MT 2009/1 - Miscellaneous taxes: notification requirements for an entity under section 105-55 of Schedule 1 to the Taxation Administration Act 1953

There is a Compendium for this document: **MT 2009/1EC** .

Tax Laws Amendment (2009 GST Administration Measures) Act 2010 received Royal Assent on 24 March 2010 and will affect this publication. The relevant amendments apply to GST returns lodged and GST assessments issued from the time of announcement (7.30 pm Australian Eastern Standard Time on 12 May 2009). The relevant amendments also apply to revisions to these returns and amended assessments issued or made after this time. For more details refer to the new legislation.

This document has changed over time. This is a consolidated version of the ruling which was published on *29 April 2009*

Miscellaneous Taxation Ruling

Miscellaneous taxes: notification requirements for an entity under section 105-55 of Schedule 1 to the *Taxation Administration Act 1953*

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Preamble

This Ruling is a public ruling for the purposes of section 105-60 of Schedule 1 to the *Taxation Administration Act 1953* (TAA).This Ruling is also a public ruling for the purposes of Division 358 of Schedule 1 of the TAA.

If a statement in this ruling is later found to be incorrect or misleading and you make a mistake as a result of relying on this ruling, you will not have to pay any resulting underpaid tax nor will you have to pay any penalty. In addition, if you have relied on this ruling reasonably and in good faith you will not have to pay interest charges.

What this Ruling is about

1. This Ruling sets out the Commissioner's views on what constitutes notification by an entity to the Commissioner under paragraphs 105-55(1)(a) and 105-55(3)(a) of Schedule 1 to the TAA (section 105-55 notifications).

2. *Tax Laws Amendment (2008 Measures No. 3) Act 2008* amended section 105-55 of Schedule 1 to the TAA with effect from 1 July 2008. The application of the amendments to refunds, other payments or credits to which an entity was entitled before 1 July 2008 depends on whether a notification of the entitlement was provided before 1 July 2008.[1] The Commissioner's views in this Ruling in relation to the validity of section 105-55 notifications are also applicable to notifications for the purposes of the application of these amendments.

3. Where a notified entitlement relates to goods and services tax (GST) that has been overpaid, any entitlement may also be affected by section 105-65 of Schedule 1 to the TAA, which provides for a restriction on refunds. This Ruling does not consider the operation of that section.

4. Except where otherwise indicated, all subsequent legislative references in this Ruling are to Schedule 1 to the TAA.

[1] Subitem 16(2) of Schedule 2 to the *Tax Laws Amendment (2008 Measures No. 3) Act 2008*.

Date of effect

5. This Ruling explains the Commissioner's view of the law as it applies both before and after its date of issue. You can rely upon this Ruling on and from its date of issue for the purposes of section 105-60 of Schedule 1 to the TAA:

- Goods and Services Tax Ruling GSTR 1999/1 explains the GST rulings system and the Commissioner's view of when you can rely on GST public and private rulings; and
- Wine Equalisation Tax WETR 2002/2 explains the Wine Equalisation Tax (WET) rulings system and the Commissioner's view of when you can rely on WET public and private rulings.

6. For fuel tax matters, this Ruling is a public ruling under Division 358 and may be relied upon, both before and after its date of issue. However, the Ruling does not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of issue of the Ruling (see paragraphs 75 to 77 of Taxation Ruling TR 2006/10).

7. The Commissioner published, prior to the issue of this Ruling, a fact sheet *Time Limit on GST refunds* (NAT 11645) and a form *Notification of entitlement to GST refund* (NAT 11719). This Ruling is broadly consistent with the fact sheet and the form. Nevertheless, the fact sheet and the form do not expressly require that an entity assert an entitlement (see paragraphs 12 and 34 to 41 of this Ruling). Also, in practice the Commissioner has on some occasions accepted notifications that contain only a very brief description of an entitlement. Accordingly, the Commissioner will not treat a notification received before 29 October 2008 (the date this Ruling was issued in draft) as invalid merely because:

(a) it uses language that is not definite in asserting an entitlement, for example a notification which states that the entity 'may' have an entitlement; or

(b) it provides only a brief description of the nature of the entitlement, *provided* it gives some information about the specific factual circumstances under which the entitlement arises.[2]

[2] This approach is also applicable for the purposes of subitem 16(2) of Schedule 2 to *Tax Laws Amendment (2008 Measures No. 3) Act 2008*.

