions will be accounted for in accordance with the rules in section 29-5. If the component of the supply is not identifiable, the components will correspond to the separate amounts of consideration.

Example 1.13

Aaron makes a creditable acquisition of a 12 month lease of a building. The lease payments are made monthly. The components are identifiable – each month is a component. The attribution rules in section 29-5 apply to the supply of the lease for each month. Aaron's entitlement to the input tax credit for each of those supplies arises on the earlier of invoice or payment for the month.

Example 1.14

Helen is a registered farmer. She leases a block of land for 12 months. Because she will be harvesting her crops in autumn, she makes 3 equal payments for the lease, in April, May and June. In this case, the components of the acquisition may not be identifiable. The effect of the amendments is that the components are taken to be in the same proportion to the total supply as each payment is to the total consideration. In this case, the supply will be split into 3 equal components. The attribution rules in section 29-5 will apply to each component.

GST implications of references to terms used in Commonwealth Acts

1.161 GST will notionally apply to taxable supplies and acquisitions by departments and agencies of government, both Federal and State. The GST implications for their supplies and acquisitions will be affected by the terms of the legislation that regulate their activities.

1.162 *New section 177-12* will attribute either a GST inclusive or a GST exclusive meaning to certain terms used in Commonwealth Acts, unless a contrary intention is apparent in the relevant Act.

1.163 Some Acts are excluded from these rules either because they expressly contain rules about the inclusion or exclusion of GST components from terms or concepts they use or because it is intended that the rules should not apply in the context in which similar terms are used in those Acts. ***[Item 115, new subsection 177-12(4)]***

References to 'price' and similar terms

1.164 A reference to the 'price' of something, or to similar terms such as 'fee', 'charge' or consideration provided in relation to a supply, is, in the absence of an apparent contrary intention, to be regarded as including the net GST payable by the entity making the supply ***[item 115, new subsections 177-12(1) and (2)]***. ***Net GST*** is to be defined in the dictionary to the GST Act as the amount of GST net of any increasing adjustments or decreasing adjustments that relate to the supply ***[item 141]***. Increasing adjustments reflect increased GST liability (e.g. if the consideration for the supply is adjusted upwards) and decreasing adjustments reflect

reduced GST liability (e.g. if there is a subsequent reduction in the consideration).

References to 'value'

1.165 References to the 'value' of something are to exclude any GST that would be payable by an entity if it were to supply that thing. ***[Item 115, new subsection 177-12(3)]***.

Unincorporated bodies

1.166 Where a partnership or other unincorporated body carries on an enterprise, it is that body that is required to be registered and liable to pay any GST. The individual members of the body are not required to be registered (unless they are carrying on an enterprise separate from the body).

1.167 ***Item 117*** adds ***new subsection 184-5(1)*** to remove any doubt as to the status of supplies, acquisitions or importations made by or on behalf of a partner of a partnership in his or her capacity as a partner. These are taken to be supplies, acquisitions or importations made by the partnership and not the partner.

1.168 ***New subsection 184-5(2)*** similarly removes any doubt in relation to supplies, acquisitions or importations made by members of a committee of management of an unincorporated association or body of persons, in their capacity as members of the committee.

1.169 The note at the end of ***new subsection 184-5(1)*** refers to section 50 of the TAA 1953 which deals with the liability of partners for the obligations imposed on a partnership under the GST law. Similarly, the note at the end of ***new subsection 184-5(2)*** refers to section 52 of the TAA 1953 which deals with the liability of members of committees of management for the obligations imposed on an unincorporated association or body of persons under the GST law.

Definition of 'value'

1.170 Paragraph (c) of the definition of 'value' is repealed ***[items 159 and 160]***. The paragraph became redundant as a consequence of the repeal of the provision to which it refers by item 110 of Schedule 1 to the A New Tax System (Indirect Tax and Consequential Amendments) Bill 1999.

Calculation of GST not to include LCT

1.171 The A New Tax System (Indirect Tax and Consequential Amendments) Bill 1999 proposes new subsection 9-75(2) be inserted into the GST Act. Subsection 9-75(2) ensures that LCT is not included when calculating the value of a taxable supply.

1.172 ***Items 131 to 133*** contain technical amendments to the GST Act, to deal with the flow-on effects of subsection 9-75(2) being inserted. This will bring the legislation into line with the Government's original intention and will ensure that the correct amount of LCT and GST is paid or payable.

1.173 The LCT is to be excluded from the definitions of both 'GST exclusive market value' and 'GST exclusive value' in section 195-1 ***[items 131 and 132]***. The definition of GST inclusive market value is to include the luxury car tax ***[item 133]***.

Chapter 2
Non-profit sub-entities

Outline of Chapter

2.1 Amendments to this Bill will introduce special rules that enable certain non-profit entities to have greater structural flexibility with regard to GST registration.

2.2 As part of negotiations over the passage of the GST Act, the Prime Minister and the Australian Democrats agreed that the ATO should establish a Charities Consultative Committee to examine implementation and administration issues. An issue was raised by the Committee in relation to the inflexibility of the GST Act in relation to the grouping and branching provisions, arguing that the current legislation did not provide for the significant diversity of organisations and structural arrangements within this sector.

2.3 Many charitable organisations have numerous divisions, branches or committees which do not meet the definition of an entity as defined in the GST Act. Often, these smaller units of the organisation work independently of the core entity. The core entity will often exercise little or no effective control over the unit, with the unit producing its own accounts and otherwise managing its own affairs. Given the large numbers of these independent units (thousands in some cases), the current law imposes a large compliance burden on these organisations, requiring them to bring together GST accounts for all of the units at the end of each tax period. Further, the core entity often will have little capacity to ensure that the accounts of the units are correct due to the limited control that they exercise over them.

2.4 Although the problem was first identified in the charities sector, other non-profit bodies such as sporting organisations experience similar structural constraints for GST purposes as those described above.

Summary of the amendments

Purpose of the amendments

2.5 The amendments allow certain non-profit entities to treat separately identifiable units of their organisations as though they are separate entities for GST purposes.

Explanation of amendments

2.6 ***Item 73*** inserts ***new Division 63*** into the GST Act. This new Division gives certain non-profit entities the choice to treat separately identifiable units of their organisations as though they are separate entities for GST purposes. ***[New section 63-1]***

Who may choose

2.7 Entities listed in ***new subsection 63-5(2)*** that are registered for GST may choose to apply the rules of ***new Division 63*** ***[new subsection 63-5(1)]***. These entities may fall into one or both of the following categories:

- charitable institutions, trustees of charitable funds or gift-deductible entities ***[new paragraph 63-5(2)(a)]***; or
- non-profit bodies that are income tax exempt under certain provisions of the ITAA 1997 ***[new paragraph 63-5(2)(b)]***.

2.8 As the categories are not mutually exclusive, there will be significant overlap. However, there are some differences. ***New paragraph 63-5(2)(a)*** will allow charities and other gift-deductible entities that are not income tax exempt to use the special rules. ***New paragraph 63-5(2)(b)*** will allow the special rules to be used by certain non-profit entities such as sporting organisations that are not considered to be charities or gift-deductible entities.

2.9 A choice to apply ***new Division 63*** will have effect from the time the entity has made the choice ***[new subsection 63-10(1)]***. The choice will cease to have effect if the entity becomes unregistered, is no longer income tax exempt or otherwise does not meet the requirements of subsection 63-5(2) ***[new paragraph 63-10(2)(b)]***.

2.10 The choice to apply ***new Division 63*** will also cease to have effect if the entity revokes the choice ***[new paragraph 63-10(2)(a)]***. However, a choice cannot be revoked within 12 months of making that choice, and a further choice cannot be made within 12 months of revoking a previous choice ***[new subsection 63-10(3)]***.

Consequences of choosing

2.11 An eligible entity will be able to apply ***new Division 63*** in respect of any branch of the entity (which could include a committee, chapter, section etc.) that meets certain requirements and as such the branch will be treated as a separate entity for GST purposes ***[new subsection 63-15(1)]***. The branch in these cases will be called a non-profit sub-entity

[new subsection 63-15(3)]. This definition of a 'non-profit sub-entity' will be inserted into section 195-1 of the GST Act, and will have the meaning given by ***new subsection 63-15(3)*** *[item 143 of Schedule 1]*. References to non-profit sub-entities will be inserted in various tables in the GST Act and ABN Act *[items 10, 27, 29, 31 and 41 of Schedule 1]*.

2.12 For a branch to be considered a non-profit sub-entity it must:

- maintain an independent system of accounting which allow all of its transactions to be clearly identified *[new paragraph 63-15(1)(a)]*;
- be separately identifiable either because the activities carried on by the branch differ from other activities carried on by the entity, or because the branch is in a different location from other parts of the entity (being located on separate floors of the same building does not in itself constitute a different location) *[new paragraph 63-15(1)(b)]*; and
- be referred to in the entity's records as a separate entity for the purposes of the GST law *[new paragraph 63-15(1)(c)]*. If an entity does not want a branch to be treated as a non-profit sub-entity it need not record it as such in its records.

2.13 It should be noted that the branch's treatment as a non-profit sub-entity ceases if the choice ceases to have effect or the branch no longer meets the requirements mentioned above *[new subsection 63-15(2)]*. In cases where the branch is registered its treatment as a non-profit sub-entity continues until its registration is cancelled under ***new section 63-30 or 63-35***.

Registration

2.14 As a result of being treated as an entity, a non-profit sub-entity can register for GST purposes. The Commissioner must allow a non-profit sub-entity to register for GST, even if it does not carry on an enterprise or intend to carry on an enterprise *[new section 63-20]*. The ABN Act will be amended to enable a non-profit sub-entity to obtain an ABN *[items 1 and 2 of Schedule 4]*.

2.15 Non-profit sub-entities will be subject to a registration threshold of $50,000, although regulations may specify a higher amount *[new section 63-25]*. Non-profit sub-entities with an annual turnover of less than $50,000 will not be required to register for GST, although they may do so if they wish. If a non-profit sub-entity with an annual turnover below the turnover threshold decides not to register, it will not be liable for GST and will not be able to claim input tax credits. Equally, the core entity will not

be liable for the GST and will not be entitled to claim the input tax credits of the unregistered non-profit sub-entity.

2.16 Non-profit sub-entities that have an annual turnover of $50,000 or more will be required to register for GST and account for all GST payable and input tax credits on their transactions. GST will be applicable on those transactions the registered sub-entity undertakes with the core entity or with another sub-entity. Also, the non-profit sub-entity will be required to make a separate GST return in respect of their GST transactions.

2.17 As a registered entity, a non-profit sub-entity will have the same rights and obligations under the GST law as any other registered entity, except for the ability to apply ***new Division 63***. For example, a registered non-profit sub-entity may choose to group with the core entity or with other registered non-profit sub-entities if they meet the general requirements for grouping in Division 48 of the GST Act. This will enable an organisation to effectively eliminate the GST effects of transactions between grouped members.

2.18 ***Item 147 of Schedule 1*** amends the definition to include a reference to a 'registration turnover threshold' (in section 195-1 of the GST Act) for a non-profit sub-entity. A note into the definition of an 'entity' for GST purposes is inserted into section 184-1 of the GST Act, which explains that a non-profit sub-entity is treated as an entity. ***[Item 116 of Schedule 1]***

Cancellation of registration

2.19 For non-profit sub-entities, the rules in ***new Division 63*** will apply in relation to cancellation of registration instead of Subdivision 25-B. ***[New subsections 63-30(2) and 63-35(3)]***

2.20 A registered non-profit sub-entity must apply to the Commissioner for cancellation of their registration if it does not meet the requirements of ***new subsection 63-15(1)***. The application for cancellation must be lodged within 21 days after the day on which it ceased to meet the requirements ***[new subsection 63-30(1)]***.

