

2010

EXPOSURE DRAFT

GST ADMINISTRATION MEASURES

EXPLANATORY MATERIAL

(Circulated by the authority of the
Treasurer, the Hon Wayne Swan MP)

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Chapter 1

GST groups and GST joint ventures

Outline of chapter

- 1.1 Schedule 1 to this exposure draft amends:
- the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act) and the *Taxation Administration Act 1953* (TAA 1953) to allow entities to self-assess their eligibility to form, change and dissolve a GST group or GST joint venture and to do so at any time during a tax period; and
 - the TAA 1953 and the GST Act to allow members of a GST group and participants in a GST joint venture to enter into indirect tax sharing agreements with a representative member or a joint venture operator respectively in relation to their indirect tax law liabilities.
- 1.2 These provisions apply to tax periods starting on or after 1 July 2010.

Context of amendments

1.3 This measure is implemented in response to recommendation 32 of the Board of Taxation's *Review of the Legal Framework for the Administration of the Goods and Services Tax*.

1.4 The GST Act allows entities that choose to form a GST group or a GST joint venture to apply special rules for reporting their GST liabilities and entitlements, and to ignore most intra-group transactions. In general terms, the special rules effectively result in treating GST groups and, to a lesser extent, GST joint ventures, as if they were a single entity for GST purposes (Divisions 48 and 51). GST groups and GST joint ventures are also recognised as one entity for the purposes of the wine equalisation tax (Subdivisions 21-B and 21-C of the *A New Tax System (Wine Equalisation Tax) Act 1999*), the luxury car tax (Division 16 of the *A New Tax System (Luxury Car Tax) Act 1999*) and fuel tax credit (sections 70-05 and 70-15 of the *Fuel Tax Act 2006*).

1.5 To form a GST group, entities must obtain approval from the Commissioner of Taxation (Commissioner) (section 48-5). The application for approval must be made jointly by all the entities concerned and must nominate one of them as a representative member of the group. The Commissioner must approve a GST group if each of the entities satisfies the membership requirements for that GST group and the nominated representative member is an Australian resident. Changes to the group membership, a change in the representative member or a revocation of a GST group also requires the Commissioner's approval. The application for such approval must be made by the representative member (subsections 48-70(1) and 48-75(1)). When a member or a group no longer meets the membership requirements, the representative member must notify the Commissioner of this (section 48-80) and the Commissioner must revoke the approval of such a member or a GST group (subsections 48-70(2) and 48-75(2)). Entities can only form, alter or revoke a GST group from the beginning of a tax period (subsection 48-85(3)), except when entities pay GST by instalments, or report and pay GST annually (subsection 48-85(3)).

1.6 If an entity becomes incapacitated, its tax period ends under section 27-39. This will generally result in the entity having a different tax period to those applying to other members of the GST group, and thus in that entity failing to meet the membership requirements of that GST group. The representative member may elect to have the tax periods that apply to other group members cease at the same time as the incapacitated entity's tax period (section 48-73). An incapacitated entity cannot be the representative member of the GST group unless all the members of the group are incapacitated (section 48-72).

1.7 To form a GST joint venture entities must obtain the Commissioner's approval (section 51-5). The application for approval must be made jointly by all the entities concerned and must nominate one of them or another entity, as the joint venture operator of the joint venture. The Commissioner must approve a GST joint venture if the joint venture is for approved purposes, the joint venture is not a partnership and each of the entities satisfies the participation requirements for that GST joint venture. Changes to the joint venture membership, a change in the joint venture operator or a revocation of a GST joint venture also requires the Commissioner's approval. The application for such approval must be made by the joint venture operator (subsections 51-70(1) and 51-75(1)). When a participant or a joint venture no longer meets the participations requirements, the joint venture operator must notify the Commissioner of this (section 51-80) and the Commissioner must revoke the approval of such a participant or a GST joint venture (subsections 51-70(2) and 51-75(2)). Entities can only form, alter or revoke a GST joint venture from the beginning of a tax period (section 51-85(2)).

1.8 Each member of a GST group or participant of a GST joint venture is jointly and severally liable to pay any amount that is payable under an indirect tax law by the representative member or the joint venture operator respectively in the event that they default on the payment (section 444-90 and 444-80 in Schedule 1 to the TAA 1953). An indirect tax law is defined as any of the following — the GST law, the wine equalisation tax law, the luxury car tax law and fuel tax law (section 995-1 of the *Income Tax Assessment Act 1997*).

1.9 The existing provisions add to compliance costs and constrain the flexibility of entities in conducting their businesses. In particular: the time taken to obtain an approval from the Commissioner can be lengthy and can result in uncertainty; allowing grouping and de-grouping only at the beginning of a tax period may delay commercial transactions or require unwinding transactions for GST purposes to the beginning of a tax period; and finally joint and several liability can give rise to ongoing uncertainty for entities, even after they leave a GST group or GST joint venture.

Summary of new law

Self-assessment and intra-tax period grouping and de-grouping

GST groups

1.10 Schedule 1 amends Division 48 of the GST Act to allow entities to self-assess their eligibility to form, change and dissolve a GST group and to notify the Commissioner of details of the GST group in the approved form. Under the amendments entities will be able to form, change and dissolve a GST group, and change a representative member at any time during a tax period. The representative member of the group must notify the Commissioner of the details of the GST group on or before the day by which the entities are required to give to the Commissioner their GST returns for the tax period in which the formation, change or dissolution takes effect.

1.11 If the representative member fails to notify the Commissioner of the details of the GST group by the relevant date, the formation, change in membership, or dissolution of a GST group or a change in the representative member will require the Commissioner's approval.

1.12 Transitional rules provide for the treatment of GST groups that already exist or that have already been approved by the Commissioner under the amended provisions. They also provide for the treatment of applications made under the existing provisions that have not been dealt with by the Commissioner.

GST joint ventures

1.13 Schedule 1 similarly amends Division 51 of the GST Act to allow entities to self-assess their eligibility to form, change and dissolve a GST joint venture and to notify the Commissioner of details of the GST joint venture in an approved form. Under the amendments entities will be able to form, change and dissolve a GST joint venture, and change a joint venture operator at any time during a tax period. The joint venture operator must notify the Commissioner of the details of the GST joint venture on or before the day by which the entities are required to give to the Commissioner their GST returns for the tax period in which the formation, change or dissolution takes effect.

1.14 If the joint venture operator fails to notify the Commissioner of the details of the GST joint venture by the relevant date, the formation, change in membership or dissolution of a GST joint venture or a change in the joint venture operator will require the Commissioner's approval.

1.15 Transitional rules provide for the treatment of GST joint ventures that already exist or that have already been approved by the Commissioner under the amended provisions. They also provide for the treatment of applications made under the existing provisions that have not been dealt with by the Commissioner.

Indirect Tax Sharing Agreements

GST groups

1.16 Schedule 1 also amends the TAA 1953 to allow members and a representative entity of a GST group to enter into an Indirect Tax Sharing Agreement (ITSA) to limit the indirect tax law liabilities of the members for tax periods in which they are a member of the GST group. Subject to certain conditions, a member with an ITSA can also leave a GST group during a tax period clear of any indirect tax law liabilities in respect of the tax period in which it leaves the group.

GST joint ventures

1.17 Similarly, Schedule 1 amends the TAA 1953 to allow participants and the joint venture operator of a joint venture to enter into an ITSA to limit the indirect tax law liabilities of the participants for tax periods in which they are a participant in the GST joint venture. Subject to certain conditions, a participant with an ITSA can also leave a GST joint venture during a tax period clear of any indirect tax law liabilities in respect of the tax period in which it leaves the group.

Comparison of key features of new law and current law

<i>New law</i>	<i>Current law</i>
<p>Assessment of eligibility to group</p> <p><i>GST groups</i></p> <p>Entities self-assess their eligibility to form, change and dissolve a GST group, and change the representative member and notify the Commissioner accordingly. However, failure to notify by the prescribed date means that formation, change or dissolution of a GST group or change of representative member requires the Commissioner’s approval.</p> <p><i>GST joint ventures</i></p> <p>Entities self-assess their eligibility to form, change and dissolve a GST joint venture, and change the joint venture operator and notify the Commissioner accordingly. However, failure to notify by the prescribed date means that formation, change or dissolution of a GST joint venture or change of the joint venture operator requires the Commissioner’s approval.</p>	<p>Assessment of eligibility to group</p> <p><i>GST groups</i></p> <p>Entities need to obtain the Commissioner’s approval for forming, altering and revoking a GST group and for changing the representative member.</p> <p><i>GST joint ventures</i></p> <p>Entities need to obtain the Commissioner’s approval for forming, altering and revoking a GST joint venture and for changing the joint venture operator.</p>

<i>New law</i>	<i>Current law</i>
<p>Date of effect of a group</p> <p><i>GST groups</i></p> <p>Entities can form, change and dissolve a GST group, and change the representative member, at any time during a tax period.</p> <p><i>GST joint ventures</i></p> <p>Entities can form, change and dissolve a GST joint venture, and change the joint venture operator, at any time during a tax period.</p>	<p>Date of effect of a group</p> <p><i>GST groups</i></p> <p>The date of effect of the Commissioner’s approval for forming, altering or revoking a GST group or for changing the representative member must be the beginning of a tax period.</p> <p><i>GST joint ventures</i></p> <p>The date of effect of the Commissioner’s approval for forming, altering or revoking a GST joint venture or for changing the joint venture operator must be the beginning of a tax period.</p>
<p>Liabilities of a group</p> <p><i>GST groups</i></p> <p>Members of a GST group can enter into an ITSA with the representative member in relation to their indirect tax law liabilities.</p> <p><i>GST joint ventures</i></p> <p>Participants in a GST joint venture can enter into an ITSA with the joint venture operator in relation to their indirect tax law liabilities.</p>	<p>Liabilities of a group</p> <p><i>GST groups</i></p> <p>Each member of a GST group is jointly and severally liable for any amount that is payable under an indirect tax law by the representative member.</p> <p><i>GST joint ventures</i></p> <p>Each participant in a GST joint venture is jointly and severally liable for any amount that is payable under an indirect tax law by the joint venture operator.</p>

Detailed explanation of new law

Self-assessment and intra-tax period grouping and de-grouping

1.18 The amendments allow entities to self-assess their eligibility to form a GST group and a GST joint venture and to make membership changes to or dissolve a GST group or a GST joint venture at any time during a tax period. The amendments are aimed at reducing compliance costs and increasing the flexibility for entities to form, change and dissolve a GST group or a GST joint venture while preserving the integrity of the GST system.

