Tax Laws Amendment (2009 GST Administration Measures) Act 2010

No. 20, 2010

An Act to amend legislation relating to indirect tax, and for related purposes

Note: An electronic version of this Act is available in ComLaw (http://www.comlaw.gov.au/)

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Tax Laws Amendment (2009 GST Administration Measures) Act 2010

No. 20, 2010

An Act to amend legislation relating to indirect tax, and for related purposes

[*Assented to 24 March 2010*]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Tax Laws Amendment (2009 GST Administration Measures) Act 2010*.

2 Commencement

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	**Column 2**	**Column 3**
Provision(s)	**Commencement**	**Date/Details**
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	24 March 2010
2. Schedule 1	The day this Act receives the Royal Assent.	24 March 2010
3. Schedule 2, items 1 and 2	1 July 2010.	1 July 2010
4. Schedule 2, items 3 and 4	The later of: (a) immediately after the commencement of the provision(s) covered by table item 6; and (b) the start of 1 July 2010.	
5. Schedule 2, items 5 to 23	1 July 2010.	1 July 2010
6. Schedules 3 to 6	The day this Act receives the Royal Assent.	24 March 2010

Note: This table relates only to the provisions of this Act as originally passed by both Houses of the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

(2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule

concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Time limit on entitlements to input tax credits and fuel tax credits

Part 1—Amendments relating to input tax credits

A New Tax System (Goods and Services Tax) Act 1999

1 Section 11-99 (at the end of the table)

Add:

16	Time limit on entitlements to input tax credits	Division 93

2 Section 17-99 (after table item 9B)

Insert:

9C	Providing additional consideration under gross-up clauses	Division 133

3 Paragraphs 19-70(2)(a) and 19-75(c)

Omit “or 129”, substitute “, 129 or 133”.

4 Section 19-99 (after table item 2)

Insert:

2A	Providing additional consideration under gross-up clauses	Division 133

5 Section 37-1 (after table item 23)

Insert:

23A	Providing additional consideration under gross-up clauses	Division 133

6 Section 37-1 (before table item 36)

Insert:

35C	Time limit on entitlements to input tax credits	Division 93

7 After Division 90

Insert:

Division 93—Time limit on entitlements to input tax credits

93-1 What this Division is about

Your entitlements to input tax credits for creditable acquisitions cease unless you include them in your net amounts within 4 years.

However, this time limit might not apply to any such entitlements relating to amounts that the Commissioner has notified to you, that arise as a result of fraud or evasion, or that you have notified to the Commissioner.

Note: These amounts are dealt with in sections 105-50 and 105-55 in Schedule 1 to the *Taxation Administration Act 1953*.

93-5 Time limit on entitlements to input tax credits

(1) You cease to be entitled to an input tax credit for a *creditable acquisition to the extent that you have not taken it into account in working out your *net amount for:

(a) the tax period to which the input tax credit would be attributable under subsection 29-10(1) or (2); or

(b) any other tax period for which you give to the Commissioner a *GST return during the period of 4 years after the day on which you were required to give to the Commissioner a GST return for the tax period referred to in paragraph (a).

Note: Section 93-10 sets out circumstances in which your entitlement to the input tax credit does not cease under this section.

(2) This section has effect despite section 11-20 (which is about who is entitled to input tax credits for creditable acquisitions).

93-10 Exceptions to time limit on entitlements to input tax credits

Commissioner has notified you of excess or refund etc.

(1) You do not cease under section 93-5 to be entitled to an input tax credit to the extent that:

(a) the input tax credit arises out of circumstances that also gave rise to the whole or a part of:

(i) an amount, or an amount of an excess, in relation to which paragraph 105-50(3)(a) in Schedule 1 to the *Taxation Administration Act 1953* applies; or

(ii) a refund, other payment or credit in relation to which paragraph 105-55(1)(b) in Schedule 1 to that Act applies; and

(b) the Commissioner gave to you the notice referred to in that paragraph not later than 4 years after the end of the tax period to which the credit would be attributable under subsection 29-10(1) or (2) of this Act.

