


MT 2009/1A2 - Addendum - Miscellaneous taxes: notification requirements for an entity under section 105-55 of Schedule 1 to the Taxation Administration Act 1953

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Addendum

Miscellaneous Taxation Ruling

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

This Addendum is a public ruling for the purposes of the *Taxation Administration Act 1953*. It amends Miscellaneous Taxation Ruling MT 2009/1 to reflect recent decisions of the Federal Court and the Administrative Appeals Tribunal in *Central Equity Limited v. Commissioner of Taxation* [2011] FCA 908, *MTAA Superannuation Fund (R G Casey Building) Property Pty Ltd v. Commissioner of Taxation* [2011] AATA 769 and *National Jet Systems Pty Ltd v. Commissioner of Taxation* [2011] AATA 766 in relation to notification requirements under section 105-55 in Schedule 1 to the *Taxation Administration Act 1953*.

The Addendum also updates the Date of Effect and Legislative Context sections to reflect amendments made by the *Tax Laws Amendment (2010 GST Administration Measures No. 2) Act 2010* which came into effect on 1 July 2010, and the *Indirect Tax Laws Amendment (Assessment) Act 2012*, which came into effect on 1 July 2012.

Miscellaneous Taxation Ruling MT 2009/1 is amended as follows:

1. Preamble

Omit the preamble, substitute:

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

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

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.

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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.]

2. Paragraph 3

Insert the following footnote at the end of the paragraph:

^{1A} MT 2010/1 sets out the Commissioner's views on section 105-65 of Schedule 1 to the TAA, which provides for a restriction on GST refunds that arise from the overpayment of GST.

3. Paragraph 5 and 6

Omit; the paragraphs; substitute:

5. This Ruling applies both before and after its date of issue. However, the Ruling 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 Ruling (see paragraphs 75 to 76 of Taxation Ruling TR 2006/10).

4. Paragraph 10A

After the paragraph, insert:

10B. The *Indirect Tax Laws Amendment (Assessment) Act 2012* introduced a self assessment regime for indirect taxes that commenced on 1 July 2012. The amendments inserted subsection 105-55(6), which provides that the section only applies to payments and refunds that

- relate to tax periods commencing before 1 July 2012; or
- do not relate to tax periods but relate to liabilities or entitlements arising before 1 July 2012.^{2AA}

Section 105-55 will be repealed on 1 January 2017.^{2AB}

^{2AA} Item 236 in Schedule 1 to the *Indirect Tax Laws Amendment (Assessment) Act 2012*.

^{2AB} Item 259 in Schedule 1 to the *Indirect Tax Laws Amendment (Assessment) Act 2012*.

10C. Payments and refunds in relation to tax periods commencing on or after 1 July 2012, or other payments or refunds relating to liabilities and entitlements that arise on or after 1 July 2012 are dealt with under the self assessment provisions. Section 105-55 does not apply to amounts under the new regime – amendments in relation to these amounts are subject to a period of review instead.^{2AC}

5. Paragraph 11

- (a) Omit; 'should be in writing and'.
- (b) At the end of the paragraph; insert: 'The notification must also identify and assert the entitlement such that it brings to the Commissioner's attention the refund, other payment or credit to which the entity claims entitlement. This requires that the notification put the Commissioner on notice of the entitlement. If the notified entitlement is to be claimed at a later time, it needs to be possible to ascertain that the subsequent claim is covered by the notification.'

6. Paragraph 12

Omit the second dot point; substitute:

- 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 entitlement to a refund, other payment or credit, which is sufficient to bring the entitlement to the Commissioner's attention, such that when a subsequent claim is made it could reasonably be identified as being covered by the notification; and
 - specifies the tax period(s) or importation(s) to which the entitlement relates.

7. Paragraph 13

- (a) Omit; 'The notification'; substitute 'A notification that is not by way of an activity statement or revised activity statement'.
- (b) Omit; 'clearly'.

^{2AC} See Subdivision 155-B in Schedule 1 to the *Taxation Administration Act 1953*.

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8. Paragraph 15

Omit 'the requisite specificity'; substitute 'sufficient information to allow it to serve its purpose'.

