


***GSTD 2003/D1 - Goods and Services tax: are acquisitions made by a company in obtaining valuations in respect of forming a consolidated group, or in respect of a subsidiary joining a consolidated group, made in carrying on the company's enterprise?***

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This document has been finalised.



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## Draft Goods and Services Tax Determination

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### **Goods and Services tax: are acquisitions made by a company in obtaining valuations in respect of forming a consolidated group, or in respect of a subsidiary joining a consolidated group, made in carrying on the company's enterprise?**

#### *Preamble*

*This document is a draft for industry and professional comment. As such, it represents the preliminary, though considered views of the Australian Taxation Office. This draft may not be relied on by taxpayers and practitioners as it is not a ruling or advice for the purposes of section 37 of the **Taxation Administration Act 1953**. The final Determination will be a public ruling for the purposes of section 37 and may be relied upon by any entity to which it applies.*

1. Yes, provided the company is carrying on an enterprise. Acquisitions made by a head company of a consolidatable or consolidated group, or a subsidiary member of that group, in obtaining valuations in respect of forming or joining a consolidated group, are made in carrying on the company's enterprise. Guidance on whether an entity is carrying on an enterprise can be found in Miscellaneous Tax Ruling MT 2000/1.<sup>1</sup>

#### **Background**

##### *Consolidation valuations*

2. Where a consolidated group is formed all subsidiary members of the group are treated as parts of the head company rather than as separate entities for the purpose of determining the head company's income tax liability.<sup>2</sup> In effect, the tax attributes of the subsidiaries become that of the head company.<sup>3</sup> This also occurs when an entity joins a consolidated group.

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<sup>1</sup> MT 2000/1 The New Tax System: the meaning of entity carrying on an enterprise for the purposes of entitlement to an Australian Business Number ('ABN').

<sup>2</sup> Section 701-1 of the *Income Tax Assessment Act 1997* (the ITAA 1997).

<sup>3</sup> Section 701-5 of the ITAA 1997.

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3. Upon consolidation the market values of all assets held by subsidiary members will need to be determined where the transitional provisions of adopting existing tax costs have not been utilised. The key purposes of market valuations for consolidation are to enable the head company to determine the tax cost setting amounts for assets that joining entities bring into the group and to assist in calculating how much of a transferred loss can be utilised.<sup>4</sup>

## ***Creditable acquisitions***

4. Under the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act)<sup>5</sup> you are entitled to input tax credits for any creditable acquisition that you make.<sup>6</sup> One of the requirements for an acquisition to be a creditable acquisition<sup>7</sup> is that you acquire it solely or partly for a creditable purpose.<sup>8</sup> You acquire a thing for a creditable purpose to the extent that you acquire it in carrying on your enterprise.<sup>9</sup>

### **‘in carrying on your enterprise’**

5. Where a member of a corporate group is carrying on an enterprise, acquisitions in obtaining valuations will be creditable acquisitions to the extent that they are made in *carrying on* that enterprise.

6. It follows from the definition of enterprise in section 9-20 that acquiring something in carrying on an enterprise means acquiring something in carrying on an activity or series of activities in the form of a business or in the form of an adventure or concern in the nature of trade, or in carrying on one of the other activities in that section. ‘Carrying on’ an enterprise is not defined in the GST Act, other than by way of including doing anything in the course of the commencement or termination of the enterprise.<sup>10</sup>

7. The term ‘in carrying on a business’ has been judicially discussed in the context of general income tax deductions. A deduction from assessable income is allowed to the extent that an outgoing is necessarily incurred in carrying on a business for the purpose of gaining or producing assessable income.<sup>11</sup>

8. The income tax authorities suggest that the outgoing must have the essential character of a business expense (or income producing expense), determined by establishing a sufficient connection between the incurring of the expenditure and the scope of the operations or activities of the business (or of the income producing activities where there is no business).<sup>12</sup>

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<sup>4</sup> Sections 705-35 and 707-320 of the ITAA 1997.

<sup>5</sup> All section references are to the GST Act unless indicated otherwise.

<sup>6</sup> Section 11-20.

<sup>7</sup> Section 11-5 provides for what is a creditable acquisition.

<sup>8</sup> Paragraph 11-5(a). The meaning of creditable purpose is given in section 11-15.

<sup>9</sup> Subsection 11-15(1).

<sup>10</sup> Section 195-1.

<sup>11</sup> Section 8-1 of the ITAA 1997.

<sup>12</sup> *Ronpibon Tin N.L and Tongkah Compound N.L. v. FC of T* (1949) 78 C.L.R. 47, *Magna Alloys & Research Pty Ltd v. FC of T* 80 ATC 4542, 11 ATR 276.

