





# **Tax Laws Amendment (Small Business Measures) Act 2004**

**No. 134, 2004**

**An Act to amend the law relating to indirect taxation, and for related purposes**

Note: An electronic version of this Act is available in SCALEplus  
(<http://scaleplus.law.gov.au/html/comact/browse/TOCN.htm>)



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**No. 134, 2004**

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## **An Act to amend the law relating to indirect taxation, and for related purposes**

*[Assented to 13 December 2004]*

The Parliament of Australia enacts:

### **1 Short title**

This Act may be cited as the *Tax Laws Amendment (Small Business Measures) Act 2004*.

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## 2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	13 December 2004
2. Schedule 1	The day on which this Act receives the Royal Assent.	13 December 2004
3. Schedule 2	The day on which this Act receives the Royal Assent.	13 December 2004
4. Schedule 3, items 1 to 4	Immediately after the commencement of Schedule 1 to this Act.	
5. Schedule 3, items 5 to 10	The day on which this Act receives the Royal Assent.	13 December 2004

Note: This table relates only to the provisions of this Act as originally passed by the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

## 3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## Schedule 1—Annual lodgment and payment

### *A New Tax System (Goods and Services Tax) Act 1999*

#### **1 At the end of section 27-5**

Add:

Note: Several provisions in Chapter 4 provide for different tax periods. In particular, Division 151 provides for annual tax periods.

#### **2 Section 27-99 (before table item 1)**

Insert:

1AAA Annual tax periods Division 151

#### **3 Section 31-99 (before table item 1)**

Insert:

1A Annual tax periods Division 151

#### **4 Section 33-99 (before table item 1)**

Insert:

1A Annual tax periods Division 151

#### **5 Section 37-1 (before table item 2)**

Insert:

1B Annual tax periods Division 151

#### **6 Subsection 48-85(2)**

Omit all the words from and including “However”.

#### **7 At the end of section 48-85 (before the note)**

Add:

(3) However, the date of effect must be:

- (a) the beginning of a tax period applying to the members of the \*GST group in question; or
- (b) a day during an \*annual tax period applying to the members of the GST group.

**8 Subsection 129-20(1)**

After “section 27-40”, insert “or subsection 151-55(1)”.

**9 Subsection 129-20(1) (note)**

Omit “deals”, substitute “and subsection 151-55(1) deal”.

**10 Subsection 138-10(1)**

Omit all the words from and including “attributable to”, substitute:  
attributable to:

- (a) your concluding tax period under section 27-40; or
- (b) if, because of subsection 151-55(1), you do not have a concluding tax period under section 27-40—the tax period to which that subsection applies.

**11 Before Division 153**

Insert:

**Division 151—Annual tax periods**

**Table of Subdivisions**

- 151-A Electing to have annual tax periods
- 151-B Consequences of electing to have annual tax periods

**151-1 What this Division is about**

<p>In some cases, you may elect to have annual tax periods. You will then lodge GST returns, and pay amounts of GST or receive refunds of GST, on an annual basis (which better matches your obligation to lodge an income tax return).</p>
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## **Subdivision 151-A—Electing to have annual tax periods**

### **151-5 Eligibility to make an annual tax period election**

You are eligible to make an \*annual tax period election if:

- (a) you are not \*required to be registered; and
- (b) you have not made any election under section 162-15 to pay GST by instalments (other than such an election that is no longer in effect).

### **151-10 Making an annual tax period election**

- (1) You may, by notifying the Commissioner in the \*approved form, make an \*annual tax period election if you are eligible under section 151-5.
- (2) Your election takes effect from:
  - (a) the start of the earliest tax period for which, on the day on which you make your election, your \*GST return is not yet due (taking into account any further period the Commissioner allows under paragraph 31-8(1)(b) or 31-10(1)(b)); or
  - (b) the start of such other tax period as the Commissioner allows, in accordance with a request you make in the \*approved form.

Note: Refusing a request to allow your election to take effect from the start of another tax period is a reviewable GST decision (see Division 7 of Part VI of the *Taxation Administration Act 1953*).

