

COMMONWEALTH OF AUSTRALIA

A NEW TAX SYSTEM (GOODS AND SERVICES TAX) ACT 1999

DETERMINATION

Under subsection 29-25(1) of the *A New Tax System (Goods and Services Tax) Act 1999* and subsection 4(1) of the *Acts Interpretation Act 1901*, I make the following determination, being satisfied under paragraph 29-25(2)(g) of the Act that it is necessary to prevent the provisions of Division 29 and Chapter 4 applying in a way that is inappropriate in circumstances involving a supply or acquisition made under a contract that provides for retention of some or all of the consideration until certain conditions are met:

Citation

1. This Determination is the *A New Tax System (Goods and Services Tax) Act 1999 (Particular Attribution Rules for Retention Payments) Determination (No. 1) 2000*.

Commencement

2. This Determination commences on the date the *A New Tax System (Goods and Services Tax) Act 1999* commences.

Particular attribution rule for GST payable on a taxable supply made under a contract that provides for retention of some or all of the consideration until certain conditions are met

3. (1) This particular attribution rule applies if you make a taxable supply under a contract that provides for the recipient of the supply to retain some or all of the consideration until certain conditions are met.
- (2) The GST payable on the non-retained consideration is attributable to the tax period when:
- (a) any of that consideration is received for the supply; or
 - (b) an invoice is issued relating to the supply; whichever is the earlier.
- (3) The GST payable on the retention amount is attributable as follows:
- (a) if, in a tax period, all of the retention amount is received, the GST payable on the retention

amount is attributable to that tax period but only to the extent that it has not been previously attributed to an earlier tax period as a result of the issue of an invoice for the retention amount; or

- (b) if, in a tax period, part of the retention amount is received, the GST payable on the retention amount is attributable to that tax period, but only to the extent that:
 - (i) the retention amount is received in that tax period; and
 - (ii) the GST payable on the retention amount has not been previously attributed to an earlier tax period as a result of the issue of an invoice for the retention amount; or
- (c) if, in a tax period, none of the retention amount is received, none of the GST payable on the retention amount is attributable to that tax period.
- (4) However, if an invoice for the retention amount is issued in a tax period, GST payable on the retention amount is attributable to that tax period, but:
 - (a) only to the extent of the amount of the invoice issued in that tax period; and
 - (b) only to the extent that the GST on the retention amount has not been previously attributed to an earlier tax period because part of the retention amount was received in an earlier tax period.
- (5) This Clause applies only if you do not account on a cash basis.

Particular attribution rules for input tax credits arising from a creditable acquisition made under a contract that provides for retention of some or all of the consideration until certain conditions are met

- 4. (1) This particular attribution rule applies if you make a creditable acquisition under a contract that allows you to retain some or all of the consideration until certain conditions are met.

- (2) The input tax credit on the non-retained consideration to which you are entitled for a creditable acquisition is attributable to tax period when:
- (a) you provide any of the consideration for the acquisition; or
 - (b) an invoice is issued relating to the acquisition;
- whichever is the earlier.
- (3) The input tax credit on the retention amount to which you are entitled for a creditable acquisition is attributable to:
- (a) if, in a tax period, you provide all of the retention amount for a creditable acquisition, the input tax credit for the retention amount is attributable to that tax period but only to the extent that it has not been previously attributed to an earlier tax period as a result of the issue of an invoice for the retention amount; or
 - (b) if, in a tax period, you provide part of the retention amount, the input tax credit for the retention amount is attributable to that tax period, but only to the extent that:
 - (i) you provided the retention amount in that tax period; and
 - (ii) the input tax credit on the retention amount has not been previously attributed to an earlier tax period as a result of the issue of an invoice for the retention amount; or
 - (c) if, in a tax period, you did not provide any of the retention amount, none of the input tax credit on the retention amount is attributable to that tax period.
- (4) However, if an invoice for the retention amount is issued in a tax period, the input tax credit on the retention amount is attributable to that tax period, but:
- (a) only to the extent of the amount of the invoice issued in that period; and
 - (b) only to the extent that the input tax credit on the retention amount has not been previously

attributed to an earlier tax period because you provided part of the retention amount in an earlier tax period.

- (2) This Clause applies only if you do not account on a cash basis.

GST payable on the retention amount

5. (1) The GST payable on the retention amount is worked out in the following way:

Step 1 Identify the retention amount as a percentage of the total of the consideration.

Step 2 Apply that percentage to the amount of GST payable on the taxable supply – the result is the ***GST payable on the retention amount***

- (2) The GST payable on the non-retained consideration is the amount obtained by subtracting the amount of GST payable on the retention amount from the amount of GST payable on a taxable supply.

Input tax credits on the retention amount

6. (1) The input tax credit on the retention amount is worked out in the following way:

Step 1 Identify the retention amount as a percentage of the total of the consideration

Step 2 Apply that percentage to the amount of the input tax credit for the creditable acquisition – the result is the ***input tax credit on the retention amount***.

- (2) The input tax credit on the non-retained consideration is the amount obtained by subtracting the amount of the input tax credit on the retention amount from the amount of the input tax credit that you are entitled to for a creditable acquisition.

7. To avoid doubt, this Determination is not intended to override subsection 29-10(3) or Division 156.

Definitions

8. (1) The following expressions are defined for the purposes of this Determination:

GST payable on the non-retained consideration, in relation to a taxable supply, means the amount worked out in accordance with Clause 5(2);

GST payable on the retention amount, in relation to a taxable supply, means the amount worked out in accordance with Clause 5(1);

input tax credit on the non-retained consideration, in relation to a creditable acquisition, means the amount worked out in accordance with Clause 6(2);

input tax credit on the retention amount, in relation to a creditable acquisition, means the amount worked out in accordance with Clause 6(1);

invoice for the retention amount, means a document notifying an obligation to pay the retention amount issued in relation to that amount following the expiry of the defects period;

non-retained consideration, in relation to a taxable supply or a creditable acquisition, means the amount obtained by subtracting the retention amount from the consideration for that supply;

retention amount, in relation to a taxable supply or a creditable acquisition, means that part of the consideration for the supply that the recipient of the supply retains under the terms of a contract which provide for the recipient to retain an amount until certain conditions specified in the contract are met;

the Act means the *A New Tax System (Goods and Services Tax) Act 1999*.

- (2) Other expressions in this Determination have the same meaning as in the Act.

Signed this 30th day of June 2000
Marilyn Knight
Senior Tax Counsel
Goods and Services Tax Program
Delegate of the Commissioner

