

EXPOSURE DRAFT

1 Inserts for
2 **Tax Laws Amendment (2009 Measures**
3 **No. 5) Bill 2009: GST and**
4 **representatives of incapacitated entities**
5

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If you have any comments on this exposure draft, they should be sent, on or before 7 August 2009, to:

The Manager
GST Property and Government Unit
Indirect Tax Division
The Treasury
Langton Crescent
PARKES ACT 2600

6 **Commencement information**

Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Schedule ??, Part 1	1 July 2000.	1 July 2000
2. Schedule ??, Part 2	1 July 2006.	1 July 2006
3. Schedule ??, Part 3	The day on which this Act receives the Royal Assent.	
4. Schedule ??, Part 4		

7 **Schedule ??—GST and representatives of**
8 **incapacitated entities**

9 **Part 1—Amendments commencing on 1 July 2000**

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

11 **1 Section 9-69 (after table item 4A)**

12 Insert:

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4B Representatives of incapacitated entities Division 58

1 **2 Section 11-99 (after table item 10)**

2 Insert:

10A Representatives of incapacitated entities Division 58

3 **3 Section 13-99 (after table item 3)**

4 Insert:

4 Representatives of incapacitated entities Division 58

5 **4 Section 15-99 (after table item 3)**

6 Insert:

3A Representatives of incapacitated entities Division 58

7 **5 Section 17-99 (table item 10)**

8 Omit “Division 147”, substitute “Divisions 58 and 147”.

9 **6 Section 21-99 (after table item 2)**

10 Insert:

2A Representatives of incapacitated entities Division 58

11 **7 Section 29-39 (after table item 10)**

12 Insert:

11 Representatives of incapacitated entities Division 58

13 **8 After Division 57 of Part 4-1**

14 Insert:

15 **Division 58—Representatives of incapacitated entities**

16 **58-1 What this Division is about**

17 This Division sets out how to ascribe activities of a representative
18 of an incapacitated entity between those parties for GST purposes.

19 In particular, supplies, acquisitions and importations, and
20 associated acts and omissions, by the representative are, in most
21 cases, treated as having been by the incapacitated entity. This
22 ensures that a transaction by the representative has the same

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1 consequences under the GST law as if the incapacitated entity had
2 no representative.

3 However, in most cases, GST-related liabilities and entitlements
4 are allocated to the representative for transactions that are within
5 the scope of the representative's responsibility or authority.

6 **58-5 General principle for the relationship between incapacitated** 7 **entities and their representatives**

- 8 (1) Subject to this Division, any supply, acquisition or importation by
9 an entity in the capacity of a *representative of another entity that
10 is an *incapacitated entity is taken to be a supply, acquisition or
11 importation by the other entity.
- 12 (2) Subject to this Division, any other act, or any omission, of an entity
13 in the capacity of a *representative of another entity that is an
14 *incapacitated entity is taken to be an act or omission of the other
15 entity, but only for the purposes of determining, for the purposes of
16 the *GST law:
- 17 (a) whether a supply or importation is a *taxable supply or
18 *taxable importation, or the amount of GST payable on the
19 supply or importation; or
 - 20 (b) whether an acquisition or importation is a *creditable
21 acquisition or *creditable importation, or the amount of the
22 input tax credit for the acquisition or importation; or
 - 23 (c) whether an *adjustment arises in relation to a supply,
24 acquisition or importation, or the amount of such an
25 adjustment.
- 26 (3) If the other entity ceases to be an *incapacitated entity, this section
27 continues to apply in relation to the supply, acquisition or
28 importation, or to the act or omission, after the other entity ceases
29 to be an incapacitated entity.
- 30 (4) To the extent that an act or omission referred to in subsection (2)
31 relates to deciding to *account on a cash basis, that subsection does
32 not apply for the purposes of determining, for the purposes of the
33 *GST law, whether an *adjustment arises under Division 21 in
34 relation to a supply or acquisition.

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58-10 Circumstances in which representatives have GST-related liabilities and entitlements

General rule

- (1) A *representative of an *incapacitated entity:
- (a) is liable to pay any GST that the incapacitated entity would, but for this section or section 48-40, be liable to pay on a *taxable supply or a *taxable importation; and
 - (b) is entitled to any input tax credit that the incapacitated entity would, but for this section or section 48-45, be entitled to for a *creditable acquisition or a *creditable importation; and
 - (c) has any *adjustment that the incapacitated entity would, but for this section or section 48-50, have;
- if the making of the supply, importation or acquisition to which the GST, input tax credit or adjustment relates is within the scope of the representative's responsibility or authority for managing the incapacitated entity's affairs.

