


MT 2010/1A3 - Addendum - Miscellaneous tax: restrictions on GST refunds under section 105-65 of Schedule 1 to the Taxation Administration Act 1953

 This cover sheet is provided for information only. It does not form part of *MT 2010/1A3 - Addendum - Miscellaneous tax: restrictions on GST refunds under section 105-65 of Schedule 1 to the Taxation Administration Act 1953*

 View the [consolidated version](#) for this notice.



Addendum

Miscellaneous Taxation Ruling

Miscellaneous tax: restrictions on GST refunds under section 105-65 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 2010/1 to reflect amendments to section 105-65 of Schedule 1 to the *Taxation Administration Act 1953* and the insertion of Division 142 into the *A New Tax System (Goods and Services Tax) Act 1999*.

MT 2010/1 is amended as follows:

1. Paragraph 13

After the paragraph, insert:

13A. In *Naidoo v. Commissioner of Taxation* [2013] AATA 443; 2013 ATC 10-323 (*Naidoo*), the Tribunal found that section 105-65 is not a provision that allows the Commissioner to alter the net amount worked out under subsection 17-5(1) of the GST Act. The Tribunal therefore found that it did not have jurisdiction to review the Commissioner's decision under section 105-65 to not give a refund of the overpaid GST.

13B. Following the Tribunal's decision in *Naidoo*, section 105-65 was amended^{4AA} effective from 30 May 2014 so that a taxpayer who is dissatisfied with a decision made by the Commissioner under section 105-65 may lodge an objection in the manner set out in Part IVC of the TAA.

13C. Section 105-65 only applies to an amount that relates to a tax period starting on or before 30 May 2014^{4AB} (the day *Tax Laws Amendment (2014 Measures No. 1) Act 2014* received Royal Assent). Section 105-65 will be repealed on 1 July 2018.

^{4AA} *Tax Laws Amendment (2014 Measures No. 1) Act 2014*

^{4AB} The treatment of excess GST relating to a tax period starting on or after 31 May 2014 is subject to Division 142 of the GST Act.

MT 2010/1

2. Paragraph 14

(a) After 'the following amounts' within subparagraph (2); insert 'that relate to a *tax period starting on or before the day the *Tax Laws Amendment (2014 Measures No. 1) Act 2014* receives the Royal Assent'.

(b) After the subparagraph (2); insert:

- (3) The Commissioner must notify you in writing of any decision relating to you made under subsection (1) after the day mentioned in subsection (2).
- (4) You may object, in the manner set out in Part IVC, against a decision you are dissatisfied with that was made under subsection (1).

Note: This section will be repealed on 1 July 2018: see Part 3 of Schedule 2 to the *Tax Laws Amendment (2014 Measures No. 1) Act 2014*.

3. Footnote 5A

Omit '& *Anor v. FC of T* [2013] AATA 443'.

4. Paragraph 31

After the paragraph; insert:

Where an administration fee is charged by the supplier

31A. A supplier may charge the recipient an 'administration fee' and reduce the amount reimbursed to the recipient by the amount of that fee.

31B. An administration fee is one charged to cover the reasonable costs of making the reimbursement. Costs will be considered reasonable when they closely reflect the actual costs incurred by the supplier in making the reimbursement.

31C. Section 105-65 does not apply to restrict the payment of a refund of the full amount that has been overpaid (or not refunded) where:

- the administration fee is based on the reasonable administration costs incurred by the supplier in making the reimbursement, and
- the recipient agrees to pay the administration fee.

31D. However, section 105-65 may apply to restrict the payment of the refund where the recipient is registered (or required to be registered) for GST.

5. Paragraph 35B

After the paragraph; insert:

35C. The Addendum to this Ruling that issued on 8 July 2015 applies before and after its date of issue. To the extent that it relates to enactment of *Tax Laws Amendment (2014 Measures No. 1) Act 2014*, the Ruling applies to tax periods commencing on or before 30 May 2014.

6. Paragraph 115A

After 'or if made' in the third dot point; insert 'under an agreement'.

7. Subparagraph 128(c)

Omit from the second sentence 'it clear from the scope and purpose that section 105-65 is'; substitute 'it is clear from the scope and purpose of section 105-65 that the provision is'.

8. Paragraph 138

After the paragraph, insert:

Where an administration fee is charged by the supplier

138A. In some circumstances, a supplier may charge an 'administration fee' to the recipient and reduce the reimbursement to the recipient by the amount of that fee.

138B. In this situation, one requirement for the supplier to obtain a refund of the full amount that has been overpaid (or not refunded) is that the fee is based on the reasonable administration costs incurred by the supplier in making the reimbursement. The other requirement is that the customer agrees to pay the administration fee.

138C. Administration costs will be considered reasonable when they closely reflect the actual costs incurred by the supplier in making the reimbursement.

