THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

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

EXPLANATORY MEMORANDUM

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

This Bill amends the Taxation Administration Act 1953 to provide support for the administration and collection of the goods and services tax (GST).

Purpose of the provisions

The main purposes of the provisions in the A New Tax System (Goods and Services Tax Administration) Bill 1998 (referred to as the GST Administration Bill) are to:

- establish who is to administer the GST law;
- support the collection and recovery of GST;
- set maximum penalties for breaching GST obligations;
- permit entities to rely on the Commissioner’s interpretation of the law;
- set time limits on GST liability and on credit entitlements;
- adopt existing mechanisms for the review of assessments and other GST decisions;
- confer powers on the Commissioner for the gathering of information; and
- protect the confidentiality of information disclosed for GST purposes.

Some administrative provisions are also contained in Division 177 of the A New Tax System (Goods and Services Tax) Act 1998 (the GST Act).

Date of effect

The amendments to the Taxation Administration Act 1953 will apply from 1 July 2000.

Financial impact and compliance cost impact

This information is contained in the Regulation Impact Statement.
Chapter 1

Preliminary matters, amendment of existing Parts and introduction to new Part VI

Overview

1.1 This Chapter explains the introductory provisions to the GST Administration Bill and to new Part VI of the Taxation Administration Act 1953. It also explains the amendments to existing Parts of the Taxation Administration Act 1953 to be made by the GST Administration Bill.

Summary of the legislation

1.2 The introductory provisions of the GST Administration Bill provide for the short title, commencement date, and the structuring of amendments to existing legislation. The Schedule to the GST Administration Bill contains amendments to the Taxation Administration Act 1953.

1.3 Items 1 to 6 of the Schedule to the GST Administration Bill contain amendments to existing Parts of the Taxation Administration Act 1953.

1.4 The GST Administration Bill will insert new Part VI in the Taxation Administration Act 1953. [Schedule 1, item 7]

Division 1 of new Part VI contains rules about the interpretation of the provisions in that Part.

Explanation of the legislation

Preliminary matters

1.5 When the GST Administration Bill is enacted, it will be called the A New Tax System (Goods and Services Tax Administration) Act 1998. [Section 1]
1.6 The provisions of the GST Administration Bill will apply from 1 July 2000, the same time as the provisions of the GST Act. [Section 2]

1.7 The GST Administration Bill will amend the Taxation Administration Act 1953 to insert collection and administration provisions specific to the goods and services tax (GST). [Section 3 and Schedule 1]

Amendment of existing Parts of the Taxation Administration Act 1953

1.8 The existing secrecy provision in Part IA of the Taxation Administration Act 1953 will be amended to exclude its operation in relation to new Part VI. Part VI will specifically provide for the confidentiality of GST information (see paragraph 8.21). [Schedule 1, item 1]

1.9 There are 4 amendments to Part III of the Taxation Administration Act 1953, which deals with prosecutions and offences. The first makes it clear that failure to comply with any of the requirements under a taxation law listed in subsection 8C(1) constitutes an offence. [Schedule 1, item 2]

1.10 The failure to apply for registration or to apply for cancellation of registration, when required to do so, will be listed in subsection 8C(1) among other offences for failure to comply with a requirement under a taxation law. [Schedule 1, item 3]

1.11 The definition of taxation statement, a term used in the description of certain offences for false or misleading statements will be modified. The amended definition will exclude statements made in a document produced as a result of the exercise of the power to direct that information in the custody or control of a person be given to the Commissioner for GST purposes. [Schedule 1, item 4]

1.12 Another amendment will ensure that statements made in relation to tax invoices and adjustment notes will be within the scope of offences for making false or misleading statements to persons other than a taxation officer. [Schedule 1, item 5]

1.13 An amendment to Part IVC of the Taxation Administration Act 1953 (which deals with taxation objections, reviews and appeals) will define the period for objections to be made against assessments of GST (see Chapter 2 about assessments). Objections will need to be lodged with the Commissioner within 4 years after the end of the relevant tax period or 4 years after the importation of goods to which the assessment objected against relates, or within 60 days of service of the relevant assessment notice, whichever is the later. [Schedule 1, item 6]
Introduction to Part VI, **Taxation Administration Act 1953**

1.14 The administration provisions in *new Part VI* of the *Taxation Administration Act 1953* are closely connected, and are therefore to be read, with the provisions of the GST Act and other relevant provisions of the *Taxation Administration Act 1953*. [New section 19]

1.15 Terms used in Part VI will adopt the meaning of defined terms and other expressions used in the GST Act. [New subsection 20(2)]

The terms *GST Act* and *authorised officer*, which are used in Part VI, are also defined. [New subsection 20(1)]

1.16 The *Criminal Code* will apply to offences specified in Part VI. [New section 21]
Chapter 2
Assessments

Overview

2.1 This Chapter explains the provisions of Division 2 of new Part VI of the Taxation Administration Act 1953. These provisions deal with assessments of goods and services tax (GST).

2.2 Your liability to GST and your entitlements to input tax credits are based on your transactions. Payments you make or amounts you are refunded, are calculated in GST returns for the tax periods that apply to you. Payments and refunds will ordinarily be made without any formal assessment of liability by the Commissioner of Taxation (the Commissioner).