### **151-15 Annual tax period elections by representative members of GST groups**

- (1) A \*representative member of a \*GST group cannot make an \*annual tax period election unless each \*member of the GST group is eligible under section 151-5.
- (2) If the \*representative member makes such an election, the \*annual tax period applying to the representative member also applies to each member.

### **151-20 When you must make your annual tax period election**

- (1) You must make your \*annual tax period election:
-

- (a) if the tax periods applying to you are \*quarterly tax periods—on or before 28 October in the \*financial year to which it relates; or
  - (b) in any other case—on or before 21 August in that financial year.
- (2) However:
- (a) if:
    - (i) during the \*financial year but after 28 October in that financial year, you became eligible under section 151-5 to make an \*annual tax period election; and
    - (ii) this subsection had not applied to you before; and
    - (iii) your \*current GST lodgment record is not more than 6 months; or
  - (b) if the financial year started on 1 July 2004 and the Commissioner determines in writing that this paragraph applies;  
you must make your election on or before the first day, after becoming eligible under section 151-5 or after the Commissioner's determination, on which you would, but for this Division, be required to give a \*GST return to the Commissioner.
- (3) The Commissioner may, in accordance with a request you make in the \*approved form, allow you to make your election on a specified day occurring after the day provided for under subsection (1) or (2).

Note: Refusing a request to be allowed to make an election on a specified day under this subsection is a reviewable GST decision (see Division 7 of Part VI of the *Taxation Administration Act 1953*).

## **151-25 Duration of an annual tax period election**

### *General rule*

- (1) Your election ceases to have effect if:
  - (a) you revoke it by notifying the Commissioner in the \*approved form; or
  - (b) the Commissioner disallows it under subsection (3); or
  - (c) on 31 July in a \*financial year, you are \*required to be registered; or

(d) in a case where you are the \*representative member of a \*GST group—the membership of the GST group changes. Your election also ceases to have effect at the end of your concluding tax period under section 27-40, or at the end of a tax period applying to you to which subsection 151-55(1) applies.

*Revocation*

- (2) A revocation of your election is taken to have had, or has, effect:
- (a) if you notify the Commissioner on or before 28 October in a financial year—from the start of that \*financial year; or
  - (b) if you notify the Commissioner after 28 October in a financial year—from the start of the next financial year.

*Disallowance*

- (3) The Commissioner may disallow your election if, and only if, the Commissioner is satisfied that you have failed to comply with one or more of your obligations under a \*taxation law.

Note: Disallowing your election is a reviewable GST decision (see Division 7 of Part VI of the *Taxation Administration Act 1953*).

- (4) A disallowance of your election is taken to have had effect:
- (a) if the Commissioner notifies you of the disallowance during the \*financial year in which your election first took effect—from the start of the tax period in which it first took effect; or
  - (b) if the Commissioner notifies you of the disallowance on or before 28 October during a later financial year—from the start of that later financial year; or
  - (c) if the Commissioner notifies you of the disallowance after 28 October during a later financial year—from the start of the financial year immediately following that later financial year.

*Becoming subject to a requirement to register*

- (5) If paragraph (1)(c) applies, your election is taken to have ceased to have effect from the start of the \*financial year referred to in that paragraph.

## **Subdivision 151-B—Consequences of electing to have annual tax periods**

### **151-40 Annual tax periods**

- (1) While an \*annual tax period election that you have made has effect, each \*financial year is a tax period that applies to you.
- (2) However, if your \*annual tax period election takes effect on a day that is not the start of a \*financial year, the period from when your annual tax period election takes effect until the end of the financial year in which it takes effect is a tax period that applies to you.
- (3) A tax period under this section is an *annual tax period*.
- (4) This section has effect despite sections 27-5, 27-10 and 27-30 (which are about tax periods).

### **151-45 When GST returns for annual tax periods must be given**

- (1) You must give your \*GST return for an \*annual tax period to the Commissioner:
  - (a) if you are required under section 161 of the \*ITAA 1936 to lodge a return in relation to a year of income corresponding to, or ending during, an annual tax period applying to you—within:
    - (i) the period, specified in the notice published in the *Gazette* under that section, for you to lodge as required under that section; or
    - (ii) such further time as the Commissioner has permitted for you to lodge as required under that section; or
  - (b) if paragraph (a) does not apply—on or before the 28 February following the end of the annual tax period.

