



# **A New Tax System (Goods and Services Tax) Amendment Regulations 2003 (No. 1)<sup>1</sup>**

**Statutory Rules 2003 No. 37<sup>2</sup>**

---

I, PETER JOHN HOLLINGWORTH, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *A New Tax System (Goods and Services Tax) Act 1999*.

Dated 20 March 2003

PETER HOLLINGWORTH  
Governor-General

By His Excellency's Command

HELEN COONAN  
Minister for Revenue and Assistant Treasurer

---

**1 Name of Regulations**

These Regulations are the *A New Tax System (Goods and Services Tax) Amendment Regulations 2003 (No. 1)*.

**2 Commencement**

These Regulations commence on 1 April 2003.

**3 Amendment of *A New Tax System (Goods and Services Tax) Regulations 1999***

Schedule 1 amends the *A New Tax System (Goods and Services Tax) Regulations 1999*.

**Schedule 1 Amendments**

(regulation 3)

**[1] Regulation 48-10.01, after definition of *family***

*insert*

*fixed trust* has the meaning given by section 995-1 of the *Income Tax Assessment Act 1997*.

**[2] Regulation 48-10.01, after definition of *GST group***

*insert*

***representative*** means:

- (a) in relation to a partner in a partnership:
  - (i) for a partner that is not an individual — the partner;  
and
  - (ii) for a partner that is an individual — the partner or a family member of the partner; and

- 
- (b) in relation to a shareholder in a company:
- (i) for a shareholder that is not an individual — the shareholder; and
  - (ii) for a shareholder that is an individual — the shareholder or a family member of the shareholder.
- shareholder***, of a company that is an unincorporated association, means a member of the association.

**[3] After regulation 48-10.01**

*insert*

**48-10.01A Trust distribution and beneficiaries**

For this Subdivision, if the trustee of a trust distributes income or capital of the trust in such a way that another entity receives the income or capital indirectly through 1 or more interposed trusts or companies:

- (a) the trustee is taken also to distribute the income or capital to the other entity; and
- (b) the other entity is taken also to be a beneficiary of the trust.

**[4] Subregulation 48-10.02 (2)**

*substitute*

- (2) If the GST group includes entities other than partnerships, the partnership must satisfy the requirements of subregulation (3), (3A), (4) or (5).
- (2A) If the GST group consists only of partnerships:
  - (a) there are no further requirements for one of the partnerships; and
  - (b) each other partnership must satisfy the requirements of subregulation (5).

**[5] Paragraph 48-10.02 (3) (b)***substitute*

- (b) shares of the company are held in such a way that:
- (i) if there is 1 shareholder — the shareholder is a representative of a partner in the partnership; and
  - (ii) if there is more than 1 shareholder — at least 2 shareholders are representatives of different partners in the partnership.

**[6] Subregulation 48-10.02 (4)***omit everything after*

the beneficiaries include

*insert*

at least 2 representatives of different partners in the partnership.

**[7] After subregulation 48-10.02 (4)***insert*

- (5) The partnership (the *candidate partnership*) satisfies the requirements of this subregulation if:
- (a) there is a partnership (the *member partnership*) that is a member of the GST group because of:
    - (i) paragraph (2A) (a) or subregulation (3), (3A) or (4); or
    - (ii) this subregulation, including the repeated application of this subregulation; and
  - (b) each partner in the candidate partnership is an individual, a family trust of an individual or a family company of an individual; and
  - (c) for each partner in the candidate partnership that is an individual, a family trust of an individual or a family company of an individual, one of the following is a partner in the member partnership:
    - (i) the individual;

- 
- (ii) a family trust of the individual;
  - (iii) a family company of the individual;
  - (iv) a family member of the individual;
  - (v) another individual for whom the first individual is a family member;
  - (vi) a family trust of a family member mentioned in subparagraph (iv) or the other individual mentioned in subparagraph (v);
  - (vii) a family company of a family member mentioned in subparagraph (iv) or the other individual mentioned in subparagraph (v); and
  - (d) at least 2 of the partners in the candidate partnership comply with paragraph (c) through different partners in the member partnership (whether or not they also comply through the same partner in the member partnership).
- (6) For this regulation:
- (a) a ***family trust*** of an individual is a trust that distributes income or capital of the trust only to the individual or family members of the individual (whether or not other distributions could lawfully be made); and
  - (b) a ***family company*** of an individual is a company each shareholder of which is either the individual or a family member of the individual.

