



Tax Laws Amendment (2014 Measures No. 1) Act 2014

No. 34, 2014

**An Act to amend the law relating to taxation, and
for related purposes**

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

Contents

1	Short title.....	1
2	Commencement.....	2
3	Schedule(s).....	2
Schedule 1—Farm management deposits		3
	<i>Banking Act 1959</i>	3
	<i>Income Tax Assessment Act 1997</i>	3
	<i>Income Tax (Transitional Provisions) Act 1997</i>	5
Schedule 2—Refunding excess GST		6
Part 1—Main amendments		6
	<i>A New Tax System (Goods and Services Tax) Act 1999</i>	6
	<i>Income Tax Assessment Act 1936</i>	11
	<i>Taxation Administration Act 1953</i>	11
Part 2—Amendments about review		12
	Division 1—Old law refund decisions are reviewable	12
	<i>Taxation Administration Act 1953</i>	12
	Division 2—Validating certain past objections and reviews	13
Part 3—Amendments commencing on 1 July 2018		16
	<i>Taxation Administration Act 1953</i>	16



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No. 34, 2014

An Act to amend the law relating to taxation, and for related purposes

[Assented to 30 May 2014]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Tax Laws Amendment (2014
Measures No. 1) Act 2014*.

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.	30 May 2014
2. Schedule 1	The day this Act receives the Royal Assent.	30 May 2014
3. Schedule 2, Parts 1 and 2	The day this Act receives the Royal Assent.	30 May 2014
4. Schedule 2, Part 3	1 July 2018.	1 July 2018

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be 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Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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—Farm management deposits

Banking Act 1959

1 Subsection 69(1A)

Repeal the subsection, substitute:

(1A) However, farm management deposits (within the meaning of the *Income Tax Assessment Act 1997*) are not unclaimed moneys.

2 Subsection 69(1E)

Omit “Subsections (1) and (1A) do”, substitute “Subsection (1) does”.

Income Tax Assessment Act 1997

3 Paragraph 165-55(5)(f)

Omit “years;”, substitute “years.”

4 Paragraph 165-55(5)(j)

Repeal the paragraph.

5 Paragraph 165-55(5)(j) (note)

Repeal the note.

6 Paragraph 393-5(1)(d)

Omit “\$65,000”, substitute “\$100,000”.

7 Subsection 393-5(1) (note 1)

Omit “section 393-15”, substitute “sections 393-15 and 393-16”.

8 Subsection 393-10(1) (note 1)

Omit “section 393-15”, substitute “sections 393-15 and 393-16”.

9 Subsection 393-10(2) (after note 1)

Insert:

Note 1A: Subsection 393-16(3) affects the unrecouped FMD deduction of a consolidated farm management deposit.

10 After section 393-15

Insert:

393-16 Consolidation of farm management deposits

- (1) The provisions mentioned in subsection (2) do not apply in relation to the immediate reinvestment of 2 or more *farm management deposits (*original deposits*) if:
 - (a) just before the reinvestment occurs the balance of each of the original deposits is equal to the *unrecouped FMD deduction for the deposit; and
 - (b) the original deposits are immediately reinvested as a single farm management deposit with the same *FMD provider, or with a different FMD provider; and
 - (c) just before the reinvestment occurs the original deposits have each been held for a period of at least 12 months.

Note: This means that the reinvestment:

- (a) will not result in assessable income for the owner; and
 - (b) will not give rise to a deduction.
- (2) The provisions are:
 - (a) section 393-5 (about deductions for making a farm management deposit); and
 - (b) subsection 393-10(1) (about assessability of the repayment of a farm management deposit).
 - (3) Despite paragraph 393-10(2)(a), the *unrecouped FMD deduction* in respect of the *farm management deposit at a time before any part of the deposit has been repaid is the sum of the unrecouped FMD deductions in respect of each of the original deposits just before the reinvestment occurred.
 - (4) Section 393-40 (about the repayment of farm management deposits within 12 months) applies as if the new *farm management deposit was made on the same day that the most recent of the original deposits was made.

11 Subsection 995-1(1) (definition of *unrecouped FMD deduction*)

Omit “393-10(2)”, substitute “393-10(2), 393-16(3)”.