Legislative context

8. Section 105-55 provides a four-year time limit for entitlements to refunds, other payments or credits in relation to GST, luxury car tax, wine tax and fuel tax in respect of a tax period or importation. The four-year time limit commences after the end of the tax period or importation.

9. An entitlement does not cease to exist, if within the four-year time limit:

- an entity notifies the Commissioner that they are entitled to the refund, other payment or credit (paragraph 105-55(1)(a));
- the Commissioner notifies an entity that it is entitled to the refund, other payment or credit (paragraph 105-55(1)(b)); or
- in the case of a credit – the credit is taken into account in working out an amount that the Commissioner may recover from an entity only because of paragraph 105-50(3)(b) (paragraph 105-55(1)(c)).

10. There are similar time limits and exceptions under subsection 105-55(3) in relation to entitlements to fuel tax credits and net fuel amounts for entities that are not registered for GST or required to be registered for GST. References in this Ruling to tax periods should be taken to include references to fuel tax return periods where relevant. References to an importation should be taken to include a reference to an 'acquisition, manufacture or importation' within the meaning of subparagraph 105-55(3)(a)(ii).

Ruling

11. There is no specific form that is required for a notification for the purposes of section 105-55. However, the notification should be in writing and must be received on or before the fourth anniversary of the end of the relevant tax period or the importation.

12. The following are valid notifications for the purposes of section 105-55:

- an activity statement or revised activity statement which includes the relevant entitlement in the relevant tax period;

- an application for a private indirect tax ruling, an objection or other correspondence from an entity that asserts the entity has an entitlement and:
  - provides a description of the nature of the entitlement to a refund, other payment or credit, which is sufficient to bring to the Commissioner's attention the basic factual and legal basis for the entitlement; and
  - specifies the tax period(s) or importation(s) to which the entitlement relates.

13. The notification need not quantify the amount of the entitlement, provided that the entitlement is clearly identified, as required in paragraph 12 of this Ruling.

14. In contrast, correspondence will not be a notification under paragraph 105-55(1)(a) if it is speculative in nature, in the sense that it is directed at reserving an entity's rights in relation to possible future claim(s), rather than being directed at one or more particular entitlements.

15. In some cases an entity may provide correspondence purporting to be a notification for the purposes of paragraph 105-55(1)(a), but which is not a valid notification (for example, because it lacks the requisite specificity). If the entity subsequently provides further information the correspondence may then be sufficient to meet the requirements of a valid notification. However, the notification will only be valid from the date the further information is received.

16. The requirements for a valid notification under subitem 16(2) of Schedule 2 to the *Tax Laws Amendment (2008 Measures No. 3) Act 2008* are the same as the requirements for a valid notification under paragraph 105-55(1)(a), with the exception that subitem 16(2) expressly requires the notification to be in writing.

Explanation

17. Subsection 105-55(1) relevantly states:

> You are not entitled to a refund, other payment or credit to which this subsection applies in respect of a *tax period or importation unless:
>
> (a) within 4 years after:
>
> (i) the end of the tax period; or
>
> (ii) the importation,
>
> as the case requires, you notify the Commissioner (in a *GST return or otherwise) that you are entitled to the refund, other payment or credit; or

> (b) within that period the Commissioner notifies you (in a notice of assessment or otherwise) that you are entitled to the refund, other payment or credit…

18. Subsection 105-55(2) sets out those refunds, other payments or credits to which subsection 105-55(1) applies. Subsection 105-55(3) contains a comparable time limit and exceptions in relation to fuel tax credits for entities that are not registered for GST or required to be registered for GST.

19. To meet the requirements of subsection 105-55(1), a notification in respect of a tax period must be received on or before the fourth anniversary of the end of the relevant tax period. For example, if an entity has overpaid GST on a taxable supply it made on 12 November 2006 and the tax period to which the supply is attributable ends on 30 November 2006, the notification must be received by the Commissioner on or before 30 November 2010. Similarly, a notification in respect of an importation must be received on or before the fourth anniversary of the importation.