2.3 In some situations it will be necessary for the Commissioner to issue an assessment of your net amount for a tax period. For example, an assessment may be made if you fail to provide a GST return to the Commissioner by the due date, or if the Commissioner has reason to believe that amounts stated in your GST return are incorrect.

Summary of the legislation

2.4 Assessments of GST may be made by the Commissioner with or without your request. The Commissioner will be required to notify you of an assessment and you may object against it if you are dissatisfied with it. An assessment which amends an earlier assessment for a tax period replaces that earlier assessment.

Explanation of the legislation

_When can the Commissioner make an assessment of GST?_

2.5 The Commissioner will be able to make assessments at any time in relation to your net amount for a tax period or for the GST payable on an importation you make. [New section 22]

2.6 If you are dissatisfied with an assessment the Commissioner makes you will be able to seek review by lodging an objection as set out in Part IVC. [New subsection 62(3), item 1 of the table]
Can you require the Commissioner to make an assessment?

2.7 You can request the Commissioner to make an assessment of the net amount for a tax period or of the GST on a taxable importation. [New subsection 23(1)]

For example, you may wish to do this if you consider that the Commissioner’s interpretation of the law is incorrect and you wish to avail yourself of the review rights the law provides. You may also request an assessment to correct an error in a return for an earlier tax period.

2.8 Ordinarily, you must make your request within 4 years from the end of the relevant tax period or, in the case of an importation, within 4 years from the time of the importation. In special cases, the Commissioner may allow you further time to make your request. [New subsection 23(2)]

Underlying liability is not affected by assessment

2.9 The GST law will expressly state that your liability to GST and the Commissioner’s obligation to refund an amount for a tax period, and the due date for payment of GST and for refunds, will arise independently of the making of an assessment. [New section 24]

Notice of assessment

2.10 The Commissioner will be required to give you a notice of assessment as soon as practicable after it is made. However, a failure to give the notice to you will not invalidate the assessment. [New subsection 25(1)]

2.11 If you lodge your GST returns electronically (under section 31-25 of the GST Act) the Commissioner may provide the notice of assessment to you by electronic transmission. [New subsection 25(2)]

Amendment of assessments

2.12 The Commissioner may amend an assessment at any time. [New section 26]

However, there are time limits on collecting GST or claiming refunds (see paragraphs 3.27 and 3.28 about new sections 35 and 36).

A later assessment replaces an earlier assessment for a particular tax period. [New section 27]
Chapter 3

Recovery

Overview

3.1  This Chapter explains Division 3 of new Part VI. This Division deals with situations where goods and services tax (GST) is not paid on time or where amounts payable by the Commissioner are withheld. Division 33 of the GST Act specifies the time when you must make your GST payments.

3.2  Some of the provisions in Division 3 are similar to those in other Acts administered by the Commissioner. As part of the Government’s plan for A New Tax System the tax laws are to be integrated in a tax code that will improve consistency across the tax laws. Although Division 3 adopts rules that currently apply to the recovery of other taxes, some of its provisions may be modified if measures to integrate the tax laws are enacted before the GST law comes into effect.

Summary of the legislation

3.3  Division 3 of new Part VI contains rules to support the recovery of GST in situations where:

- the Commissioner sues for the debt;
- payments that discharge only part of the debt owing are applied;
- entities are jointly liable;
- a person dies before settling his or her GST liabilities; or
- an entity who has a GST debt is owed money by another entity.

3.4  Division 3 contains rules that prohibit the recovery of GST if:

- the 4 year time period (other than in cases of fraud or evasion) has expired; or
- you have relied on the Commissioner’s interpretation of the GST law which is later altered.
3.5 Although the Commissioner is generally bound to refund a reduction in a net amount payable by you or an increase in a net amount payable to you, the Commissioner may withhold a refund if:

- you have not provided return information as required; or
- the Commissioner is satisfied that you have not reimbursed the recipient of a GST-free supply which had previously been treated as a taxable supply.

**Explanation of the legislation**

*Recovery of unpaid GST and penalty*

3.6 Unpaid GST, including any penalty payable under new Part VI, will be a debt that the Commissioner can sue for in the appropriate court. [New section 28]

*Part payment of GST debts*

3.7 If you owe two or more amounts of GST, or penalty payable under new Part VI, but pay an amount that is less than the combined amount, the Commissioner may apply the amount paid to offset the outstanding amounts in the order in which they became payable unless the Commissioner determines that they should be applied in a different order. The Commissioner may similarly apply a refund payable to you under Division 35 of the GST Act to offset amounts you owe. [New section 29]

*What rights do you have if you pay GST on behalf of another entity?*

3.8 If you pay GST and any penalties payable under Part VI for, or on behalf of, another entity you will be entitled to recover the amount (including the cost of recovery) from the other entity as a debt through court action. Alternatively, you will be able to deduct the amount from moneys you hold that belong to the other entity. [New section 30]

*Joint liability for GST*

3.9 If you and one or more other entities become jointly liable to pay GST, including any penalties payable under Part VI, you and the other entities will each be liable for the whole amount. If you pay the whole amount, you will be able to recover an amount from the other entities in the same proportion as their respective interests in the relevant transactions.