Note: Section 388-55 in Schedule 1 to the *Taxation Administration Act 1953* allows the Commissioner to defer the time for giving the GST return.

- (2) This section has effect despite sections 31-8 and 31-10 (which are about when GST returns must be given).

**151-50 When payments of net amounts for annual tax periods must be made**

- (1) If the \*net amount for an \*annual tax period applying to you is greater than zero, you must pay the net amount to the Commissioner on or before the day on which, under section 151-45, you are required to give to the Commissioner your \*GST return for the annual tax period.
- (2) This section has effect despite section 33-5 (which is about when payments of net amounts must be made).

**151-55 An entity's concluding annual tax period**

- (1) If any of the following occurs:
  - (a) an entity who is an individual dies;
  - (b) an entity ceases to \*carry on any \*enterprise;
  - (c) an entity's \*registration is cancelled;during an \*annual tax period applying to the entity, the annual tax period is not affected by the death, cessation or cancellation.
- (2) This section has effect despite section 27-40 (which is about an entity's concluding tax period).
- (3) However, this section does not affect the application of section 27-40 if:
  - (a) an entity who is an individual becomes bankrupt; or
  - (b) an entity that is not an individual goes into liquidation or receivership or for any reason ceases to exist.

**151-60 The effect of bankruptcy, liquidation or receivership etc.**

- (1) If:
  - (a) an entity who is an individual becomes bankrupt; or
  - (b) an entity that is not an individual goes into liquidation or receivership or for any reason ceases to exist;the entity must give the \*GST return, for the \*annual tax period that ends because of the bankruptcy, liquidation, receivership or cessation, to the Commissioner:
  - (c) on or before the 21st day of the month following the end of the annual tax period; or

- (d) within such further period as the Commissioner allows.
- (2) If the \*net amount for the \*annual tax period is greater than zero, the entity must pay the net amount to the Commissioner on or before the 21st day of the month following the end of the annual tax period.
- (3) This section has effect despite sections 151-45 (which is about when GST returns for annual tax periods must be given) and 151-50 (which is about when payments of net amounts for annual tax periods must be made).

**151-65 The effect of changing the membership of GST groups—end of the annual tax period**

- (1) If you are a \*member of a \*GST group whose membership changes during an \*annual tax period applying to you, the annual tax period ends when the membership of the GST group changes.
- (2) The \*representative member of the \*GST group must give the \*GST return for the \*annual tax period to the Commissioner:
  - (a) on or before the 21st day of the month following the end of the annual tax period; or
  - (b) within such further period as the Commissioner allows.
- (3) If the \*net amount for the \*annual tax period is greater than zero, the \*representative member of the \*GST group must pay the net amount to the Commissioner on or before the 21st day of the month following the end of the annual tax period.
- (4) This section has effect despite sections 151-40 (which is about annual tax periods), 151-45 (which is about when GST returns for annual tax periods must be given) and 151-50 (which is about when payments of net amounts for annual tax periods must be made).

**151-70 The effect of changing the membership of GST groups—tax periods for the remainder of a financial year**

- (1) If an \*annual tax period applying to you ends under section 151-65 other than at the end of a \*financial year, the remainder of that financial year constitutes one or more tax periods applying to you.

- (2) Those one or more tax periods are the tax periods that would have applied to you, in respect of the remainder of the \*financial year, if this Division had never applied.
- (3) However, if the \*annual tax period ends other than immediately before the start of a tax period referred to in subsection (2), that tax period so referred to is taken to start immediately after the end of the annual tax period.
- (4) Subsection (3) has effect despite sections 27-5, 27-10 and 27-15 (which are about tax periods).

## 12 Section 195-1

Insert:

*annual tax period* has the meaning given by section 151-40.

## 13 Section 195-1

Insert:

*annual tax period election* means an election made under section 151-10.

## 14 Section 195-1 (definition of *tax period*)

Omit “or 147-25”, substitute “, 147-25 or 151-40”.