GST groups

1.19 To form a GST group, entities must satisfy the membership requirements of a GST group, agree to form a GST group and nominate a representative member (which has to be an Australian resident). Entities can self-assess to form a GST group provided that the representative member notifies the formation to the Commissioner in the approved form on or before the day by which the entities are required to give the Commissioner their GST returns for the tax period in which the formation takes effect. [*Schedule 1, item 3, subsections 48-5(1) to (3)*].

Example 1.1

Company A has a 90 per cent stake in companies B, C and D. They are all registered for GST purposes, apply the monthly GST tax period, account for GST on the same basis, are not members of another GST group and do not have any branch registered for GST purposes. Entities, A, B, C and D agree to form a GST group with a date of effect from 23 April 2011. They nominate entity A (which is an Australian resident for GST purposes) as the representative member. Entity A notifies the Commissioner in the approved form of their decision to form a GST group and the details of the group membership on 27 April 2011. These entities have formed a GST group (under section 48-5 of the GST Act) with a date of effect from 23 April 2011 as the notification was provided to the Commissioner before 21 May 2011 which is the due date for lodgment of GST returns for the April tax period.

1.20 The Commissioner can approve the formation of a GST group for a tax period in which the due date for lodgment of GST returns by the entities wishing to form a group has already passed (retrospective formation). To form a group with a retrospective date of effect the representative member needs to notify the Commissioner in the approved form and the Commissioner has to approve the date of effect and notify the representative member of the decision. The Commissioner's decision is a reviewable decision. *[Schedule 1, item 3, subsection 48-5(4) and item 6, subsection 48-71]*

Example 1.2

Same facts as in Example 1.1 but the nominated representative member (entity A) notifies the Commissioner of their decision to form a GST group on 22 May 2011. In this case the entities cannot self-assess their eligibility to form a GST group with a date of effect from 23 April 2011. This is because they did not notify the Commissioner about forming a GST group on or before 21 May 2011; that is, on or before the due date for lodgment of GST returns for the April tax period. The Commissioner therefore needs to approve the date of effect of the formation of the group. The Commissioner approves 23 April 2011 as the day of the formation of the GST group on 30 June 2011 and gives notice to the representative entity of the decision. Thus a GST group is formed with a date of effect from 23 April 2011 under section 48-5.

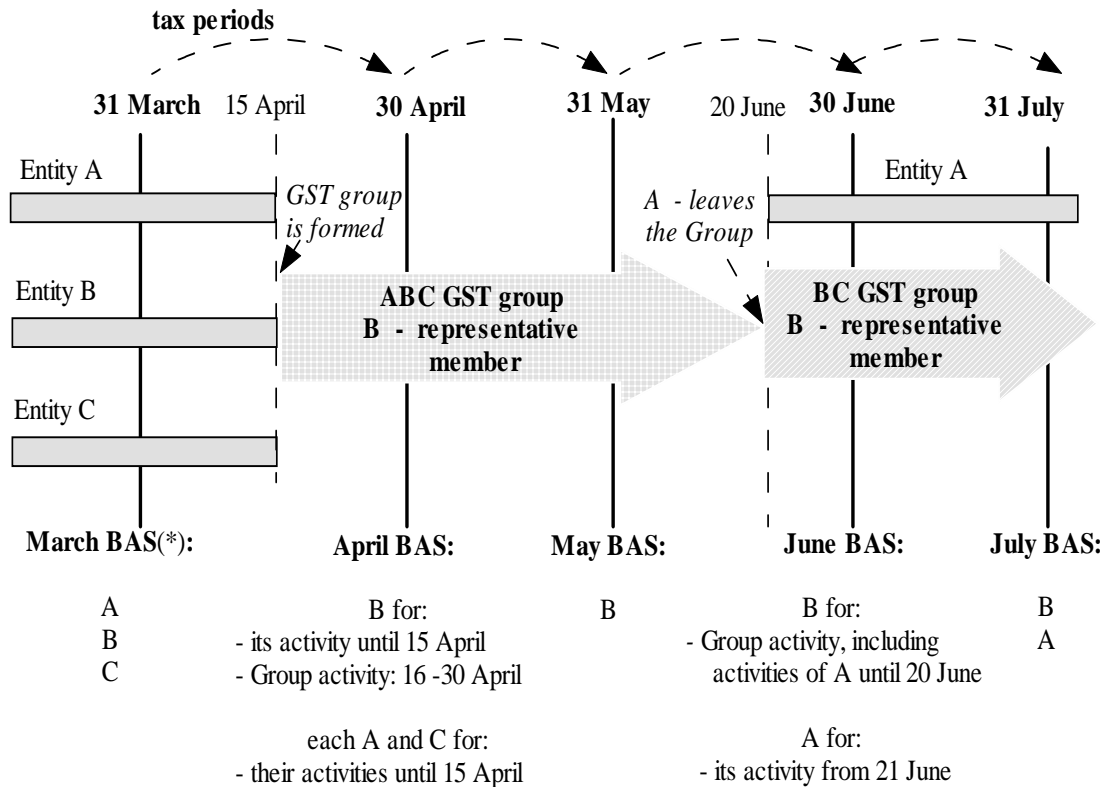
1.21 A member of a GST group is defined as an entity that either formed a GST group or joined the group (and has not subsequently left the group) and that satisfies the membership requirements of the group. *[Schedule 1, item 3, section 48-7].*

1.22 Changes can be made to a GST group by the representative member notifying the Commissioner in the approved form of the changes. The changes have effect from the date specified in the notice, providing the notice is given to the Commissioner on or before the day by which the representative member of the group is required to give the Commissioner a GST return for the tax period in which such actions take effect. The changes include an entity joining a GST group, a member leaving a GST group, the representative member of the GST group being replaced by another member of the group and the GST group being dissolved. A notice that another entity has become the representative member must be given to the Commissioner within 21 days after the other entity became the representative member. *[Schedule 1, item 6, subsection 48-70(1) to (4)]*

1.23 The Commissioner can approve a change in the membership of the GST group, a replacement of the representative member of the GST group or dissolution of a GST group retrospectively. The approval of the Commissioner is required when the representative member notifies the Commissioner of the action after the due date for lodgment of the GST return for the tax period in which the action takes effect. To make changes to a group with a retrospective date of effect the representative member needs to notify the Commissioner in the approved form and the Commissioner has to approve the date of effect and notify the representative member of the decision. The Commissioner's decision is a reviewable decision. *[Schedule 1, item 6, subsection 48-70(5) and section 48-71]*

1.24 The date of effect of forming, changing and dissolving a GST group, whether by self-assessment or with the Commissioner's approval can be any date during a tax period. The existing requirements concerning the date of effect for approvals and revocations of GST groups in subsection 48-85(3) are repealed. Diagram 1.1 below illustrates the responsibilities for accounting and reporting for GST by both entities forming and leaving a GST group, and the representative member of a GST group. *[Schedule 1, item 11]*

Diagram 1.1 Intra-tax period formation and alteration of a GST group and accounting for GST in a Business Activity Statement



(*) Business Activity Statement.

In Diagram 1.1 entities A, B and C form a GST group on 15 April with entity B becoming the representative member of the group. In these circumstances, each entity will be required to lodge a BAS for the tax period ending on 30 April, with:

- the representative member (entity B) accounting for its activity from 1 April to 15 April and the GST group activity for the period from 16 April to 30 April; and
- entity A and entity C accounting for their own activities from 1 April to 15 April.

Further, the membership of the ABC GST group is altered on 20 June when entity A leaves the group. This will require:

- the representative member (entity B) to account for the activities of the GST group for the whole of the tax period, including entity A's activities until 20 June, in its BAS for the tax period ending on 30 June; and
- entity A accounting for its activities from 21 June to 30 June.

Entity A (together with entities B and C) will have joint and several liability for the GST group's liabilities in respect of the group's activities for the period from 16 April (when it joins the GST group) until 20 June (when it leaves the GST group). These joint and several liabilities will only arise in the case that entity B, as a representative member of the GST group, defaults on the payment of the group's GST liabilities for that period.