3.10 By paying all the GST you will be able to recover the other entities’ shares as a debt through court action or by deducting it from any money you hold which belongs to the other entities. [New section 31]
Recovery of GST from the trustee of a deceased estate

3.11 If at the time of your death, your GST liability has not been paid, the Commissioner will have the same powers and remedies for assessment and recovery from the trustee of your estate as he or she would have had against you before your death. [New subsection 32(2)]

3.12 The trustee will be required to give any returns and any other information to the Commissioner that you would have been liable to provide. The trustee will also be required to provide any further returns or other information required by the Commissioner. [New subsection 32(3)]

3.13 If the trustee does not provide a return or further information, the Commissioner will be able to make an assessment of your GST liability. [New subsection 32(4)]

The trustee will be liable to the same penalty for unpaid GST for which you would have been liable if you had still been alive. [New subsection 32(5)]

3.14 Any GST payable by the trustee will be a charge on all of your estate in the hands of the trustee. [New subsection 32(6)]

3.15 A trustee who is dissatisfied with an assessment made under this section will be able to seek review by lodging an objection as set out in Part IVC. [New subsection 62(3), item 2 of the table]

Recovery of GST from unadministered deceased estate

3.16 If probate has not been granted or letters of administration have not been taken out within 6 months of your death, the Commissioner will be able to make an assessment of your liability to GST. The Commissioner will be required to publish notice of the assessment twice in a daily newspaper in the State or Territory where you resided at the time of death. [New section 33]

3.17 A person who claims an interest in the deceased person’s estate, or has been granted probate of the person’s will, or letters of administration of the person’s estate, and who is dissatisfied with the assessment will be able to seek review of the assessment by lodging an objection in the way prescribed in Part IVC. [New subsection 33(3)]

Recovery from third party

3.18 If you have a GST debt the Commissioner will be able to collect money from a third party who owes money to you. [New section 34]

3.19 Money is a term defined in section 195-1 of the GST Act and includes promissory notes, bills of exchange and other negotiable instruments as well as Australian currency and foreign currency.
3.20 The power to collect money owed by a third party will extend to situations where:

- a third party may owe you money at a later time, or has money accruing to you;
- a third party holds money for you, or on your account;
- a third party holds money for, or on account of, another entity for payment to you; or
- a third party has authority from someone else to pay money to you.

[New subsection 34(8)]

3.21 The Commissioner will be able, by written direction, to require entities in the above situations to pay the money (or an amount equal to the GST due) to the Commissioner, in accordance with the direction. If several payments are to be made to the entity, the Commissioner will be able to require a specified amount out of each payment.

3.22 The third party will not be required to pay the money to the Commissioner until it becomes owing to you. [New subsection 34(3)]

3.23 A person who does not comply with a direction will be guilty of an offence carrying a maximum penalty of 20 penalty units. [New subsection 34(4)]

If such a person is convicted of not complying with a direction by a court, the court will be able to order the convicted person to pay the amount refused in addition to any penalty determined by the court. [New subsection 34(5)]

3.24 A third party making payment to the Commissioner under a direction will be deemed to be acting on the authority of the entity that has the GST debt and be indemnified for the payments. [New subsection 34(6)]

3.25 If the whole debt has been paid before the Commissioner has received payment of the debt from a third party, the Commissioner will be required to inform the third party that the debt has been paid and that the direction has been withdrawn. [New subsection 34(7)]

3.26 If a person owns withdrawable shares in the capital of a building society which have not been repaid, the money represented by the shares and held by the building society will be taken to be due to the person if it is repayable on demand, or if it is not repayable on demand, it will be taken to be money which may later be due by the building society to the person. [New subsection 34(9)]
**Time limit on GST and credit entitlements**

3.27    Ordinarily, GST and penalty for late payment under new section 40 will not be payable if 4 years have passed after the due date for payment following the end of the tax period to which the net amount relates. The exceptions will be where the Commissioner has issued a notice requiring payment before the end of that 4 year period, or is satisfied that the absence of payment is due to fraud or evasion. An amount of GST on an importation will also cease to be payable if 4 years have passed after the due date for payment of the GST on the importation. [New section 35]

3.28    Similarly, entitlements to refunds, input tax credits and diesel fuel credits will expire 4 years after the end of the tax period to which they relate unless your claim to the refund or entitlement has been notified to the Commissioner before that time. [New section 36]

**Will the Commissioner be bound by rulings on the GST law?**

3.29    If you have underpaid GST the amount underpaid will cease to be payable if the underpayment occurred in reliance on the Commissioner's interpretation of the GST law. Similarly, an amount overpaid as a refund by the Commissioner will be taken to have been payable if the overpayment occurred in reliance on the Commissioner’s interpretation.

3.30    The Commissioner's interpretation of the GST law will be communicated through private rulings or public rulings. These rulings will take the form of advice or rulings given or published by the Commissioner, other than by oral means. Private rulings will apply only to the entity to which the ruling is given.

3.31    If you have relied on a ruling which has later been changed and, in reliance on the earlier ruling, you have underpaid the GST that had become due under the later ruling you will not be liable for the shortfall prior to the later ruling. Similarly, you will not be liable to repay an amount overpaid by the Commissioner as a refund in these circumstances.

3.32    However, the underpayment will remain payable, or you will be liable to repay the overpaid refund (as appropriate), if the Commissioner is satisfied that you had made a misstatement of fact or suppressed an important fact causing the first ruling to be given or continued.

