THE TAX INSTITUTE

26 March 2013

Ms Brenda Berkeley
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Indirect, Philanthropy and Resource Tax Division
The Treasury
Langton Crescent
PARKES ACT 2600

Attn: Mr Rob Dalla-Costa

By email: gstpolicyconsultations@treasury.gov.au

Dear Ms Berkeley,

Refunding Excess GST – Exposure Draft

The Tax Institute is pleased to have the opportunity to make a submission to the Treasury in relation to the *Refunding Excess GST – Exposure Draft* (**Exposure Draft**).

Summary

Our submission below addresses issues arising in respect of the Exposure Draft. Much improvement has been made to these draft provisions since they were first released in exposure draft form on 17 August 2012.Though much closer to the policy intent behind these draft provisions, the current Exposure Draft still poses some concerns. In particular:

- Some suggested amendments to the operative provisions have been included in Appendix A to ensure the provisions will operate consistently with the rest of the GST law and not give rise to unintended outcomes;
- We have suggested some amendments to clarify the ambit of the Commissioner's discretion; and
- To avoid compliance issues for taxpayers, we suggest a start date coinciding with Royal Assent rather than the date of the announcement.

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Discussion

1. Original Policy Intent of an "excess refunds" provision

The original policy intent behind section 105-65 of Schedule 1 to the *Taxation Administration Act 1953* (Cth) (TAA) was that

> "Ordinarily, if GST has been overpaid or entitlements to credits have been understated the Commissioner is obliged to refund the amount overpaid or credit understated"[1].

Section 105-65[2] operates as an exception to the general rules to ensure that the Commissioner is not required to refund GST in circumstances where a supplier has passed on the GST and receives a "windfall gain". In such circumstances, it is contemplated that the supplier would be required to refund the overpaid GST to the consumer of the goods and services prior to a refund being payable[3].

In this respect, section 105-65 reflects similar provisions that had previously operated under the *Sales Tax Assessment Act,* which limited the Commissioner's obligation to refund tax overpaid

> "unless the Commissioner is satisfied that the tax has not been passed on by the person to another person or, if passed on by the person to another person, has been refunded by the person to the other person"[4].

The provisions specifically allowed for the payment of a refund where sales tax had not been passed on or where the sales tax had been refunded. The provisions now found in section 105-65 were intended to introduce an equivalent regime in respect of GST. However, unlike the equivalent sales tax provisions, the GST administrative provisions do not codify the taxpayer's entitlement to a refund of tax overpaid. Therefore, in the context of section 105-65, it is unclear whether the section operates to give the Commissioner discretion to pay refunds or discretion to withhold refunds of overpaid tax.

In addition, emanating from recent case law[5], a question of policy has arisen as to whether a section such as section 105-65 should be able to deal with the circumstances where an incorrect amount of GST has been remitted to the Commissioner either as a result of a mischaracterisation of a transaction or a miscalculation of the amount of GST that should have been remitted on the taxable supply made.

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[1] See paragraph 3.39 of the Explanatory Memorandum to *the GST Administration Bill 1998* (Cth).
[2] Originally enacted as s. 39(3) of the TAA.
[3] See paragraph 3.40 and 3.41 of the Explanatory Memorandum to *the GST Administration Bill 1998* (Cth).
[4] S. 11 of the *Sales Tax Assessment Act (*No. 6) 1930 (Cth) as it applied historically.
[5] *International All Sports v Commissioner of Taxation* [2011] FCA 824 identified the fact that section 105-65 only applied to mischaracterisations and had no application to miscalculations.

The Assistant Treasurer's announcement[6] on 17 August 2012 stated that the draft legislation would clarify the circumstances in which the restriction on GST refunds would apply to overpayments of GST "…and allows taxpayers to self-assess their entitlement to a GST refund by reference to ascertainable criteria". These same ascertainable criteria are also to apply to refunds of GST where there has been a miscalculation of the GST.