Note 1: Section 105-50 in Schedule 1 to the *Taxation Administration Act 1953* deals with the time limit within which the Commissioner can recover indirect tax amounts, and section 105-55 in Schedule 1 to that Act deals with the time limit within which you can claim amounts relating to indirect tax.

Note 2: Section 93-15 of this Act may preclude this subsection from applying to the input tax credit, in which case section 93-5 of this Act will apply.

Excess relates to amount avoided by fraud or evaded

(2) You do not cease under section 93-5 to be entitled to an input tax credit to the extent that the input tax credit arises out of circumstances that also gave rise to:

(a) the whole or a part of an amount in relation to which paragraph 105-50(3)(b) in Schedule 1 to the *Taxation Administration Act 1953* applies; or

(b) an amount of an excess, in relation to which that paragraph applies.

Note 1: Section 105-50 in Schedule 1 to the *Taxation Administration Act 1953* deals with the time limit within which the Commissioner can recover indirect tax amounts.

Note 2: Section 93-15 of this Act may preclude this subsection from applying to the input tax credit, in which case section 93-5 of this Act will apply.

You have notified the Commissioner of refund etc.

(3) You do not cease under section 93-5 to be entitled to an input tax credit to the extent that:

(a) the input tax credit arises out of circumstances that also gave rise to the whole or a part of a refund, other payment or credit

in relation to which paragraph 105-55(1)(a) in Schedule 1 to the *Taxation Administration Act 1953* applies; and

(b) you gave to the Commissioner the notice referred to in that paragraph not later than 4 years after the end of the tax period to which the credit would be attributable under subsection 29-10(1) or (2) of this Act.

Note 1: Section 105-55 in Schedule 1 to the *Taxation Administration Act 1953* deals with the time limit within which you can claim amounts relating to indirect tax.

Note 2: Section 93-15 of this Act may preclude this subsection from applying to the input tax credit, in which case section 93-5 of this Act will apply.

93-15 GST ceasing to be payable on the related supply

Section 93-10 does not apply if:

(a) GST has ceased to be payable (other than as a result of its payment) on the supply that is related to the *creditable acquisition for which you would be entitled to an input tax credit but for this section; and

(b) at the time of the cessation, you did not hold a *tax invoice for the creditable acquisition.

8 Section 129-80 (heading)

Repeal the heading, substitute:

129-80 Effect of adjustment under Division 19, 21 or 133

9 Section 129-80

Omit “Division 19 or 21”, substitute “Division 19, 21 or 133”.

10 Subsection 132-5(2) (paragraph (c) of the definition of *adjusted input tax credit*)

Omit “Division 129”, substitute “Division 129 or 133”.

11 After Division 132

Insert:

Division 133—Providing additional consideration under gross-up clauses

133-1 What this Division is about

> You may have a decreasing adjustment for an acquisition that you made if, to take account of a GST liability that the supplier is subsequently found to have, you provide additional consideration at a time when you can no longer claim an input tax credit.

133-5 Decreasing adjustments for additional consideration provided under gross-up clauses

(1) You have a ***decreasing adjustment*** if:

(a) you made an acquisition on the basis that:

(i) it was not a *creditable acquisition because the supply to which the acquisition relates was not a *taxable supply; or

(ii) it was *partly creditable because the supply to which the acquisition relates was only partly a taxable supply; and

(b) you provided *additional consideration for the acquisition in compliance with a contractual obligation that required you, or had the effect of requiring you, to provide additional consideration if:

(i) in a case where subparagraph (a)(i) applies—the supply was later found to be a taxable supply, or to be partly a taxable supply; or

(ii) in a case where subparagraph (a)(ii) applies—the supply was later found to be a taxable supply to a greater extent; and

(c) GST on the supply has not ceased to be payable (other than as a result of its payment); and

(d) at the time you provided the additional consideration, you were no longer entitled to an input tax credit for the acquisition.

Note: Section 93-5 may provide a time limit on your entitlement to an input tax credit.

(2) The amount of the *decreasing adjustment is the difference between:

(a) what would have been the *previously attributed input tax credit amount for the acquisition if:

(i) the *additional consideration for the acquisition had been provided as part of the original *consideration for the acquisition; and

(ii) in a case where you have not held a *tax invoice for the acquisition—you held such an invoice; and

(iii) subsection 29-10(4) did not apply in relation to the acquisition; and

(b) the previously attributed input tax credit amount.

