



8 February 2019

Manager
Individuals and Indirect Taxes Division
The Treasury
Langton Crescent
Parkes ACT 2600

By email – GSTConsultations@treasury.gov.au

Dear Sir / Madam

FSC submission – Remaking Sunsetting GST Regulations

The Financial Services Council (**FSC**) welcomes the opportunity to provide comments on the proposed exposure draft of the A New Tax System (Goods and Services Tax) Regulations 2019, Treasury Laws Amendment (Goods and Services Tax) Regulations 2019 and related explanatory materials.

The FSC is a leading peak body which sets mandatory Standards and develops policy for more than 100 member companies in Australia’s largest industry sector, financial services.

Our Full Members represent Australia’s retail and wholesale funds management businesses, superannuation funds, life insurers, financial advisory networks and licensed trustee companies. Our Supporting Members represent the professional services firms such as ICT, consulting, accounting, legal, recruitment, actuarial and research houses.

The financial services industry is responsible for investing almost \$3 trillion on behalf of more than 14.8 million Australians. The pool of funds under management is larger than Australia’s GDP and the capitalisation of the Australian Securities Exchange, and is the fourth largest pool of managed funds in the world.

The FSC’s feedback is directed at drawing attention to a potential risk associated with unintended changes to the operation of the GST law arising from the current drafting of the exposure draft, raising a matter of consistent drafting in relation to transitional rules, while enabling taxpayers to continue to refer to the GST regulations in a manner that continues to be familiar, administratively convenient and enabling more efficient application.

Reference to “GST Regulations” in this document is to the *A New Tax System (Goods and Services Tax) Regulations 1999*, and a reference to a “Regulation” is to a provision of the GST Regulations.

1. Section 115(3) (currently Regulation 40-5.09), item 6 in the table (Life insurance business)

This section involves the changing of the current wording of Item 6 into two sub-items. The FSC consider this change does not precisely convey the original meaning of the regulation.

We are unable to identify any problems with the current wording of Item 6. The language of the Item was agreed with the industry in 1999 to provide clarity about GST treatment and simplicity for life companies. Indeed, we understand that actuaries from the leading insurers led the industry discussions on this at that time with ATO/Treasury.

Specifically, there was no mention of “policies” in the current wording of Item 6. The proposed wording “the issuing of *policies* [emphasis added] ... to which subsection 9(1) of [*Life Insurance Act 1995*] applies” requires the thing to be a policy before you apply subsection 9(1). Subsection 9(1) provides that the various things *are* life policies for the purposes of the Life Act (but not necessarily for any other purposes). Most of the things listed in subsection 9(1) are contracts and not policies.

If there is to be any streamlining of the current item to improve or simplify the language, then we would support the following in order to split out reinsurance:

Item 6

(a) Life insurance business to which subsection 9(1) of the Life Insurance Act 1995, or a declaration under subsection 12(2) or section 12A of that Act, applies; or

(b) Reinsurance business related to Item 6(a).

FSC Recommendation - The current wording of Item 6 should be maintained as it provides clarity about GST treatment and simplicity for life companies who understand the workings of the Life Insurance Act.

2. Section 180(1) (currently Regulation 70-5.02), item 33 in the table (recognised trust schemes – 55% RITCs – currently item 32)

The corresponding reference to acquisitions after 1 July 2012 which is referred to in the corresponding provision in the current GST regulations has been deleted.

Firstly, we would query whether this will have unintended consequences for any older acquisitions that continue to have GST implications going forward (e.g. if attribution of input tax credits continues beyond the date of the new GST regulations for any reason). The deletion of that reference may cause any ongoing attributed input tax credits to start applying at a rate other than the current prescribed 55% rate applicable to item 32 (e.g. 0% or 75%).

Secondly, assuming that the deletion does not cause a difference to the current position, we would then query whether this is a consistent drafting approach with other provisions that do continue to refer to transactions before 2012, such as item 9 in section 115(3) table (credit under a hire purchase agreement entered into before 1 July 2012).

FSC Recommendation – In the interests of best preserving the current GST treatment as is the stated intention of the exposure draft, we would recommend including a reference in section 180(1), item 33 in the table to relevant acquisitions after 1 July 2012 (see current item 21(a)).

3. General comment – numbering

The exposure draft proposes a renumbering of individual GST Regulations and items within particular regulations within them. FSC members do not see any benefit to doing so, and instead

believe that the renumbering will confuse taxpayers, be less relevant as a reference and have an adverse impact on current legal documentation, policies, procedures etc.

FSC members, along with many other taxpayers, have been applying the GST regulations for almost 20 years and are closely familiar with all aspects of the GST Regulations, including reference to particular regulations and items within them. In addition to the industry being familiar with the current numbering, FSC members believe that the current numbering is more appropriate than under the exposure draft as the current numbering corresponds directly to sections within the underlying *A New Tax System (Goods and Services Tax) Act 1999* to which each regulation relates.

There are also implications for legal documents, advices, policies and procedures which may specifically refer to current numbering which will no longer be correct or accurate. These documents may require revision based on the numbering used in the exposure draft (resulting in additional costs for members), in circumstances where the exposure draft provides no apparent benefit to taxpayers in doing so.

In particular, the renumbering of Item "12A" to "13" in the RITC table is problematic as it causes renumbering of all the following items with an impact on public and private rulings, advice etc. An alternative option is to combine the items under a new heading for "Lenders insurance" or similar and create sub-headings (a) and (b) which correspond to item 12 and 12A to limit the impact just to these items.

FSC Recommendation - As a matter of administrative convenience, ease of reference, familiarity within the industry, and in the interests of minimising transition costs for taxpayers, the FSC recommends against the proposed renumbering of the regulations and items and instead the numbering be revised to retain the current numbering within the GST Regulations.

However, should the re-numbering proposal go ahead, then we would expect that all public rulings and other materials issued by the ATO be revised within a reasonable period of time to include new numbering and wording, if applicable.

The FSC would welcome any opportunity to discuss this submission. I may be contacted for any questions in relation to this submission on (02) 9299 3022.

Yours faithfully,

[signed]

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