138D. It is recognised that the actual costs in making the reimbursement will vary from case to case. For instance, where the tasks associated with the reimbursement are quick and straightforward, the costs may be immaterial or low. However, where those tasks are time consuming or onerous, the costs may be higher. When the costs are higher and the supplier charges an administration fee accordingly, it should ensure that the administration fee charged is reasonable and the costs can be substantiated.

MT 2010/1

Example 7A – administration fee charged to recipient of supply

138E. *John Co is registered for GST and treats a supply made to Christyne (who is not registered or required to be registered) as a taxable supply for \$1,100.*

138F. *In its quarterly GST return, John Co includes GST payable of \$100 for the supply to Christyne. John Co later realises that the supply is GST-free and decides to reimburse Christyne for the overpaid GST less an administration fee of \$10. The fee closely reflects the actual costs incurred in making the reimbursement and Christyne agrees to pay the fee.*

138G. *John Co obtains a refund for the full amount of GST that was overpaid, being \$100.*

9. Paragraph 152

After the paragraph, insert:

152A. Following the Tribunal's decision in *Naidoo*, section 105-65 was amended effective 30 May 2014 so that a taxpayer who is dissatisfied with a decision made by the Commissioner under section 105-65 may lodge an objection in the manner set out in Part IVC of the TAA.

10. Paragraph 161

Omit the last sentence; substitute 'If Sheree is dissatisfied with the Commissioner's decision to not pay the GST refund, she can object against that decision under Part IVC of the TAA.'

11. Paragraph 195

Omit the Detailed contents list, substitute:

	Paragraph
What this Ruling is about	1
Background	7
Legislative framework	7
Legislative context	14
Frequently used terms	15
Ruling	19
Whether section 105-65 applies to overpayments of LCT and WET and to taxable importations	19
Circumstances under which section 105-65 applies	20
Meaning of 'treated' as a taxable supply	21
Meaning of 'to any extent'	23

Circumstances in which the Commissioner may exercise the discretion to refund where section 105-65 applies	27
What is the amount of any refund given	29
<i>Where an administration fee is charged by the supplier</i>	31A
Recovery of amounts refunded without regard to section 105-65	32
Section 105-65 is not taken into account in determining assessed net amount	34
Date of effect	35
Appendix 1 - Explanation	36
Whether section 105-65 applies to overpayments of LCT and WET and to taxable importations	46
Circumstances under which section 105-65 applies	54
<i>Example 1</i>	59
<i>Example 1A</i>	61A
<i>Example 1B</i>	61E
<i>Example 1C</i>	61H
Entity not carrying on an enterprise	61L
<i>Example 1D</i>	61M
<i>Example 1E</i>	61P
Meaning of 'treated' as a taxable supply	62
<i>Example 2</i>	65
Meaning of 'to any extent'	68
Margin scheme cases	83
Mixed supply cases	86
<i>Example 3</i>	89
Gambling supplies	92
Effect where the wrong entity remits the GST	94
<i>Example 4</i>	95
Associates	98A
Long-term accommodation in commercial residential premises	98C
GST payable on supplies of fringe benefits	98G
Miscalculation of GST which arises when a taxpayer fails to pay LCT on a luxury car	98K
<i>Example 4A</i>	98L
GST on insurance premiums	98P

MT 2010/1

Circumstances in which the Commissioner may exercise the discretion to refund where section 105-65 applies	113
Guiding principles to consider in exercising the discretion	128
What is the amount of any refund given	133
<i>Example 7</i>	137
<i>Where an administration fee is charged by the supplier</i>	138A
<i>Example 7A</i>	138E
Recovery of amounts refunded without regard to section 105-65	143
Section 105-65 is not taken into account in determining assessed net amount	150
<i>Example 9</i>	160
Appendix 2 – Overview of the GST refund rules	162
Appendix 3 – Examples: exercise of the discretion	163
<i>Example 10</i>	164
<i>Example 11</i>	169
<i>Example 12</i>	173
<i>Example 13</i>	177
<i>Example 14</i>	181
<i>Example 15</i>	184
Appendix 4 - Detailed contents list	195

12. Legislative references

Insert:

- ANTS(GST)A 1999 Div 142
- Tax Laws Amendment (2014 Measures No. 1) Act 2014
- Tax Laws Amendment (2014 Measures No. 1) Act 2014 Sch 2 Pt 3

This Addendum applies on and from 31 May 2014.

Commissioner of Taxation

8 July 2015

ATO references

NO: 1-5YZZ9RW

ISSN: 1039-0731

ATOlaw topic: Goods and Services Tax ~~ General rules and concepts ~~
adjustment events
Goods and Services Tax ~~ General rules and concepts ~~
GST returns.

**© AUSTRALIAN TAXATION OFFICE FOR THE
COMMONWEALTH OF AUSTRALIA**

You are free to copy, adapt, modify, transmit and distribute this material as you wish (but not in any way that suggests the ATO or the Commonwealth endorses you or any of your services or products).