Proposed Division 36 issued in exposure draft form at the same time contained the first iteration of the rules intended to replace section 105-65 and bring the rules into the *A New Tax System (Goods and Services Tax) Act* 1999 (Cth) (**GST Act**). Many concerns were highlighted with Division 36, particularly that it did not address the stated policy intent behind having such a provision and went well beyond addressing the issues that have been identified with section 105-65.

Proposed Division 142 is a second iteration of the rules to replace section 105-65 and bring this provision into the GST Act. The policy intent behind Division 142 is to ensure that taxpayers do not obtain a windfall gain, irrespective of how the overpayment of GST arises[7].

Division 142 comes much closer to meeting the stated policy intent and addressing the issues identified with section 105-65. It mostly succeeds in ensuring the provision can operate in the context of a self-assessment system. However, it presents its own set of concerns.

2. Operative provisions of proposed Division 142

a) When Division 142 applies

Draft section 142-5 sets out when Division 142 will apply and defines a new term, "extra GST", that is the crux of this division. There is confusion between the "amount" referred to in subsection 142-5(1) and subsection 142-5(2) and whether these are intended to be the same amount or different amounts. An interpretation of these subsections suggests these amounts are different. That is, the "amount" in subsection 142-5(1) refers to all GST in excess of what should have been payable by the taxpayer. The "amount" in subsection 142-5(2) refers to the new term "extra GST" which, by definition, is an amount less than the excess GST referred to in subsection 142-5(1).

We suggest Treasury clarify these subsections by ensuring the use of the term "amount" is clarified. We have attached in Appendix A some suggested mark-ups to clarify what may be intended here for Treasury's consideration.

In addition, subsections 142-5(2)(a) and (b) restrict the application of Division 142 where the extra GST amount is covered by a decreasing GST adjustment attributable

[6] *Assistant Treasurer Media Release* No. 86, 17 August 2012
[7] Paragraphs 1.17 and 1.19 in the EM

to a later period or is correctly attributable to a different tax period (i.e. a timing difference).

This leaves in question what happens when the extra GST is identified and adjusted for in the same tax period in which it first arose. The Commissioner's view, as set out at paragraph 15 of GSTR 2000/19, is that no adjustment arises, where the adjustment event occurs in the same period.

For example, a taxpayer agrees with a recipient to make a taxable supply for a price of $1,100. The taxpayer accounts for GST of $100 and issues a tax invoice to the recipient. In the same tax period, an event arises which causes the supply to stop being a taxable supply. The price remains the same. No refund is given to the recipient because the price has remained the same. There is no corresponding decreasing adjustment and the GST is not attributable to any other tax period. Provided the taxpayer identifies the adjustment in the current tax period, it will not be required to account for GST.

Similarly, if the adjustment event occurs in a different period, the taxpayer will also be entitled to a decreasing adjustment for the GST. However, in the event that the adjustment happens in the same tax period (meaning there is no decreasing adjustment), and the taxpayer incorrectly accounts for the GST (for example, because it is unaware of the event which caused the supply to stop being taxable), section 142-5 has the effect of denying the taxpayer a refund of the GST that it would otherwise be entitled to.

The Tax Institute is of the view that a taxpayer should be able to self-assess a refund under Division 142 even where the mischaracterisation occurs within the same tax period. Section 142-5(2) should be amended to reflect this.

b) Refunding extra GST

(i) Subsection 142-10(1)

General operation

Subsection142-10(1) deems that extra GST has always been payable on a taxable supply until the extra GST that has been passed-on is reimbursed to the entity to whom the GST was passed on.

There is a clear attempt to deem the extra GST as always having been payable by the taxpayer for the purpose of the GST law (regardless of whether it actually was payable or not) and remains so until the taxpayer can show the extra GST has been reimbursed. After this, the taxpayer is then eligible to obtain a refund. The subsection works fairly well as far as it applies to taxpayers (suppliers) with GST liabilities as it contains objective criteria and therefore, at first instance, allows a taxpayer to self-assess entitlement to a refund.

