



Australian Government

The Treasury

EXEMPTING AUSTRALIAN TAXES, FEES AND CHARGES FROM THE GST

SUMMARY OF CONSULTATION PROCESS

The Government announced in the 2010-11 Budget that it would amend the GST law to replace the current mechanism for exempting Australian taxes, fees and charges under Division 81 of the GST Act with a principles based legislative exemption with effect from 1 July 2011.

This measure was included in Tax Laws Amendment (No.2) Bill 2011, which was introduced into Parliament on 24 of March 2011.

Consultation process

Confidential consultation with the States and Territories and Commonwealth government agencies on a discussion paper was conducted between 23 April 2010 and 26 May 2010. Eleven submissions were received.

Consultation on the draft legislation was conducted between 11 January 2011 and 11 February 2011. A consultation meeting was held in Canberra on 31 January 2011. 6 public and 6 confidential submissions were received.

Submissions can be viewed on the [Treasury website](#).

Summary of key issues

In general, submissions were supportive of the simplification of the process whereby taxes, fees and charges are exempted from GST and the removal of the large and cumbersome determinations which are issued by the Assistant Treasurer. However, a number of technical issues were raised in relation to the various provisions, which were taken into account in finalising the Bill. There were also some concerns raised about the scope of the provisions in the exposure draft. These concerns are discussed below.

Key issues

Concerns were raised that the proposed law results in greater uncertainty, risk, and compliance and administrative costs to taxpayers. This is due to the fact that government agencies will need to self assess the GST treatment of Australian taxes, fees and charges, resulting in increased compliance costs for government agencies. In particular, stakeholders anticipate that there will be an increase in applications to the Australian Taxation Office for private binding rulings.

Stakeholders also had concerns regarding the scope of the proposed provisions. It was submitted that the scope of the exemptions in the proposed legislation was too narrow and that all the Australian taxes, fees and charges that are currently exempt from GST under the current mechanism would no longer be exempt.



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Stakeholders also commented that in parts of the Bill the drafting style made it difficult to interpret the proposed law.

Stakeholders noted that the exemption in the proposed law, especially in regard to taxes, should provide that an amount is not consideration for a supply to any entity, not just to the agency to which the amount is payable. That is, the payment of a tax to a government agency cannot be held to be consideration for a supply made by any entity. It was also raised that there was uncertainty due to a 'tax' not being a term currently defined by legislation.

In addition, clarification was sought as to whether Local Government charges were covered by the proposed law and whether State Mining Royalties were exempted under the proposed law.

Concerns were raised regarding some uncertainty as to the application of the transitional arrangements. It was suggested that it be expressly stated in the legislation itself that taxes, fees and charges currently listed in the determination will remain not subject to GST until 1 July 2012, after which they will be assessed against the proposed amendments.

A number of submissions raised concerns regarding the possible retrospective application of the regulation making power in the proposed law. It was noted that exempting any possible regulation from the application of subsection 12(2) of the Legislative Instruments Act 2003 would confer a power to create a retrospective tax liability. Stakeholders suggested that only the regulation making power that allows a tax, fee or charge to be exempt from GST have retrospective application.

Response

Under the proposed law, agencies will self assess whether their taxes, fees and charges are excluded from the GST, in a similar manner to what they currently do in notifying items for inclusion in the Division 81 Determination. The only difference would be that having determined that the law applied the agency can treat the relevant tax, fee or charge as exempt without the need for it being included in the Division 81 Determination. Where government agencies have doubt as to the application of the law they can apply for a private binding ruling, as they would in respect to any other aspect of the tax law. Generally, agencies will only need to self assess the GST treatment of a tax, fee or charge once and would not need to review them biannually as is presently required under current determination making process. In addition, any initial compliance impacts on government agencies is significantly eased by the transitional arrangements that grandfather the GST treatment of those taxes, fees and charges that are currently exempt from GST. To assist government agencies, the Explanatory Memorandum was amended to include further examples and to align the proposed provisions with the principles in the Intergovernmental Agreement on Federal Financial Relations (IGA).

Some minor amendments have been made to the scope of the proposed provisions to ensure they are broad enough to cover the types of taxes, fees and charges that are intended to be exempt under the principles agreed to in the IGA. A tax, fee or charge that is exempt under the current law, but not under the proposed law, will remain exempt until 1 July 2012. Any taxes, fees and charges that are



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not covered by the proposed law, may be exempted from GST by the proposed regulations, provided they are of a kind not intended to attract GST.

Several amendments were made to the Bill to improve taxpayer certainty and allow for a more straightforward interpretation of the proposed law. This includes moving the regulation making provisions to separate subsections to allow for easier interpretation.

The common law definition of 'tax' will be applied in respect to the application of the proposed law. To provide a legislative definition of 'tax' would be problematic; resulting in increased uncertainty for all taxpayers and possibly unintended consequences throughout the tax system. However, the Bill was amended to ensure that taxes, exempted under the proposed law, will not be considered as consideration for any supply.

The Explanatory Memorandum was amended to include specific examples of some Local Government charges that are intended to be within the scope of the exemption. The uncertainty surrounding the application of the proposed law to State Mining Royalties will be dealt with through the regulation making powers.

The Bill was amended to insert a tie-breaker provision so that the transitionally grandfathered legislative determination prevails over the proposed provisions, to the extent of any inconsistency, until 1 July 2012.

The retrospective application of the regulations that allow for an Australian tax, fee or charge to be treated in a particular way (either taxable or exempt from GST) is necessary. This allows the appropriate GST treatment to be applied to a new tax, fee or charge, not covered by the proposed law in the interim period before any necessary regulations are made. This gives all levels of government the flexibility to appropriately treat an Australian tax, fee or charge for GST purposes, pending its listing in the regulations.

Feedback

Feedback on the consultation process for this measure can be forwarded to consultation@treasury.gov.au . Alternatively, you can contact Michael Harms on 6263 3308.

Thank you to all participants in the consultation process.