Income Tax (Transitional Provisions) Act 1997

12 At the end of Subdivision 393-A

Add:

393-30 Unclaimed moneys

- (1) Subsection (2) applies if:
 - (a) a farm management deposit of an owner was unclaimed moneys for the purposes of section 69 of the *Banking Act 1959*; and
 - (b) the unclaimed moneys were paid to the Commonwealth under that section; and
 - (c) the unclaimed moneys were repaid as a result of subsection 69(7) of that Act.
- (2) For the purpose of subsection 393-10(1) of the *Income Tax Assessment Act*, treat the repaid unclaimed moneys as a repayment of the deposit of the owner.
- (3) To avoid doubt, the payment of unclaimed moneys to the Commonwealth under section 69 of the *Banking Act 1959* is not a repayment of the deposit of the owner for the purposes of Division 393 of the *Income Tax Assessment Act 1997*.

13 Application of amendments

- (1) The amendments made by items 3 to 11 apply to assessments for income years starting on or after 1 July 2014.
- (2) The amendment made by item 12 applies on and after 1 January 2013.

Schedule 2—Refunding excess GST

Part 1—Main amendments

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

1 Section 9-99 (at the end of the table)

Add:

10 Excess GST Division 142

2 Subsection 17-5(1) (note)

Repeal the note, substitute:

Note 1: For the basic rules on what is attributable to a particular period, see Division 29.

Note 2: For further rules if you have excess GST for the period, see Division 142.

3 Section 19-99 (after table item 1AA)

Insert:

1AB Excess GST and cancelled supplies Division 142

4 Subsection 35-5(1) (note 1)

Omit “, and section 105-65 in Schedule 1 to,”.

5 Section 35-99 (after table item 1)

Insert:

1A Excess GST Division 142

6 Section 35-99 (note)

Repeal the note.

7 Section 37-1 (after table item 10A)

Insert:

10B Excess GST Division 142

8 Section 51-60 (note 1)

Omit “, and section 105-65 in Schedule 1 to,”.

9 Section 54-65 (note 1)

Omit “, and section 105-65 in Schedule 1 to,”.

10 At the end of Part 4-4

Add:

Division 142—Excess GST

Table of Subdivisions

142-A	Excess GST unrelated to adjustments
142-B	GST related to cancelled supplies
142-C	Passed-on GST

142-1 What this Division is about

Excess GST is not to be refunded if this would give an entity a windfall gain.
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Note: Refunding excess GST to a supplier will give it a windfall gain if it has already passed on the excess GST in the price of the supply (and not reimbursed the recipient).

Subdivision 142-A—Excess GST unrelated to adjustments

142-5 When this Subdivision applies

- (1) This Subdivision applies if, after disregarding any amounts covered by subsection (2), your *assessed net amount for a tax period takes into account an amount of GST exceeding that which is payable.

Note: This Subdivision applies whether or not you have paid, or been refunded, the assessed net amount.

Example: Sunny Co mistakenly reports a negative net amount of \$4,000 made up of GST of \$10,000 less input tax credits of \$14,000. In fact, Sunny Co's GST should have been \$8,000 making its negative net amount \$6,000. Sunny Co has excess GST of \$2,000.

- (2) Disregard the following amounts:

Schedule 2 Refunding excess GST

Part 1 Main amendments

- (a) an amount of GST that was correctly payable and attributable to the tax period, but which later becomes the subject of a *decreasing adjustment;
- (b) an amount of GST that is payable, but is correctly attributable to a different tax period.

142-10 Refunding the excess GST

For the purposes of each *taxation law, so much of the excess from subsection 142-5(1) (the **excess GST**) as you have *passed on to another entity is taken to have always been:

- (a) payable; and
- (b) on a *taxable supply;

until you reimburse the other entity for the passed-on GST.

- Note 1: If you reimburse the passed-on GST so that this section ceases to apply there will be an adjustment event under paragraph 19-10(1)(b) or (c). You will have a decreasing adjustment (see section 19-55) and the other entity may have an increasing adjustment (see section 19-80).
- Note 2: Any excess GST you have not passed on will be refunded as described in section 155-75 in Schedule 1 to the *Taxation Administration Act 1953*.
- Note 3: While this section applies, paragraph 11-5(b) (about taxable supplies) is satisfied for the corresponding acquisition by the other entity.