1.25 If a member becomes an incapacitated entity, it ceases to be a member of the GST group, unless the representative member makes an election for the tax period that applies to the members of the GST group to end at the same time as the incapacitated entity became incapacitated. *[Schedule 1, items 8 to 11, section 48-75]*

1.26 If a representative member becomes an incapacitated entity, it ceases to be the representative member of a GST group, unless all other entities of the GST group also become incapacitated entities at the same time. The representative member must notify the Commissioner in the approved form within 21 days if a member of the GST group no longer satisfies the membership requirements. *[Schedule 1, item 11, section 48-80 and paragraphs 48-85(1) and (2)]*

1.27 If an entity ceases to be the representative member, the GST group is taken to be dissolved unless another member of the group becomes the representative and the Commissioner is notified, in the approved form, of the new representative member within 21 days of the original representative member ceasing to be the representative member. *[Schedule 1, item 11, subsection 48-85(3)]*

GST joint ventures

1.28 To form a GST joint venture, entities must satisfy the participation requirements of a GST joint venture, agree to form a GST joint venture and nominate a joint venture operator. The joint venture operator does not need to be a joint venture participant. Entities can self-assess to form a GST joint venture provided that one of the entities notifies the formation to the Commissioner in the approved form on or before the day by which the entities are required to give the Commissioner their GST returns for the tax period in which the formation takes effect. *[Schedule 1, items 14 to 17, and item 18, subsection 51-5(2)(2) to (3)]*

1.29 The Commissioner can approve the formation of a GST joint venture for a tax period in which the due date for lodgment of GST returns by the entities wishing to form the joint venture has already passed (retrospective formation). To form a joint venture retrospectively the joint venture operator needs to notify the Commissioner in the approved form and the Commissioner has to approve the date of effect and notify the joint venture operator of the decision. The Commissioner's decision is a reviewable decision. *[Schedule 1, item 18, subsection 51-5(4) and item 21, section 51-75]*

1.30 A participant in a joint venture is defined as an entity that either formed a GST joint venture or joined a GST joint venture (and has not subsequently left the joint venture) and that satisfies the participation requirements of the joint venture. *[Schedule 1, item 19, section 51-7]*

1.31 Changes can be made to a GST joint venture by the joint venture operator notifying the Commissioner in the approved form of the changes. The changes have effect from the date specified in the notice, providing the notice is given to the Commissioner on or before the day by which the joint venture operator is required to give the Commissioner a GST return for the tax period in which such actions take effect. The changes include an entity joining a GST joint venture, a member leaving a GST joint venture, the joint venture operator being replaced by another entity and the GST joint venture being dissolved. A notice that another entity has become the joint venture operator must be given to the Commissioner within 21 days after the other entity became the joint venture operator. *[Schedule 1, item 21, subsections 51-70(1) to (4)]*

1.32 The Commissioner can approve a change in the participants in a GST joint venture, a replacement of the joint venture operator or dissolution of the GST joint venture retrospectively. The approval of the Commissioner is required when the joint venture operator notifies the Commissioner of the action after the due date for lodgment of the GST return for the tax period in which the action takes effect. To make changes to a joint venture with a retrospective date of effect the joint venture operator needs to notify the Commissioner in the approved form and the Commissioner has to approve the date of effect and notify the joint venture operator of the decision. The Commissioner's decision is a reviewable decision. *[Schedule 1, item 21, subsection 51-70(5), section 51-75]*

1.33 The date of effect of forming, changing and dissolving a GST joint venture, whether by self-assessment or with the Commissioner's approval can be any date during a tax period. The existing requirement in subsection 51-85(2) that the date of effect of any approvals or revocations must be the beginning of a tax period is repealed. *[Schedule 1, item 21, subdivision 51-C]*

1.34 The joint venture operator must notify the Commissioner in the approved form within 21 days if a participant in the GST joint venture no longer satisfies the participation requirements [*Schedule 1, item 21, subsections 51-80(1) and (2)*]

1.35 If an entity ceases to be the joint venture operator, the GST joint venture is taken to be dissolved unless another participant in the group becomes the joint venture operator and the Commissioner is notified, in the approved form, of the new joint venture operator within 21 days of the original joint venture operator ceasing to be the joint venture operator. [*Schedule 1, item 21, subsection 51-80(3)*]

Indirect Tax Sharing Agreements

1.36 The amendments allow participants of a GST joint venture and members of a GST group to enter into an ITSA with their joint venture operator and representative member respectively in relation to their indirect tax law liabilities. The amendments are aimed at reducing compliance costs and increasing certainty by introducing arrangements similar to the tax sharing agreements for consolidated groups under the income tax law.

GST joint ventures

1.37 Joint venture participants can enter into an ITSA with the joint venture operator to limit their indirect tax liability for a tax period to contribution amounts determined in accordance with the agreement.

1.38 An ITSA must be in force before the date on which an indirect tax amount relating to a tax period becomes payable and under the ITSA the participant must be liable to pay a contribution amount for that tax period. In addition, the contribution amounts of each participant under the ITSA must represent a reasonable allocation of their shares of the joint venture operator's total liabilities under each indirect tax law (that is, under the GST law, fuel tax law, luxury car tax law and wine equalisation tax law) in relation to that tax period. [*Schedule 1, items 35 and 36, subsection 444-80(1), and item 37 paragraphs 444-80(1A)(a) to (c)*]

1.39 To provide additional assurance to the business community, the Commissioner will publish guidelines as to what is considered to be a reasonable allocation of a GST joint venture liability under an ITSA.

1.40 The effect of the ITSA provisions is to limit the liability of a participant in the event that a joint venture operator defaults on the payment of a joint venture's indirect tax law liabilities for a tax period.

1.41 A participant with an ITSA can leave a GST joint venture during a tax period clear of any liability for an indirect tax amount for that tax period. To leave clear of any liability for this period, the participant needs to pay the joint venture operator the contribution amount, or if that amount cannot be determined at the time of payment, a reasonable estimate of the contribution amount, before the due date for lodgment of a GST return for the period. [Schedule 1, item 37, paragraph 444-80(1A)(d) and subsection 444-80(1B)]

1.42 The liability of participants with an ITSA in other circumstances is limited to the contribution amount determined in accordance with the ITSA. [Schedule 1, item 37, paragraphs 444-80(1A)(e)]

Example 1.3: Joint venture participant and ITSA

Entities A, B, C, D and E formed a GST joint venture on 5 February 2011. A is nominated as the joint venture operator and thus is responsible for the indirect tax law liabilities of the GST joint venture, but B, C, D and E are jointly and severally liable for any amount that is payable under an indirect tax law by the joint venture operator. The GST joint venture applies a monthly tax period for remitting its indirect tax law liabilities. On 10 April 2011, B, C, D and E enter into an ITSA with A in respect of the April 2011 tax period. On 21 May 2011, A defaults on the payment to the Commissioner of amounts that are payable for the April 2011 tax period in respect of the GST joint venture's indirect tax law liabilities. B, C, D and E are jointly and severally liable for the GST joint venture's indirect tax law liabilities. However, as they have a valid ITSA for the tax period their liabilities are limited to their respective contribution amounts determined in accordance with the ITSA.

If B left the GST joint venture on 20 April 2011 and made a payment to A of its contribution amount for the April 2011 tax period it is clear of any indirect tax law liabilities for the April 2011 tax period. C, D and E are jointly and severally liable for the GST joint venture's indirect tax law liabilities for the tax period, with their liabilities being limited to their contribution amounts determined in accordance with the ITSA.

1.43 More details about the operation of ITSAs can be found in Diagram 1.2 that illustrates the operation of ITSAs in respect of the indirect tax law liabilities of a GST group.

1.44 An ITSA does not apply if it was entered into as part of an arrangement that had a purpose to prejudicing the Commissioner's ability to recover an amount payable under an indirect tax law. [Schedule 1, item 37, subsection 444-80(1C)]

1.45 In addition, an ITSA does not apply if the joint venture operator fails to comply with a written notice given by the Commissioner requiring the joint venture operator to give the Commissioner a copy of the ITSA in the approved form within 14 days. *[Schedule 1, item 37, subsection 444-80(1D)]*

1.46 An ITSA can cover more than one participant in a joint venture but the joint venture operator for the GST joint venture cannot enter into more than one ITSA for the same tax period. *[Schedule 1, item 37, subsections 444-80(1E) and (1F)]*

GST groups

1.47 Members of a GST group can enter into an ITSA with the representative member of the group to limit their indirect tax liability for a tax period to contribution amounts determined in accordance with the agreement.

1.48 An ITSA must be in force before the date on which an indirect tax amount relating to a tax period becomes payable and under the ITSA the member must be liable to pay a contribution amount for that tax period. In addition the contribution amounts of each member covered by the ITSA must represent a reasonable allocation of their shares of the representative member's total liabilities under each indirect tax law in relation to that tax period. *[Schedule 1, items 38 and item 39, subsection 444-90(1), and item 40 paragraphs 444-90(1A)(a) to (c)]*

1.49 To provide additional assurance to the business community, the Commissioner will publish guidelines as to what is considered to be a reasonable allocation of a GST group liability under an ITSA.

1.50 The effect of the ITSA provisions is to limit the liability of a member in the event that a representative member defaults on the payment of a group's indirect tax law liabilities for a tax period.