Form of the notification

20. There is no prescribed form for a notification or a particular form of words required to notify the Commissioner of an entitlement. The notification may be in the form of the *Notification of entitlement to GST refund* form (NAT 11719), but use of this form is not mandatory.

Should the notification be in writing?

21. Section 105-55 does not expressly state that a notification needs to be in writing in order to be valid.[3]

22. However, it would only be in very rare circumstances that a statement made orally could sufficiently bring to the Commissioner's attention the matters necessary for a valid section 105-55 notification. Moreover, even if an oral statement were sufficient to constitute notification, there would potentially be formidable problems of proving the existence of the notification and determining what the parameters of the notification were. Accordingly, entities should only seek to make section 105-55 notifications in writing.

[3] Subitem 16(2) of Schedule 2 to *Tax Laws Amendment (2008 Measures No. 3) Act 2008* differs in this respect by expressly requiring the notification to be in writing.

Notification must bring the entity's entitlement to the Commissioner's attention

23. The notification from an entity might be contained within another document, for example a private ruling application, which serves another purpose. For such a document to constitute notification for the purposes of section 105-55, the assertion that there is an entitlement to a refund, other payment or credit must be sufficiently prominent. An oblique reference will not suffice.[4]

24. In *Federal Commissioner of Taxation v. Prestige Motors Pty. Ltd* (1994) 181 CLR 1, the High Court upheld an assessment, notice of which was given by a letter, which did not identify the taxpayer but was served upon the taxpayer. At CLR 14, Mason CJ, Brennan, Deane, Gaudron and McHugh JJ said:

> That is because, on the view which we take of the provisions, it is necessary that the notice should bring to the attention of the person on whom it is served that the assessment to which it relates is an assessment of that person to tax. The principal purpose of the notice of assessment is to bring to the attention of the person on whom it is served that such person is liable to pay on the due date the amount of tax assessed in the notice on the income stated in the notice (see *Federal Commissioner of Taxation v. Bayly* (1952) 86 CLR 506, at p. 509, per Williams J.

25. For the purposes of section 105-55, it is sufficient that the notification brings to the attention of the Commissioner that the entity has an entitlement to an identifiable refund, other payment or credit in respect of a tax period(s) or importation.

How specific must a notification be?

26. Where an entitlement is notified in a manner other than by including the entitlement in an activity statement or revised activity statement, there is a question of how specific the notification must be.

27. In *Deputy Commissioner of Taxation v. Woodhams* (2000) 199 CLR 370; [2000] HCA 10, the High Court considered the validity of notices given under sections 222AOE and 222APE of the *Income Tax Assessment Act 1936*. At paragraph 33, Gleeson CJ and McHugh, Gummow, Kirby and Callinan JJ said:

> 33. It is the legislative purpose to be served by the giving of a s 222AOE notice that determines the nature and extent of the information necessary to satisfy the requirement to set out details of the unpaid amount of the company's liability under a remittance provision in respect of deductions. At this stage of the argument, the concern is with absence of information, rather than erroneous or misleading information. Absence of information will involve a failure to provide necessary details if, without such information, the notice will not fulfil the purpose for which it is required to be given.

[4] See *Secretary, Department of Family & Community Services v. Rogers* (2000) 104 FCR 272; [2000] FCA 1447 at [32].

28. The Explanatory Memorandum to A New Tax System (Goods and Services Tax Administration) Bill 1999, which introduced section 35 of the TAA (later replaced by section 105-50 of Schedule 1 to the TAA) and section 36 of the TAA (later replaced by section 105-55 of Schedule 1 to the TAA), stated:

> 3.27 Ordinarily, GST and penalty for late payment under new section 40 will not be payable if 4 years have passed after the due date for payment following the end of the tax period to which the net amount relates. The exceptions will be where the Commissioner has issued a notice requiring payment before the end of that 4 year period, or is satisfied that the absence of payment is due to fraud or evasion. An amount of GST on an importation will also cease to be payable if 4 years have passed after the due date for payment of the GST on the importation. [New section 35]
>
> 3.28 Similarly, entitlements to refunds, input tax credits and diesel fuel credits will expire 4 years after the end of the tax period to which they relate unless your claim to the refund or entitlement has been notified to the Commissioner before that time. [New section 36]

29. It is therefore apparent that section 105-55 is intended to ordinarily impose a four-year time limit on entitlements to refunds, other payments and credits, with an exception where an entity has notified the Commissioner of its entitlement before that time. This requires that the entitlement be brought clearly to the Commissioner's attention.[5]

Notification need not quantify amount

30. Section 105-55 does not expressly state whether a notification needs to specify the amount of the refund, other payment or credit to which the entity is entitled.