142-15 When section 142-10 does not apply

Commissioner satisfied it is inappropriate for that section to apply

- (1) Treat section 142-10 as never having applied to the extent that the Commissioner is satisfied that:
 - (a) applying that section would be inconsistent with the principle that excess GST is not to be refunded if this would give an entity a windfall gain; and
 - (b) you have requested a decision under this subsection in the *approved form.

Note: Refusing to make the requested decision is a reviewable GST decision (see Subdivision 110-F in Schedule 1 to the *Taxation Administration Act 1953*).

- (2) The Commissioner must notify you in writing of any decision relating to you made under subsection (1).

If there never was a supply

- (3) Treat section 142-10 as never having applied to the extent that:
- (a) you treated the excess GST as payable on a supply, but in fact there never was a supply; and
 - (b) you reimburse the other entity for the *passed-on GST.

Note: If you reimburse the passed-on GST, you will be refunded an equivalent amount as described in section 155-75 in Schedule 1 to the *Taxation Administration Act 1953*.

So far as it relates to your creditable acquisitions

- (4) Section 142-10 does not apply for the purposes of applying subsection 11-15(2) (about creditable purpose) to you.

If the recipient knows you have not paid the excess GST

- (5) Section 142-10 does not apply for the purposes of applying a *taxation law to the other entity if, and while, that other entity knows, or could reasonably be expected to have known, that you have not paid the excess GST to the Commissioner.

Note: Section 142-10 still applies for the purposes of applying taxation laws to you.

Subdivision 142-B—GST related to cancelled supplies

142-20 Refunding GST relating to cancelled supplies

- (1) This section applies if:
- (a) your *assessed net amount for a tax period takes into account an amount of GST on a supply; and
 - (b) you have a *decreasing adjustment attributable to a later tax period as a result of the cancellation of the supply.
- (2) Reduce:
- (a) your *decreasing adjustment; and
 - (b) if the *recipient of the supply has a corresponding *increasing adjustment—the recipient's increasing adjustment;

to the extent that you have *passed on that GST to the recipient, but not reimbursed the recipient for the passed-on GST.

- (3) This section has effect despite sections 19-55 (about decreasing adjustments for supplies) and 19-80 (about increasing adjustments for acquisitions).

Subdivision 142-C—Passed-on GST

142-25 Working out if GST has been passed on

- (1) Some or all of an amount of GST may have been *passed on* to another entity even if:
- (a) a *tax invoice is not issued to or by that other entity; or
 - (b) a tax invoice issued to or by that other entity relates to that GST, but does not contain enough information to enable that GST to be clearly ascertained.
- (2) If:
- (a) you issue a *tax invoice to another entity, or another entity issues a *recipient created tax invoice to you; and
 - (b) the invoice contains enough information to enable some or all of an amount of GST to be clearly ascertained; and
 - (c) in a case where you must pay the *assessed net amount for a tax period to which the invoice relates—you have paid that assessed net amount to the Commissioner;
- the invoice is prima facie evidence of that part of that GST having *passed on to that other entity.

11 Section 195-1

Insert:

passed on has a meaning affected by section 142-25.

12 Section 195-1 (note at the end of the definition of *taxable supply*)

Omit “and 113-5”, substitute “, 113-5 and 142-10”.

Income Tax Assessment Act 1936

13 Subsection 98A(2) (note)

Omit “, and section 105-65 in Schedule 1 to,”.

14 Subsection 98B(4) (note)

Omit “, and section 105-65 in Schedule 1 to,”.

Taxation Administration Act 1953

15 Subsection 110-50(2) in Schedule 1 (after table item 53)

Insert:

53A refusing to make requested decision about excess subsection 142-15(1)
GST

16 Application of amendments

The amendments made by this Part apply in relation to working out your net amount for a tax period starting on or after the day after this Act receives the Royal Assent.

Part 2—Amendments about review

Division 1—Old law refund decisions are reviewable

Taxation Administration Act 1953

17 After paragraph 14ZW(1)(bg)

Insert:

- (bh) if the taxation objection is made under section 105-65 in Schedule 1 to this Act (about GST refunds)—at least one of the following periods:
 - (i) 60 days after notice of the taxation decision to which it relates has been served on the person;
 - (ii) 4 years after the end of the tax period to which that decision relates; or

18 At the end of subsection 14ZW(1)

Add:

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

19 Subsection 105-65(2) in Schedule 1

After “the following amounts”, 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”.

