



A New Tax System (Managing the GST Rate and Base) Act 1999

Act No. 110 of 1999 as amended

This compilation was prepared on 1 July 2009
taking into account amendments up to Act No. 12 of 2009

The text of any of those amendments not in force
on that date is appended in the Notes section

The operation of amendments that have been incorporated may be
affected by application provisions that are set out in the Notes section

Prepared by the Office of Legislative Drafting and Publishing,
Attorney-General's Department, Canberra

Contents

Part 1—Preliminary	1
1 Short title [<i>see</i> Note 1].....	1
2 Commencement [<i>see</i> Note 1].....	1
3 Outline of Act.....	1
4 Definitions.....	1
Part 3—Changing the rate and base of GST	3
11 Changing the rate and base of GST.....	3
12 Definitions.....	3
Notes	5

An Act to provide financial assistance to the States, the Australian Capital Territory and the Northern Territory, and for related purposes

Part 1—Preliminary

1 Short title [see Note 1]

This Act may be cited as the *A New Tax System (Managing the GST Rate and Base) Act 1999*.

2 Commencement [see Note 1]

- (1) This Act commences at the later of:
 - (a) the start of the day on which this Act receives the Royal Assent; and
 - (b) the start of the day after the last day on which any of the following receive the Royal Assent:
 - (i) the GST Act; and
 - (iii) the *A New Tax System (Goods and Services Tax Administration) Act 1999*.
- (2) To avoid doubt, this Act does not commence unless all of the Acts mentioned in subsection (1) have received the Royal Assent

3 Outline of Act

<p>This Act deals with circumstances in which the rate of the GST and the GST base can be altered.</p>
--

4 Definitions

In this Act, unless the contrary intention appears:

GST has the same meaning as in the GST Act.

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999*.

Section 4

GST Imposition Acts mean:

- (a) the *A New Tax System (Goods and Services Tax Imposition—Customs) Act 1999*;
- (b) the *A New Tax System (Goods and Services Tax Imposition—Excise) Act 1999*;
- (c) the *A New Tax System (Goods and Services Tax Imposition—General) Act 1999*;
- (d) the *A New Tax System (Goods and Services Tax Imposition (Recipients)—Customs) Act 2005*;
- (e) the *A New Tax System (Goods and Services Tax Imposition (Recipients)—Excise) Act 2005*;
- (f) the *A New Tax System (Goods and Services Tax Imposition (Recipients)—General) Act 2005*.

State includes the Australian Capital Territory and the Northern Territory.

Part 3—Changing the rate and base of GST

11 Changing the rate and base of GST

- (1) The rate of the GST, and the GST base, are not to be changed unless each State agrees to the change. Such changes to the GST base should be consistent with:
 - (a) maintaining the integrity of the GST base; and
 - (b) administrative simplicity; and
 - (c) minimising compliance costs for taxpayers.
- (2) In particular, but without limiting subsection (1), a Minister may only make a determination under the GST Act, or the *A New Tax System (Goods and Services Tax Transition) Act 1999*, that affects the GST base if the determination is made in accordance with a procedure to which all of the States have agreed.
- (3) This section does not apply to the changes to the GST base that are contained in legislation introduced, or regulations or other instruments made, before 1 July 2001 if the changes are:
 - (a) of an administrative nature; and
 - (b) necessary to facilitate minor adjustments to the GST; and
 - (c) made having regard to the need to protect the revenue of the States.
- (4) Also, this section does not apply to later changes to the GST base if the changes are of an administrative nature and are approved by a majority of the Commonwealth and the States.

12 Definitions

- (1) In this Part:

rate of the GST is the rate of tax specified in the GST Imposition Acts.
- (2) A change is *of an administrative nature* only if the change is necessary to:
 - (a) maintain the integrity of the GST base; or
 - (b) prevent tax avoidance.

Table of Acts

Notes to the *A New Tax System (Managing the GST Rate and Base) Act 1999***Note 1**

The *A New Tax System (Managing the GST Rate and Base) Act 1999* as shown in this compilation comprises Act No. 110, 1999 amended as indicated in the Tables below.

For all relevant information pertaining to application, saving or transitional provisions see Table A.