2.21 The Commissioner must cancel a registration if he or she is satisfied that the non-profit sub-entity does not meet the requirements in ***new subsection 63-15(1)*** ***[new subsection 63-35(2)]***. If the Commissioner has cancelled the registration of a non-profit sub-entity, he or she must notify the sub-entity of the cancellation and the date of its effect ***[new subsection 63-35(2)]***. The cancellation of the registration of a non-profit sub-entity is a reviewable GST decision under the TAA 1953 ***[item 21 of Schedule 8]***.

2.22 It should be noted that if a non-profit sub-entity's registration has been cancelled, the entity will resume accounting for the branch's GST obligations.

Record-keeping

2.23 If an entity chooses to apply ***new Division 63***, ***new paragraph 70(1A)(a)*** of the TAA 1953 stipulates that it must keep records of that choice and must ensure that it documents all branches which it chooses to treat as non-profit sub-entities (see also ***new paragraph 63-15(1)(c)***). An entity is also required to keep a record of those branches that cease to be treated as separate entities. ***[Item 20 of Schedule 8]***

2.24 ***New paragraph 70(1A)(b)*** of the TAA 1953 provides that these records must be retained for at least 5 years after the choice has been revoked.***[Item 20 of Schedule 8]***.

Liability

2.25 ***New section 52A*** of the TAA 1953 provides that the liability for all obligations under the GST law on the non-profit sub-entity will be imposed on each person responsible for the management of the non-profit sub-entity. The core entity will have no legal liability in respect of the GST dealings of a non-profit sub-entity. ***[Item 22 of Schedule 8]***

Effect on adjustments of becoming and ceasing to be a non-profit sub-entity

2.26 When a branch becomes a non-profit sub-entity, their GST obligations will include making adjustments where necessary. If the branch undertook a transaction while it was a part of the core entity and a GST adjustment is required for that transaction after the branch has become a non-profit sub-entity, the non-profit sub-entity will be responsible for making the adjustment ***[new subsection 63-40(1)]***. For the purposes of calculating an adjustment for a change in creditable purpose, the previous extent of creditable purpose in relation to the acquisition or importation will be assumed by the non-profit sub-entity ***[new subsection 63-40(2)]***.

2.27 If a branch ceases to be a non-profit sub-entity (see ***new subsection 63-15(2)***), the core entity will again be responsible for the GST obligations of that branch, including adjustments. Any adjustments that arise in respect of transactions that the branch has made while it was a non-profit sub-entity will become the responsibility of the core entity ***[new subsection 63-45(1)]***. For an adjustment for a change in creditable purpose, the extent of creditable purpose that was previously attributable to the

acquisition or importation will be assumed by the core entity ***[new subsection 63-45(2)]***.

Chapter 3
Insurance

Outline of Chapter

3.1 This Chapter discusses the amendments that are made in relation to the treatment of general insurance for GST purposes. Amendments are made to this Bill in relation to:

- changing the current treatment of settlements;
- removing the transitional notification requirement insureds currently have;
- State stamp duties;
- statutory compensation schemes;
- court orders and judgements;
- the exclusion of certain insurance schemes from Division 78;
- supplies by insurer's in settling claims;
- subrogation;
- insurance brokers and tax invoices. and
- transitional arrangements for compulsory third party schemes.

Summary

3.2 The amendments:

- remove the insured's GST liability on settlements;
- remove the insurer's input tax credit entitlement on settlements;
- provide for insurers to have an adjustment on settlements. That adjustment being equivalent to the difference between what would have been their input tax credit and what would have been the insured's GST liability;

- remove the requirement that insured's notify the Commissioner if they wish to claim input tax credits on the acquisition of insurance policies in the first 3 years of GST;
- have little revenue impact. The amendments reduce compliance costs for all registered entities that have insurance policies and also for insurers;
- exclude State stamp duties from the calculation of GST on insurance premiums;
- include prescribed statutory compensation schemes within the operation of Division 78;
- ensure that there is no difference for the purposes of Division 78 in the treatment of a settlement if it is made under a court order or judgment;
- allow certain government insurance schemes to be excluded from Division 78 through regulation;
- provide that certain supplies by insurers made as settlement of a claim are not taxable supplies;
- provide for the treatment of settlements made when an insurer is making a claim in exercise of its rights of subrogation;
- ensure that insurance brokers can issue tax invoices on behalf of insurers; and
- provide that insureds are not entitled to input tax credits on the acquisition of compulsory third party insurance cover in the first 3 years of GST. This allows time for repricing to take account of GST.

Detailed explanation of amendments

Adjustment mechanism

Background

3.3 This Bill as introduced to Parliament proposed amending Division 78 of the GST Act to simplify the application of GST to workers' compensation and compulsory third party insurance. Those amendments retained the underlying policy for the application of GST to insurance whilst simplifying the administration of that policy. After

consultation with the general insurance industry after the introduction of those amendments to Parliament, this Bill was amended to similarly simplify the application of GST to the rest of general insurance.

3.4 The supply of insurance premiums would still be treated under the other rules of GST, that is, taxable if section 9-5 applies, GST-free if any of Division 38 applies, etc. Input tax credits for the acquisition of premiums will also remain subject to the other rules in Division 11, etc. It will be the GST treatment of the settlement of a claim under an insurance policy that is treated differently.

Current treatment under Division 78 of the GST Act

3.5 For insurance settlements Division 78 currently generally applies as follows:

- insurers receive an input tax credit on the settlement if the supply of the policy was a taxable supply; and
- insureds have a GST liability to the extent they were entitled to an input tax credit for the acquisition of the policy.

The amendments

3.6 ***Item 89*** preserves this model for the treatment of insurance but reduces the compliance costs for all concerned. This is achieved by providing that insurers have an adjustment on settlements rather than insureds having a GST liability and insurers having an input tax credit. The settlement of an insurance claim will not be consideration for a supply made by the insured ***[new section 78-45]***. Nor will it be consideration for an acquisition made by the insurer ***[new section 78-20]***.

3.7 The amendments amend the GST Act to remove Subdivisions 78-A and 78-B and replace them with new Subdivisions dealing with the GST treatment of insurance settlements for insurers and insureds.

The decreasing adjustment

3.8 Insurers will only have a deceasing adjustment on settlements that relate to the taxable part of a policy. Where the supply of a policy is solely GST-free or input taxed, there will be no decreasing adjustment on settlement. ***[New section 78-10]***

Premium partly or fully subject to GST

3.9 Where the supply of the policy was fully taxable, the insurer could have a decreasing adjustment on any settlement under the policy ***[new subsection 78-10(2)]***. If the supply of the policy was partly taxable and partly not taxable (i.e. GST-free or input taxed), the insurer will have a

decreasing adjustment to the extent the settlement relates to the taxable part of the policy ***[new subsection 78-15(3)]***.

3.10 The insurer will only have a decreasing adjustment if there was no input tax credit or a partial input tax credit available on the acquisition of the policy.

Example 3.1

> Big Global Corp Ltd (BGC) takes out an insurance policy. The supply of the policy is 60% taxable and 40% GST-free. BGC was entitled to a input tax credit to the extent of 30% of the policy. A settlement of $88,000 is made relating to the GST-free part of the policy.
>
> BGC is entitled to a 30% input tax credit on the insurance policy under Division 11 and BGC has no GST liability on settlement of the claim. ***[New section 78-45]***
>
> The insurer has a GST liability on the supply of the taxable part of the insurance policy under Division 9. The insurer has no decreasing adjustment as the settlement relates to the non taxable part of the policy. ***[New subsection 78-10(2)]***
>
> Another settlement is made under the policy. It relates 100% to the taxable part of the policy. The insurer will have a decreasing adjustment because BGC was only entitled to a partial input tax credit on the acquisition of the taxable part of the policy (see paragraph 3.13).

Full input tax credit entitlement on the premium

3.11 The insurer will not have a decreasing adjustment if there was a full input tax credit available on the acquisition for the policy. ***[New paragraph 78-10(2)(b)]***

Example 3.2

> A registered business, Angela's Automatic Carwash (AAC), acquires an insurance policy fully for a creditable purpose. The GST inclusive price of the policy is $385. AAC causes personal injuries to a customer when the automatic carwash malfunctions. The damages are $50,000.
>
> AAC is entitled to a $35 input tax credit on the insurance policy under Division 11 of the GST Act. It has no GST liability on settlement of the claim ***[new section 78-45]***.
>
> The insurer has a $35 GST liability on the supply of the insurance policy under Division 9 of the GST Act. The settlement under the policy is not treated as consideration for an acquisition made by the insurer ***[new section 78-20]***. In this instance the insurer does not have a decreasing adjustment because AAC was entitled to a full input tax credit on the premium.

The total settlement will be the $50,000 paid to the injured customer. The cost of the claim to the insurer is $50,000.

Amount of decreasing adjustment

No credit entitlement on the premium

3.12 If there was no entitlement to an input tax credit on the premium, the amount of the decreasing adjustment that the insurer has is 1/11 of the 'settlement amount'. ***[New subsection 78-15(1)]*** In this instance, the 'settlement amount' will be the same amount of money the insurer pays in settlement of the claim. ***[New subsection 78-15(4)]***

Example 3.3

Continuing example 3.2, AAC has chosen to cancel its registration because its annual turnover was below $50,000. It still runs the carwash. It acquires an insurance policy which has a GST inclusive price of $385. The carwash malfunctions again. This time the damages are $16,500.

AAC is not entitled to an input tax credit for the GST paid on the policy because it is not registered (paragraph 11-5(d) of the GST Act). There is no GST liability on the settlement because AAC is not registered (section 9-5 of the GST Act).

The insurer has a $35 GST liability on the supply of the insurance policy under Division 9 of the GST Act. The settlement under the policy is not consideration for a creditable acquisition made by the insurer ***[new section 78-20]. New subsection 78-15(1)*** will apply to allow a decreasing adjustment of 1/11 of the settlement amount, which is 1/11 of $16,500. The insurer will account for a decreasing adjustment of $1,500 in the relevant tax period.

The net cost of the claim to the insurer is the $16,500 settlement less the $1,500 decreasing adjustment, which is $15,000.

Partial credit on the premium

3.13 If there was an entitlement to a partial input tax credit on the premium, the amount of the decreasing adjustment will be 1/11 of the 'settlement amount' multiplied by the extent to which there was no input tax credit entitlement on the premium. ***[New subsection 78-15(2)]***

3.14 The 'settlement amount' will be the amount of money the insurer provides as settlement, multiplied by 11 and then divided by 11, less the extent of credit on the premium. ***[New subsection 78-15(4)]***

Example 3.4

Continuing example 3.3 above, AAC registers again. It has diversified its business and now runs the car wash and makes supplies of long

term commercial residential accommodation at a caravan park. It has chosen to have its supplies of long term commercial accommodation input taxed. It acquires an insurance policy that covers it for liabilities arising out of the car wash and the caravan park for a GST inclusive cost of $770. AAC is entitled to an input tax credit on the premium to the extent of 60%. The carwash malfunctions yet again. This time the damages are $5,200.

AAC is entitled to an input tax credit on the insurance policy of $42 (1/11 x 770 x 60%) under Division 11. It has no GST liability on settlement of the claim ***[new section 78-45]***.

The insurer has a $70 GST liability on the supply of the insurance policy under Division 9. The settlement under the policy is not treated as consideration for an acquisition made by the insurer ***[new section 78-20]***. ***New subsection 78-15(2)*** will apply to allow a decreasing adjustment equal to 1/11 of the settlement amount multiplied by 40%. The settlement amount will be:

$$\$5{,}200 \times 11 \div (11 - 0.6) = \$5{,}500.$$

The decreasing adjustment will be:

$$1/11 \text{ of } \$5{,}500 \times 40\% = \$200.$$

The net cost of the claim to the insurer is the $5,200 settlement less the decreasing adjustment of $200, which is $5,000.

3.15 This 'grossing up' of the amount of settlement ensures that insurers have the same claims cost under the adjustment as they would have under the current Division 78.

