

1998-99

THE PARLIAMENT ~~OF~~ THE COMMONWEALTH OF AUSTRALIA

SENATE

AMENDMENTS AND REQUESTS FOR AMENDMENTS TO THE
A NEW TAX SYSTEM (GOODS AND SERVICES TAX) BILL 1998

REQUESTS FOR AMENDMENTS TO THE A NEW TAX SYSTEM
(GOODS AND SERVICES TAX TRANSITION) BILL 1998

AMENDMENT TO THE A NEW TAX SYSTEM (GOODS AND
SERVICES TAX ADMINISTRATION) BILL 1998

SUPPLEMENTARY EXPLANATORY MEMORANDUM

Amendments to be moved on behalf of the Government

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

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General outline and financial impact

Amendments to A New Tax System (Goods and Services Tax) Bill 1998

Amendments are made to the A New Tax System (Goods and Services Tax) Bill 1998 (GST Bill) to:

- enable the Commissioner of Taxation (the Commissioner) to determine tax periods other than monthly tax periods in certain cases;
- allow charitable institutions, trustees of charitable funds and gift-deductible entities to account on a cash basis even if their turnover exceeds the cash accounting turnover threshold;
- provide that tax invoices are not required for gambling supplies; and
- provide further clarification of the rules that deal with periodic supplies and acquisitions.

Date of effect: 1 July 2000.

Proposal announced: Not announced.

Financial impact: Negligible.

Compliance cost impact: Nil but expected to decrease costs for taxpayers.

Requests for amendments to A New Tax System (Goods and Services Tax) Bill 1998

Requests for amendments to the GST Bill to:

- provide that appropriations by an Australian Government Agency are not subject to Goods and Services Tax (GST);
- ensure transfers to an overseas branch of an entity are treated as GST-free exports;
- remove the requirement that the supplier notify a debtor that a debt has been written-off and instead provide for adjustments where a debt has been outstanding for 12 months or more;

- extend GST-free treatment to all supplies of personal care and nursing services by approved providers; limit the GST-free services to residents requiring personal or nursing care; and ensure that GST-free treatment is confined to the type of services covered by the Quality of Care Principles made under section 96-1 of the *Aged Care Act 1997*;
- extend GST-free treatment to spare parts specifically designed for a medical aid or appliance in Schedule 1 to the GST Bill;
- ensure that subsequent supplies of second-hand goods by a charity remain GST-free as long as the goods retain their original character;
- ensure that GST is not imposed on raffles and bingo conducted by charities;
- enable the GST-free treatment applied to the supply of going concerns to also apply to sales of farm land;
- provide suppliers of long term accommodation in commercial residential premises the choice of treating their supplies as either input taxed or valued at 50%;
- extend the grouping provisions to include partnerships and trusts;
- allow non-resident companies to be part of a GST group and require the representative member to be an Australian resident;
- clarify the treatment of input taxed supplies between members of GST groups;
- clarify who is entitled to diesel fuel credits within GST groups and GST joint ventures;
- clarify the input tax credit treatment for luxury cars;
- treat strata and similar titles in the same way as freehold interests and long term leases;
- clarify how GST applies to insurance transactions;
- allow input tax credits where an entity reimburses expenses incurred by an employee, agent, partner or company officer;
- allow a full diesel fuel credit for the transport of sugar cane by sugar cane rail transport;

- include casino rebates in the calculation of the gambling margin so that GST is charged on the correct amount;
- modify the rules in relation to adjustments for changes in creditable purpose so that no adjustment is necessary in certain circumstances;
- provide that adjustments for supplies of things used to make supplies are only required in certain circumstances and correct how the adjustment is calculated;
- limit the application of the anti-avoidance rules, particularly the principal effect test; and
- clarify that an entity is entitled to input tax credits for creditable acquisitions made from the Government.

Date of effect: 1 July 2000.

Proposal announced: Not announced.

Financial impact: Negligible.

Compliance cost impact: Nil but expected to decrease costs for taxpayers.

Requests for amendments to A New Tax System (Goods and Services Tax Transition) Bill 1998

Requests amendments to the A New Tax System (Goods and Services Tax Transition) Bill 1998 (Transition Bill) to:

- ensure transitional arrangements cover supplies of rights paid for periodically on or after 1 July 2000;
- amend the rules that deal with review opportunities;
- extend the transitional wholesale sales tax (WST) credit for imported second hand goods held for sale or exchange at the start of 1 July 2000;
- exclude imported second hand goods from the second hand goods transitional arrangements;
- make provision for insurance claims made after the commencement of the GST legislation and relating to events where the time is uncertain;
- provide transitional rules that allow a choice to claim input tax credits, in certain circumstances, for premiums paid on insurance policies before 1 July 2003;
- amend the rate of excise or customs duty used to calculate diesel fuel credits on diesel or like fuel acquired or imported before 1 October 2000; and
- ensure the reduction in the WST rate from 32% to 22% will apply from 21 days after Royal Assent of the GST Bill.

Date of effect: The requests for amendments will apply from the same date to which the relevant provisions in the Transition Bill will have effect. Generally, this will be 1 July 2000.

Proposal announced: Not announced.

Financial impact: Negligible. The request that relates to the reduction in the WST rate from 32% to 22% is expected to have a small financial impact compared to the Mid-Year Economic and Fiscal Outlook estimates. However, this depends on the time of Royal Assent to the GST Bill.

Compliance cost impact: Negligible.

Amendments to A New Tax System (Goods and Services Tax Administration) Bill 1998

A technical amendment is required to the A New Tax System (Goods and Services Tax Administration) Bill 1998 to provide that decisions the Commissioner makes in relation to special tax periods are reviewable GST decisions.

Date of effect: 1 July 2000.

Proposal announced: Not announced.

Financial impact: Nil.

Compliance cost impact: Nil.

Chapter 1

Amendments and requests for amendments to the A New Tax System (Goods and Services Tax) Bill 1998

Overview

1.1 This Chapter explains the amendments and requests for amendments to the A New Tax System (Goods and Services Tax) Bill 1998 (GST Bill).

1.2 In particular, the Chapter deals with:

- tax periods;
- accounting rules and charities;
- tax invoices and gambling;
- periodic supplies and acquisitions;
- government appropriations;
- export of financial supplies to a branch;
- bad debts;
- health;
- charities and donated second hand goods;
- charitable raffles and bingo;
- supplies of farm land;
- long term accommodation;
- Goods and Services Tax (GST) groups;
- GST joint ventures;
- cars;
- freehold interests in land;
- insurance;

- reimbursements;
- diesel fuel credits;
- casino rebates;
- change in creditable purpose;
- adjustments on sale;
- general anti-avoidance; and
- things acquired from governments by registered entities.

Amendments

Tax periods

1.3 Division 27 provides for monthly and quarterly tax periods. Some entities with annual turnovers that would require them to use monthly tax periods have commercial accounting periods that do not accord with the months in a year.

1.4 For example, some entities have 13 four-weekly accounting periods and other entities have twelve accounting periods in a year, some of which are four weeks long and others 5 weeks long.