1.51 A member with an ITSA can leave a GST group during a tax period clear of any liability for an indirect tax amount for the tax period. To leave clear of any liability for this period, the member needs to pay the representative member the contribution amount, or if that amount cannot be determined at the time of payment, a reasonable estimate of the contribution amount, before the due date for lodgment of a GST return for the period. *[Schedule 1, item 40, paragraph 444-90(1A)(d) and subsection 444-90(1B)]*

1.52 The liability of members with an ITSA in other circumstances is limited to the contribution amount determined in accordance with the ITSA. *[Schedule 1, item 40, paragraphs 444-90(1A)(e)]*

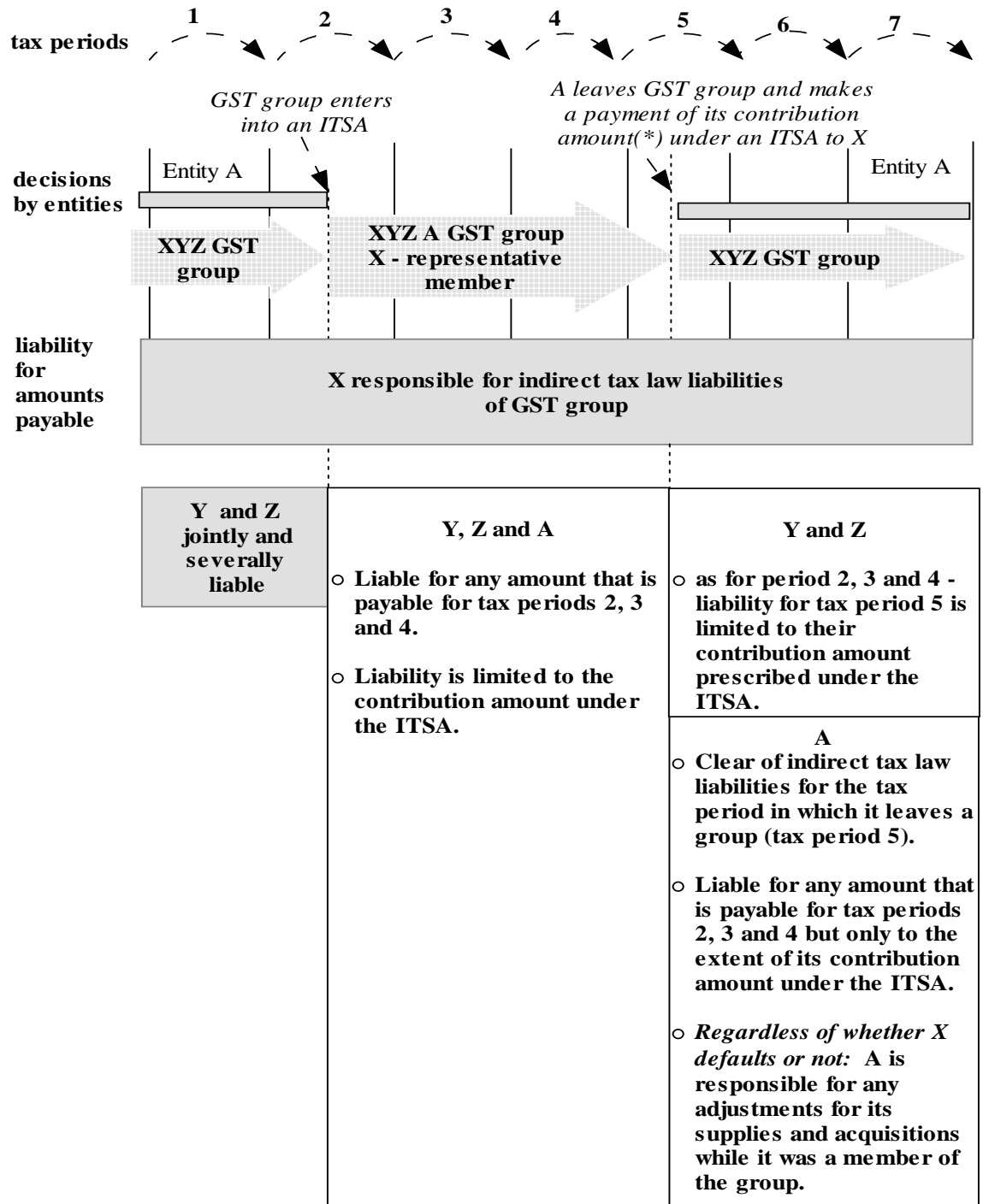
1.53 Diagram 1.2 below illustrates the intended outcome of these provisions in respect of the liability of a member with an ITSA that leaves a GST group and the liabilities of the remaining members of the GST group for an amount that is payable under an indirect tax law.

1.54 An ITSA does not apply if it was entered into as part of an arrangement that had a purpose to prejudicing the Commissioner's ability to recover an amount payable under an indirect tax law. *[Schedule 1, item 40, subsection 444-90(1C)]*

1.55 In addition, an ITSA does not apply if the representative member fails to comply with a written notice given by the Commissioner requiring the representative member to give the Commissioner a copy of the ITSA in the approved form within 14 days. *[Schedule 1, item 40, subsection 444-90(1D)]*

1.56 An ITSA can cover more than one member of a GST group but the representative member of the GST group cannot enter into more than one ITSA for the same tax period. *[Schedule 1, item 40, subsections 444-90(1E) and(1F)]*

Diagram 1.2: ITSA and indirect tax law liabilities of GST group



(*) That is an amount that represents a reasonable allocation of the GST group's total indirect tax law liabilities.

In Diagram 1.2, a GST group operates that consists of entity X (a representative member of the group), and entities Y and Z. Entity A joins this group in the middle of tax period 2 which is to be allowed under provisions covered by this exposure draft and illustrated in Diagram 1.1. The group members enter into an ITSA with the representative member of the GST group (entity X) at the same time. Entity A leaves the group in the middle of tax period 5 after making a payment of its contribution amount to X under the ITSA. The contribution amount needs to represent a reasonable allocation of A's share of the GST group's total indirect tax law liabilities that have not yet become payable.

In this scenario, the representative member (X) is responsible for indirect tax law liabilities of the GST group for the duration it was the representative member of the group. However, if X defaults on the payment of the indirect tax law liabilities of the GST group:

- before entity A leaves the group, entities Y, Z and A are liable for any amounts that are payable for tax periods covered under the ITSA (tax periods 2, 3 and 4). However, their liabilities are limited to their respective contribution amounts prescribed by the ITSA;
- after entity A leaves the group and makes a payment under the ITSA to X:
 - entities Y and Z remain liable for the indirect tax law liabilities of the GST group that arose in a tax period prior to A leaving the group (tax periods 2, 3 and 4) as well as for the tax period in which A leaves the group (tax period 5). However, their liabilities are limited to their respective contribution amounts prescribed by the ITSA;
 - entity A:
 - does not have any indirect tax law liabilities for the tax period in which it leaves the GST group (tax period 5); and
 - remains responsible for amounts that are payable for tax periods in which it was a member of the GST group (except the period in which it left the group) but only to the extent of its contribution amounts prescribed by the ITSA for those periods.

Regardless of whether X defaults or not, entity A remains responsible for any increasing and decreasing adjustments that might arise after it leaves the group (for example, in tax period 7) but in respect of supplies and acquisitions that A made while it was a member of the GST group (tax periods from 2 to 5).

Application and transitional provisions

1.57 The amendments made by Schedule 1 apply to tax periods starting on or after 1 July 2010. *[Schedule 1, item 42]*

1.58 Transitional rules provide for the treatment of GST groups and GST joint ventures that already exist or that have already been approved by the Commissioner under the amended provisions. They also provide for the treatment of applications made under the existing provisions that have not been dealt with by the Commissioner.

Self-assessment: GST groups

1.59 A GST group that existed immediately before 1 July 2010 will be taken to continue to exist under the new provisions for formation of a GST group, provided that the entities who are members of the GST group and the representative member of such a group before and after 1 July 2010 remain the same. *[Schedule 1, item 31, subitem 1]*

1.60 GST groups that have been approved by the Commissioner before 1 July 2010 with a date of effect after 1 July 2010 will not be required to notify the Commissioner about the formation of the GST group, unless there are changes to membership of the GST group or the representative member. *[Schedule 1, item 31, subitem 2]*

1.61 An application by entities to form a GST group with effect after 1 July 2010 that was not approved or refused by the Commissioner before 1 July 2010 will be taken to be a notification of the formation of the GST group under the amended provisions. *[Schedule 1, item 31, subitem 3]*

1.62 An application by entities to form a GST group with effect before 1 July 2010 that was not approved or refused by the Commissioner before 1 July 2010 will be taken to be an application for approval to form the GST group under the amended provisions. *[Schedule 1, item 31, subitem 4]*

1.63 An application by a representative member to make changes to a GST group with effect after 1 July 2010 that was not approved or refused by the Commissioner before 1 July 2010 will be taken to be a notification of the changes to the GST group under the amended provisions. *[Schedule 1, item 31, subitem 5]*

1.64 An application by a representative member to make changes to a GST group with effect before 1 July 2010 that was not approved or refused by the Commissioner before 1 July 2010 will be taken to be an application for changes to the GST group under the amended provisions. *[Schedule 1, item 31, subitem 6]*

1.65 An application by a representative member to revoke a GST group with effect after 1 July 2010 that was not approved or refused by the Commissioner before 1 July 2010 will be taken to be a notification of the revocation of the GST group under the amended provisions. *[Schedule 1, item 31, subitem 7]*

1.66 An application by a representative member to revoke a GST group with effect before 1 July 2010 that was not approved or refused by the Commissioner before 1 July 2010 will be taken to be an application for approval of the revocation of the GST group under the amended provisions. *[Schedule 1, item 31, subitem 8]*

Self-assessment: GST joint ventures

1.67 A GST joint venture that existed immediately before 1 July 2010 will be taken to continue to exist under the new provisions for formation of a GST joint venture, provided that the entities who participate in the GST joint venture and the joint venture operator of such a GST joint venture before and after 1 July 2010 remain the same. *[Schedule 1, item 32, subitem 1]*

