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Add on 1: input tax credit entitlements

- If the excess GST amount arose from the treatment of a supply as a taxable supply, or of an arrangement as giving rise to a taxable supply, then for the purposes of s 11-5(b) of the GST Act, it is treated as a supply that is a taxable supply.
 - In conjunction with core rule about treating the amount of GST as properly payable, this should entitle the relevant recipient to an input tax credit if it is for a creditable purpose.

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FOI 2459
Document 2

DRAFT WORKING DOCUMENT

Refunding excess GST (Exposure Draft 17 August 2012]

Issues register and analysis of stakeholder concerns

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	Issue	Source	Description	Current Status / Possible Response
<h1>S 22</h1>				
4.	Preserving Input tax credit entitlements for mischaracterisations	<i>Internal</i>	Section 36-5 does not actually protect a recipient's input tax credit entitlement where the supply is not a taxable supply.	<p>The Explanatory Memorandum states that the ITCs will be protected if the supply was otherwise a taxable supply. We note that PSLA 3521 provides that the Commissioner will generally not require the repayment of input tax credits in most cases.</p> <p><i>[Confidential: We may need to escalate the note to a provision and could deem the requirement in paragraph 11-5(b) as being satisfied for the purposes of retaining ITCs already claimed.]</i></p>

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We could also include an example or two in the EM to illustrate how subsection 142-10(1) will affect when the recipient is entitled to claim ITCs.

Example 1.##

On 15 July 2013 Williams Enterprises makes a supply of goods to McConnell Enterprises for \$110, including a GST of \$10. McConnell Enterprises is registered for GST and the acquisition is for a creditable purpose, but it incorrectly treats a GST-free supply as a taxable supply. Williams Enterprises includes the amount of GST in the price of the supply and on a tax invoice issued to McConnell Enterprises. On 15 October 2013, Williams Enterprises lodges its quarterly GST return for the tax period ending 30 September 2013 and remits an assessed net amount for that tax period which takes into account the GST payable of \$10 for the supply made to McConnell Enterprises. Williams Enterprises pays this amount to the Commissioner under section 33-3.

The additional \$10 exceeds what was payable. Therefore, the \$10 is an amount of excess GST to which section 142-5 applies. The excess GST paid by McConnell Enterprises will continue to be treated in the same way as GST payable on the transaction for the purpose of working out the amount of its input tax credits under Division 11. Williams Enterprises has not reimbursed McConnell Enterprises for the passed-on GST. Therefore, the excess GST is treated as always having been payable and the supply is treated as always having been a taxable supply. O'Connell Enterprises is therefore entitled to claims input tax credits under section 11-20 for the \$10 of extra GST paid on the supply acquired by it.

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