1.5 Rather than requiring such entities to change their commercial accounting practices, the amendment allows the Commissioner of Taxation (the Commissioner) to determine tax periods other than monthly tax periods in certain cases. *[Amendments 1 to 3]*

1.6 To use other than monthly tax periods:

- you must apply to the Commissioner to make a determination;
- your application must specify the tax periods you want to use;
- you must meet the tax period turnover threshold;
- the tax periods you request must accord with your commercial accounting practice;
- you are still required to have twelve complete tax periods in a year; and
- you must meet any other requirements specified in the regulations.

[New section 27-37]

1.7 The Commissioner is able to revoke the determination if he or she is satisfied that you fail to meet any of the requirements for having the determination. *[New section 27-38]*

1.8 These decisions by the Commissioner are reviewable GST decisions. See Chapter 3

Charities – option to account on a cash basis

1.9 Division 29 allows entities with an annual turnover of \$500,000 or less to choose to use the cash basis of accounting. Under section 29-45 the Commissioner may permit you to account on a cash basis even if your annual turnover exceeds \$500,000 in certain circumstances.

1.10 The normal accounting practice of many charitable institutions and gift deductible bodies is to account on a cash basis. Some of these bodies will have an annual turnover above \$500,000 and would currently be required under the GST Bill to account for GST other than on a cash basis.

1.11 *Amendment 4* inserts *new subsection 29-40(1A)* to allow charitable institutions and trustees of charitable funds and gift deductible bodies to account for GST on a cash basis, whether or not their turnover exceeds the cash accounting turnover threshold. *Amendment 5* inserts *new subsection 29-50(5)* so that if their turnover exceeds the cash accounting turnover threshold they do not have to cease accounting on a cash basis.

Tax invoices for gambling supplies

1.12 Section 126-30 provides that a gambling supply cannot give rise to a creditable acquisition. Tax invoices are only required to evidence a creditable acquisition. Therefore, there is no need for a tax invoice to be issued in relation to a gambling supply. *Amendments 6 and 7* insert *new section 126-33* which provides that you are not required to issue tax invoices in relation to gambling supplies.

Periodic supplies and acquisitions

1.13 *Amendments 8 to 11* amend Division 156 to make it clear that the Division applies to supplies and acquisitions that are made for a period. This would cover, for example, a supply of right to use something for a 5-year period where consideration is provided annually.

Requests

Appropriations

1.14 The GST Bill currently makes no special provision for Government appropriations. The requests for amendment establish that appropriations between and within governments are not subject to GST.

1.15 *Request 1* inserts *new paragraph 9-15(3)(c)* to provide that appropriations from one Australian government agency to another are not the provision of consideration. This covers payments between the Commonwealth, States and Territories. It also covers payments between Commonwealth, State and Territory authorities, provided that they are Australian government agencies.

1.16 For example, if a State government makes an appropriation to a State Crown department, there would be no GST on this payment as it would be covered by *new paragraph 9-15(3)(c)*. If the department makes a further payment to a State authority under the appropriation, there would be no GST on this payment. If the authority distributes the money to various registered community bodies and the community bodies have to use the money for particular purposes (that is, the payments are not unconditional gifts), the payments to the community bodies will be consideration for a supply, and hence will be taxable.

Export of financial supplies to a branch

1.17 If an entity that operates through branches acquires something through a branch in Australia and transfers it to a branch outside Australia, that transfer is akin to an export. Exports are GST-free, which means that input tax credits are available for acquisitions relating to the export, even if the export would otherwise be input taxed. The GST Bill does not currently treat such transfers to overseas branches as exports because it is a supply entirely within the entity. If the acquisition relates to making input taxed supplies, the entity will not be entitled to an input tax credit for the acquisition.

1.18 However, if the entity has separately registered its branches as GST branches under Division 54, that transfer is treated as a separate supply. The supply would be GST-free under Subdivision 38-D and the entity would be entitled to input tax credits in relation to the acquisition.

1.19 This means that there is different treatment of acquisitions of input taxed supplies depending on whether the entity has separately registered its branches or not.

1.20 *Requests 4, 6, 56 and 74* seek to amend the definitions of *creditable purpose* to provide that such acquisitions are for a creditable purpose. This has the effect that, if the other requirements for creditable acquisitions are met, you will be entitled to an input tax credit for such acquisitions. This has the same effect as making such transfers between branches of an entity GST-free.

1.21 For example, an Australian branch of an entity that only makes financial supplies acquires something that it transfers to an overseas branch. That overseas branch uses it entirely to provide management services to the branch in Australia. The acquisition relates entirely to making input taxed supplies. Under the current provisions of the Bill no input tax credit would be available. The amendments will mean that an input tax credit could be available if the other requirements for making a creditable acquisition are met.

1.22 Note that the reverse charge in Division 84 may apply. The entity would be required to account for GST on that supply of management services, whether or not it has separately registered its branches under Division 54, if it is not entitled to a full input tax credit for the acquisition of that supply. In this example, the entity would not be entitled to a full input tax credit.

Bad debts (Division 21)

1.23 Where a debt is written off, you make an adjustment for the purposes of working out the net amount of GST you are to pay. Adjustments are required by both the supplier and the debtor and can arise both for amounts written off and for recovery of amounts previously written off.

Amounts written off

1.24 Subsection 21-5(3) of the GST Bill currently requires you to notify a recipient of a supply where you have written off their bad debt. This is not desirable from a commercial point of view.

1.25 **Requests 10 to 12** amend section 21-5 to remove the requirement for you to notify the debtor where you write off a bad debt and instead provides for a decreasing adjustment where the whole or part of a debt has been due for 12 months or more if you have not already written off the debt.

1.26 **Request 9** substitutes a *new section 21-1* to explain that both debts written off and those outstanding for 12 months or more lead to adjustments.

Recovery of amounts previously written off

1.27 **Requests 13 and 14** amend section 21-10 so that where you had a decreasing adjustment under section 21-5 and you recover the whole or part of the amount previously written off or due for 12 months or more, you make an increasing adjustment.

Bad debts written off (creditable acquisitions)

1.28 **Requests 15 to 18** request corresponding amendments to sections 21-15 and 21-20 concerning bad debts in relation to creditable acquisitions made by the debtor. Therefore, if you made a creditable acquisition and you have not provided some or any of the consideration due and the supplier writes off the amount, or the amount has been due for 12 months or more, you will have an

increasing adjustment. If you later pay an amount to the supplier for that debt, you will have a decreasing adjustment.