3.33    If a private ruling is given to a particular entity, it will apply only to that entity and when a subsequent public ruling is issued which conflicts with a private ruling previously given to a particular entity, the public ruling will prevail. Similarly, if a private ruling is issued which conflicts with an earlier public ruling, the private ruling will be the correct ruling.
3.34 The general position with private and public rulings will be that the later issued ruling will prevail. With public rulings, it will be the responsibility of the entity to ensure that any public ruling does not conflict with an earlier ruling the entity has received.

3.35 If the Commissioner issues a ruling after an amendment to the law that ruling will only alter a previous ruling issued before the amendment to the extent that it deals with issues other than the amendment. [New section 37]

**Withholding of refunds if GST returns are outstanding**

3.36 The Commissioner will be able to withhold a refund payable to you under section 35-5 of the GST Act if you have not complied with a requirement to provide GST returns for other tax periods or to provide further or fuller returns as requested by the Commissioner. [New subsection 38(1)]

3.37 When the return, or returns, as requested are given to the Commissioner, and provided a refund remains payable, the Commissioner will be obliged to pay the refund within 14 days from that time. Interest will be payable on the refund amount if the refund is not paid or applied against other liabilities during the 14 day period. [New subsection 38(2)]

3.38 Alternatively, if the Commissioner makes an assessment of your net amount for a tax period before you provide a further or a fuller return, and provided a refund remains payable by the Commissioner, the Commissioner will be obliged to pay the refund at the time the assessment is made. [New subsection 38(3)]

**In what situation can a refund not be payable?**

3.39 Ordinarily, if GST has been overpaid or entitlements to credits have been understated the Commissioner is obliged to refund the amount overpaid or credit understated. [New subsection 39(1)]

Alternatively, the Commissioner may apply any or all of it against other taxation liabilities. [New subsection 39(2)]

Refunds may result from error in the calculation of a net amount for a tax period or from GST being paid in error on a non-taxable importation.

3.40 However, if GST is overpaid in a situation where supplies were incorrectly treated as taxable supplies in a GST return or assessment, a refund will have to be paid only if the Commissioner is satisfied that the recipients of the supplies on which the GST was overpaid have been reimbursed. The recipients of the supplies must not be registered or required to be registered for GST purposes. [New subsection 39(3)]

3.41 Because GST is payable by suppliers but is ultimately borne by the consumers of goods and services, a refund of overpaid GST would ordinarily result in a windfall gain to the supplier. A supplier will need to
satisfy the Commissioner that an amount corresponding to the refund will be passed on to the persons who ultimately bore the cost of the overpaid GST.
Chapter 4

Penalties

Overview

4.1 This Chapter explains the penalty provisions in Division 4 of new Part VI. The penalties provided for under this Division are designed to encourage entities to comply voluntarily with their obligations under the GST law.

Summary of the legislation

4.2 Penalties will be imposed for:

- late payment of GST;
- paying GST in another form if you are required to make electronic payments;
- failing to apply for registration or for cancellation of registration when you are required to do so;
- failing to give GST returns or other information to the Commissioner when required;
- failing to issue tax invoices or adjustment notes when required; and
- making false statements to a tax officer, or to any other person if it is made in connection with the operation of the GST law.

4.3 The Commissioner will have the power to remit penalties if he or she is satisfied that it is fair and reasonable to do so and will be required to notify entities of the amount of the penalty (other than the penalty interest charge for late payment).
Explanation of the legislation

What if GST is not paid on time?

4.4 If you don’t pay GST by the due date, a penalty interest charge will apply. The penalty will be calculated from the due date for payment at the rate of 16% per year on the unpaid amount. [New subsection 40(1)]

4.5 Ordinarily, the due date for payment is not affected by an extension of time to pay granted by the Commissioner under section 33-20 of the GST Act. However, in special cases, such as financial hardship as a result of a natural disaster, a later due date for payment may be used to calculate the penalty interest charge. [New subsection 40(2)]

4.6 The penalty charge accrues until the GST is paid. Although the Commissioner is not required to notify you of this penalty (see paragraph 4.22), penalty notices may be given in particular cases.

4.7 If judgment has been entered or given in a court for the payment of GST, this will not alter the fact that the tax has remained unpaid from the time it was originally required to be paid. [New subsection 40(3)]

4.8 If the judgment debt includes interest, a proportion of the interest will reduce the penalty interest charge as follows:

\[
\text{Interest on judgment debt} \times \frac{\text{GST component of judgment debt}}{\text{Judgment debt}}
\]

[New subsection 40(4)]

Does it matter if you pay by cheque instead of by electronic payment?

4.9 There are costs associated with different payment methods. If you are required under subsection 33-10(2) of the GST Act to pay GST by electronic transmission but actually pay by other means you will be liable for a penalty of 5 penalty units. [New section 41]

4.10 The Commissioner may remit, or reduce, the penalty in special circumstances (see paragraph 4.23 about remission of penalty). This penalty may be remitted if the failure to pay by electronic transmission is beyond your control, for example, as a result of equipment breakdown.

Is there a penalty for failing to apply for registration?

