



GST and co-insurance arrangements

Three possible ways to treat co-insurance for GST purposes.

Last updated 29 November 2017

Co-insurance is the sharing of risk among insurers. The goods and services tax (GST) treatment of co-insurance arrangements depends on the nature of the arrangement between the co-insurers in each case.

These arrangements do not cover all the possibilities of co-insurance arrangements. You should seek advice based on your particular co-insurance arrangement. In the case of Subdivision 153-B agreements and GST joint venture agreements it is up to the co-insurers to choose whether they want these arrangements to apply.

There are various conditions outlined in the relevant parts of the GST Act that have to be met before entities can choose to apply those arrangements. These requirements are not discussed below.

This information is for insurers. It describes the GST treatment of co-insurance under three possible arrangements:

Agency agreement

Where an agency relationship exists Subdivision 153A of the A New Tax System (Goods and Services Tax) Act 1999 applies.

Subdivision 153-B arrangements

Where the co-insurance group has entered into a Subdivision 153-B agreement, the provisions of that Subdivision apply.

Joint venture agreement



Where the co-insurance group has formed a GST joint venture, Division 51 would apply.

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Agency agreement

Where an agency relationship exists Subdivision 153A of the A New Tax System (Goods and Services Tax) Act 1999 applies.

Last updated 29 November 2017

If the lead insurer is acting as agent for the other co-insurers – such that the lead insurer makes creditable acquisitions under Division 11 on behalf of the principals, and also makes Division 78 settlements for which the principals may be entitled to a decreasing adjustment – the following will apply.

Input tax credits

The other co-insurers are entitled to an input tax credit for acquisitions made through an agent. In accordance with section 153-5, they can attribute that input tax credit to the first tax period in which they or their agent (the lead insurer) holds a tax invoice. However, Division 11 limits the amount of input tax credit each of the co-insurers is entitled to claim. Section 11-25 states that the amount of input tax credit for a creditable acquisition is an amount equal to the GST payable. However, under section 11-30, the amount of input tax credit is reduced if the acquisition is only partly creditable.

Section 11-30 states that an acquisition is only partly creditable if you provide, or are liable to provide, only part of the consideration for the acquisition. Consequently, each co-insurer is entitled to claim an input

tax credit in accordance with the percentage of consideration that they provide.

Subdivision 153-A provides that a principal must attribute input tax credits or adjustments to the first tax period when the principal holds the relevant tax invoice or adjustment note. Under Subdivision 153-A, the principal's obligations are complied with if the agent issues tax invoices and adjustment notes on behalf of the principal for those supplies made by the principal through the agent.

Where the agent incurs extra expenses – but not expenses for which it is an agent of the principal, and the principal reimburses the agent for those expenses – the principal may be entitled to claim the input tax credits for those reimbursements under Division 111. This will only be the case where the agent is not able to claim the input tax credits in their own right, such as if the agent is not registered for GST.

Decreasing adjustments

Under section 78-10, 'an insurer has a decreasing adjustment if, in settlement of a claim under an insurance policy, the insurer makes one or more of the following:

- a payment of money
- a payment of digital currency
- a supply.

Consequently each co-insurer, including the lead insurer, has a decreasing adjustment for the settlement that they make under the insurance policy. The lead insurer and the other co-insurers would attribute a decreasing adjustment according to the basic attribution rules set out in section 29-20 unless a special attribution rule applies. Section 29-20 states that you attribute an adjustment to the tax period in which you become aware of it. Each co-insurer would only attribute their share of the decreasing adjustment, that is, to the extent of their share in the co-insurance arrangement.

Administration fees

In some cases the lead insurer and the principals have agreed to share administration costs by way of a fee paid to the lead insurer. In this case, the lead insurer makes a taxable supply of the administration

services to the other co-insurers and would need to provide a tax invoice for the agreed claims administration costs, if requested by the other co-insurers.

Example: Agency agreement

Sure Insurance acts as agent for three other co-insurers.