20 At the end of section 105-65 in Schedule 1

Add:

- (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*.

Division 2—Validating certain past objections and reviews

21 Definitions

In this Division:

AAT means the Administrative Appeals Tribunal.

refund decision means a decision under subsection 105-65(1) in Schedule 1 to the *Taxation Administration Act 1953*.

22 Validating objections, Commissioner decisions and AAT decisions

Validating objections, Commissioner decisions and AAT decisions

- (1) This item applies to each of the following things:
 - (a) an objection, purportedly made before 28 June 2013 as a taxation objection under section 105-40, or Subdivision 155-C, in Schedule 1 to the *Taxation Administration Act 1953* against a refund decision;
 - (b) a decision of the Commissioner, purportedly made before the commencement of this Division under Part IVC of that Act in relation to an objection covered by paragraph (a);
 - (c) a decision of the AAT, purportedly made before the commencement of this Division in relation to a decision covered by paragraph (b);
 - (d) any other thing, purportedly done before the commencement of this Division under or in relation to Part IVC of that Act (other than an order purportedly made by a court) in relation to an objection covered by paragraph (a) or a decision covered by paragraph (b) or (c);

to the extent that, apart from this item, the thing would not be valid or effective because taxation objections are unable to be made under section 105-40, or Subdivision 155-C, in Schedule 1 to that Act against refund decisions.
- (2) The thing is as valid, and is taken always to have been as valid, as it would have been if:

- (a) taxation objections were able to be made under section 105-40, or Subdivision 155-C, in Schedule 1 to that Act against refund decisions; and
- (b) refund decisions were taxation decisions for the purposes of Part IVC of that Act.

No second objection available

- (3) Despite subsection 105-65(4) in Schedule 1 to the *Taxation Administration Act 1953*, a taxation objection cannot be made under that subsection against a refund decision that is the subject of an objection covered by paragraph (1)(a).

23 Extension of time for lodging an objection

- (1) Subitem (3) applies if, on 28 June 2013, a person has not lodged, and was not prevented by section 14ZW of the *Taxation Administration Act 1953* from lodging, a purported taxation objection under section 105-40, or Subdivision 155-C, in Schedule 1 to that Act against a refund decision.
- (2) When considering section 14ZW of that Act under subitem (1), assume that such a purported taxation objection would have been a valid taxation objection.

Extension of time for lodging an objection

- (3) The person may lodge a taxation objection, under section 105-65 in Schedule 1 to that Act against that refund decision, before the end of whichever of the following ends last:
 - (a) 60 days after notice of the refund decision has been served on the person;
 - (b) 4 years after the end of the tax period to which the refund decision relates;
 - (c) 60 days after the commencement of this Division.
- (4) Subitem (3) applies despite paragraph 14ZW(1)(bh) of that Act.

24 Extension of time for pending objections etc.

- (1) This item applies if:
 - (a) before 28 June 2013, a person lodged an objection covered by paragraph 22(1)(a); and
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- (b) on or after that day, a period had not expired for the person to take further action under, or as described in, Part IVC of the *Taxation Administration Act 1953* in relation to that objection; and
 - (c) the person chose not to take that action within that period; and
 - (d) that period expired before the commencement of this Division.
- (2) Part IVC of that Act, and the *Administrative Appeals Tribunal Act 1975*, apply as if that period were reset so as to be 60 days starting at the commencement of this Division.

Part 3—Amendments commencing on 1 July 2018

Taxation Administration Act 1953

25 Paragraph 14ZW(1)(bh)

Repeal the paragraph.

26 Subsection 14ZW(1) (note)

Repeal the note.

27 Section 105-65 in Schedule 1

Repeal the section.

28 Transitional

Despite the repeals made by this Part, the following provisions continue to apply, on and after 1 July 2018, in relation to amounts that relate to a tax period starting on or before the day this Act receives the Royal Assent:

- (a) paragraph 14ZW(1)(bh) of the *Taxation Administration Act 1953*;
- (b) section 105-65 in Schedule 1 to that Act.

*[Minister's second reading speech made in—
House of Representatives on 27 March 2014
Senate on 14 May 2014]*

(76/14)
