GSTR 1999/D7 - Goods and Services Tax: attributing GST payable, input tax credits and adjustments

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This document has been finalised.
There is an Erratum notice for this document.

Draft Goods and Services Tax Ruling

Goods and Services Tax: attributing GST payable, input tax credits and adjustments

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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 taxation officers, taxpayers and practitioners, as it is not a ruling or advice in terms of section 37 of the ***Taxation Administration Act 1953****. When officially released it will be a public ruling for the purposes of section 37 and may be relied upon by any person to whom it applies.*

What this Ruling is about

1. This Ruling applies to all entities that make taxable supplies or creditable acquisitions.

2. This Ruling is about attribution of Goods and Services Tax ('GST') payable, input tax credits and adjustments under the *A New Tax System (Goods and Services Tax)Act 1999* ('GST Act') and the *A New Tax System (Goods and Services Tax Transition) Act 1999* ('GST Transition Act'). All legislative references are to the GST Act unless otherwise stated.

3. This Ruling explains the basic attribution rules that apply to attribute GST payable on taxable supplies, input tax credits for creditable acquisitions and creditable importations, and adjustments. It also explains the effect of some special rules that modify these basic rules, in particular circumstances.

4. Under section 29-25, the Commissioner proposes to make determinations altering the operation of the basic attribution rules and any relevant special rules for taxable supplies and creditable acquisitions of the following kind:

- supplies and acquisitions made under contracts that are subject to a statutory cooling off period;
- supplies made through coin-operated machines and similar devices;
- supplies and acquisitions made through agents;

- supplies and acquisitions made under contracts that provide for the retention of consideration; and
- supplies and acquisitions for which consideration is received or provided before the total consideration is known.

The Ruling sets out the reasons why the Commissioner proposes to make these determinations.

5. The Commissioner does not propose to make determinations under section 29-25 in relation to supplies and acquisitions made under:

- agreements for the supply of goods on:
  (a) approval; or
  (b) 'sale or return' basis;
- lay-by sale agreements;
- floor plan arrangements; and
- hire purchase agreements.

The basic attribution rules and any relevant special rules apply to these supplies and acquisitions. The Ruling examines the reasons for not making determinations in these cases.

6. This is a draft Ruling. It does not represent the Commissioner's final views as to whether the application of the basic attribution rules and any relevant special rules is inappropriate for particular kinds of supplies or acquisitions. We seek your comments on the Commissioner's proposals to make or not make determinations under section 29-25 in the circumstances outlined in this draft Ruling. We will take your views into account in forming the final views of the Commissioner on the necessity to make determinations.

7. The Ruling does not address any issues about whether there is a taxable supply, creditable acquisition or adjustment. The Ruling only looks at how to account for GST payable, input tax credits or adjustments.

8. The Ruling does not examine the application of the attribution rules for supplies and acquisitions made under:

- conditional contracts for sale and acquisition of real property; or
- contracts containing retention of title clauses.

We will deal with the application of the basic attribution rules and any special rules for these supplies and acquisitions in future public rulings. We will also consider the appropriateness of the application

of these rules and the need for the Commissioner to make any determinations under section 29-25 in those rulings.

9. The Commissioner may make further determinations in relation to supplies and acquisitions where the Commissioner is satisfied that, in circumstances specified in subsection 29-25(2), the application of the basic attribution rules and/or special rules is inappropriate.

Date of effect

10. This Ruling, when finalised, it will take effect on and from 8 July 1999 (the date of Royal Assent to the GST legislation).

Context of attribution

11. To assist you in understanding the role of attribution in the GST system, we have provided a brief explanation of the basic operation of the GST law below. This is followed by an outline of the basic attribution and special rules under the GST Act. The definitions of 'net amount' and 'recipient', terms used in this part of the Ruling, are included in the Dictionary at the back of the Ruling.

12. GST is payable on taxable supplies and taxable importations.[1] The amount of GST payable on a taxable supply is 10% of the value of the taxable supply.[2]

13. You make a taxable supply if:

(a) you make the supply for consideration; and

(b) the supply is made in the course or furtherance of an enterprise that you carry on; and

(c) the supply is connected with Australia; and

(d) you are registered, or required to be registered.

However, the supply is not a taxable supply to the extent that it is GST-free or input taxed.[3]

14. Consideration is very broadly defined in the GST Act. It includes:

(a) any payment, or any act or forbearance, in connection with a supply of anything; and

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[1] Sections 9-40 and 13-15.
[2] Section 9-70.
[3] Section 9-5.

(b) any payment, or any act or forbearance, in response to or for the inducement of a supply of anything.

It does not matter whether the payment, act or forbearance was voluntary, or whether it was by the recipient of the supply.[4]

15. Entitlements to input tax credits arise on creditable acquisitions and creditable importations.[5]

16. You make a creditable acquisition if:

(a) you acquire anything solely or partly for a creditable purpose; and

(b) the supply of the thing to you is a taxable supply; and

(c) you provide, or are liable to provide, consideration for the supply; and

(d) you are registered, or required to be registered.[6]

17. You make a creditable importation if:

(a) you import goods solely or partly for a creditable purpose; and

(b) the importation is a taxable importation; and

(c) you are registered, or required to be registered.[7]

18. The amount of the input tax credit for a creditable acquisition is an amount equal to the GST payable on the supply of the thing acquired. However, the amount of the input tax credit is reduced if the acquisition is only partly creditable.[8]

19. Amounts of GST payable and amounts of input tax credits are set off against each other to produce a net amount for a tax period. The net amount must be altered to take account of adjustments. The net amount for a tax period is the amount that you must pay to the Commissioner, or the Commissioner must refund, in respect of that tax period. However, all or part of any refund may be offset against a liability you have for other taxes administered by the Commissioner, such as income tax and fringe benefits tax.[9]

The basic attribution rules

20. 'Attribution' is the term used in the GST law to describe the way you account for GST payable, input tax credits and adjustments

[4] Sections 9-15(1) and 9-15(2).
[5] Sections 11-20 and 15-15.
[6] Section 11-5.
[7] Section 15-5.
[8] Section 11-25.
[9] Sections 33-5 and 35-5.

in order to work out your net amount of GST for the tax period. GST payable, input tax credits and adjustments are attributed to tax periods rather than being remitted or refunded, as the case may be, each time a taxable supply, creditable acquisition or adjustment is made.

21. The basic attribution rules are set out in Division 29[10] of Part 2-6 of the GST Act. They provide rules about when to account for GST payable on taxable supplies, input tax credits for creditable acquisitions and creditable importations, and adjustments. The basic attribution rules differ depending on whether or not you account for GST on a cash basis.

22. You can choose to account for GST on a cash basis[11] if:

- your annual turnover[12] is $1 million or less;
- for income tax purposes, you account for your income using the receipts method; or
- you carry on an enterprise of a kind that the Commissioner has determined, in writing, is a kind of enterprise in respect of which a choice to account on a cash basis may be made. (The ATO will issue further information about this kind of enterprise.)

23. Any charitable institution, trustee of a charitable fund or gift-deductible entity may choose to account on a cash basis without the need to satisfy any of the requirements specified in paragraph 22.

24. You may choose to account on a cash basis with effect from the first day of the tax period that you choose this basis.[13]

25. If you do not fit into any of the above categories, you cannot choose to account for GST on a cash basis. However, you can apply to the Commissioner for approval to account for GST on a cash basis. The Commissioner would need to be satisfied that it is appropriate to permit you to account on a cash basis, [14] having regard to:

- the nature and size of the enterprise that you carry on; and

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[10] Sections 29-5, 29-10, 29-15 and 29-20.

[11] This reflects changes to section 29-40, proposed under *the A New Tax System (Indirect Tax and Consequential Amendments) Bill 1999*. As at 17 December 1999 this Bill is awaiting Royal Assent.

[12] You work out whether your annual turnover is $1 million or less by looking at your current annual turnover and your projected annual turnover. Turnover is the total value of supplies (excluding certain supplies) you make in the course of your enterprise (Division 188).

[13] Section 29-40.

[14] This reflects changes to section 29-45(1), proposed under *the A New Tax System (Indirect Tax and Consequential Amendments) Bill 1999*. As at 17 December 1999 this Bill is awaiting Royal Assent.

- the nature of the accounting system that you use.

26. In the next part of the Ruling, we explain:

- the operation of the basic attribution rules if you account for GST on a cash basis;
- the operation of the basic attribution rules if you do not account for GST on a cash basis;
- the effect of Division 156 on attribution under the basic attribution rules; and
- the application of the basic attribution rules to supplies and acquisitions to which the GST Transition Act applies.