Health

Residential care

1.29 Section 38-25 of the GST Bill provides GST-free status for a supply of residential care services in respect of which a residential care subsidy is payable under the *Aged Care Act 1997* to the supplier of the care. The request broadens the eligibility for GST-free treatment to include all services covered by Schedule 1 of the Quality of Care Principles provided through a residential care service by an approved provider under the *Aged Care Act 1997*. **[Request 25]**

1.30 The current provisions of section 38-25 of the GST Bill provide GST-free status for certain residential care services and personal care services. The request ensures that the supply of accommodation, if supplied in the course of making a supply under subsection (1), (2) or (3) of section 38-25 is also GST-free. **[Request 27]**

1.31 Subsection 38-25(3) may allow residents of a privately funded residential care facility who do not require nursing services or daily living activities assistance access to GST-free treatment for all services covered by Schedule 1 to the Quality of Care Principles. The request limits these GST-free services to residents requiring daily living activities assistance or nursing services. **[Request 26]**

1.32 Section 38-25 may allow services provided through extra services fees to have GST-free treatment. Extra services fees are a voluntary fee by which residents in residential care facilities can purchase additional services such as televisions in their rooms and a higher standard of meals. The request ensures that GST-free treatment is confined to the type of services covered by the Quality of Care Principles. **[Request 27]**

Spare parts for medical aids and appliances

1.33 **Request 28** extends the GST-free treatment for medical aids and appliances to include spare parts that are specifically designed for a medical aid or appliance covered by Schedule 1 of the GST Bill. **[Requests 28 and 29]**

GST-free supplies of donated second-hand goods

1.34 Supplies by charities of donated goods are intended to be GST-free under section 38-255 as long as the goods retain their original character. The request seeks an amendment to ensure that section 38-255 reflects this intention. **[Request 30]**

1.35 **Request 30** substitutes a **new paragraph 38-255(b)**. A charity may obtain the second-hand goods directly from a donation or from another charity to

which the goods were originally donated. **New paragraph 38-255(b)** provides that the supply of the donated goods from the charity to whom they were donated to the second charity is GST-free. The supply of the goods by the second charity will be GST-free under **new subparagraph 38-255(b)(ii)**. Supplies of such goods by a charity will remain GST-free no matter how many charities the goods have been supplied through since they were donated, as long as they retain their original character. **[Request 30]**

GST-free treatment for charitable raffles and bingo

1.36 Charitable institutions, trustees of charitable funds and gift-deductible entities may run certain gambling events, such as raffles and bingo, in order to raise funds. Currently under the GST Bill, such events are treated the same as gambling generally and are subject to GST under Division 126. However, raffles and bingo conducted by charitable institutions, trustees of charitable funds and gift-deductible entities are not subject to State taxes on gambling.

1.37 **Request 31** inserts **new subdivision 38-FA** to provide that supplies of raffles and bingo by charitable institutions, trustees of charitable funds or gift-deductible entities are GST-free. However, similar events, such as lotteries, which are subject to State taxes on gambling, are not covered by **new subdivision 38-FA** and are not GST-free.

1.38 The raffle or bingo supplies will only be GST-free if conducting the raffle or bingo does not contravene a State or Territory law. For example, if a State or Territory law requires that a licence be obtained for running a particular raffle, and a licence is not obtained under that law, the supply of the raffle ticket will not be GST-free. **[New paragraph 38-270(c)]**

[Requests 31 and 67]

Supplies of farm land

1.39 Farms are often sold piecemeal, that is, the stock and machinery are sold separately in clearing sales and then the land and buildings are sold afterwards. Merely selling the farm land would not be the supply of a going concern, and hence not GST-free under Subdivision 38-H. **Request 33** inserts **new section 38-480** to make the separate supply of farm land GST-free. A supply of farm land includes improvements. **[Requests 32 and 33]**

1.40 Note that the various supplies of machinery and stock in separate supplies before the supply of the farm land are not GST-free under this provision, only the supply of the farm land.

1.41 For the supply to be GST-free, the supplier has to have carried on a farming business on the land for at least the last five years before the supply. **[New subsection 38-480(a)]**

1.42 For example, if a farmer subdivides a large farm into separate properties that are subsequently operated as farms, the supplies of those properties will be GST-free.

1.43 Further, only the supply of farm land where the recipient intends to operate a farming business on the farm land will be GST-free. *[New subsection 38-480(a)]* If the recipient acquires farmland GST-free and subsequently changes use of the land from farming to another use, the recipient will have to make an increasing adjustment under Division 135.

[Requests 32, 33 and 76 to 78]

Long term accommodation

Input taxation option (Division 87)

1.44 Section 40-35 currently excludes commercial residential premises from the input taxed treatment applied to residential premises. This means that accommodation in premises such as hotels, motels, hostels, boarding houses and camping grounds, is not input taxed but is subject to GST.

1.45 The supply of long term accommodation in these premises is given alternative treatment under Division 87 to make accounting for these supplies easier. Under Division 87, if you supply commercial residential accommodation to an individual for more than 27 days, the value of the supply for calculating GST is 50% of the price that would be charged if the Division did not apply. If your premises are predominantly for long term accommodation, the alternative treatment applies from the start of the stay. Otherwise, it is calculated from the 28th day.

1.46 *Request 34* substitutes *section 40-35* and *Request 60* inserts *new section 87-25* so that if you are a supplier of long term commercial accommodation you may choose whether to treat the supply of that accommodation as being input taxed or to apply the alternative treatment of Division 87. You must treat all your supplies of long term accommodation in the same way. Once you choose to treat your supplies in a particular way you cannot change your choice for twelve months.

Grouping of partnerships and trusts

1.47 These requests extend the grouping provisions in the GST Bill to certain trusts and partnerships. *[Requests 35 to 38, 40 to 44, 46 to 48 and 51]* The regulations will set out the requirements that a partnership or trust must satisfy in order to form GST groups under Division 48 of the GST Bill.

Grouping of non-residents

1.48 The membership requirements of a GST group in section 48-10 require that the company must be an Australian resident. The request will allow non-resident companies to group. **Request 45** achieves this by removing the requirement in section 48-10 that the company be an Australian resident.

1.49 A condition of allowing non-resident companies to be members of GST groups, is that the representative member of a GST group must be a resident of Australia. **[Request 39]** This ensures that the entity liable for GST is within the Australian jurisdiction. A similar rationale underlies Division 57.

1.50 Division 57 provides that if a non-resident makes taxable supplies, creditable acquisitions and so on through a resident agent, the agent accounts for GST and input tax credits etc. on those transactions. For GST groups, the representative member accounts for GST and credits. Therefore, **Request 55** inserts **new section 57-50** that provides that if a non-resident is a member of a GST group, Division 57 does not apply.

1.51 **Request 49** ensures that the reverse charge in Division 84 still applies when an offshore supply of other than goods or real property is made to a member of a GST group by another member of the group.

Groups (Division 48)

1.52 Subdivision 48-B sets out the consequences of companies becoming part of a GST group. The representative member of the GST group is responsible for paying all the GST and is entitled to all the input tax credits the members of the GST group have that relate to supplies, acquisitions and importations made outside the GST group.

1.53 GST groups are effectively treated as a single entity. Supplies, acquisitions and importations made between you and another member of your GST group are taken out of the GST system. See subsection 48-40(2) and 48-45(2).