9. Paragraph 22

(a) Omit; 'very'

(b) After the paragraph, insert:

Example 1

22A. Specter Bank (Specter) is a small retail bank that makes both financial supplies and taxable supplies. During the course of an audit, ATO officers investigate whether certain supplies Specter treated as input taxed financial supplies in tax periods from 1 January 2011 until 31 March 2011, are in fact taxable supplies. Specter's tax manager informs the auditors during a meeting that if the supplies in question are taxable supplies, then Specter is entitled to input tax credits for creditable acquisitions the bank made in relation to those supplies. The tax manager says that Specter intends to claim the further input tax credits for that period, but will wait until the audit is completed and the Commissioner's position on whether the supplies are taxable supplies or input taxed supplies is finalised. One of the officers notes Specter's statement in their record of the meeting.

22B. In this case, the tax manager's oral statement constitutes a section 105-55 notification as the statement identifies the relevant transactions (the supplies that are subject to the audit) and the relevant tax periods. It also explains the reason why Specter considers that it is entitled to the input tax credits. The fact that the notification has been noted in the contemporaneous record of the meeting will assist in proving the existence of the notification and its parameters. Whether an oral statement is sufficient to constitute a notification will depend on the facts and circumstance of each individual case.

22C. Whilst the notification in Specter's case is valid, this does not mean that Specter is actually entitled to the input tax credits – the Commissioner will still need to determine whether the supplies in question are taxable supplies or financial supplies, and whether the acquisitions made are creditable acquisitions, under the relevant taxation laws.

10. Paragraph 23

Before the first sentence, insert 'The entity's entitlement must be brought clearly to the Commissioner's attention.'^{3A}.

11. Paragraph 27

(a) In the first sentence, omit; 'HCA 10'; substitute: 'HCA 10 (*Woodhams*)'.

(b) After the paragraph, insert:

27A. While *Woodhams* was concerned with director penalty notices, Gordon J in *Central Equity Limited v. Commissioner of Taxation* [2011] FCA 908 confirmed that a notice 'must fulfil its purpose and convey the information which it is intended to convey'.^{4A} Citing Gordon J, the Tribunal in *MTAA Superannuation Fund (R G Casey Building) Property Pty Ltd v. Commissioner of Taxation* [2011] AATA 769 and *National Jet Systems Pty Ltd v. Commissioner of Taxation* [2011] AATA 766 stated 'the content of a notice must be sufficient to allow the notice to serve the purpose it was intended to serve'.^{4B}

12. Paragraph 29

(a) Omit; the last sentence.

(b) After the paragraph, insert:

29A. In this context, the purpose of a section 105-55 notification is to ensure that the entity may still claim the refund, other payment or credit that is described in the notification once the four-year time limit has expired.

29B. For the notification to serve its purpose, it is considered necessary that the notification contains sufficient information about the entitlement to put the Commissioner on notice of the entitlement, such that when a subsequent claim is made it could reasonably be identified as being covered by the notification.

29C. A taxpayer will only be entitled to a subsequent refund to the extent that refund is covered by the notification. This would be the case if the refund is of the nature specified in the notice and relates to the periods covered by the notice.

^{3A} See *Secretary, Department of Family & Community Services v. Rogers* (2000) 104 FCR 272; [2000] FCA 1447 at [32].

^{4A} [2011] FCA 908 at paragraph [77] citing *Deputy Commissioner of Taxation v Woodhams* (2000) 199 CLR 370.

^{4B} [2011] AATA 769 at paragraph [50]; [2011] AATA 766 at paragraph [59].

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13. Paragraph 32

Omit the heading and paragraph; substitute:

Notification must identify the entitlement

32. Section 105-55 requires that a notification is of ‘the’ refund, other payment or credit, not merely that there is some unspecified entitlement. Accordingly, a notification must bring to the Commissioner’s attention the refund, other payment or credit to which the entity claims entitlement. For example, in *MTAA Superannuation Fund (R G Casey Building) Property Pty Ltd v. Commissioner of Taxation* [2011] AATA 769 and *National Jet Systems Pty Ltd v. Commissioner of Taxation* [2011] AATA 766, the Tribunal found that the Commissioner was ‘advised or put on notice that a refund entitlement was asserted concerning mistaken application of the transitional rules’.^{5A} On the other hand, a notification that fails to put the Commissioner on notice about the asserted refund entitlement will not be a valid notification.