Exceptions for certain taxable supplies

- (2) This section does not apply to the GST payable on a *taxable supply to the extent that one or more of the following apply:
- (a) the *incapacitated entity received the *consideration for the supply before the *representative became a representative of the incapacitated entity;
 - (b) if, under Division 83 or 84, the GST is payable by the recipient of the supply—the incapacitated entity provided the consideration for the supply before the representative became a representative of the incapacitated entity;
 - (c) if:
 - (i) the supply is a supply for which a *voucher is redeemed; and
 - (ii) the incapacitated entity had supplied the voucher before the representative became a representative of the incapacitated entity;the consideration for the supply referred to in subparagraph (i) does not exceed the consideration provided for the incapacitated entity's supply of the voucher;
 - (d) the GST payable would be attributable to a tax period applying to the representative, in the capacity of a representative of the incapacitated entity, that ends after the

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1 representative ceases to be a representative of the
2 incapacitated entity.

3 *Exceptions for certain creditable acquisitions and creditable*
4 *importations*

- 5 (3) This section does not apply to an input tax credit for a *creditable
6 acquisition or *creditable importation to the extent that either or
7 both of the following apply:
- 8 (a) in the case of a creditable acquisition—the *incapacitated
9 entity provided the *consideration for the acquisition before
10 the *representative became a representative of the
11 incapacitated entity;
 - 12 (b) in any case—the input tax credit would be attributable to a
13 tax period applying to the representative, in the capacity of a
14 representative of the incapacitated entity, that ends after the
15 representative ceases to be a representative of the
16 incapacitated entity.

17 *Exceptions for certain adjustments*

- 18 (4) This section does not apply to an *adjustment to the extent that one
19 or more of the following apply:
- 20 (a) if the adjustment relates to a supply—the *incapacitated
21 entity received the *consideration for the supply before the
22 *representative became a representative of the incapacitated
23 entity;
 - 24 (b) if the adjustment relates to an acquisition—the incapacitated
25 entity provided the *consideration for the supply before the
26 representative became a representative of the incapacitated
27 entity;
 - 28 (c) the adjustment would not be attributable to a tax period
29 applying to the representative in the capacity of a
30 representative of the incapacitated entity.

31 *Incapacitated entity not liable to pay GST etc.*

- 32 (5) An *incapacitated entity or, if the *incapacitated entity is a
33 *member of a *GST group, the *representative member of that
34 group:
- 35 (a) is not liable to pay the GST on a *taxable supply or a *taxable
36 importation if a *representative of the incapacitated entity is
37 liable under this section to pay the GST on the supply or
38 importation; and

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- 1 (b) is not entitled to the input tax credit for a *creditable
2 acquisition or a *creditable importation if a representative of
3 the incapacitated entity is entitled under this section to the
4 input tax credit for the acquisition or importation; and
5 (c) does not have an adjustment that a representative of the
6 incapacitated entity has under this section.

7 *Other*

- 8 (6) This section has effect despite sections 9-40, 11-20, 13-15, 15-15,
9 83-5 and 84-10 and subsections 48-40(1), 48-45(1) and 48-50(1)
10 (which are about who is liable for GST, who is entitled to input tax
11 credits).

12 **58-15 Adjustments for bad debts**

- 13 (1) For the purposes of determining whether an adjustment arises
14 under section 21-5 or 21-15 for the whole or a part of a debt
15 relating to a *taxable supply or *creditable acquisition for which a
16 *representative of an *incapacitated entity is liable to pay GST, or
17 is entitled to an input tax credit, under section 58-10:
18 (a) the adjustment cannot arise if, when the whole or part of the
19 debt is written off, or has been *overdue for 12 months, the
20 representative *accounts on a cash basis; but
21 (b) it does not matter whether the incapacitated entity accounts
22 on a cash basis at that or any other time.
23 (2) This section has effect despite subsections 21-5(2) and 21-15(2)
24 (which preclude adjustments for bad debts when accounting on a
25 cash basis).

