

## EXPLANATORY STATEMENT

### Issued by the Authority of the Minister for Finance

#### *A New Tax System (GST, Luxury Car Tax and Wine Tax) Direction 2015*

The *A New Tax System (GST, Luxury Car Tax and Wine Tax) Direction 2015* (Direction), replaces the *Finance Minister's (A New Tax System) Direction 2005*, dealing with the taxation of Government entities. The Direction is issued under the authority of:

- subsection 177-1(2) of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act);
- subsection 21-1(2) of the *A New Tax System (Luxury Car Tax) Act 1999* (LCT Act); and
- subsection 27-20(2) of the *A New Tax System (Wine Equalisation Tax) Act 1999* (WET Act).

The *Public Governance, Performance and Accountability Act 2013* (PGPA Act) sets out a framework for regulating resource management by the Commonwealth and relevant entities, and replaced the *Financial Management and Accountability Act 1997* and the *Commonwealth Authorities and Companies Act 1997* from 1 July 2014.

Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

The *Finance Minister's (A New Tax System) Directions 2005* are revoked by the Direction. However, the policy intent remains unchanged. The only change is of an administrative nature, updating references to Commonwealth entities to ensure alignment and continuity with the PGPA Act.

The Direction continues to give effect to the Parliament's long standing intention that Commonwealth entities are to be notionally liable to pay certain taxes. The Direction applies only to entities that cannot be made liable to taxation by a Commonwealth law, for example non-corporate Commonwealth entities such as Departments of State. The Direction maintains existing arrangements to support the notional application of certain taxes to the Commonwealth and untaxable Commonwealth entities.

Once registered, the Direction will be taken to have commenced on 1 April 2015. This is intended to ensure continuity of GST arrangements for the Commonwealth and relevant Commonwealth entities following the sunset of the *Finance Minister's (A New Tax System) Directions 2005* on 1 April 2015. The Direction is not intended to affect the rights of any person, or impose liabilities on any person, other than the Commonwealth or an authority of the Commonwealth (see section 12(2) of the *Legislative Instruments Act 2003*).

Details of the Direction are set out at [Attachment A](#). A statement of compatibility with human rights is at [Attachment B](#).

The Direction is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

**Consultation**

The Direction continues the policy intention of the previous instrument. Further consultation was not undertaken as there is no practical change in the effect of the instrument.

The Direction was drafted by the Office of Parliamentary Counsel.

**Details of the *A New Tax System (GST, Luxury Car Tax and Wine Tax) Direction 2015***

**Section 1—Name**

This section provides that the title of the rule is the *A New Tax System (GST, Luxury Car Tax and Wine Tax) Direction 2015* (Direction).

**Section 2—Commencement**

This section provides the Direction is taken to have commenced on 1 April 2015.

**Section 3—Authority**

This section states that the Direction is made under the authority of:

- subsection 177-1 (2) of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act);
- subsection 21-1 (2) of the *A New Tax System (Luxury Car Tax) Act 1999* (LCT Act); and
- subsection 27-20 (2) of the *A New Tax System (Wine Equalisation Tax) Act 1999* (WET Act).

**Section 4—Schedules**

This section provides that each legislative instrument that is specified in a Schedule to this Direction is amended or repealed as set out, and any other item in a Schedule to the instrument has effect according to its terms.

**Section 5—Definitions**

This section provides definitions for the GST Act, the LCT Act, and the WET Act. This section also provides that a reference to the Commonwealth includes a reference to an untaxable Commonwealth entity.

**Section 6—Purpose of Instrument**

This section provides that the purpose of the Direction is to give effect to the Parliament's intention that the GST Act, the LCT Act and the WET Act apply notionally to the Commonwealth, including untaxable Commonwealth entities which are otherwise not liable to pay GST, luxury car tax or wine tax.

## **Part 2—Directions**

### **Item 7 – Notional liability to pay GST**

This section provides that the Commonwealth is notionally liable to pay GST on taxable supplies and taxable importations. The effect of this is to ensure that the Commonwealth will be notionally liable to pay GST in the same manner as a person other than the Commonwealth.

In addition to this, subsection (3) provides that the value of the taxable importation for the purposes of subsection 13-20(2) of the GST Act is taken to include the value of the administrative charge payable on the taxable importation in accordance with *Australian Customs Notice 90/124* published by the Australian Customs Service on 11 September 1990.

### **Item 8 – Notional entitlement to input tax credits**

This section provides that the Commonwealth is notionally entitled to an input tax credit if it makes a creditable acquisition of a creditable importation in accordance with the GST Act, in the same manner as a person other than the Commonwealth.

### **Item 9 – Notional liability to pay luxury car tax**

This section provides that the Commonwealth is notionally liable to pay luxury car tax if it makes a taxable supply of a luxury car or a taxable importation of a luxury car in accordance with the LCT Act, in the same manner as a person other than the Commonwealth.

For the purposes of the amount of tax payable on such transactions, the luxury car tax value for the purposes of subsection 7-15(1) LCT Act is taken to include the value of any administrative charge payable on the taxable importation in accordance with *Australian Customs Notice 90/124* published by the Australian Customs Service on 11 September 1990.

### **Item 10 – Notional liability to pay wine tax**

This section provides that the Commonwealth is notionally liable to pay wine tax on a taxable dealing that it is a party to, in the same manner as a person other than the Commonwealth.