31. Notification may be by way of a 'GST return or otherwise'. The words 'or otherwise' are of broad application. It is implicit that the notification need not be the final step in claiming the refund, other payment or credit. Rather, the notification may set out the basis for the relevant entitlement, and be followed by subsequent action (for example a revised activity statement or a request to issue an assessment). Therefore, it is considered that the notification need not specify the sum to which an entity is entitled to be a valid section 105-55 notification. The amount of the entitlement may be subsequently advised when the formal request for the refund, other payment or credit is made.

[5] See *Secretary, Department of Family & Community Services v. Rogers* (2000) 104 FCR 272; [2000] FCA 1447 at [32].

Notification must identify an entitlement

32. A notification must bring to the Commissioner's attention the refund, other payment or credit to which the entity claims entitlement. If a notification is vague it will not be a valid notification. A notification that does not on its face show any basis for the entitlement to a refund, other payment or credit will not be valid. For example, a letter claiming entitlement to a refund, which does not provide any reason why the entity is entitled to the refund, including assertion of facts that would be necessary to support entitlement to the refund would not be a notification for the purposes of section 105-55.

33. The mere fact that the Commissioner may disagree with an entity's entitlement to the claimed amount does not affect the validity of the notification. A notification does not have to go so far as to persuade the Commissioner of the entitlement to the claim. For example, a notification may be made for an entitlement that is dependent on the application of a particular provision in a way that is contrary to the weight of legal authority. What is necessary is that the notification provides enough explanation to bring to the Commissioner's attention a particular entitlement to a refund, other payment or credit.

The notification must assert an entitlement

34. To constitute a notification of an entitlement, the notification needs to assert that the entity has an entitlement. The context provided by the reference to notification by way of GST return (paragraph 105-55(1)(a)) indicates that a section 105-55 notification must state that the entity has an entitlement.

35. Where an entity notifies the Commissioner by way of GST return, the entity makes a statement about its entitlement by entering an amount in that return[6]. Where an entity notifies the Commissioner by way of correspondence, the entity makes a statement about its entitlement by asserting the factual basis of its entitlement.

36. Correspondence that is equivocal about the factual basis of an entitlement, for example advising that an entity might be entitled to a refund if certain facts are subsequently established, does not meet the requirements of section 105-55.

[6] See paragraph 16 of Miscellaneous Taxation Ruling MT 2008/1.

Example 1

37. *NDTRA Financial Management Services Pty Ltd (NDTRA) explains in its notice that it 'may' have entered into a contract to supply certain input taxed financial services to Debbie and Frank's Events, and if it did so, it would have overpaid GST. The notification does not assert an entitlement because the factual basis of NDTRA's entitlement is equivocal – it is unclear whether NDTRA has even entered into a contract with Debbie and Frank's Events to make the supplies in question and whether it has overpaid GST.*

Example 2

38. *Renpam Properties Pty Ltd (Renpam) states in its notice that it supplied residential premises to Andrew, and it is in the process of reviewing its records to determine whether it treated the supply as a taxable supply. Renpam says that it should have treated this supply as an input taxed supply. The notification does not assert an entitlement, because although Renpam states that it supplied residential premises it is not clear that it did in fact incorrectly treat the supply of residential premises as a taxable supply.*

39. However, a notification or accompanying documentation may advise that an issue is contentious, or that the entity's claim is contrary to the Commissioner's view of the law or that the matter is contingent on the outcome of a pending court case. This will not affect the validity of the notification provided the entity asserts the factual basis upon which it is entitled to the relevant refund, payment or credit.