3.16 From examples 3.2 to 3.4, it can be seen that the insurer will need to know the extent of input tax credit entitlement on the premium. Under the current Division 78, insurers would generally have needed this information so that they could determine the premium to charge for the policy. That is, the amount of premium depended on the potential amount of settlement, which depended on the extent of the insured's GST liability on a settlement, which depended upon the insured's extent of input tax credit on the premium.

3.17 However, under the adjustment mechanism, the insurer will be relying on the information from the insured in order to determine its adjustment entitlement. For this reason, if the insurer is not correctly informed of the extent of input tax credit entitlement on the acquisition of the policy, the entity that was entitled to the input tax credit on the premium will have a GST liability on a settlement. That entity will have a GST liability to the extent it did not inform the insurer of its credit entitlement ***[new section 78-50]***. Private consumers have no credit entitlement. They do not have a GST liability on settlement.

Example 3.5

> Robert is registered and makes both taxable and input taxed supplies. Robert acquires an insurance policy 100% for a creditable purpose and pays a GST inclusive premium of $330. He informs his insurer that his credit on the acquisition of the policy was 70%. A settlement of $16,500 is later made under the policy.
>
> The insurer has a $30 GST liability on the supply of the insurance policy under Division 9. The settlement under the policy is not treated as consideration for an acquisition made by the insurer ***[new section 78-20]***. The insurer bases its adjustment on the extent of credit Robert informed them of. In this instance, the insurer believes that no decreasing adjustment arises because Robert was entitled to a full input tax credit on the premium.
>
> Robert is entitled to a $30 input tax credit on the insurance policy under Division 11. On settlement, Robert will have a GST liability of $450 ***[new section 78-50]***. That is, 30% (100% less 70%) of 1/11 of $16,500.

Adjustment events

3.18 Currently, adjustment events can arise in relation to the input tax credits or GST liability that arises in relation to settlements. For example, if a settlement is made, but later investigation reveals that the claim was fraudulent, and the settlement is recovered, the insurer (and the insured if registered) will have an adjustment. Under an adjustment approach, there is no longer an input tax credit or an amount of GST in relation to which an adjustment event can arise. ***New section 78-40*** ensures that adjustment events can arise in relation to the adjustment that an insurer will have on a settlement.

Subrogation

3.19 ***New section 78-35*** provides that if an insurer has made a claim in exercising its rights of subrogation and a third party makes a payment, a supply or both in settlement of that claim, that supply or payment is not consideration for a supply made by the insurer. The effect of this is that the insurer will not have a GST liability on the supply or payment. ***Item 90*** inserts ***new section 78-75*** to provide that the third party making the payment or supply will not have made a creditable acquisition. It will not be entitled to an input tax credit on the payment or supply.

3.20 Instead, settling claims made in exercise of rights of subrogation will be treated as an adjustment event. ***[New paragraph 78-40(c)]***

Example 3.6

> An insurer makes a settlement of $11,000. There was no input tax credit on the premium. It receives a decreasing adjustment of $1,000.

It later, in exercise of its right of subrogation, recovers $6,600 from a third party. This means that in effect the net settlement the insurer paid has been reduced to $4,400 ($11,000 – $6,600). The insurer's decreasing adjustment on that amount of settlement would be $400.

The insurer will have an increasing adjustment of $600 due to the adjustment event. This leaves it with a net decreasing adjustment on the settlement of $400.

Supplies by insurers in settlement of claims

3.21 It is common in certain types of insurance for the insurer to acquire goods or services and supply it to the insured in settlement of a claim. For example, if an entity's business premises burn down, it is common for the insurer to pay the builder directly for the cost of rebuilding. If the insurer has acquired the services of the builder under a contract for the builder to supply building services to the insurer, it would be a creditable acquisition in the hands of the insurer. The insurer would be entitled to an input tax credit under Division 11 for that acquisition. If it then supplies those services to the insured in settlement of the claim, that supply by the insurer could be a taxable supply under Division 9. If the claim had been settled in money it would not be a taxable supply. The treatment of the claim settlement should be no different if it is a supply of goods or services. For this reason, ***new section 78-25*** provides that a supply an insurer makes in settling a claim is not a taxable supply.

Acquisitions of goods by insurers in settling claims

3.22 If an insurer acquires goods or services for the purpose of settling a claim, that acquisition will generally be a creditable acquisition under the general rules. If the insurer then supplies those goods to an insured as settlement of the claim, that supply would generally be a taxable supply under the general rules. As discussed at paragraph 3.21 that supply is treated as not being a taxable supply. As the insurer will have been entitled to an input tax credit on the acquisition of the goods or services, the amount of settlement that the decreasing adjustment is calculated on excludes the amount of the supply of those goods or services ***[new subsection 78-15(4)]***.

3.23 However, the insurer does not have a decreasing adjustment if the supply of the policy was not a taxable supply. Therefore, the insurer is not entitled to an input tax credit on the acquisition of goods if the insurer acquires them to make a supply in settlement of a claim that is made under such a policy. ***[New section 78-30]***

Goods supplied to insurer in course of settling a claim

3.24 If you supply goods to an insurer under an insurance policy in the course of settling a claim, such as supplying a car wreck after an accident, the supply is not a taxable supply. This also means that the acquisition by

the insurer of those goods is not a creditable acquisition. If part of the supply is not a supply of goods to an insurer under an insurance policy in the course of settling a claim, you will be liable for GST on that part of the supply. *[New section 78-60]*

Excesses

3.25 Excesses paid to the insurer are excluded from the calculation of the decreasing adjustment *[new subsection 78-15(4)]*. The payment of an excess by an insured to an insurer is also not treated as consideration for a supply. Otherwise, under the general rules the insurer could be liable to 1/11 of the excess as GST and the insured could be entitled to 1/11 of the excess as an input tax credit. *[New section 78-55]*

Statutory compensation schemes

3.26 Some 'statutory compensation schemes' do not fall within the definition of insurance and therefore are not covered by Division 78. Other statutory compensation schemes are insurance and are covered by Division 78. For example, some workers' compensation schemes are within the definition of insurance and others are not. The Government's intention is to treat such statutory compensation schemes similarly.

3.27 ***Item 94*** inserts ***new subdivision 78-E*** to deal with statutory compensation schemes.

3.28 ***New section 78-100*** ensures that any payments towards or under a 'statutory compensation scheme' and any settlement of a claim for compensation under such a scheme are treated in the same manner as payments for an insurance policy and a settlement of a claim under an insurance policy. 'Statutory compensation scheme' is defined in ***new section 78-105.*** Note that the scheme has to be specified in the regulations or of the type specified in the regulations to be brought within the operation of Division 78. For example, a particular workers' compensation scheme could be specified in the regulations and thereby brought within the operation of Division 78.

3.29 In some situations a settlement under a compensation scheme can arise even where an entity that was responsible for making payments to the scheme did not do so. For example, under some workers' compensation schemes an employee can be entitled to compensation even if the employer did not make the payments into the scheme it was liable to make. ***New subparagraph 78-100(2)(c)(ii)*** ensures that the compensation is treated the same whether or not the employer met their liability to make payments into the scheme. It does so by providing that even if an entity did not make payments into a statutory compensation scheme but it was liable to do so, it is treated as the entity insured for the purposes of Division 78.

Effect of judgments and court orders on GST and insurance

3.30 In some circumstances when there is a court ordered settlement there will be a different treatment for GST purposes than if the settlement had been reached without the intervention of the court. ***New section 78-110*** ensures that if there is a judgment or order of the court in relation to an insurance claim the outcome for GST purposes is the same as if the settlement had been made without the intervention of the court.

3.31 ***New section 78-110*** also applies in relation to claims made by insurers in exercising their rights of subrogation (see paragraph 3.19 for a discussion of subrogation). That is, if the outcome of such a claim is determined by a judgment or order of the court it will be treated in the same way as if the outcome had been reached through an out of court settlement.

Exclusion of certain insurance schemes

3.32 There may be certain government schemes of insurance or compensation to which it is not appropriate to apply Division 78. For this reason, ***new section 78-115*** is inserted to provide that Division 78 does not apply to types of insurance or compensation specified in the regulations. The insurance or compensation scheme has to be one established by a law of the Commonwealth, State or Territory. For example, it may not be appropriate to treat a loss making statutory insurance scheme as insurance under Division 78.

Stamp duty

3.33 State stamp duty legislation imposes a stamp duty liability on insurers in relation to insurance policies they sell. The stamp duty legislation is generally framed such that duty is calculated on the GST inclusive premium. The GST law is framed such that GST is calculated on the premium inclusive of an amount for the stamp duty the insurer has had to pay and is recovering from the insured as part of the premium. This makes it somewhat difficult to calculate the correct amount of stamp duty and the correct amount of GST.

3.34 The GST on the supply of an insurance policy, or the supply of membership or participation in a statutory scheme, will be calculated as if an amount equivalent to stamp duty were excluded from the price of the supply. For example, if the total premium for a policy was $185, with stamp duty of $20, GST would be 1/11 of $165, which is $15. ***[New sections 78-5 and 78-95]*** The price for other purposes of the GST Act, such as the tax invoicing provisions, will remain stamp duty inclusive.

Insurance brokers and tax invoices

3.35 Under Division 153 of the GST Act, tax invoices can be issued by an agent of an entity that makes a taxable supply. As insurance brokers are generally not acting as agents of the insurer when they arrange an insurance policy, they are not able to issue tax invoices in relation to the supply of that policy. This has the result that whilst the broker generally issues all other documents to the insured in relation to that policy, they cannot issue the tax invoice.

3.36 ***Item 110*** amends Division 153 to permit insurance brokers to issue tax invoices on behalf of the insurer. This will be the case even though the broker is not acting as agent of the insurer ***[new section 153-25]***. ***Item 109*** amends the guide and ***item 108*** the heading to Division 153 to reflect the amendment and ***item 62*** amends the Dictionary to the GST Act. ***Items 32, 37 and 38*** make consequential cross referencing amendments.

3.37 ***New subsection 153-25(2)*** ensures that the insured can still claim input tax credits if it does not hold a tax invoice but its insurance broker as its agent holds the tax invoice.

Example 3.7

Wilfred employs the services of Owen, an insurance broker, to arrange insurance for his poetry publishing business. Both are registered for GST. Owen arranges for Wilfred to be covered by Donne and Browning Insurance Co. Owen is agent of Wilfred in arranging the cover. Donne and Browning Insurance Co issues all the insurance documentation to Owen and he deals with Wilfred. The amendments allow Owen to issue the tax invoice for the supply of the insurance policy from Donne and Browning Insurance Co to Wilfred even though he is not its agent.

If, along with all the other policy related documentation Donne and Browning Insurance Co sent to Owen, it also sent a tax invoice for its supply of insurance to Wilfred, Wilfred would be able to claim his input tax credit on the policy if Owen holds the tax invoice rather than himself. This is because Owen is Wilfred's agent.

Consequential amendments

3.38 ***Item 136*** replaces the definition of 'insurance policy' in the Dictionary in section 195-1 of the GST Act.

3.39 ***Items 17, 91 to 93, 126 and 150 to 153*** make consequential cross referencing amendments.

Associates

3.40 ***Items 85 and 86*** make amendments to ensure that the associate provisions do not apply where the transaction is a settlement of an insurance claim.

Transitional provisions

Section 22

3.41 Section 22 of the GST Transition Act currently provides which settlements the GST treatment of insurance applies to. ***Items 18 and 19 of Schedule 2*** amend section 22 to take account of the change in the treatment of insurance. The insurer will not have an adjustment under Division 78 if the event to which the settlement relates occurred before 1 July 2000 or, if the time of the event is not certain, the claim was made before 1 July 2000.

Section 23 notification

3.42 The removal of the GST liability on the settlement that the insured currently has under Division 78 means that there is no longer any need for the notification under section 23 of the GST Transition Act. The notification under section 23 was required to enable insureds time to ensure that their insurance policies were rewritten to take account of their GST liability on a settlement. As the amendments remove that GST liability, there is no need for the notification under section 23. ***Item 20 of Schedule 2*** repeals section 23 of the GST Transition Act.