However, the position is not clear for the other entity (recipient) referred to in the provision to whom the GST has been passed on. Though this may be intended, on the face of the draft provision, it is not clear if the recipient is also deemed to have made an acquisition for which they may be entitled to claim an input tax credit on account of having paid GST on the acquisition.

We have suggested wording in Appendix A to clarify that the other entity, the recipient, is making an acquisition in respect of which they are entitled to an input tax credit subject to satisfying the normal rules for an input tax credit. We also suggest inclusion of some examples in the Explanatory Memorandum (**EM**), or perhaps building on the existing examples in the EM (for example, Example 1.8) to illustrate how section 142-10(1) will affect when the recipient is entitled to claim input tax credits.

Timing

The timing as to when the GST has or has not been passed on is also unclear on the face of the draft provision. It would be useful if Treasury could include some guidance in the EM regarding when the GST is taken to have been passed on (or not).

For example, is GST passed on when the tax invoice is issued or is it when the tax invoice is paid? If it is when the tax invoice is issued, issues arise under section 142-20, as the taxpayer may not be in a position to reimburse the recipient for GST, as no amount of GST has been paid by the customer.

(ii) Subsection 142-10(2)

If a taxpayer incorrectly treats a supply as taxable, passes on the GST, realises the supply should have been treated as input taxed and is unable to refund the GST to the recipient, the Commissioner will receive a double windfall. The supplier will not be entitled to a refund from the Commissioner of GST incorrectly paid on what would have been, in the absence of Division 142, the input taxed supply as they have no cause to refund the GST to the recipient of the supply. At the same time, the supplier will be denied input tax credits on acquisitions made in making what would have been an input taxed supply.

If the supply is taken to be taxable for the payment of GST, then it should be also be taxable for the purposes of the related input tax credits. This is a fundamental premise on which the GST Act is based – as noted in paragraphs 1.4 and 1.5 of the draft EM, which state:

> 1.4 The scheme of the GST Act is premised on the following principles (see Chapter 1 of the Executive Summary in the Explanatory Memorandum to the A New Tax System (Goods and Services Tax) Bill 1998:
>
> - GST is remitted by suppliers who make supplies in carrying on their enterprise. Suppliers do not bear the GST because the tax is included in the price of what they supply;
> - GST is effectively borne by private consumers when they acquire anything to consume; and

- To ensure that GST is effectively borne by consumers, anyone who is registered is generally entitled to an input tax credit for the GST on what they acquire or import for the purpose of their enterprise.

1.5 Accordingly, the scheme of the GST Act envisages that the supplier 'passes on' the GST to the recipient of the supply and there should not be a refund where it may result in a windfall gain. Symmetry is also maintained between the GST payable and the corresponding input tax credit which may be claimed by a GST registered recipient.

The Tax Institute is of the view that inclusion of subsection 142-10(2) is unwarranted and contradictory to the premise on which Division 142 is based.

(iii) Subsection 142-10(4)

Subsection 142-10(4) appears to operate as an integrity measure to deny a recipient input tax credits in certain circumstances. The provision may be aimed at preventing the claim of input tax credits by entities who have received tax invoices from related parties, but the other party has not remitted any GST (for example, they are not actually carrying on an enterprise).

The provision suggests that a recipient should know whether the supplier has or has not paid extra GST to the Commissioner. It is not clear what Treasury intends here. Is Treasury, for example, expecting recipients to make enquiries of their suppliers to determine whether the suppliers have remitted the GST to the Commissioner? If a recipient is always expected to find out whether the supplier has or has not remitted the GST to the Commissioner on the supply made to the recipient, this creates an unacceptable administrative burden on both recipients and suppliers.