Treatment of input taxed supplies within a group

1.54 For an acquisition to be creditable under section 11-5 of the GST Bill the supply of the thing to you must have been a taxable supply. Section 9-5 provides that a supply is not a taxable supply to the extent it is input taxed. Input taxed supplies include financial supplies (Subdivision 40-A) and residential rent (Subdivision 40-B).

1.55 Subdivision 48-B does not specifically deal with how input taxed supplies made within a group are to be treated.

1.56 **Request 50** inserts a **new subsection 48-45(1A)** and **Request 52** amends **section 48-45** to make it clear that an importation or acquisition by a member of a GST group is solely or partly creditable only if it would be treated

that way if the GST group were a single entity. The effect of this is that you look at the creditable purpose of the group as a whole in making the acquisition to determine the extent to which it is creditable.

Group members and diesel fuel credits (Subdivision 48-B)

1.57 Diesel fuel credits can be offset against your GST liabilities in the same way as input tax credits. Under section 123-40 you are entitled to a diesel fuel credit if:

- you are registered or required to be registered;
- you acquire or import diesel or like fuel for creditable diesel fuel consumption; and
- you provided (or are liable to provide) the consideration for the diesel or like fuel.

1.58 Section 48-45 sets out who is entitled to input tax credits where a member of the GST group makes a creditable acquisition. There is no equivalent section that sets out who is entitled to diesel fuel credits within a group.

1.59 ***Request 53*** inserts ***new section 48-47*** so that if a member of a GST group acquires or imports diesel or like fuel, the representative member is entitled to any diesel fuel credit for the acquisition or importation.

Joint ventures (Division 51)

Diesel fuel credits claimed on behalf of other joint venture members (Subdivision 51-B)

1.60 Under Division 51 the operator of a joint venture pays the GST and is entitled to the input tax credits that relate to supplies, acquisitions and importations it makes for the purposes of the joint venture on behalf of the other participants of the GST joint venture (See sections 51-30 and 51-35).

1.61 It is unclear from Division 51 of the GST Bill as currently drafted who is entitled to diesel fuel credits acquired by a participant of the joint venture.

1.62 ***Request 54*** inserts ***new section 51-37*** so that if a joint venture operator acquires or imports diesel or like fuel on behalf of another participant in the joint venture, the joint venture operator is entitled to any diesel fuel credit for that acquisition or importation.

1.63 ***Request 62*** inserts a note at the end of section 123-10 to point out that representative members are entitled to the diesel fuel credits of their GST group, and that joint venture operators are entitled to the diesel fuel credits of their joint ventures.

Input tax credit denial – retail sales

1.64 Section 69-10 operates so that the car depreciation limit (under the *Income Tax Assessment Act 1997*) applies for working out the amount of your input tax credit for a creditable acquisition of a car.

1.65 **Request 57** inserts **new paragraph 69-10(1)(aa)** so that a reduced input tax credit applies only to registered entities who are not, for the purposes of the A New Tax System (Luxury Car Tax) Bill 1999, entitled to quote an Australian Business Number (ABN) in relation to the supply to which the creditable acquisition or importation of the car relates. You are entitled to quote your ABN for the supply or importation of a luxury car if you are registered for GST and you intend to use the car solely:

- as trading stock, other than for hire or lease;
- for research and development for the manufacturer of the car; or
- as an export in circumstances where the export is GST-free under Subdivision 38-D of the GST Bill. (See section 9-5 A New Tax System (Luxury Car Tax) Bill 1999)

Otherwise, section 69-10 will operate so that the maximum amount of your input tax credit to which you are entitled will be based on 1/11th of the car depreciation limit (\$55,134 in the 1998/99 financial year).

Sale of freehold interests

1.66 **Requests 58 and 97** clarify the application of Division 75 by including strata unit and other similar titles in taxable supplies of real property. This is achieved by replacing Division 75 with a **new Division 75** that includes strata and similar titles and treats them in the same way as freehold interests and long term leases.

Insurance

1.67 Division 78 does not entirely achieve the intended mechanism for applying GST to insurance transactions. **Requests 7, 21, 22, 59, 87-89, 91, 92, 94 and 99 to 101** replace Division 78 and seek other consequential amendments to establish the GST treatment for insurance transactions.

1.68 The supply of an insurance policy by an insurer who is registered for GST is generally a taxable supply. Private health insurance policies are GST-free, life insurance policies are input taxed and some insurance will be GST-free under section 38-190.

Insurer

1.69 A settlement when a claim is made under an insurance policy is akin to a creditable acquisition in that it is made for a creditable purpose. Therefore, if the

supply of an insurance policy is a taxable supply, the insurer is entitled to input tax credits for settlements made under that policy. The method by which the input tax credit is delivered depends on whether the settlement is in money or would be a supply if it were not for the specific insurance provisions. *[New section 78-5]*

Amount of input tax credit

1.70 Insurers will be entitled to an input tax credit equal to 1/11th of the amount of money paid out in settlement of the claim. If the insurer acquires things other than money to pass on to the insured as the settlement, or part of the settlement, and the supply of those things to the insured is not a taxable supply, the insurer is entitled to an input tax credit of 1/11th of the market value of the supply to them. The value of things that the insurer acquires in a taxable supply to pass on to the insured as the settlement, or part of the settlement, is not included in the calculation of the input tax credit for the settlement. This is because the insurer would already be entitled to an input tax credit on such acquisitions. *[New subsection 78-10(1)]*

Non-taxable policies

1.71 If the settlement relates to a non-taxable policy, or to that part of a policy that is not taxable, the insurer is not entitled to an input tax credit for the settlement. For example, the policy is one for travel insurance, including a health insurance component. Part of the policy relates to travel in Australia and part relates to travel outside Australia. The policy is taxable to the extent that it relates to travel in Australia. It is not taxable (GST-free) to the extent it relates to health insurance and travel outside Australia. A settlement is made in relation to the travel outside Australia. The insurer is not entitled to an input tax credit on the settlement. However, if a settlement were made partly in relation to travel in Australia and partly in relation to the health insurance component, the insurer would be entitled to an input tax credit on the settlement to the extent it related to the travel component. *[New subsections 78-10(2) and (3)]*

GST-free insurance

1.72 As no GST is charged on the premium, an insurer is not entitled to an input tax credit for settlements in money. If the insurer acquires goods that it then supplies to the insured as the settlement, it will not receive an input tax credit for any GST included in the price it paid for the acquisition of the goods. *[New section 78-15]*

Insured

Monetary settlements

1.73 A settlement in money or other things to a registered entity may be considered a taxable supply by the insured entity. You are liable for GST on a monetary settlement if you were entitled to an input tax credit for your payment of the premium that relates to the period during which the event for which the

settlement is made occurred. For a 'claims made' policy (a policy that covers you for claims made against you), the making of the claim against you will be the event. **[New section 78-30]** The amount of the GST is 1/11th of the total settlement (in money or other things) you received.

Non-monetary settlements

1.74 However, if the settlement is not in money, you are only liable to GST on the settlement if the insurer's supply to you would have been a non-taxable supply if it were not for this Division. You are not liable for GST on a settlement that would have been a taxable supply were it not for this Division. The reason for this is that there should be no net GST collected if the insurance policy is provided by a registered insurer to a registered insured entity and the policy covers the insured in relation to its taxable supplies.