(3) To avoid doubt, ***additional consideration*** for an acquisition includes a part of the *consideration for the acquisition that:

(a) relates to the amount of GST payable on the *taxable supply to which the acquisition relates; and

(b) at the time of the acquisition, the parties to the transaction under which the acquisition was made assumed was not payable.

133-10 Availability of adjustments under Division 19 for acquisitions

(1) If:

(a) you have a *decreasing adjustment under this Division for an acquisition; and

(b) the circumstances that gave rise to the adjustment also constitute an *adjustment event;

you do not have a decreasing adjustment under section 19-70 for the acquisition in relation to those circumstances.

(2) This section has effect despite section 19-70 (which is about adjustments for acquisitions arising because of adjustment events).

12 Section 195-1

Insert:

additional consideration includes the meaning given by subsection 133-5(3).

13 Section 195-1 (after table item 6 of the definition of *decreasing adjustment*)

Insert:

6A	Section 133-5	*Decreasing adjustments for *additional consideration provided under gross-up clauses

Income Tax Assessment Act 1997

14 Subsection 995-1(1)

Insert:

tax invoice has the meaning given by section 195-1 of the *GST Act.

Taxation Administration Act 1953

15 At the end of subsection 105-55(1) in Schedule 1

Add:

Note: Division 93 of the GST Act puts a time limit on your entitlement to an input tax credit. Division 47 of the *Fuel Tax Act 2006* puts a time limit on your entitlement to a fuel tax credit.

16 After subsection 105-55(2) in Schedule 1

Insert:

(2A) A request by you to the Commissioner to treat a document as a *tax invoice for the purposes of attributing a credit to a *tax period is taken to be a notification, for the purposes of paragraph (1)(a), of your entitlement to the credit if:

(a) you made the request within the 4 year period referred to in that paragraph in relation to the credit; and

(b) the Commissioner agrees to the request (whether or not within that period).

Part 2—Amendments relating to fuel tax credits

Fuel Tax Act 2006

17 At the end of Part 3-3

Add:

Division 47—Time limit on entitlements to fuel tax credits

Table of Subdivisions

Guide to Division 47
47-A Time limit on entitlements to fuel tax credits

Guide to Division 47

47-1 What this Division is about

Your entitlements to fuel tax credits cease unless you include them in your net fuel amounts within 4 years.

However, this time limit might not apply to any such entitlements relating to amounts that the Commissioner has notified to you, that arise as a result of fraud or evasion, or that you have notified to the Commissioner.

Note: These amounts are dealt with in sections 105-50 and 105-55 in Schedule 1 to the *Taxation Administration Act 1953*.

Subdivision 47-A—Time limit on entitlements to fuel tax credits

Table of Sections

47-5 Time limit on entitlements to fuel tax credits
47-10 Exceptions to time limit on entitlements to fuel tax credits

47-5 Time limit on entitlements to fuel tax credits

You cease to be entitled to a fuel tax credit to the extent that you have not taken it into account in working out your *net fuel amount for:

(a) the *tax period or *fuel tax return period to which the fuel tax credit would be attributable under subsection 65-5(1), (2) or (3); or

(b) any other tax period, or fuel tax return period, for which you give to the Commissioner a return under section 61-15 during the period of 4 years after the day on which you were required to give to the Commissioner such a return for the tax period or fuel tax return period referred to in paragraph (a).

Note: Section 47-10 sets out circumstances in which your entitlement to the fuel tax credit does not cease under this section.

47-10 Exceptions to time limit on entitlements to fuel tax credits

Commissioner has notified you of excess or refund etc.

(1) You do not cease under section 47-5 to be entitled to a fuel tax credit to the extent that:

(a) the fuel tax credit arises out of circumstances that also gave rise to the whole or a part of:

(i) an amount, or an amount of an excess, in relation to which paragraph 105-50(3)(a) in Schedule 1 to the *Taxation Administration Act 1953* applies; or

(ii) a refund, other payment or credit in relation to which paragraph 105-55(1)(b) or (3)(b) in Schedule 1 to that Act applies; and

(b) the Commissioner gave to you the notice referred to in that paragraph not later than 4 years after the end of the tax period to which the credit would be attributable under subsection 65-5(1), (2) or (3) of this Act.

