

***GSTD 2016/2 - Goods and services tax: can Division 142 of the A New Tax System (Goods and Services Tax) Act 1999 (GST Act) prevent refunds of increasing adjustments made under section 19-50 of the GST Act?***

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## Goods and Services Tax Determination

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Goods and services tax: can Division 142 of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act) prevent refunds of increasing adjustments made under section 19-50 of the GST Act?

**1 This publication provides you with the following level of protection:**

This publication (excluding appendixes) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

A public ruling is an expression of the Commissioner's opinion about the way in which a relevant provision applies, or would apply, to entities generally or to a class of entities in relation to a particular scheme or a class of schemes.

If you rely on this ruling, the Commissioner must apply the law to you in the way set out in the ruling (unless the Commissioner is satisfied that the ruling is incorrect and disadvantages you, in which case the law may be applied to you in a way that is more favourable for you – provided the Commissioner is not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any underpaid tax, penalty or interest in respect of the matters covered by this ruling if it turns out that it does not correctly state how the relevant provision applies to you.

### Ruling

1. Yes. An increasing adjustment made under section 19-50<sup>1</sup> can give rise to an amount of excess GST within the meaning of Division 142. This means that if an entity's assessed net amount takes into account an increasing adjustment under section 19-50, and some or all of that increasing adjustment is later found to have been incorrectly taken into account in the assessed net amount, then Division 142 may apply to prevent a refund of the excess GST.<sup>2</sup>

#### **Example 1 – section 19-50 increasing adjustments for supplies to Barry's Biz**

2. *Jo Wholesale makes a supply of goods to a customer, Barry Biz. Both businesses are GST registered. Jo Wholesale treats the supply of goods as a taxable supply and charges Barry Biz a GST inclusive price of \$22,000. Jo Wholesale includes GST of \$2,000 on this transaction in its Business Activity Statement (BAS) for the quarter ending 31 March 2015.*

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<sup>1</sup> All legislative references are to the *A New Tax System (Goods and Services Tax) Act 1999*.

<sup>2</sup> Where Division 142 applies to prevent a refund of the excess GST arising from the increasing adjustment, the recipient remains entitled to any corresponding decreasing adjustment under section 142-10.

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3. *Some months later, Jo Wholesale discovers that the GST inclusive price charged to Barry Biz for the goods was incorrect and that a higher price should have been charged. Jo Wholesale and Barry Biz agree that a pricing error has occurred. Jo Wholesale issues an adjustment note and Barry Biz pays an additional amount (including GST) of \$5,500 that should have been charged for the supply of the goods.*
4. *Jo Wholesale makes an increasing adjustment of \$500 for the supply under section 19-50, representing the extra amount of GST included in the additional amount charged to Barry Biz. The \$500 is included in Jo Wholesale's assessed net amount for the quarter ending 31 December 2015.*
5. *In November 2016, Jo Wholesale discovers that the goods in question are in fact GST-free. The GST amounts of \$2,000 and \$500 are excess GST.*
6. *There are no facts which indicate that the GST amounts of \$2,000 and \$500 were not passed on to Barry Biz.*
7. *Jo Wholesale does not reimburse Barry Biz any amount representing the excess GST paid.*
8. *Division 142 applies to prevent a refund of the \$2,000 of excess GST that was included in Jo Wholesale's assessed net amount for the March 2015 quarter, as the excess GST has been passed on but not reimbursed to Barry Biz.*
9. *Division 142 also applies to prevent a refund to Jo Wholesale of the excess GST arising from the increasing adjustment of \$500 included in Jo Wholesale's assessed net amount for the December 2015 quarter, as the excess GST has been passed on but not reimbursed to Barry Biz.*

## **Date of effect**

10. This Determination applies both before and after its date of issue. However, this Determination will not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of this Determination (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10).

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**Commissioner of Taxation**

29 June 2016

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## Appendix 1 – Explanation

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**❶** *This Appendix is provided as information to help you understand how the Commissioner's view has been reached. It does not form part of the binding public ruling.*

### Division 19 adjustments

11. Adjustments under Division 19 can arise because of adjustment events. An adjustment event is any event which has the effect of:

- cancelling a supply or acquisition
- changing the consideration for a supply or acquisition, or
- causing a supply or acquisition to become, or stop being, a taxable supply or creditable acquisition.<sup>3</sup>

12. When an adjustment event occurs in relation to a supply, the supplier may have to make one of the following types of adjustments:

- an increasing adjustment – where the 'corrected GST amount' is greater than the 'previously attributed GST amount'<sup>4</sup>, or
- a decreasing adjustment – where the 'corrected GST amount' is less than the 'previously attributed GST amount'.<sup>5</sup>

13. Conversely, if an adjustment event occurs in relation to an acquisition, the recipient may have to make one of the following types of adjustments:

- an increasing adjustment – where the 'previously attributed input tax credit amount' is greater than the 'corrected input tax credit amount'<sup>6</sup>, or
- a decreasing adjustment – where the 'previously attributed input tax credit amount' is less than the 'corrected input tax credit amount'.<sup>7</sup>

### Division 142 and excess GST

14. Division 142 is aimed at preventing windfall gains. Excess GST arises if a supplier's 'assessed net amount for a tax period takes into account an amount of GST exceeding that which is payable'.<sup>8</sup> However, excess GST does not include an amount of GST that was correctly payable and attributable to the tax period, but which later becomes the subject of a decreasing adjustment.<sup>9</sup> Nor does it include an amount of GST that is payable, but correctly attributable to a different tax period.<sup>10</sup>

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<sup>3</sup> Subsection 19-10(1).