Under the co-insurance arrangement, Sure Insurance is agent of three other co-insurers for the purposes of:

- supplying the insurance offered by the co-insurers
- settling claims under those policies, whether by making acquisitions or importations, making acquisitions or importations directly for the purpose of settling claims, or making cash settlements.

Under the co-insurance arrangement, the four co-insurers (including Sure Insurance) supply an insurance policy to Invisible Ink, a small supplier of invisible ink whiteboard markers for Secret Service. The insurance premium is \$110. Invisible Ink is not registered for GST and so is not entitled to input tax credits on this premium. Each co-insurer makes a quarter of the supply as they share the risks equally.

As Sure Insurance is agent for the other co-insurers, each co-insurer has made a supply to Invisible Ink. Each co-insurer, including Sure Insurance, will account for a supply for \$27.50, including GST of \$2.50.

Invisible Ink makes a claim under the policy.

In order to settle the claim, Sure Insurance acquired building services and replacement equipment in its own right (to the extent of its share in the arrangement) and as agent for the other co-insurers (to the extent of their share in the arrangement). The total acquisitions cost \$17,600, including GST of \$1,600. Sure Insurance and each co-insurer would be entitled to their share of the input tax credits for these acquisitions, that is, \$400 each. This is because Sure Insurance is acting as agent for the three other co-insurers.

Sure Insurance also makes a payment of \$2,200 to Invisible Ink in settlement of the claim. As Sure Insurance is acting as agent for

the other co-insurers – and in its own right to the extent of its share in the co-insurance arrangement in making the cash settlement – each co-insurer has made a quarter of the payment. Each will have a decreasing adjustment on their share of the payment. As Invisible Ink was not entitled to input tax credits on the premium, the amount of the decreasing adjustment will be one-eleventh of their share, that is, one-eleventh of \$550, which is \$50.

Sure Insurance would therefore need to inform the other three co-insurers of:

- the quantum of the acquisitions it has made as their agent, including the portion of input tax credit available and whether it holds the relevant tax invoice
- the quantum of any Division 78 settlement amount and the decreasing adjustment (if any) that is available.

Under this co-insurance arrangement, the other co-insurers reimburse Sure Insurance for the administration costs. Sure Insurance would also need to provide a tax invoice for the agreed claims administration costs, if requested by the other co-insurers. This is because Sure Insurance has made a taxable supply of the administration services to the other co-insurers.

See also:

- *GSTR 2000/37 Goods and services tax: agency relationships and the application of the law*

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Subdivision 153-B arrangements

Where the co-insurance group has entered into a Subdivision 153-B agreement, the provisions of that Subdivision apply.

Last updated 29 November 2017

Subdivision 153-B simplifies the way you can account for GST by allowing entities to enter into an arrangement under which an agent is treated as a separate supplier or acquirer. The general effect of entering into these arrangements in respect of both supplies and acquisitions is that the principal and agent are treated as acting as between a principal and another principal.

These arrangements do not impact on other taxation laws except where specifically noted. Nor do the arrangements impact upon other laws or contractual arrangements between the parties. The option exists for GST purposes only and allows an alternative way for agents and principals to account for GST.

From 1 July 2010, the range of entities that can access these arrangements has been extended to include intermediaries that facilitate transactions but are not common law agents. The changes apply to supplies and acquisitions made by intermediaries on or after 1 July 2010.

The following would be the effect of a Subdivision 153-B, if the lead insurer and the three other co-insurers have a Subdivision 153-B arrangement for transactions in relation to supplying insurance and processing claims, and under the co-insurance arrangement, the lead insurer is agent for the other co-insurers for the purposes of:

- supplying the insurance offered by the co-insurers
- settling claims under those policies, whether by making acquisitions or importations, making acquisitions or importations directly for the purpose of settling claims, or making cash settlements.

Under the agreement, the lead insurer would be treated as making the supplies of insurance to the third parties and the acquisitions from the third parties entirely in its own right for GST purposes only. The principals would be treated as making corresponding supplies to the lead insurer and corresponding acquisitions from the lead insurer.