9. In the GST context there must be a link between making the acquisition and the enterprise. That is, a link between the acquisition and the activities, or series of activities done in the form of a business, or in the form of an adventure or concern in the nature of trade, or in carrying on one of the other activities in section 9-20.
10. However, the scope of the operations or activities in carrying on an enterprise in the GST Act is not limited to activities for an income making purpose, in the way that the concept of carrying on a business is so limited in the income tax context by the words ‘for the purpose of gaining or producing your assessable income.’ Similarly, the GST Act does not limit the entitlement to input tax credits to acquisitions made for the purpose of making taxable supplies, as is the case in the equivalent provisions of other VAT jurisdictions.<sup>13</sup>
11. For these reasons, acquisitions made in carrying on an enterprise is clearly a wider concept than the scope of expenditure incurred in carrying on a business.
12. This is consistent with the Explanatory Memorandum to the A New Tax System (Goods and Services Tax) Bill 1998, which states at paragraph 3.25:
- 3.25 The creditable purpose test is broader than the test of deductibility for income tax in section 8-1 of the *Income Tax Assessment Act 1997*. For example, input tax credits may be available in relation to the acquisition of capital items whereas your capital purchases are not deductible for income tax. The acquisition of services for preparing your tax returns may satisfy the creditable purpose test, even though these are only deductible under a specific provision for income tax.
13. There is judicial authority under income tax law that has held that tax related costs, such as expenses relating only to determining the correct amount of income tax payable, are not incurred in carrying on a business for the purpose of gaining or producing assessable income, and are therefore not deductible.<sup>14</sup>
14. However, in the GST context, where the enterprise of a head company includes the activities of fulfilling the income tax obligations of the consolidated group, acquisitions made in carrying out these activities are made in carrying on the head company’s enterprise, even though the acquisitions are not directly for the purpose of gaining or producing income.
15. Similarly, where a subsidiary company is carrying on an enterprise, acquisitions by the subsidiary in joining a consolidated group are made in carrying on the subsidiary’s enterprise.
16. This will also be the case for both a head company and a subsidiary where the company acquires the valuation for the purpose of entering into a consolidated group even though the consolidation does not go ahead.

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<sup>13</sup> See for example the meaning of ‘input tax’ at section 3A(1) of the *Goods and Services Tax Act 1985* (New Zealand) and Article 4(2) of the Sixth Council Directive 77/388/EEC on the harmonisation of the laws of the Member States relating to turnover taxes, in relation to the EEC.

<sup>14</sup> *Cliffs International Inc v. FC of T* 85 ATC 4374, 16 ATR 601, *Smith’s Potato Estates Ltd v. Bolland* (1948) 2 All ER 367.

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## Apportionment

17. If the acquisition of the market valuation is only acquired partly for consolidation valuation purposes and partly for some other reason, the acquisition may be made in carrying on an enterprise only to the extent that it is made for the purposes of consolidation valuation. This will depend on what the other purpose for the acquisition is, and whether that other purpose also is in carrying on the enterprise. If it is not, the acquisition is only partly for a creditable purpose. A reasonable method of apportionment will be required in accordance with the principles GSTR 2000/15.<sup>15</sup>

18. Even where an acquisition is made in carrying on an enterprise, the acquisition is not for a creditable purpose to the extent that it relates to making supplies that would be input taxed, or to the extent the acquisition is of a private or domestic nature. For example, the acquisition will not be creditable if the valuation relates to the company making financial supplies.<sup>16</sup> For an entity that makes both taxable and input taxed supplies, enterprise costs that do not relate particularly to making supplies, must be apportioned using a reasonable method. The acquisition of valuation services to meet the requirements of the consolidation legislation would not relate directly to making input taxed supplies. It relates to the company carrying out the activities of its enterprise that deal with its tax affairs. GSTR 2000/22<sup>17</sup> provides guidance on reasonable methods to apportion costs associated with the operating of an enterprise which are not linked directly to making either input taxed or other supplies.

19. Also note that if you acquire valuation services intending only to use them for consolidation purposes but later apply that acquisition for another purpose Division 129 may apply. Division 129 provides for adjustments where there are changes in the extent of creditable purpose.

## Your comments

20. We invite you to comment on this draft Goods and Services Tax Determination. We are allowing 6 weeks for comments before we finalise the Determination. If you want your comments considered, please provide them to us within this period.

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<sup>15</sup> GSTR 2000/15 Goods and Services Tax: determining the extent of creditable purpose for claiming input tax credits and for making adjustments for changes in extent of creditable purpose.

<sup>16</sup> However certain financial supply acquisitions may be creditable acquisitions if they do not exceed the financial acquisitions threshold (subsection 11-15(4)) or if they are reduced credit acquisitions (Division 70).

<sup>17</sup> GSTR 2000/22 Goods and Services tax: determining the extent of creditable purpose for providers of financial supplies.

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## Commissioner of Taxation

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*Previous draft:*

Not previously issued in draft form.

*Related Rulings/Determinations:*

MT 2000/1, GSTR 2000/15, GSTR 2000/22, TD 2002/D12

*Subject references:*

- acquisitions
- creditable acquisitions

*Legislative references:*

- ANTS(GST)A99 9-20
- ANTS(GST)A99 11-5
- ANTS(GST)A99 11-5a
- ANTS(GST)A99 11-15
- ANTS(GST)A99 11-15(1)
- ANTS(GST)A99 11-20
- ANTS(GST)A99 129
- ANTS(GST)A99 195-1
- ITAA 1997 8-1
- ITAA 1997 701-1
- ITAA 1997 701-5
- ITAA 1997 705-35
- ITAA 1997 707-320
- GSTA(NZ)85 3A(1)
- TAA 1953 37

*Case references:*

- Ronpibon Tin N.L and Tongkah Compound N.L. v. FC of T (1949) 78 C.L.R. 47
- Magna Alloys & Research Pty Ltd v. FC of T 80 ATC 4542, 11ATR 276
- Cliffs International Inc v. FC of T 85 ATC 4374, 16 ATR 601
- Smith's Potato Estates Ltd v. Bolland (1948) AC 508, (1948) 2 All ER 367.

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ATO references

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