


GSTA TPP 059 - Goods and services tax: Will the Tax Office refund overpaid GST if a supplier makes a mistake in preparing its activity statement and incorrectly includes a supply as a taxable supply?

 This cover sheet is provided for information only. It does not form part of *GSTA TPP 059 - Goods and services tax: Will the Tax Office refund overpaid GST if a supplier makes a mistake in preparing its activity statement and incorrectly includes a supply as a taxable supply?*

 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: will the Tax Office refund overpaid GST if a supplier makes a mistake in preparing its activity statement and incorrectly includes a supply as a taxable supply?

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

Yes, the Tax Office will provide a refund of overpaid GST to the supplier.

Background

An entity makes a supply on which no GST is properly payable. The invoice issued in respect of that supply indicates that no GST has been

included in the price for the supply (i.e. the supply is GST-free or input taxed). The entity makes a mistake in preparing its activity statement, incorrectly includes this supply as a taxable supply and pays GST on that supply.

Explanation

GST has not been included in the price charged to the recipient. If the recipient is registered for GST, it is not entitled to claim an input tax credit. If the recipient is not registered for GST, it has not borne any GST in the price paid for the goods or services. The supplier is entitled to a refund of GST. Section 39 of the *Tax Administration Act 1953* does not place any restriction on that refund. The supplier may correct the mistake in a later activity statement if the mistake is within the terms of the *Correcting GST Mistakes Fact Sheet*. Alternatively, it can revise the activity statement for the tax period in which the mistake occurred.

Note: If the 'tax invoice' issued in relation to the supply did not indicate that GST was not included in the price, the prima facie position would be that GST was (incorrectly) included in the price. In these circumstances, the terms on GST refunds would need to be followed before the Commissioner could make a decision in the matter.

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).

Commissioner of Taxation
6 July 2005

Related Rulings/Determinations/GST Advice:
TR 2006/10

Subject references:

correcting GST mistakes
business activity statement
non-taxable supplies
reimbursement of receipts
refund

Legislative references:

TAA 1953 39
TAA 1953 Sch 1 Div 358

Other references:

Correcting GST mistakes – fact sheet

ATO references

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