## *Taxation Administration Act 1953*

### 15 Subsection 62(2) (before table item 37B)

Insert:

37AD	refusing a request to allow an annual tax period election to take effect from the start of another tax period	paragraph 151-10(2)(b)
37AE	refusing a request to be allowed to make an annual tax period election on a specified day	subsection 151-20(3)
37AF	disallowing an annual tax period election	subsection 151-25(3)

## 16 Application

The amendments made by this Schedule apply, and are taken to have applied, in relation to net amounts for tax periods starting, or that started, on or after:

- (a) for entities that, on 1 October 2004, had quarterly tax periods applying to them—1 October 2004; or
- (b) for other entities—1 November 2004.

## **Schedule 2—Annual apportionment of creditable purpose**

### ***A New Tax System (Goods and Services Tax) Act 1999***

#### **1 Section 11-99 (after table item 1A)**

Insert:

1B	Annual apportionment of creditable purpose	Division 131
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#### **2 Section 15-99 (before table item 1A)**

Insert:

1AA	Annual apportionment of creditable purpose	Division 131
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#### **3 Section 17-99 (before table item 1)**

Insert:

1A	Annual apportionment of creditable purpose	Division 131
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#### **4 Paragraph 19-70(c)**

Omit all the words from and including “, taking into account”.

#### **5 At the end of section 19-70**

Add:

- (2) In working out the \*corrected input tax credit amount for the acquisition:
  - (a) take into account any change of circumstances that has given rise to an adjustment for the acquisition under this Subdivision or Division 21 or 129; and
  - (b) if an adjustment relating to the acquisition under Division 131 was attributable to an earlier tax period:
    - (i) do not take into account that adjustment; and

- (ii) treat the acquisition as one in relation to which Division 131 had not applied.

**6 Paragraph 19-75(b)**

Omit “or 129”, substitute “, 129 or 131”.

**7 Section 29-99 (after table item 1)**

Insert:

1A	Annual apportionment of creditable purpose	Division 131
----	--------------------------------------------	--------------

**8 Section 37-1 (after table item 1)**

Insert:

1A	Annual apportionment of creditable purpose	Division 131
----	--------------------------------------------	--------------

**9 After subsection 72-45(1)**

Insert:

(1A) However, if:

- (a) an \*annual apportionment election that you have made has effect at the end of the tax period to which the input tax credit is attributable; and
- (b) the acquisition is not an acquisition of a kind specified in the regulations made for the purposes of paragraph 131-40(1)(b); the amount of the input tax credit on the acquisition is worked out under section 131-40 as if you had provided, or had been liable to provide, all of the \*consideration for the acquisition.

**10 After subsection 78-10(2)**

Insert:

- (2A) In working out the amount of an input tax credit for the purposes of subparagraph (2)(b)(ii), disregard sections 131-40 and 131-50 (which are about amounts of input tax credits under the annual apportionment rules).

**11 After subsection 78-50(2)**

Insert:

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- (2A) In working out, for the purposes of subparagraph (1)(c)(ii) or subsection (2), whether an entitlement to an input tax credit has been understated, or the extent of the understatement, disregard sections 131-40 and 131-50 (which are about amounts of input tax credits under the annual apportionment rules).

## **12 After subsection 84-13(1)**

Insert:

- (1A) However, if:
- (a) an \*annual apportionment election that you have made has effect at the end of the tax period to which the input tax credit is attributable; and
  - (b) the acquisition is not an acquisition of a kind specified in the regulations made for the purposes of paragraph 131-40(1)(b); the amount of the input tax credit on the acquisition is worked out under section 131-40 as if *full input tax credit* had the same meaning in subsection 131-40(2) as it has in subsection (1) of this section.

## **13 After subsection 111-5(3)**

Insert:

- (3AA) In working out the extent to which a person is entitled to an input tax credit for the purposes of paragraph (3)(a), disregard sections 131-40 and 131-50 (which are about amounts of input tax credits under the annual apportionment rules).

## **14 After Division 130**

Insert:

### **Division 131—Annual apportionment of creditable purpose**

#### **Table of Subdivisions**

- 131-A Electing to have annual apportionment
- 131-B Consequences of electing to have annual apportionment

### 131-1 What this Division is about

In some cases, you may be able to claim a full input tax credit for acquisitions that are only partly for a creditable purpose. You will then have an increasing adjustment for a later tax period (that better matches your obligation to lodge an income tax return).