Example 3

40. *Djurdja explains in her notice that she entered into a contract to provide certain administrative services and she treated these services as taxable supplies. She further explains that she is aware that there is a test case about whether the supplies of those services should have been input taxed. If this is found to be the case, Djurdja would have overpaid GST. In the event that a court finds that the supplies should have been input taxed, Djurdja will be seeking a refund of overpaid GST.*

41. The notification clearly asserts the factual basis of Djurdja's entitlement. She identifies the affected supplies and the GST treatment of those supplies. Although she is not certain about whether the GST treatment is correct, she provides an explanation as to why this is the case.

Notification must identify tax period or importation

42. The notification must also identify the tax period(s) concerned (except where it relates to an importation).[7] Subsection 105-55(1) and subsection 105-55(2) make this clear. For example, paragraph 105-55(2)(a) provides that the section applies to 'a refund in relation to a *net amount or *net fuel amount in respect of *a particular *tax period*' (emphasis added).

43. Where a notification covers more than one tax period, it will be necessary for the notification to identify those tax periods. For example, where a notification relates to the GST treatment of a series of transactions over the course of several tax periods, the notice should specify the tax periods for which GST or input tax credits (as necessary) are attributable in respect of each transaction.

44. In some cases the manner in which the notification relates to each tax period may be obvious and not require detailed elaboration, particularly where the notification identifies a discrete error made by an entity in its activity statements over a period of time. For example, a letter that advises that an entity conducted an enterprise in which it acquired cans of soft drink in each tax period from 1 January 2007 to 30 September 2008 and it failed to claim input tax credits in relation to those acquisitions on the mistaken understanding that they were GST-free supplies does not need any further elaboration as to how the entitlement relates to each tax period, nor does the notification need to separately list each tax period between 1 January 2007 and 30 September 2008.

45. Where a notification relates to different issues in more than one tax period, for example involving a variety of different transactions, the notification must provide an explanation about how each part of the claimed entitlement relates to each tax period.

46. A notification will not apply to a tax period which is not identified in the notice. For example, if an entity, a monthly lodger, overpays GST in January 2008, and subsequently notifies the Commissioner that it is entitled to a refund for the overpaid GST in respect of February 2009, that notification will not apply to a refund entitlement in respect of January 2008. The entity would need to notify the Commissioner within the four-year time limit that it was entitled to a refund in January 2008.

[7] Where the notification relates to importations, it must identify the particular importation or importations concerned.

Notification may be on behalf of more than one entity

47. Because subsection 105-55(1) uses the term 'you' it might be interpreted as allowing for notification only by a single entity, and not permitting notifications for two or more entities in the one letter or form.[8] The Commissioner will accept notifications on behalf of more than one entity, provided the person lodging the notification has the authority to act on behalf of those entities. However, a notification will not meet the requirements for validity unless it explains how the relevant entitlement relates to each entity and (where relevant) each of the specified tax periods.

Indicators that a notification may be speculative

48. Correspondence that is speculative, in the sense that it is intended to reserve the entity's right to make possible future claim(s), rather than being directed at one or more particular entitlements, is not a notification for the purposes of section 105-55. In many cases it will be apparent on the face of the notification whether it is speculative.

49. However, where there is some doubt on the face of the notice as to whether the notification is speculative, the surrounding facts and circumstances may be taken into account. If, for example, an entity cannot explain why it is not in a position to quantify an entitlement, or if there is unreasonable delay in making a formal claim following notification, these circumstances might tend to suggest that the entity did not have a particular entitlement in mind in lodging its notification. The Commissioner will take the overall context into account in determining whether such a notification was speculative.

50. The Commissioner's practice is to ask that within three months the entity either quantify the claim or provide an explanation why further time is required.

51. If an entity does not formalise their claim within a reasonable period of time and does not provide any reasonable explanation for the delay, this **might** be indicative of the original notification being speculative. Accordingly, the Commissioner may give further consideration to whether the original notification genuinely notifies the Commissioner of a particular entitlement.

52. Similarly, where the notification does not quantify the entitlement, it is expected that a taxpayer will provide a reasonable explanation for why the amount cannot be precisely quantified at that time. If an explanation is not provided, the Commissioner may seek one. Although a continued failure to provide an explanation does not *in itself* make a notification invalid, it might, depending on the circumstances, be indicative that the original notification was speculative.

[8] However paragraph 23(b) of the *Acts Interpretations Act 1901* provides that unless the contrary intention appears, words in the singular number include the plural.