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>A New Tax System (Commonwealth-State Financial Arrangements) Act 1999</i>	110, 1999	10 Sept 1999	10 Sept 1999	
<i>Public Employment (Consequential and Transitional) Amendment Act 1999</i>	146, 1999	11 Nov 1999	Schedule 1 (item 95): 5 Dec 1999 (see <i>Gazette</i> 1999, No. S584) (a)	—
as amended by				
<i>Statute Law Revision Act 2002</i>	63, 2002	3 July 2002	Schedule 2 (item 17): (aa)	—
<i>A New Tax System (Indirect Tax and Consequential Amendments) Act (No. 2) 1999</i>	177, 1999	22 Dec 1999	Schedule 3: (b)	—
<i>A New Tax System (Commonwealth-State Financial Arrangements) Amendment Act 2004</i>	21, 2004	23 Mar 2004	23 Mar 2004	Sch. 1 (items 3, 10)
<i>Tax Laws Amendment (Long-term Non-reviewable Contracts) Act 2005</i>	10, 2005	22 Feb 2005	Schedule 1 (items 1, 2): 1 July 2005	—
<i>Tax Laws Amendment (2006 Measures No. 2) Act 2006</i>	58, 2006	22 June 2006	Schedule 7 (item 1): Royal Assent	—

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Fuel Tax (Consequential and Transitional Provisions) Act 2006</i>	73, 2006	26 June 2006	Schedule 5 (item 64): 1 July 2006 (see s. 2(1))	—
<i>Tax Laws Amendment (Repeal of Inoperative Provisions) Act 2006</i>	101, 2006	14 Sept 2006	Schedule 1 (items 1, 3), Schedule 2 (items 1017, 1018) and Schedule 6 (items 1, 6–11): Royal Assent	Sch. 6 (items 1, 6–11)
<i>Federal Financial Relations (Consequential Amendments and Transitional Provisions) Act 2009</i>	12, 2009	26 Mar 2009	Schedule 1 and Schedule 4 (items 1, 2): 1 July 2009	Sch. 4 (items 1, 2)

Act Notes

- (a) The *A New Tax System (Managing the GST Rate and Base) Act 1999* was amended by Schedule 1 (item 95) only of the *Public Employment (Consequential and Transitional) Amendment Act 1999*, subsections 2(1) and (2) of which provide as follows:
- (1) In this Act, **commencing time** means the time when the *Public Service Act 1999* commences.
 - (2) Subject to this section, this Act commences at the commencing time.
- (aa) The *Public Employment (Consequential and Transitional) Amendment Act 1999* was amended by Schedule 2 (item 17) only of the *Statute Law Revision Act 2002*, subsection 2(1) (item 46) of which provides as follows:
- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

Commencement information

Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
46. Schedule 2, item 17	Immediately after the time specified in the <i>Public Employment (Consequential and Transitional) Amendment Act 1999</i> for the commencement of item 95 of Schedule 1 to that Act	5 December 1999

- (b) The *A New Tax System (Managing the GST Rate and Base) Act 1999* was amended by Schedule 3 only of the *A New Tax System (Indirect Tax and Consequential Amendments) Act (No. 2) 1999*, subsection 2(6) of which provides as follows:

Schedule 3—Commonwealth-State financial arrangements

- (6) Schedule 3 is taken to have commenced immediately after the commencement of the *A New Tax System (Commonwealth-State Financial Arrangements) Act 1999*.

The *A New Tax System (Managing the GST Rate and Base) Act 1999* commenced on 10 September 1999.

Table of Amendments**Table of Amendments**

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Part 1	
S. 1	am. No. 12, 2009
S. 2	am. No. 10, 2005
S. 3	rs. No. 12, 2009
S. 4	am. No. 177, 1999; No. 10, 2005; No. 101, 2006; No. 12, 2009
S. 5	am. No. 177, 1999; No. 21, 2004; No. 58, 2006 rep. No. 12, 2009
Ss. 6, 7.....	am. No. 21, 2004 rep. No. 12, 2009
Ss. 8, 9.....	rep. No. 12, 2009
Part 2	rep. No. 12, 2009
S. 10	rep. No. 12, 2009
Note to s. 10(1)	ad. No. 73, 2006 rep. No. 12, 2009
Part 4	rep. No. 12, 2009
Ss. 13–15.....	rep. No. 12, 2009
S. 16	rep. No. 101, 2006
Ss. 17–19.....	rep. No. 12, 2009
Part 5	rep. No. 12, 2009
S. 20	rep. No. 12, 2009
S. 21	am. No. 146, 1999 (as am. by No. 63, 2002) rep. No. 12, 2009
Ss. 22, 23.....	rep. No. 12, 2009
Schedule 1	rep. No. 12, 2009
Cc. 1, 2.....	am. No. 21, 2004 rep. No. 12, 2009
Cc. 3–6.....	rep. No. 12, 2009
C. 7.....	ad. No. 21, 2004 rep. No. 12, 2009
Schedule 2	rep. No. 12, 2009

