



***GSTA TPP 057 - Goods and services tax: How does section 39 of the Taxation Administration Act 1953 (TAA) operate if supplies that incorrectly include GST in the price are made to the public at large and unregistered recipients cannot be traced?***

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 This document has changed over time. This is a consolidated version of the ruling which was published on *14 June 2005*



## Goods and Services Tax Advice

**Goods and services tax:** How does section 39 of the *Taxation Administration Act 1953* (TAA) operate if supplies that incorrectly include GST in the price are made to the public at large and unregistered recipients cannot be traced?

### Preamble

*This document is a ruling for the purposes of section 37 of the Taxation Administration Act 1953. You can rely on the information presented in this document, which provides advice on the operation of the GST system.*

### Answer

The Tax Office is not obliged to give a refund under section 39 of the TAA of GST incorrectly included in the price of supplies that are non-taxable, unless it is satisfied that the supplier has reimbursed the overpaid GST to the recipients, and the recipients are not registered or required to be registered for GST. Suppliers must be able to demonstrate that these conditions exist and each case depends on its own circumstances.

### Background

Prior to 30 June 2002, if unregistered recipients could not be traced the Tax Office was satisfied the supplier had reimbursed recipients if the supplier had complied with steps negotiated with the Australian Competition and Consumer Commission (ACCC) to mitigate the effect of the overcharging on consumers.

The ACCC does not regulate supplies made after 30 June 2002. It retains a continuing role for supplies that may have been made prior to that date but were not the subject of a consumer complaint until a later time.

### Explanation

The Tax Office has no role in dealing with price exploitation but it does have to be satisfied that unregistered recipients have first been reimbursed and that there is no windfall gain to suppliers before a GST refund can be paid pursuant to section 39.

The Tax Office may allow a refund if unregistered recipients are untraceable, but only if the supplier

can tangibly and conclusively demonstrate that it absorbed the cost of the amount incorrectly included as GST in the price in its profit margin and did not pass it on to the consumer.

If the Tax Office makes a refund and later discovers that it would not have done so on the facts because the supplier made no attempt to reimburse its recipients, the Tax Office may seek to recover the amount from the supplier, or it may consider prosecution action in cases of misrepresentation or fraud.

### Application of this GST Advice

This GST Advice explains our view of the law as it applied from 1 July 2000. You can rely upon this GST Advice on and from its date of issue for the purposes of section 37 of the *Taxation Administration Act 1953*. Goods and Services Tax Ruling GSTR 1999/1 explains the GST rulings system and our view of when you can rely on our interpretation of the law in GST public and private rulings.

If this GST Advice conflicts with a previous private ruling that you have obtained, this public ruling prevails. However, if you have relied on a private ruling, you are protected in respect of what you have done up to the date of issue of this public ruling. This means that if you have underpaid an amount of GST, you are not liable for the shortfall prior to the date of issue of this later ruling. Similarly, you are not liable to repay an amount overpaid by the Commissioner as a refund.

### Commissioner of Taxation

Date

### Subject references:

non-taxable supplies  
unregistered recipients  
reimbursement of receipts  
refund

### Legislative references:

TAA 1953 39

### Other references:

PS LA 2002/12

### ATO references

NO:	05/3095
ISSN:	1833-0053