4.11 If you fail to apply for registration when you are required to do so under the GST Act you will be liable to a penalty of 20 penalty units. The same penalty will apply if you fail to apply for cancellation of registration when you are required to do so under the GST Act. [New section 42]
What is the penalty if a GST return is not lodged on time?

4.12 If you fail to provide a GST return as required you will be liable to a penalty calculated at $10 per week or part thereof while the return is outstanding. The maximum penalty will be $200. [New subsection 43(1)]

4.13 You will be liable to a penalty if you fail to give information (other than information relating to a GST return) when required. The penalty will be 200% of the difference between the net amount for the relevant tax period, or the GST payable on a taxable importation, as assessed following the request for information and the net amount or GST as returned or assessed without the knowledge of that information. [New subsections 43(2) and (3)]

4.14 There will be no penalty under this provision if the failure to provide the return or information does not result in any underpayment of tax.

4.15 A person who fails to provide a return or other information required by the Commissioner could be guilty of an offence under section 8C of the Taxation Administration Act 1953.

What is the penalty for failing to issue a tax invoice?

4.16 If you fail to issue a tax invoice, or an adjustment note, when you are required to do so under the GST Act you will be liable to a penalty of 20 penalty units. [New section 44]

Tax invoices issued by principals and their agents

4.17 If both the principal and their agent issue a tax invoice in relation to the same taxable supply the principal will be liable to a penalty of 20 penalty units. [New section 45]

What is the penalty for making false or misleading statements?

4.18 If you make a false or misleading statement either to a tax officer or to another person for a purpose connected to the GST law and, as a result of that statement, GST is underpaid or a refund to you is overpaid, the penalty will be 200% of the GST underpayment or refund overpayment (whichever applies). [New section 46]

4.19 It will not matter if the statement you made is false and you did not know that it is false. The penalty will apply if it is simply a false statement. However, the Commissioner will have the power to remit the penalty (see paragraph 4.23). The Commissioner may issue a public ruling that provides guidelines on remission of the penalty according to the degree of culpability in making a false or misleading statement.
4.20 A false statement is one that is false or misleading in a material particular or one where something is omitted which makes the statement misleading in a material particular. [New subsection 46(3)]

4.21 A person who makes a false or misleading statement could be guilty of an offence under Part III of the *Taxation Administration Act* 1953.

**Notifying the amount of the penalty and when it must be paid**

4.22 The Commissioner must notify you of your obligation to pay a penalty imposed under Part VI, other than the penalty interest charge under section 40 which accrues until payment is made. The notice the Commissioner gives you must specify the amount of penalty payable and the day by which it must be paid. The penalty notice may be included in any other notice, such as a notice of assessment, that the Commissioner gives to you. [New section 47]

**Remission of penalty by the Commissioner**

4.23 The Commissioner will be able to remit, or reduce, some or all of the penalty that a person is liable for under Part VI. The remission can take place before, or after, the penalty is notified. [New section 48]

4.24 The Commissioner may publish guidelines for the remission of penalties imposed by Division 4.

4.25 A decision by the Commissioner not to remit penalties (other than the penalty interest charge under new section 40) in whole or in part will be reviewable if the penalty, after any remission, exceeds $200. [New subsection 62(3), item 3 of the table]

**Relationship to offence provisions**

4.26 If a penalty is imposed under this Division it does not mean that an offence has been committed. However, conduct that may result in a Division 4 penalty may also constitute an offence under Part III of the *Taxation Administration Act* 1953. An entity that is convicted of an offence under Part III will not be subject to a Division 4 penalty in relation to the same conduct. [New section 49]
Chapter 5

Special rules for certain entities

Overview

5.1 This Chapter explains the provisions in Division 5 of new Part VI. This Division imposes separate obligations on certain entities if other entities have obligations under the GST law.

Summary of the legislation

5.2 The special rules apply to the following entities:

- partners in a partnership;
- participants in a joint venture;
- members of the committee of management of an unincorporated association or body of persons;
- members of a GST group;
- representatives of incapacitated entities;
- liquidators or receivers;
- public officer of a company; and
- directors of a company.

Explanation of the legislation

Liability of partners

5.3 An entity for the purposes of the GST law includes a partnership (see definition of entity, in section 184-1 of the GST Act). However, as a partnership is not a separate legal entity the GST law also imposes separate obligations on the partners of a partnership.

5.4 Partners will be jointly and severally liable for any amount payable by the partnership and will be taken to have individually committed offences committed by the partnership. The GST law will also
provide that if a person is prosecuted for an offence under these provisions, certain defences will be available. [New section 50]

**Liability of participants in a GST joint venture**

5.5 Two or more companies may participate in a GST joint venture (see Division 51 of the GST Act). Consequences of a GST joint venture are that the liability for GST and the entitlement to input tax credits rest with the joint venture operator.

5.6 Participants in a GST joint venture will be jointly and severally liable for any amount payable by the joint venture operator that relates to the joint venture. Participants will each be taken to have committed offences committed by the joint venture operator but certain defences will be available to them. [New section 51]

**Liability related to unincorporated associations or bodies of persons**

5.7 The GST law treats an unincorporated association or body of persons as an entity (see definition of entity, in section 184-1 of the GST Act). Although any member may discharge an obligation imposed by the GST law, obligations that the unincorporated entity has are separately imposed on members of the committee of management of the unincorporated entity. Members will each be taken to have committed offences committed by the unincorporated entity but certain defences will be available to them. [New section 52]

**Liability of members of a GST group**

5.8 Two or more companies that belong to a 90% owned group (as defined in Division 190 of the GST Act) may operate for GST purposes as a GST group (see Division 48 of the GST Act). Consequences of a GST group are that the liability for GST and the entitlement to input tax credits rest with the representative member of the group.