### Subdivision 131-A—Electing to have annual apportionment

#### 131-5 Eligibility to make an annual apportionment election

- (1) You are eligible to make an \*annual apportionment election if:
  - (a) your \*annual turnover does not exceed the \*annual apportionment turnover threshold; and
  - (b) you have not made any election under section 162-15 to pay GST by instalments (other than such an election that is no longer in effect); and
  - (c) you have not made any \*annual tax period election (other than such an election that is no longer in effect).
- (2) The **annual apportionment turnover threshold** is:
  - (a) \$2 million; or
  - (b) such higher amount as the regulations specify.

#### 131-10 Making an annual apportionment election

- (1) You may make an \*annual apportionment election if you are eligible under section 131-5.
- (2) Your election takes effect from:
  - (a) the start of the earliest tax period for which, on the day on which you make your election, your \*GST return is not yet due (taking into account any further period the Commissioner allows under paragraph 31-8(1)(b) or 31-10(1)(b)); or
  - (b) the start of such other tax period as the Commissioner allows, in accordance with a request you make in the \*approved form.

Note: Refusing a request to allow your election to take effect from the start of another tax period is a reviewable GST decision (see Division 7 of Part VI of the *Taxation Administration Act 1953*).

### **131-15 Annual apportionment elections by representative members of GST groups**

- (1) A \*representative member of a \*GST group cannot make an \*annual apportionment election unless each \*member of the GST group is eligible under section 131-5.
- (2) If the \*representative member makes such an election, or revokes such an election, each \*member of the \*GST group is taken to have made, or revoked, the election.

### **131-20 Duration of an annual apportionment election**

#### *General rule*

- (1) Your election ceases to have effect if:
  - (a) you revoke it; or
  - (b) the Commissioner disallows it under subsection (3); or
  - (c) on 31 July in a \*financial year, your \*annual turnover exceeds the \*annual apportionment turnover threshold.

#### *Revocation*

- (2) A revocation of your election is taken to have had, or has, effect at the start of the earliest tax period for which, on the day of the revocation, your \*GST return is not yet due.

#### *Disallowance*

- (3) The Commissioner may disallow your election if, and only if, the Commissioner is satisfied that you have failed to comply with one or more of your obligations under a \*taxation law.

Note: Disallowing your election is a reviewable GST decision (see Division 7 of Part VI of the *Taxation Administration Act 1953*).

- (4) A disallowance of your election is taken to have had effect from the start of the tax period in which the Commissioner notifies you of the disallowance.

*Exceeding the annual apportionment turnover threshold*

- (5) If paragraph (1)(c) applies, your election is taken to have ceased to have effect from the start of the tax period in which 31 July in the \*financial year referred to in that paragraph falls.

**Subdivision 131-B—Consequences of electing to have annual apportionment**

**131-40 Input tax credits for acquisitions that are partly creditable**

- (1) The amount of the input tax credit on an acquisition that you make that is \*partly creditable is an amount equal to the GST payable on the supply of the thing acquired if:
- (a) an \*annual apportionment election that you have made has effect at the end of the tax period to which the input tax credit is attributable; and
  - (b) the acquisition is not an acquisition of a kind specified in the regulations.
- (2) However, if one or both of the following apply to the acquisition:
- (a) the acquisition relates to making supplies that would be \*input taxed;
  - (b) you provide, or are liable to provide, only part of the \*consideration for the acquisition;

the amount of the input tax credit on the acquisition is as follows:

$$\text{Full input tax credit} \times \text{Extent of non-input-taxed purpose} \times \text{Extent of consideration}$$

where:

*extent of consideration* is the extent to which you provide, or are liable to provide, the \*consideration for the acquisition, expressed as a percentage of the total consideration for the acquisition.

*extent of non-input-taxed purpose* is the extent to which the acquisition does not relate to making supplies that would be \*input taxed, expressed as a percentage of the total purpose of the acquisition.

*full input tax credit* is what would have been the amount of the input tax credit for the acquisition if it had been made solely for a

\*creditable purpose and you had provided, or had been liable to provide, all of the consideration for the acquisition.