Compulsory third party insurance

3.43 ***Item 20 of Schedule 2*** also inserts ***new section 23. New section 23*** provides a special transitional rule for compulsory third party insurance.

3.44 You are not entitled to input tax credits on the acquisition of compulsory third party insurance for the first 3 years of the GST. The effect of this is that the insurer will be entitled to a decreasing adjustment equal to 1/11 of the amount of the settlement. See paragraph 3.12 for a discussion of calculating the decreasing adjustment on a settlement. This will allow time for compulsory third party insurance to be repriced to take account of the GST.

3.45 The regulations will specify the compulsory third party schemes, or kinds of schemes, to which ***new section 23*** applies.

Informing insurers of input tax credit entitlement

3.46 As discussed at paragraph 3.17, insureds will generally need to inform insurers of the extent to which they are entitled to input tax credit on premiums, when or before the policy is supplied. As policies have already been supplied, insureds will not have been able to inform insurers of their input tax credit entitlement.

3.47 ***Item 21 of Schedule 2*** inserts ***new section 23A*** for policies that span 1 July 2000 so that insureds will have until 30 June 2000 to inform insurers of the extent to which they are entitled to an input tax credit for the premium they have paid.

Chapter 4
Amendment of the A New Tax System (Luxury Car Tax) Act 1999

Outline of Chapter

4.1 This Chapter explains a change to the definition of 'car' in the LCT Act. The amendment is contained in ***Part 2 of Schedule 1*** to this Bill.

4.2 Other amendments in ***Part 2 of Schedule 1*** are explained in Chapter 1 (see paragraphs 1.29 to 1.34) and Chapter 11 (see paragraphs 11.36 and 11.37).

Definition of car

4.3 Currently, the definition of ***car*** in the LCT Act means a motor vehicle (except a motor cycle or similar vehicle) designed to carry a load of less than 2 tonnes and fewer than 9 passengers (section 27-1). ***Motor vehicle*** is defined to mean a motor-powered road vehicle (including a 4 wheel drive vehicle).

4.4 The definition of ***car*** is intended to include all passenger cars (including station wagons), all 4 wheel drive vehicles, light trucks, motor homes, campervans and hearses.

4.5 However, some luxury passenger vehicles, such as stretched limousines, are designed to carry *more than* 9 passengers. Therefore, these limousines do not fall within the LCT Act. This is contrary to the Government's original intention.

4.6 ***Item 167*** amends the definition of 'car' in section 27-1 to include a limousine, regardless of the number of passengers it is designed to carry.

Chapter 5
Amendment of the A New Tax System (Wine Equalisation Tax) Act 1999

Outline of Chapter

5.1 This Chapter explains the amendments to the WET Act to:

- allow refunds of WET to persons who are taking wine with them out of Australia as accompanied baggage; and
- ensure that certain applications to own use of wine are not taxable.

Refunds of wine equalisation tax for persons leaving Australia with wine

5.2 ***Amendment 170*** inserts Division 25 which will enable the establishment of a WET refund system similar to that available for GST on goods being taken out of Australia as accompanied baggage.

5.3 The effect of the new provision will be that if a person takes wine overseas as accompanied baggage the person may be entitled to a refund of the WET that was included in the price they paid for the wine.

5.4 Section 25-5 contains details of the requirements to be met before a refund can be paid:

- the person must acquire wine on which they have borne WET and which they are exporting as accompanied baggage. Accompanied baggage are goods which a person takes with them on the aircraft or ship in which they are departing Australia;
- the acquisition must be of a kind specified in the regulations; and
- the person must leave Australia and export the wine from Australia as accompanied baggage, in the circumstances specified in the regulations.

5.5 If the person meets the above requirements, the Commissioner must pay the person a refund equal to the amount of the WET the person

bore on the wine or some proportion of that amount specified in the regulations.

5.6 The law allows for regulations setting out the method to be used in calculating the amount of WET to be refunded.

Applications to own use

5.7 ***Item 171*** amends the definition of 'application to own use' in section 33-1 of the WET Act by adding a further exclusion. Section 13-5 of the WET Act allows an entity to purchase wine free of WET if it will be used as a material in manufacture or other treatment or processing. This will allow, for example, a manufacturer that uses wine to produce other beverages to purchase the wine under quote, free of WET.

5.8 The WET Act imposes a WET liability on an application to own use by an entity that obtained the wine under quote. In the example in paragraph 5.7 this provision would apply and the manufacturer would have a WET liability at the time the wine is used. This amendment will ensure that when wine is used in that circumstance it will not be an application to own use and a WET liability will not arise. Any WET or GST will be payable at the time the goods produced are sold or applied to own use.

Chapter 6
Indirect tax transition

Outline of Chapter

6.1 This Chapter explains the amendments made to the GST Transition Act in relation to:

- long-term leases;
- rights granted for life;
- transitional credits for alcoholic beverages;
- transitional credits for petroleum products;
- second-hand goods;
- special GST credits for sales tax paid on stock;
- warranties; and
- application of timing rules to acquisitions.

Detailed explanation of the amendments

Long-term leases

6.2 *Items 2 and 5* amend sections 11 and 12 of the GST Transition Act to make it clear that those sections do not apply to a supply of a long-term lease made before 1 July 2000. A long-term lease is defined in the GST Act to be a lease for at least 50 years.

6.3 Section 11 applies to a supply of rights exercisable on or after 1 July 2000. This section, if applied to long-term leases entered into between 2 December 1998 and 1 July 2000, would subject to GST that portion of the lease that relates to post 1 July 2000 rights. This would be inconsistent with the treatment of long-term leases in the GST Act which treats them in the same manner as a sale of property.

6.4 Section 12 applies to progressive or periodic supplies made over the GST transition period. As with the application of section 11 it would be inappropriate to apply section 12 to long-term leases entered into between 2 December 1998 and 1 July 2000.

Rights granted for life

6.5 ***Item 6*** replaces subsection 14(2) of the GST Transition Act. Section 14 of that Act operates to subject to GST all of the consideration paid for the grant of a right for life that is entered into after 2 December 1998. This would include any supplies made from the date of the agreement to 1 July 2000. There may be some situations where other services are provided along with the life membership (e.g. counselling services or food). Under the current provisions these goods or services provided prior to 1 July 2000 and included in the supply of the right granted for life would be subject to GST. This amendment will ensure that it is only the extent to which a supply relates to the right granted for life that will be taken to be made after 1 July 2000 and subject to GST.

Special credit for alcoholic beverages

6.6 Section 16 of the GST Transition Act provides a special GST credit for sales tax paid on certain stock held at the start of 1 July 2000. The section currently excludes a credit being claimed in respect of alcoholic beverages. These amendments including the addition of ***new sections 16A and 16B*** will be added to allow a credit to be claimed for certain alcoholic beverages.

6.7 ***Items 9 and 10*** amend paragraph 16(2)(b) and add paragraph 16(2)(c) so that the exclusion in section 16 only applies to stocks of alcoholic beverages that have been opened and alcoholic beverages covered by the WET. Products covered by the WET have a special credit entitlement contained in section 3 of the WET and LCT Transition Act.

6.8 The above changes mean that if you hold unopened stocks of alcoholic beverages that are not covered by the WET and satisfy the other conditions of section 16, you will be entitled to claim a special credit for the sales tax included in the price of the goods. However, the amount of the special credit may be reduced by the operation of ***new sections 16A or 16B***.

6.9 ***Item 15*** inserts ***new section 16A*** which will apply to certain alcoholic beverages where the rate of duty will increase from 1 July 2000. As an example, spirits are likely to fall into this category with their rate of duty likely to increase with the removal of sales tax and the introduction of GST on 1 July 2000.

6.10 ***New section 16A*** operates to reduce the section 16 credit by an amount equal to the difference between the new duty amount and the old duty amount. If this amount equals or exceeds the amount of the section 16 credit, no credit is available. ***[New subsection 16A(3)]***

6.11 If the new duty amount is less than the old duty amount there will be no reduction in the section 16 special credit and a full credit will be available.

6.12 In some cases beverages will not currently be subject to duty but will be subject to duty after 1 July 2000 (e.g. certain designer drinks). ***Item 15*** also inserts ***new section 16B*** which will operate to ensure that the section 16 special credit for these products is reduced by the amount of the new duty amount. If the new duty amount equals or exceeds the amount of the section 16 special credit, no section 16 credit is allowed. ***[New subsection 16B(3)]***

6.13 The following examples explain the operation of these provisions:

Example 6.1

John is a retailer and holds stocks of spirits for resale at the start of 1 July 2000. The amount of excise that was included in the price of the spirit was $125.03 and the amount of sales tax was $80.88. The amount of excise that would have been paid if the stock was subject to excise after 1 July 2000 is $178.75. John satisfies the conditions set out in section 16 and would be entitled to claim a special credit of $80.88 if section 16A did not apply. However, section 16A will operate to reduce the special credit by $53.72 (i.e. $178.75 – $125.03). John will be able to claim a section 16 special credit of $27.16 (i.e. $80.88 – $53.72).

Example 6.2

Dianne is a retailer and holds stocks of spirit based pre-mix beverages for resale at the start of 1 July 2000. The amount of excise that was included in the price of the beverages was $16.74 and the amount of sales tax was $15.70. The amount of excise that would have been paid if the stock was subject to excise after 1 July 2000 is $14.80. Dianne satisfies the conditions set out in section 16 and would be entitled to claim a special credit of $15.70 if section 16A did not apply. In Dianne's situation section 16A will not operate and there will be no reduction to the special credit as the new excise amount is less than the old excise amount. Dianne will be able to claim a section 16 special credit of $15.70. (Note: the special credit cannot be increased by the difference between the old excise amount and the new excise amount as the special credit is limited to the amount of sales tax borne in respect of the goods).

Example 6.3

Margaret is a retailer and holds stocks of designer drinks for resale at the start of 1 July 2000. These drinks were not subject to excise prior to 1 July 2000 and the amount of sales tax included in the purchase price was $12.30. The amount of excise that would have been paid if the stock was subject to excise after 1 July 2000 is $14.33. Margaret

satisfies the conditions set out in section 16 and would be entitled to claim a special credit of $14.33 if section 16B did not apply. However, section 16B will operate to deny a special credit as the new excise amount exceeds the amount of the special credit ***[new subsection 16B(3)]***. Margaret will not be able to claim a section 16 special credit in respect of these goods.

Special credit for petroleum products

6.14 ***Item 15*** also inserts ***new section 16C*** which provides a special credit for petroleum products of a kind specified in the regulations for this section. An entity will be entitled to a special petroleum credit if:

- it is registered at 1 July 2000;
- it has on hand at the start of 1 July 2000 petroleum products that are specified in the regulations, that an entity acquired or imported and hold for the purpose of sale or exchange (but not manufacture) in the ordinary course of business;
- before 1 July 2000 an amount of excise duty or customs duty was paid in respect of the goods; and
- the new excise duty or new customs duty on the goods applying on or after 1 July 2000 would be less than the old duty amount.

6.15 The amount of the special credit will be equal to the difference between the old duty amount and the new duty amount ***[new subsection 16C(2)]***. The manner in which this credit can be claimed and paid will be set out in the regulations for this section ***[new subsection 16C(3)]***.

Second-hand goods

6.16 The amendment made by ***item 16*** to section 18 of the GST Transition Act (relating to second-hand goods) is explained at paragraph 1.87 of this Explanatory Memorandum.