Note: Section 105-50 in Schedule 1 to the *Taxation Administration Act 1953* deals with the time limit within which the Commissioner can recover indirect tax amounts, and section 105-55 in Schedule 1 to that Act deals with the time limit within which you can claim amounts relating to indirect tax.

Excess relates to amount avoided by fraud or evaded

(2) You do not cease under section 47-5 to be entitled to a fuel tax credit to the extent that the fuel tax credit arises out of circumstances that also gave rise to:

(a) the whole or a part of an amount in relation to which paragraph 105-50(3)(b) in Schedule 1 to the *Taxation Administration Act 1953* applies; or

(b) an amount of an excess, in relation to which that paragraph applies.

Note: Section 105-50 in Schedule 1 to the *Taxation Administration Act 1953* deals with the time limit within which the Commissioner can recover indirect tax amounts.

You have notified the Commissioner of refund etc.

(3) You do not cease under section 47-5 to be entitled to a fuel tax credit to the extent that:

(a) the fuel tax credit arises out of circumstances that also gave rise to the whole or a part of a refund, other payment or credit in relation to which paragraph 105-55(1)(a) or (3)(a) in Schedule 1 to the *Taxation Administration Act 1953* applies; and

(b) you gave to the Commissioner the notice referred to in that paragraph not later than 4 years after the end of the tax period to which the credit would be attributable under subsection 65-5(1), (2) or (3) of this Act.

Note: Section 105-55 in Schedule 1 to the *Taxation Administration Act 1953* deals with the time limit within which you can claim amounts relating to indirect tax.

Taxation Administration Act 1953

18 At the end of subsection 105-55(3) in Schedule 1

Add:

Note: Division 47 of the *Fuel Tax Act 2006* puts a time limit on your entitlement to a fuel tax credit.

Part 3—Application of amendments

19 Application of amendments relating to input tax credits

The amendments made by Part 1 of this Schedule apply, and are taken to have applied, in relation to acquisitions and adjustments that are taken into account in:

(a) GST returns given to the Commissioner under the *A New Tax System (Goods and Services Tax) Act 1999* after 7.30 pm Australian Eastern Standard Time on 12 May 2009; or

(b) assessments made by the Commissioner under Subdivision 105-A in Schedule 1 to the *Taxation Administration Act 1953* after that time; or

(c) amendments of:

(i) GST returns referred to in paragraph (a); or

(ii) assessments referred to in paragraph (b).

20 Application of amendments relating to fuel tax credits

The amendments made by Part 2 of this Schedule apply, and are taken to have applied, in relation to acquisitions, manufacturing, importations and adjustments that are taken into account in:

(a) returns given to the Commissioner under section 61-15 of the *Fuel Tax Act 2006* on or after 1 July 2010; or

(b) amendments of such returns.

Schedule 2—Refund collection system

A New Tax System (Goods and Services Tax) Act 1999

1 After paragraph 38-185(3)(e)

Insert:

; and (f) if that entity is covered by paragraph 168-5(1A)(c)—the supplier has a declaration by that entity stating that:

(i) a payment has not been sought under section 168-5 for the supply; and

(ii) if the goods are wine (within the meaning of the *A New Tax System (Wine Equalisation Tax) Act 1999*)—a payment has not been sought under section 25-5 of that Act for the supply.

2 At the end of subsection 38-185(3)

Add:

Note: The entity will be covered by paragraph 168-5(1A)(c) if the entity is an individual who resides in an external Territory.

3 After paragraph 38-185(4)(e)

Insert:

; and (f) if the associate is covered by paragraph 168-5(1A)(c)—the supplier has a declaration by the associate stating that:

(i) a payment has not been sought under section 168-5 for the supply; and

(ii) if the goods are wine (within the meaning of the *A New Tax System (Wine Equalisation Tax) Act 1999*)—a payment has not been sought under section 25-5 of that Act for the supply.