For GST purposes, the lead insurer would be treated as having made the acquisitions for the co-insurers – such as building services, replacement equipment, and general claims costs – in its own right and would claim the full input tax credit for those acquisitions. The lead insurer would also be treated as supplying those things acquired to each of the co-insurers to the extent of their share of the co-insurance arrangement. For GST purposes, each co-insurer would be treated as having made an acquisition of that supply from the lead insurer.

If the lead insurer makes a payment in settlement of the claim, the lead insurer would claim the appropriate decreasing adjustment (if any). This is because the lead insurer is treated as having made the supply of insurance in its own right for GST purposes.

The other three co-insurers are entitled to an input tax credit for the corresponding acquisitions from the lead insurer and a decreasing adjustment (if any) for the corresponding payment in settlement of the claim if they reimburse the lead insurer for the payment. However, generally it is expected that the other co-insurers will have no decreasing adjustment as the lead insurer is the entity that is treated as having acquired the insurance from the other co-insurers. It is generally expected that the lead insurer would have had a full input tax credit on the payment they are treated as having made to the co-insurers for that supply.

Subsections 153-55(3) and 153-60(3) provide that the payment of commission or similar payment to the agent (the lead insurer) for the agent's supply to the third party or acquisition from a third party is not a taxable supply.

Example: Subdivision 153-B agreement

Under a co-insurance arrangement, Rob's Cover is agent of three other co-insurers for the purposes of:

- supplying the insurance offered by the co-insurers
- settling claims under those policies, whether by making acquisitions or importations, making acquisitions or importations directly for the purpose of settling claims, or making cash settlements.

Under the co-insurance arrangement, the four co-insurers (including Rob's Cover) supply an insurance policy to Dutton Loans, a supplier of housing loans to members of Kleen Services. The insurance premium is \$11,000. Dutton Loans is not entitled to input tax credits on this premium. Each co-insurer makes a quarter of the supply as they share the risks equally.

As the co-insurers have a Subdivision 153-B agreement in place, the co-insurers are treated as making a supply of insurance to Rob's Cover equal to their share of the supply to Dutton Loans, and Rob's Cover as making a supply of that insurance to Dutton

Loans. Rob's Cover still supplies its share of the insurance to Dutton Loans.

Rob's Cover will account for the entire supply of insurance to Dutton Loans, that is, \$11,000, including GST of \$1,000. Each of the other co-insurers will account for a taxable supply to Rob's Cover of one-quarter of the supply to Dutton Loans, that is, \$2,750, including GST of \$250. Rob's Cover will account for input tax credits on each of the supplies from the other co-insurers, that is, three acquisitions of \$2,750, with input tax credits of \$250 each.

Dutton Loans later makes a claim under the policy.

Rob's Cover settles the claim by making an acquisition of services for \$495 and a cash settlement of \$1,925. Rob's Cover will claim an input tax credit of \$45 and a decreasing adjustment of \$175.

Presuming the other co-insurers reimburse Rob's Cover for the acquisition, Rob's Cover will be treated as making supplies of those services to each of the co-insurers to the extent of their share of the co-insurance arrangement, that is, three supplies for \$123.75 each, including GST of \$11.25 each. Each co-insurer would account for these supplies as acquisitions, that is, one acquisition each for \$123.75, with an input tax credit of \$11.25.

Presuming the other co-insurers reimburse Rob's Cover for the cash settlement and Rob's Cover has claimed for this reimbursement, each co-insurer would be treated as making a payment in settlement of the claim by Rob's Cover under the insurance policy that each co-insurer has been treated as having made to Rob's Cover. None of the other co-insurers would be entitled to a decreasing adjustment on these settlements as Rob's Cover was entitled to a full input tax credit on the acquisition of the insurance it is treated as having made from the other co-insurers.

