



Tax Laws Amendment (2010 GST Administration Measures No. 3) Act 2010

No. 91, 2010

**An Act to amend legislation relating to indirect tax,
and for related purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

Contents

| | | |
|-------------------------------------------------------------------------------------------------|-----------------------------------------------------------|----------|
| 1 | Short title | 1 |
| 2 | Commencement | 2 |
| 3 | Schedule(s) | 2 |
| Schedule 1—GST and cross-border transport supplies | | 3 |
| | <i>A New Tax System (Goods and Services Tax) Act 1999</i> | 3 |
| Schedule 2—GST relief for telecommunication supplies for global roaming in Australia | | 7 |
| | <i>A New Tax System (Goods and Services Tax) Act 1999</i> | 7 |
| Schedule 3—Adjustments for third party payments | | 9 |
| | <i>A New Tax System (Goods and Services Tax) Act 1999</i> | 9 |



Tax Laws Amendment (2010 GST Administration Measures No. 3) Act 2010

No. 91, 2010

An Act to amend legislation relating to indirect tax, and for related purposes

[Assented to 29 June 2010]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Tax Laws Amendment (2010 GST Administration Measures No. 3) Act 2010*.

2 Commencement

This Act commences on the day this Act receives the Royal Assent.

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Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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

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

1 After paragraph 13-20(2)(b)

Insert:

- (ba) the amount paid or payable for a supply to which item 5A in the table in subsection 38-355(1) applies, to the extent that the amount:
 - (i) is not a tax, fee or charge to which subsection 81-5(2) applies; and
 - (ii) is not already included under paragraph (a) or (b); and

2 Subsection 13-20(2A)

After “paragraph (2)(b)”, insert “or (ba)”.

3 Paragraph 13-20(3)(b)

Repeal the paragraph, substitute:

- (b) determine the way in which the amount paid or payable for a specified kind of supply referred to in paragraph (2)(ba) is to be worked out for the purposes of that paragraph; and
- (c) in relation to importations of a specified kind or importations to which specified circumstances apply—determine that:
 - (i) the amount paid or payable for a specified kind of transport or insurance is taken, for the purposes of paragraph (2)(b), to be zero; or
 - (ii) the amount paid or payable for a specified kind of supply referred to in paragraph (2)(ba) is taken, for the purposes of that paragraph, to be zero.

4 At the end of section 38-190

Add:

- (5) Subsection (4) does not apply to any of the following supplies:
 - (a) a transport of goods within Australia that is part of, or is connected with, the *international transport of the goods;

- (b) a loading or handling of goods within Australia that is part of, or is connected with, the international transport of the goods;
- (c) a service, done within Australia, in relation to the goods that facilitates the international transport of the goods;
Example: The services of a customs broker in processing the information necessary for the clearance of goods into home consumption.
- (d) insuring transport covered by paragraph (a);
- (e) arranging transport covered by paragraph (a), or insurance covered by paragraph (d).

Note: The supply might still be GST-free under item 5, 5A, 6 or 7 in the table in subsection 38-355(1).

5 Section 38-355

Before “The third column”, insert “(1)”.

6 Section 38-355 (table item 5)

Before “the *international transport”, insert “subject to subsection (2),”.

7 Section 38-355 (table item 5)

Omit “However, paragraph (a) or (b) only applies to the transport of the goods within Australia if it is supplied by the supplier of the transport of the goods from or to Australia (whichever is relevant).”.

8 Section 38-355 (after table item 5)

Insert:

- | | | |
|----|--------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 5A | Loading or handling etc. | subject to subsection (2): <ul style="list-style-type: none">(a) loading or handling of goods, the *international transport of which is covered by item 5, during the course of the international transport; or(b) supply of a service, during the course of the international transport of goods covered by item 5, that facilitates the international transport. |
|----|--------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

9 At the end of section 38-355

Add:

- (2) Paragraphs (a) and (b) of item 5, and item 5A, in the table in subsection (1) do not apply to a supply to the extent that the thing supplied is done in Australia, unless:

- (a) the *recipient of the supply:
 - (i) is a *non-resident; and
 - (ii) is not in Australia when the thing supplied is done in Australia; or
- (b) the supply is done by the supplier of the transport of the goods from or to Australia (whichever is relevant).

