

EXPOSURE DRAFT

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Inserts for
**Tax and Superannuation Laws
Amendment (2014 Measures No. 2) Bill
2014: Refunding excess GST**

Commencement information

Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Schedule ??, Parts 1 and 2	The day this Act receives the Royal Assent.	
2. Schedule ??, Part 3	1 July 2018.	1 July 2018

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1 Schedule ??—Refunding excess GST

2 Part 1—Main amendments

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

4 **1 Section 9-99 (at the end of the table)**

5 Add:

10 Excess GST Division 142

6 **2 Subsection 17-5(1) (note)**

7 Repeal the note, substitute:

8 Note 1: For the basic rules on what is attributable to a particular period, see
9 Division 29.

10 Note 2: For further rules if you have excess GST for the period, see
11 Division 142.

12 **3 Section 19-99 (after table item 1AA)**

13 Insert:

1AB Excess GST and cancelled supplies Division 142

14 **4 Subsection 35-5(1) (note 1)**

15 Omit “, and section 105-65 in Schedule 1 to,”.

16 **5 Section 35-99 (after table item 1)**

17 Insert:

1A Excess GST Division 142

18 **6 Section 35-99 (note)**

19 Repeal the note.

20 **7 Section 37-1 (after table item 10A)**

21 Insert:

10B Excess GST Division 142

22 **8 Section 51-60 (note 1)**

23 Omit “, and section 105-65 in Schedule 1 to,”.

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9 Section 54-65 (note 1)

Omit “, and section 105-65 in Schedule 1 to,”.

10 At the end of Part 4-4

Add:

Division 142—Excess GST

Table of Subdivisions

142-A	Excess GST unrelated to adjustments
142-B	GST related to cancelled supplies
142-C	Passed-on GST

142-1 What this Division is about

Excess GST is not to be refunded if this would give an entity a windfall gain.
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Note: Refunding excess GST to a supplier will give it a windfall gain if it has already passed on the excess GST in the price of the supply (and not reimbursed the recipient).

Subdivision 142-A—Excess GST unrelated to adjustments

142-5 When this Subdivision applies

- (1) This Subdivision applies if, after disregarding any amounts covered by subsection (2), your *assessed net amount for a tax period takes into account an amount of GST exceeding that which is payable.

Note: This Subdivision applies whether or not you have paid, or been refunded, the assessed net amount.

Example: Sunny Co mistakenly reports a negative net amount of \$4,000 made up of GST of \$10,000 less input tax credits of \$14,000. In fact, Sunny Co’s GST should have been \$8,000 making its negative net amount \$6,000. Sunny Co has excess GST of \$2,000.

- (2) Disregard the following amounts:
- (a) an amount of GST that was correctly payable and attributable to the tax period, but which later becomes the subject of a *decreasing adjustment;

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(b) an amount of GST that is payable, but is correctly attributable to a different tax period.

142-10 Refunding the excess GST

For the purposes of each *taxation law, so much of the excess from subsection 142-5(1) (the *excess GST*) as you have *passed on to another entity is taken to have always been:

(a) payable; and

(b) on a *taxable supply;

until you reimburse the other entity for the passed-on GST.

Note 1: If you reimburse the passed-on GST so that this section ceases to apply there will be an adjustment event under paragraph 19-10(1)(b) or (c). You will have a decreasing adjustment (see section 19-55) and the other entity may have an increasing adjustment (see section 19-80).

Note 2: Any excess GST you have not passed on will be refunded as described in section 155-75 in Schedule 1 to the *Taxation Administration Act 1953*.

Note 3: While this section applies, paragraph 11-5(b) (about taxable supplies) is satisfied for the corresponding acquisition by the other entity.

142-15 When section 142-10 does not apply

Commissioner satisfied it is inappropriate for that section to apply

- (1) Treat section 142-10 as never having applied to the extent that the Commissioner, on request, is satisfied that its application would be inconsistent with the principle that excess GST is not to be refunded if this would give an entity a windfall gain.

Note: Refusing to make the requested decision is a reviewable GST decision (see Subdivision 110-F in Schedule 1 to the *Taxation Administration Act 1953*).

- (2) A request for a decision under subsection (1) must be made in the *approved form.

If there never was a supply

- (3) Treat section 142-10 as never having applied to the extent that:
- (a) you treated the excess GST as payable on a supply, but in fact there never was a supply; and
- (b) you reimburse the other entity for the *passed-on GST.

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1 Note: If you reimburse the passed-on GST, you will be refunded an
2 equivalent amount as described in section 155-75 in Schedule 1 to the
3 *Taxation Administration Act 1953*.