Accounting for GST on a cash basis

Taxable supplies

27. If you account for GST on a cash basis, you attribute GST payable on a taxable supply to the tax period in which you receive consideration for the supply, but only to the extent that the consideration is received in the tax period. This means that if, in a particular tax period, you receive only part of the consideration for a supply, you attribute only that same part of the total GST payable to that tax period.[15] For example, if you received 50 per cent of the total consideration for a supply in the tax period, you attribute 50 per cent of the total GST payable on the supply to that tax period.

Example 1

28. Zayn has a small business designing and hand-printing silk fabrics to order for the fashion industry. He accounts for GST on a cash basis and has three month tax periods.

29. Akbar Creations orders a design run of 100 metres for $4,400. Zayn receives payments as follows:

- deposit of $1,100 on 29 December 2000;
- payment of $2,200 on delivery on 22 May 2001 (Zayn issued an invoice on 22 May 2001 showing the due date for payment of the balance of $1,100 as 20 June 2001); and
- payment of the balance of $1,100 on 16 July 2001.

The total GST payable on the taxable supply is $400 (1/11 x $4,400).

[15] Subsection 29-5(2).

30. GST payable on the taxable supply is attributed as follows:

$100 (1/11 x $1,100 received 29 December 2000) is attributable to the tax period ending 31 December 2000.

$200 (1/11 x $2,200 received on 22 May 2001 is attributable to the tax period ending 30 June 2001.

$100 (1/11 x $1,100 received on 16 July 2001) is attributable to the tax period ending 30 September 2001.

Creditable acquisitions

31. If you account for GST on a cash basis, you attribute the input tax credit for a creditable acquisition to the tax period in which you provide consideration for the acquisition, but only to the extent that you provided the consideration in that tax period. This means that if, in a particular tax period, you have paid only part of the total consideration for an acquisition, you are entitled to only that same part of the input tax credit for the acquisition.[16] For example, if you paid 50 per cent of the total consideration for the acquisition in the tax period, you can attribute 50 per cent of the total input tax credit to that tax period.

32. However, an input tax credit is not attributable to a tax period if you do not have a tax invoice for the acquisition when you lodge your Business Activity Statement ('BAS')[17] for that tax period.[18] You attribute the input tax credit to the first tax period for which you have a tax invoice when you lodge your BAS.[19]

33. A tax invoice is a document that contains information about a taxable supply as specified in subsection 29-70 and the Regulations.[20] The specified information may not necessarily be shown on an ordinary commercial invoice. In that case, a separate tax invoice is required.

Example 2

34. Aimee is registered for GST and accounts for GST on a cash basis in three month tax periods. On 25 June 2001, Aimee purchases stock for her dress shop for $7,700. She pays $3,300 on 25 June 2001 and is issued with an invoice asking for payment of the balance within 30 days. She pays the balance of $4,400 on 18 July 2001.

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[16] Subsection 29-10(2).
[17] Your GST return is part of your Business Activity Statement.
[18] There is no requirement to hold a tax invoice if the value of the taxable supply to you was $50 or less (subsection 29-80(1)).
[19] Subsection 29-10(3).
[20] A New Tax System (Goods and Services Tax) Regulations 1999, regulations 29-70 and 29-71.

35. Input tax credits for the acquisition are attributable to tax periods as follows:

> An input tax credit of $300 (1/11 x $3,300) is attributable to the tax period ending 30 June 2001. (Aimee had obtained a tax invoice before lodging her BAS for this tax period. The tax invoice shows the GST payable for the taxable supply as $700.) An input tax credit of $400 (1/11 x $4,400) is attributable to the tax period ending on 30 September 2001.

Creditable importations

36. Whether you account for GST on a cash basis or not, the input tax credit for the GST on a creditable importation is attributable to the tax period in which the GST is paid on the importation[21] or the tax period in which the liability to pay the GST arose if payment of the GST has been deferred.[22] The liability arises when the importation takes place.

37. If the payment of GST on an importation is deferred,[23] the GST payable on the importation is attributable to the tax period in which the importation took place. You also attribute any input tax credit to which you are entitled on the importation to this tax period. The effect of the deferral of payment of GST on importations is to remove the negative cash flow effect of having to pay GST before you are able to claim the input tax credit.

Adjustments

38. Adjustments are necessary where subsequent events mean that the GST payable or input tax credit attributed in a previous tax period is incorrect.

39. Adjustments are either increasing or decreasing. An increasing adjustment increases your net amount for the tax period, while a decreasing adjustment decreases your net amount for the tax period. The net amount is the difference between the GST payable by you and your input tax credits.

40. One way in which an adjustment can arise is if an adjustment event occurs. Under the GST Act, an adjustment event occurs when:

- a supply or acquisition is cancelled;

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[21] Section 29-15.

[22] This reflects changes to section 29-15 proposed under the *A New Tax System (Indirect Tax and Consequential Amendments) Bill 1999*. As at 17 December 1999 this Bill is awaiting Royal Assent.

[23] Refer to Australian Customs Notice No 99/66 for more information about the proposed deferral scheme.

- the consideration for a supply or acquisition is changed (for example, because of a volume discount);
- a supply becomes taxable or stops being taxable; or
- an acquisition becomes creditable or stops being creditable.[24]

41. Adjustments for adjustment events are attributed to the tax period in which you become aware of the adjustment.[25] If the adjustment event requires you to provide consideration, the adjustment is attributable to the tax period in which you provide the consideration. However, if you provide only part of the consideration in a tax period, you attribute that part of the adjustment to that tax period.[26]

42. When you have a decreasing adjustment from an adjustment event, you can not account for the adjustment in your BAS until you hold an adjustment note.[27] You attribute the adjustment to the first tax period for which you have an adjustment note when you lodge your BAS.[28]

43. You attribute an adjustment for a change in extent of creditable purpose for an acquisition to the relevant adjustment period for that acquisition.[29]

If you do not account for GST on a cash basis

Taxable supplies

44. If you do not account for GST on a cash basis, you attribute all the GST payable on a taxable supply to the earlier of the tax period in which:

- any of the consideration for the supply is received; or
- an invoice for the supply is issued.[30]

This means that you may have to account for GST payable on a supply before actually receiving payment for the supply.

45. An invoice is a document notifying an obligation to make a payment.[31] An invoice does not necessarily contain all the information required for it to be a tax invoice.

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[24] Section 19-10.
[25] Subsection 29-20(1).
[26] Subsection 29-20(2).
[27] There is no requirement to hold an adjustment note if the value of the taxable supply to you when originally supplied was $50 or less (subsection 29-80(2)).
[28] Subsection 29-20(3).
[29] Section 129-90.
[30] Subsection 29-5(1).

Example 3

46. Lumber Trading Pty Ltd is a wholesale/retail distributor of local and imported timber. It is registered for GST and does not account for GST on a cash basis. It has one month tax periods. On 14 June 2001, Lumber sells treated pine to Handy Hardware for $9,900. Handy is a regular account customer. Lumber invoices Handy on 26 June 2001 asking for payment within 30 days. The issue of this invoice triggers attribution of GST payable for Lumber. Lumber attributes the GST payable of $900 on the sale of the timber to the tax period ending 30 June 2001.

Creditable acquisitions

47. If you do not account for GST on a cash basis, you attribute all the input tax credit for an acquisition to the earlier of the tax period in which:

- you provide any of the consideration, or
- an invoice is issued for the acquisition.[32]

This means that you may be entitled to input tax credits before actually paying for the acquisition.

48. However, an input tax credit is not attributable to a tax period if you do not have a tax invoice for the acquisition when you lodge your BAS[33] for that tax period.[34] You attribute the input tax credit to the first tax period for which you have a tax invoice when you lodge your BAS.[35]

Example 4

49. Lumber is registered for GST and does not account for GST on a cash basis. It has three month tax periods. Handy receives a sale invoice from Lumber on 14 June 2001. It pays the account on 13 July 2001. Handy attributes the input tax credit of $900 to the tax period ending on 30 June 2001. (The invoice issued on 14 June 2001 contained all the information required for it to be a tax invoice.)

50. Note: If the invoice issued on 14 June 2001 did not have all the information for it to be a tax invoice and Handy had not obtained a tax invoice by 21 July 2001 when it lodges its BAS, attribution of the

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[31] Section 195-1.
[32] Subsection 29-10(1).
[33] Your GST return is part of your Business Activity Statement.
[34] There is no requirement to hold a tax invoice if the value of the supply to you was $50 or less (subsection 29-80(1)).
[35] Subsection 29-10(3).

input tax credit is deferred until the tax period in which it holds a tax invoice.

