

Tax Laws Amendment (Long Term Non-reviewable Contracts) Bill 2004

When the GST legislation was introduced, there were numerous pre-existing contracts where the supply was to be made on or after 1 July 2000. The prices in these contracts were likely to have been determined without regard for the GST. If the GST had been applied immediately to these contracts, suppliers would have had to remit the GST on their supplies. In most cases, suppliers would have had no ability under the contract to pass that cost on to recipients because there was no opportunity to review the consideration in the contract. In contrast, many recipients would have received an input tax credit, despite paying consideration for the supply that excluded the GST, thereby receiving a windfall gain at the expense of the supplier.

The transitional rules in the GST Transition Act allow supplies under contracts entered into before a relevant date (generally 8 July 1999, but where the recipient would not have been entitled to a full input tax credit, 2 December 1998) to remain GST-free until a review opportunity arises. GST will apply normally to those supplies from that point, as suppliers will have had the opportunity to adjust prices to take account of GST, or their prices will reflect a market with GST-inclusive prices. The transition period ends on 30 June 2005, at which point remaining supplies would, under the legislation as it currently stands, become subject to the GST in the normal way.

This new law will:

- insert Division 2 into Part 3 of the GST Transition Act to modify the transitional rules so that suppliers with long-term non-reviewable contracts can negotiate with the recipient to take account of the impact of the New Tax System changes on the supplies; and
- amend section 13 of the GST Transition Act to ensure that after the commencement of this Bill, renegotiations of the contract price to apply from 1 July 2005 will not result in the supply losing its GST-free status before the transition period ends on 30 June 2005, unless the parties agree to change the consideration from an earlier date.

Division 2

Under this division, the recipient will become liable to pay GST where:

- The recipient has notified the supplier that the recipient agrees to pay GST on the supplies; or
- The recipient has failed to accept an arbitrated offer by the supplier to change the consideration for supplies made from 1 July 2005 under a transitional arrangement.

The recipient's entitlement to input tax credits applies in the normal way in respect of GST for which the recipient is liable. However, no tax invoices or adjustment notes are required to be issued in respect of supplies where the recipient is liable for GST on those supplies.

The process for an arbitrated offer is the supplier makes an initial offer to change the consideration for supplies. If this is rejected by the recipient, the supplier can progress the matter to arbitration. The assessor (arbitrator) gives a determination of appropriate changes to the consideration in writing, signed and dated in accordance with the Regulations. This offer is then to be put to the recipient by the supplier and must be left open for 21 days. If the recipient agrees to the offer, the supplier will be liable for GST. If not, the recipient will be liable, as above.