Special GST credit for sales tax paid on stock

6.17 Under subsection 16(4), you can only claim the special GST credit by identifying it in one (and only one) GST return that you lodge before 22 January 2001. The Commissioner recently granted a concession to enable small business to extend the time of lodgment of the GST return for their second 3 month tax period under section 31-10 of the GST Act. The original intent of subsection 16(4) is that the claim for the special GST credit be made as part of a GST return for a period that ends before 7 January 2001. This amendment will align the date of lodgment in

subsection 16(4) with the concession granted by the Commissioner. ***[Item 13, subsection 16(4)]***

6.18 It is anticipated that many retailers will claim the special credit as soon as possible. However, later events such as discounts and returns may alter the amount the entity is entitled to claim. If, after making the claim, the entity receives any discounts or rebates, or accept any returns or return goods to their supplier so that the entitlement to the special credit is changed, the entity must lodge an amended GST return. The entity must do this on or before the 21st day of the month following the end of the tax period in which the change happens. ***[Item 12 and 14, new subsections 16(3A) and 16(4A)]***

Warranties

6.19 The amendment made to section 11 by this Bill in relation to warranties is repealed and the same amendment is made to section 12 (progressive or periodic supplies). As section 12 deals with supplies that are made for a period it is more appropriate for the exclusion relating to warranties to be made to that section.

6.20 This amendment makes it clear that warranties that are included in the price of goods or services sold prior to 1 July 2000 are not subject to GST. Where the warranty is the subject of a separate contract and the warranty period spans 1 July 2000, part of the warranty value will be subject to GST in accordance with section 12. ***[Item 5, new subsection 12(1A)]***

6.21 ***New subsection 12(5)*** provides a definition of 'warranty' for the purposes of section 12. ***[Item 5]***

Application of timing rules to acquisitions

6.22 Sections 11, 12 and 14 of the GST Transition Act provide rules about when particular supplies are made. Although these rules refer only to supplies, they also apply to the acquisitions corresponding to those supplies. ***New subsections 11(4), 12(6) and 14(6)*** will expressly apply the rules to acquisitions. ***[Item 3, 5 and 7]***

Chapter 7
Commonwealth-State financial arrangements

Outline of Chapter

7.1 This Chapter explains the amendments contained in ***Schedule 3*** to this Bill.

7.2 The amendments ensure that the calculation of GST revenue to be distributed to the States and Territories will include any GIC relating to GST and will ensure that any effect the WET and LCT laws may have on GST revenue will not be included in the calculation.

Date of effect

7.3 The amendments will be taken to commence immediately after the commencement of the CSFA Act. *[Subclause 2(6)]*

Background to the legislation

7.4 The CSFA Act provides for GST revenue to be distributed to the States and Territories and prescribes how the Commissioner will determine GST revenue.

7.5 The Commonwealth and the States have agreed that GST revenue will be distributed on a *tax collected* basis; that is, the States and Territories will bear the cost of non-payment of GST and receive the GIC collected by the ATO in respect of taxpayers defaulting on their GST liabilities – to the extent that it is attributable to GST. However, the CSFA Act, as currently drafted, does not include any GIC that is attributable to GST in the calculation of GST revenue.

7.6 Further, due to the interaction of the GST Act with the WET Act and the LCT Act, the calculation of GST revenue as currently set out in the CSFA Act may include amounts that are referrable to WET and LCT. The distribution of GST revenue to the States and Territories should not include any amounts in respect of WET or LCT.

Detailed explanation of the amendments

7.7 ***New paragraph 5(3)(aa)*** will ensure that the GIC attributable to GST will be included in the calculation of GST revenue for distribution to the States and Territories. The GIC that is included in the calculation will be any GIC collected that is attributable to unpaid GST, or any GIC collected on unpaid GIC that is attributable to unpaid GST. ***[Item 4]***

7.8 ***Item 1 of Schedule 3*** inserts a definition of GIC for this purpose.

7.9 ***Item 5 of Schedule 3*** amends subsection 5(4) to ensure that refund amounts that are taken into consideration when calculating GST revenue include only those amounts that are attributable to GST. This will ensure that GST revenue calculation is not reduced by refund amounts in respect of WET or LCT.

7.10 Similarly, this Bill will insert ***new subsection 5(4A)***, which will allow the Commissioner to adjust the GST revenue calculated under subsection 5(2) to remove any effect that the WET and the LCT might have on the calculation. ***[Item 6]***

7.11 ***Items 2 and 3 of Schedule 3*** provide definitions of WET and LCT for the purposes of the CSFA Act.

Chapter 8
ABNs

Outline of Chapter

8.1 This Chapter explains the amendments made to the ABN Act to ensure that overseas businesses that are required to register for GST purposes are able to obtain an ABN.

Detailed explanation of the amendments

8.2 ***Item 3*** amends subsection 8(1) to include a further category where an entity will be entitled to have an ABN. Currently an entity must be carrying on an enterprise in Australia to have an ABN. The additional circumstance where an entity will be able to have an ABN is if in the course or furtherance of an enterprise, an entity makes supplies that are connected with Australia. The terms 'connected with Australia' and 'supply' have the meanings given by the GST Act. ***[Items 6 and 9]***

8.3 An example of a situation where an enterprise may not be carried on in Australia, but the entity will be required to be registered for GST and therefore hold an ABN, is an overseas telecommunications supplier that is making supplies that are connected with Australia.

8.4 ***Item 4*** repeals section 39 of the ABN Act. The application of this section would have prevented a non-resident without a permanent establishment in Australia from obtaining an ABN. This amendment removes this restriction and will allow, for example, a visiting entertainer, sportsperson or overseas telecommunication supplier to obtain an ABN where they are making supplies connected with Australia in the course of carrying on an enterprise. This will allow them to meet their GST obligations in respect of any supplies connected with Australia.

8.5 ***Item 5*** removes the definition of 'carried on in Australia' from section 41 of the ABN Act.

Chapter 9
Income tax deductions for GST-related expenditure

Overview

9.1 *Schedule 5* will amend Divisions 25, 42 and 46 of the ITAA 1997 to allow an immediate income tax deduction for the cost of GST-related plant or software acquired or upgraded by small and medium sized businesses during the period 1 July 1999 to 30 June 2000.

Summary of the amendments

Purpose of the amendments

9.2 The amendments will make the necessary changes to the rules about:

- the depreciation of plant in Division 42 of the ITAA 1997;
- software depreciation in Division 46 of the ITAA 1997; and
- the deductibility of particular amounts in Division 25 of the ITAA 1997,

so that eligible businesses will be able to claim an immediate income tax deduction for the cost of acquiring or upgrading plant or software for the purpose of meeting their obligations or exercising their entitlements under the GST law.

9.3 To qualify for the deduction, the business must acquire or upgrade the plant during the period from 1 July 1999 to 30 June 2000.

9.4 In addition, a business will only be eligible for the deduction if:

- it has a pre-GST annual turnover as defined in ***new Subdivision 960-R*** of the ITAA 1997 which does not exceed $10 million;
- one of the reasons the plant was acquired or upgraded was to meet the business's obligations or exercise its entitlements under the GST law; and
- it is registered for the GST immediately before 1 July 2000.

9.5 This measure forms part of the Government's commitment to assisting small and medium sized businesses in gearing up for the GST.

Date of effect

9.6 The amendments will commence on Royal Assent of this Bill (see Clause 2 of this Bill). They will apply to plant or software that a business acquires or upgrades during the period 1 July 1999 to 30 June 2000. ***[New paragraphs 25-80(1)(a) and 42-168(1)(a)]***

Background

9.7 On 19 August 1999 the Treasurer announced that the Government would legislate to allow an immediate income tax deduction to small and medium sized businesses for expenditure on acquiring new plant or software (including upgrades) for the purposes of implementing the GST. The amendments give effect to that announcement.

9.8 Without the benefit of this immediate deduction, businesses would gradually depreciate items of plant (such as computers or cash registers) acquired in readiness for the GST in accordance with the rules in Division 42 of the ITAA 1997. In the case of computers this would be over 3.7 years. Businesses would also depreciate any expenditure on software acquired to meet GST obligations over 2.5 years under the software depreciation rules in Division 46 of the ITAA 1997.

9.9 Other GST-related expenditure may be fully deductible in the year of income in which it is incurred because it is revenue in nature. For example, expenditure on GST-related training or stationery. Taxation Ruling TR 1999/12 provides further discussion on this point.

9.10 This special tax concession for GST-related plant and software is in addition to the $500 million being provided in 1999-2000 to assist small and medium businesses, charities and educational bodies prepare for the introduction of the GST.

Explanation of the amendments

Deducting the cost of acquiring or upgrading plant to prepare for the GST

Expenditure on acquiring plant

9.11 ***New section 42-168*** will be inserted into Subdivision 42-E of the ITAA 1997 to provide that the deduction a business will be entitled to under Division 42 (Depreciation of plant) for expenditure on acquiring

GST-related plant will be the *cost* of the plant. Thus, the business will be able to deduct the whole of the cost of the plant in the income year in which it was acquired, provided the other depreciation rules are met.

9.12 It will not be necessary for the business to work out the effective life of the plant or the applicable rate of depreciation. This reflects the fact that this is intended to be an immediate deduction claimed in full for the income year in which the plant is acquired. The general rules about deductions for depreciation in Division 42 will apply to this immediate deduction. For example, the amount of the depreciation will be reduced to the extent that the plant is used for private purposes (section 42-170).

Expenditure on upgrading plant

9.13 Similarly, ***new section 25-80*** allows a business to claim an immediate deduction for the full cost of *upgrading* an existing unit of plant for the purpose of meeting its obligations or exercising its entitlements under the GST law.

9.14 In cases where a business makes a GST-related upgrade to an item of plant that is currently being depreciated under Division 42, the business will claim an immediate deduction under ***new section 25-80*** for the cost of the upgrade. It will then continue to depreciate the existing item of plant separately under the Division 42 rules without taking into account the cost of the upgrade or other matters such as its effect on the effective life of the plant. If the business disposes of the item of plant, the cost of the upgrade will not be taken into account when calculating any balancing adjustment.

Deducting the cost of acquiring or upgrading software to prepare for the GST

Deducting software expenditure using the general depreciation provisions

9.15 Section 46-25 sets out the broad principle that the rules about the depreciation of plant in Division 42 of the ITAA 1997 apply to software on which the taxpayer incurs expenditure *as if that software was plant owned by the taxpayer.*

9.16 This rule will enable a business to work out its deduction for the cost of acquiring GST-related software under ***new section 42-168*** as the software will be treated, for the purposes of that section, as plant owned by the business. This will ensure the business is able to claim an immediate deduction for the full cost of the software rather than a deduction over 2.5 years under Subdivision 46-B. Thus, section 46-25 enables a business to use ***new section 42-168*** to work out its deduction for expenditure incurred on acquiring both GST-related software (including software upgrades) and other GST-related items of plant.

Upgrading software

9.17 A business will also be able to deduct in full the cost of making GST-related upgrades to existing software under ***new section 42-168***.

9.18 In applying ***new section 42-168***, the business will ignore the special rules about depreciation of software in sections 46-35 to 46-50 of the ITAA 1997. ***[New section 46-62, item 6]***

Exclusion from software pool

9.19 ***New paragraph 46-85(d)*** excludes expenditure on GST-related software from the kinds of expenditure which can be included in a software pool under Subdivision 46-D of the ITAA 1997. ***[Item 7]***

The circumstances in which an immediate deduction may be claimed

9.20 To be eligible to claim an immediate deduction for the cost of acquiring new plant or software (including software upgrades) under ***new section 42-168***, the tests set out in ***new subsection 42-168(1)*** must be satisfied. To claim a deduction for the cost of upgrading existing items of plant under ***new section 25-80***, the tests set out in ***new subsection 25-80(1)*** must be satisfied. These tests are explained below. If the tests are not satisfied, the business may be able to depreciate the cost of the plant under the general depreciation rules in Division 42 or, in the case of expenditure on software, under the rules in Division 46.

9.21 In addition to satisfying the tests in ***new section 42-168***, the general conditions for claiming a deduction for depreciation of plant under Division 42 will need to be satisfied by a business wishing to claim an immediate deduction for the cost of acquiring new plant or software. For example, the business will need satisfy the conditions in section 42-15, namely that the business:

- is the owner or quasi-owner of the plant; and
- uses the plant or has it installed ready for use for the purpose of producing assessable income.