1.75 If the settlement is in money, it is a GST-inclusive amount. The insurer charges GST on the premium. The insured is entitled to an input tax credit in relation to the premium. No net GST is collected. If there is a settlement in money, the insurer is entitled to an input tax credit in relation to the settlement, and the insured is liable for GST on the settlement. Again, no net GST is collected.

1.76 If there is a settlement in goods, such as a replacement car, and the insurer acquires the goods in a taxable supply, GST will be included in the price paid by the insurer for the goods and the insurer will be entitled to an input tax credit for that acquisition. The insurer is not entitled to an input tax credit on the settlement as they have an entitlement to an input tax credit on the acquisition of goods. No net GST is collected so far. If the insured was then liable for GST on the settlement, net GST would be collected.

Liability may continue after you cease to be registered

1.77 You are liable to the GST whether or not you are registered when the settlement is made. **[New subsection 78-30(4)]** **New sections 78-80, 78-85 and 78-90** provide for how you make a special return and pay the GST on a settlement if you are not registered.

Goods supplied under insurance policy

1.78 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 78-45]**

Excess

1.79 Payment of an excess is taken not to be consideration for a supply. If you pay an excess in settling an insurance claim, 10/11 of the excess is deducted

from the value of the taxable supply you are treated as having made on settlement. This reduces the amount of GST you account for on that taxable supply by an amount equivalent to the amount of GST in the excess.

[New sections 78-35 and 78-40]

Non-taxable policies

1.80 If you were not entitled to an input tax credit for any GST on a policy (including where the supply of the policy was not a taxable supply), you are not liable for GST on a settlement made in respect of that policy. If the supply of the policy is partly non-taxable and partly taxable, you are liable to GST on the settlement to the extent that the settlement relates to the taxable part of the policy (although note the comments above about monetary and non-monetary settlements). **[New section 78-50]**

Third parties

1.81 If the insurance settlement is made to a third party, the insured will be liable to GST of $1/11^{\text{th}}$ of the settlement if the insured claimed an input tax credit in relation to the premium. The third party will never be liable to GST on a settlement made under an insurance policy. **[New section 78-65]**

1.82 The making of a payment or a supply by an insured entity to discharge a liability to a third party will not be consideration for a supply if that payment or supply is covered by the settlement of a claim under an insurance policy. As a result there will be no GST liability on that payment or supply. This effectively limits the GST treatment of insurance to the parties to the insurance contract. **[New section 78-70]**

Examples of Insurance Transactions

Example 1

1.83 A registered insured pays a \$110 premium, including GST, for a policy to cover its business car that is used entirely in making taxable supplies. The insurer is also registered. The insurer accounts for \$10 GST. The insured accounts for a \$10 input tax credit. The car is damaged in a road accident and the repairs will cost \$5500, including GST. The insured makes a claim of \$5500 under the policy. The insurer pays the insured the \$5500 and accounts for an input tax credit of $1/11^{\text{th}}$ of the settlement, that is, \$500. The receipt of the settlement by the insured is treated as consideration for a taxable supply and the insured accounts for $1/11^{\text{th}}$ of the settlement (\$500) as GST. This leaves \$5000 to repair the car. The insured spends \$5500 to repair the car and is entitled to \$500 input tax credit as the repairs are a creditable acquisition.

Example 2

1.84 A registered insured pays a \$110 premium, including GST, for a policy to cover its business car that is used entirely in making input taxed supplies. The insurer is also registered. The insurer accounts for \$10 GST. The insured is not

entitled to an input tax credit in relation to the premium. The car is damaged in a road accident and the repairs will cost \$5500, including GST. The insured makes a claim of \$5500 under the policy. The insurer pays the insured the \$5500 and accounts for an input tax credit of $1/11^{\text{th}}$ of the settlement, that is, \$500. The receipt of the settlement by the insured is not treated as consideration for a taxable supply and so there is no GST on the settlement. This leaves \$5500 to repair the car. As the acquisition of the repairs relates to making input taxed supplies, the insured is not entitled to an input tax credit in relation to the repairs.

Example 3

1.85 An unregistered insured pays a \$110 premium, including GST, for a policy to cover its car. The insurer is registered. The insurer accounts for \$10 GST. The insured is not entitled to an input tax credit in relation to the premium. The car is damaged in a road accident and the repairs will cost \$5500, including GST. The insured makes a claim of \$5500 under the policy. The insurer pays the insured the \$5500 and claims an input tax credit of $1/11^{\text{th}}$ of the settlement, that is, \$500. The receipt of the settlement by the insured is not treated as consideration for a taxable supply and so there is no GST on the settlement. This leaves \$5500 to repair the car.

Example 4

1.86 A registered insured pays a \$110 premium, including GST, for a policy to cover it for damage to others. It damages another registered entity's car that the other entity uses entirely in making taxable supplies. The insurer is also registered. The insurer accounts for \$10 GST on the premium. The insured accounts for a \$10 input tax credit. The damages to the other entity are \$5000. The insured makes a claim of \$5500 under the policy (the policy has been written to anticipate the GST consequences of any settlement). The insurer pays the insured the \$5500 and accounts for an input tax credit of $1/11^{\text{th}}$ of the settlement, that is, \$500. The receipt of the settlement by the insured is treated as consideration for a taxable supply and the insured accounts for $1/11^{\text{th}}$ of the settlement (\$500) as GST. This leaves \$5000 to pay to the other entity. The insured pays the other entity \$5000. The other entity has received \$5000, but this is not considered a taxable supply, so there are no further GST implications.

Example 5

1.87 An overseas entity pays an Australian insurer a \$100 GST exclusive premium for a policy covering a car that is used outside Australia. The insurer is registered. The supply of the insurance policy is GST-free under Subdivision 38-D as it is a supply of a thing other than goods or property for consumption outside Australia. The car is damaged overseas and written off. The entity makes a \$5000 claim for a new car. As there was no GST on the premium, the insurer is not entitled to an input tax credit in relation to the settlement.

Example 6

1.88 An unregistered person pays a \$100 premium for a health insurance policy. Health insurance is GST-free under section 38-55. There is no GST on the premium. The insurer is registered. The consumer makes a claim under the policy for an item the supply of which is a taxable supply, such as a pair of running shoes. The GST-inclusive price of the running shoes is \$110. If the insurer had paid the insured \$110 it would not be entitled to an input tax credit of \$10. Therefore, if the insurer buys the running shoes and then supplies them to the insured, it is not entitled to an input tax credit for the acquisition of the running shoes.

Transitional

1.89 Paragraphs 2.14 to 2.18 deal with insurance matters that relate to the transitional period.

Reimbursements

1.90 Reimbursements to your employees, your agents, partners and officers of your company are not creditable acquisitions under Division 11 of the GST Bill, unless the relevant person is acting as your agent in making the acquisition. You would therefore not be entitled to an input tax credit for such reimbursements. In some situations you may reimburse the expenses of a person that were not incurred by the person whilst acting as your agent.