The taxable value of the dealing, for the purposes of subsection 5-5(3) of the WET Act, is taken to include the value of any administrative charge payable on the taxable dealing in accordance with *Australian Customs Notice 90/124* published by the Australian Customs Service on 11 September 1990.

### **Item 11 – Notional entitlement to wine tax credits**

This section provides that the Commonwealth is notionally entitled to wine tax credits in accordance with Division 17 of Part 4 of the WET Act, in the same manner as a person other than the Commonwealth.

**Item 12 – Registration**

This section requires untaxable Commonwealth entities to be registered under the GST Act, in accordance with guidelines made by the Finance Minister.

**Item 13 – GST returns**

This section applies where an untaxable Commonwealth entity's GST return is not lodged electronically. For non-electronically lodged returns, the return must be signed by a person who has authority to sign the return on behalf of the entity.

**Item 14 – Net amounts**

This section provides the formula for determining the net amount for an untaxable Commonwealth entity for a tax period. The net amount is the combination of any GST Act, LCT Act and WET Act liabilities minus the sum of all input tax credits and wine tax credits for a tax period.

**Item 15 – Notional adjustment**

This section provides for notional adjustments for untaxable Commonwealth entities, arising under the GST Act and the LCT Act. These adjustments are worked out as if the person to whom the adjustment relates were not an untaxable Commonwealth entity.

**Item 16 – Adjustment of net amounts**

This section provides for adjustment of net amounts for untaxable Commonwealth entities. If an untaxable Commonwealth entity has any notional adjustments that are attributable to a tax period, then the entity's net amount for the period is to be altered by adding the notional increasing adjustments that are attributable to the period; and subtracting the notional decreasing adjustments that are attributable to the period.

The increasing or decreasing adjustments are to be worked out under the GST Act or the LCT Act. The adjustments are to be attributed to a tax period in the same manner as if the entity were not an untaxable Commonwealth entity.

**Item 17 – Transfer of net amounts to Commissioner**

This section provides that where an untaxable Commonwealth entity holds a net amount for a tax period, the entity must transfer that net amount from the entity's bank account to an official administered receipts bank account chosen by the Tax Commissioner by the 21<sup>st</sup> day of the month following the end of the tax period, unless the tax period ends during the first seven days of the month. In this case the net amount is to be transferred on or before the 21<sup>st</sup> day of that month.

**Item 18 – Transfer of net amounts by Commissioner**

This section provides that where the net amount for an untaxable Commonwealth entity for a tax period is less than zero, the Tax Commissioner may offset the net amount, or part thereof, against any withholding amounts due and payable to the Tax Commissioner by the entity.

under Part 2-5 in Schedule 1 to the *Taxation Administration Act 1953*. The Tax Commissioner must then transfer the net amount or remainder of the net amount to the bank account of the entity.

### **Item 19 – Transfer of amounts between an entity’s accounts**

This section applies where an untaxable Commonwealth entity gives its GST return for a tax period to the Commissioner or the Commissioner transfers a net amount to a bank account of the entity.

The effect of the section is to require the entity to transfer amounts between the entity’s bank accounts, if necessary, so that the entity’s bank account balances correctly reflect the entity’s departmental and administered cash balances. The entity must do this as soon as practicable before the end of the next banking day after the entity gives the return or receives the net amount.

### **Item 20 – Transfer of importation amounts to Commissioner**

This section provides that an untaxable Commonwealth entity that is notionally liable for taxation under the GST Act, LCT Act or WET Act, must transfer the amount to a bank account designated by Customs (within the meaning of section 4AA of the *Customs Administration Act 1985*). The transfer must occur when the relevant goods are entered for home consumption.

Despite this, if the Commissioner has approved that an entity may defer a transfer of an amount of GST, an amount must be transferred to the official administered receipts bank account chosen by the Commissioner in accordance with section 17, and on or before the 21st day after the end of the month in which the notional liability for the amount arose.

### **Item 21 – General direction to Commissioner**

This section provides a general direction to the Commissioner in relation to notional taxes under this Direction. The section provides that the Commissioner must collect and account for these taxes as required by this Direction and administer the GST Act, LCT Act and WET Act in their application to the Commonwealth as if a reference to a tax, credit or adjustment in relation to the Commonwealth were a reference to the notional tax, notional credit or notional adjustment imposed by this direction; and a requirement for payment of an amount to or by the Commonwealth were a requirement to transfer money between designated accounts.

### **Schedule 1—Repeals**

This Schedule has the effect of repealing the previous GST Direction, the *Finance Minister’s (A New Tax System) Direction 2005*.

**Attachment B****Statement of Compatibility with Human Rights**

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

***A New Tax System (GST, Luxury Car Tax and Wine Tax) Direction 2015***

The *A New Tax System (GST, Luxury Car Tax and Wine Tax) Direction 2015* (Direction) is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

**Overview of the legislative instrument**

The Direction replaces the *Finance Minister's (A New Tax System) Direction 2005*, dealing with the taxation of Government entities. The Direction is issued under the authority of:

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**Human rights implications**

The legislative instrument does not engage any of the applicable rights or freedoms.

**Conclusion**

The legislative instrument is compatible with human rights as it does not raise any human rights issues.

**Senator the Hon Mathias Cormann  
Minister for Finance**