5.9 Members of a GST group will be jointly and severally liable for any amount payable by the representative member that relates to the group. Members will each be taken to have committed offences committed by the representative member but certain defences will be available to them. [New section 53]

**Liability of representatives of incapacitated entities**

5.10 The GST law imposes obligations on the representative of a bankrupt or an entity in liquidation or receivership if the representative is required to be registered for GST purposes (see Division 147 of the GST Act).

5.11 If there are 2 or more representatives of the incapacitated entity each will be jointly and severally liable for any amount payable by the representatives that relates to the entity. Representatives will each be
Special rules for certain entities

taken to have committed offences committed by any of the representatives but certain defences will be available to them. [New section 54]

**Obligations of liquidator or receiver**

5.12 Special obligations are imposed on a liquidator or receiver if they are not required to be registered for GST purposes. This may occur if the enterprise carried on by the company has ceased prior to their appointment.

5.13 A liquidator or receiver who takes control of the assets of a company will be required to notify the Commissioner of that fact within 14 days of taking control. As soon as practicable, the Commissioner will be required to notify the liquidator or receiver of the amount necessary to set aside to cover the GST that is payable by the company or may become payable.

5.14 The liquidator or receiver will not be able to part with any assets of the company without the Commissioner's permission but this obligation will not apply to the payment of a debt that is not an ordinary debt. An ordinary debt is an unsecured one that is not required by any law to be paid in priority to the other debts of the company.

5.15 The formula for calculating the assets to be set aside will include the expression 'notified other taxes' which means the total of any amounts, other than GST, which the Commissioner has notified as being outstanding. [New section 55]

**Public officer of a company**

5.16 The public officer of a company will be responsible for ensuring that the company meets all its obligations under the GST law and will be liable if the company defaults on those obligations. The person appointed as public officer for the purposes of the *Income Tax Assessment Act 1936*, will also be the public officer for GST purposes.

5.17 A proceeding may be brought against the public officer and notices or other documents relevant to the GST law may be served on the public officer. [New section 56]

**Liability of directors etc. of a company**

5.18 Directors, company officers and attorneys or agents of a company will have the same potential liabilities as the public officer of a company.

5.19 If the Commissioner thinks fit, documents may be served on them and any proceeding may be taken against them instead of or in addition to the company or public officer. [New section 57]
Obligations of agent winding up business for non-resident principal

5.20 Special obligations will apply to agents winding up businesses for principals who are not residents of Australia. Within 14 days of being instructed by the principal to wind up the business the agent will be required to advise the Commissioner of the instruction.

5.21 The Commissioner will then be required as soon as practicable to advise the agent of any GST payable by the principal and the agent will be required to set aside sufficient assets to pay the GST. The agent will be liable as trustee to pay the GST owing by the principal to the extent of the value of the assets that the agent is required to put aside.

5.22 If the agent fails to comply with these obligations, the agent will be personally liable to pay the GST and will be guilty of an offence punishable on conviction by a fine of up to 10 penalty units.

[New section 58]
Chapter 6

Evidence

Overview

6.1 This Chapter explains the provisions in Division 6 of new Part VI. These provisions specify the evidentiary effect of certain documents and copies of documents. These rules ensure that the only avenue of appeal is to dispute the amount of the liability and not the procedures in creating the documents.

Summary of the legislation

6.2 The provisions of Division 6 specify that:

- a notice of assessment or declaration under the general anti-avoidance provision is conclusive evidence of the making of the assessment or declaration and, except if review rights are exercised, that the amounts stated in the notice or declaration are correct;

- a certificate which contains particulars of an entity’s GST debt and is signed by the Commissioner or Deputy Commissioner is prima facie evidence that the particulars are correct; and

- a copy of a document or extract from a document given by or to an entity which is signed by the Commissioner or Deputy Commissioner has the same evidentiary value of the matters stated in the copy as the original document has.

Explanation of the legislation

Assessment notice is conclusive evidence of the assessment

6.3 The production of a notice of assessment, a declaration made under Division 165 of the GST Act (the general anti-avoidance provision), or document purporting to be a copy of an assessment or declaration is conclusive evidence that:
• the assessment or declaration was properly made; and

• that the amounts and all particulars of the assessment or declaration are correct, except in proceedings before a tribunal or court seeking review of the assessment or declaration.