<sup>4</sup> Section 19-50.

<sup>5</sup> Section 19-55.

<sup>6</sup> Section 19-80.

<sup>7</sup> Section 19-85.

<sup>8</sup> Subsection 142-5(1).

<sup>9</sup> Paragraph 142-5(2)(a).

<sup>10</sup> Paragraph 142-5(2)(b).

**Division 142 may prevent a refund of an increasing adjustment for a supply**

15. For Division 142 to prevent a refund of an adjustment amount, the following requirements must be satisfied:

- the adjustment amount is an amount of excess GST (see paragraphs 16 to 19)
- the adjustment amount has been passed on by a supplier to a recipient (see paragraphs 20 to 23), and
- the supplier has not reimbursed the adjustment amount to the recipient (see paragraph 24).

***Amount of increasing adjustment for a supply is an amount of excess GST***

16. An increasing adjustment for a supply is an adjustment in a later tax period of the amount of GST that was payable on the supply. Section 19-50 relevantly provides that the amount of the increasing adjustment is the difference between the 'previously attributed GST amount' and the 'corrected GST amount'. As both the 'previously attributed GST amount'<sup>11</sup> and the 'corrected GST amount'<sup>12</sup> are amounts of GST, the difference between the two amounts (being the adjustment amount) is also an amount of GST.

17. Where an adjustment event occurs and the 'corrected GST amount' is greater than the 'previously attributed GST amount', a supplier's net amount for a later period<sup>13</sup> is increased by the difference.

18. An adjustment amount gives rise to excess GST where the adjustment amount results in a supplier's assessed net amount for a tax period taking into account more GST than is otherwise payable.

19. In circumstances where it is subsequently identified that there was no adjustment event and the increasing adjustment should not have been made, or where the adjustment amount was over-calculated for some other reason, the assessed net amount for that later tax period may have taken into account an amount of GST exceeding that which is payable.

***Adjustment amount has been passed on***

20. The amount of an increasing adjustment under section 19-50 is an amount of GST and is an amount that can be passed on by a supplier to another entity.

21. Whether the excess GST is passed on is a question of fact and must be determined on a case by case basis. The Commissioner's views on the meaning of 'passed on', in the context of amounts of excess GST, are set out in Goods and Services Tax Ruling GSTR 2015/1 *Goods and services tax: the meaning of the terms 'passed on' and 'reimburse' for the purposes of Division 142 of the A New Tax System (Goods and Services Tax) Act 1999*.

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<sup>11</sup> Section 19-45.

<sup>12</sup> Paragraph 19-40(c).

<sup>13</sup> The tax period to which the adjustment is attributable under section 29-20.

22. However, subsection 142-25(2) provides that if excess GST is included on a tax invoice, this is prima facie evidence that the excess GST has been passed on.<sup>14</sup> Section 142-25, and the policy and scheme of the GST Act more generally, give rise to an expectation that the excess GST will be passed on in most cases.

23. In the context of section 19-50 adjustments, the amount of an increasing adjustment is generally passed on to a recipient where a supplier includes the amount as a component of any additional consideration provided by the recipient.

***Increasing adjustment for the supply has not been reimbursed***

24. Division 142 applies to prevent a refund of excess GST as a result of an increasing adjustment for a supply if the excess GST has been passed on to the recipient, and the supplier does not reimburse the recipient for the amount of excess GST. The Commissioner's views on reimbursement are set out in Goods and Services Tax Ruling GSTR 2015/1.

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<sup>14</sup> In the circumstances set out in paragraphs 142-25(2)(a)-(c).

## References

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*Previous draft:*

GSTD 2016/D1

*Related Rulings/Determinations:*

TR 2006/10; GSTR 2015/1

*Legislative references:*

- |                            |                                |
|----------------------------|--------------------------------|
| - ANTS(GST)A 1999          | - ANTS(GST)A 1999 19-80        |
| - ANTS(GST)A 1999 Div 19   | - ANTS(GST)A 1999 19-85        |
| - ANTS(GST)A 1999 19-10(1) | - ANTS(GST)A 1999 29-20        |
| - ANTS(GST)A 1999 19-40(c) | - ANTS(GST)A 1999 Div 142      |
| - ANTS(GST)A 1999 19-45    | - ANTS(GST)A 1999 142-5(1)     |
| - ANTS(GST)A 1999 19-50    | - ANTS(GST)A 1999 142-5(2)(a)  |
| - ANTS(GST)A 1999 19-55    | - ANTS(GST)A 1999 142-5(2)(b)  |
|                            | - ANTS(GST)A 1999 142-10       |
|                            | - ANTS(GST)A 1999 142-25       |
|                            | - ANTS(GST)A 1999 142-25(2)    |
|                            | - ANTS(GST)A 1999 142-25(2)(a) |
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ATO references

NO: 1-7U4Q0M1

ISSN: 2205-6254

BSL: ITX

ATOlaw topic: Goods and services tax ~~ Miscellaneous ~~ Refunds - Division 142 GST Act  
~~ Reimbursement  
Goods and services tax ~~ General rules and concepts ~~ Adjustments ~~  
Other

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