4 At the end of subsection 38-185(4)

Add:

Note: The associate will be covered by paragraph 168-5(1A)(c) if the associate is an individual who resides in an external Territory.

5 Section 168-1

After “baggage,”, insert “or you are a resident of an external Territory and send goods home,”.

6 Before subsection 168-5(1)

Insert:

Exporting goods as accompanied baggage

7 After subsection 168-5(1)

Insert:

Resident of external Territory sending goods home

(1A) If:

(a) you make an acquisition of goods the supply of which to you is a *taxable supply; and

(b) the acquisition is of a kind specified in the regulations; and

(c) at the time of the acquisition, you are an individual to whom one of the following subparagraphs applies:

(i) you reside in an external Territory;

(ii) your domicile is in an external Territory;

(iii) you have actually been in an external Territory, continuously or intermittently, during more than half of the last 12 months; and

(d) at the time of the acquisition, you are not *registered or *required to be registered; and

(e) you leave Australia, and export the goods to the external Territory:

(i) in circumstances not covered by paragraph (1)(c); and

(ii) in circumstances specified in the regulations;

the Commissioner must, on behalf of the Commonwealth, pay to you an amount equal to:

(f) the amount of the GST payable on the taxable supply; or

(g) such proportion of that amount of GST as is specified in the regulations.

8 Before subsection 168-5(2)

Insert:

Paying the refund

9 Subsection 168-5(2)

Omit "The amount", substitute "An amount payable under this section".

10 At the end of section 168-5

Add:

You may be found not to be a resident of an external Territory

(3) Subparagraph (1A)(c)(ii) does not apply to you if the Commissioner is satisfied that your permanent place of abode is outside that external Territory.

(4) Subparagraph (1A)(c)(iii) does not apply to you if the Commissioner is satisfied:

(a) that your usual place of abode is outside that external Territory; and

(b) that you do not intend to take up residence in that Territory.

11 At the end of Division 168

Add:

168-10 Supplies later found to be GST-free supplies

(1) If:

(a) you are paid an amount under subsection 168-5(1A) for a supply; and

(b) the supply is or becomes a *GST-free supply;

you become liable to repay the amount (the ***recoverable amount***) to the Commonwealth on the later of the following days (the ***due day***):

(c) the day you were paid the recoverable amount;

(d) the day the supply becomes a GST-free supply.

(2) You are liable to pay general interest charge on the whole, or any part, of the recoverable amount that remains unpaid after the due day for each day in the period that:

(a) starts on the due day; and

(b) finishes at the end of the last day at the end of which any of the following remains unpaid:

(i) the recoverable amount;

(ii) general interest charge on any of the recoverable amount.

A New Tax System (Wine Equalisation Tax) Act 1999

12 Section 25-1

After "baggage,", insert "or you are a resident of an external Territory and send wine home,".

13 Before subsection 25-5(1)

Insert:

Exporting wine as accompanied baggage

14 After subsection 25-5(1)

Insert:

Resident of external Territory sending wine home

(1A) If:

(a) you have *borne wine tax on wine that you purchased; and

(b) the purchase is of a kind specified in the regulations; and

(c) an amount is payable to you under subsection 168-5(1A) of the *GST Act for the *taxable supply corresponding to the purchase;

the Commissioner must, on behalf of the Commonwealth, pay to you an amount equal to:

(d) the amount of the wine tax that you have borne on the wine; or

(e) such proportion of that amount of wine tax as is specified in the regulations.

15 Before subsection 25-5(2)

Insert:

Working out amounts of wine tax borne

16 Before subsection 25-5(3)

Insert:

Paying the refund

17 Subsection 25-5(3)

Omit "The amount", substitute "An amount payable under this section".

18 At the end of Division 25

Add:

25-10 Purchases later found to be GST-free supplies

(1) If:

(a) you are paid an amount under subsection 25-5(1A) for a purchase; and

(b) the supply corresponding to the purchase is or becomes a *GST-free supply;

you become liable to repay the amount (the ***recoverable amount***) to the Commonwealth on the later of the following days (the ***due day***):

(c) the day you were paid the recoverable amount;

(d) the day the supply becomes a GST-free supply.