Table A

Table A

Application, saving or transitional provisions

A New Tax System (Commonwealth-State Financial Arrangements) Amendment Act 2004 (No. 21, 2004)

Schedule 1

3 Application of amendments

- (1) If this Part commences before 1 June in a GST year, the amendments made by this Part apply in relation to that GST year and later GST years.
- (2) If this Part commences on or after 1 June in a GST year, the amendments made by this Part apply in relation to the next GST year and later GST years.
- (3) However, the amendments do not apply for the purpose of making a determination that relates to an actual amount for June in a GST year if the amendments did not apply for the purpose of making a determination that related to the estimated amount for June in that GST year.
- (4) In this item:
GST year has the same meaning as it has in the *A New Tax System (Commonwealth-State Financial Arrangements) Act 1999*.

10 Application of amendments

- (1) If this Part commences before 1 June in a GST year, the amendments made by this Part apply in relation to that GST year and later GST years.
- (2) If this Part commences on or after 1 June in a GST year, the amendments made by this Part apply in relation to the next GST year and later GST years.

(3) In this item:

GST year has the same meaning as it has in the *A New Tax System (Commonwealth-State Financial Arrangements) Act 1999*.

Tax Laws Amendment (Repeal of Inoperative Provisions) Act 2006
(No. 101, 2006)

Schedule 6

1 Application of Schedule 1 and 2 amendments

Except as mentioned in items 2 and 3, the repeals and amendments made by Schedules 1 and 2 apply:

- (a) so far as they affect assessments—to assessments for the 2006-07 income year and all later income years; and
- (b) otherwise—to acts done or omitted to be done, or states of affairs existing, after the commencement of the repeals and amendments.

6 Object

The object of this Part is to ensure that, despite the repeals and amendments made by this Act, the full legal and administrative consequences of:

- (a) any act done or omitted to be done; or
- (b) any state of affairs existing; or
- (c) any period ending;

before such a repeal or amendment applies, can continue to arise and be carried out, directly or indirectly through an indefinite number of steps, even if some or all of those steps are taken after the repeal or amendment applies.

7 Making and amending assessments, and doing other things, in relation to past matters

Even though an Act is repealed or amended by this Act, the repeal or amendment is disregarded for the purpose of doing any of the following under any Act or legislative instrument (within the meaning of the *Legislative Instruments Act 2003*):

Table A

- (a) making or amending an assessment (including under a provision that is itself repealed or amended);
- (b) exercising any right or power, performing any obligation or duty or doing any other thing (including under a provision that is itself repealed or amended);

in relation to any act done or omitted to be done, any state of affairs existing, or any period ending, before the repeal or amendment applies.

Example 1: On 31 July 1999, Greg Ltd lodged its annual return under former section 160ARE of the *Income Tax Assessment Act 1936*. The return stated that the company had a credit on its franking account and that no franking deficit tax was payable for the 1998-99 franking year. Under former section 160ARH of that Act, the Commissioner was taken to have made an assessment consistent with the return.

Following an audit undertaken after the repeal of Part IIIAA of that Act, the Commissioner concludes that Greg Ltd fraudulently overfranked dividends it paid during the 1998-99 franking year, and had a franking account deficit for that franking year. As a result, the Commissioner considers that franking deficit tax and a penalty by way of additional tax are payable.

The Commissioner can amend the assessment under former section 160ARN of that Act, because item 7 of this Schedule disregards the repeal of that section for the purposes of making an assessment in relation to the 1998-99 franking year. Item 7 will also disregard the repeal of Division 11 of former Part IIIAA to the extent necessary for the Commissioner to assess Greg Ltd's liability to a penalty by way of additional tax.