4 *So far as it relates to your creditable acquisitions*

- 5 (4) Section 142-10 does not apply for the purposes of applying
6 subsection 11-15(2) (about creditable purpose) to you.

7 *If the recipient knows you have not paid the excess GST*

- 8 (5) Section 142-10 does not apply for the purposes of applying a
9 *taxation law to the other entity if, and while, that other entity
10 knows, or could reasonably be expected to have known, that you
11 have not paid the excess GST to the Commissioner.

12 Note: Section 142-10 still applies for the purposes of applying taxation laws
13 to you.

14 **Subdivision 142-B—GST related to cancelled supplies**

15 **142-20 Refunding GST relating to cancelled supplies**

- 16 (1) This section applies if:
17 (a) your *assessed net amount for a tax period takes into account
18 an amount of GST on a supply; and
19 (b) you have a *decreasing adjustment attributable to a later tax
20 period as a result of the cancellation of the supply.
- 21 (2) Reduce:
22 (a) your *decreasing adjustment; and
23 (b) if the *recipient of the supply has a corresponding *increasing
24 adjustment—the recipient's increasing adjustment;
25 to the extent that you have *passed on that GST to the recipient, but
26 not reimbursed the recipient for the passed-on GST.
- 27 (3) This section has effect despite sections 19-55 (about decreasing
28 adjustments for supplies) and 19-80 (about increasing adjustments
29 for acquisitions).

30 **Subdivision 142-C—Passed-on GST**

31 **142-25 Working out if GST has been passed on**

- 32 (1) Some or all of an amount of GST may have been *passed on* to
33 another entity even if:

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- 1 (a) a *tax invoice is not issued to or by that other entity; or
2 (b) a tax invoice issued to or by that other entity relates to that
3 GST, but does not contain enough information to enable that
4 GST to be clearly ascertained.

5 (2) If:

- 6 (a) you issue a *tax invoice to another entity, or another entity
7 issues a *recipient created tax invoice to you; and
8 (b) the invoice contains enough information to enable some or all
9 of an amount of GST to be clearly ascertained; and
10 (c) in a case where you must pay the *assessed net amount for a
11 tax period to which the invoice relates—you have paid that
12 assessed net amount to the Commissioner;
13 the invoice is prima facie evidence of that part of that GST having
14 *passed on to that other entity.

15 **11 Section 195-1**

16 Insert:

17 *passed on* has a meaning affected by section 142-25.

18 **12 Section 195-1 (note at the end of the definition of *taxable*** 19 ***supply*)**

20 Omit “and 113-5”, substitute “, 113-5 and 142-10”.

21 ***Income Tax Assessment Act 1936***

22 **13 Subsection 98A(2) (note)**

23 Omit “, and section 105-65 in Schedule 1 to,”.

24 **14 Subsection 98B(4) (note)**

25 Omit “, and section 105-65 in Schedule 1 to,”.

26 ***Taxation Administration Act 1953***

27 **15 Subsection 110-50(2) in Schedule 1 (after table item 53)**

28 Insert:

53A refusing to make requested decision about excess subsection 142-15(1)
GST

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1 **16 Application of amendments**

2 The amendments made by this Part apply in relation to working out
3 your net amount for a tax period starting on or after the day after this
4 Act receives the Royal Assent.

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1 **Part 2—Amendments about review**

2 **Division 1—Old law refund decisions are reviewable**

3 ***Taxation Administration Act 1953***

4 **17 After paragraph 14ZW(1)(bg)**

5 Insert:

6 (bh) if the taxation objection is made under section 105-65 in
7 Schedule 1 to this Act (about GST refunds)—at least one of
8 the following periods:

- 9 (i) 60 days after notice of the taxation decision to which it
10 relates has been served on the person;
11 (ii) 4 years after the end of the tax period to which that
12 decision relates; or

13 **18 At the end of subsection 14ZW(1)**

14 Add:

15 Note: Paragraph (bh) will be repealed on 1 July 2018: see Part 3 of Schedule
16 ?? to the *Tax and Superannuation Laws Amendment (2014 Measures*
17 *No. 2) Act 2014*.

18 **19 Subsection 105-65(2) in Schedule 1**

19 After “the following amounts”, insert “that relate to a *tax period
20 starting on or before the day the *Tax and Superannuation Laws*
21 *Amendment (2014 Measures No. 2) Act 2014* receives the Royal
22 Assent”.

23 **20 At the end of section 105-65 in Schedule 1**

24 Add:

25 (3) You may object, in the manner set out in Part IVC, against a
26 decision you are dissatisfied with that was made under
27 subsection (1).