1.68 GST joint ventures that have been approved by the Commissioner before 1 July 2010 with a date of effect after 1 July 2010 will not be required to notify the Commissioner about the formation of the GST joint venture, unless there are changes to membership of the GST joint venture or the joint venture operator. *[Schedule 1, item 32, subitem 2]*

1.69 An application by entities to form a GST joint venture with effect after 1 July 2010 that was not approved or refused by the Commissioner before 1 July 2010 will be taken to be a notification of the formation of the GST joint venture under the amended provisions. *[Schedule 1, item 32, subitem 3]*

1.70 An application by entities to form a GST joint venture with effect before 1 July 2010 that was not approved or refused by the Commissioner before 1 July 2010 will be taken to be an application for approval to form the GST joint venture under the amended provisions. *[Schedule 1, item 32, subitem 4]*

1.71 An application by a joint venture operator to make changes to a GST joint venture with effect after 1 July 2010 that was not approved or refused by the Commissioner before 1 July 2010 will be taken to be a notification of the changes to the GST joint venture under the amended provisions. *[Schedule 1, item 32, subitem 5]*

1.72 An application by a joint venture operator to make changes to a GST joint venture with effect before 1 July 2010 that was not approved or refused by the Commissioner before 1 July 2010 will be taken to be an application for approval of the changes to the GST joint venture under the amended provisions. *[Schedule 1, item 32, subitem 6]*

1.73 An application by a joint venture operator to revoke a GST joint venture with effect after 1 July 2010 that was not approved or refused by the Commissioner before 1 July 2010 will be taken to be a notification of the revocation of the GST joint venture under the amended provisions. *[Schedule 1, item 32, subitem 7]*

1.74 An application by a joint venture operator to revoke a GST joint venture with effect before 1 July 2010 that was not approved or refused by the Commissioner before 1 July 2010 will be taken to be an application for approval of the revocation of the GST joint venture under the amended provisions. *[Schedule 1, item 32, subitem 8]*

Consequential amendments

Self-assessment and intra-tax period grouping and de-grouping

- 1.75 As a consequence of introducing self-assessment:
- Section 48-1 of the GST Act describing the content of Division 48 and a heading of subdivision 48-A are amended to indicate that entities can form rather than be approved as a GST group *[Schedule 1, item 1 and item 2]*;
 - A note is inserted under subsection 48-60(1) of the GST Act to indicate that if an entity is not a member of a GST group during the whole tax period, it will still be obligated to give a GST return for the tax period *[Schedule 1, item 5]*;
 - Note 2 under subsection 48-73(1) of the GST Act was amended to indicate that if a representative member does not make an election for the tax period that applies to the members of the GST group to end at the same time as a member becomes incapacitated, the member's membership of the group will be taken to cease on becoming incapacitated *[Schedule 1, item 8]*;

- Section 51-1 of the GST Act describing the content of Division 51 and a heading of subdivision 51-A are amended to indicate that entities can form rather than be approved as a GST joint venture [*Schedule 1, item 12 and item 13*];
- Sections 151-65 and 151-70 of the GST Act are repealed to ensure that an intra-tax period alteration to a GST group or an intra-tax period change in a representative member does not prevent a GST group from continuing to lodge GST returns, and pay amounts of GST or receive refunds of GST, on an annual tax basis [*Schedule 1, item 22*];
- Section 162-95 of the GST Act is repealed to ensure that an intra-tax period alteration to a GST group or an intra-tax period change in a representative member does not prevent a GST group from continuing to pay GST by instalments. [*Schedule 1, item 23*];
- Section 195-1 of the GST Act is amended to reflect changes in the main provisions dealing with GST groups (Division 48) and GST joint ventures (Division 51) [*Schedule 1, items from 24 to 28*]; and
- Subsection 110-50(2) in Schedule 1 to the TAA 1953 is amended by deleting items relating to the Commissioner's decisions to refuse to approve the formation etc of a GST group and a GST joint venture and inserting items relating to the Commissioner's decision to refuse to approve a retrospective date of effect for forming etc a GST group and a GST joint venture [*Schedule 1, item 29 and item 30*].

Indirect Tax Sharing Agreements

1.76 A note under subsection 48-40(1) of the GST Act that deals with GST liabilities of a GST group is amended to indicate that each member may be, rather than is, jointly and severally liable to pay GST that is payable by the representative member. A similar amendment was made to a note under subsection 51-30(1) of the GST Act that deals with the GST liabilities of a GST joint venture. [*Schedule 1, item 33 and item 34*]

Chapter 2

Adopting the general rulings system for indirect taxes and excise

Outline of chapter

2.1 Schedule 2 of the exposure draft amends the *Taxation Administration Act 1953* (TAA), the *A New Tax System (Goods and Services Tax) Act 1999*, the *Excise Act 1901* and the *Income Tax Assessment Act 1997* to include indirect tax rulings and excise advice in the general rulings regime. All references are to the TAA unless otherwise specified.

2.2 These provisions apply to rulings made on or after 1 July 2010.

Context of amendments

2.3 This exposure draft implements the Government's response to the Board of Taxation's *Review of the Legal Framework for the Administration of the GST* in relation to rulings.

2.4 Under the current law, indirect tax rulings are issued under the Commissioner's power of general administration of indirect tax. Administratively binding excise duty advice is issued under the Commissioner's power of general administration of the excise law. There is currently no express legislative framework for indirect tax rulings and excise advice, and no formal objection or review rights.

2.5 The intention of harmonising indirect tax rulings and excise advice with the general rulings system is to simplify the tax law and provide consistent rules that apply across different taxes. Specific differences between the rulings regimes are retained only where essential characteristics of the different taxes require a different approach.

2.6 It is not intended that any changes be made to how the general rulings regime generally applies for taxes to which that regime currently applies. In addition, public indirect tax rulings and private indirect tax rulings in operation immediately prior to 1 July 2010 are generally treated as if made under the revised ruling regime. This ensures that the rulings

remain valid and do not impose additional compliance costs on affected parties by requiring new rulings to be obtained.

Summary of new law

2.7 Schedule 2 of the exposure draft broadens the scope of the general rulings system to extend it to GST, luxury car tax (LCT), wine equalisation tax (WET) and excise duty. This ensures that, where possible, consistent rules for tax rulings apply across different taxes.

2.8 This allows the Commissioner to issue public rulings, including product and class rulings and private rulings to taxpayers that are legally binding on the Commissioner in relation to these taxes and excise duty. The adoption of the general rulings regime for indirect tax and excise duty introduces a range of features which include the right to object to a private indirect tax or excise ruling.

2.9 The amendments apply to rulings made by the Commissioner on or after 1 July 2010. They also apply to rulings that have been applied for or that are in operation immediately before 1 July 2010 in order to reduce any transitional compliance costs resulting from the changes.

Comparison of key features of new law and current law

<i>New law</i>	<i>Current law</i>
Scope of indirect tax and excise ruling regimes	Scope of indirect tax and excise ruling regimes
Indirect tax and excise rulings are included in the general rulings regime.	No legislated rulings regime for indirect tax or excise. However, the indirect tax law sets out the consequences of changes to indirect tax rulings. The general rulings regime applies to income tax, fringe benefits tax, petroleum resource rent tax, fuel tax credits, Medicare levy, mining withholding tax, franking tax and grants or benefits under the products grants legislation. GST, WET, LCT rulings are issued under the Commissioner's general power of administration of indirect tax laws.

<i>New law</i>	<i>Current law</i>
	Only administratively binding advice is issued in relation to excise.
Objecting to rulings	Objecting to rulings
A right of objection exists for indirect tax and excise rulings consistent with the general rulings regime.	No objections right exists for indirect tax rulings. In order to lodge an objection, taxpayers are required to request an assessment of their net amount for the relevant tax period and object to that assessment. No objection right exists for administratively binding advice issued by the Commissioner concerning excise duty.
Withdrawing or replacing rulings	Withdrawing or replacing rulings
An indirect tax or excise ruling applies until it is withdrawn or replaced by the Commissioner, unless the Commissioner otherwise provides an end date in the ruling.	An indirect tax ruling applies until it is withdrawn or replaced by the Commissioner, unless the Commissioner otherwise provides an end date in the ruling.
Time new ruling applies from	Time new ruling applies from
No change.	A new or revised indirect tax ruling applies from its date of release or any other date set out in the ruling.
Reliance on a ruling	Reliance on a ruling
If a taxpayer relies on an indirect tax or excise ruling then the Commissioner is legally bound to administer the law in accordance with the ruling.	There is uncertainty about what is required to demonstrate that a taxpayer has relied on a ruling, and thus receive protection from the ruling.
Impact on GST input tax credit	Impact on GST input tax credit
No policy change. However, the application of the law is clarified.	If a taxpayer relies on a ruling from the Commissioner that a supply is either GST-free or input taxed, then they are unable to issue a tax invoice treating that supply as a taxable supply. No input tax credit entitlement arises to the recipient of such a supply.
End dates for rulings	End dates for rulings
No end date applies to an indirect tax or excise ruling unless specified in the ruling.	No end date applies to an indirect tax ruling.