Creditable importations

51. Refer to paragraphs 36 and 37 above.

Adjustments

52. Adjustments can arise because of adjustment events (refer to paragraph 40 above). Adjustments for adjustment events are attributed to the tax period in which you become aware of the adjustment.[36] However, an adjustment for a decreasing adjustment arising from an adjustment event is not attributable to a tax period if you do not have an adjustment note when you lodge your BAS for that tax period.[37] You attribute the adjustment to the first tax period for which you have an adjustment note when you lodge your BAS.[38]

53. You attribute any adjustments that arise from bad debts to the tax period in which you become aware of the adjustment.[39]

54. You attribute an adjustment for a change in extent of creditable purpose for an acquisition to the relevant adjustment period for that acquisition.[40]

Special rules about attribution

Supplies and acquisitions made on a progressive or periodic basis

55. Division 156 applies to supplies and acquisitions made for a period or on a progressive basis, where the consideration is also provided on a progressive or periodic basis. Examples of the types of supplies and acquisitions to which the Division applies are supplies and acquisitions made under:

- lease agreements;
- property maintenance agreements; and
- long term construction contracts.

56. Division 156 provides a special rule so that you attribute GST payable and input tax credits as if the relevant supply or acquisition is made up of separate supplies or acquisitions corresponding to the

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[36] Subsection 29-20(1).
[37] There is no requirement to hold an adjustment note if the value of the supply to you when originally supplied was $50 or less (subsection 29-80(2)).
[38] Subsection 29-20(3).
[39] Subsection 29-20(1).
[40] Section 129-90.

separate progressive or periodic components of the supply or acquisition. The basic attribution rules will then apply in respect of each separate supply or acquisition.

Example 5

57. Homer does not account for GST on a cash basis. He has one month tax periods. He grants a lease on a warehouse building to Sylvia on 1 March 2001. The lease is for a term of three years with lease payments of $1,100 to be made monthly. (This means that the total consideration payable under the lease agreement is $39,600 and the total GST payable on the supply is $3,600.)

58. Division 156 applies to treat each periodic component (that is, each month in this case) as a separate supply. The GST payable or input tax credits are accounted for on the basis that there are separate supplies. The basic attribution rules in Division 29 apply to each separate supply.

59. Homer attributes GST payable of $100 to each tax period in which any part of the lease payment due for the month is received or an invoice is issued for that month, whichever is the earlier. Because Homer does not account for GST on a cash basis, he attributes GST payable of $100 to the tax period even if, in a particular month, for example, he received only $880* of the total lease payment of $1,100. This is the effect of the application of subsection 29-5(1).

60. Sylvia accounts for GST on a cash basis. She has one month tax periods. Because Sylvia accounts for GST on a cash basis, she attributes input tax credits of $100 to each tax period if she pays the total lease payment each month.

61. Note: It is assumed that the lease agreement has all the information necessary for it to be a tax invoice. Therefore, Sylvia holds a tax invoice that allows her to claim input tax credits for each of the acquisitions in the relevant tax periods.

62. If, for example, in a particular month, she pays only $880[41] of the total lease payment of $1,100, she attributes only a proportion of the input tax credit, that is, $80 (1/11 x $880). This is the effect of the application of paragraph 29-10(2)(b).

[41] It is assumed that the payment of an amount less than the amount payable for this month was in accordance with a prior agreement between the parties. It was not an instance of default.

Attribution of GST payable and input tax credits on supplies and acquisitions to which the GST Transition Act applies

63. GST is payable and an entitlement to an input tax credit arises only to the extent that supplies or acquisitions are made on or after 1 July 2000.[42]

64. The GST Transition Act sets out time of supply rules so that you can determine whether a supply or acquisition of goods, services, real property or any other thing is made on or after 1 July 2000.[43]

65. If you make a supply for a period or progressively over a period, the supply is treated as if it is made continuously and uniformly throughout the period.[44] This enables you to work out what part of the supply is made on or after 1 July 2000. A supply by way of lease or hire is a supply for the period of the lease or hire arrangement.[45]

66. For supplies or acquisitions that you make on or after 1 July 2000, the basic attribution rules (refer to paragraphs 20 to 54 above) will, depending on whether you account for GST on a cash basis or not, attribute the whole or part of the GST payable or input tax credit to the tax period in which you receive or provide any part of the consideration or an invoice is issued.

67. However, for some supplies or acquisitions made on or after 1 July 2000, the receipt or payment of consideration, or invoicing, could occur prior to 1 July 2000. Under the GST Transition Act that consideration is taken to have been received or provided, or the invoice is taken to have been issued, in your first tax period after 1 July 2000.[46] This is the basis upon which the basic attribution rules and any relevant special rules in the GST Act apply to determine attribution.

Proposed determinations

Determination of attribution rules under section 29-25

68. The Commissioner may, under section 29-25, determine the tax period or periods to which GST payable, input tax credits and adjustments for taxable supplies, creditable acquisitions and creditable importations of certain kinds are attributable, if the application of the basic attribution rules and any relevant special rules under the GST Act would produce an inappropriate result.

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[42] The GST Transition Act, section 7.
[43] The GST Transition Act, section 6.
[44] The GST Transition Act, section 12.
[45] The GST Transition Act, section 12(3).
[46] The GST Transition Act, section 10.

69. The Commissioner can make these determinations only in the circumstances described in subsection 29-25(2).

70. Determinations made under section 29-25 override the basic attribution rules and the special rules in Chapter 4 of the GST Act but only to the extent of any inconsistency[47] and only to the extent provided for in the determination. Where the Commissioner makes a determination, attribution must be in accordance with that determination.

71. The Commissioner proposes to make determinations under section 29-25 as outlined below.

Proposed determinations

72. The Commissioner is satisfied that the basic attribution rules and relevant special rules apply inappropriately for the following kinds of supplies and acquisitions:

- supplies and acquisitions made under contracts that are subject to a statutory cooling off period;
- supplies made through coin-operated machines and similar devices;
- supplies and acquisitions made through agents;
- supplies and acquisitions made under contracts that provide for the retention of consideration; and
- supplies and acquisitions for which consideration is received or provided before the total consideration is known.

73. The Commissioner proposes to make determinations of the tax period or periods to which GST payable, input tax credits and adjustments for these supplies and acquisitions are attributable.

Supplies and acquisitions made under contracts that are subject to a statutory cooling off period

74. The Commissioner proposes to make the following determination under section 29-25.

75. If you make a taxable supply under an agreement that is subject to a cooling off period under an Australian law,[48] any amount of GST payable on the supply that you would otherwise attribute to a

[47] Subsection 29-25(3).
[48] Section 195-1. 'Australian law' has the meaning give by section 995-1 of the ITAA 1997. It means a Commonwealth law, a State law or a Territory law.

tax period that ends before the cooling off period expires, you attribute to the tax period in which the statutory cooling off period expires.

76. If you make a creditable acquisition under an agreement that is subject to a cooling off period under an Australian law, any input tax credit that you would otherwise attribute to a tax period which ends before the cooling off period expires, you attribute to the tax period in which the statutory cooling off period expires.

77. When made, this determination will apply whether you account for GST on a cash basis or not.

Supplies made through coin-operated machines and similar devices

78. The Commissioner proposes to make the following determination under section 29-25.

79. If you receive consideration for taxable supplies through the use of a coin-operated vending machine or similar device, you attribute the GST payable on those supplies to the tax period in which you remove the coins and notes from the machine or device.

80. When made, this determination will apply whether you account for GST on a cash basis or not.

81. If you make a creditable acquisition through a coin-operated machine or similar device, the basic attribution rules apply. This generally means that you attribute input tax credits to the tax period in which you pay for the acquisition.

Supplies and acquisitions made through agents

82. The Commissioner proposes to make the following determination under section 29-25 in respect of supplies and acquisitions made through agents who make those supplies or acquisitions on behalf of their principals.

83. If you do not account for GST on a cash basis and you make a taxable supply through an agent on whom you rely for information about the supply, the basic attribution rule in subsection 29-5(1) does not apply. Instead, any GST payable on the supply that you would otherwise attribute under subsection 29-5(1) to a particular tax period, you attribute to the tax period in which you become aware that:

- any of the consideration for the supply has been received; or
- an invoice relating to the supply has been issued;

whichever is the earlier.

84. If you account for GST on a cash basis and you make a taxable supply through an agent on whom you rely for information about the supply, the basic attribution rule in subsection 29-5(2) does not apply. Instead, any GST payable that you would have attributed to a particular tax period or periods, you attribute to the tax period or periods in which you become aware that consideration for the supply has been received. If you become aware that part of the consideration has been received, you attribute only that part of the total GST payable on the supply to that tax period.

