



Tax Laws Amendment (2010 GST Administration Measures No. 1) Bill 2010

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Note: This Digest is an historical Digest, published after the Bill was read a third time in the Senate on 11 March 2010. The Bill was passed by both Houses unamended, and received Royal Assent on 24 March 2010.

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Glossary

<i>Abbreviation</i>	<i>Definition</i>
ABN	Australian Business Number
BAS	business activity statement
Commissioner	Commissioner of Taxation
GST	goods and services tax
GST Act	<i>A New Tax System (Goods and Services Tax) Act 1999</i>
TAA 1953	<i>Taxation Administration Act 1953</i>

Source: Parliamentary Library and Explanatory Memorandum, Tax Laws Amendment (2010 GST Administration Measures No. 1) Bill 2010, p. 1.

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Tax Laws Amendment (2010 GST Administration Measures No. 1) Bill 2010

Date introduced: 10 February 2010

House: House of Representatives

Portfolio: Treasury

Commencement: This Bill commences on the day of Royal Assent. However, items 3, 10, and 11 of Schedule 1 and item 2 of Schedule 2 only commence after the commencement of Schedule 1 of the *Tax Laws Amendment (2009 GST Administration Measures) Act 2010*.¹

Links: The [relevant links](#) to the Bill, Explanatory Memorandum and second reading speech can be accessed via BillsNet, which is at <http://www.aph.gov.au/bills/>. When Bills have been passed they can be found at ComLaw, which is at <http://www.comlaw.gov.au/>.

Purpose

This Bill implements improvements to GST laws in line with recommendations from the Board of Taxation's review of GST administration. In particular, this Bill deals with the recommendations involving adjustments for third party payments and attribution of input tax credits.

Background

The report of the Board of Taxation's *Review of the Legal Framework for the Administration of the Goods and Services Tax* was released on 12 May 2009 by the then Assistant Treasurer.² At that time, the Assistant Treasurer agreed to implement 41 of the Board's 46 recommendations.

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1. The Tax Laws Amendment (2009 GST Administration Measures) Bill 2009 passed both of the Houses on 11 March 2010. Schedule 1 is due to commence on Royal Assent.
 2. C Bowen MP (then Assistant Treasurer), *Government response to Board of Taxation review of GST administration*, media release, 12 May 2009, viewed 11 February 2010, <http://assistant.treasurer.gov.au/DisplayDocs.aspx?doc=pressreleases/2009/042.htm&pageID=003&min=ceb&Year=&DocType=0>

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Recommendation 6 involved amending the GST law to ensure that adjustments for manufacturers' rebates which effectively change the price of a transaction also result in adjustments for the taxpayer and the third party.³

Recommendation 20 involved the clarification of input tax credits to confirm that a taxpayer can defer input tax credit claims even if he or she held a tax invoice at the end of the period to which the credit would otherwise be attributable.⁴

The Government's initial response to the report indicated that adjustments for manufacturers' rebates would apply from 1 July 2010, and clarification of input tax credits would apply from 12 May 2009.⁵ However, following the four-year restriction on claiming input tax credits contained in Schedule 1 of the Tax Laws Amendment (2009 GST Administration Measures) Bill 2009, further clarification of the input tax attribution rules was required.

On 12 May 2009, the Treasury released a discussion paper outlining the government response to the Board of Taxation's review.⁶ This discussion paper received thirteen submissions.⁷

Position of significant interest groups/press commentary

A number of comments on the proposed amendments present in this Bill were raised in submissions to the Treasury's Discussion Paper.

For example, while the Corporate Tax Association of Australia appreciated the practical value of allowing taxpayers to claim input tax credits in a later income year, it raised

3. Board of Taxation, *Review of the legal framework for the administration of the Goods and Services Tax*, report to the Assistant Treasurer and Minister for Competition Policy and Consumer Affairs, Australian Government, December 2008, p. 198, viewed 11 February 2010, http://www.taxboard.gov.au/content/GST_administration_review/downloads/Review_Legal_Framework_Admin_GST_Report_to_Minister.pdf
4. *Ibid.*, p. 200.
5. Bowen, *op. cit.*
6. Treasury, Implementation of the recommendations of the Board of Taxation's review of the legal framework for the administration of the GST, Treasury Discussion Paper, Australian Government, 12 May 2009, viewed 11 February 2010, http://www.treasury.gov.au/documents/1525/PDF/Review_of_the_legal_framework_3.pdf
7. The Treasury, 'Submissions: Government response to the Board of Taxation Review of the legal framework for the administration of the GST First Discussion Paper', The Treasury website, viewed 11 February 2010, <http://www.treasury.gov.au/contentitem.asp?ContentID=1578&NavID=037>

