



Australian Government

The Treasury

REFUNDING EXCESS GST

SUMMARY OF CONSULTATION PROCESS

The Government announced changes to the refund provisions for overpaid GST on 17 August 2012. Changes to the refund provisions were initially recommended by the Board of Taxation's *Review of the Legal Framework for the administration of the GST*. These changes clarify the circumstances in which the restriction on GST refunds applies to overpayments of GST and allows taxpayers to self-assess their entitlement to a GST refund by reference to ascertainable criteria.

This measure was included in Tax Laws Amendment (2013 Measures No.4) Bill 2013, which was introduced into Parliament on 26 June 2013.

Consultation process

Consultation on initial draft legislation was conducted between 17 August 2012 and 14 September 2012 and in response to a number of concerns raised during that public consultation significant redrafting was undertaken. Due to the significant changes it was considered desirable to have a further round of consultation on the revised draft legislation and this was conducted between 26 February 2013 and 26 March 2013. Thirteen submissions were received for the first round and nine submissions for the second round.

Submissions can be viewed on the [Treasury website](#).

Summary of key issues

Submissions received on the first round of consultations were released along with the revised draft legislation which attempted to address many of the concerns raised in those submissions.

Respondents to the second consultation noted that the revised draft was a substantial improvement on the first exposure draft. However, most suggested there was still room for improvement.

In particular:

- the view was again expressed that in the case of supplies of real property the price was set by the market and as such GST was not passed on in the price
- how were recipients going to establish that the supplier has remitted the GST on the taxable supply to them
- the introduction of new terms such as 'excess refund' and 'passing-on' required defining; and
- the lack of symmetry in some of the provisions proposed.

Concerns were also expressed about how this measure may impact on the value of transactions for stamp duty purposes.



Australian Government

The Treasury

Whilst also welcoming the reintroduction of a discretion for the Commissioner, respondents considered it to be unduly restrictive and unlikely to operate except in limited circumstances. Respondents again were concerned with the start date of the provision particularly given that the announcement was made on 17 August 2012 and was unlikely to be legislated for some time. Some argued that the proposed section 142-20 was unnecessary given the result in the Qantas case but that if it was retained a further provision should be included that reduces the recipient's increasing adjustment where GST had been passed on but not reimbursed.

The provision outlining the Commissioner's discretion has been re-worded to clarify its application along with additional examples in the Explanatory Memorandum. A note was added to the legislation to remove any doubt that where a supply has been deemed as always taxable, the recipient of that supply is taken to have made an acquisition. Notes regarding the application of the adjustment provisions have been replaced with a specific subsection to ensure the excess refund provisions work effectively with other aspects of the GST law. A note has been inserted to clarify that the Commissioner's decision not to pay a GST refund is a reviewable GST decision.

Additional examples were added and further changes made to some of the examples in the Explanatory Memorandum to address some of the other concerns expressed in submissions, in particular how the excess refund provisions will apply in certain supplies involving the margin scheme.

In recognition that it is likely that a significant delay will arise between the initially announced start date and the passage of this measure, the application date has been revised to refund claims made after the introduction of the legislation. The relevant legislation was introduced on 26 June 2013.

Feedback

Feedback on the consultation process for this measure can be forwarded to consultation@treasury.gov.au. Alternatively, you can contact Rob Dalla-Costa on (02) 6263 3328.

Thank you to all participants in the consultation process.