85. If you do not account for GST on a cash basis and you make a creditable acquisition through an agent on whom you rely for information about the acquisition, the basic attribution rule in section 29-10(1) does not apply. Instead, any input tax credit for the acquisition that you would otherwise attribute under subsection 29-10(1) to a particular tax period you attribute to the tax period in which you become aware that:

- any of the consideration has been provided, or
- an invoice relating to the acquisition has been issued;

whichever is the earlier.

86. If you account for GST on a cash basis and you make a creditable acquisition through an agent on whom you rely for information about the acquisition, the basic attribution rule in subsection 29-10(2) does not apply. Instead, any input tax credit that you would have attributed to a particular tax period or periods, you attribute to the tax period or periods in which you become aware that consideration for the supply has been provided. If you become aware that part of the consideration has been provided, you attribute only that part of the total input tax credit for the acquisition to that tax period.

87. If you do not account for GST on a cash basis, you attribute adjustments arising from adjustment events or bad debts to the tax period in which you, rather than your agent, become aware of the adjustment or bad debt.

88. If you account for GST on a cash basis, you attribute adjustments arising from adjustment events to the tax period in which you, rather than your agent, become aware of the adjustment. However, if the adjustment event requires you to provide consideration, you attribute the adjustment to the tax period in which you become aware that the agent has provided the consideration.

89. When made, this determination will not alter the application of Division 153. That Division sets out the rules for holding and issuing tax invoices and adjustment notes when your supplies or acquisitions are made through an agent.

90. When made, this determination will not apply to taxable supplies and creditable acquisitions made by a non-resident through a resident agent. Division 57 applies to these supplies and acquisitions.

Supplies and acquisitions made under contracts that provide for the retention of consideration

91. The Commissioner proposes to make a determination under section 29-25 in relation to supplies and acquisitions made under a written contract that provides for the recipient of the supply to retain part of the consideration ('the retention amount') pending full and satisfactory performance of the contract or until the end of a defects liability period.

92. If you make a taxable supply of this kind, you attribute the part of the total GST payable that relates to the retention amount to the tax period in which you receive the retention amount.

93. This determination, when made, will override subsection 29-5(1) to the extent that it would otherwise operate to attribute GST payable in relation to the retention amount to a tax period that ends before the retention amount is received.

94. If you make a creditable acquisition of this kind, you attribute the part of the total input tax credit that relates to the retention amount to the tax period in which you provide the retention amount.

95. This determination, when made, will override subsection 29-10(1) to the extent that it would otherwise operate to attribute the input tax credit in relation to the retention amount to a tax period that ends before the amount is provided.

96. When made, this determination will not apply if you account for GST on a cash basis. We consider the basic attribution rules in subsection 29-5(2) and subsection 29-10(2) to apply appropriately.

Supplies and acquisitions for which consideration is received or provided before the total consideration is known

97. The Commissioner proposes to make the following determination under section 29-25 in circumstances where you cannot ascertain the total consideration because it depends on a future event or events.

98. If, in a tax period, you receive any consideration for a taxable supply before you can ascertain the total consideration, you attribute GST payable on the taxable supply to a tax period to the extent that you received the consideration in that tax period.

99. However, when you know the total consideration, you attribute any GST payable on the supply that you have not attributed to a

previous tax period to the tax period in which you first know the amount of the total consideration.

100. If, in a tax period, any consideration is provided for a creditable acquisition before you can ascertain the total consideration you attribute the input tax credit for the creditable acquisition to a tax period to the extent that the consideration is provided in that tax period.

101. However, when you know the total consideration, you attribute any input tax credit on the acquisition that you have attributed to a previous tax period to the tax period in which you first know the amount of the total consideration.

102. When made, this determination will not apply if you account for GST on a cash basis.

Determinations not proposed

103. The Commissioner is not satisfied that the application of the basic attribution rules for the following kinds of supplies and acquisitions is inappropriate. Accordingly, the Commissioner does not propose to make determinations under section 29-25 in relation to attribution of GST payable, input tax credits and adjustments for supplies and acquisitions made under:

- an agreement for the supply of goods on approval or on 'sale or return' terms;
- floor plan arrangements;
- lay-by sale agreements; and
- hire purchase agreements.

Explanation

Proposed determinations

104. The Commissioner proposes to make determinations of attribution rules under section 29-25 for the following kinds of supplies and acquisitions.

Supplies and acquisitions made under contracts that are subject to a statutory cooling off period

The nature of the relevant transactions

105. A statutory cooling off period is a period prescribed by legislation, which allows a purchaser, or other person assuming

obligations under a contract, time within which to rescind the contract. This is a legislative measure designed to protect consumers. It is not dependent upon any fault or breach by the supplier. The right can not usually be excluded by agreement between the parties. The relevant legislation for the purposes of the GST Act, is Commonwealth, State or Territory legislation.

106. In some circumstances it may be an offence for the supplier to accept payment during the cooling off period.

107. The statutory cooling off period usually commences on the day a contract for a supply is entered into, or the day after the contract is entered into, depending on the relevant legislation.

Examples of these transactions

108. A statutory cooling off period may apply to contracts for particular types of supplies. For example, section 43 of the *Motor Car Traders Act 1986 (Vic)* provides that a cooling off period of three days applies to sales of used motor cars to consumers.

109. A statutory cooling off period may also apply to contracts for supplies entered into in certain circumstances. For example, under section 62 of the *Fair Trading Act 1989 (Qld)*, contracts for door-to-door sales of goods and services are subject to a ten day cooling off period.

Is the application of the basic attribution rules inappropriate?

110. Paragraph 29-25(2)(c) allows the Commissioner to remedy an inappropriate application of the basic attribution rules and any relevant special rule in circumstances involving 'a supply or acquisition occurring, but still being subject to a statutory cooling off period under an Australian law'.

111. During the cooling off period, there is a real likelihood that a recipient of a supply will exercise the statutory right to rescind the contract for the supply. Because of this likelihood, it would be inappropriate to attribute GST payable or input tax credits to a tax period which ends before the statutory cooling off period expires.

112. The Commissioner proposes to make a determination under section 29-25 to defer the attribution of GST payable on supplies and input tax credits for acquisitions where a cooling off period applies. The effect of the determination will be to defer attribution until the tax period in which the cooling off period expires. This will reduce the number of adjustments that would otherwise arise when supplies are cancelled in cooling off periods.

Supplies made through coin-operated machines and similar devices

The nature of the relevant transactions

113. There are circumstances in which taxable supplies may take place, without the suppliers being immediately aware of the fact. For example, a wide variety of taxable supplies can be made through machines designed to accept consideration.

Examples of these transactions

114. Coin or note accepting machines are used in making many kinds of supplies. Examples include:

- supplies of goods, such as food, beverages or photographs, from machines that both accept the consideration and dispense the goods;
- supplies of services such as photocopying, Internet access (through kiosks in public places), games and amusements, laundry services and car-washes; and
- supplies of rights such as parking, or the use of a toll-way.

Is the application of the basic attribution rules inappropriate?

115. Paragraph 29-25(2)(d) allows the Commissioner to remedy an inappropriate application of the basic attribution rules and any special rules in circumstances involving 'a supply or acquisition occurring before the supplier or recipient knows it has occurred'. Supplies made through coin-operated machines and similar devices may fit within this description.

116. Application of the basic attribution rules would require you to establish the tax period in which payment is deposited in your machines. This would involve removing cash from the machines at the end of the last day of each tax period rather than in accordance with your normal business practice.

117. As there may be considerable compliance costs incurred by machine operators in applying the basic attribution rules in these circumstances, the Commissioner is satisfied that the application of those rules is inappropriate.

118. The Commissioner proposes to make a determination under subsection 29-15(1) that allows attribution of GST payable on supplies when the cash is removed rather than when it is deposited in a machine.

Application of the GST Transition Act

119. Under the GST Transition Act, GST may be payable on supplies of goods that are removed or made available on or after 1 July 2000.[49] GST may be payable on a supply of services that are performed on or after 1 July 2000.[50] GST may be payable on the supply of a right granted on or after 2 December 1998 and before 1 July 2000 but only to the extent that the right can be reasonably expected to be exercised on or after 1 July 2000.

120. The practical implications for supplies made through coin-operated machines or similar devices are that:

- if cash is removed from a machine before 1 July 2000, the supplies to which that cash relates are not subject to GST, and
- if the cash is removed from a machine on or after 1 July 2000, the supplies to which that cash relates are subject to GST.