1.91 For example, if the person acting as agent acquires something for you, that acquisition is effectively made by you, and could therefore be a creditable acquisition by you. However, if the person, on his or her own behalf, incurs, for example, petrol expenses, in making that acquisition, and you reimburse him or her for those expenses, you have not made an acquisition. You would therefore not be entitled to an input tax credit in relation to such a reimbursement.

1.92 **Request 61** inserts **new Division 111** to provide that you are entitled to input tax credits in relation to such reimbursements in certain circumstances.
[Requests 5, 19, 23, 61, 90 and 95]

1.93 You are entitled to input tax credits for reimbursements you make to employees and other Pay As You Earn (PAYE) earners of expenses they incur that are directly related to their activities as your employee or PAYE earner. The same rules apply for reimbursements you make to agents, and to reimbursements made by partnerships to partners and by companies to officers of the company. The supply to the employee, other PAYE earner, agent, partner or officer has to be a taxable supply. **[New section 111-5]**

1.94 Note that if you acquire something through an agent who was acting on your behalf in making the acquisition, you are making that acquisition. The consideration you pay through the agent for that acquisition is covered by the general rules about creditable acquisitions, not by this new Division.

1.95 The input tax credit is generally equal to 1/11th of the actual reimbursement. **[New subsection 111-10(1)]**

1.96 However, the employee, partner etc. may be reimbursed for costs that are not entirely related to their activities as employee, partner etc. For example, an employee travels and takes his or her spouse. The employer reimburses the employee for the total accommodation charge, even though part of the charge relates to the spouses accommodation. If such a reimbursement is subject to the *Fringe Benefits Tax Assessment Act 1986* (FBTAA 1986), or would have been subject to Fringe Benefits Tax (FBT) if it were not an exempt benefit, you are still entitled to an input tax credit equal to 1/11th of the total reimbursement. However, if the reimbursement is not subject to FBT (other than those not subject to FBT because they relate to exempt benefits), you are only entitled to an input tax credit to the extent that the reimbursement is for activities directly related to the employee's, partner's, etc. activities as your employee, partner, etc. **[New subsection 111-10(2)]**

1.97 As with other creditable acquisitions, you must have a tax invoice to be able to account for the input tax credit. The tax invoice must be for the taxable supply to the employee, PAYE earner, partner or officer. This means that an employee, other PAYE earner, agent, partner, or officer will have to obtain a tax invoice for any acquisition over \$50 for which you reimburse them. **[New section 111-15]**

Subdivision 123-B Diesel fuel credits

1.98 Subdivision 123-B allows a reduced rate of diesel fuel credit for transport by rail. The request excludes sugar cane rail transport, which is used to transport sugar cane from the farm to the refinery, from the definition of rail to allow a full diesel fuel credit for such transport of sugar cane. **[Requests 62-65]** Sugar cane rail transport is defined in **Request 98**.

Casino rebates

1.99 Division 126 provides for the calculation of GST on gambling supplies. This calculation does not take into account the provision of 'high roller rebates' by casinos. **Requests 3 and 66 to 68** request amendments to allow such rebates to be taken into account in calculating GST on gambling supplies.

1.100 One of the methods of attracting 'high rollers', either individuals or tour groups, to casinos is for the casino to offer rebates. Such payments are common practice. The effect of these rebates is to change the odds or the price of a game. The odds or price of a game is often fixed by State legislation with the effect that casinos are unable to offer better odds or prices to attract high rollers.

1.101 For example, a casino offers to rebate 50% of a player's losses. The casino tracks the player's play. If the house margin is 1.3%, the house would keep \$13,000 for every \$1 million bet by the player. That is, the player has lost

\$13,000 to the house. As the player is to receive back 50% of all that he or she loses, the casino would pay the player \$6500. The effect is that the casino keeps \$6500. This is their margin. However, Division 126 provides that the margin is total wagers less total monetary prizes, which in this example is \$13,000.

1.102 The request ensures that such rebates are included in the calculation of the margin so that GST is charged on the correct amount.

1.103 The supply of such rebates could be seen as a separate supply of an inducement. As such rebates are specifically included in the calculation of the margin it is necessary to specifically provide that such a rebate is not a separate supply so that it is not accounted for twice. *[New section 126-32]*

Change in creditable purpose

1.104 *Requests 69 to 73 and 96* request amendments that provide some additional rules in relation to adjustments for change in creditable purpose so that an adjustment is not necessary in certain circumstances.

Financial supplies

1.105 The requests provide that no adjustments arise under Division 129 for an acquisition or importation that relates solely or partly to making financial supplies, and was not solely or partly of a private or domestic nature, if the value of the acquisition or importation is \$10,000 or less. *[New subsection 129-10(1)]*

Private or domestic use

1.106 The requests provide that no adjustments arise under Division 129 for an acquisition or importation that is used solely or partly for a private or domestic purpose, if the value of the acquisition or importation is \$1000 or less. *[New subsection 129-10(2)]*

1.107 If the value of the acquisition or importation is between \$1000 and \$5000, you have two adjustment periods in relation to the acquisition or importation. If the value of the acquisition or importation is between \$5000 and \$500,000, you have five adjustment periods in relation to the acquisition or importation. If the value of the acquisition or importation is more than \$500,000, you have ten adjustment periods in relation to the acquisition or importation. *[New subsection 129-20(3)]*

1.108 The requests provide that the Commissioner can allow fewer adjustment periods having regard to income tax record keeping requirements. *[New subsection 129-20(3)]*

Financial, private and taxable use

1.109 The requests provide that if you make an acquisition that relates to making financial supplies, taxable supplies and is also of a private or domestic

nature, the adjustment rules in relation to private use apply. *[New section 129-10]* If the acquisition or importation is to any extent of a private or domestic nature it does not *relate to business finance* and therefore *new subsection 129-10(2)* applies.

1.110 If you make an acquisition for the purpose of making financial supplies and taxable supplies you will start using the rules for adjustments relating to financial supplies discussed above at paragraph 1.104. However, you may later change your use to partly private or domestic use. If this occurs, you continue to use the adjustment rules relating to financial supplies.

1.111 If you make an acquisition for the purpose of making taxable supplies and for private or domestic use you will start using the rules for adjustments relating to private or domestic use discussed above at paragraph 1.105. However, you may later change your use to partly making financial supplies. If this occurs, you continue to use the adjustment rules relating to private or domestic use.

Disposal

1.112 *Requests 72 and 73* clarify the overlap between the decreasing adjustment required under Division 132 on sale of certain items and the final adjustment on disposal required under Division 129. If Division 132 applies, your last adjustment period under Division 129 is taken to be the adjustment period that last occurred before the sale to which Division 132 applies. If Division 132 does not apply, the next adjustment period is the final adjustment period.

Division 132 Adjustments on sale

1.113 *Request 75* replaces Division 132. The requested amendments provide that the adjustment under Division 132 for supplies of things used to make supplies is only required in certain circumstances. The amendments also correct the calculation of the adjustment. *Requests 2, 8, 20, 24, 85 and 86* are consequential to the replacement of Division 132.