(2) You are liable to pay general interest charge on the whole, or any part, of the recoverable amount that remains unpaid after the due day for each day in the period that:

(a) starts on the due day; and

(b) finishes at the end of the last day at the end of which any of the following remains unpaid:

(i) the recoverable amount;

(ii) general interest charge on any of the recoverable amount.

Taxation Administration Act 1953

19 Subsection 8AAB(5) (after table item 1AA)

Insert:

1AB	168-10	*A New Tax System (Goods and Services Tax) Act 1999*

20 Subsection 8AAB(5) (before table item 1A)

Insert:

1AD	25-10	*A New Tax System (Wine Equalisation Tax) Act 1999*

21 Subsection 250-10(2) in Schedule 1 (before table item 15)

Insert:

13	repayments of amounts paid under tourist refund scheme	168-10	*A New Tax System (Goods and Services Tax) Act 1999*

22 Subsection 250-10(2) in Schedule 1 (after table item 20)

Insert:

21	repayments of amounts paid under tourist refund scheme	25-10	*A New Tax System (Wine Equalisation Tax) Act 1999*

23 Application

(1) The amendments made by this Schedule apply in relation to goods acquired, and wine purchased, on or after 1 July 2010.

(2) However, if this Act does not receive the Royal Assent on or before 1 July 2010, the amendments made by items 3 and 4 of this Schedule apply in relation to goods acquired, and wine purchased, on or after the day this Act receives the Royal Assent.

Schedule 3—Agency provisions

A New Tax System (Goods and Services Tax) Act 1999

1 Division 153 (heading)

Repeal the heading, substitute:

Division 153—Agents etc. and insurance brokers

2 Section 153-1

Omit "acquisition made through an agent", substitute "acquisition made through, or facilitated by, an entity on your behalf".

3 Subsection 153-15(2) (note)

Repeal the note, substitute:

Note: If Subdivision 153-B is to apply to the supply, there will be an arrangement under which only your agent can issue the tax invoice: see paragraph 153-50(1)(d).

4 Subdivision 153-B (heading)

Repeal the heading, substitute:

Subdivision 153-B—Principals and intermediaries as separate suppliers or acquirers

5 Section 153-50 (heading)

Repeal the heading, substitute:

153-50 Arrangements under which intermediaries are treated as suppliers or acquirers

6 Section 153-50

Before "An", insert "(1)".

7 Section 153-50

Omit "(the ***agent***)", substitute "(the ***intermediary***)".

8 Paragraph 153-50(a)

Repeal the paragraph, substitute:

(a) the intermediary will, on the principal's behalf, do any or all of the following:

(i) make supplies to third parties;

(ii) facilitate supplies to third parties (including by issuing *invoices relating to, or receiving *consideration for, such supplies);

(iii) make acquisitions from third parties;

(iv) facilitate acquisitions from third parties (including by providing consideration for such acquisitions); and

9 Paragraphs 153-50(c), (d) and (e)

Omit "agent" (wherever occurring), substitute "intermediary".

10 At the end of section 153-50

Add:

(2) For the purposes of subsection (1), an entity can be an intermediary whether or not the entity is the agent of the principal.

11 Subsection 153-55(1)

Omit "agent" (wherever occurring), substitute "intermediary".

12 Subsection 153-55(2)

Omit "to the agent", substitute "to the intermediary".

13 Paragraph 153-55(2)(a)

Omit "***agent's supply***) that the agent", substitute "***intermediary's supply***) that the intermediary".

14 Paragraph 153-55(2)(b)

Omit "agent in respect of the agent's", substitute "intermediary in respect of the intermediary's".

15 Subsection 153-55(2)

Omit "The agent", substitute "The intermediary".

16 Subsection 153-55(3)

Omit “agent for the agent’s”, substitute “intermediary for the intermediary’s”.

17 Paragraphs 153-55(3)(a) and (b)

Omit “agent” (wherever occurring), substitute “intermediary”.

18 Subsection 153-60(1)

Omit “agent” (wherever occurring), substitute “intermediary”.

19 Subsection 153-60(2)

Omit “, the agent”, substitute “, the intermediary”.

20 Paragraph 153-60(2)(a)

Omit “***agent’s acquisition***) that the agent”, substitute “***intermediary’s acquisition***) that the intermediary”.

