


GSTD 2016/D1 - Goods and services tax: can Division 142 of the A New Tax System (Goods and Services Tax) Act 1999 prevent refunds of increasing adjustments made under section 19-50 of that Act?

 This cover sheet is provided for information only. It does not form part of *GSTD 2016/D1 - Goods and services tax: can Division 142 of the A New Tax System (Goods and Services Tax) Act 1999 prevent refunds of increasing adjustments made under section 19-50 of that Act?*

This document has been finalised by GSTD 2016/2.



Draft Goods and Services Tax Determination

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

❶ This publication provides you with the following level of protection:

This publication is a draft for public comment. It represents the Commissioner's preliminary view about the way in which a relevant taxation 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.

You can rely on this publication (excluding appendixes) to provide you with protection from interest and penalties in the following way. If a statement turns out to be incorrect and you underpay your tax as a result, you will not have to pay a penalty. Nor will you have to pay interest on the underpayment provided you reasonably relied on the publication in good faith. However, even if you don't have to pay a penalty or interest, you will have to pay the correct amount of tax provided the time limits under the law allow it.

Ruling

1. Yes. An increasing adjustment made under section 19-50¹ 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.²

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.

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

² 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.

GSTD 2015/D1

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 \$2000 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.*
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.*

Date of effect

10. *When the final Determination is issued, it is proposed to apply both before and after its date of issue. However, the Determination will 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 Determination (see paragraphs 75 to 76 of Taxation Ruling TR 2006/10 *Public Rulings*).*

Commissioner of Taxation

23 March 2016

Appendix 1 – Explanation

❶ *This Appendix is provided as information to help you understand how the Commissioner's preliminary view has been reached. It does not form part of the proposed 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.³

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'⁴, or
- a decreasing adjustment – where the 'corrected GST amount' is less than the 'previously attributed GST amount'.⁵

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'⁶, or
- a decreasing adjustment – where the 'previously attributed input tax credit amount' is less than the 'corrected input tax credit amount'.⁷

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'.⁸ 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.⁹ Nor does it include an amount of GST that is payable, but correctly attributable to a different tax period.¹⁰

³ Subsection 19-10(1).

⁴ Section 19-50.

⁵ Section 19-55.

⁶ Section 19-80.

⁷ Section 19-85.

⁸ Subsection 142-5(1).

⁹ Paragraph 142-5(2)(a).

¹⁰ 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 of this draft Determination)
- the adjustment amount has been passed on by a supplier to a recipient (see paragraphs 20 to 23 of this draft Determination), and
- the supplier has not reimbursed the adjustment amount to the recipient (see paragraph 24 of this draft Determination).

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'¹¹ and the 'corrected GST amount'¹² 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 period¹³ 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*.

¹¹ Section 19-45.

¹² Paragraph 19-40(c).

¹³ 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.¹⁴ 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 GSTR 2015/1.

¹⁴ In the circumstances set out in paragraphs 142-25(2)(a) to (c).

Appendix 2 – Your comments

25. You are invited to comment on this draft Determination including the proposed date of effect. Please forward your comments to the contact officer by the due date.

26. A compendium of comments is prepared for the consideration of the relevant Rulings Panel or relevant tax officers. An edited version (names and identifying information removed) of the compendium of comments will also be prepared to:

- provide responses to persons providing comments, and
- be published on the ATO website at www.ato.gov.au.

Please advise if you do not want your comments included in the edited version of the compendium.

Due date:	Friday, 22 April 2016
Contact officer:	Rebecca Smith
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References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 2006/10; GSTR 2015/1

Legislative references:

- ANTS(GST)A 1999
- ANTS(GST)A 1999 Div 19
- ANTS(GST)A 1999 19-10(1)
- ANTS(GST)A 1999 19-40(c)
- ANTS(GST)A 1999 19-45
- ANTS(GST)A 1999 19-50
- ANTS(GST)A 1999 19-55

- ANTS(GST)A 1999 19-80
 - ANTS(GST)A 1999 19-85
 - ANTS(GST)A 1999 29-20
 - ANTS(GST)A 1999 Div 142
 - ANTS(GST)A 1999 142-5(1)
 - ANTS(GST)A 1999 142-5(2)(a)
 - 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)
 - ANTS(GST)A 1999 142-25(2)(b)
 - ANTS(GST)A 1999 142-25(2)(c)
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ATO references

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ATOlaw topic: Goods and services tax ~~ General rules and concepts ~~ Adjustments ~~
Other

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