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concerns about the situation where a BAS is later amended (voluntarily or as a result of an audit) and a higher amount of GST becomes payable. In particular, it said:

In this scenario, the ATO's view is that the GST payable must be attributed to the prior period and that the increase in input tax credits must be attributed to the next BAS to be lodged, as directed under subsection 29-10(4). This means that [General Interest Charge] and penalties may arise on a GST payable amount despite the existence of valid offsetting input tax credits. To avoid such unfair exposures to GIC and penalties, taxpayers should be allowed the option of amending BASs for increases in input tax credits claimed.⁸

CPA Australia supported the changes to tax invoice requirements and attribution provisions put forward by the Discussion Paper but made the following qualification:

From a policy perspective we believed that reliance on the exercise of the Commissioner's discretion should be avoided wherever practicable in order to provide both the ATO and taxpayers with sufficient clarity on the operation of the law.

Accordingly, any changes to, or relaxation of, the tax invoice requirements should be made via amendments to the GST legislation (including the regulations) rather than by increasing reliance on the exercise of the Commissioner's discretion.⁹

The Investment and Financial Services Association (IFSA) raised concerns in regards to supply and third party payments arrangements:

An area of uncertainty in the current GST framework is in tri-partite rebate arrangements. In the insurance and investment industry, fund manager rebates to investors are common; however, rebates on services are not addressed by the Discussion Paper (only rebates in relation to goods in a distribution chain). This is complicated further by the broad scope of *supply* in the GST Act.

...

IFSA recommends consideration is given to the expansion of rebates (i.e. the manufacturers rebate scenario) to include a services context.¹⁰

8. Corporate Tax Association of Australia, Submission to the Treasury Discussion Paper on the implementation of the Board of Tax's review of the legal framework for the administration of the GST, 12 June 2009, p. 4, viewed 10 March 2010, http://www.treasury.gov.au/documents/1578/PDF/Corporate_Tax_Association.pdf

9. CPA Australia, Submission to the Treasury Discussion Paper on the implementation of the Board of Tax's review of the legal framework for the administration of the GST, 22 June 2009, p. 6, viewed 10 March 2010, http://www.treasury.gov.au/documents/1578/PDF/CPA_Australia.pdf

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The Property Council of Australia submission supported both the third party payments arrangements and the attribution of input credits.¹¹

Financial implications

The Explanatory Memorandum for the Bill states that the financial impact of Schedule 1 (dealing with adjustments for third party payments) will be nil in 2009–10 and low in the following four financial years. The financial impact of Schedule 2 (dealing with the attribution of input tax credits) will be negligible as it ‘clarifies the interpretation of the law in a manner consistent with current administration’.¹²

Main provisions

Schedule 1—Adjustments for third party payments

Schedule 1 to the Bill primarily amends the *A New Tax System (Goods and Services Tax) Act 1999* (the GST Act) to insert **proposed Division 134—Third party payments**.

Proposed Division 134

Item 13 of **Schedule 1** to the Bill inserts **proposed Division 134** to allow for decreasing adjustments for payments *made to* third parties (**proposed section 134-5**), and increasing adjustments for payments *received by* third parties (**proposed section 134-10**).

The Treasury Discussion Paper on these changes uses the following example:

- A manufacturer supplies a computer printer to a wholesaler for \$440. The manufacturer accounts for \$40 GST, giving net revenue collected to this point in the supply chain of \$40.
- The wholesaler then supplies the printer to a retailer for \$660. The wholesaler accounts for \$40 input tax credit and accounts for GST of \$60, giving net GST of \$20.