9.22 The general recoupment rules in Division 20 of the ITAA 1997 will also apply to reverse the effect of the immediate deduction to the extent that a business recoups all or part of the cost of the software or upgrading the plant. ***[New item 1.7AA and item 1.7A in the table in section 20-30]***

When must the plant be acquired or upgraded?

9.23 To qualify for the immediate deduction, the business must become the owner or quasi-owner of the plant or software, or incur the cost of upgrading it, during the period 1 July 1999 to 30 June 2000 ***[new paragraphs 42-168(1)(a) and 25-80(1)(a)]***. This reflects the Government's

intention to assist small and medium sized businesses in *gearing up* for the commencement of the GST on 1 July 2000.

9.24 In order to obtain an immediate deduction under ***new section 25-80*** for the cost of upgrading plant, the business must use the upgraded item of plant or have it installed ready for use for the purpose of producing assessable income immediately before 1 July 2000. This rule will ensure that only upgrades that assist the business with the commencement of the GST on 1 July 2000 will qualify for the immediate deduction. ***[New paragraph 25-80(1)(d)]***

Purpose of the expenditure

9.25 To claim the immediate deduction, a business must also acquire or upgrade the item of plant for the purpose of, or for purposes that include the purpose of:

- meeting its existing or future obligations under the GST law; or
- exercising its existing or future entitlements under the GST law.

[New paragraphs 42-168(1)(b) and 25-80(1)(b)]

9.26 Under this test, the purpose of meeting its obligations or exercising its entitlements under the GST law will not need to be the sole or dominant purpose of the business in acquiring the plant. However, the business will need to be able to demonstrate that the purpose of satisfying its obligations or exercising its entitlements under the GST law was a significant reason for acquiring or upgrading the plant.

9.27 This test recognises that a business may acquire or upgrade plant to assist it in meeting a range of obligations under the new tax system from 1 July 2000. For example, a business may need to acquire new software which will enable it to meet its obligations under the GST law together with its obligations under the PAYG and fringe benefits tax arrangements. For this reason, the cost of acquiring *bundled* software which can support a range of compliance obligations including those under the GST law will qualify for the deduction, as may the cost of a new computer capable of supporting such software.

9.28 Some examples of expenditure on plant or software which will qualify for the deduction are set out below.

Example 9.1

A business has cash registers that cannot comply with the GST requirements. The business acquires new cash registers on 30 April 2000 so that it can provide to its customers the information required

for GST purposes. The cost of the new cash registers would be immediately deductible under ***new section 42-168***.

Example 9.2

A business operating a manual accounting system decides that it should change to a computerised system because of the additional work required to comply with its GST obligations. During 1999-2000 the business also acquires the computerised system because it will help the business to manage its quarterly obligations under the PAYG instalments arrangements. The business would be entitled to an immediate deduction for the cost of the computer and the software under ***new section 42-168***. Meeting its obligations under the GST law was a significant purpose in its decision to acquire the new plant.

Example 9.3

A business, that already has a computerised system, buys new software and upgrades its existing software during 1999-2000, so that it can comply with its GST and PAYG obligations. The business's existing computer hardware is not capable of operating the new software in an efficient way and decides to buy a new computer that can. The cost of the new software (and the upgraded software) and the computer would be immediately deductible under ***new section 42-168***.

Ownership test

9.29 To be able to deduct the cost of acquiring plant or software to prepare for the GST, a business must become the owner or quasi-owner of the plant (section 42-15).

9.30 ***New paragraph 25-80(1)(c)*** provides that a business will only be entitled to an immediate deduction for the cost of upgrading an item of plant if the business is the owner or quasi-owner of the plant when the upgrade is made.

Annual turnover test

Pre-GST annual turnover

9.31 An immediate deduction for acquiring or upgrading plant will only be available to businesses satisfying the 'pre-GST annual turnover' test. To satisfy this test, the business must have a 'group turnover' of not more than $10 million for the income year in which it acquires or upgrades the plant. ***[New paragraphs 42-168(1)(c) and 25-80(1)(e), new subsection 960-370(1)]***

9.32 A business's ***group turnover*** for an income year will be the sum of the 'value of the business supplies' made by the business *and* its connected entities during that year. ***[Item 9]***

9.33 The ***value of the business supplies*** an entity makes in an income year will be the sum of:

a) the value of all 'taxable supplies' (as defined by section 9-75 of the GST Act) made during the year in the ordinary course of carrying on the business; and

b) the 'prices' (as defined by section 9-75 of the GST Act) of other supplies made during the year in the ordinary course of carrying on the business.

[Item 12]

9.34 A supply will only be a taxable supply if it is made on or after 1 July 2000, therefore paragraph (a) above will only be relevant to supplies made on or after that date and will not apply for the purposes of this measure to businesses with a standard income year ***[section 7 of the GST Transition Act]***. These businesses will calculate the value of their business supplies on the basis of the rule in paragraph (b) above.

9.35 The 'value of the business supplies' made by the business will exclude the value of:

- supplies not made in the ordinary course of carrying on a business – for example, the proceeds of sale of a capital asset, goods taken for own use and rental receipts (unless the rental activity constitutes or forms part of a business activity); and
- things that do not constitute the making of a supply – for example, dividend receipts.

Connected entities

9.36 In calculating its 'group turnover', a business will be required to include the 'value of the business supplies' made by any entity *connected with* it during the income year. This is to ensure that the immediate deduction is only available to genuinely small and medium sized businesses. ***[Item 9]***

9.37 However, in calculating the 'value of the business supplies' made by it and its connected entities, the business will ignore the value of supplies made:

- by the business to entities connected with it during the income year;
- to the business by entities connected with it; and
- by one connected entity to another connected entity.

[Item 9]

9.38 The concept of 'connected with' used in the amendments draws on the existing concept of 'connected with' contained in the CGT roll-over relief provisions for small business taxpayers. These CGT provisions are contained in Division 123 of the ITAA 1997. This concept of 'connected with' has also recently been used in the small business taxpayer test contained in Schedule 2 to the New Business Tax System (Capital Allowances) Bill 1999. A detailed explanation of the concept of 'connected with' is provided in Chapter 3 of the Explanatory Memorandum to that Bill.

New businesses

9.39 If a business or an entity connected with it starts to carry on business after the beginning of the income year, the business will be required to make a reasonable estimate of its 'group turnover' had it or the connected entity carried on business for the whole year. If the estimate is not more than $10 million the business will satisfy the 'pre-GST annual turnover' test. ***[New subsection 960-370(2), item 8]***

Registration test

9.40 To qualify for an immediate deduction under ***new section 42-168*** or ***new section 25-80***, the business must be registered for the GST under Part 2-5 of the GST Act immediately before 1 July 2000. ***[New paragraphs 42-168(1)(d) and 25-80(1)(f)].***

9.41 This rule is aimed at ensuring that only businesses within the GST system, and which anticipate having GST obligations as of 1 July 2000, will benefit from the concession.

9.42 ***New subsection 42-168(2)*** contains a special rule for taxpayers with income years that do not end on the standard date of 30 June. The subsection provides that if the income year in which a business acquires GST-related plant, including software, ends before 30 June 2000, the business will be taken to have satisfied the registration requirement if:

- the business is registered for GST when it lodges its income tax return for the income year; or
- the business has applied for registration and has not been refused registration when it lodges its income tax return for the income year.

9.43 However, a business covered by ***new subsection 42-168(2)*** cannot deduct the cost of GST-related plant, including software, if immediately before 1 July 2000 it is not registered for GST. In these cases the Commissioner can amend the business's income tax return to disallow the deduction if it has been claimed by the business. ***[New subsection 42-168(3)]***

9.44 ***New subsections 25-80(2) and 25-80(3)*** have the same effect in relation to claiming an immediate deduction for GST-related upgrades under ***new section 25-80***.

Chapter 10
Diesel Fuel Rebate Scheme

Overview

10.1 This Chapter explains the amendments contained in ***Schedule 6*** to this Bill. ***Schedule 6*** contains a number of minor technical amendments to the Customs Act, the DFRS Act and the Excise Act.

Summary of the legislation

10.2 The DFRS Act amended the Customs Act to provide a diesel fuel rebate for purchases of diesel and like fuels where that fuel is for use in:

- rail transport in the course of carrying on an enterprise; or
- marine use in the course of carrying on an enterprise.

10.3 The amendments will change the reference from 'marine use' to 'marine transport' in accordance with the Government's original intent. It will also set the rebate rates for rail and marine transport from 1 July 2000 at the same rate as that applying to primary production.

Details of amendments

10.4 *Item 1* amends subsection 164(1)(ac) of the Customs Act to clarify that the diesel fuel rebate is extended to marine transport in accordance with the Government's original intent.

10.5 *Item 2* inserts ***new subsection 164(4C)*** to the Customs Act to set the rebate rate for rail and marine transport from 1 July 2000 at the same rate as that applying to primary production. This will allow present arrangements to continue under which rebates are paid on an average of the rate applying in the 6 months prior to lodgement of the rebate claim. The application of the averaging provisions means that an increase in the excise rate is phased in over 6 months.

10.6 *Item 3* amends subsections 164(5AC)(a) and (b) of the Customs Act to provide that if you are entitled to the rebate under more than one category, you are entitled to the greater rate of rebate.

10.7 Subsection 164(7) of the Customs Act is amended by replacing the definition of marine use with a definition of marine transport. The new definition makes it clear that the rebate is payable for marine transport and includes transport by vessels in or on fresh water but does not include any transport relating to forestry. ***[Items 4 and 5]***

10.8 DFRS Act sets the rebate rate for rail transport and marine use at the amount per litre of duty paid on the diesel fuel. ***Item 6*** repeals the provision contained in the Customs Act and ***item 7*** repeals the provision contained in the Excise Act. ***Item 2*** and ***item 9*** provide that the rebate rate for rail and marine transport from 1 July 2000 is the same rate as that applying to primary production.

10.9 ***Item 8*** amends subsection 78(1)(ac) of the Excise Act to clarify that the diesel fuel rebate is extended to marine transport in accordance with the Government's original intent.

10.10 ***Item 9*** inserts ***new subsection 78A(4C)*** to the Excise Act to set the rebate rate for rail and marine transport from 1 July 2000 at the same rate as that applying to primary production.

10.11 ***Item 10*** amends subsections 78A(5AC)(a) and (b) of the Excise Act to provide that if you are entitled to the rebate under more than one category, you are entitled to the greater rate of rebate.

10.12 Reference to marine use in subsection 78A(7) of the Excise Act is amended to marine transport. ***[Item 11]***

Chapter 11
Amendments relating to international obligations

Outline of Chapter

11.1 Australia is party to a number of international conventions and agreements which among other things provide a range of taxation concessions to various bodies and personnel in Australia. This Chapter explains the amendments made to the following Acts to ensure that Australia continues to meet its international obligations:

- *GST Act, WET Act and LCT Act*;
- *TAA 1953*;
- *Consular Privileges and Immunities Act 1972* (CP&I Act);
- *Diplomatic Privileges and Immunities Act 1967* (DP&I Act);
- *International Organisations (Privileges and Immunities) Act 1963* (IO(P&I) Act); and
- *Overseas Missions (Privileges and Immunities) Act 1995* (OM(P&I) Act).

Amendments relating to diplomatic, consular and related privileges and immunities

11.2 The taxation concessions relate to the GST, WET and LCT. The concessions will be granted by way of an exemption for goods imported by the eligible body or person and by way of a payment by the Commissioner through the 'indirect tax concession scheme' for goods purchased in Australia. This is a departure from the way in which concessions for local purchases are currently granted under the wholesale sales tax system. However, given the wider application of the GST in terms of the range of goods and services covered and the number of businesses involved, the indirect tax concession scheme is considered the most effective way of providing these concessions. The indirect tax concession scheme will maintain the integrity of the GST system and allow Australia to meet its international obligations.