21 Paragraph 153-60(2)(b)

Omit “agent by the principal in respect of the agent’s”, substitute “intermediary by the principal in respect of the intermediary’s”.

22 Subsection 153-60(2)

Omit “from the agent”, substitute “from the intermediary”.

23 Subsection 153-60(3)

Omit “agent for the agent’s”, substitute “intermediary for the intermediary’s”.

24 Paragraphs 153-60(3)(a) and (b)

Omit “agent” (wherever occurring), substitute “intermediary”.

25 Subsection 153-65(1)

Repeal the subsection, substitute:

(1) The Commissioner may determine in writing that:

(a) supplies of a specified kind to third parties that any entity (the ***intermediary***) makes or facilitates (including by issuing *invoices relating to, or receiving *consideration for, such supplies) on behalf of any other entity (the ***principal***); or

(b) acquisitions of a specified kind from third parties that any entity (the ***intermediary***) makes or facilitates (including by providing consideration for such acquisitions) on behalf of any other entity (the ***principal***);

are taken to be supplies or acquisitions that are of a kind to which an arrangement of a kind referred to in section 153-50 applies, and that are made in accordance with that arrangement.

26 Subsection 153-65(2)

Omit "either the agent", substitute "either the intermediary".

27 Paragraph 153-65(2)(a)

Omit "that the agent makes to third parties", substitute "to third parties that the intermediary makes or facilitates (including by issuing *invoices relating to, or receiving *consideration for, such supplies)".

28 Paragraph 153-65(2)(b)

Omit "that the agent makes from third parties", substitute "from third parties that the intermediary makes or facilitates (including by providing consideration for such acquisitions)".

29 Subsections 188-24(1) and (2)

Omit "agent", substitute "intermediary".

Taxation Administration Act 1953

30 Subsection 382-5(5) in Schedule 1

Omit "agent", substitute "intermediary (within the meaning of that section)".

31 Application

The amendments made by this Schedule apply in relation to supplies and acquisitions made on or after 1 July 2010.

Schedule 4—Gambling activities by entities outside Australia

A New Tax System (Goods and Services Tax) Act 1999

1 Subsection 126-10(3)

Omit “under section 38-270”.

2 Application

(1) The amendment made by this Schedule applies in relation to monetary prizes that you become liable to pay on or after the first day of the first quarterly tax period that starts on or after the commencement of this Schedule.

(2) For the purposes of subitem (1), it does not matter whether quarterly tax periods are the tax periods that apply to you.

Schedule 5—Recovering overpaid refunds

A New Tax System (Goods and Services Tax) Act 1999

1 Section 35-5

Before “If”, insert “(1)”.

2 At the end of section 35-5 (after the notes)

Add:

(2) However, if the amount paid, or applied under the *Taxation Administration Act 1953*, exceeds the amount to which you are properly entitled under subsection (1), the excess is to be treated as if it were GST that became payable, and due for payment, by you at the time when the amount was paid or applied.

Note: The main effect of treating the amount as if it were GST is to apply the collection and recovery rules in Part 3-10 in Schedule 1 to the *Taxation Administration Act 1953*, such as a liability to pay the general interest charge under section 105-80 in that Schedule.

3 Application

The amendment made by item 2 applies in relation to amounts payable under subsection 35-5(1) of the *A New Tax System (Goods and Services Tax) Act 1999* (as amended by this Schedule) for tax periods starting on or after the commencement of this Schedule.

A New Tax System (Luxury Car Tax) Act 1999

4 At the end of Division 17

Add:

17-15 Excess credits must be repaid

If the amount of a credit you claim exceeds the amount to which you are properly entitled under section 17-5, the excess is to be treated as if it were luxury car tax that became payable, and due for payment, by you at the time when the credit was paid or applied to you.

Note: The main effect of treating the amount as if it were luxury car tax is to apply the collection and recovery rules in Part 3-10 in Schedule 1 to the *Taxation Administration Act 1953*, such as a liability to pay the general interest charge under section 105-80 in that Schedule.

5 Application

The amendment made by item 4 applies in relation to claims made on or after the commencement of this Schedule.