The Tax Institute also raises concerns about the use of the phrase "and while" in this subsection. Some clarification should be provided as to how this is intended to apply in practice. Is it intended that the recipient may claim the input tax credits if it doesn't know and cannot be reasonably expected to know that the supplier has not remitted the GST, but must then repay the input tax credits if it comes to know that the supplier has not remitted the GST (e.g. because it reads about a dispute between the supplier and the Commissioner in the tax press)? Is it also possible that a recipient may know that a supplier has not remitted the GST and is therefore not entitled to claim input tax credits, but later ceases to be informed of the supplier's actions and so becomes entitled to make a claim?

We illustrate with an example below:

(A) A recipient, who accounts for GST on a monthly basis, purchases goods from a small business which accounts for GST on a quarterly basis. In preparing its BAS for January 2013, the recipient discovers that GST has been incorrectly charged by the small business. The small business will not have paid the GST to the Commissioner as it accounts for GST on a quarterly basis. Is it reasonable for the recipient to have expected that the small business has not remitted the GST to the Commissioner as it is a small business which is likely to

account for GST on a quarterly basis? What enquiries does the recipient need to make in order to ascertain that it acted reasonably?

(B) In the same scenario, the recipient claims the input tax credits assuming, incorrectly that the small business has paid the GST on to the Commissioner. In March 2013, the recipient discovers that the small business went into liquidation at the end of January 2013, and it is likely it did not pay any GST onto the Commissioner. Does the recipient now need to go back and amend its BAS for January 2013, as it now knows the small business did not pay the GST to the Commissioner? Should the recipient be reasonably expected to know the small business did not pay the GST as it went into liquidation in January 2013?

In our view, Division 165 of the GST Act may already work sufficiently to - despite the GST amount having been passed on – guard against contrived arrangements that Treasury may be concerned about and will significantly increase the cost of GST administration for business, as it will now require a recipient to ascertain whether the supplier has in fact paid its GST liability. However, if subsection 142-10(4) is to be retained, we request that Treasury include an example in the EM of the kind of situation to which this provision is intended to apply and make clear the mischief that the provision is intended to address.

3. Commissioner discretion – section 142-10(3)

We understand that section 142-10(3) is intended to provide the Commissioner with limited discretion to deem an amount of extra GST not to be payable where the Commissioner is satisfied that a refund of the extra GST would flow through to the entity who has borne the cost of the GST and there would not be any windfall gain to the taxpayer (supplier).

We have suggested some amendments to this subsection (contained in Appendix A) to clarify that the extra GST is not deemed to be payable where the Commissioner is satisfied of the elements in subsections (3)(a) and (b).

Subsection 142-10(3)(a) also appears to require that the GST flow through a chain of entities to the final consumer. We query the necessity of including this subsection as it is not clear. It would be useful if examples of the circumstances to which this subsection is intended to apply were included in the EM.

We query what the term “flow” is intended to mean in this circumstance. Does it relate to passing on GST between two parties only, or through a chain involving intermediaries until it rests with the final consumer? In practical terms, how is a supplier meant to prove the extra GST has flowed through a chain of intermediaries to the final consumer?

Example 1.12 in the EM that is intended to illustrate the circumstances where the Commissioner’s discretion has been applied is not a very useful example as Entity A who has remitted the GST to the Commissioner has not passed the GST on to anyone.

It is Entity B that passed the GST on to Eric Pty Ltd. Therefore there is no real need for the Commissioner to exercise discretion in this case. We suggest an example properly demonstrating when the Commissioner has had to exercise discretion be included in the EM. Perhaps existing Example 1.12 might be a good example of how the discretion might apply if Entities A and B are grouped for GST (instead of not being grouped per the facts in the example). Though, we note we are unsure how this provision is intended to apply to GST groups either. Treasury should give some consideration to this issue; perhaps inclusion of a simple amendment to Division 48 may be enough to clarify this.