11.3 The GST also presents an opportunity to maximise benefits for Australia through reciprocal agreements to provide limited tax concessions. These are in addition to our treaty obligations and are consistent with international practice. Australia's position on these limited reciprocal concessions is that we must maintain our global advantage, taking into account the value of foreign taxation exempted and Australian taxation forgone.

11.4 The range of taxation concessions to be granted for local purchases by International Organisations and Overseas Missions will be covered by the regulations which is consistent with the manner in which other concessions are currently granted for these bodies. The Minister for Foreign Affairs will determine the concessions for diplomatic and consular missions and personnel through a determination, (which is a disallowable instrument for the purposes of section 46A of the AIA 1901) rather than by the regulations. The privileges and immunities for diplomatic and consular missions and officials, are set out in the Conventions agreed to by Australia and have been enacted as part of the legislation rather than through regulations.

11.5 A number of taxation concessions that are currently provided for in the various Acts need to be amended to overcome the effect of section 177-5 of the GST Act. That section cancels the effect of a provision of another Act that would have the effect of exempting a person from liability to pay GST. The WET Act and LCT Act also contain similar provisions relating to WET and LCT. The cancellation in these Acts does not apply if:

- the provision of the other Act commences after the commencement of the sections in the GST, WET and LCT Acts; and
- refers specifically to GST, WET and LCT payable under those Acts.

11.6 The amendments to diplomatic, consular and related privileges and immunities are required for goods imported by these bodies. Without an exemption these bodies would be liable to pay GST, WET and LCT (as appropriate) on the goods imported.

11.7 In some circumstances a mission or post may make a supply for which they could be potentially liable to pay GST. This would be in breach of the Conventions. However, as diplomatic missions, consular posts, overseas missions and International Organisations are not considered to be carrying on an enterprise they will not be able to register for GST and therefore will not be subject to GST on any supplies they may make. There may be some circumstances where an International Organisation is considered to be carrying on an enterprise and the IO(P&I) Act is being amended to make it clear that in these circumstances, the

organisation will not be considered to be carrying on an enterprise for the purposes of the GST Act.

Consular Privileges and Immunities

11.8 ***Items 1 to 7 of Schedule 7*** insert definitions of 'acquisition', 'approved form', 'Commissioner', 'GST Act', 'indirect tax', 'Luxury Car Tax Act' and 'Wine Equalisation Tax Act' in subsection 3(1) of the CP&I Act.

11.9 ***Item 8*** amends section 6 of the CP&I Act to overcome the effect of:

- section 177-5 of the GST Act;
- section 21-5 of the LCT Act; and
- section 27-25 of the WET Act.

11.10 This amendment will ensure that importations covered by paragraph 1 or paragraph 2 of Article 50, or Article 62, of the Vienna Convention on Consular Relations and section 5 of the CP&I Act are not subject to GST, WET or LCT.

11.11 ***Item 9 of Schedule 7*** sets out the indirect tax concession scheme, the detail of which will be provided by a determination of the Minister for Foreign Affairs. The determination will cover the following:

- the countries which will benefit from the concessions;
- the types of acquisitions that will be covered;
- the types of eligible use for acquisitions; and
- the conditions, limitations, and the period and manner in relation to any amounts payable.

11.12 The indirect tax concession scheme in ***new section 10A*** of the CP&I Act provides for the Commissioner to pay to the head of the consular post an amount equal to the GST, WET and LCT payable in respect of acquisitions covered by the determination. A claim for an amount must be in the approved form, which has the meaning given in section 995-1 of the ITAA 1997.

11.13 ***New subparagraph 10A(1)(b)(i)*** refers to the official use of the consular post. Official use is use that has a direct relation with the exercise of the functions of the post in accordance with the Vienna Convention on Consular Relations or other related international agreements or arrangements.

Diplomatic Privileges and Immunities

11.14 ***Items 10 to 16 of Schedule 7*** insert definitions of 'acquisition', 'approved form', 'Commissioner', 'GST Act', 'indirect tax', 'Luxury Car Tax Act' and 'Wine Equalisation Tax Act' in subsection 4(1) of the DP&I Act.

11.15 ***Item 17 of Schedule 7*** amends section 8 of the DP&I Act to overcome the effect of:

- section 177-5 of the GST Act;
- section 21-5 of the LCT Act; and
- section 27-25 of the WET Act.

11.16 This amendment will ensure that importations covered by paragraph 1 of Article 36, or paragraph 1 or paragraph 2 of Article 37, of the Vienna Convention on Diplomatic Relations and section 7 of the DP&I Act are not subject to GST, WET or LCT.

11.17 ***Item 18 of Schedule 7*** sets out the indirect tax concession scheme, the detail of which will be provided by a determination of the Minister for Foreign Affairs. The determination will cover the following:

- the countries which will benefit from the concessions;
- the types of acquisitions that will be covered;
- the types of eligible use for acquisitions; and
- the conditions, limitations, and the period and manner in relation to any amounts payable.

11.18 The indirect tax concession scheme in ***new section 10B*** of the DP&I Act provides for the Commissioner to pay to the head of the diplomatic mission an amount equal to the GST, WET and LCT payable in respect of acquisitions covered by the determination. A claim for an amount must be in an approved form, which has the meaning given in section 995-1 of ITAA 1997.

11.19 ***New subparagraph 10B(1)(b)(i)*** refers to the official use of the diplomatic mission. Official use is use that has a direct relation with the exercise of the functions of the mission in accordance with the Vienna Convention on Diplomatic Relations or other related international agreements or arrangements.

International Organisations

11.20 ***Items 19 to 26 of Schedule 7*** insert definitions of 'acquisition', 'approved form', 'Commissioner', 'enterprise', 'GST Act', 'indirect tax', 'Luxury Car Tax Act' and 'Wine Equalisation Tax Act' in subsection 3(1) of the IO(P&I) Act.

11.21 ***Item 27 of Schedule 7*** adds ***new section 11B*** to the IO(P&I) Act to overcome the effect of:

- section 177-5 of the GST Act;
- section 21-5 of the LCT Act; and
- section 27-25 of the WET Act.

11.22 This amendment will ensure that importations covered by an immunity from taxation conferred by the regulations are not subject to GST, WET or LCT.

11.23 ***Item 27 of Schedule 7*** also sets out the indirect tax concession scheme, the detail of which will be covered by regulations made for the purposes of the indirect tax concession scheme. The regulations will cover the following:

- the organisations which will benefit from the concessions;
- the types of acquisitions that will be covered;
- the types of eligible use for acquisitions; and
- the conditions, limitations, and the period and manner in relation to any amounts payable.

11.24 The indirect tax concession scheme in ***new section 11C*** of the IO(P&I) Act provides for the Commissioner to pay to the organisation an amount equal to the GST, WET and LCT payable in respect of acquisitions covered by the regulations. A claim for an amount must be in an approved form, which has the meaning given in section 995-1 of the ITAA 1997.

11.25 ***New subparagraph 11C(1)(b)(i)*** refers to the official use of the international organisation. Official use is use that has a direct relation with the exercise of the functions of the organisation in accordance with the United Nations Convention on Privileges and Immunities or other related international agreements or arrangements.

11.26 ***Item 28 of Schedule 7*** inserts ***new section 12B*** in the IO(P&I) Act which relates to registration under the GST Act. As the regulations confer the privileges and immunities for international organisations, which

will be, either provided by way of exemption or by payment by the Commissioner, there will be no need for these organisations to be registered for GST purposes. ***New section 12B*** states that an international organisation will not be considered to be carrying on an enterprise for the purposes of the GST Act when acting in the capacity for which the organisation or person was granted those privileges and immunities. As such, International Organisations will not register for GST and therefore will not be liable to pay GST in respect of any supplies they may make in Australia (e.g. for providing any expert services).

Overseas Missions

11.27 ***Items 29 to 35 of Schedule 7*** insert definitions of 'acquisition', 'approved form', 'Commissioner', 'GST Act', 'indirect tax', 'Luxury Car Tax Act' and 'Wine Equalisation Tax Act' in section 3 of the OM(P&I) Act.

11.28 ***Item 36 of Schedule 7*** adds ***new subsection 9(2)*** to the OM(P&I) Act to overcome the effect of:

- section 177-5 of the GST Act;
- section 21-5 of the LCT Act; and
- section 27-25 of the WET Act.

11.29 This amendment will ensure that importations covered by an immunity from taxation conferred by the regulations are not subject to GST, WET or LCT.

11.30 ***Item 37 of Schedule 7*** sets out the indirect tax concession scheme, the detail of which will be covered by regulations made for the purposes of the indirect tax concession scheme. The regulations will cover the following:

- the overseas missions which will benefit from the concessions;
- the types of acquisitions that will be covered;
- the types of eligible use for acquisitions; and
- the conditions, limitations, and the period and manner in relation to any amount payable.

11.31 The indirect tax concession scheme in ***new section 12A*** of the OM(P&I) Act provides for the Commissioner to pay to the head of a designated overseas mission an amount equal to the GST, WET and LCT payable in respect of acquisitions covered by the regulations. A claim for an amount must be in an approved form, which has the meaning given in section 995-1 of the ITAA 1997.

11.32 ***New subparagraph 12A(1)(b)(i)*** refers to the official use of the overseas mission. Official use is use that has a direct relation with the exercise of the functions of the mission in accordance with international agreements or arrangements.

Visiting forces and other international obligations

11.33 Australia is party to a number of international agreements including status of forces agreements with other countries. These agreements provide for certain taxation concessions to be granted. These amendments will ensure that Australia is able to grant these taxation concessions as required.

11.34 The taxation concessions relate to the GST, WET and LCT. The concessions will be granted by way of an exemption for goods imported by the eligible body or person and by way of a refund by the Commissioner for eligible goods purchased in Australia. This is a departure from the way in which concessions for local purchases are currently granted under the wholesale sales tax system. However, given the wider application of the GST in terms of the range of goods and services covered and the number of businesses involved, the refund mechanism is considered the most effective way of providing these concessions, while preserving the integrity of the GST system and at the same time continuing to meet Australia's international obligations.

Visiting forces

11.35 ***Item 53 of Schedule 1*** adds items 4, 8 and 15 in Schedule 4 to the CTA 1995 to section 42-5(1) of the GST Act (non-taxable importations). These items relate to concessions for visiting forces and members of visiting forces. In addition, item 4 covers goods owned by a foreign government and brought into Australia for the official use of that government. This amendment will ensure that importations covered by these items are non-taxable. The goods covered by these items reflect the concessions provided for in the status of forces agreements.

11.36 ***Item 162 of Schedule 1*** adds the same items in Schedule 4 of the CTA 1995 to paragraph 7-10(3)(c) of the LCT Act. Subsection 7-10(3) of the LCT Act relates to importations of luxury cars that are not taxable. These items reflect the concessions provided in the status of forces agreements.

11.37 ***Item 169 of Schedule 1*** adds items 4 and 8 in Schedule 4 of the CTA 1995 to subsection 7-15(1) of the WET Act. This subsection refers to customs dealings that are not taxable.

11.38 ***Item 55*** repeals section 42-15 of the GST Act. This section qualifies the circumstances in which goods covered by item 15 in Schedule 4 to the CTA 1995 would be non-taxable importations. As all importations of goods covered by item 15 will now be non-taxable importations, section 42-15 is no longer required.

Other international obligations

11.39 ***Item 54 of Schedule 1*** inserts ***new subsection 42-5(1C)*** into the GST Act. This subsection provides that an importation of goods is non-taxable if the goods are covered by:

- item 1A, 1B, 1C, 1D, 1E, 5, 6, 9, or 16 in Schedule 4 to the CTA 1995; and
- regulations made for the purposes of this subsection.

11.40 These items in the CTA 1995 relate to importations where Australia has an international obligation. Importations made under these items will only be non-taxable if they are also specified in the regulations. This will allow the regulations to specify those importations where Australia is required to provide an indirect tax concession.