32A. A notification that does not either explicitly or implicitly show any basis for the entitlement to a refund, other payment or credit may be ineffective because it is not possible to identify whether a subsequent claim is ‘the’ (or one of ‘the’) entitlement(s) covered by the notification. For example, a letter that simply states that the entity has overpaid GST or underclaimed refunds or credits without providing any reason or context in support of the entity’s entitlement to the refund would not be a notification for the purposes of section 105-55. Whilst such a letter identifies that there is ‘a’ refund entitlement, it is not notification of any particular refund, other payment or credit.

14. Paragraph 36

At the end of the paragraph, insert ‘However, it is accepted that a notification would not be invalid merely because it acknowledges some controversy about the application of the law – for example that a particular interpretation of the law depends on the resolution of a case before the courts.’

15. Paragraph 37 (heading)

Omit ‘1’; substitute ‘1A’.

16. Paragraph 44

Omit the words ‘each tax period’ from the third sentence and substitute; ‘tax periods’.

^{5A} [2011] AATA 769 at paragraph [51]; [2011] AATA 766 at paragraph [60].

17. Paragraph 45

Omit the paragraph, substitute:

45. In *Central Equity Limited v. Commissioner of Taxation* [2011] FCA 908 at [77], Gordon J accepted that a notification which identified the periods of the claim sufficiently specified those periods even though the periods covered by the notification spanned eight years.

18. Paragraph 46

At the end of the first sentence, omit 'notice'; substitute 'notification'.

19. Paragraph 47

In the last sentence:

- (a) Omit; 'explains'; substitute: 'is apparent'.
- (b) Omit; 'and (where relevant) each of the specified tax periods'.

20. Paragraph 56

In the first sentence, omit; 'reasons for the entitlement set out in the original notification are'; substitute 'entitlement that was originally notified is'

21. Paragraph 60D

In the third sentence, omit; 'very'

22. Paragraph 61

After 'Pty Ltd', insert ', a property development company,'.

23. Paragraph 65

Omit the first and second dot points; substitute:

- the reference to GST overpaid and/or input tax credits underclaimed in respect of property dealings is very open-ended without any further context, particularly given that BB is a property development company and the reference to 'property dealings' does not provide further meaningful context. On balance, it could not be said that any particular refund, other payment or credit is covered by the notification; and

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24. Paragraph 67 to 69

Omit the paragraphs

25. Detailed contents list

(a) Omit:

Notification must identify an entitlement 32

Example 1 37

Example 5 67

(b) Substitute:

Example 1 22A

Notification must identify the entitlement 32

Example 1A 37

26. Related Rulings/Determinations

Insert 'MT 2010/1'.

27. Legislative references

Insert:

- TAA 1953 Sch 1 105-55(6)
- TAA 1953 Sch 1 Subdiv 155-B.
- Indirect Tax Laws Amendment (Assessment) Act 2012 Sch 1 236
- Indirect Tax Laws Amendment (Assessment) Act 2012 Sch 1 259

28. Case references

Insert:

- Central Equity Limited v. Commissioner of Taxation [2011] FCA 908; 2011 ATC 20-274; (2011) 82 ATR 550
- MTAA Superannuation Fund (R G Casey Building) Property Pty Ltd v. Commissioner of Taxation [2011] AATA 769; 2012 ATC 20-323
- National Jet Systems Pty Ltd v. Commissioner of Taxation [2011] AATA 766; 2011 ATC 10-212; (2011) 82 ATR 740

29. Other references

Insert:

- Decision Impact Statement for MTAA Superannuation Fund (R G Casey Building) Property Pty Ltd v. Commission of Taxation
- Decision Impact Statement for National Jet Systems Pty Ltd v. Commissioner of Taxation

This Addendum applies on and from the date of issue.

Commissioner of Taxation

27 March 2013

ATO references

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