The provision also has the potential to cause hardship for an intermediary. Take an example where Entity A sells crackers to Supermarket Co who in turn sells the crackers to consumers. Entity A and Supermarket Co incorrectly treat the supplies as taxable, but a large court decision clarifies that the supply is GST-free. Consequently Entity A offers to refund consumers for the GST incorrectly charged. As Entity A has paid the GST refund to the end consumer, subsection 142-10(3) should operate, meaning that subsection 142-10(1) will not apply. This means Entity A will be entitled to a refund of the GST. However, it will also mean that Supermarket Co is no longer entitled to an input tax credit, as the supply to it is no longer a taxable supply.

We also raise concerns regarding the situation where a supply is not taxable and the Commissioner treats the supply as taxable. The Commissioner can make a mistake in assessing the taxpayer and cause an amount of extra GST to be included in the taxpayer's assessed net amount. Even if the Commissioner is overturned on objection or appeal, Division 142 may still apply so as to make the taxpayer liable to pay that excess GST assessed by the Commissioner. This is confirmed by Example 1.11 of the EM.

Treasury dealt with this issue previously in its 2009 Discussion Paper, "*Implementation of the recommendations of the Board of Taxation's review of the legal framework for the administration of the GST*". In that Discussion Paper, Treasury stated that it would be appropriate for the Commissioner to exercise his discretion to pay a refund where:

> "... the overpayment of GST has directly resulted from actions of the Commissioner. In particular, where the supply was originally treated as non-taxable, the Commissioner has assessed the supplier on the basis that it is taxable, but the assessment is overturned on objection or appeal".

This view was manifestly reasonable. It would be a harsh and arbitrary outcome for taxpayers who take the correct view of the law to be required to pay more GST because of an error on the Commissioner's part. However, this will be a consequence of Division 142, which does not provide the Commissioner with discretion to pay a refund in those circumstances. We submit that Treasury's initial view was the correct one, and that Division 142 should not apply so as to deny a refund to a taxpayer where the extra GST arises as a result of the actions of the Commissioner.

4. Passing on of GST and reliance on tax invoices – section 142-15

Subsection 142-15 is an attempt to define when the extra GST has been passed on to the recipient of the supply. There is still heavy reliance on the issue of a tax invoice being prima facie evidence that GST has been passed on. We query whether documentation able to be treated as a tax invoice by the Commissioner under section 29-70(1B) should be excluded from this provision and only documentation that meets the requirements of being a tax invoice, independent of any determination by the Commissioner, be included.

Though the EM talks about all kinds of evidence to indicate whether GST has been passed on (for example, referring to the supplier's pricing policies[8]), there is no indication in the legislation that this kind of circumstantial evidence is evidence of GST being passed on in accordance with section 142-15.

Also, for section 142-15 to operate effectively, reference should be made to other kinds of evidence besides tax invoices to prove that GST has been passed on.

In addition, this provision should also make reference to the fact that the recipient has paid an amount of GST (or what would be regarded as GST).

5. Cancelled supplies – 142-20

The intention behind and operation of this provision is unclear. On its face, the provision operates to deny a decreasing adjustment where the GST has been passed on to the recipient of the supply and has not been reimbursed. Paragraph 1.37 in the EM makes reference to the *Qantas*[9] case though we note that no reference was made to decreasing adjustments in this case. The provision also appears to apply in all circumstances, that is, it is not limited to a circumstance where GST has been incorrectly paid initially.

If enacted, the provision will give rise to unintended consequences and double taxation. For example, where a supply is cancelled, it is common for the supplier to provide the customer with a voucher of equal value. The cancellation of the original supply would give rise to an adjustment event. Pursuant to section 142-20, the supplier will no longer be entitled to a decreasing GST adjustment, as the GST has not been reimbursed to the customer. The customer has instead been provided with a voucher for a value equal to the price of the original supply. The supply of the voucher is not subject to GST under Division 100. However, a second set of GST liability will arise when the voucher is redeemed for taxable supplies.

