

**PROPOSED AMENDMENT TO THE GST TREATMENT
OF LONG TERM NON-REVIEWABLE CONTRACTS**

The Government has announced a proposal to amend the *A New Tax System (Goods and Services Tax Transition) Act 1999* ("GST Transition Act"). The existing provisions of the GST Transition Act result in certain pre-existing contracts (that do not have review clauses) becoming subject to GST as from 1 July 2005 without the ability of suppliers to recover the GST from the recipients, whilst the recipients would receive an input tax credit.

For example, there are still many leases in existence which were entered into prior to:

- (a) 8 July 1999, where the lessee is entitled to a full input tax credit; or
- (b) 2 December 1998, where the lessee is not entitled to a full input tax credit;

which do not:

- (c) include any GST recovery clauses allowing the lessor to recover GST from the lessee; and
- (d) allow for any review opportunity prior to 1 July 2005.

Pursuant to the current legislation, as from 1 July 2005, such leases would be subject to GST. However, due to the absence of a GST recovery clause in the leases, the lessors would not be able to recover the GST from their respective lessees. This would create the unfortunate result of such lessors losing 1/11th of their rent in GST.

The new proposal from the Government attempts to address this anomaly by amending the GST Transition Act. From 1 July 2005, all suppliers with pre-existing long-term contracts that have not had a review opportunity would be able to recover GST from the recipient, including those contracts where the recipient is not entitled to input tax credits. The amendments will provide as follows:

1. By default, the existing obligation to remit GST from 1 July 2005 will remain with the supplier.
2. However, if the supplier proposes a price adjustment to incorporate GST and the recipient agrees to this price adjustment, the contract will continue to operate under the normal GST rules as from 1 July 2005.
3. In circumstances where the recipient does not accept an appropriate price adjustment proposed by the supplier, the GST liability will be transferred to the recipient and the supplier will collect and remit the GST to the Australian Taxation Office through its current business activity statement. The supplier will be entitled to add ten per cent

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(10%) to the contract price as an explicit collection of tax, rather than a recovery of a cost incurred by the supplier.

4. Recipients will receive input tax credits in the usual manner in accordance with their usual entitlements.

This proposed amendment to the GST Transition Act will not override any specific GST clauses in contracts. Further, it is an option to either the supplier or the recipient to simply accept the GST liability without requiring a price adjustment should the parties, for some reason, wish to avoid disturbing the contract.

Once the precise details for implementation have been finalised and approval has been obtained from all of the States and Territories, legislation to give effect to this proposal will be introduced into Parliament. However, the proposal set out above may be amended during this process and the capacity for suppliers to recover GST in these circumstances will not be certain until legislation has been passed.

If you have any questions regarding these proposed amendments to the GST Transition Act, please contact Vera Visevic on (02) 9233 7788 or send an email to vvisevic@makdap.com.au.

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