


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 *31 October 2012*



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 was published prior to 1 July 2010 and was a public ruling for the purposes of former section 37 of the **Taxation Administration Act 1953** and former section 105-60 of Schedule 1 to the **Taxation Administration Act 1953**.*

*From 1 July 2010, this document is taken to be a public ruling under Division 358 of Schedule 1 to 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.

[Note: *This is a consolidated version of this document. Refer to the Legal Database (<http://law.ato.gov.au>) to check its currency and to view the details of all changes.]*

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 Advice applies [to tax periods commencing] both before and after its date of issue. However, this Advice 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 Advice (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10).

Related Rulings/Determinations/GST Advice:

TR 2006/10

Subject references:

non-taxable supplies
unregistered recipients
reimbursement of receipts
refund

Legislative references:

TAA 1953 39
TAA 1953 Sch 1 Div 358

ATO references

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