Supplies and acquisitions made through agents

The nature of the relevant transactions

121. There may be situations arising under a traditional agency arrangement where information about supplies or acquisitions you make through an agent is not available to you until your agent provides it. This may be after the end of the tax period.

122. A traditional agency arrangement is one where the acts of the agent are taken to be the acts of the principal. It does not include arrangements where the supplier or recipient is colloquially referred to as an agent but makes supplies and acquisitions as a principal rather than as an agent. For example, stock brokers and some travel agents make supplies and acquisitions as principals and not as agents.

Is the application of the basic rules inappropriate?

123. Paragraph 29-25(2)(d) allows the Commissioner to remedy an inappropriate application of the basic attribution rules and any special rules in circumstances involving 'a supply or acquisition occurring before the supplier or recipient knows it has occurred'.

124. The Commissioner is satisfied that the application of the basic attribution rules, in circumstances where your normal business practice involves a delay in reporting the details of transactions, could

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[49] The GST Transition Act, section 7 and subsection 6(2).
[50] The GST Transition Act, section 7 and subsection 6(4).

impose an unreasonable compliance burden on suppliers and recipients of supplies who make supplies and acquisitions through agents. This is an inappropriate application of those rules.

125. The Commissioner proposes to make a determination under section 29-25. The effect of the determination will be to defer attribution of GST payable and input tax credits until you obtain the necessary information from your agent.

Application of certain special rules

126. When made, this determination will not alter the application of Division 153. Division 153 sets out the rules for holding and issuing tax invoices and adjustment notes when your supplies or acquisitions are made through an agent.

127. When made, this determination will not apply to supplies or acquisitions made by a non-resident through a resident agent. Division 57 applies to these supplies or acquisitions.

Supplies and acquisitions under contracts that provide for the retention of consideration

The nature of the relevant transactions

128. Provisions for retention amounts are very common in building and construction contracts between the builder/contractor and developer/proprietor and also between the builder/contractor and its subcontractors.

129. The recipients withholds retention amounts from the total amount payable in order to provide the recipient with some protection that the builder/contractor or subcontractor will satisfactorily perform its obligations under the contract.

130. The retention amounts may be significant, with some contracts allowing the recipient to withhold as much as 10 per cent of payments pending full and satisfactory performance of the contract or until the end of the defects liability period. Recipients may retain these retention amounts for lengthy periods.

Is the application of the basic attribution rules inappropriate?

131. Paragraph 29-25(2)(g) allows the Commissioner to remedy an inappropriate application of the basic attribution rules and any special rules 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'.

132. Under subsection 29-5(1), if you do not account for GST on a cash basis, you attribute all the GST payable on a taxable supply (or each separate supply if Division 156 applies) to the tax period in which an invoice is issued or you receive an amount of consideration in respect of that supply even though that amount of consideration excludes the retention amount.

133. Under subsection 29-10(1), if you do not account for GST on a cash basis, you attribute the whole input tax credit for a creditable acquisition (or for each separate acquisition if Division 156 applies) to the tax period in which an invoice is issued or you pay an amount of consideration in respect of that acquisition even though that amount of consideration excludes the retention amount.

134. Having regard to the delay in receiving or paying retention amounts, the Commissioner is satisfied that the basic attribution rules apply in a way that is inappropriate.

135. The Commissioner proposes to make a determination under section 29-25. The effect of the determination will be to defer the attribution of the part of GST payable and the part of input tax credit that relate to the retention amount until the amount is actually received or provided.

136. When made, this determination will not apply if you account on a cash basis. We consider the basic attribution rules in subsection 29-5(2) and subsection 29-10(2) apply appropriately.

Supplies and acquisitions for which consideration is received or provided before the total consideration is known

The nature of the relevant transactions

137. Sometimes consideration is received or provided before the total consideration is known, the total consideration being unascertainable because it is dependent on a future event or events.

138. For example, in some industries, particularly agricultural industries where produce is pooled, goods may be removed by or delivered to a recipient before the total consideration for the supply is ascertained. It is a characteristic of this type of supply that final determination of the consideration is dependent on factors including:

- quantitative analysis of the goods, such as measurement of weight or volume;
- qualitative analysis of the goods; and
- market conditions and prices.

Because of the delay in determining the final total consideration, it is common for some of the consideration to be paid in advance.

Examples of these transactions

139. An example of this type of transaction can be found in the sugar industry. The Queensland Sugar Corporation (QSC) is the marketing body for all sugar produced in Queensland. Proceeds from the sale of raw sugar are pooled for payment purposes. The QSC distributes the proceeds to millers, who then distribute payments to the growers.

140. The price paid to the farmer for sugar cane is based on a number of factors, such as the proportion of sugar contributed by the mill, the recoverable sugar content of the cane provided by the grower, the rate of recovery of Commercial Cane Sugar (CCS) by the mill, the region that the cane was grown in, and the total pooled proceeds from the marketing of the sugar.

141. The formula used to calculate sugar payments not only requires analysis of the quality and quantity of the cane, and market conditions, but also comparisons with the quality and quantity of production from other millers and growers.

142. Mill owners receive progressive payments from the QSC during the sugar harvesting season. The mill owners make advance payments to the farmers. Harvesting takes place from August to December, but payments for the harvest may take place over a period of 11 months. The initial advance payment rate is based on the estimated final average price for the sugar. The advance rates may vary due to factors such as changes to anticipated cash flows and the estimated final average price. The final payment is made in July in the year after a particular harvest.[51]

143. Until the final payment, farmers do not know the total consideration for their supplies of sugar cane.

Is the application of the basic attribution rules inappropriate?

144. Paragraph 29-25(2)(e) allows the Commissioner to remedy an inappropriate application of the basic attribution rules and any relevant special rule in circumstances involving 'a supply or acquisition occurring before the supplier or recipient knows the total consideration'.

145. If you account for GST on a cash basis, you account for GST payable and input tax credits to the extent to which you have received consideration for taxable supplies or you have provided consideration for creditable acquisitions. This means that you do not have to know the total consideration to apply the attribution rules. The application

[51] *Australian Sugar Industry Handbook*, Canegrowers, ch 7.

of the basic attribution rules is appropriate and a determination to vary those rules is not required.

146. If you do not account for GST on a cash basis and you do not know the total amount of consideration for the supply, you will be unable to work out the GST payable or the input tax credit. The Commissioner is satisfied that the application of the basic attribution rules is inappropriate in these circumstances and proposes to make a determination under section 29-25 to vary the application of those rules.

147. The effect of that determination will be to provide for attribution of GST payable and input tax credits to the extent that consideration is received or provided, up until the total consideration is known. Once the total consideration is known, any GST payable or input tax credits not already attributed to a previous tax period becomes attributable to the tax period in which the total consideration is known.

148. When made, this determination will only apply if the total consideration is not known at the time some of the consideration is received or provided because the amount of the consideration depends on a future event or events.

149. When made, this determination will not apply where consideration is merely expressed in non-monetary terms, but has an ascertainable value at the time some consideration is received or provided for the supply or acquisition, or an invoice is issued.

Determinations not proposed

150. The Commissioner does not propose to make determinations of attribution rules under section 29-25 for the following kinds of supplies and acquisitions.

Supplies and acquisitions under agreements for the supply of goods on approval, or on 'sale or return' terms

The nature of the relevant transactions

151. Goods may be taken on approval or on sale or return terms where a retailer is unsure that the goods will be sold. This allows the retailer to offer goods for sale without having to pay for them before securing a customer for the goods. The essence of these transactions is that, under the contract:

- property in the goods remains with the supplier until the recipient accepts or on-sells the goods; and

- the recipient is not liable to pay for the goods until he has accepted or on-sold the goods to a customer.

Is the application of the basic attribution rules inappropriate?

152. Paragraph 29-25(2)(a) allows the Commissioner to remedy an inappropriate application of the basic attribution rules and any special rules in circumstances involving 'a supply or acquisition in which possession of goods passes but title in the goods will, or may, pass at some time in the future'.

153. The supply or acquisition of goods under agreements for the sale of the goods on approval or on 'sale or return' terms would fit within this description.

154. Because of the nature of these arrangements, while there is a supply of goods, the recipient of the supply will not usually be invoiced or make any payment before title in the goods is transferred. If this is the case, there will be no attribution of GST payable on the supply or input tax credits for the acquisition before title in the goods passes to the recipient.

155. The Commissioner is not satisfied that this application of the basic attribution rules is inappropriate and does not propose to make a determination under section 29-25 to vary their application.