- (3) In determining for the purposes of subsection (2) whether, or the extent to which, an acquisition relates to making supplies that would be \*input taxed, subsections 11-15(3) to (5) apply in the same way that they apply for the purposes of paragraph 11-15(2)(a).
- (4) Determinations made by the Commissioner under subsection 11-30(5) apply (so far as they are capable of applying) to working out the extent to which a \*partly creditable acquisition does not relate to making supplies that would be \*input taxed.
- (5) This section does not apply to an input tax credit on an acquisition if the acquisition is, to any extent, a \*reduced credit acquisition.
- (6) This section has effect despite sections 11-25 and 11-30 (which are about amounts of input tax credits).

### **131-45 Input tax credits for importations that are partly creditable**

- (1) The amount of the input tax credit on an importation that you make that is \*partly creditable is an amount equal to the GST payable on the importation if:
  - (a) an \*annual apportionment election that you have made has effect at the end of the tax period to which the input tax credit is attributable; and
  - (b) the importation is not an importation of a kind specified in the regulations.
- (2) However, if the importation relates to making supplies that would be \*input taxed, the amount of the input tax credit on the importation is as follows:

Full input tax credit × Extent of non-input-taxed purpose

where:

*extent of non-input-taxed purpose* is the extent to which the importation does not relate to making supplies that would be \*input taxed, expressed as a percentage of the total purpose of the importation.

*full input tax credit* is what would have been the amount of the input tax credit for the importation if it had been made solely for a \*creditable purpose.

- (3) In determining for the purposes of subsection (2) whether, or the extent to which, an importation relates to making supplies that would be \*input taxed, subsections 15-10(3) to (5) apply in the same way that they apply for the purposes of paragraph 15-10(2)(a).
- (4) Determinations made by the Commissioner under subsection 15-25(4) apply (so far as they are capable of applying) to working out the extent to which a \*partly creditable importation does not relate to making supplies that would be \*input taxed.
- (5) This section has effect despite sections 15-20 and 15-25 (which are about amounts of input tax credits).

### **131-50 Amounts of input tax credits for creditable acquisitions or creditable importations of certain cars**

- (1) If:
  - (a) this Division applies to working out the amount of a \*creditable acquisition or \*creditable importation that you made; and
  - (b) the acquisition or importation is an acquisition or importation of a \*car;the amount of the input tax credit on the acquisition or importation under this Division must not exceed the amount (if any) of the input tax credit worked out under section 69-10.
- (2) However, if subsection 131-40(2) or 131-45(2) applies to the acquisition or importation:
  - (a) take into account the operation of section 69-10 in working out the full input tax credit for the purposes of that subsection; but
  - (b) disregard subsection 69-10(3).

### **131-55 Increasing adjustments relating to annually apportioned acquisitions and importations**

- (1) You have an *increasing adjustment* if:
-

- (a) an acquisition or importation that you made was \*partly creditable; and
  - (b) the input tax credit on the acquisition or importation is attributable to a tax period ending in a particular \*financial year; and
  - (c) the amount of the input tax credit is an amount worked out under this Division.
- (2) The amount of the increasing adjustment is an amount equal to the difference between:
- (a) the amount of the input tax credit worked out under this Division; and
  - (b) what would have been the amount of the input tax credit if this Division did not apply.
- (3) In working out for the purposes of paragraph (2)(a) the amount of an input tax credit, take into account any change of circumstances that has given rise to:
- (a) an adjustment for the acquisition under Division 19; or
  - (b) an adjustment for the acquisition under Division 21.

Note: Because of subsection 136-10(3), the amount of the Division 21 adjustment will not be reduced under Division 136.

- (4) In working out for the purposes of paragraph (2)(b) what would have been the amount of an input tax credit, take into account any change of circumstances that has given rise to:
- (a) an adjustment for the acquisition under Division 19 (worked out as if this Division had not applied to working out the amount of the input tax credit); or
  - (b) an adjustment for the acquisition under Division 21.

Note: If this Division did not apply, the amount of the Division 21 adjustment would have been worked out under Division 136.

Example: While an annual apportionment election has effect, you make a partly creditable acquisition for \$1,100, for which you have an input tax credit of \$100. The extent of your creditable purpose is 10%.

