

EXPOSURE-DRAFT

1 Inserts for

2 **Tax Laws Amendment (2013 Measures**
3 **No. 2) Bill 2013: Refunding excess GST**
4

EXPOSURE DRAFT

5 **Commencement information**

Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1.		
2. Schedule ??	The day this Act receives the Royal Assent.	
3.		

6 **Schedule ??—Refunding excess GST**
7

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

9 **1 Subsection 17-5(1) (note)**

10 Repeal the note, substitute:

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

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

15 **2 Section 19-99 (after table item 1AA)**

16 Insert:

1AB Excess GST and cancelled supplies Division 142

17 **3 Subsection 35-5(1) (note 1)**

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

19 **4 Section 35-99 (after table item 1)**

20 Insert:

1A Excess GST Division 142

21 **5 Section 35-99 (note)**

1

EXPOSURE-DRAFT

EXPOSURE-DRAFT

1 Repeal the note.

2 **6 Section 37-1 (after table item 10A)**

3 Insert:

10B Excess GST

Division 142

4 **7 At the end of Part 4-4**

5 Add:

6 **Division 142—Excess GST**

7 **Table of Subdivisions**

8 142-A Excess GST unrelated to adjustments

9 142-B Excess GST related to cancelled supplies

10 **142-1 What this Division is about**

11 Amounts of excess GST will not be refunded if this would give an
12 entity a windfall gain.

13 Note: Refunding excess GST to a supplier will give it a windfall gain if it
14 has already passed on the excess GST in the price of the supply (and
15 not reimbursed the recipient).

16 **Subdivision 142-A—Excess GST unrelated to adjustments**

17 **142-5 When this Subdivision applies**

18 (1) This Subdivision applies in relation to the amount in subsection (2)
19 if your *assessed net amount for a tax period takes into account an
20 amount of GST exceeding that which is payable.

21 Note: This Subdivision can apply whether or not you have paid, or been
22 refunded, the assessed net amount.

23 (2) The amount (the *extra GST*) is the excess GST less any of it that:
24 (a) is covered by a *decreasing adjustment attributable to a later
25 tax period; or
26 (b) is correctly attributable to a different tax period.

27 Example: Sunny Co mistakenly reports a negative net amount of \$4,000 made
28 up of GST of \$10,000 less input tax credits of \$14,000. In fact, Sunny
29 Co's GST should have been \$8,000 making its negative net amount
30 \$6,000. Sunny Co has extra GST of \$2,000.

EXPOSURE-DRAFT

142-10 Refunding extra GST

(1) For the purposes of each *taxation law, so much of the extra 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 subsection ceases to apply, you may have a decreasing adjustment (see section 19-55) and the other entity may have an increasing adjustment (see section 19-80).

Note 2: The rest of the extra GST will be refunded as described in section 155-75 in Schedule 1 to the *Taxation Administration Act 1953*.

(2) Subsection (1) does not apply for the purposes of how subsection 11-15(2) (about creditable purpose) applies to you.

(3) Subsection (1) does not apply to the extent that the Commissioner is satisfied that a refund of the extra GST:

- (a) would flow to the entity that has effectively borne the cost of the extra GST; and
- (b) would not give an entity a windfall gain.

(4) Subsection (1) does not apply for the purposes of applying a *taxation law to the other entity if, and while, that other entity knows, or could reasonably be expected to have known, that you have not paid the extra GST to the Commissioner.

Note: Subsection (1) still applies for the purposes of applying taxation laws to you.

142-15 Working out if the extra GST has been passed on

For the purposes of section 142-10:

(a) some or all of the extra GST may pass on to the other entity even if:

- (i) a *tax invoice is not issued to or by that other entity; or
- (ii) a tax invoice issued to or by that other entity relates to that extra GST, but does not contain enough information to enable that extra GST to be clearly ascertained; and

(b) if:

- (i) a tax invoice is issued to or by the other entity; and
- (ii) it contains enough information to enable some or all of the extra GST to be clearly ascertained;

EXPOSURE-DRAFT

1 the tax invoice is prima facie evidence of that part of the
2 extra GST having passed on to that other entity.

3 **Subdivision 142-B—Excess GST related to cancelled supplies**

4 **142-20 Refunding excess GST relating to cancelled supplies**

5 (1) If:

6 (a) your *assessed net amount for a tax period takes into account
7 an amount of GST on a supply; and

8 (b) you have a *decreasing adjustment attributable to a later tax
9 period as a result of the cancellation of the supply;

10 the decreasing adjustment is reduced to the extent that you have
11 passed on that GST to the *recipient of the supply, but not
12 reimbursed the recipient for the passed-on GST.

13 (2) Subsection (1) has effect despite section 19-55 (which is about
14 decreasing adjustments for supplies).

15 **8 Section 51-60 (note 1)**

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

17 **9 Section 54-65 (note 1)**

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

19 **10 Section 195-1 (note at the end of the definition of *taxable*** 20 ***supply*)**

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

22 ***Income Tax Assessment Act 1936***

23 **11 Subsection 98A(2) (note)**

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

25 **12 Subsection 98B(4) (note)**

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

27 ***Taxation Administration Act 1953***

28 **13 Section 105-65 in Schedule 1**

29 Repeal the section.

EXPOSURE-DRAFT

1 **14 Application of amendments**

2 The amendments made by this Schedule apply in relation to working
3 out your net amount for a tax period starting on or after 17 August
4 2012.

5