1.114 If you acquired or imported something and you have not been entitled to an full input tax credit for that acquisition or importation due to some partial use for making financial supplies, you have a decreasing adjustment if you later sell the thing in a taxable supply. You also have a decreasing adjustment if you later sell the thing in what would have been a taxable supply if it were not a GST-free supply of a going concern. *[New subsection 132-5(1)]* You may have been denied part of the input tax credit relating to the thing at any stage, ie, when first acquired or imported or through later adjustment, either under Division 19 or 129.

1.115 The amount of the decreasing adjustment is the lesser of:

$$\frac{1}{11} \times \text{price} \times \left[1 - \left(\frac{\text{adjusted input tax credit}}{\text{full input tax credit}} \right) \right]$$

and

full input tax credit – adjusted input tax credit.

Adjusted input tax credit is the total amount of input tax credit you have received in relation to your acquisition or importation of the thing, taking into account any other adjustments.

Full input tax credit is $1/11^{\text{th}}$ of consideration you paid for your acquisition or importation of the thing. [*New subsections 132-5(2) and (3)*]

1.116 *New subsection 132-5(4)* provides that in working out the adjusted input tax credit you ignore any input tax credit denied due to private or domestic use or any input taxed use other than use for making financial supplies. This is because the adjustment is only available in relation to input tax credit you were not entitled to due to use in making financial supplies.

General anti-avoidance provision (Division 165)

1.117 Division 165 operates to deter avoidance schemes that are designed to obtain GST benefits by taking advantage of a GST law or the wine tax, or luxury car tax laws.

1.118 Queries have been made about the scope of the current Division 165. It has been suggested that the Division may have unintended effects and may apply to transactions not intended to defeat the GST law. In particular, it has been suggested that the exercise of an explicit option under the GST law may trigger the anti-avoidance provisions. In addition, the commencement date is not specified.

1.119 *Requests 79 to 82* seek amendments to Division 165 to clarify the intended operation of the Division.

1.120 *Request 79* substitutes a *new section 165-1* to explain what the Division is about, pointing out that it is aimed at artificial and contrived schemes. Examples are given of activities the Division is not intended to cover.

1.121 *Request 82* inserts *new paragraph 165-5(1)(c)* so that the provisions will apply only to schemes entered into or carried out after 2 December 1998. *Request 80* inserts *new paragraph 165-5(1)(aa)* so that the exercise of an option expressly provided for under the GST law will not fall within the scope of the anti-avoidance provisions. *Request 81* seeks to amend *subparagraph 165-5(b)(ii)*

so that the Division will operate if *the* principal effect (rather than *a* principal effect) of the scheme is that the avoider gets a GST benefit from the scheme.

1.122 **Requests 93 and 102** add definitions of luxury car tax law and wine tax law to the Dictionary in section 195-1.

Goods or services purchased from government by GST-registered entities (Division 177)

Acquisitions from Commonwealth

1.123 Section 177-1 of the GST Bill provides that the Commonwealth and Commonwealth entities are not liable to pay GST. They are, however, intended to be notionally liable to pay GST and entitled to input tax credits and to notionally have adjustments.

1.124 Section 11-25 of the GST Bill provides that the amount of the input tax credit for a creditable acquisition is an amount equal to the GST payable on the thing acquired. The liability of the Commonwealth to pay the GST is notional. As a result, no input tax credit would be available to you on that acquisition.

1.125 **Request 83** inserts ***new subsection 177-1(3A)*** so that where the Commonwealth or a Commonwealth entity makes a supply to you the amount of GST for which it is notionally liable is treated as an amount of GST payable on a taxable supply.

1.126 Therefore, if you are registered and you acquire anything from the Commonwealth or a Commonwealth entity, you will be entitled to input tax credits for any purchases that are creditable acquisitions. The amount of your input tax credit will be based on the amount of the Commonwealth's notional liability to pay GST.

Acquisition from State or Territory where notional GST liability

1.127 In certain circumstances the liability of an agency of an Australian State or Territory government to pay the GST will only be notional. **Request 84** inserts ***new section 177-3*** so that if:

- the agency makes a supply to you; and
- an amount is included in the consideration as the agency's notional GST liability;

the supply will be treated as taxable and the notional amount will be treated as an amount of GST payable on a taxable supply.

1.128 As at paragraph 1.125 above, you will be entitled to input tax credits for any purchases that are creditable acquisitions. The amount of your input tax credit will be based on the amount of the agency's notional liability to pay GST.

Chapter 2

Requests for amendments to the A New Tax System (Goods and Services Tax Transition) Bill 1998

Overview

2.1 This Chapter explains the requests for amendments to the A New Tax System (Goods and Services Tax Transition) Bill 1998 (Transition Bill). In particular, it deals with:

- supplies of rights paid for periodically on or after 1 July 2000;
- review opportunities;
- imported second hand goods;
- insurance;
- diesel fuel credits before 1 October 2000; and
- the reduction of wholesale sales tax (WST) rates from 32% to 22%.

Supplies of rights paid for periodically after 1 July 2000

2.2 Section 11 of the Transition Bill provides the transitional rules that apply to periodic or progressive supplies spanning the 1 July 2000 implementation date. Generally speaking, if you enter into an agreement before 1 July 2000 for a periodic or progressive supply of things (other than goods or real property) that extends after 1 July 2000, those supplies are taken to be made continuously and uniformly throughout that period. The proportion of the supply made before 1 July 2000 will not be subject to goods and services tax (GST) while the proportion of the supply made on or after 1 July 2000 will be.

2.3 Under the Transition Bill, as currently drafted, where a right is created or transferred before 1 July 2000, but the effective service delivery and consideration occurs on or after 1 July 2000, the supply may not be subject to GST (since the supply of the right is made before 1 July 2000). This is not the intention of the transitional measures.

2.4 **Request 3** inserts **new section 11A** into the Transition Bill which will apply to you if:

- you make a supply under an agreement that provides that amounts of consideration for the supply are to be provided progressively over a period or otherwise on a periodic basis (whether or not at regular intervals);
- the period of the agreement begins before 1 July 2000 and ends on or after 1 July 2000;
- section 11 does not apply; and
- the supply does not consist of the provision of a funeral.

[Subsection 11A(1)]

2.5 If **new section 11A** does apply, each amount of consideration provided on or after 1 July 2000 is treated as if it is consideration for a separate supply:

- made by the entity to which the consideration is provided; and
- made at the time at which the consideration is provided

and will be subject to GST.

[Subsection 11A(2)]

2.6 **Requests 1 and 2** will update references to section 11 in the Transitional Bill to also include references to section 11A.