Supplies and acquisitions under floor plan arrangements

The nature of the relevant transactions

156. There are various forms of floor plan arrangements, also known as display or bailment arrangements. This Ruling applies to floor plan arrangements with the following features:

- a manufacturer/distributor sells goods to a floor plan financier;
- the floor plan financier supplies the goods under bailment to a dealer, who holds and displays the goods for sale until such time as a customer is found. Alternatively, no floor plan financier is involved and the manufacturer/distributor supplies the goods directly to the dealer under a bailment arrangement;
- the dealer takes possession of the goods, but is not invoiced and does not pay for the goods until a customer is found; and

- at the time a customer is found, the floor plan financier transfers title in the goods to the dealer, and the dealer transfers title in the goods to the customer.

157. The essence of a floor plan arrangement is that ownership and title to goods remain with the manufacturer, distributor or financier, while possession only (and the obligation to return the goods if unsold) is granted to the dealer.

158. Although this is a typical arrangement, other arrangements may involve the dealer merely acting as agent for the owner where the dealer does not obtain title to the goods at any stage. Another variation is that the dealer may pay a fee for a separate supply being a supply of rights to display the goods for sale.

Examples of these transactions

159. These arrangements are used to finance trading stock, especially where the stock consists of a high volume of expensive items. This is because one feature of trading stock is that it fluctuates from time to time, the amount being diminished as stock is sold and the amount increasing as new stock is acquired and added. Because of its fluctuating nature, it is often financed differently from, for example, items of plant and equipment which may be acquired and retained for a period of years.

160. Examples of the types of goods typically held under a floor plan arrangement include motor vehicles, motor cycles, caravans, power boats, pianos and jewellery.

Application of the basic attribution rules

161. If you are the manufacturer, distributor or financier operating under a floor plan arrangement, the basic attribution rules apply as follows.

162. If you account on a cash basis, you attribute GST payable on a taxable supply to the dealer to the tax period or periods in which you receive payment for the supply from the dealer.

163. If you do not account on a cash basis, you attribute all of the GST payable on a taxable supply to the dealer to the tax period in which you issue an invoice, or receive any part of the consideration for the goods from the dealer. This will usually occur when the dealer acquires title to the goods, having secured a customer for them. We do not consider that delivery documentation accompanying the physical removal of the goods to the dealer would be an invoice. This is because it would not usually notify the dealer of an obligation to made a payment.

164. If you are the dealer acquiring stock under a floor plan arrangement, the basic attribution rules apply as follows.

165. If you account on a cash basis, you attribute the input tax credit for a creditable acquisition to the tax period or periods in which you make a payment to the supplier for the goods.

166. If you do not account on a cash basis, you attribute the input tax credit for a creditable acquisition to the tax period or periods in which an invoice is issued, or you make any payment for the goods. This will usually occur when you acquire title to the goods, having secured a customer for them.

Is the application of the basic attribution rules inappropriate?

167. Paragraph 29-25(2)(a) allows the Commissioner to remedy an inappropriate application of the basic attribution rules and any special rules in circumstances involving 'a supply or acquisition in which possession of goods passes but title in the goods will, or may, pass at some time in the future'.

168. The supply of goods to a dealer, and the acquisition of goods by a dealer, under a floor plan arrangement would fit within this description.

169. Where a supply is made under a floor plan arrangement, there is no sale from the supplier to the dealer until the dealer has on-sold the goods to a customer. Before that happens, there will usually be no payments made or received nor any invoice issued in respect of the supply of the goods. If this is the case, whether you account for GST on a cash basis or not, there will be no attribution of GST payable or input tax credits to a tax period earlier than the period in which the sale to the customer takes place.

170. The Commissioner is not satisfied that the way in which the basic attribution rules apply in relation to floor plan arrangements is inappropriate and does not propose to make a determination under section 29-25 to vary the application of these rules.

Application of the GST Transition Act

171. GST is only payable on a supply of goods to the extent that it is made on or after 1 July 2000. Similarly, an entitlement to input tax credits only arises on an acquisition to the extent that it is made on or after that date.

172. For the purposes of working out whether a supply of goods is made on or after 1 July 2000, the time of supply is taken to be the time when the goods are removed by or made available to the recipient of the supply. However, for supplies where the goods are removed

before it is certain a supply will be made, for example, for goods taken on approval, sale or return or similar terms, the supply is made when the supply is certain.[52]

173. Under a floor plan arrangement, it is not certain that a supply will be made to the dealer until the dealer acquires title to the goods, usually after a customer is found for the goods.

174. This means that, if goods are passed from a supplier to a dealer under a floor plan arrangement before 1 July 2000, the supply of those goods will be subject to GST if the dealer does not on-sell or buy the goods until on or after that date.

Supplies and acquisitions made under lay-by sale agreements

The nature of the relevant transactions

175. In this Ruling, the term 'lay-by sale agreement' refers to an agreement under which goods are agreed to be sold, on terms that the goods will not be delivered to the buyer until the buyer pays the purchase price in full.

176. The purchase price is commonly payable by way of an initial deposit and the balance by instalments. The number and amount of any of the instalments may be fixed by agreement or may be left to the option of the purchaser. Service or handling fees that may or may not be refundable in the event of cancellation may be imposed.

Application of the basic attribution rules

177. GST payable, input tax credits and adjustment for supplies and acquisitions under lay-by sale agreements are attributable to a tax period or tax periods in accordance with the basic attribution rules in sections 29-5, 29-10 and 29-20 of the GST Act.

178. The application of the basic attribution rules and the special rule in Division 102 dealing with the cancellation of lay-by sales is outlined below.

Accounting for GST on a cash basis

179. If you account for GST on a cash basis, you attribute the GST payable by you on a lay-by sale you make to the tax period or tax periods in which you receive the consideration for the supply. This means that you account for GST payable on the supply in a tax period, but only to the extent that you have received consideration for the supply in that tax period.

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[52] The GST Transition Act, subsection 6-2.

180. If you make a taxable supply under a lay-by agreement that is subsequently cancelled and you refund all or part of the instalments that you received for the supply, you need to make an adjustment in the BAS for the tax period in which you find out about the cancellation. The cancellation of a taxable supply is an adjustment event and a decreasing adjustment is required if you have accounted for GST payable for the taxable supply in a previous tax period.[53]

181. If you retain any of the payments or obtain any further payment on cancellation of the lay-by, that amount is consideration for a supply.[54] You attribute the GST payable on this supply to the tax period in which the amount is retained or recovered.

Example 7

182. Jamiesons Fine Furnishings accounts for GST on a cash basis. It has three month tax periods. On 18 September 2000, the retailer makes a lay-by sale to Indira. It agrees to sell Indira dining chairs for a total price of $2,200 payable by instalments over a period of three months. The agreement does not specify the minimum number or amount of the instalments except that the first instalment to be paid on entry into the agreement is to be a minimum of ten per cent of the price. The agreement also specifies that, in the event of cancellation of the sale by the purchaser, a service fee of $22 is payable. This amount will be retained out of instalments paid with the balance to be refunded.

183. Indira made a first payment of $550 on 18 September 2000 and further payments on 29 September 2000 ($660), 28 October 2000 ($220), 22 November ($220), 13 December ($220) and 18 January 2001 ($330).

184. The retailer should account for GST payable as follows:

Tax period ending 30 September 2000 – $110 (1/11 x $1,210)

Tax period ending 31 December 2000 – $60 (1/11 x $660)

Tax period ending 31 March 2001 – $30 (1/11 x $330).

Example 8

185. Jamiesons Fine Furnishings entered a lay-by sale agreement as described in Example 7. (It accounted for GST payable of $110 in the tax period ending on 30 September 2000.) Indira tells the retailer on 28 October 2000 that she wants to cancel the sale. The retailer refunds the payments made but retains $22 as a service charge.

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[53] Division 19.
[54] Section 102-5.

186. The cancellation of the lay-by sale should be accounted for as follows:

> The retailer has a decreasing adjustment of $110 because a taxable supply has been cancelled and GST payable for that taxable supply was accounted for in a previous tax period (the tax period ending on 30 September 2000). The adjustment to decrease the net amount of GST by $110 is attributable to the tax period in which the retailer finds out about the adjustment, that is, the tax period ending on 31 December 2000. GST payable of $2 (1/11 x $22) on the supply of the lay-by service is attributable to the tax period in which the amount of $22 was retained, that is, the tax period ending on 31 December 2000.

187. If you account for GST on a cash basis you attribute input tax credits for a creditable acquisition made under a lay-by sale agreement to the tax period or periods in which you make payments under the agreement, to the extent of the payment made in the tax period.