26 **58-40 Effect on attribution rules of not accounting on a cash basis**

- 27 (1) If:
28 (a) a *representative of an *incapacitated entity does not *account
29 on a cash basis; and
30 (b) because of section 58-10, all or part of the amount of GST
31 payable on a *taxable supply is payable by the representative,
32 or the representative is entitled to all or part of the input tax
33 credit for a *creditable acquisition;
34 then, to the extent that, but for this section, the GST or input tax
35 credit would be attributable to a tax period that ended before the
36 representative became a representative of the incapacitated entity,

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1 the GST or input tax credit is instead attributable to the first tax
2 period applying to the representative in that capacity.

3 (2) If:

- 4 (a) an *incapacitated entity does not *account on a cash basis;
5 and
6 (b) because of section 58-10, all or part of the amount of GST
7 payable on a *taxable supply is payable by a *representative
8 of the incapacitated entity, or a representative of the
9 incapacitated entity is entitled to all or part of the input tax
10 credit for a *creditable acquisition;

11 then:

- 12 (c) to the extent that GST payable on the supply is payable by
13 the incapacitated entity, section 29-5 applies as if the
14 incapacitated entity accounted on a cash basis: and
15 (d) to the extent that the incapacitated entity is entitled to the
16 input tax credit for the acquisition, section 29-10 applies as if
17 the incapacitated entity accounted on a cash basis.

18 (3) This section has effect despite sections 29-5 and 29-10 (which are
19 about attribution of GST on taxable supplies and of input tax
20 credits for creditable acquisitions).

21 9 Subsection 147-20(1)

22 Repeal the subsection, substitute:

23 (1) If:

- 24 (a) an *increasing adjustment relates to a supply, acquisition or
25 importation that an *incapacitated entity made before a
26 *representative of the incapacitated entity was appointed; and
27 (b) the adjustment arises after that appointment; and
28 (c) the representative fails to give the Commissioner written
29 notice that:
30 (i) states that the adjustment has arisen in these
31 circumstances; and
32 (ii) specifies the amount of the adjustment;

33 the adjustment is to be treated as if:

- 34 (d) the representative had the adjustment; and
35 (e) the incapacitated entity did not have the adjustment.

36 Note: The heading to section 147-20 is replaced by the heading "**Effect of representative**
37 **failing to notify the Commissioner of certain adjustments**".
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1 **Part 2—Amendments commencing on 1 July 2006**

2 *Fuel Tax Act 2006*

3 **10 Section 70-25**

4 Omit “Division 147”, substitute “Divisions 58 and 147”.

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1 **Part 3—Amendments commencing on Royal Assent**

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

3 **11 Section 17-99 (table item 10)**

4 Omit “Divisions 58 and 147”, substitute “Division 58”.

5 **12 Section 23-99 (table item 1)**

6 Omit “Division 147”, substitute “Division 58”.

7 **13 Section 25-99 (table item 2)**

8 Omit “Division 147”, substitute “Division 58”.

9 **14 After section 27-38**

10 Insert:

11 **27-39 Tax periods of incapacitated entities**

12 (1) If an entity becomes an *incapacitated entity, the entity’s tax period
13 at the time is taken to have ended at the end of the day before the
14 entity became incapacitated.

15 (2) If a tax period (the *first tax period*) ends on a particular day
16 because of subsection (1), the next tax period starts on the day after
17 that day and ends when the first tax period would have ended but
18 for that subsection.

19 **15 Subsection 27-40(1)**

20 Repeal the subsection, substitute:

21 (1) If:

22 (a) an individual dies; or

23 (b) another entity for any reason ceases to exist;

24 the individual’s or entity’s tax period at the time is taken to have
25 ceased at the end of the day before the death or cessation.

26 **16 Section 27-99 (table item 1AA)**

27 Repeal the item, substitute:

1AA GST groups Division 48

1AB Payment of GST by instalments Division 162

28 **17 Section 27-99 (table item 1A)**

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1 Omit “Division 147”, substitute “Division 58”.