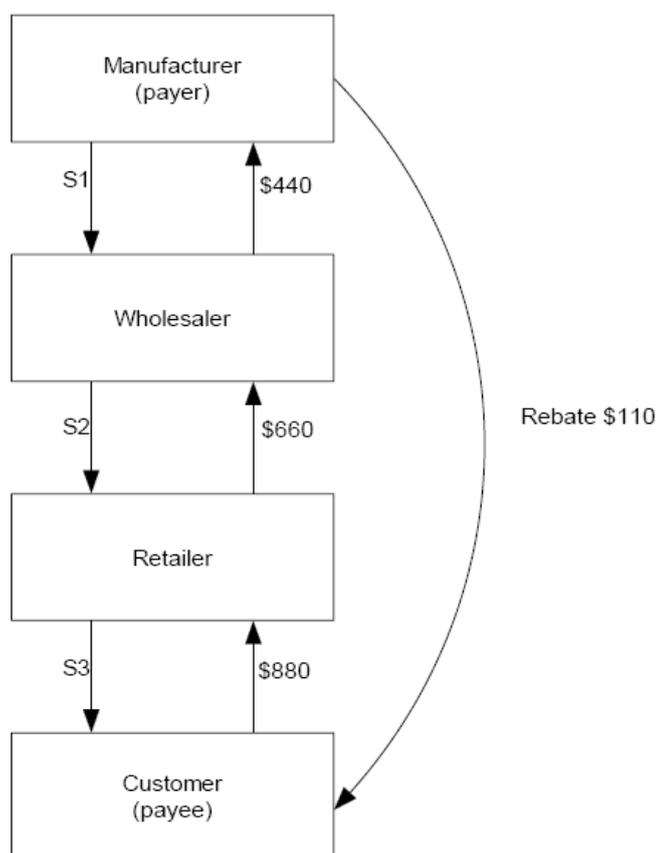
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10. IFSA, Submission to the Treasury Discussion Paper on the implementation of the Board of Tax’s review of the legal framework for the administration of the GST, 18 June 2009, p. 2, viewed 10 March 2010, <http://www.treasury.gov.au/documents/1578/PDF/IFSA.pdf>
 11. Property Council of Australia, Submission to the Treasury Discussion Paper on the implementation of the Board of Tax’s review of the legal framework for the administration of the GST, June 2009, pp. 6 & 9, viewed 10 March 2010, <http://www.treasury.gov.au/documents/1578/PDF/IFSA.pdf>
 12. Explanatory Memorandum, Tax Laws Amendment (2010 GST Administration Measures No. 1) Bill 2010, p. 3.

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- The retailer then supplies the printer to a customer for \$880. The retailer accounts for \$60 input tax credit and accounts for GST of \$80, giving net GST of \$20.
- The customer pays \$880 inclusive of \$80 GST being 1/11th of the total GST inclusive price the customer has paid. This is the correct amount of revenue $\$40 + \$20 + \$20 = \80 (which is equal to 10 per cent of the \$800 value added through the supply chain).
- The customer then receives a \$110 rebate from the manufacturer (and makes no separate supply to the manufacturer). The customer has now effectively paid \$770 for the printer. The value added through the supply chain is \$700. GST on the value added of \$700 at 10 per cent is \$70. However, total GST revenue collected is \$80.¹³



Source: Treasury Discussion Paper, p. 12.

13. Treasury, Implementation of the recommendations of the Board of Taxation's review of the legal framework for the administration of the GST, Treasury Discussion Paper, Australian Government, 12 May 2009, pp. 11–13, viewed 11 February 2010, http://www.treasury.gov.au/documents/1525/PDF/Review_of_the_legal_framework_3.pdf

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Proposed Division 134 provides for an adjustment so that in this instance the GST owed would only be \$70 on the final cost of the product, rather than the \$80 which has been paid.

A ‘*decreasing adjustment*’ occurs if:

- the taxpayer makes a payment to an entity (the payee) who has acquired a thing that the taxpayer supplied to another entity (**proposed paragraph 134-5(1)(a)**)
- the taxpayer’s supply of the thing to the other entity was a ‘taxable supply’ (**proposed paragraph 134-5(1)(b)**)
- the payment is in the form of a payment of money; an offset of an amount of money the payee owes to the taxpayer; or a crediting of an amount of money to an account held by the payee (**proposed subsection 134-5(1)(c)**)
- the payment is made in connection with (or as a response to or inducement for) the payee’s acquisition of the thing (**proposed paragraph 134-5(1)(d)**), and
- the payment is not ‘consideration’ for a supply to the taxpayer (**proposed paragraph 134-5(1)(e)**).

The amount of the ‘*decreasing adjustment*’ is the difference between the GST paid on the original supply and the GST payable on the supply if the price is reduced by the amount paid to the payee (**proposed subsection 134-5(2)**).

Conversely, an ‘*increasing adjustment*’ occurs if:

- the taxpayer receives a payment from an entity (the payer) who has supplied a thing the taxpayer acquired from another entity (whether or not the entity acquired the thing from the payer) (**proposed paragraph 134-10(1)(a)**)
- the taxpayer’s acquisition of the thing from the other entity was a ‘creditable acquisition’ (**proposed paragraph 134-10(1)(b)**)
- the payment is in the form of a payment of money; an offset of an amount of money the payee owes to the taxpayer; or a crediting of an amount of money to an account held by the taxpayer (**proposed subsection 134-10(1)(c)**)
- the payment is made in connection with (or as a response to or inducement for) the taxpayer’s acquisition of the thing (**proposed paragraph 134-10(1)(d)**), and
- the payment is not ‘consideration’ for a supply from the taxpayer (**proposed paragraph 134-10(1)(e)**).

