



Australian Government

The Treasury

PROPOSED AMENDMENT FOR THE GOODS AND SERVICES TAX (GST) TREATMENT OF LONG-TERM NON-REVIEWABLE CONTRACTS

The Government has revised the proposal by which GST will be applied to long-term non-reviewable contracts from 1 July 2005. This reaffirms the Government's commitment that section 13 of the *A New Tax System (Goods and Services Tax Transition) Act 1999* (GST Transition Act) will be amended to allow suppliers with long-term non-reviewable contracts to recover the net impact of the New Tax System reforms.

The original proposal provided a contract override to allow suppliers to increase prices where the recipient of the supply was entitled to an input tax credit. However, having considered feedback from the first consultation process, the Government now intends to introduce an arrangement that will accommodate all suppliers with pre-existing long-term contracts that have not had a review opportunity by 30 June 2005.

From 1 July 2005, all suppliers with pre-existing long-term contracts that have not had a review opportunity will be allowed to recover the net impact of the New Tax System reforms from the recipient, including contracts where the recipient is not entitled to input tax credits. In circumstances where the recipient does not accept an appropriate price adjustment proposed by the supplier, GST liability will be transferred to the recipient and the supplier will collect and remit the GST.

As with the original proposal, this measure will not override any specific GST clauses in contracts. It is also open to either the supplier or the recipient to simply accept the GST liability, without requiring a price adjustment, should, for some reason, they wish to avoid disturbing the contract.

The revised measure is in accordance with the previously announced policy aimed at addressing a particular shortcoming in the drafting of contracts which meant suppliers could not pass on the GST in the normal way, regardless of market conditions. For most contracts, the net outcome would be similar to what would have occurred had the price override proposal been implemented, while avoiding the need to impinge on the sanctity of contract.

Once the precise details for implementation have been finalised and approval by the States and Territories has been received, pursuant to the Intergovernmental Agreement on the Reform of Commonwealth-State Financial Relations, legislation to give effect to this measure will be introduced into the Parliament.

The attached document sets out details of the proposed amendment for comment. Treasury would appreciate receiving any written comments you might have by 19 December 2003, at which time further consultation will be undertaken as necessary.

Further information regarding the proposed changes to the GST Transition Act, can be obtained by contacting Francesca Kibria, on (02) 6263 4319 or by e-mail at fkibria@treasury.gov.au. Alternatively, you can contact David Earl, on (02) 6263 4420 or by e-mail at dearl@treasury.gov.au

Proposed Amendment to Section 13 of the GST Transition Act

The existing provisions of the GST legislation would result in certain pre-existing contracts that do not have review clauses becoming subject to GST from 1 July 2005 without the ability of the suppliers to recover the GST, while the recipients of the supplies would receive an input tax credit.

Section 13 of the *A New Tax System (Goods and Services Tax Transition) Act 1999* will be amended to ensure that the GST liability rests on the recipient, but the supplier will still be responsible for collecting and remitting the tax through the current business activity statement. That is, the supplier will be entitled to add 10 per cent GST to the contract price as an explicit collection of tax, rather than a recovery of a cost incurred by the supplier. However, such a measure will not apply where the recipient agrees to adjust the contract price by the amount of the GST less savings the supplier has enjoyed from the New Tax System reforms.

The measure is therefore as follows:

- By default, the existing obligation to remit GST from 1 July 2005 will remain with the supplier.
- However, where the supplier proposes a price rise that reflects the net impact of the New Tax System reforms, and the recipient agrees to the price adjustment, the contract will operate under normal GST rules from 1 July 2005.
- Should the recipient not accept an appropriate price adjustment proposed by the supplier, the GST liability for the supply will fall on the recipient, with the supplier required to collect and remit the GST through the existing business activity statement.
 - Recipients will receive input tax credits, or reduced input tax credits, in the usual manner, according to their usual entitlements.

The appropriate price adjustment should reflect the GST applicable to the contract, less the cost reductions from the new tax system reforms associated with the supply. Arbitration mechanisms will apply where the parties cannot agree on the appropriate price adjustment to be used in the formal offer.

It is intended that accompanying regulations will set out what amounts to an 'appropriate' price adjustment and that this is to be determined by an independent assessor before the supplier proposes a price rise to the recipient.

This will operate as follows:

- An assessor is to be determined:
 - by agreement in writing between the supplier and the recipient; or
 - if the supplier and recipient do not agree in writing on an assessor – an independent assessor will need to be appointed and comments on how this might operate are welcome.
- The amount of the increase in the price must not exceed the amount that the supplier requires to recover the net impact of GST on the supplies. In working out the net impact of GST on supplies, the following should be taken into account:
 - the direct cost to the supplier of the imposition of GST on the supplies;

- net recurrent compliance costs of the supplier associated with the imposition of GST on the supplies; and
- cost reductions of the supplier arising from the abolition of other taxes when GST was introduced.

This approach provides a clear incentive to both parties to agree on an appropriate price adjustment, without the need for an explicit contract price override. However, it will still be open to either the supplier or the recipient to simply accept the GST liability, without negotiating a price adjustment, should, for some reason, they wish to avoid disturbing the contract itself. This amendment will not apply where the contract specifically precluded the inclusion of the GST or a similar tax in the price of the supply.

It is intended that no significant compliance costs or enforcement issues should arise from GST being collected as a recipient tax, even should such an arrangement persist in the very long term. The ongoing administrative arrangements will closely mimic those applying to normal supplies, with GST remittances and input tax credit entitlements respectively determined by actual consideration received and paid for supplies and acquisitions.