188. If you make a creditable acquisition under a lay-by sale agreement that is subsequently cancelled and you receive a refund of all or part of the instalments that you have paid for the acquisition, you will need to make an adjustment in the BAS for the tax period in which the cancellation occurs. The cancellation of a creditable acquisition is an adjustment event and an increasing adjustment is required if you have accounted for input tax credits for the acquisition in a previous tax period.

189. If a lay-by sale agreement is cancelled and you are required to make a further payment or part or all of any payment already made is retained, that amount is consideration for the acquisition of a service. You attribute the input tax credit on this supply in the tax period in which the cancellation occurs.

Example 9

(Refer to example 7 above.)

190. Indira is registered for GST and the acquisition of the chairs is for a creditable purpose. She is entitled to claim input tax credits for the acquisition. She accounts for GST on a cash basis and three month tax periods apply.

191. Indira accounts for input tax credits for the acquisition as follows:

> Tax period ending 30 September 2000 – input tax credit $110
>
> Tax period ending 31 December 2000 – input tax credit $60
>
> Tax period ending 31 March 2001 – input tax credit of $30

192. If, in the alternative, Indira cancels the lay-by on 28 October 2000, she attributes an increasing adjustment of $110 to the tax period ending on 31 December 2000. (The cancellation of the acquisition is an adjustment event and an input tax credit of $110 had been attributed to a previous tax period.) When the retailer retains $22 for the lay-by service on cancellation, Indira attributes the input tax credit of $2 for the acquisition of the lay-by service to the tax period ending on 31 December 2000.

If you do not account for GST on a cash basis

193. If you do not account on a cash basis, the basic attribution rules require you to account for GST payable on a lay-by sale in the tax period in which you receive any of the consideration for the supply or you issue an invoice relating to the supply.

194. Because of the nature of lay-by sale agreements, an invoice would not usually be issued before you receive some or all of the consideration for the supply. This means that you account for GST payable for the supply in the tax period in which you receive the first instalment of the purchase price. This would usually occur on entry into the lay-by sale agreement.

195. If the lay-by is cancelled and you refund all or part of the instalments that you received for the supply, you will need to make an adjustment in the BAS for the tax period in which you find out about the cancellation. The cancellation of a taxable supply is an adjustment event and you have a decreasing adjustment if you have accounted for GST payable for the taxable supply in a previous tax period.

196. If you retain any of the payments or obtain any further payment on cancellation of the lay-by, that amount is consideration for a supply on which GST is payable. You attribute the GST payable on this supply in the tax period in which the cancellation occurs and you retain or recover some of the payment.

Example 10

197. Jamieson Fine Furnishings does not account on a cash basis. It should account for GST payable on the lay-by sale described in Example 7 as follows:

Tax period ending on 30 September 2000 – GST payable of $200.

Jamiesons Fine Furnishings enters a lay-by agreement and received payments totalling $1,210 on 18 September 2000 and 29 September 2000 as described in Example 1. It accounted for GST payable of $200 in the tax period ending 30 September 2000. The lay-by was cancelled on 28 October 2000.

198. The cancellation of the lay-by sale should be accounted for as follows:

> The retailer has a decreasing adjustment of $200 because a taxable supply has been cancelled and GST payable for that taxable supply was accounted for in a previous tax period (the tax period ending on 30 September 2000). The adjustment to decrease the net amount of GST by $200 (the amount of GST payable previously attributed) should be attributed to the tax period in which the retailer finds out about the adjustment, that is, the tax period ending on 31 December 2000. GST payable on the supply of the lay-by service ($2) is attributable to the tax period in which the cancellation occurred and an amount of $22 was retained, that is, the tax period ending on 31 December 2000.

199. If you do not account on a cash basis, the basic attribution rules allow you to account for input tax credits on a lay-by sale in the tax period in which you provide any of the consideration for the supply.

200. If an invoice for the supply had been issued in an earlier tax period, you would account for the input tax credits in that earlier tax period. Because of the nature of lay-by sale agreements, it would be unlikely for an invoice to be issued before you make the final payment for the purchase. This means that you account for input tax credits for the acquisition in the tax period in which you pay the first instalment of the purchase price. This would usually occur on entry into the lay-by agreement.

Example 11

201. Indira is registered for GST and the acquisition of the chairs is for a creditable purpose. She is entitled to claim input tax credits for the acquisition. She does not account for GST on a cash basis and three month tax periods apply.

202. Input tax credits for the acquisition should be accounted for as follows:

> Tax period ending on 30 September 2000 – input tax credit $200.

Is the application of the basic rules inappropriate?

203. Paragraph 29-25(2)(b) allows the Commissioner to remedy an inappropriate application of the basic attribution rules and any special rules in circumstances involving 'a supply or acquisition for which

payment is made or an invoiced is issued, but use, enjoyment or passing of title will, or may, occur at some time in the future'.

204. Most sales and purchases under lay-by sales agreements fit this description. The Commissioner may make a determination about attributing GST payable and input tax credits for supplies and acquisitions made under these agreements if necessary to prevent inappropriate application of the basic attribution rules and any relevant special rule.

205. Taxation regimes in other countries typically defer accounting for the GST or Value Added Tax ('VAT') on lay-by sales until the final payment is made and the goods are delivered to, or made available to the buyer. For Australian income tax purposes, income (other than non-refundable deposits) from lay-by sales is not recognised as being derived until the buyer pays the final instalment of the purchase price and the goods are delivered to the buyer.[55]

206. However, comments received from industry representatives indicate that the application of the basic attribution rules is not inappropriate. Under those rules, the attribution of GST payable is triggered by the first instalment of the purchase price if you do not account for GST on a cash basis or, as you receive payments if you account for GST on a cash basis. It is understood that industry concerns are that there will be significant practical difficulties for retailers involved in differentiating lay-by sales from other sales for the purpose of applying a different attribution rule.

207. Accordingly, the Commissioner is not satisfied that the way in which these rules apply in relation to lay-by sales is inappropriate and does not propose to make a determination under section 29-25(1) to vary their application. However, we would welcome your further comments– refer to 'Your comments' at the back of the Ruling.

Lay-by sale agreements entered into before 1 July 2000

208. GST is only payable on a supply to the extent that it is made on or after 1 July 2000. If a lay-by sale agreement is entered before 1 July 2000 but the goods are delivered to or made available to the purchaser on or after 1 July 2000, the supply is subject to GST.[56]

209. Any payment that is received before 1 July 2000 for the supply is taken to have been received in the first tax period after 1 July 2000.[57] The basic attribution rules apply to attribute the GST payable to tax periods.

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[55] Taxation Ruling TR 95/7.
[56] GST Transition Act, section 6.
[57] GST Transition Act, section 10.

Example 12

210. On 22 March 2000, Henry, the owner of a bed and breakfast hotel, enters into a lay-by sale agreement with Creative Curtains to purchase bedroom curtains for $5,500.

Creative Curtains receives payments from Henry as follows:

22 June 2000 - $550

15 July 2000 - $1,100

18 August 2000 - $1,100

7 September 2000 - $770

20 October 2000 - $1,100

1 November 2000 - $880

Henry collects the curtains on 1 November 2000.

211. Creative Curtains is registered for GST and accounts for GST on a cash basis and has three month tax periods. GST is payable by Creative Curtains on the supply of the curtains as they are collected after 1 July 2000. This is not altered by the fact that the agreement was entered and payments were made before 1 July 2000. Payments received before 1 July 2000 for the supply made after 1 July 2000 are taken to have been received in the first tax period after 1 July 2000.

GST payable is attributed as follows:

tax period ending 30 September 2000 - $320 (1/11 x $3,520)

tax period ending 31 December 2000 - $180 (1/11 x $1,980).

212. If Henry does not account on a cash basis and has three month tax periods, input tax credits for the creditable acquisition are attributable to the tax period in which she provided any of the consideration. The payments made before 1 July 2000 are taken to have been made in the first tax period after 1 July 2000.

Attribution of the input tax credits is as follows:

tax period ending on 30 September 2000 - $500.

Supplies and acquisitions made under hire purchase agreements

The nature of the relevant transactions

213. In the usual hire purchase agreement, the 'purchaser' has possession of and the right to use the goods, as well as an option to purchase the goods, exercisable at or before the end of the hire period. It is usual for a deposit to be paid and the balance of the purchase price is secured under the hire purchase agreement.