**[8] Subregulation 48-10.03 (1)**

*substitute*

- (1) For subparagraph 48-10 (1) (a) (ii) of the Act, the requirements that must be satisfied for a trust to be a member of a GST group are:
- (a) if the GST group consists only of fixed trusts — either the requirements set out in this regulation or the alternative requirements set out in regulation 48-10.03A; and
  - (b) in any other case — the requirements set out in this regulation.

*Note* The trust must also satisfy other membership requirements set out in section 48-10 of the Act.

**[9] Subregulation 48-10.03 (2)***substitute*

- (2) One of the following must be satisfied for the trustee of the trust (the ***candidate trustee***):
- (a) the candidate trustee has at least a 90% stake in a company that is a member of the GST group (worked out in accordance with section 190-5 of the Act as if the trustee were a company);
  - (b) the candidate trustee distributes any income or capital of the trust only to beneficiaries that are permitted beneficiaries (whether or not other distributions could lawfully be made);
  - (c) the candidate trustee is the sole beneficiary of any distribution of income or capital by the trustee of another trust that is a member of the GST group;
  - (d) the candidate trustee distributes income or capital of the trust, and the trustee of another trust that is a member of the GST group distributes income or capital of the other trust, only to persons who are all family members of the same individual (whether or not other distributions could lawfully be made).

*Note* Distributions to beneficiaries may be direct or indirect (regulation 48-10.01A).

**[10] Paragraph 48-10.03 (3) (d)***substitute*

- (d) a family member of an individual who is a member of the GST group;
- (e) a trustee of a trust that is a member of the GST group.

---

**[11] Subregulation 48-10.03 (4)***substitute*

- (4) For a company that is a member of the GST group, each representative of a shareholder of the company is also a ***permitted beneficiary*** if:
- (a) for a company with 1 shareholder — the beneficiaries of the trust include a representative of the shareholder; and
  - (b) for a company with more than 1 shareholder — the beneficiaries of the trust include at least 2 beneficiaries who are representatives of different shareholders.

**[12] Subregulation 48-10.03 (5)***substitute*

- (5) For a partnership that is a member of the GST group, each representative of a partner in the partnership is also a ***permitted beneficiary*** if the beneficiaries of the trust include at least 2 beneficiaries who are representatives of different partners.

**[13] After regulation 48-10.03***insert***48-10.03A Alternative membership requirements for groups of fixed trusts**

- (1) This regulation sets out the alternative requirements mentioned in paragraph 48-10.03 (1) (a) for a trust to be a member of a GST group that consists only of fixed trusts.
- Note* The fixed trust must also satisfy other membership requirements set out in section 48-10 of the Act.
- (2) The fixed trust must be a member of the same 90% owned group as all other fixed trusts in that group.

(3) For this regulation:

- (a) two fixed trusts are members of the same **90% owned group** if:
  - (i) the trustee of one of the trusts has at least a 90% stake in the other trust; or
  - (ii) the trustee of a third trust has at least a 90% stake in each of the two trusts; and
- (b) the trustee of a fixed trust (the **head trust**) has **at least a 90% stake** in another fixed trust (the **sub-trust**) if the trustee:
  - (i) owns at least 90% of the issued units in the sub-trust (whether directly or indirectly through 1 or more interposed trusts or companies); and
  - (ii) has the right to receive at least 90% of any distribution of capital or income of the sub-trust.

**[14] Paragraph 48-10.04 (3) (b)**

*substitute*

- (b) each shareholder of the company is either the individual or a family member of the individual.

**[15] Paragraph 48-10.04 (5) (a)**

*omit*

(either directly, or indirectly through 1 or more interposed trusts)

---

**Notes**

1. These Regulations amend Statutory Rules 1999 No. 245, as amended by 2000 Nos. 49, 77, 89, 110, 268 and 363; 2001 Nos. 48 and 126; 2002 No. 88.
2. Notified in the *Commonwealth of Australia Gazette* on 27 March 2003.