[New section 59]

Certificate of amount payable
6.4 The production of a signed certificate which certifies an amount of GST payable and any penalty payable at the date of the certificate is prima facie evidence that the matters stated in the certificate are correct. [New section 60]

Signed copies as evidence
6.5 The production of a document signed by the Commissioner or a Deputy Commissioner purporting to be a copy of, or extract from a document is evidence of the matters in the document to the same extent as the original document had it been produced. [New subsection 61(1)]

6.6 Copies or extracts (eg. print-outs or paper versions) of electronic documents will be treated in the same way for evidentiary purposes. However, a copy of an electronic document is not evidence of the return or notice if the taxpayer can show that he or she did not authorise the document. This will apply to copies or extracts of returns and notices of assessment that are transmitted electronically. [New subsection 61(2)]

6.7 Regulation 12 of the Taxation Administration Regulations provides that a document purporting to be signed by the authority of the Commissioner will be effective as if the document had been personally signed by the Commissioner. It also provides that a certificate required to be signed by the Commissioner will be treated as being so signed if it bears the written, printed or stamped name, or facsimile signature of a person who is, or was at the relevant time, the Commissioner or Deputy Commissioner.
Chapter 7

Reviewable GST decisions

Overview

7.1 This Chapter explains how you will be able to use existing review mechanisms in the Taxation Administration Act 1953 to challenge decisions made under the GST law if you are dissatisfied with them. Division 7 of new Part VI lists all the decisions made under a GST law which are subject to review through these mechanisms.

Explanation of the legislation

7.2 The mechanisms and conditions for a person dissatisfied with a taxation decision to object against the decision and, ultimately, to request a review or appeal against the decision are set out in existing Part IVC of the Taxation Administration Act 1953.

7.3 These provisions will apply if you wish to object against a reviewable GST decision that you are not satisfied with. [New subsection 62(1)]

7.4 Reviewable GST decisions made under provisions of the GST Act are listed in the table in new subsection 62(2). Reviewable GST decisions made under Part VI are listed in the table in new subsection 62(3).

7.5 Unless a specific time limit applies to the particular decision you are dissatisfied with, existing section 14ZW requires that you must lodge your objection within 60 days after notice of the decision has been served on you. This rule will apply to most types of reviewable GST decisions including declarations made under the general anti-avoidance provision (Division 165 of the GST Act).

7.6 Assessments made under Division 2 of new Part VI are reviewable GST decisions to which a specific time limit applies. For these decisions you must lodge your objection within 4 years after the end of the relevant tax period or 4 years after the importation of goods to which the assessment objected against relates, or within 60 days of the relevant assessment notice being served on you, whichever is the later. [Schedule 1, item 6]
Chapter 8

Other administrative provisions

Overview

8.1 This Chapter explains the various administrative provisions in Division 8 of new Part VI.

Summary of the legislation

8.2 Division 8 provides for:

- general administration of the GST law by the Commissioner of Taxation;
- reporting to Parliament on the working of the GST law;
- information gathering powers to be conferred on the Commissioner;
- rules relating to notices and the service of documents by the Commissioner;
- the confidentiality of information to be protected; and
- record-keeping requirements.

Explanation of the legislation

8.3 Although most of the administrative provisions for GST will be located in Part VI of the Taxation Administration Act 1953, existing provisions of that Act will apply where appropriate to the GST context. They will do so because they apply to a taxation law which is defined in section 2 of the Taxation Administration Act 1953 to include Acts of which the Commissioner has the general administration.

Commissioner has general administration of the GST law

8.4 The Commissioner will be responsible for the general administration of the GST law. These responsibilities include the collection of GST and ensuring compliance with the provisions of the GST law. [New section 63]
8.5 Section 8 of the *Taxation Administration Act 1953* allows the Commissioner to delegate any of the powers or functions (other than the delegation power) the Commissioner has under a taxation law. Certain powers and functions will be delegated to the Chief Executive Officer of Customs, for example, in relation to payments and refunds of GST on importations.

**Commissioner must prepare annual report**

8.6 Each year the Commissioner will have to prepare an annual report on the working of the GST law, including a report about any breaches or evasions of the GST law that the Commissioner knows about. The report will be presented to Parliament by the Minister. *[New section 64]*

**Information gathering and verification**

8.7 Provisions dealing with access to premises and information gathering powers will be necessary for the Commissioner to ensure compliance with the GST law. Similar provisions are found in other Acts administered by the Commissioner.

8.8 The access and information gathering powers may be used, for example, to ensure that an entity has returned the full amount of GST payable on taxable supplies it has made in the relevant tax period. In such a case, it may be necessary for authorised officers to inspect documents which may not otherwise be available for inspection if access and information gathering powers were not included in this Bill.

**Commissioner may direct a person to provide information**

8.9 The Commissioner will have powers to compel a person to provide information and to obtain access to premises and documents. The confidentiality of the information obtained by the Commissioner or his officers will be protected (see paragraph 8.21).

8.10 The Commissioner will have the power to require a person:

- to provide such information as the Commissioner requires;
- to attend and give evidence; and
- to produce documents in the custody or control of the person.

The Commissioner will be able to use these powers for the purpose of applying the GST law in relation to that person or another person. *[New subsection 65(1)]*

8.11 The Commissioner will be able to require information or answers to questions to be given orally or in writing. The Commissioner will also be able to insist that information or answers to questions be verified or be given under oath or affirmation. *[New subsection 65(2)]*
Either the Commissioner or an authorised officer will be able to administer the oath or affirmation. [New subsection 65(3)]

The law will allow for regulations to set out scales of reimbursement of expenses for persons required to attend before the Commissioner.

8.12 Failure to comply with any of these requirements will be an offence under existing section 8C of the Taxation Administration Act 1953.

Access to premises etc.

