


# ***MT 2009/1A3 - 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 the recent decision of the Administrative Appeals Tribunal in *North Sydney Developments Pty Ltd v. Federal Commissioner of Taxation* [2014] AATA 363 in relation to notification requirements under section 105-55 in Schedule 1 to the *Taxation Administration Act 1953*.

#### **MT 2009/1 is amended as follows:**

##### **1. Paragraph 13**

Omit the paragraph; substitute:

13. A notification that is not by way of an activity statement or revised activity statement need not quantify the amount of the entitlement but the notification should specify:<sup>2AD</sup>

- the details of the tax period/s (or importation) to which 'the claim' relates, and
- the nature of the refund, other payment or credit claimed.

##### **2. Paragraph 15**

At the end of the first sentence; insert:

<sup>2AE</sup> In *North Sydney Developments Pty Ltd v FC of T* [2014] AATA 363 the Tribunal at [34-35] held that it is the communication relied on as the section 105-55 notification itself that must provide the requisite notification information. Any deficiency in the notification cannot relevantly be overcome by pointing to any information previously provided to the Commissioner.

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<sup>2AD</sup> In *North Sydney Developments Pty Ltd v. FC of T* [2014] AATA 363 the Tribunal at [13], [28] and [30-31], held that section 105-55(1)(a) required no greater specification than the tax period(s) to which the notification relates and the nature of the refund or input tax credit claimed. The notification is not required to include a dollar amount or further explanation about the circumstances in which the refund arises.

# MT 2009/1

Page 2 of 5

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## 3. Paragraph 25

After the paragraph; insert:

25A. In *North Sydney Developments Pty Ltd v. FC of T* [2014] AATA 363 (*North Sydney*), the Tribunal at [26] pointed to the significance of the entitlement being brought to the Commissioner's attention:

26. The critical part of the 'unless' condition is merely that the taxpayer 'notify the Commissioner (in a GST return or otherwise) that you are entitled to the refund, other payment or credit'.

## 4. Paragraph 27A

After the paragraph; insert:

27B. In *North Sydney* the Tribunal specifically considered what a section 105-55 notice must tell the Commissioner. The Tribunal considered a number of decided cases where the issue had arisen and stated at [25]:

25. The common themes resonating through the decisions to which I have referred are the absence of any formal notification content requirement, a disavowal of amount specificity and the apparent sufficiency of a notice where it communicates a claim relating to a particular tax period in relation to a particular kind of tax liability. Implicit in the third theme, and variously expressed in the judgments and reasons, is a refusal to endorse any particular requirement for the details, grounds or even circumstances relied on to support the claim.

27C. The Tribunal went on to observe, at [29]:

29. In the taxpayer notification cases to which I have referred above, each of the taxpayers had provided GST returns, and paid the amounts for which they had provided. In cases of those kinds, where a taxpayer seeks to depart from the content of previous returns, it is perhaps understandable that a notification might be required to condescend to some aspect of the underlying details of the taxpayer's contention. But, as the cases show, whatever additional aspect might be required, it is not the kind of detailed specificity for which the Commissioner contended in those cases. And in the present case, where *North Sydney* had not submitted any Business Activity Statements for the two tax periods to which its notification related, there is little to support the view that the notification required any details of the 'circumstances' of the input tax credit claim.

**5. Paragraph 29C**

After the paragraph; insert:

29D. In this context, it is the communication relied on as the section 105-55 notification itself that must provide the requisite notification information. Any deficiency in the notification cannot relevantly be overcome by pointing to any information previously provided to the Commissioner.<sup>5A</sup>

**6. Paragraph 31**

(a) Omit the fourth sentence; substitute:

Rather, the notification may set out the claim for the relevant entitlement, and be followed by subsequent action (for example, a revised activity statement or a request to issue an assessment).

(b) After the paragraph, insert:

31A. In *North Sydney* the Tribunal confirmed that a notification of a specific amount was not required to satisfy the notification requirement in relation to 'the' refund, other payment or credit referred to in paragraph 105-55(1)(a), observing at [28]:

28. The use of the definitive article in both the Commissioner's contention and the statutory provision itself, would be most naturally construed as requiring specificity of amount. But a requirement of that kind is both disavowed by the Commissioner and contrary to authority.

**7. Paragraph 32**

Omit the paragraph and original footnote 5A; substitute:

32. Section 105-55 requires that a notification must bring to the Commissioner's attention the refund, other payment or credit to which the entity claims entitlement.

**8. Paragraph 32A**

Omit the paragraph.

**9. Paragraph 33**

Omit the last sentence; substitute:

What is necessary is that the notification brings to the Commissioner's attention a particular entitlement to a refund, other payment or credit.

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<sup>5A</sup> Refer to *North Sydney* at [34-35].

# MT 2009/1

## 10. Paragraph 35

Omit the second sentence; substitute:

Where an entity notifies the Commissioner by way of correspondence, the entity makes a statement about its entitlement by asserting that it has an entitlement.<sup>6A</sup>

## 11. Paragraph 43

At the end of the first sentence; insert:

<sup>7A</sup> Refer to *North Sydney* [at 30] where it was stated that the notification required details of the tax periods to which the notification related.

## 12. Paragraph 56

After the paragraph; insert:

56A. It is the communication itself that must be relied on to provide the requisite notification information. Any deficiency in the notification cannot relevantly be overcome by pointing to any information previously provided to the Commissioner.<sup>9A</sup>

## 13. Paragraph 64

Omit the third sentence.

## 14. Paragraph 65

Omit the paragraph; substitute:

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:

- the reference to GST overpaid and/or input tax credits underclaimed does not clearly identify the tax periods involved. It could not be said that any particular refund, other payment or credit is covered by the notification; and
- it does not positively assert that there is an entitlement, rather it indicates that there may be a refund or credit entitlement.

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<sup>6A</sup> Refer to *North Sydney* [at 30] where the notification required details of the tax period involved and the nature of the refund or input tax credit claimed.

<sup>9A</sup> Refer to *North Sydney* at [34-35].

**15. Case references**

Insert:

- North Sydney Developments Pty Ltd v Federal Commissioner of Taxation [2014] AATA 363; 2014 ATC 10-365; [2014] ALMD 5048; (2014) 92 ATR 740

This Addendum applies on and from the date of issue.

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**Commissioner of Taxation**

24 June 2015

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ATO references

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