During later tax periods, the price increases by \$110, for which you have a decreasing adjustment under Division 19 of \$10, and the supplier writes off \$660 as a bad debt, for which you have an increasing adjustment under Division 21 of \$60 (subsection 136-10(3) prevents the amount from being reduced under Division 136).

The amount of your increasing adjustment under this section is \$45. This is the difference between the amounts under paragraphs (2)(a) and (b).

The paragraph (2)(a) amount (which is effectively worked out on a fully creditable basis) is:

$$\$100 + \$10 - \$60 = \$50$$

The paragraph (2)(b) amount (which is based on a 10% creditable purpose) is:

$$\$10 + \$1 - \$6 = \$5$$

### **131-60** **Attributing adjustments under section 131-55**

- (1) An \*increasing adjustment under section 131-55 is attributable to:
- (a) the tax period worked out using the method statement; or
  - (b) such earlier tax period as you choose.

*Method statement*

*Step 1.* Work out the tax period (the *ITC tax period*) to which the input tax credit for the acquisition or importation to which the adjustment relates is attributable.

*Step 2.* Work out in which year of income that tax period starts.

*Step 3.* If you are required under section 161 of the \*ITAA 1936 to lodge a return in relation to that year of income, work out the last day of the period, specified in the notice published in the *Gazette* under that section, for you to lodge as required under that section.

*Step 4.* The \*increasing adjustment is attributable to the tax period in which that last day occurs.

*Step 5.* If step 3 does not apply, the increasing adjustment is attributable to the tax period in which occurs 31 December in the next \*financial year to start after the end of the ITC tax period.

Note: Section 388-55 in Schedule 1 to the *Taxation Administration Act 1953* allows the Commissioner to defer the time for giving the GST return.

- (2) Despite subsection (1), if, during (but not from the start of) the \*financial year in which the ITC tax period ended, your \*annual apportionment election ceases to have effect because:
- (a) you revoke your annual apportionment election, or the Commissioner disallows your election, during that financial year; and
  - (b) the revocation or disallowance takes effect before the end of that financial year;
- the \*increasing adjustment is attributable to the tax period in which the cessation takes effect, or to such earlier tax period as you choose.
- (3) However, the \*increasing adjustment is attributable to a tax period provided under section 27-40 if that tax period ends earlier than the end of the tax period to which the increasing adjustment would, but for this subsection, be attributable under subsections (1) and (2).
- (4) This section has effect despite section 29-20 (which is about attributing your adjustments).

**15 Subsection 132-5(2) (paragraph (b) of the definition of adjusted input tax credit)**

Repeal the paragraph, substitute:

- (b) the sum of:
- (i) any \*increasing adjustments, under Subdivision 19-C or Division 129, that were previously attributable to a tax period in respect of the acquisition or importation; and
  - (ii) any increasing adjustment under Division 131 that has been previously, is or will be attributable to a tax period in respect of the acquisition or importation; plus

**16 At the end of section 136-10**

Add:

- (3) However, this section does not apply to an \*adjustment that you have in relation to a \*creditable acquisition if:
- (a) the amount of the input tax credit for the acquisition is worked out under Division 131; and
  - (b) the adjustment is attributable to a tax period that is not later than the tax period to which an adjustment under section 131-55 relating to the acquisition is attributable.

**17 Section 188-5 (after table item 4)**

Insert:

4A Annual appportionment turnover threshold whether you can make an annual apportionment election (see subsection 131-5(2))

**18 Before paragraph 188-10(3)(aa)**

Insert:

(aaa) the \*annual apportionment turnover threshold;

**19 Section 195-1**

Insert:

*annual apportionment election* means an election made under section 131-10.

**20 Section 195-1**

Insert:

*annual apportionment turnover threshold* has the meaning given by subsection 131-5(2).

**21 Section 195-1 (after table item 5A in the definition of *increasing adjustment*)**

Insert:

5B Section 131-55 Annually apportioned acquisitions and importations

***Taxation Administration Act 1953***

**22 Subsection 62(2) (after table item 37A)**

Insert:

37AB refusing a request to allow an annual apportionment election to take effect from the start of another tax period paragraph 131-10(2)(b)

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37AC disallowing an annual apportionment election subsection 131-20(3)

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## **23 Application**

The amendments made by this Schedule apply, and are taken to have applied, in relation to net amounts for tax periods starting, or that started, on or after:

- (a) for entities that, on 1 October 2004, had quarterly tax periods applying to them—1 October 2004; or
- (b) for other entities—1 November 2004.