28 Note: This section will be repealed on 1 July 2018: see Part 3 of Schedule ??
29 to the *Tax and Superannuation Laws Amendment (2014 Measures*
30 *No. 2) Act 2014*.

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1 Division 2—Validating certain past objections and 2 reviews

3 21 Definitions

4 In this Division:

5 *AAT* means the Administrative Appeals Tribunal.

6 *refund decision* means a decision under subsection 105-65(1) in
7 Schedule 1 to the *Taxation Administration Act 1953*.

8 22 Validating objections, Commissioner decisions and AAT 9 decisions

10 *Validating objections, Commissioner decisions and AAT*
11 *decisions*

12 (1) This item applies to each of the following things:

13 (a) an objection, purportedly made before 28 June 2013 as a
14 taxation objection under section 105-40, or
15 Subdivision 155-C, in Schedule 1 to the *Taxation*
16 *Administration Act 1953* against a refund decision;

17 (b) a decision of the Commissioner, purportedly made before the
18 commencement of this Division under Part IVC of that Act in
19 relation to an objection covered by paragraph (a);

20 (c) a decision of the AAT, purportedly made before the
21 commencement of this Division in relation to a decision
22 covered by paragraph (b);

23 (d) any other thing, purportedly done before the commencement
24 of this Division under or in relation to Part IVC of that Act
25 (other than an order purportedly made by a court) in relation
26 to an objection covered by paragraph (a) or a decision
27 covered by paragraph (b) or (c);

28 to the extent that, apart from this item, the thing would not be valid or
29 effective because taxation objections are unable to be made under
30 section 105-40, or Subdivision 155-C, in Schedule 1 to that Act against
31 refund decisions.

32 (2) The thing is as valid, and is taken always to have been as valid, as it
33 would have been if:

34 (a) taxation objections were able to be made under
35 section 105-40, or Subdivision 155-C, in Schedule 1 to that
36 Act against refund decisions; and

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(b) refund decisions were taxation decisions for the purposes of Part IVC of that Act.

No second objection available

- (3) Despite subsection 105-65(3) in Schedule 1 to the *Taxation Administration Act 1953*, a taxation objection cannot be made under that subsection against a refund decision that is the subject of an objection covered by paragraph (1)(a).

23 Extension of time for lodging an objection

- (1) Subitem (3) applies if, on 28 June 2013, a person has not lodged, and was not prevented by section 14ZW of the *Taxation Administration Act 1953* from lodging, a purported taxation objection under section 105-40, or Subdivision 155-C, in Schedule 1 to that Act against a refund decision.
- (2) When considering section 14ZW of that Act under subitem (1), assume that such a purported taxation objection would have been a valid taxation objection.

Extension of time for lodging an objection

- (3) The person may lodge a taxation objection, under section 105-65 in Schedule 1 to that Act against that refund decision, before the end of whichever of the following ends last:
- (a) 60 days after notice of the refund decision has been served on the person;
 - (b) 4 years after the end of the tax period to which the refund decision relates;
 - (c) 60 days after the commencement of this Division.
- (4) Subitem (3) applies despite paragraph 14ZW(1)(bh) of that Act.

24 Extension of time for pending objections etc.

- (1) This item applies if:
- (a) before 28 June 2013, a person lodged an objection covered by paragraph 22(1)(a); and
 - (b) on or after that day, the person was capable of taking further action under, or as described in, Part IVC of the *Taxation Administration Act 1953* in relation to that objection; and
 - (c) the person chose not to take that action; and

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1 (d) by the commencement of this Division, the period of time in
2 or as described in Part IVC of that Act for taking that action
3 has expired.

4 (2) Part IVC of that Act, and the *Administrative Appeals Tribunal Act 1975*,
5 apply as if that period of time were reset so as to be 60 days starting at
6 the commencement of this Division.

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1 **Part 3—Amendments commencing on 1 July 2018**

2 *Taxation Administration Act 1953*

3 **25 Paragraph 14ZW(1)(bh)**

4 Repeal the paragraph.

5 **26 Subsection 14ZW(1) (note)**

6 Repeal the note.

7 **27 Section 105-65 in Schedule 1**

8 Repeal the section.

9 **28 Transitional**

10 Despite the repeals made by this Part, the following provisions continue
11 to apply, on and after 1 July 2018, in relation to amounts that relate to a
12 tax period starting on or before the day this Act receives the Royal
13 Assent:

14 (a) paragraph 14ZW(1)(bh) of the *Taxation Administration Act*
15 *1953*;

16 (b) section 105-65 in Schedule 1 to that Act.