If the purpose of this provision is to say that where a supply was a taxable supply and is no longer a taxable supply, a taxpayer is unable to obtain a decreasing adjustment, then a mirror provision should be included to ensure that there is no increasing

[8] Paragraph 1.50 of the EM

[9] *Commissioner of Taxation v Qantas Airways Ltd* [2012] HCA 41

adjustment to a recipient of the supply that has been re-characterised from taxable to non-taxable.

Finally, we note that the provision will only apply where the supply is cancelled in a different tax period. The provision will not apply where the supply is cancelled in the same tax period, as there is no decreasing adjustment. It is odd that the GST outcome for the same transaction would depend so heavily upon whether the cancellation spanned two tax periods.

6. Commencement date

There will be compliance issues for taxpayers having to comply with new Division 142 on the basis that, according to the Exposure Draft[10], it will start to apply to the first tax period commencing after the date of the original announcement by the Assistant Treasurer, 17 August 2012, and not from Royal Assent. In particular, section142-20, which was not previously announced, may have a significant impact on the retail sector, and will result in double taxation. It is difficult to see what basis there could be for justifying retrospective introduction of an announced measure giving rise to double taxation on a sector which is already facing significant pressure.

In our view, commencement of Division 142 from the date of Royal Assent would be more appropriate, so to minimise the compliance burden on taxpayers arising from the amendments.

Also, while we appreciate that the Australian Taxation Office has provided guidance on how it will treat GST refunds during the interim period where the existing legislation is in place and before any (new) retrospective legislation is potentially passed, we note that there is only a 28 day window for taxpayers to re-visit their GST refund compliance free of penalties or interest. Given that the announcement occurred on 17 August 2012, proposed Division 36 came and went, and now a proposed Division 142 has been issued with no indication of when it will be considered by Parliament, we suggest that it would be reasonable for the 28 day window to be extended. We take the view, in these circumstances, that the remission period for penalties and interest under retrospective legislation, should be 90 days.

If you would like to discuss any of the above, please contact either me or Tax Counsel, Stephanie Caredes, on 02 8223 0011.

Yours sincerely

Robert Jeremenko
Senior Tax Counsel

[10] Item 14

Inserts for

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

EXPOSURE DRAFT

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.		

Schedule ??—Refunding excess GST

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

1 Subsection 17-5(1) (note)

Repeal the note, substitute:

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

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

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

Insert:

1AB	Excess GST and cancelled supplies	Division 142

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

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

4 Section 35-99 (after table item 1)

Insert:

1A	Excess GST	Division 142

5 Section 35-99 (note)

Repeal the note.

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

Insert:

10B	Excess GST	Division 142

7 At the end of Part 4-4

Add:

Division 142—Excess GST

Table of Subdivisions

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

142-1 What this Division is about

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

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 in relation to the *extra GST amount in subsection (2) if your *assessed net amount for a tax period takes into account an amount of GST ***(excess GST***) exceeding the ~~at which~~ amount of GST which is payable.

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

(2) The amount (the ***extra GST***) is the excess GST less any of it that:

(a) is covered by a *decreasing adjustment attributable to a later tax period; or

(b) is correctly attributable to a different tax period.

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 extra GST of $2,000.

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 made to the other entity;

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*.

Note 3: The other entity is taken to have made an acquisition from you (see section 11-5).

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

(23) Subsection (1) does not apply to ~~deny the refund to~~deem the extra GST to be payable on a taxable supply 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; or~~and~~

(b) would not give an entity a windfall gain.

(34) 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;

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

Subdivision 142-B—Excess GST related to cancelled supplies

142-20 Refunding excess GST relating to cancelled supplies

(1) If:

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

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

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

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

8 Section 51-60 (note 1)

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

9 Section 54-65 (note 1)

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

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

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

Income Tax Assessment Act 1936

11 Subsection 98A(2) (note)

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

12 Subsection 98B(4) (note)

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

Taxation Administration Act 1953

13 Section 105-65 in Schedule 1

Repeal the section.

14 Application of amendments

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