<i>New law</i>	<i>Current law</i>
Stopping relying on a ruling	Stopping relying on a ruling
Taxpayers can expressly stop relying on an indirect tax or excise ruling.	Taxpayers can stop relying on an indirect tax ruling or excise advice.
Oral rulings	Oral rulings
No change.	Oral rulings are not available on GST, LCT, WET or excise matters
Public rulings	Public rulings
A public ruling is a published written ruling labelled as a public ruling on the way in which the Commissioner considers that a relevant provision applies or would apply to entities generally or to a class of entities.	Public indirect tax rulings are all forms of written advice involving the interpretation of indirect tax laws, other than GST private rulings. This is much broader than for the general rulings regime, and in some cases extends to booklets, guides and fact sheets.
Product and class rulings	Product and class rulings
Product and class rulings can be provided for GST, LCT, WET or excise.	Product and class rulings are not provided for GST, LCT, WET or excise.

Detailed explanation of new law

2.10 The amendments include indirect tax rulings and excise advice in the general rulings regime available for income tax and other taxes and are intended to reduce compliance costs for taxpayers by providing generally consistent rules across different taxes. Where necessary limited differences have been maintained for indirect tax and excise rules reflecting the specific characteristics of these taxes.

Inclusion in general rulings regime

2.11 The extension of the general rulings regime to indirect tax rulings and excise advice is achieved by the inclusion of indirect tax, excise duty, net amounts, wine tax credits or administration, and the payment or collection of a net amount or wine tax credit within the scope of the general regime. As the regime applies amongst other things to net amounts, it allows for rulings relating to components that make up the net amount (for example, input tax credits and adjustments). [*Schedule 2, items 50, 52, 55, paragraphs 357-55(fb), (fc), (g), (j) and (k)*]

2.12 This ensures that the common rules for rulings and specific rules for public rulings and private rulings apply to indirect taxes and excise, subject to any specific modifications. This allows the Commissioner to

issue public rulings, including product and class rulings and private rulings to taxpayers that are legally binding on the Commissioner. The adoption of the general rulings regime for indirect tax rulings and excise advice introduces a range of features for indirect tax and excise duty. Some of these features include:

- the Commissioner is able to apply the law if it is more favourable than a ruling;
- public rulings can be made on any matter involved in the application of a provision, including matters relating to administration, procedure, collection and ultimate conclusions of fact;
- private rulings may cover anything involved in the application of the provision, including valuations. The Commissioner may charge for a private ruling on a valuation issue;
- if a taxpayer has applied for a private ruling and the Commissioner has not made the ruling or declined to make the ruling within 60 days, then the applicant can issue a written notice requiring the Commissioner to make the ruling. If the Commissioner does not make the ruling or declines to rule within 30 days, then the taxpayer has an objection right;
- the Commissioner may rely on information from other sources, provided the Commissioner tells the applicant what the information is, and gives them a reasonable opportunity to respond before making the private ruling; and
- the Commissioner can make assumptions about a future event or other matter for a private ruling, provided the Commissioner informs the applicant of the assumptions and gives the applicant a reasonable opportunity to respond.

Right of objection

2.13 With the incorporation of indirect tax and excise rulings into the general rulings regime, taxpayers that obtain an indirect tax or excise private ruling have a right to object against that ruling under subsection 359-60(1). This contrasts with the situation under the current law in which to dispute the Commissioner's interpretation of an indirect tax law, a taxpayer who obtains a private ruling must request that the Commissioner issue an assessment before a right of objection exists against that assessment.

2.14 Consistent with the general rulings regime, if a taxpayer objects to a private indirect tax or excise ruling then their right of objection against an assessment or other decision is limited to matters that were not able to be raised as grounds for objection against the private ruling. This ensures that there is a single avenue to object and prevents duplicate objections from being made. [*Schedule 2, item 37A, section 14ZVA*]

2.15 The amendment also ensures that objections cannot be lodged against a private ruling if other events occur which provide an alternative means to object to an indirect tax or excise liability. These include where a taxable importation or a taxable importation of a luxury car has been made or excisable goods have been (or taken to have been) entered for or delivered into home consumption. [*Schedule 2, item 130, paragraph 359-60(3)(c)*]

2.16 There is a further provision in the case of excise that also prevents duplication of avenues of review where there is an objection to a private ruling in relation to the rate of duty or liability to duty. [*Schedule 2, item 14*]

Other changes

2.17 A new term ‘indirect tax or excise ruling’ is added to the income tax definitions. It includes public or private rulings to the extent they relate to indirect tax or excise duty (or their administration or collection), a net amount (or its administration, collection or payment), or a wine credit (or its administration or payment). The existing definitions of indirect tax rulings are repealed. [*Schedule 2, items 20, 25, 30 and 35, subsection 995-1(1) of the Income Tax Assessment Act 1997*]

2.18 A new term ‘private indirect tax ruling’ is added to the definitions in the taxation administration provisions, and the definition of private ruling has the meaning given in the relevant provision in Schedule 2 to the TAA. [*Schedule 2, items 35D and 36, subsection 2(1) of the TAA*]

2.19 A definition of excise duty has been included to ensure that a common definition of excise duty applies. [*Schedule 2, item 15, subsection 995-1(1) of the Income Tax Assessment Act 1997*]

Existing rules: reliance on Commissioner’s interpretation

2.20 Section 105-60 in Schedule 1 to the TAA provides rules where a taxpayer relies on the Commissioner’s interpretation of the indirect tax law. This section has been repealed as a result of the inclusion of indirect tax rulings and excise advice in the general ruling regime. [*Schedule 2, item 45*]

Additions to the general rulings regime

Inconsistent rulings

2.21 The amendment provides special rules which set out the result for inconsistent indirect tax or excise rulings. [*Schedule 2, item 80, subsection 357-75(1A)*]

Example 2.1

On 16 August 2010, the Commissioner issued a public ruling in relation to the GST treatment of chocolate-covered fruit. On 18 March 2011, he issued another public ruling, which was inconsistent, in part, with the earlier ruling. Taxpayers may rely on either ruling to the extent of the inconsistency, until one of the rulings is withdrawn.

Example 2.2

The Commissioner issued a public ruling on 1 July 2010. On 15 September 2010 the Commissioner issued a private ruling to Steve's Fishing Supplies, which specified that it would apply from 25 October 2010. From that date, the public ruling ceased to apply to Steve's Fishing Supplies to the extent of the inconsistency between the two rulings.

Example 2.3

The Commissioner issued a private ruling to J & M Building Services on 29 July 2010. On 30 December 2010 the Commissioner issued another private ruling to J & M Building Services. The second ruling was silent on the time from which it began to apply. This second ruling is taken to apply from the date it was made, which was 30 December 2010, and from that date, the earlier ruling ceases to apply to J & M Building Services to the extent of the inconsistency between the two rulings.

GST payable

2.22 A feature of the GST is that an amount of an input tax credit that a recipient can claim for a creditable acquisition is directly dependent on the amount of the GST payable by the supplier.

2.23 In business to business transactions, the input tax credits that a recipient claims should match the GST that the supplier pays if the recipient's acquisition is wholly creditable. This is because input tax credits reflect the amount of GST on the supply.

2.24 The GST treatment of a supply will impact on the input tax credits available to a recipient and this reflects the symmetry of the GST

system. This is provided by section 11-25 of the GST Act. The tax invoice is a mechanism for communication between a supplier and a recipient concerning the GST treatment of a supply.

Example 2.4

A supplier issues a tax invoice which includes an amount of GST payable. The recipient will be able to claim an input tax credit provided the requirements of the GST Act are met.

If the supplier issues a tax invoice that shows that no GST is payable, then the recipient will not generally be able to claim an input tax credit.

2.25 The basic rules for working out the GST payable on a supply are contained in Subdivision 9-C of the GST Act. The basic rules may be affected by other provisions in the GST Act and other Acts.

2.26 The GST Act is also supported by various machinery provisions contained in the TAA. In determining the net amount or the amount of GST payable all provisions affecting the taxpayer's liability or entitlement to a refund including provisions contained in the TAA need to be taken into consideration. *[Item 5, section 2-30, GST Act]*

2.27 Under subsection 105-60(2) of Schedule 1 to the TAA in the existing law, a taxpayer could rely on the Commissioner's interpretation where the Commissioner altered a previous indirect tax ruling. The effect of this was that the underpaid amount ceased to be payable. Once an underpaid amount ceases to be payable, this has an impact on the amount of the input tax credit that a recipient can claim for a creditable acquisition.

2.28 This provision ensures that registered recipients are not able to obtain windfall gains by claiming input tax credits on transactions in respect of which GST was not payable because of the existence of a ruling.

2.29 The amendments ensure the same outcome arises under the general rulings regime. As a result, in cases where a ruling has been issued, and the taxpayer relies on the ruling, the amendments expressly confirm that the GST payable on the supply is the amount worked out in accordance with the ruling. *[Schedule 2, item 5, section 2-30; item 10 section, 9-99; item 12, section 11-25 GST Act; items 60 and 65, subsections 357-60(1) and 357-60(3) TAA]*

2.30 The amendments include an example illustrating that in the context of GST relying on a ruling involves acting consistently with the ruling in respect of the relevant transaction by issuing any tax invoice and lodging a GST return in accordance with the ruling. Accordingly, if a

supplier issues a recipient with a tax invoice showing GST payable on a transaction, the recipient's input tax credit entitlement (if any) cannot be affected by a ruling to the supplier providing that the supply is GST-free. [Schedule 2, item 60, subsection 357-60(1)]

Example 2.5

Peter makes ongoing supplies of a particular food item to Lara. Peter obtains a private ruling from the Commissioner that the supplies are GST-free.