2 **18 Section 31-99 (after table item 4A)**

3 Insert:

4B Representatives of incapacitated entities Division 58

4 **19 Section 37-1 (table item 25)**

5 Omit “Division 147”, substitute “Division 58”.

6 **20 After subsection 48-70(1)**

7 Insert:

8 (1A) The Commissioner must revoke the approval of one of the

9 *members of a *GST group if:

10 (a) the member becomes an *incapacitated entity; and

11 (b) the *representative of the incapacitated entity applies to the
12 Commissioner in the *approved form for the member’s
13 approval to be revoked.

14 **21 After section 48-70**

15 Insert:

16 **48-72 Tax periods of GST groups with incapacitated members**

- 17 (1) If a *member of a *GST group becomes an *incapacitated entity,
18 the *representative member of that group may, by notifying the
19 Commissioner in the *approved form, elect for the tax period that
20 applies at the time to the members of the group to end at the same
21 time as the incapacitated entity’s tax period ends under subsection
22 27-39(1).

23 Note 1: Section 31-10 provides for when a GST return must be given to the
24 Commissioner for a tax period other than a *quarterly tax period.

25 Note 2: If the representative member does not make an election under this
26 section when a member of the group becomes an incapacitated entity,
27 it is likely that the member would no longer satisfy paragraph
28 48-10(1)(d), and that the Commissioner would revoke its approval as a
29 member of the group under subsection 48-70(2).

- 30 (2) If a tax period (the *first tax period*) ends on a particular day
31 because of subsection (1), the next tax period starts on the day after
32 that day and ends when the first tax period would have ended but
33 for that subsection.

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- 1 (3) This section has effect despite Division 27 (which is about how to
2 work out the tax periods that apply).

3 **22 After section 58-15**

4 Insert:

5 **58-20 Representatives are required to be registered**

- 6 (1) A *representative of an *incapacitated entity is *required to be*
7 *registered* in that capacity if the incapacitated entity is *registered
8 or *required to be registered.
- 9 (2) This section has effect despite section 23-5 (which is about who is
10 required to be registered).

11 **58-25 Cancellation of registration of a representative**

- 12 (1) The Commissioner must cancel the *registration of a
13 *representative of an *incapacitated entity if the Commissioner is
14 satisfied that the representative is not *required to be registered in
15 that capacity.

16 Note: Cancelling the registration of a representative under this subsection is
17 a reviewable GST decision (see Subdivision 110-F in Schedule 1 to
18 the *Taxation Administration Act 1953*).

- 19 (2) The Commissioner must notify the *representative of the
20 cancellation.
- 21 (3) Sections 25-50 and 25-55 do not apply to the cancellation of the
22 *registration of a *representative of an *incapacitated entity.

23 **58-30 Notice of cessation of representation**

24 A *representative who ceases to be a representative of an
25 *incapacitated entity must notify the Commissioner of that
26 cessation, in the *approved form, within 21 days after so ceasing.

27 **58-35 Tax periods of representatives**

- 28 (1) If a *representative of an *incapacitated entity is required to be
29 registered in that capacity, the tax periods applying to the
30 representative in that capacity are the same tax periods that apply
31 to the incapacitated entity.

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- 1 (2) This section has effect despite Division 27 (which is about how to
2 work out the tax periods that apply).

3 **23 At the end of Division 58**

4 Add:

5 **58-45 GST returns for representatives of incapacitated entities**

- 6 (1) If an individual is appointed as a *representative of 2 or more
7 *incapacitated entities, the individual may give to the
8 Commissioner one *GST return for a tax period in respect of the
9 entities if the entities are members of the same *GST group.
- 10 (2) This section has effect despite section 31-5 (which is about who
11 must give GST returns).