Fuel Tax Act 2006

6 At the end of section 61-5

Add:

(3) However, if the amount (the ***refund***) paid, or applied under the *Taxation Administration Act 1953*, for a *tax period or *fuel tax return period exceeds the *amount to which you are properly entitled under subsection (1) for that period, you must pay the excess to the Commissioner as if:

(a) the excess were a *net fuel amount for that period; and

(b) that net fuel amount were an amount greater than zero and equal to the excess; and

(c) despite section 61-10, that net fuel amount became payable, and due for payment, by you at the time when the refund was paid or applied.

Note: Treating the excess as if it were a net fuel amount has the effect of applying the collection and recovery rules in Part 3-10 in Schedule 1 to the *Taxation Administration Act 1953*, such as a liability to pay the general interest charge under section 105-80 in that Schedule.

7 Application

The amendment made by item 6 applies in relation to amounts payable under subsection 61-5(1) of the *Fuel Tax Act 2006* for tax periods, and fuel tax return periods, starting on or after the commencement of this Schedule.

Taxation Administration Act 1953

8 Subsection 250-10(2) in Schedule 1 (after table item 10)

Insert:

12	excess refund of GST	35-5(2)	*A New Tax System (Goods and Services Tax) Act 1999*

9 Subsection 250-10(2) in Schedule 1 (after table item 15)

Insert:

16	excess luxury car tax credits	17-15	*A New Tax System (Luxury Car Tax) Act 1999*

10 Subsection 250-10(2) in Schedule 1 (before table item 20)

Insert:

18	excess wine tax credits	17-25	*A New Tax System (Wine Equalisation Tax) Act 1999*

11 Subsection 250-10(2) in Schedule 1 (table item 36)

Omit “61-10”, substitute “61-5(3), 61-10”.

Schedule 6—Interaction of associate provisions

A New Tax System (Goods and Services Tax) Act 1999

1 Subsection 38-185(1) (after table item 2)

Insert:

2A	Export of goods—supplies to associates without consideration	a supply of goods without *consideration to an *associate of the supplier, but only if the supplier exports them from Australia.

2 At the end of section 38-185

Add:

(4) Without limiting item 2A in the table in subsection (1), a supplier of goods is treated, for the purposes of that item, as having exported the goods from Australia if:

(a) before the goods are exported, the supplier supplies them to an entity that:

(i) is an *associate of the supplier; and

(ii) is not *registered or *required to be registered; and

(b) the associate exports the goods from Australia within 60 days (or such further period as the Commissioner allows) after the earlier of the following:

(i) the day the goods were delivered in Australia to the associate;

(ii) the day the goods were made available in Australia to the associate; and

(c) the goods have been entered for export within the meaning of section 113 of the *Customs Act 1901*; and

(d) since their supply to the associate, the goods have not been altered or used in any way, except to the extent (if any) necessary to prepare them for export; and

(e) the supplier has sufficient documentary evidence to show that the goods were exported.

However, if the goods are reimported into Australia, the supply is *not* GST-free unless the reimportation is a *taxable importation.

3 At the end of Subdivision 72-A

Add:

72-20 Supplies and acquisitions that would otherwise be sales etc.

(1) If, apart from a lack of *consideration:

(a) a supply to your *associate from you; or

(b) a supply to you from your associate;

would be a sale or some other kind of supply, the supply is taken for the purposes of the *GST law to be a supply of that kind.

(2) If, apart from a lack of *consideration:

(a) an acquisition by your *associate from you; or

(b) an acquisition by you from your associate;

would be by sale or some other means, the acquisition is taken for the purposes of the *GST law to be an acquisition by that means.

72-25 Supplies that would otherwise be GST-free, input taxed or financial supplies

The fact that a supply to or from your *associate is without *consideration does not stop the supply from being any of the following for the purposes of the *GST law:

(a) a *GST-free supply;

(b) a supply that is *input taxed;

(c) a *financial supply.

4 Application

The amendments made by this Schedule apply in relation to supplies, and acquisitions, made on or after the commencement of this Schedule.

[*Minister's second reading speech made in—*
House of Representatives on 25 November 2009
Senate on 24 February 2010]

(244/09)