Amendments to the Taxation Administration Act 1953

11.41 ***Item 38 of Schedule 7*** inserts ***new section 62B*** into the TAA 1953. This provides for a refund scheme for defence related international obligations. This relates to refunds of GST, LCT and WET for eligible local purchases. The range of taxation concessions to be granted for local purchases by visiting forces and other bodies will be covered by a determination, (which is a disallowable instrument for the purposes of section 46A of the AIA 1901 to be made by the Defence Minister.

11.42 ***New section 62B*** sets out the areas where the Defence Minister can determine that a refund of tax is payable. These cover the bodies or persons who are entitled to the concessions, the types of acquisitions, the eligible uses of acquisitions and any conditions or limitations. The refund of tax will be made by the Commissioner within the period and manner set out in the determination.

11.43 ***New section 62C*** relates to a refund scheme for other international obligations. This allows regulations to be made providing for a refund of tax to entities covered by the regulations. The regulations will specify the kind of entities and the kind of acquisitions that are eligible. However, the regulations can only specify entities and acquisitions for which the Commonwealth is under an international obligation to grant indirect tax concessions in relation to the kind of entity and the kind of acquisition. Refunds will be payable by the Commissioner.

11.44 The types of international obligations under which indirect tax concessions may be required include:

- treaties, which are binding under international law;
- memoranda of understanding, arrangements and other documents of less than treaty status, which implement general obligations under a treaty; and
- memoranda of understandings, etc. which stand alone but which document Australia's international political and moral obligations.

Chapter 12
Income tax consequences of GST

Outline of Chapter

12.1 This Chapter explains amendments to the ITAA 1997 to be made by *Schedule 8* to this Bill. These amendments will:

- ensure that GST is excluded from income amounts derived before 1 July 2000, and input tax credit entitlements are excluded from deductions incurred before 1 July 2000, if the transitional GST provisions operate to make GST payable on those amounts; and
- treat the special credits provided for under the GST Transition Act as assessable income.

Treatment of amounts derived or incurred before 1 July 2000

Background

12.2 Amendments to the ITAA 1997 propose that GST payable be excluded from assessable income, and that deductions exclude an amount corresponding to an input tax credit entitlement. These amendments are proposed by the A New Tax System (Indirect Tax and Consequential Amendments) Bill 1999 and are to apply from 1 July 2000, the commencement of the GST.

12.3 For supplies that span 1 July 2000, an entity may derive an amount as income before 1 July 2000 for which a liability to GST will be attributable in the first tax period after that date. Conversely, an entity may incur an outgoing before 1 July 2000 for which an entitlement to an input tax credit will be attributable in the first tax period. There is doubt about how the amendments proposed by the A New Tax System (Indirect Tax and Consequential Amendments) Bill 1999 apply in these situations.

Explanation of the amendments

12.4 An amount equal to GST payable that will result from the operation of the transitional GST provisions is to be excluded from income derived before 1 July 2000, if the GST relates to that income. ***[Item 1, new section 17-25]***

12.5 Similarly, an amount equal to an input tax credit entitlement that will result from the operation of the transitional GST provisions is to be excluded from an outgoing incurred before 1 July 2000, if the input tax credit entitlement relates to that outgoing. ***[Item 3, new section 27-30]***

12.6 These rules will also apply to amounts received, or receivable, that result in a GST liability, and to amounts paid, or payable, that result in an input tax credit entitlement, if those amounts are taken into account in calculating assessable income derived, or deductions incurred (as appropriate), before 1 July 2000.

Example 12.1

Steven operates a small computer systems consultancy and expects to be registered for GST purposes. In January 2000 Steven paid for annual subscriptions to industry publications used by him and his employees in the course of the business. The publishers have provided tax invoices which indicate the GST component of the amounts paid which correspond to that part of the subscription period from 1 July 2000.

An input tax credit corresponding to the GST shown on the tax invoices is attributed to the tax period ending 30 September 2000.

The amendment will result in a deduction, for the 1999-2000 income year, for the amount paid for the subscriptions reduced by the amount of the input tax credit.

Special credits under the GST Transition Act 1999

Background

12.7 As part of the transition to a new system of indirect taxation there is an entitlement to a special credit for sales tax embedded in certain stock on hand at the start of 1 July 2000 (section 16 of the GST Transition Act). Proposed amendments to the GST Transition Act will confer entitlements to special credits for:

- certain sales of motor vehicles held under operating leases since 2 December 1998 (***new section 19A***), proposed to be inserted by the A New Tax System (Indirect Tax and Consequential Amendments) Bill 1999);
- certain alcoholic beverages on which excise duty or customs duty has been increased (***new section 16A***), proposed to be inserted by this Bill;

- certain alcoholic beverages on which duty would not previously have been paid (***new section 16B***), proposed to be inserted by this Bill; and
- certain petroleum products on hand on 1 July 2000 (***new section 16C***), proposed to be inserted by this Bill.

12.8 As special credits do not correspond to any particular outgoing by the entity it is impractical to treat them for income tax purposes in the same way as input tax credits (i.e. as reducing the amount of an outgoing). A neutral outcome can be achieved, however, by treating them as assessable income.

Explanation of the amendment

12.9 The amendment will include in assessable income an amount equal to a special credit. It will be treated as income in the income year in which the end of the tax period the special credit is attributed to occurs. For example, if a special credit is attributed to a tax period ending 30 November 2000, and the entity has a calendar year substituted accounting period for income tax purposes, an amount equal to the special credit will be included in assessable income for the 2000 calendar year. ***[Item 2, new section 17-30]***

12.10 A reference to the income tax treatment of the special credits under sections 16, that is, in the same way as input tax credits, will be removed. ***[Item 14 of Schedule 2]***

Chapter 13
Amendment of the Petroleum Resource Rent Tax Assessment Act 1987

Outline of Chapter

13.1 This Chapter explains the amendments to PRRTAA necessary to ensure that GST is excluded from the tax base for calculating PRRT. The amendments are contained in ***Schedule 8*** to this Bill.

Context of Reform

13.2 Participants in a petroleum project are liable for PRRT on taxable profits from the project. A taxable profit will result if project-related assessable receipts for a financial year exceed deductible expenditure. From 1 July 2000, the receipts derived and expenditure incurred may include GST. These amendments will ensure that GST components embedded in the receipts and expenditure will be excluded from the calculation of the taxable profit that is subject to PRRT.

Summary of amendments

Purpose of the amendments

13.3 The amendments to the PRRTAA will remove a distortion to the PRRT tax base that might otherwise arise as a consequence of the introduction of the GST.

Date of effect

13.4 The amendments will apply from 1 July 2000, the commencement of the GST.

Detailed explanation of amendments

13.5 The taxable profit of a person for a financial year in relation to a petroleum project is defined in Part V of the PRRTAA as the excess of the assessable receipts derived over deductible expenditure incurred (including any transferred amounts).

Excluding GST components from assessable receipts

13.6 The calculation of amounts that are included in the defined categories of assessable receipts are to exclude amounts corresponding to any GST, or increasing adjustments (representing additional GST liability), that would otherwise be included in those amounts. ***[Item 15, new subsection 22B(1)]***

13.7 An amount equal to the GST component of the sale price of property, or any increasing adjustment relating to the sale, is similarly excluded in calculating the assessable receipt ***[item 15, new subsection 22B(2)]***. An amount equal to the input tax credit entitlement, or any decreasing adjustment (representing reduced GST liability), relating to sale expenses is also to be excluded from that calculation ***[item 15, new subsection 22B(3)]***.

Excluding GST components from deductible expenditure

13.8 Expenditure or liabilities incurred that are included in the defined categories of deductible expenditure are to exclude amounts corresponding to any input tax credit entitlement, or decreasing adjustment, relating to that expenditure or liability. ***[Item 16, new section 31B]***

Excluded expenditure

13.9 The list of excluded expenditure in section 44 of the PRRTAA will be amended to put beyond doubt that payments of GST are within the category of excluded expenditure. ***[Items 17 and 18, new paragraph 44(i)]***

Defined terms

13.10 The amendments refer to terms that have particular meanings in the GST Act. These meanings will be adopted by including the relevant terms in the list of defined terms in section 2 of the PRRTAA. ***[Items 3 to 9]***

13.11 One of the defined terms to be inserted in section 2 is ***market value*** ***[item 14]***. This term will account for the input tax credit that a person would be entitled to if they had acquired the property at the time the market value is determined. This reflects the net impact on an entity's resources if it acquired the property. The consideration given would be offset by the input tax credit the entity would be entitled to.

Chapter 14
Reliance on the Commissioner's interpretation of the law

Background

14.1 Section 37 of the TAA 1953 ensures that taxpayers are able to rely on the Commissioner's interpretation of the indirect tax law as expressed in public rulings or private rulings. If there has been an underpayment of indirect tax, but that underpayment was made in reliance on a ruling, the section treats the underpaid amount as not being payable.

14.2 Underpaid tax ceases to be payable if it relates to taxable supplies, taxable importations or taxable dealings made before another ruling is made to alter the earlier ruling. Similarly, an amount overpaid as a refund by the Commissioner that relates to such transactions will remain payable.

14.3 As the provision now stands, the protection it confers on taxpayers may not be available if the subject of a change in the Commissioner's interpretation of the law is the entitlement to an input tax credit.

Explanation of the amendment

14.4 The amendment will extend the application of section 37 to cover underpayments of tax (or overpayments of refunds by the Commissioner) that result from reliance on rulings that relate to creditable acquisitions or creditable importations. It will ensure that rulings on the entitlement to input tax credits can be relied on in the same way as rulings on the liability to indirect tax. ***[Item 19 of Schedule 8, new subparagraph 37(1)(b)(iv)]***

Chapter 15
Wool tax amendment

Outline of Chapter

15.1 This Chapter explains the amendment to wool tax as a consequence of the introduction of GST. The amendment will be inserted in ***Schedule*** 8 to this Bill.

Context of Reform

15.2 Liability to wool tax is generally based on the sale price of wool. From 1 July 2000 supplies of wool will be subject to GST, other than those exported by the supplier (which will be GST-free). The sale price of wool will include a GST component. This amendment will exclude the GST component from the tax base for wool tax.

Detailed explanation of the amendment

15.3 Wool tax is imposed at a prescribed rate (currently 4%) on the sale value of shorn wool. Section 10 of the WTAA 1964 defines the sale value of shorn wool. In situations where liability attaches to sale of the wool, the sale value is based on the price of the wool.

15.4 Section 9-75 of the GST Act defines 'price' as a GST inclusive amount. Consistent with this meaning, ***new subsection 177-12(1)*** to be inserted by this Bill attributes a GST inclusive meaning to references to 'price' in other Commonwealth Acts. In the absence of any contrary intention, the reference to 'price' in the WTAA 1964 would have adopted a GST inclusive meaning.

15.5 An amendment of the WTAA 1964 will expressly provide that the 'price' of wool for the purpose of calculating wool tax is to exclude the 'net GST' payable by the supplying entity. It will override the meaning attributed to 'price' by ***new subsection 177-12(1)***. ***[Item 23, new subsection 10(5)]***

15.6 ***Net GST*** is to be defined in section 195-1 of the GST Act as the amount of GST net of any increasing adjustments or decreasing adjustments that relate to the supply. Increasing adjustments reflect increased GST liability (e.g. if the sale consideration is adjusted upwards) and decreasing adjustments reflect reduced GST liability (e.g. if there is a

subsequent reduction in the sale consideration). ***[Item 141 of Schedule 1, definition of 'net GST']***

15.7 Expressions used in ***new subsection 10(5)***, such as 'supply' and 'entity', have the same meaning as those terms have in the GST Act. ***[New subsection 10(6)]***

15.8 The sale value of shorn wool under paragraph 10(1)(d) of the WTAA 1964 is determined by reference to the 'value' of the wool. In accordance with proposed ***new subsection 177-12(3)***, 'value' is to be taken to exclude an amount corresponding to any GST that would be payable if there were a supply of the wool at that time.

Application provision

15.9 The amendment will apply from 1 July 2000, the commencement of GST. ***[Subclause 2(8)]***