12 **58-50 GST returns for incapacitated entities**

- 13 (1) A *representative of an *incapacitated entity must give to the
14 Commissioner a *GST return for a tax period applying to the
15 incapacitated entity if:
16 (a) the incapacitated entity has failed to give to the
17 Commissioner a *GST return for a tax period; and
18 (b) the Commissioner, in writing, directs the representative to
19 give to the Commissioner the return.
- 20 (2) The tax period may be any tax period applying to the
21 *incapacitated entity, including:
22 (a) a tax period that ends before the *representative became a
23 representative of the incapacitated entity; and
24 (b) a tax period that starts after the representative became a
25 representative of the incapacitated entity.
- 26 (3) The return by the *representative:
27 (a) must be in accordance with the requirements of Division 31
28 as they would apply in relation to the *incapacitated entity
29 except to the extent that the direction under paragraph (1)(b)
30 modifies those requirements; and
31 (b) must be given to the Commissioner within the period
32 specified in the direction.
- 33 (4) Without limiting the matters that the Commissioner may take into
34 account in deciding whether to give a direction under
35 paragraph (1)(b), the Commissioner must take into account:
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- 1 (a) the likelihood of a dividend to unsecured creditors of the
2 incapacitated entity being declared, and the likely amounts of
3 any such dividend; and
4 (b) the likelihood that, if the Commissioner were given the *GST
5 return, it would reveal an increase in amounts payable to the
6 Commissioner under the *GST law; and
7 (c) the availability of books and records that would make it
8 possible to prepare the return; and
9 (d) the likelihood that the cost to the *representative of preparing
10 the return would be covered by the incapacitated entity's
11 assets without resulting in an unreasonable impact on the
12 other creditors of the incapacitated entity.
- 13 (5) The *incapacitated entity is taken to have complied with
14 Division 31 in relation to giving a *GST return for a tax period if
15 the *representative gives to the Commissioner a return for the tax
16 period in accordance with this section.
- 17 (6) A direction under paragraph (1)(b) is not a legislative instrument.
- 18 (7) This section has effect despite section 31-5 (which is about who
19 must give GST returns).

20 **58-55 Representative to notify Commissioner of certain liabilities** 21 **etc.**

- 22 (1) If a *representative of an *incapacitated entity that is in liquidation
23 becomes aware, or could reasonably be expected to have become
24 aware, that:
25 (a) the entity is liable for an amount of GST, or has an
26 *increasing adjustment; and
27 (b) the amount of GST, or the adjustment, is attributable to a tax
28 period applying to the incapacitated entity for which a *GST
29 return has not been given to the Commissioner;
30 the representative must not declare a dividend to unsecured
31 creditors of the incapacitated entity unless the representative has
32 notified the Commissioner in accordance with subsection (2).
- 33 (2) The notice must:
34 (a) be in writing and in the *approved form; and
35 (b) set out the amount of GST, or the amount of the *increasing
36 adjustment, that is attributable to the tax period ; and
37 (c) be given to the Commissioner as soon as is practicable after
38 the end of the tax period.
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1 (3) This section does not apply in circumstances determined by the
2 Commissioner under subsection (4).

3 (4) The Commissioner may, by legislative instrument, determine
4 circumstances in which this section does not apply.

5 **58-60 Money available to meet representative's liabilities**

6 A *representative of an *incapacitated entity who is liable to pay an
7 amount because of this Division is authorised and required to apply
8 any money which the representative receives in his or her capacity
9 as that representative in order to pay the liability.

10 **58-65 Protection for actions of representative**

11 A *representative of an *incapacitated entity is not liable to civil or
12 criminal proceedings in relation to an act done, or omitted to be
13 done, in good faith, in the performance or purported performance,
14 or exercise or purported exercise, of the representative's duties or
15 powers under, or in relation to, this Act.

16 **24 Subsection 129-20(1)**

17 After "under section", insert "27-39 or".

18 **25 Subsection 129-20(1) (note)**

19 Before "Section 27-40", insert "Section 27-39 deals with an
20 incapacitated entity's tax periods."

21 **26 Subsection 131-60(3)**

22 After "under section", insert "27-39 or".

23 **27 Before paragraph 138-10(1)(a)**

24 Insert:

25 (aa) if you are an *incapacitated entity—your tax period under
26 section 27-39; or

27 **28 Division 147**

28 Repeal the Division.

29 **29 Subsection 151-25(1)**

30 After "at the end of your", insert "tax period under subsection 27-39(1),
31 at the end of your".

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30 Subsection 151-55(3)

Repeal the subsection, substitute:

(3) However, this section does not affect the application of:

(a) section 27-39; or

(b) if an entity for any reason ceases to exist—section 27-40.

31 Subsection 151-60(1)

Repeal the subsection, substitute:

(1) If an entity becomes an *incapacitated entity, or the entity for any reason ceases to exist, the entity must give the *GST return, for the *annual tax period that ends as a result, to the Commissioner:

(a) on or before the 21st day of the month following the end of the annual tax period; or

(b) within such further period as the Commissioner allows.