See also:

- GSTR 2000/37 *Goods and services tax: agency relationships and the application of the law* (paragraphs 74 to 91L)

Joint venture agreement

Where the co-insurance group has formed a GST joint venture, Division 51 would apply.

Last updated 29 November 2017

If eligible, the members of a co-insurance group can form a GST joint venture with the lead insurer nominated as the joint venture operator. The participants in the joint venture would need to have a joint venture agreement. The joint venture operator must notify us of the formed GST joint venture.

The lead insurer as the joint venture operator would be liable for the GST payable on any taxable supply or taxable importation it makes on behalf of another entity that is a participant in the joint venture, in the course of the activities for the joint venture – subsection 51-30(1).

The lead insurer as the joint venture operator would be entitled to claim an input tax credit for creditable acquisitions or creditable importations it makes on behalf of another entity that is a participant in the joint venture, in the course of the activities for the joint venture – section 51-35.

The lead insurer as the joint venture operator would account for any adjustments relating to any supply, acquisition or importation it makes on behalf of another entity that is a participant in the joint venture, in the course of the activities for the joint venture at the time the adjustment arises – section 51-40.

Any supply that the lead insurer as the joint venture operator makes to a participant in the GST joint venture is not a taxable supply provided that the participant acquired the supply in the course of activities for the joint venture.

The lead insurer as the joint venture operator would give us a GST return for each tax period applying to the operator detailing the net amount relating to the GST joint venture.

Participants in a GST joint venture will be jointly and severally liable for any amount payable by the joint venture operator that relates to the

joint venture. Participants will each be taken to have committed offences by the joint venture operator but certain defences will be available to them. However, joint venture participants can enter into an indirect tax sharing agreement with the joint venture operator to limit their exposure to joint and several liability for the joint venture operator's indirect tax liability.

If the lead insurer is the joint venture operator of a co-insurance GST joint venture and as the operator made acquisitions – such as building services, replacement equipment, or general claims costs – in its own right (to the extent of its share of the co-insurance arrangement) and as agent for the other co-insurers (to the extent of their share of the co-insurance arrangement), the lead insurer will be entitled to the input tax credits on the acquisition. The lead insurer, as the joint venture operator, would also be entitled to any decreasing adjustments arising under Division 78.

As supplies that the joint venture operator makes to participants of the GST joint venture are not taxable supplies, the lead insurer's supply of administration services to the other co-insurers would not be a taxable supply.

The lead insurer, as the joint venture operator, would recover:

- the acquisitions costs net of any input tax credit claimed
- any Division 78 settlement amount net of any decreasing adjustment
- any administration services fee.

Example: Joint venture agreement

Under a co-insurance arrangement, Chopra Insurance is agent of three other co-insurers for the purposes of:

- supplying the insurance offered by the co-insurers
- settling claims under those policies, whether by making acquisitions or importations, making acquisitions or importations directly for the purpose of settling claims, or making cash settlements.

The four co-insurers form a GST joint venture with Chopra Insurance as joint venture operator.

Under the co-insurance arrangement, the four co-insurers (including Chopra Insurance) supply an insurance policy to Dresswell Inc, a supplier of fashionable men's clothing to members of Abs Galore. The supply is made through Chopra Insurance as agent for the other three co-insurers and in its own right. The insurance premium is \$22,000. Dresswell Inc is entitled to full input tax credits on this premium. Each co-insurer makes one-quarter of the supply as they share the risks equally.

Chopra Insurance, as joint venture operator, has the full GST liability on the supply of \$2,000.

Dresswell Inc makes a claim under the policy.

Chopra Insurance settles the claim by making a creditable acquisition of services for \$1,650 and a cash settlement of \$10,000. Chopra Insurance will claim a full input tax credit of \$150. Chopra Insurance would also claim the full decreasing adjustment, but in this case there was a full input tax credit on the insurance premium, so there is no decreasing adjustment.

See also:

- *GSTR 2004/2 Goods and services tax: What is a joint venture for GST purposes?*

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