Remedying a notification that is not valid

53. A question arises as to the effect of a notification that is deficient, but which an entity later corrects, for example by providing more information.

54. It may be that if an entity provides further correspondence that explains or corrects an earlier purported notification, that further correspondence will constitute sufficient notification for the purposes of section 105-55.

55. However, in these cases the notification will only be valid from the date that sufficient information is received. Section 105-55 does not either expressly or implicitly provide any right to retrospectively amend a notification or backdate a notification.[9]

56. On the other hand, if later correspondence merely corrects a minor or trivial error in the original notification, and the reasons for the entitlement set out in the original notification are clear, the error may not be such as to undermine the validity of the original notification. In these cases, the relevant date is that of the original notification. For example, if a letter advising of an entitlement includes a typographical error when setting out the dates of the relevant tax period, the error would not affect the validity of the notification, provided the period to which the taxpayer intends to refer is apparent in the context of the letter as a whole.

Application of amendments to section 105-55

57. Section 105-55 of Schedule 1 to the TAA was amended by *Tax Laws Amendment (2008 Measures No. 3) Act 2008* with effect from 1 July 2008 to ensure that the provision operates as intended. Prior to the amendment it was considered that the time limit may not apply if the refund resulted from a reduction in the amount of an entity's indirect tax liability or fuel tax credit related liability.

58. The commencement date for the amendment to section 105-55 of Schedule 1 to the TAA was 1 July 2008. Subitem 16(2) of Schedule 2 to the *Tax Laws Amendment (2008 Measures No. 3) Act 2008* provides:

> The amendments made to section 105-55 of Schedule 1 to the *Taxation Administration Act 1953* by this Schedule apply in relation to a refund, other payment or credit:
>
> (a) that is of a kind referred to in subsection 105-55(1) or (3) of Schedule 1 to that Act as amended by this Schedule; and
>
> (b) to which you became entitled before the commencement of this Schedule;
>
> unless, before that commencement, you notified the Commissioner in writing, or the Commissioner notified you in writing, that you were entitled to the refund, other payment or credit.

[9] See *White v. Herefordshire Council* [2008] 2 All ER 852 at 859; *Beard v. South Australia* (1991) 57 SASR 65, per Zelling AJ.

59. The exception for where an entity notified the Commissioner of an entitlement to a refund, other payment or credit before the commencement date (that is, 1 July 2008) is phrased in similar terms to paragraph 105-55(1)(b). Accordingly, the Commissioner considers that the requirements for a valid notification under this application provision are the same as the requirements for a valid notification under section 105-55.[10]

60. The Commissioner's approach to such notifications is subject to the exceptions about how the Commissioner will apply this Ruling to notifications received before this Ruling was issued in draft (see paragraph 7 of this Ruling).

Further examples

Example 4

61. *Bigger Buildings Pty Ltd entered into a contract for the sale of an office block in which the parties agreed that the margin scheme would apply. The sale was completed in March 2006. However, in preparing its activity statement, Bigger Buildings made an error and returned GST on the full sale price rather than the margin.*

62. *Bigger Buildings Pty Ltd subsequently realises that it made a number of errors in its activity statements between January 2005 and June 2008 because of a shortage of appropriately trained staff.*

63. *It undertakes a process to comprehensively review its GST affairs during that period. In November 2008, it provides the Tax Office with a letter which states:*

> *Please be advised that:*
>
> *On 21 January 2006 Bigger Buildings Pty Ltd (BB) entered into a contract of sale for an office block at 1001 High Street, New Town. The contract of sale included an election by the parties to apply the margin scheme. The sale was completed on 21 March 2006. In its Activity Statement for the quarter ending 31 March 2006, BB returned GST on the sale of the apartment block based on the full sale price of $4.5 million, rather than the margin. Accordingly, BB has overpaid GST and is entitled to a refund.*
>
> *BB owned the office block since 1996. BB obtained a valuation of the office block as at 1 July 2000, but cannot presently locate the valuation. BB is seeking to obtain a copy of that valuation from the valuer and when it has the relevant information will formalise a claim for a refund.*

[10] With the exception that subitem 16(2) of Schedule 2 to *Tax Laws Amendment (2008 Measures No. 3) Act 2008*, expressly requires the notification to be in writing.