Note: The heading to section 151-60 is altered by omitting “**bankruptcy, liquidation or receivership etc.**” and substituting “**incapacitation or cessation**”.

32 Subsection 162-30(1)

After “at the end of your”, insert “tax period under subsection 27-39(1), at the end of your”.

33 Subsection 162-85(4)

Repeal the subsection, substitute:

(4) However, this section does not affect the application of:

(a) section 27-39; or

(b) if a *GST instalment payer for any reason ceases to exist—section 27-40.

34 Subsection 162-90(1)

Repeal the subsection, substitute:

(1) If a *GST instalment payer becomes an *incapacitated entity or, for any reason ceases to exist, the GST instalment payer must give the *GST return, for the *instalment tax period that ends as a result, to the Commissioner:

(a) on or before the 21st day of the month following the end of the instalment tax period; or

(b) within such further period as the Commissioner allows.

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1 Note: The heading to section 162-90 is altered by omitting “**bankruptcy, liquidation or**
2 **receivership etc.**” and substituting “**incapacitation or cessation**”.

3 **35 Section 195-1 (at the end of the definition of *GST return*)**

4 Add “, and includes a return given in accordance with section 58-50”.

5 **36 Section 195-1 (definition of *required to be registered*)**

6 Omit “144-5 and 147-5”, substitute “58-20 and 144-5.”

7 **37 Section 195-1 (definition of *tax period*)**

8 Omit “57-35, 147-25 or 151-40”, substitute “48-72, 57-35, 58-35 or
9 151-40”.

10 ***Fuel Tax Act 2006***

11 **38 Section 70-25**

12 Omit “Divisions 58 and 147”, substitute “Division 58”.

13 ***Taxation Administration Act 1953***

14 **39 Subsection 110-50(2) of Schedule 1 (table item 54)**

15 Omit “147-10(1)”, substitute “58-25(1)”.

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1 Part 4—Transitional provisions

2 40 Application of Division 72

3 Section 58-5 of the *A New Tax System (Goods and Services Tax) Act*
4 *1999* does not affect the application of Division 72 of that Act to
5 supplies or acquisitions made before this Act receives the Royal Assent.

6 41 Cancellations of registration under section 147-10

7 If:

- 8 (a) before this Act received the Royal Assent, the Commissioner
9 cancelled the registration of an incapacitated entity; and
10 (b) but for the enactment of this Schedule, the cancellation
11 would have had effect under section 147-10 of the *A New Tax*
12 *System (Goods and Services Tax) Act 1999*;
13 the cancellation has effect as a cancellation under section 58-25 of
14 that Act.

15 42 Notices under section 147-15

16 If:

- 17 (a) before this Act received the Royal Assent, a representative
18 who ceased to be a representative of an incapacitated entity
19 notified the Commissioner of that cessation; and
20 (b) but for the enactment of this Schedule, the notice would have
21 met the requirements of section 147-15 of the *A New Tax*
22 *System (Goods and Services Tax) Act 1999*;
23 the notice has effect as a notice under section 58-30 of that Act.

24 43 Time limit on recovery by the Commissioner

25 If:

- 26 (a) because of the amendments made by this Schedule, you are
27 liable to pay an amount of indirect tax that you would not
28 have been liable to pay if the amendments had not been
29 made; and
30 (b) the liability arose before this Act received the Royal Assent;
31 and
32 (c) the amount of indirect tax corresponds to a refund of indirect
33 tax that you claimed on or after 12 December 2008 and
34 before this Act received the Royal Assent;

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1 the *Taxation Administration Act 1953* applies in relation to the amount
2 as if the reference in subsection 105-50(1) of Schedule 1 to that Act to 4
3 years after the amount became payable by you were a reference to 4
4 years after you claimed the refund.

5 **44 Refunds of amounts wrongly paid by incapacitated** 6 **entities**

7 If:

8 (a) before this Act received the Royal Assent, an incapacitated
9 entity paid an amount of indirect tax (including any relevant
10 general interest charge under the *Taxation Administration Act*
11 *1953*) that was payable by a representative of an
12 incapacitated entity; and

13 (b) but for this item, the Commissioner would be liable to refund
14 the amount to the incapacitated entity;

15 the Commissioner is not liable to refund the amount unless the
16 representative has also paid the amount to the Commissioner.