10 After paragraph 117-5(1)(b)

Insert:

- (ba) the amount paid or payable for a supply to which item 5A in the table in subsection 38-355(1) applies, to the extent that the amount:
 - (i) is not a tax, fee or charge to which subsection 81-5(2) applies; and
 - (ii) is not already included under paragraph (a) or (b); and

11 Subsection 117-5(1A)

After “paragraph (1)(b)”, insert “or (ba)”.

12 Section 195-1 (definition of *international transport*)

Repeal the definition, substitute:

international transport means:

- (a) in relation to the export of goods—the transport of the goods from their *place of export in Australia to a destination outside Australia; or
- (b) in relation to the import of goods—the transport of the goods from a place outside Australia to their *place of consignment in Australia.

13 Section 195-1 (after paragraph (a) of the definition of *place of consignment*)

Insert:

- (aa) if the supplier of the goods is to deliver the goods in Australia—the place in Australia to which the goods are to be delivered under the contract for the supply of the goods; or
- (ab) if:
 - (i) neither paragraph (a) nor (aa) applies; and

- (ii) the goods are to be transported into Australia by an entity supplying a transport service to an entity that is to import the goods into Australia;
the place in Australia to which the goods are to be delivered under the contract for the supply of the transport service; or

14 Section 195-1 (paragraph (b) of the definition of *place of export*)

Repeal the paragraph, substitute:

- (b) if paragraph (a) does not apply and the goods were packed in a *freight container:
 - (i) the last place from which they were collected, or to which they were delivered, prior to being so packed; or
 - (ii) if subparagraph (i) does not apply—the place where they were so packed; or

15 Existing determinations under paragraph 13-20(3)(b)

A determination under paragraph 13-20(3)(b) of the *A New Tax System (Goods and Services Tax) Act 1999*, that was in force immediately before the commencement of this item, continues in force after that commencement as if it were a determination under subparagraph 13-20(3)(c)(i) of that Act as inserted by this Act.

16 Application

- (1) The amendments made by this Schedule apply to:
 - (a) supplies made on or after 1 July 2010; and
 - (b) taxable importations made on or after 1 July 2010.
- (2) Despite paragraph (1)(a), the amendments made by this Schedule do not apply to a supply of services to the extent that the supply relates to a taxable importation made before 1 July 2010.

Schedule 2—GST relief for telecommunication supplies for global roaming in Australia

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

1 At the end of Division 38

Add:

Subdivision 38-R—Telecommunication supplies made under arrangements for global roaming in Australia

38-570 Telecommunication supplies made under arrangements for global roaming in Australia

- (1) A *telecommunication supply is *GST-free* if:
- (a) the supply is to enable the use in Australia of a portable device for sending and receiving signals, writing, images, sounds or information by an electromagnetic system while the device is linked to:
 - (i) an international mobile subscriber identity; or
 - (ii) an IP address; or
 - (iii) another internationally recognised identifier; containing a home network identity that indicates a subscription to a telecommunications network outside Australia; and
 - (b) the supply is covered by subsection (2) or (3).

Supply by non-resident telecommunications supplier

- (2) This subsection covers the supply if:
- (a) the supply is made to the subscriber in connection with the subscription; and
 - (b) the billing of the subscriber for the supply is to an address outside Australia; and
 - (c) the supply is made by a *non-resident that:

- (i) *carries on outside Australia an *enterprise of making *telecommunication supplies; and
- (ii) does not *carry on in Australia such an enterprise.

Supply by Australian resident telecommunications supplier

- (3) This subsection covers the supply if:
 - (a) the supply is made by an *Australian resident that is:
 - (i) a carrier, or a carriage service provider, as defined in the *Telecommunications Act 1997*; or
 - (ii) an internet service provider as defined in Schedule 5 to the *Broadcasting Services Act 1992*; and
 - (b) the supply is provided to the user in Australia of the device; and
 - (c) the supply is made to a *non-resident that:
 - (i) *carries on outside Australia an *enterprise of making *telecommunication supplies; and
 - (ii) does not *carry on in Australia such an enterprise.