BB has also identified a number of other errors in its BAS between 2005 and 2008 and is continuing to review its affairs. BB considers that it may have overpaid GST and/or underclaimed input tax credits in respect of several property dealings within this period. BB will seek to quantify these claims as soon as possible.

64. To the extent that the letter relates to the sale of the office block in New Town it is considered to be a valid section 105-55 notification. The letter identifies the relevant transaction and the relevant tax period. It explains the reason why the taxpayer considers that it is entitled to a refund. Whilst the notification is valid in relation to the New Town sale, the Commissioner will still need to consider whether BB is actually entitled to the refund under the relevant taxation laws.

65. On the other hand, the letter is not a valid notification for the purposes of any other overstatements of GST or underclaiming of input tax credits between 2005 and 2008. It is considered that the letter does not meet the requirements for section 105-55 purposes because:

- it does not sufficiently identify the relevant transactions;
- it is not specific about how the overpayment or underclaiming relates to particular tax periods; and
- it does not positively assert that there is an entitlement, rather it indicates that there may be a refund or credit entitlement.

66. To make a claim for these other overstatements of GST or under claiming of input tax credits, BB would need to lodge revised activity statements, or provide further correspondence which meets the requirements for a section 105-55 notification before the expiry of the four-year time limit.

Example 5

67. *Max runs an accounting practice that specialises in the health care industry. Several doctors who are clients of Max's from time to time perform a particular medical procedure that Max has taken the view constitutes a taxable supply. Max reads in a tax journal that the Tax Office's view of the GST status of this medical procedure is under review, and that there is an argument that it might be GST-free under section 38-7 of the A New Tax System (Goods and Services Tax) Act 1999.*

68. *Max realises that the classification of these supplies by his clients as taxable may have been incorrect. He writes a letter to the Tax Office on 18 March 2009. After describing the procedure concerned he writes:*

> *I provide accounting services to 21 medical practices listed in the attached schedule. They provide this procedure and other procedures that should have comparable GST treatment from time to time. I understand that the Tax Office is reviewing the GST treatment of this procedure and other similar procedures. I wish to protect my clients' rights under section 105-55 for all tax periods commencing on or after 1 April 2005 up to 1 April 2009 in the event that the Tax Office rules that the relevant procedures are GST-free.*

69. Max's letter does not constitute a section 105-55 notification for the following reasons:

- Max has not identified how the entitlement relates to each taxpayer and each tax period. Based on the facts provided, it is not clear whether each of the listed medical practices provided the procedure in each tax period. If some of the listed entities never performed the procedure, or some of them were not carrying on an enterprise for the whole period it would be evident that the notice was speculative in nature.
- To the extent the letter relates to 'other similar procedures' it does not sufficiently identify these procedures to constitute the notification of an entitlement.

Detailed contents list

70. Below is a detailed contents list for this Miscellaneous Taxation Ruling:

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Commissioner of Taxation
29 April 2009

Previous draft:
MT 2008/D4

Related Rulings/Determinations:
GSTR 1999/1; TR 2006/10; WETR 2002/2; MT 2008/1

Subject references:
- business activity statements
- fuel tax credits
- GST input tax credits & creditable acquisitions
- GST refunds
- GST returns, payments & refunds
- WET credit

Legislative references:
- TAA 1953
- TAA 1953 35
- TAA 1953 36
  TAA 1953 Sch 1 105-50
  TAA 1953 Sch 1 105-50(3)(b)
- TAA 1953 Sch 1 105-55
- TAA 1953 Sch 1 105-55(1)
- TAA 1953 Sch 1 105-55(1)(a)
- TAA 1953 Sch 1 105-55(1)(b)
- TAA 1953 Sch 1 105-55(1)(c)
- TAA 1953 Sch 1 105-55(2)
- TAA 1953 Sch 1 105-55(2)(a)
- TAA 1953 Sch 1 105-55(3)
- TAA 1953 Sch 1 105-55(3)(a)
- TAA 1953 Sch 1 105-55(3)(a)(ii)
- TAA 1953 Sch 1 105-60
- TAA 1953 Sch 1 105-65
- TAA 1953 Sch 1 Div 358
- ITAA 1936 222AOE
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