214. In *Warman v. Southern Counties Car Finance Corporation Ltd W J Ameris Car Sales* [1949] 2 KB 576, Finnemore J outlined at 582, the nature of a hire purchase agreement as follows:

> 'A hire purchase agreement is in law, an agreement in two parts. It is an agreement to rent a particular chattel for a certain length of time. If during the period or at the end of the period the hirer does not wish to buy the chattel he is not bound to do so. On the other hand, the essential part of the agreement is that the hirer has the option of purchase, and it is common knowledge – and I suppose, common sense – that when people enter into a hire purchase agreement they enter into it not so much for the purpose of hiring, but for the purpose of purchasing, by a certain method, by what is, in effect, deferred payments, and that is done by this special kind of agreement known as a hire purchase agreement, the whole object of which is to acquire the option to purchase the chattel when certain payments have been made.'

215. This statement by His Honour recognises two basic ingredients of a hire purchase agreement, namely, the paramount purpose of purchasing and the financing element of the hire purchase (purchasing by deferred payments).

216. Under the GST Act, if a hire purchase agreement, as defined in section 195-1, provides for a separate credit charge and the charge is disclosed to the recipient of the goods, the credit charge is input taxed as a financial supply.[58] This recognises the financing element of the hire purchase agreement.

217. The Commissioner's long standing practice is to allow depreciation on plant or articles acquired under a hire purchase to the 'hirer', even though the hirer does not legally own the plant until the last instalment is paid.[59] It is also proposed to amend the *Income Tax Assessment Act 1997* to treat hire purchase agreements and instalment sales as the equivalent of sale, loan and debt transactions for income tax purposes.[60] In broad terms, persons who acquire goods under hire purchase or instalment sales arrangements are to be treated as the owners of the goods for the purposes of applying the various capital allowances provisions of the income tax law.

218. The treatment of hire purchase agreements as equivalent to a sale and loan transaction appears consistent with the accounting and commercial treatment of hire purchase agreements.

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[58] A New Tax System (Goods and Services Tax) Regulations 1999, regulation 40-13(1) item 8.
[59] See, for example, Income Tax Ruling IT 2236.
[60] Taxation Laws Amendment Bill (No 5) 1999 - proposed new Division 240.

219. The explanatory memorandum accompanying A New Tax System (Indirect Tax and Consequential Amendments) Bill 1999 (as at 17 December 1999, this Bill is awaiting Royal Assent) states that:

> 'Liability for GST under a hire purchase agreement will arise at the commencement of the agreement and not continuously throughout the period of the agreement. If a hire purchase agreement is entered into prior to 1 July 2000 it will not be subject to GST'.[61]

This result could only be achieved if a hire purchase agreement is treated as akin to a sale.

220. In A New Tax System (Indirect Tax and Consequential Amendments) Bill 1999, amendments to section 11 of the GST Transition Act are proposed, to ensure that an option to purchase under a pre 1 July 2000 hire purchase agreement, exercisable on or after 1 July 2000, is not caught by that section. It is stated in the Explanatory Memorandum accompanying the Bill, that where an option of this kind exists, '… the effect of the transition provisions appears to bring a pre-1 July 2000 hire-purchase contract within the GST. This result is not intended and an amendment is required to ensure that the correct outcome is achieved'.[62]

221. Taxation regimes in other countries typically account for GST or VAT on hire purchase agreements on the date of entry into the agreement.

The preferred view

222. It is apparent that the policy intent is for a hire purchase agreement to be treated on the same basis as a sale of goods for GST purposes. This is consistent with income tax, accounting and commercial treatments. We consider, therefore, that for the purposes of applying the attribution rules in Division 29, a hire purchase agreement is to be regarded as a sale of goods. If there is a separate credit charge it may be input taxed as described in paragraph 216.

223. For the purposes of this Ruling, hire purchase agreement has the meaning given by section 995-1 of the *Income Tax Assessment Act 1997*.[63] That definition, as proposed to be amended by Taxation Laws Amendment Bill (No 5) 1999 is as follows:

> 'Hire purchase agreement means:

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[61] Explanatory memorandum accompanying A New Tax System (Indirect Tax and Consequential Amendments) Bill 1999 at page 69. As at 17 December 1999 this Bill is awaiting Royal Assent.

[62] Explanatory memorandum accompanying A New Tax System (Indirect Tax and Consequential Amendments) Bill 1999 at page 70. As at 17 December 1999 this Bill is awaiting Royal Assent.

[63] 'Hire purchase agreement' is defined in these same terms in section 195-1.

(a) a contract for the hire of goods where:

(i) the hirer has the right, obligation or contingent obligation to buy the goods; and

Note: An example of a contingent obligation is a put option.

(ii) the charge that is or may be made for the hire together with any other amount payable under the contract (including an amount to buy the goods or to exercise an option to do so), exceeds the price of the goods; and

(iii) title to the goods does not pass to the hirer until the option referred to in subparagraph (a)(i) is exercised; or

(b) an agreement for the purchase of the goods by instalments where title in the goods does not pass until the final instalment is paid.'

Application of the basic attribution rules

224. The application of the basic attribution rules is the same as for any supply of goods under an ordinary sale agreement.

225. If you account for GST on a cash basis you attribute GST payable on a taxable supply under a hire purchase agreement to the tax periods in which you receive payments for the supply.

226. Likewise, you attribute input tax credits for a creditable acquisition under a hire purchase agreement to the tax periods in which you provide consideration for the acquisition.

227. Supplies under hire purchase agreements generally involve the trade-in of goods or the payment of a deposit and the issue of an invoice on entering into the agreement.

228. If you do not account for GST on a cash basis and you receive a payment, or an invoice is issued in the tax period in which you enter a hire purchase agreement, you attribute all the GST payable on a taxable supply under the agreement to the tax period in which you enter the agreement.

229. Likewise, if you make a payment or an invoice is issued in the tax period in which you enter a hire purchase agreement, you attribute all the input tax credit on a creditable acquisition under the agreement to the tax period in which you enter the agreement.

Is the application of the basic attribution rules inappropriate?

230. Paragraph 29-25(2)(a) allows the Commissioner to remedy an inappropriate application of the basic attribution rules and any special rules in circumstances involving 'a supply or acquisition in which possession of goods passes, but title in the goods will, or may, pass at some time in the future'.

231. The supply or acquisition of goods under a hire purchase agreement fits this description.

232. However, the Commissioner is not satisfied that the application of the basic rules in relation to hire purchase agreements is inappropriate.

233. As the transaction is essentially one of sale of goods, there is no justification to treat these supplies and acquisitions differently from other sales for attribution purposes. We do not consider the fact that, in a hire purchase agreement, there is provision for the withholding of title if the purchaser defaults, sufficient reason to distinguish these sales from other sales.

234. In these circumstances, the Commissioner does not propose to make a determination under section 29-25 to vary the application of the basic attribution rules.

Alternative view

235. An alternative view is to characterise a hire purchase agreement according to its strict legal form being the provision of rights to hire for a certain period and an option to purchase.

236. On this view, the payments (except for the separate credit charge component) would be seen as payments for the right to possession and use of the goods over the hire period. On this analysis, Division 156 would apply. The result, for attribution purposes, is that you would attribute GST payable and input tax credits in respect of each separate periodic component of the supply or acquisition.

237. A determination could be made under section 29-25 to attribute GST on the same basis as the preferred view.

238. The characterisation of a hire purchase agreement as the provision of rights to hire and an option to purchase appears to be inconsistent with the policy intentions as discussed above and would produce unintended outcomes under the GST Transition Act. If we adopt the alternative view, hire purchase agreements which are entered into before 1 July 2000 and which span that date would not be outside the GST net.

Dictionary

Net amount

239. The net amount for a tax period applying to you is worked out using the following formula:

GST – Input tax credits

where:

GST is the sum of all of the GST for which you are liable on the taxable supplies that are attributable to the tax period.

input tax credits is the sum of all of the input tax credits to which you are entitled for the creditable acquisitions and creditable importations that are attributable to the tax period.

However, the net amount for the tax period may be increased or decreased if you have any adjustments for the tax period.[64]

Recipient

240. In relation to a supply, means the entity to which the supply was made.[65]

Your comments

241. If you wish to comment on this draft ruling, please send your comments by 18 February 2000 to:

Contact officers: **Lyn Staples or Peter Martin**
Telephone: **(07) 3853 4840**
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GPO Box 920
BRISBANE QLD 4001.

Detailed contents list

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[65] Section 195-1.

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Commissioner of Taxation
22 December1999

Previous draft:
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Related Rulings/Determinations:
IT 2236; TR 95/7

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- acquisitions
- adjustments
- adjustment notes
- adjustment periods
- agents

- attribution
- business activity statement
- cash basis
- coin-operated machines
- conditional contracts
- consideration
- cooling-off period
- creditable acquisition
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- GST payable
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- input tax credits
- invoice
- lay-by
- progressive or periodic supply
- retention of consideration
- taxable supply
- tax invoice

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