

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Finance

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

A New Tax System (Luxury Car Tax) Act 1999

A New Tax System (Wine Equalisation Tax) Act 1999

A New Tax System (GST, Luxury Car Tax and Wine Tax) Directions 2025

The *A New Tax System (GST, Luxury Car Tax and Wine Tax) Directions 2025* (Directions), replaces the *A New Tax System (GST, Luxury Car Tax and Wine Tax) Direction 2015*, dealing with the notional taxation of the Commonwealth and untaxable Commonwealth entities. The Directions are 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 Commonwealth entities and companies.

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 *A New Tax System (GST, Luxury Car Tax and Wine Tax) Direction 2015* are revoked by the Directions. However, the policy intent remains unchanged. The changes are administrative in nature, updating references and drafting to ensure alignment and continuity with the PGPA Act, as well as updating for the current requirements under the GST Act and relevant taxation arrangements.

The Directions continue to give effect to the Parliament's long standing intention that Commonwealth entities are to be notionally liable to pay certain taxes. The Directions apply 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 Directions maintain existing arrangements to support the notional application of certain taxes to the Commonwealth and untaxable Commonwealth entities. This ensures that the Commonwealth and untaxable Commonwealth entities do not receive a comparative advantage compared to other entities that have a legal liability under the GST, LCT and WET Acts.

Once registered, the Directions will be taken to apply from tax periods commencing on or after 1 October 2025, whether or not commencement occurs prior to or after this date. This is intended to ensure continuity of GST arrangements for the Commonwealth and relevant Commonwealth entities following the sunset of the *A New Tax System (GST, Luxury Car Tax and Wine Tax) Direction 2015* on 1 October 2025. The Directions are 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 *Legislation Act 2003*).

Details of the Directions are set out at Attachment A. A statement of compatibility with human rights is at Attachment B.

The Directions are a legislative instrument for the purposes of the *Legislation Act 2003*.

Document incorporated by reference

Section 12 of the Directions incorporates into law by reference guidelines issued by the Finance Minister relating to the registration for GST by untaxable Commonwealth entities. At the time the Directions were made, no guidelines had been issued by the Finance Minister on this matter.

In the event guidelines are issued by the Finance Minister relating to the registration for GST by untaxable Commonwealth entities, this document would be accessible for viewing on the Department of Finance Website at www.finance.gov.au.

Consultation

The Directions continue the policy intention of the previous instrument and affect the Commonwealth and untaxable Commonwealth entities. In accordance with section 17 of the *Legislation Act 2003*, consultation has taken place with the Department of the Treasury and the Australian Taxation Office.

The Directions were drafted by the Office of Parliamentary Counsel.

Details of the *A New Tax System (GST, Luxury Car Tax and Wine Tax) Directions 2025*

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) Directions 2025* (Directions).

Section 2 – Commencement

This section provides the Directions are taken to have commenced on the later of 1 October 2025, and the day after the Directions are registered.

Section 3 – Authority

This section states that the Directions are 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 these Directions are 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, and a reference to the GST Act includes a reference to the *A New Tax System (Goods and Services Tax Transition) Act 1999*.

Section 6 – Purpose of instrument

This section provides that the purpose of the Directions 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 accordance with the GST Act, in the same manner as a person other than the Commonwealth.

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 or a creditable importation in accordance with the GST Act, in the same manner as a person other than the Commonwealth. This ensures that an obligation of the Commonwealth to pay GST is matched with entitlements to input tax credits to ensure that the Commonwealth is in a comparable position to entities with a legal liability for GST under the GST Act.

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.

Item 10 – Notional liability to pay wine tax

This section provides that the Commonwealth is notionally liable to pay wine tax if it makes a taxable dealing in accordance with the WET Act, in the same manner as a person other than the Commonwealth.

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. The form of registration and procedures for registration must be in accordance with any guidelines made by the Finance Minister. At the time the Directions were made, no guidelines had been issued by the Finance Minister on this matter. In the event guidelines are issued by the Finance Minister relating to the registration for GST by untaxable Commonwealth entities, this document would be accessible for viewing on the Department of Finance website at www.finance.gov.au.

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 for a tax period minus the sum of all input tax credits and wine tax credits for a tax period.

Item 15 – Notional adjustments

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 greater than zero 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. The net amount must be transferred by the untaxable Commonwealth entity at the time, or before the end of the period within which a person other than the Commonwealth would be required to pay the net amount, in accordance with the GST Act.

