TR 2002/D3 - Income tax: Simplified Tax System eligibility - STS average turnover

This document has been finalised by TR 2002/11.

Draft Taxation Ruling
Income tax: Simplified Tax System eligibility– *STS average turnover*

Contents Para

Preamble

Draft Taxation Rulings (DTRs) represent the preliminary, though considered, views of the Australian Taxation Office. DTRs may not be relied on by taxation officers, taxpayers and practitioners. It is only final Taxation Rulings that represent authoritative statements by the Australian Taxation Office of its stance on the particular matters covered in the Ruling.

What this Ruling is about

1. This Ruling considers the definition of *STS average turnover[1] in section 328-370 of the *Income Tax Assessment Act 1997* ('ITAA 1997'). *STS average turnover is relevant to determining whether an entity is eligible to be an *STS taxpayer for an income year under the Simplified Tax System ('STS') in Division 328. Specifically, the Ruling considers:

(i) which amounts an entity should include when working out its *STS average turnover for an income year under section 328-370;

(ii) when an entity may base its *STS average turnover for an income year on relevant information in past Business Activity Statements (BASs) or income tax returns; and

(iii) how to make a reasonable estimate of *STS group turnover under section 328-370.

Class of person/arrangement

2. This Ruling applies to an entity that satisfies the STS eligibility rules in Subdivision 328-F for a relevant income year and has made an election in the *approved form to become an *STS taxpayer for that year under Subdivision 328-G of the ITAA 1997.

[1] Terms that are defined in the *Income Tax Assessment Act 1997*, and identified with an asterisk in that Act, are similarly identified in this Ruling.

Legislative framework

Introduction to Division 328 – Simplified Tax System

3. The STS arose as a result of the Government's adoption of Recommendation 17.1 of the Ralph Committee's report, *Review of Business Taxation: A Tax System Redesigned*. This recommended the introduction of a simplified tax system to reduce the income tax compliance costs faced by small business.

4. Division 328 of the ITAA 1997 provides the legislative framework for the STS. In implementing the recommendation, Division 328 offers eligible small businesses the choice of using the modified accounting, capital allowance and trading stock regimes. An entity that chooses to become an *STS taxpayer will also be able to claim a full deduction for certain prepaid expenditure through the combined operation of section 8-1 of the ITAA 1997 and section 82KZM of the *Income Tax Assessment Act 1936* ('ITAA 1936').

Outline of the STS eligibility rules

5. Before the rules in Division 328 can apply to an entity, the entity must be an *STS taxpayer for the relevant income year. Section 328-435 requires that to be an *STS taxpayer for an income year the entity must:

(a) be eligible to be an *STS taxpayer for that year under Subdivision 328-F; and

(b) notify the Commissioner of its choice to be an *STS taxpayer for that year in the *approved form.

6. Under Subdivision 328-F, an entity is eligible to be an *STS taxpayer for an income year if:

(a) it carries on a business in that year;

(b) it has an *STS average turnover for that year of less than $1 million; and

(c) the sum of the *adjustable values of the *depreciating assets held by it and other entities it is grouped with is less than $3 million at the end of that year: section 328-365.

Working out an entity's STS average turnover: the 'look back' method and the 'look forward' method

7. To be eligible to be an *STS taxpayer for an income year an entity must have an *STS average turnover for that year of less than $1 million: paragraph 328-365(1)(b). Subsection 328-370(1) provides

that an entity's *STS average turnover for an income year is the average of its *STS group turnovers for any three out of the four previous income years (not including the current year). This is referred to as the 'look back' method of working out *STS average turnover. In some cases an entity may also work out its *STS average turnover by making a reasonable estimate of its *STS group turnovers for the current and following two income years. This is known as the 'look forward' method of working out *STS average turnover .

8. To work out its *STS average turnover for an income year an entity will therefore need to understand the concept of *STS group turnover.

STS group turnover

9. The term *STS group turnover is defined in section 328-375. Under this definition, an entity's *STS group turnover for an income year is the sum of the *value of the business supplies made by the entity in the income year and the *value of the business supplies made by the entity's 'grouped entities'. This figure is reduced by the *value of the business supplies made between the entity and its grouped entities, and between the grouped entities themselves.

