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## ATO ruling - GST refunds

25 March 2015

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### *In brief*

On 25 March 2015, the Australian Tax Office (ATO) issued GST Ruling GSTR 2015/1 which sets out the Commissioner of Taxation's (Commissioner) views on the meaning of the terms 'passed on' and 'reimburse' for the purposes of Division 142 of the GST Act (which deals with refunds of 'excess GST').

The object of Division 142 is to ensure that 'excess GST' is not refunded if this would give an entity a windfall gain. Excess GST is an amount of GST included in the net amount declared on a Business Activity Statement (BAS) that exceeds the amount which should have been included in the relevant net amount.

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### *In detail*

An amount of excess GST will only be refundable if:

- It has not been '**passed on**' to the recipient, or
- It has been passed on to the recipient, and the recipient has been '**reimbursed**'.

#### **Meaning of 'passed on'**

The Commissioner correctly notes that it is a question of fact as to whether excess GST has been passed on to another entity. That said, the Commissioner then states the following:

- "... s142-25, and the policy and scheme of the GST Act more generally, give rise to an expectation that the excess GST will be passed on in most cases."
- "In any dispute, the taxpayer would have the onus of proving that its circumstances are outside the ordinary and that it did not pass on the excess GST."

The Ruling sets out certain matters relevant to determining whether GST has been passed on, including:

- the manner in which the excess GST arose
- the entity's pricing policy and practice, and
- documentary evidence of whether GST is included in the price of a supply, including tax invoices, contracts of sale, correspondence between the parties and internal pricing policy documents.

It is clear the Commissioner expects an entity claiming a refund of excess GST to have evidence supporting an assertion that the excess GST has not been passed on.

#### **Meaning of 'reimburse'**

The Commissioner's view is that an amount of excess GST that has been passed on by a supplier to the recipient is appropriately reimbursed when the recipient has been compensated an equivalent amount by the supplier.

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Reimbursement can take the form of a payment of money (including payment by way of credit or debit card, or by crediting or debiting an account), the provision of a voucher, or offsetting (by journal entry) mutual liabilities. The reimbursement, or journal entry under an agreement to set off liabilities, must have actually been made, not merely planned.

Where an entity only reimburses a recipient for part of the excess GST it has passed on, Division 142 will preclude a refund applying to the excess GST that has not been reimbursed. Where an entity imposes an administration fee before reimbursing the recipient, the entity will be entitled to a full refund of the excess GST, provided the administration fee is based on reasonable administration costs incurred in making the reimbursement.

The Ruling will apply both before and after its date of issue.

### ***The takeaway***

As foreshadowed when Division 142 was enacted, these provisions are designed to make it very difficult for taxpayers to obtain a refund of GST overpaid. The Commissioner's ruling reinforces this. In particular, the Commissioner maintains the following in relation to the passing on of GST:

- even where there is very little or no profit margin, this will not necessarily mean that GST has not been taken into account in setting a price
- a GST liability calculated under the margin scheme is likely to be a foreseeable cost which forms part of setting a price structure, and
- where an entity is a 'price taker' in a market that primarily makes taxable supplies, this will indicate that the entity has passed on GST, even if they have no awareness of a GST cost when setting prices.

It is unlikely the Commissioner will refund GST overpaid once an amount has been paid as GST. All taxpayers, particularly those supplying property under the margin scheme and making gambling supplies should obtain GST advice before submitting their BAS and making payment to the Commissioner, if they are in any doubt as to their correct GST liability. We recommend all taxpayers ensure their GST compliance processes are sound, as a calculation or transposition error will still carry a burden of proving that the amount overpaid was not 'passed on'.

### ***Let's talk***

For a deeper discussion of how these issues might affect your business, please contact:

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