## Schedule 3—Payment of GST by instalments

### *A New Tax System (Goods and Services Tax) Act 1999*

#### **1 Paragraph 48-85(3)(b)**

After “\*annual tax period”, insert “, or an \*instalment tax period.”.

#### **2 Subsection 129-20(1)**

After “subsection 151-55(1)”, insert “or 162-85(1)”.

#### **3 Subsection 129-20(1) (note)**

Omit “subsection 151-55(1)”, substitute “subsections 151-55(1) and 162-85(1)”.

#### **4 Paragraph 138-10(1)(b)**

After “subsection 151-55(1)”, insert “or 162-85(1)”.

#### **5 Subsections 162-15(2), (3) and (4)**

Repeal the subsections, substitute:

(2) Your election takes effect from:

- (a) the start of the earliest tax period for which, on the day on which you make your election, your \*GST return is not yet due; or
- (b) the start of such other tax period as the Commissioner allows, in accordance with a request you make in the \*approved form.

Note: Refusing a request to allow your election to take effect from the start of another tax period is a reviewable GST decision (see Division 7 of Part VI of the *Taxation Administration Act 1953*).

#### **6 Section 162-30**

Repeal the section, substitute:

##### **162-30 Duration of your election**

###### *General rule*

(1) Your election ceases to have effect if:

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- (a) you revoke it, by notifying the Commissioner in the \*approved form; or
- (b) the Commissioner disallows it under subsection (3); or
- (c) on 31 July in a \*financial year, your \*annual turnover exceeds the \*instalment turnover threshold; or
- (d) during the first tax period applying to you in a financial year, you are in a \*net refund position; or
- (e) in a case where you are the \*representative member of a \*GST group—the membership of the GST group changes.

Your election also ceases to have effect at the end of your concluding tax period under section 27-40, or at the end of a tax period applying to you to which subsection 162-85(1) applies.

*Revocation*

- (2) A revocation of your election is taken to have had, or has, effect:
  - (a) if you notify the Commissioner on or before 28 October in a \*financial year—from the start of that financial year; or
  - (b) if you notify the Commissioner after 28 October in a financial year—from the start of the next financial year.

*Disallowance*

- (3) The Commissioner may disallow your election if, and only if, the Commissioner is satisfied that you have failed to comply with one or more of your obligations under a \*taxation law.

Note: Disallowing your election is a reviewable GST decision (see Division 7 of Part VI of the *Taxation Administration Act 1953*).

- (4) A disallowance of your election is taken to have had effect:
  - (a) if the Commissioner notifies you of the disallowance during the \*financial year in which your election first took effect—from the start of the tax period in which it first took effect; or
  - (b) if the Commissioner notifies you of the disallowance on or before 28 October during a later financial year—from the start of that later financial year; or
  - (c) if the Commissioner notifies you of the disallowance after 28 October during a later financial year—from the start of the financial year immediately following that later financial year.

*Exceeding the instalment turnover threshold*

- (5) If paragraph (1)(c) applies, your election is taken to have ceased to have effect from the start of the \*financial year referred to in that paragraph.

*Being in a net refund position*

- (6) If paragraph (1)(d) applies, your election is taken to have ceased to have effect from the start of the \*financial year referred to in that paragraph.

**7 Subsection 162-50(2)**

Omit “the”, substitute “any”.

***Taxation Administration Act 1953***

**8 Subsection 62(2) (table item 37B)**

Repeal the item, substitute:

37B	refusing a request to allow an election to pay GST by instalments to take effect from the start of another tax period	paragraph 162-15(2)(b)
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**9 Subsection 62(2) (after table item 37C)**

Insert:

37D	disallowing an election to pay GST by instalments	subsection 162-30(3)
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**10 Application**

The amendments made by this Schedule apply in relation to net amounts for tax periods starting on or after 1 July 2005.

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*[Minister's second reading speech made in—  
House of Representatives on 18 November 2004  
Senate on 7 December 2004]*

(196/04)