Despite the repeal of sections 160ARU and 160ARV, item 9 will ensure that the general interest charge will accrue on the unpaid franking deficit tax and penalty until they are paid.

Item 7 will also preserve Greg Ltd's right, under former section 160ART of that Act, to object against the Commissioner's amended assessment (including the penalty), since the objection is the exercise of a right in relation to a franking year that ended before the repeal of Part IIIAA.

Example 2: During the 1997-98 income year, Duffy Property Ltd withheld amounts from its employees' wages as required by former Divisions 1AAA and 2 of Part VI of the *Income Tax Assessment Act 1936*. The company failed to notify the Commissioner of those amounts, and failed to remit them to the Commissioner.

Following an audit undertaken after the repeal of those Divisions, the Commissioner discovers that the withheld amounts have not been remitted. The company's records are incomplete and the Commissioner is unable to completely ascertain the extent of its liability for the withheld amounts. Under section 222AGA of that Act, the Commissioner makes an estimate of the liability.

Item 7 will disregard the repeal of section 220AAZA of that Act (which empowered the Commissioner to recover the amount of the estimate). Even though the estimate is made after the repeal, it relates to amounts withheld before the repeal.

8 Saving of provisions about effect of assessments

If a provision or part of a provision that is repealed or amended by this Act deals with the effect of an assessment, the repeal or amendment is disregarded in relation to assessments made, before or after the repeal or amendment applies, in relation to any act done or omitted to be done, any state of affairs existing, or any period ending, before the repeal or amendment applies.

9 Saving of provisions about general interest charge, failure to notify penalty or late reconciliation statement penalty

If:

- (a) a provision or part of a provision that is repealed or amended by this Act provides for the payment of:
 - (i) general interest charge, failure to notify penalty or late reconciliation statement penalty (all within the meaning of the *Income Tax Assessment Act 1936*); or
 - (ii) interest under the *Taxation (Interest on Overpayments and Early Payments) Act 1983*; and
- (b) in a particular case, the period in respect of which the charge, penalty or interest is payable (whether under the provision or under the *Taxation Administration Act 1953*) has not begun, or has begun but not ended, when the provision is repealed or amended;

then, despite the repeal or amendment, the provision or part continues to apply in the particular case until the end of the period.

10 Repeals disregarded for the purposes of dependent provisions

If the operation of a provision (the *subject provision*) of any Act or legislative instrument (within the meaning of the *Legislative Instruments Act 2003*) made under any Act depends to any extent on an Act, or a provision of an Act, that is repealed by this Act, the repeal is disregarded so far as it affects the operation of the subject provision.

Table A

11 Schedule does not limit operation of section 8 of the Acts Interpretation Act 1901

This Schedule does not limit the operation of section 8 of the *Acts Interpretation Act 1901*.

Federal Financial Relations (Consequential Amendments and Transitional Provisions) Act 2009 (No. 12, 2009)

Schedule 4

1 Payments for the 2008-09 GST year

Despite the amendments to the *A New Tax System (Commonwealth-State Financial Arrangements) Act 1999* made by this Act, that Act continues to apply, in relation to the 2008-09 GST year (within the meaning of that Act), as if those amendments had not been made.

2 Overpayments and underpayments for the 2008-09 GST year

- (1) If a State has been paid an amount in excess of the amount that, under a provision of the Financial Arrangements Act, it was entitled to receive by way of financial assistance for the 2008-09 GST year, the Minister must deduct an amount equal to the excess from any amount that the State is entitled to receive by way of financial assistance under section 5 of the *Federal Financial Relations Act 2009* for the financial year starting on 1 July 2009.
- (2) If a State has been paid less than the amount that, under a provision of the Financial Arrangements Act, it was entitled to receive by way of financial assistance for the 2008-09 GST year, the Minister must add an amount equal to the shortfall to any amount that the State is entitled to receive by way of financial assistance under section 5 of the *Federal Financial Relations Act 2009* for the financial year starting on 1 July 2009.
- (3) Payments made under subitem (2) are to be made out of the Consolidated Revenue Fund, which is appropriated accordingly.

Table A

(4) In this item:

Financial Arrangements Act means the *A New Tax System (Commonwealth-State Financial Arrangements) Act 1999*.

GST year has the same meaning as in the Financial Arrangements Act.

State includes the Australian Capital Territory and the Northern Territory.