2 Application

The amendment made by this Schedule applies to supplies made on or after 1 July 2000.

Schedule 3—Adjustments for third party payments

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

1 Paragraph 134-5(1)(b)

Repeal the paragraph, substitute:

- (b) your supply of the thing to the other entity:
 - (i) was a *taxable supply; or
 - (ii) would have been a taxable supply but for a reason to which subsection (3) applies; and

2 Paragraph 134-5(2)(a)

Repeal the paragraph, substitute:

- (a) either:
 - (i) if your supply to the other entity was a *taxable supply—the amount of GST payable on the supply; or
 - (ii) if your supply to the other entity would have been a taxable supply but for a reason to which subsection (3) applies—the amount of GST that would have been payable on the supply had it been a taxable supply; taking into account any other *adjustments that arose, or would have arisen, relating to the supply; and

3 Paragraph 134-5(2)(b)

After “payable”, insert “, or would (but for a reason to which subsection (3) applies) have been payable,”.

4 Subparagraph 134-5(2)(b)(ii)

After “adjustments”, insert “that arose, or would have arisen,”.

5 At the end of section 134-5

Add:

- (3) This subsection applies to the following reasons why your supply of the thing to the other entity was not a *taxable supply:

- (a) you and the other entity are *members of the same *GST group;
 - (b) you and the other entity are members of the same *GST religious group;
 - (c) you are the *joint venture operator for a *GST joint venture, and the other entity is a *participant in the GST joint venture.
- (4) However:
- (a) paragraph (3)(a) does not apply if you and the payee are *members of the same *GST group when the payment referred to in paragraph (1)(a) is made; and
 - (b) paragraph (3)(b) does not apply if you and the payee are members of the same *GST religious group when that payment is made.

6 Paragraph 134-10(1)(b)

Repeal the paragraph, substitute:

- (b) your acquisition of the thing from the other entity:
 - (i) was a *creditable acquisition; or
 - (ii) would have been a creditable acquisition but for a reason to which subsection (3) applies; and

7 Paragraph 134-10(2)(a)

Repeal the paragraph, substitute:

- (a) either:
 - (i) if your acquisition from the other entity was a *creditable acquisition—the amount of the input tax credit entitlement for the acquisition; or
 - (ii) if your acquisition from the other entity would have been a creditable acquisition but for a reason to which subsection (3) applies—the amount that would have been the amount of the input tax credit entitlement for the acquisition had it been a creditable acquisition; taking into account any other *adjustments that arose, or would have arisen, relating to the acquisition; and

8 Paragraph 134-10(2)(b)

After “entitled”, insert “, or would (but for a reason to which subsection (3) applies) have been entitled,”.

9 Subparagraph 134-10(2)(b)(ii)

After “adjustments”, insert “that arose, or would have arisen,”.

10 At the end of section 134-10

Add:

- (3) This subsection applies to the following reasons why your acquisition of the thing from the other entity was not a *creditable acquisition:
 - (a) you and the other entity are *members of the same *GST group;
 - (b) you and the other entity are members of the same *GST religious group;
 - (c) you are the *joint venture operator for a *GST joint venture, and the other entity is a *participant in the GST joint venture.
- (4) However:
 - (a) paragraph (3)(a) does not apply if you and the payer are *members of the same *GST group when the payment referred to in paragraph (1)(a) is made; and
 - (b) paragraph (3)(b) does not apply if you and the payer are members of the same *GST religious group when that payment is made.

11 At the end of Division 134

Add:

134-30 Application of sections 48-55 and 49-50

- (1) For the purposes of working out whether you have an adjustment under this Division, disregard sections 48-55 and 49-50.
- (2) However, this section does not affect the application of sections 48-55 and 49-50 for the purposes of working out the amount of an adjustment under this Division.

Note: Sections 48-55 and 49-50 require GST groups and GST religious groups to be treated as single entities for the purposes of adjustments.

12 Application

The amendments made by this Schedule apply in relation to payments made on or after 1 July 2010.

*[Minister's second reading speech made in—
House of Representatives on 26 May 2010
Senate on 22 June 2010]*

(103/10)

12 *Tax Laws Amendment (2010 GST Administration Measures No. 3) Act 2010* No. 91,
2010