In making his December 2010 delivery to Lara, Peter relies on the ruling to:

- not include any GST in the price charged to Lara;
- not issue a tax invoice to Lara;
- lodge his business activity statement (BAS) on this basis; and
- not pay GST in relation to this supply.

As there is no GST payable because the ruling provides that the supply is GST-free and Peter has relied on the ruling, Lara is not able to claim an input tax credit in relation to supplies to which the ruling applies even if the Commissioner's ruling is incorrect.

In March 2011 Peter makes a similar supply to Lara for which Peter would be entitled to rely on the ruling. Peter issues a tax invoice to Lara showing GST payable on the supply. Peter has not relied on the ruling. If the supply is in fact a taxable supply, and Lara's acquisition is a creditable acquisition, Lara can claim input tax credits in respect of the supply.

Fuel tax credits

2.31 The fuel tax credits legislation adopted the general rulings regime when it came into operation on 1 July 2006. Accordingly, no changes have generally been made to the way in which the general rulings regime applies to the fuel tax credits legislation.

Exclusions from the general rulings regime

2.32 There are several areas in which modifications have been made to the general rulings regime so that they do not apply for indirect tax and excise rulings. These include oral rulings, end-dates for private rulings, revised rulings and trustees.

Oral rulings

2.33 Under the general rulings regime, an individual taxpayer may apply to the Commissioner for an oral ruling on how the Commissioner considers the law applies to them. This allows taxpayers with very simple affairs to rely on oral advice in much the same way as written private rulings.

2.34 Oral rulings are not currently available for indirect tax or excise duty. These taxes are business taxes and therefore the advice they seek is not simple non-business advice.

2.35 The amendments provide that taxpayers cannot apply for oral rulings for indirect tax or excise duty or their administration or collection, net amounts or their administration, collection or payment, and wine tax credits or their administration or payment. [*Schedule 2, item 145, subsection 360-5(2A)*]

End-dates for private rulings

2.36 Under the general rulings regime, if a private ruling does not specify an end time, it ceases to apply at the end of the income year or other accounting period in which it started to apply. The reason for having a deemed end time for a private ruling where no end time is specified is to provide certainty about the period covered by the ruling.

2.37 During consultation in the development of the legislative design concerning including indirect tax rulings in the general rulings regime, this was identified as an area where there was a need for a special rule for indirect tax rulings.

2.38 Schedule 2 amends the law so that an indirect tax or excise ruling that does not specify an end time continues to apply until it is withdrawn or replaced by the Commissioner. This is consistent with the existing law for rulings dealing with indirect tax, allowing the Commissioner to set an end date if necessary, but allowing flexibility to provide for unlimited application until the ruling is replaced or withdrawn. [*Schedule 2, item 95 and 98, subsection 359-25(4)*]

Revised rulings

2.39 Under the general rulings regime, the Commissioner cannot revise a private ruling after the scheme to which the ruling relates, or the income year or other accounting period has begun.

2.40 The term ‘scheme’ can capture events or circumstances beyond the supply itself. The general rulings regime treats a scheme as having begun to be carried out when the contract has been entered into.

However, the time when a contract is entered into will be different to the time when taxable supplies are provided under the contract.

2.41 Under the existing law, the Commissioner can change an indirect tax ruling at any time. The flexibility for the Commissioner to withdraw or replace an indirect tax ruling ensures that competing suppliers of goods or services are not disadvantaged in selling to consumers when one supplier obtains a favourable ruling that is not available to its competitors. As discussed below, this is a feature that is preserved in Schedule 2.

2.42 Schedule 2 excludes indirect tax and excise rulings from the general rules in relation to the commencement of the scheme or tax period. The result is that the Commissioner is able to revise an indirect tax or excise ruling and the revised ruling will apply to transactions occurring after that time. The revised ruling only applies to the extent that it is inconsistent with an earlier ruling, and applies from the date it is issued or such later time as specified in the private ruling. [*Schedule 2, item 110, paragraph 359-55(1)(b)*]

2.43 The ability of the Commissioner to specify a later date from which a revised ruling will apply, provides flexibility so that in appropriate cases the Commissioner can provide a reasonable period for taxpayers to take into account the new ruling.

2.44 Under the general rulings regime, a public ruling that relates to a scheme does not apply if the scheme has begun to be carried out when the ruling is published, and a public ruling that is withdrawn continues to apply to schemes that had begun to be carried out before the withdrawal. Schedule 2 modifies these rules in relation to indirect tax and excise rulings as set out above. [*Schedule 2, item 90, subsections 358-10(2) and 358-20(3)*]

Trustees

2.45 The existing general rulings regime will not extend fully to indirect tax and excise where a private ruling is given to a trustee. Under the existing general rulings system, a private ruling given to a trustee also applies to the beneficiaries of the trust. This will not be the case for indirect tax and excise private rulings. An indirect tax or excise private ruling given to a trustee will not apply to a beneficiary of the trust.

2.46 Under the income tax law, beneficiaries may be subject to tax on the income of the trust under section 97 of the *Income Tax Assessment Act 1936*. It is therefore appropriate that they receive the protection of income tax and related private rulings sought by the trustee. However, under the GST, LCT and WET legislation, trusts and beneficiaries are separate entities and GST, LCT and WET obligations are imposed on

trustees and not generally beneficiaries as far as dealings of the trust are concerned.

2.47 Similarly the excise legislation imposes an excise liability on the entity that manufactures or deals with the goods. Accordingly, if a trustee undertakes such activities, excise obligations will not generally be imposed on beneficiaries of the trust.

2.48 However, the general rulings system applies to trusts in other respects. So a private ruling given to a trustee applies to a trustee replacing an earlier trustee.

Application and transitional provisions

Application provisions

2.49 The amendments made by Schedule 2 apply to rulings made on or after 1 July 2010. The amendments also apply in some circumstances to rulings requested before 1 July 2010. This is dealt with in the transitional provisions.

Transitional rules

Indirect tax

2.50 Schedule 2 of the exposure draft applies the general rulings system to labelled public indirect tax rulings and private indirect tax rulings that are in operation immediately before 1 July 2010. This ensures that the adoption of the general rulings regime does not force taxpayers to seek revised rulings or for the Commissioner to need to reissue existing rulings with resulting compliance cost impacts on taxpayers. [*Schedule 2, items 150(2) and (3)*]

2.51 In the case of public indirect tax rulings in operation immediately before 1 July 2010, the ruling must be labelled a public ruling for the general ruling system to apply to it.

2.52 The general rulings regime also applies to an application for a private GST, LCT or WET ruling that is with the Commissioner immediately before 1 July 2010 where the ruling has not been made or the application declined by the Commissioner or the application withdrawn by the taxpayer. [*Schedule 2, item 150(4)*]

Excise

2.53 The amendments ensure that more than one right of objection does not exist (see paragraphs 1.13 to 1.16) following the introduction of a right to object to a private excise ruling from 1 July 2010. However, the amendments do not apply to actions brought prior to 1 July 2010.

[Schedule 2, item 155]

Chapter 3

Tax invoices

Outline of chapter

- 3.1 Schedule 3 to this Bill amends the GST law to simplify the requirements for a document to be a tax invoice by expressing the requirements in a more principled way.
- 3.2 The amendments apply in relation to net amounts for tax periods commencing on and after 1 July 2010.

Context of amendments

Tax Invoices

- 3.3 Tax invoices play an important role in the GST system. They are the mechanism by which the GST treatment adopted by a supplier is communicated to a recipient and reconciled with their treatment of an acquisition.
- 3.4 To ensure this communication occurs, recipients must hold a tax invoice to claim input tax credits for acquisitions over \$75 (excluding GST). Similarly, suppliers must provide a tax invoice within 28 days of being requested by the recipient.
- 3.5 Section 29-70 of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act) and regulations 29-70.01 and 29-70.02 of the *A New Tax System (Goods and Services Tax) Regulations 1999* (GST Regulations) set out the requirements that a document must satisfy in order for it to be a tax invoice.
- 3.6 The current list of requirements is lengthy and prescriptive. The structure of the requirements often means that even if all of the necessary information has been included on a document, errors in the form in which this information is provided or in the structure of the document can mean that the document is not a tax invoice.

Summary of new law

3.7 Schedule 3 amends the present requirements for an invoice to be a tax invoice, replacing the current prescriptive list with equivalent but more flexible principles.

3.8 As a result of this amendment, a document may be a tax invoice if it is issued by the supplier in the approved form and contains sufficient information to allow a number of key matters to be determined, including the supplier's identity and Australian Business Number (ABN), the nature of the supply and the amount of tax payable.

3.9 The amendments will also allow multiple documents issued by the supplier to collectively constitute a tax invoice where, when considered together, they provide all the information needed to satisfy the new requirements.

3.10 As a result of these changes minor errors should no longer result in documents not being tax invoices. Instead documents will generally only fail to constitute a tax invoice where key information has not been provided by the supplier.