8.13 There will be an obligation to provide authorised officers, at all reasonable times, with access to premises, goods, documents and property for the purposes of the GST law. Officers exercising powers under this section will need an authority in writing signed by the Commissioner.

8.14 An authorised officer must be given entry at any reasonable time, to land or premises. Authorised officers must also be given full access to documents, goods or other property at all reasonable times. They must be allowed to inspect, examine, copy or take extracts from any documents and inspect, examine, count, measure, weigh, gauge, test or analyse any goods or other property and take samples from them. [New subsection 66(1)]

8.15 The occupier of the land or premises will be obliged to provide the officer seeking access with reasonable facilities and assistance. [New subsection 66(3)]

8.16 For example, an authorised officer will be entitled to reasonable use of photocopying, telephone, fax and light and power facilities and of work space and facilities to extract relevant information stored on computer. In addition, the officer will be entitled to reasonable assistance, for example, in the form of advice as to where relevant documents are located and access to areas where such documents are located.

8.17 If reasonable facilities and assistance are not provided, the occupier will be guilty of an offence with a maximum penalty of 10 penalty units. [New subsection 66(4)]

On the other hand, an officer will not be entitled to remain on land or premises if they fail to produce their written authorisation when requested to do so. [New subsection 66(2)]

Address for service

8.18 For GST purposes the address to which the Commissioner will deliver or send notices or other documents is:
(a) the address shown on the Australian Business Register (if the entity is registered there);

(b) the address last notified to the Commissioner by the entity (if it is not registered on the Australian Business Register);

(c) if no address has been notified, the entity’s place of business or residence in Australia last known to the Commissioner; or

(d) any other address the Commissioner reasonably believes to be the entity’s address for service.

[New subsection 67(1)]

8.19 If you are liable to pay GST you will be required to notify the Commissioner of any change of address within 28 days of the change. [New subsection 67(2)]

8.20 Notices or other documents may be served by posting them to your address. [New subsection 67(3)]

However, the Commissioner may serve them by electronic transmission if you give your GST returns to the Commissioner in electronic form and you have notified an address for receipt by electronic transmission. [New subsection 67(4)]

Protecting the confidentiality of information

8.21 The dissemination of information obtained under the GST laws will be restricted. [New subsection 68(1)]

An obligation of secrecy will be imposed on persons who, in the course of their duties relating to the administration of the GST law, acquire information about the affairs of another person. A person who holds protected information or documents obtained in the course of official employment will be prohibited from making a record of the information or disclosing it to anyone else, except in specified circumstances. The penalty for a breach of this prohibition is imprisonment for two years. [New subsection 68(2)]

8.22 Protected information will be defined as information obtained under the GST laws by a person acting in the course of official employment and relating to the affairs of another person. Protected documents will be documents made or given under, or for the purposes of, the GST laws. Official employment will mean, as well as appointment or employment by the Commonwealth, performance of services for the Commonwealth or the exercise of powers or functions under a delegation by the Commissioner. [New subsection 68(6)]
8.23 A person will be able to record or disclose protected information or documents if:

(a) the recording or disclosure is for the purposes of the GST law;

(b) it happens in the course of official employment;

(c) the person is the Commissioner or Deputy Commissioner and the disclosure is to the Chief Executive Officer of Customs, to the Australian Statistician for census or statistics purposes, to another person carrying out functions under a taxation law or to the Administrative Appeals Tribunal in proceedings under a taxation law; or

(d) the person making the disclosure has been authorised by the Commissioner or Deputy Commissioner to disclose the information and the disclosure is to the Chief Executive Officer of Customs, to another person carrying out functions under a taxation law administered by the Commissioner or to the Australian Statistician for census or statistics purposes.

[New subsection 68(3)]

8.24 Disclosure of information or production of a document can be made to a court if it is necessary to give effect to the GST law. A person acting in the course of official employment will not otherwise be required to produce protected information or documents to a court.

[New subsection 68(5)]

8.25 There will be no circumstances in which a disclosure of protected information or documents can be made to a Minister.

[New subsection 68(4)]

8.26 These provisions are consistent with secrecy provisions in other Acts administered by the Commissioner.

Notices etc. by Commissioner must be in writing

8.27 Any notice, approval, direction or authority which the Commissioner will be required to give to a person under the GST law will have to be in writing. [New subsection 69(1)]

8.28 However, it will be permissible for certain notices to be sent by electronic transmission if so provided for in the GST law.

[New subsection 69(2)]

8.29 New subsection 25(2) expressly provides for assessment notices to be served by electronic transmission to entities that are required to lodge returns electronically by section 31-25 of the GST Act.
Keeping records of GST transactions

8.30 The law will impose record keeping requirements on an entity that:

- makes a taxable supply, taxable importation, creditable acquisition or creditable importation; or
- acquires or imports diesel or like fuel for creditable diesel fuel consumption.

The entity will be required to keep sufficient records to explain all relevant transactions and other relevant acts for the purposes of the GST law.

8.31 The records must be in the English language, or be accessible and easily converted into writing in the English language so that, where necessary, an entity’s GST liability can readily be determined. Records will be required to be kept for 5 years after the relevant transactions are completed unless the entity is notified by the Commissioner that it need not retain them or is a company that has been dissolved. A failure to keep records will be an offence under Part III. [New section 70]
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