Review opportunities

2.7 Section 12 of the Transition Bill provides that certain supplies under agreements that span the implementation date are GST-free until there is an opportunity under the agreement to review the consideration because of the imposition of the GST or to conduct a general review, renegotiation or alteration of the consideration (see paragraphs 2.32 to 2.52 of the explanatory memorandum to the Transition Bill for more information). However, the definition of a review opportunity in subsection 12(5) does not make it clear that it is the supplier that must have this review opportunity – an opportunity under the agreement for the recipient to review the consideration is not intended to be a review opportunity under section 12.

2.8 **Request 4** amends subsection 12(5) of the Transition Bill to provide that a review opportunity is an opportunity that arises under the agreement for the *supplier* under the agreement (acting either alone or

with the agreement of one or more of the other parties to the agreement) to:

- change the consideration because of the imposition of the GST; or
- conduct a general review, renegotiation or alteration of the consideration.

Imported second hand goods

WST paid on stock held for resale

2.9 If you hold inventories of new goods for sale or exchange at the start of 1 July 2000 on which WST has been paid, you may be entitled to a special GST credit under Part 4 of the Transition Bill. The reason for this special GST credit is to avoid applying GST on top of WST already paid in respect of these goods. The special GST credit is equal to the amount of sales tax that you have borne in respect of the goods.

2.10 Second hand goods held for sale or exchange at the start of 1 July 2000 are excluded from the special GST credit, because you have not borne any WST in respect of them. [Paragraph 15(2)(a)] However, if you import goods for sale or exchange, you generally pay WST at the time of importation, regardless of whether they are second hand or not.

2.11 Therefore, the Transition Bill will be amended to extend the special GST credit for second hand goods that you import and hold for sale or exchange at the start of 1 July 2000. However, you will not be entitled to claim the special GST credit in respect of goods if you did not pay WST when you imported them because you were entitled to quote under the *Sales Tax Assessment Act 1992*. [*Request 5*]

Transitional rules

2.12 Generally, if you buy second hand goods for the purposes of sale or exchange in the ordinary course of your business, you are entitled to claim an input tax credit under Division 66 of the A New Tax System (Goods and Services Tax) Bill 1998 (GST Bill), subject to some limitations. Section 17 of the Transition Bill extends the application of Division 66 of the GST Bill to goods that you hold for sale or exchange at the start of 1 July 2000, which would otherwise be excluded by subsection 66-5(2) of the GST Bill.

2.13 *Request 6* will exclude imported second hand goods from the second hand goods transitional arrangements available under section 17 of the Transition Bill, if you are also entitled to a special GST credit as outlined in paragraph 2.11 above.

Insurance

Claims notified before 1 July 2000

2.14 Section 20 of the Transition Bill deals with insurance arrangements where the insured event and the settlement of a claim under an insurance policy fall either side of the implementation date. If an insurance company settles an insurance claim on or after 1 July 2000 in relation to an event that occurs before that date, the:

- acceptance of the payment by the insured is not a taxable supply by him or her [Subsection 20(1)]; and
- acquisition by the insurance company of the insured person's right to pursue the claim any further is not a creditable acquisition. [Subsection 20(2)]

2.15 However, in some cases it may be difficult to determine when the insured event actually takes place. Therefore, ***Requests 7 and 8*** insert ***new subsections 20(1A) and 20(3)*** respectively, that will apply if it cannot be ascertained whether the event giving rise to the claim happened before 1 July 2000. If this is the case:

- subsections 20(1) and/or 20(2) do not apply; and
- the settlement is not a taxable supply and/or you are not entitled to an input tax credit for the claim you pay, if the claim was made before 1 July 2000.

2.16 What this means is that if the event is uncertain, and the claim is lodged by the insured with the insurer under a policy that spans 1 July 2000, then the event is considered to have occurred after 1 July 2000 and the usual GST insurance provisions apply. For example, if the policy is a taxable supply, the insurer will be entitled to an input tax credit of 1/11th of a monetary settlement. In addition, if the insured is entitled to an input tax credit for the GST on the premium, the insured will be liable to remit 1/11th of any monetary settlement. In the case of a policy that spans 1 July 2000 and the part of the policy after 1 July 2000 is GST-free, the usual treatment for settlements under a GST-free insurance policy applies.

Insurers – input tax credits before 1 July 2003

2.17 You may choose whether or not to be liable for GST on the settlement of your insurance policy for a period of three years. This provides an opportunity for insurance contracts to be rewritten to take into account the GST on premiums and the GST you would be liable for on the settlement. This is done by inserting ***new section 20A*** in the Transition Bill to provide that you are not entitled to an input tax credit for a premium paid on an insurance policy before 1 July 2003 unless you notify the Commissioner of Taxation (the Commissioner) that you are claiming

an input tax credit for GST on the payment of the premium. **[Request 9]**
You must notify the Commissioner in the approved form.

2.18 If you are not entitled to an input tax credit for the payment of the premium under **new section 20A**, you are not liable for GST on any related settlement. If you notify the Commissioner that you are claiming an input tax credit for the payment of the premium, you will be liable for GST on a related settlement (see paragraphs 1.67 to 1.89 for more information).

Diesel fuel credits

2.19 Under section 123–40 of the GST Bill, diesel fuel credits are based on the excise or customs duty rate applicable on the 1 April or 1 October last occurring before the end of the tax period to which the acquisition or importation is attributable. However, this means that for the first 3 months of the GST, the diesel fuel credit is based on the pre-GST 1 April diesel excise or customs duty rate. This is inappropriate because the diesel fuel excise or customs duty rate is expected to fall from 1 July 2000.

2.20 **Request 10** inserts **new section 21A** into the Transition Bill, so that if you acquire or import diesel or like fuel for creditable diesel fuel consumption before 1 October 2000, your diesel fuel credits will be calculated using the excise or customs duty rate as at 1 July 2000. The amount of diesel fuel credits on acquisitions or importations of diesel fuel made on or after 1 October 2000, will be calculated using the normal rules under the GST Bill.

Reduction of sales tax rates

2.21 Under the Transition Bill, the reduction in the WST rate from 32% to 22% will apply from the date of the Royal Assent of the GST Act (see Chapter 5 of the explanatory memorandum to the Transition Bill for further information). However, to allow businesses adequate time to plan for this change, it is necessary to give some notice of a specific date from which the measure will apply.

2.22 **Requests 11 and 12** amend Schedule 1 to the Transition Bill to ensure that the reduction in the sales tax rate from 32% to 22% will apply from the 21st day following the date of Royal Assent of the GST Act.

Chapter 3

Amendment to the A New Tax System (Goods and Services Tax Administration) Bill 1998

Overview

3.1 This Chapter explains the amendment to the A New Tax System (Goods and Services Tax Administration) Bill 1998. The amendment relates to reviewable Goods and Services Tax (GST) decisions.

Tax periods

3.2 *Amendment 1* provides that decisions the Commissioner of Taxation makes in relation to special tax periods are reviewable GST decisions (see paragraphs 1.3 to 1.8 in Chapter 1 about special tax periods).

3.3 If a person is dissatisfied with a taxation decision they may object against the decision and, ultimately, request a review or appeal against the decision. The mechanisms and conditions for doing this are set out in existing Part IVC of the *Taxation Administration Act 1953*.