Comparison of key features of new law and current law

<i>New law</i>	<i>Current law</i>
Issuer of tax invoices	Issuer of tax invoices
Tax invoices must be issued by the supplier (or by the recipient if they are a recipient created tax invoice).	Tax invoices must be issued by the supplier (or by the recipient if they are a recipient created tax invoice).
Single or multiple documents	Single or multiple documents
A collection of documents may together constitute a tax invoice.	A tax invoice must be a single document.
Information required	Information required
A tax invoice must contain information sufficient to determine: <ul style="list-style-type: none"> • the supplier's identity and ABN; • if the consideration for the supply is \$1000 or more, the recipient's identity and ABN; • what is supplied, including the quantity and price of what is supplied; • the extent to which supplies are 	A tax invoice must contain: <ul style="list-style-type: none"> • the issuer's ABN; • the price of the supply; • the words 'tax invoice' stated prominently; • the date of issue; • the name of the supplier; • a brief description of the thing supplied; and

<i>New law</i>	<i>Current law</i>
taxable; <ul style="list-style-type: none"> the date of issue; and the amount of GST payable. It must also be clear that the document (or collection of documents) is intended to be a tax invoice.	<ul style="list-style-type: none"> a statement all prices are GST inclusive or the amount of GST payable. If the consideration for the supply is \$1000 or more, then additional requirements apply, including that the name of the recipient and their address or ABN be included. Further requirements also apply in a number of other circumstances including where the invoice covers mixed supplies.
Commissioner's discretion	Commissioner's discretion
The Commissioner has a discretion to treat a document or documents that are not a tax invoice as a tax invoice.	The Commissioner has a discretion to treat a document that is not a tax invoice as a tax invoice.
GST groups	GST groups
A document may be a tax invoice, where it identifies as the recipient the GST group or a member of the GST group to which the recipient belongs. A recipient of a supply can require a supplier to provide a tax invoice which identifies the recipient of the supply rather than just the relevant GST group or another member or the representative member of the group.	There are no exceptions to the rules about the contents of a tax invoice for members of GST groups.
Recipient created tax invoices	Recipient created tax invoices
Recipient created tax invoice are not subject to any special requirements.	A separate list of requirements exists for documents to be recipient created tax invoices.

Detailed explanation of new law

Tax invoices

General Requirements

3.11 The amendment repeals and replaces the present requirements for a document to be a tax invoice in section 29-70 of the GST Act and regulations 29-70.01 and 29-70.02 of the GST regulations.

3.12 Following the amendments a document will be a tax invoice if it meets several requirements.

3.13 The first of these is that the document is issued by the supplier, unless it is a recipient created tax invoice, in which case it must be issued by the recipient. *[Schedule 3, item 3, paragraph 29-70(1)(a)]*

3.14 The second requirement is that the document is in the approved form. Consistent with the present rules, this permits the Commissioner to set basic procedural requirements to ensure efficient administration. *[Schedule 3, item 3, paragraph 29-70(1)(b)]*

3.15 The third requirement is that the document contain enough information to allow the determination of:

- the supplier's identity and ABN;
- the identity and ABN of the recipient, if the consideration for the supply is \$1000 or more;
- what is being supplied (including the quantity and price);
- the GST treatment of the supply (eg. to what extent is it taxable);
- the date the document is issued; and
- the amount of GST payable in relation to the supply.

Further matters may be specified by regulation. *[Schedule 3, item 3, paragraph 29-70(1)(c)]*

3.16 As is currently the case, a tax invoice may include more than one supply provided it meets the information requirements for each supply. If the document does not meet the requirements to be a tax invoice for a particular supply or supplies, it remains a tax invoice for other supplies it covers for which it meets the requirements. *[Schedule 3, item 3, subsection 29-70(1A)]*

3.17 A document may be part of multiple tax invoices. It may be a tax invoice for one supply and be part of a collection of documents forming a tax invoice for another. Alternatively, it may be part of two collections of documents forming tax invoices for separate supplies. For example, a document may be issued as a tax invoice for two supplies. It meets all of the requirements for the first supply. However, required information for the second supply is not included and is later supplied on a second document. The first document is a tax invoice for the first

supply. The collection of the first and second documents is a tax invoice for the second supply. [*Schedule 3, item 3, subsection 29-70(1A)*]

3.18 Consistent with the flexible approach underlying these changes, these provisions require key information to be conveyed by the document rather than the inclusion of specific details in a particular format. This allows these conditions to be satisfied in a variety of ways, provided the key information is conveyed by the document. For example, including the amount of GST payable in conjunction with the price will generally be sufficient to make clear the GST treatment of the supply. Likewise, one piece of information may often be sufficient to satisfy more than one condition.

3.19 An important feature of the new requirements is that the document only need contain enough information to allow the key information to be clearly ascertained, rather than contain the information itself. Thus, a requirement can be satisfied even where the information is not specifically stated. For example, the requirement to provide the price of what is supplied could be satisfied by stating a unit price and the quantity or stating the extent to which a taxable supply is taxable and the amount of GST payable.

3.20 However, such information must be able to be clearly determined from the contents of the document. Where the document is not clear or where the information can only be determined by reference to some outside source, then this will not suffice. For example, if a document met all of the requirements to be a tax invoice, but did not contain the ABN, it would not be sufficient if it contained information which would allow the ABN to be found on the Australian Business Register. Information that can be determined in conjunction with an external reference is not information that can be clearly ascertained from the document.

3.21 The final requirement is that the document is clearly intended by the issuer to be a tax invoice. This can involve including the words ‘tax invoice’ on the document. However, other means of communicating this intention are also equally acceptable, ranging from the use of different words (eg. ‘GST invoice’) to the circumstances in which the document is provided (eg. in response to an email requesting a tax invoice). [*Schedule 3, item 3, paragraph 29-70(1)(d)*]

3.22 Two or more documents may together constitute a tax invoice where they collectively satisfy the requirements set out above and at least

one of the documents is an invoice for the transaction.¹ [*Schedule 3, item 3, subsection 29-70(1A)*]

3.23 Such a collection of documents could consist of an invoice issued as a tax invoice but missing key information such as the ABN and a subsequent correcting correspondence or other related document from the supplier containing the missing information. Alternatively, a collection could be made up of a more varied set of documents, such as a number of emails sent by the supplier as part of an exchange settling the nature of the supply, a standard form contract and an invoice for ‘services rendered’.

3.24 Such a collection of documents can satisfy the information requirements if the required information can be determined using material in any of the documents or a combination of the documents. It should be noted though that contradictory material in a collection of documents will make it impossible to clearly ascertain the necessary information (for example, if two different ABNs are provided and none of the other material clarifies which is the correct ABN).

3.25 Similarly, the context in which a collection of documents is provided must be considered in determining if the necessary intention is present for the documents to be a tax invoice. In some cases, while on their face documents may not make clear the intention of the supplier to issue a tax invoice, when the contents of all documents are taken into account, the intention to issue a tax invoice may be clear. For example, a tax invoice could be constituted by a series of notifications lodged through a linked accounting system and correspondence between the parties in which it was agreed these notifications would constitute the tax invoice.

3.26 Despite the changes made to tax invoices, in almost all cases documents satisfying the current requirements will remain tax invoices. This includes retaining the Commissioner’s ability to treat a document that does not satisfy the tax invoice requirements as a valid tax invoice. [*Schedule 3, item 3, subsection 29-70(1B)*]

GST grouping rules

3.27 The amendments also address issues concerning input tax credits that arise in the context of GST groups.

3.28 Under normal circumstances the GST grouping rules mean that all input tax credits are claimed by the representative member on behalf of the GST group. As a result there is generally little significance attached to which particular entity within the GST group made the relevant

¹ An invoice is defined in the GST Act as a document notifying an obligation to make a payment.

acquisition.² However, the correct entity must be identified on the tax invoice. Often this can create difficulties for GST groups and their suppliers, as suppliers may be uncertain which of the grouped entities is making the acquisition.

3.29 The amendments address this situation by modifying the information required for a document to be a tax invoice for acquisitions by a member of a GST group.

3.30 If a document (or collection of documents):

- would be a tax invoice if it contained information from which the recipient's identity and ABN could be readily determined; and
- contains sufficient information to clearly show the identity of the GST group, the representative member or another member of the GST group;

then the document (or collection of documents) is a tax invoice.
[Schedule 3, item 6, subsection 48-57(1)]

3.31 This concession however only applies if the representative entity is entitled to claim an input tax credit for the acquisition. This ensures that the concession only applies to acquisitions by members of the GST group and hence for which the identity of the recipient is important.
[Schedule 3, item 6, paragraph 48-57(1)(c)]

3.32 If another entity is identified in the document rather than the acquiring entity, the concession will only apply if that entity was a member of the GST group at that time. Again, this ensures the concession only applies where it is the representative entity of the group rather than the recipient that is entitled to the credit and hence the identity of the recipient would generally not be significant. *[Schedule 3, item 6, subparagraph 48-57(1)(d)(iii)]*

3.33 Although such a document (or collection of documents) is treated as a tax invoice, it will not satisfy the requirement for suppliers to issue a tax invoice identifying the recipient of the supply or supplies at the request of the recipient. While generally the identity of the particular

² It should be noted, however, that it is still necessary for a particular entity to be able to demonstrate it has made the relevant acquisition in order for a creditable acquisition to arise. This requirement is not modified by the grouping provisions in section 48-45 as these only modify the entity that is entitled to the credit and how creditable purpose is determined. If no entity within a group at the appropriate time can demonstrate they are or were entitled to a credit then it cannot be claimed.

entity making the acquisition is not significant in the context of a GST group, there are circumstances, in which it is important, such as where adjustments arise following an entity leaving the group. This qualification ensures that taxpayers still have a legal right to a more accurate tax invoice should it become necessary, but are not obliged to do so where it is unnecessary. *[Schedule 3, item 6, subsection 48-57(3)]*

Application and transitional provisions

3.34 These amendments will apply in relation to net amounts for tax periods commencing on or after 1 July 2010. *[Schedule 3, item 9]*