The amount of the ‘*increasing adjustment*’ is equal to the difference between the amount of input tax credit the taxpayer was entitled for the original acquisition from the other entity and the amount of input tax credit the taxpayer would have been entitled for that acquisition if consideration for the acquisition had been reduced by the amount paid by the payer to the taxpayer (**proposed section 134-10**).

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Decreasing adjustments above the adjustment note threshold¹⁴ cannot be attributed until the tax period in which the taxpayer holds a third party adjustment note (**proposed section 134-15**). **Proposed section 134-20** sets out the requirements for a ‘third party adjustment note’. A ‘third party adjustment’ note for a decreasing adjustment is a document that must be created by the taxpayer in the approved form and must include the payer’s ABN and any other information the Commissioner determines in writing (**proposed subsection 134-20(1)**). The taxpayer must supply a copy of the third party adjustment note to the entity that received the payment that gave rise to the adjustment within 28 days of the entity requesting a copy, or within 28 days of the taxpayer becoming aware of the adjustment (**proposed subsection 134-20(2)**). The Commissioner may make a determination in regards to the alternative number of days a taxpayer has to supply a copy of the third party adjustment note (**proposed subsections 134-20(2)(b) to (7)**).

A payment that leads to a third party adjustment under **proposed Division 134** cannot give rise to an ‘adjustment event’ (**proposed section 134-25**).¹⁵

Consequential amendments

Schedule 1 (items 1 to 13 and items 14 to 23) makes a number of consequential amendments to include third party adjustments into the tax law. This includes inserting references to **proposed Division 134** into the following provisions of the GST Act:

- paragraph 19-40(c) (where adjustments for supply arise)
- paragraph 19-45(c) (decreasing adjustments for supplies)
- paragraph 19-70(2)(a) (working out corrected input tax credit amounts for adjusted acquisitions)
- paragraph 19-75(b) (previously attributed input tax credit amounts)
- section 19-99 (special rules relating to adjustment events)
- section 29-39 (special rules relating to attribution rules)
- section 37-1 (checklist of special rules)
- subsections 54-50(1) and (2) (tax invoices and adjustment notes)
- section 129-80 (effect of adjustment)

14. Currently \$50, but increasing to \$75 on 1 July 2010. See: GST Act, subsection 29-80(2).

15. The term ‘adjustment event’ is defined in section 195-1 of the GST Act by reference to sections 19-10 and 69-50 of that Act. There it is defined to mean an event which has the effect of (a) cancelling a supply or acquisition; (b) changing the consideration for a supply or acquisition; or (c) causing a supply or acquisition to become or cease being a taxable supply or creditable acquisition.

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- subsections 131-55(3) and (4) (increasing adjustments relating to annually apportioned acquisitions and importations)
- Subdivision 153-A (attributing input tax credits, tax invoices and adjustment notes in the context of agents and insurance brokers), and
- section 195-1 (dictionary).

Schedule 1 (items 24 to 28) also amends the *Taxation Administration Act 1953* to include:

- third party adjustment notes in the list of statements made in relation to a tax law that are made to a person other than a taxation officer (**subsection 8J(1)**),
- an administrative penalty of 20 penalty units for failing to issue a third party adjustment note (**section 288-45 in Schedule 1**),¹⁶ and
- an offence where principal and agent both issue separate third party adjustment notes (**section 288-50 in Schedule 1**).

Application

Schedule 1 applies to payments made on or after 1 July 2010 (**item 29**).

Schedule 2—Attribution of input credits

Schedule 2 to this Bill amends **subsection 29-10(4)** of the GST Act by removing any reference to other provisions in the Act. This will have the same effect as the previous law, but aims to remove ambiguity in the interpretation, about which some taxpayers have expressed concerns.

Application

Schedule 2 applies to net amounts for tax periods commencing on or after 1 July 2010. It is subject to the four-year restriction on claiming input tax credits which are contained in Schedule 1 to the Tax Laws Amendment (2009 GST Administration Measures) Bill 2009.¹⁷

16. The term ‘penalty unit’ is defined in section 4AA of the *Crimes Act 1914* to mean \$110. Section 4B of that Act provides that where a body corporate is convicted of an offence, a court may impose a penalty up to five times that which may be imposed on an individual.

17. This Bill passed both of the Houses on 11 March 2010.

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