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 all or part of the net amount 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* or any notional tax debt of the entity that is notionally due and payable. The Tax Commissioner must then transfer the net amount or remainder of the net amount after undertaking the offsetting to a bank account of the entity.

Item 19 – 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 an official administered receipts bank account chosen by the Tax Commissioner. The amount must be transferred by the untaxable Commonwealth entity at the time, or before the end of the period within which a person other than the Commonwealth would be required to pay the amount in accordance with the GST Act, LCT Act or WET Act.

Item 20 – General direction to Commissioner

This section provides a general direction to the Tax Commissioner in relation to notional taxes under these Directions. The section provides that the Commissioner must collect and account for these taxes as required by these Directions 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 these Directions; and a requirement for payment of an amount to or by the Commonwealth were a requirement to transfer money between designated accounts.

Part 3 – Application provisions

Item 30 – Definitions

This section provides a definition of the term “2015 direction”, which refers to the *A New Tax System (GST, Luxury Car Tax and Wine Tax) Direction 2015*.

Item 31 – Net amounts

This section provides that the Directions apply to net amounts for untaxable Commonwealth entities for a tax period that starts on or after 1 October 2025.

This section also provides that the 2015 direction continues to apply in relation to a net amount for an untaxable Commonwealth entity for a tax period that starts before 1 October 2025. The 2015 direction continues to apply to those amounts despite its repeal on 1 October 2025.

Item 32 – Importation amounts

This section provides that the Directions apply in relation to a taxable importation, a taxable importation of a luxury car or a customs dealing in wine, which is made by a Commonwealth entity or to which the Commonwealth entity is a party to, if the standard payment time relating to the importation or customs dealing is on or after 1 October 2025.

This section also provides that the 2015 direction continues to apply in relation to an importation or customs dealing for an untaxable Commonwealth entity if the standard payment time is before 1 October 2025 for the importation or customs dealing. The 2015 direction continues to apply to those importations and customs dealings despite its repeal on 1 October 2025.

This section also provides that the standard payment time is the time by which a person other than the Commonwealth would be required to pay the assessed amount under the GST Act, LCT Act or WET Act, if that person had made the importation or been a party to the customs dealing in the same way as the untaxable Commonwealth had made the importation or been a party to the customs dealing.

In relation to **items 31 and 32**, once registered, the Directions will be taken to apply from tax periods commencing on or after 1 October 2025, whether or not commencement occurs prior to or after this date. This is intended to ensure continuity of GST arrangements for the Commonwealth and relevant Commonwealth entities following the sunseting of the *A New Tax System (GST, Luxury Car Tax and Wine Tax) Direction 2015* on 1 October 2025. The Directions are 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 *Legislation Act 2003*).

Schedule 1 – Repeals

This Schedule has the effect of repealing the 2015 direction, the *A New Tax System (GST, Luxury Car Tax and Wine Tax) Direction 2015*.

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) Directions 2025

The *A New Tax System (GST, Luxury Car Tax and Wine Tax) Directions 2025* (Directions) 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 Directions replace the *A New Tax System (GST, Luxury Car Tax and Wine Tax) Direction 2015*, dealing with the taxation of the Commonwealth and untaxable Commonwealth entities. The Directions are issued under the authority of:

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

The *Public Governance, Performance and Accountability Act 2013* (PGPA Act) sets out a framework for regulating resource management by the Commonwealth entities and companies.

The *A New Tax System (GST, Luxury Car Tax and Wine Tax) Direction 2015* are revoked by the Directions. However, the policy intent remains unchanged.

The Directions continue to give effect to the Parliament's long standing intention that Commonwealth entities are to be notionally liable to pay certain taxes. The Directions apply 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 Directions maintain existing arrangements to support the notional application of certain taxes to the Commonwealth and untaxable Commonwealth entities.

Once registered, the Directions will be taken to apply from tax periods commencing on or after 1 October 2025, whether or not commencement occurs prior to or after this date. This is intended to ensure continuity of GST arrangements for the Commonwealth and relevant Commonwealth entities following the sunset of the *A New Tax System (GST, Luxury Car Tax and Wine Tax) Direction 2015* on 1 October 2025. The Directions are not intended to affect the rights of any person, or impose liabilities on any person, other than the Commonwealth or untaxable Commonwealth entities (see section 12(2) of the *Legislation Act 2003*).

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 Katy Gallagher
Minister for Finance