10. The term *value of the business supplies is defined in subsection 995-1(1) (see paragraph 57 in the Explanations part of this Ruling). The effect of this definition is that before the value of a supply will be included in the *value of the business supplies made by an entity, the supply must have been made by the entity in the 'ordinary course of carrying on its business'. Supplies not made in the ordinary course of carrying on the business will not be included in the entity's *STS group turnover and will therefore not affect its *STS average turnover.

Making a reasonable estimate of STS group turnover

11. Under the 'look back method' in subsection 328-370(1), an entity's *STS average turnover for an income year is the average of its *STS group turnovers for any three out of the four previous income years (not including the current year).

12. Where the entity or one of its grouped entities carried on a business for only part of one of those previous income years, subsection 328-370(2) requires the entity to make a 'reasonable estimate' of what its *STS group turnover for that year would have been if the business had been carried on for the whole of the year.

13. An entity may not satisfy the *STS average turnover test under the look back method, or it may be unable to rely on this method

because it did not carry on a business in any of the previous four income years.

14. In either case, the entity can calculate its *STS average turnover for the year by making a reasonable estimate of its *STS group turnovers for the current and following two income years: subsection 328-370(3). This is known as the 'look forward' method of calculating *STS average turnover.

15. If it prefers, an entity using this 'look forward' method to work out its *STS average turnover can use its actual *STS group turnover for the current year rather than a reasonable estimate for that year, together with reasonable estimates of its *STS group turnovers for the following two income years. Where the entity or one of its grouped entities carried on a business for only part of the current year, the entity needs to make a reasonable estimate of what its *STS group turnover would have been had the business been carried on for the whole year: subsection 328-370(4).

Ruling

Working out an entity's STS average turnover

Applying the 'look back' method using past years' Business Activity Statements or assessable income

16. An entity working out its *STS average turnover using the 'look back method' in subsection 328-370(1) will need to calculate its *STS group turnover for one or more past income years. Section 328-375 provides the method for working out an entity's *STS group turnover for an income year. Generally, an entity can expect that its *STS group turnover for a year under section 328-375 will approximate the total of the amounts shown on that year's Business Activity Statements as the entity's total sales and income and other supplies, including exports and other GST free supplies.[2] It can also generally expect that its *STS group turnover for that year under section 328-375 will approximate its assessable income for the year.[3] In light of this, the Commissioner will in most cases accept the use by an entity of either of these amounts as its *STS group turnover for an

[2] If the *value of the business supplies made by an entity in an income year is grouped with the *value of the business supplies made by another entity under section 328-380, the entity can expect that its *STS group turnover for that year will approximate the total of the relevant amounts on the entity's BASs for the year **plus** the total of the relevant amounts on the other entity's BASs for that year.
[3] If the *value of the business supplies made by an entity in an income year is grouped with the *value of the business supplies made by another entity under section 328-380, the entity can expect that its *STS group turnover for that year will approximate the sum of its assessable income for that year and the assessable income of the other entity for that year.

income year for the purposes of determining if it satisfies paragraph 328-365(1)(b).

17. The appendix to this Ruling sets out the method to be used by an entity wishing to rely on its assessable income or information in its Business Activity Statements to work out its *STS group turnover for a year. It also explains when the Commissioner will not accept an *STS group turnover figure based on these amounts.

Applying the 'look back' method using section 328-375

18. An entity that cannot, or decides not to follow the approach in paragraph **Error! Reference source not found.** of this Ruling to work out its *STS average turnover using the look back method, will need to work out its *STS group turnover for each of the relevant past income years by applying the definition of *STS group turnover in section 328-375. This definition is explained at paragraph **Error! Reference source not found.** of this Ruling.

19. Under the definition of *STS group turnover in section 328-375 and the definition of *value of the business supplies in subsection 995-1(1), the value of a supply will only be included in an entity's *STS group turnover for a year if the supply was made in the ordinary course of carrying on a business.

'in the ordinary course of carrying on a business'

20. The phrase 'in the ordinary course of carrying on a business' is not defined in the ITAA 1997 or the income tax law generally. It must therefore be interpreted according to its ordinary meaning and its legislative context.

21. For the purposes of the 'value of the business supplies' definition in subsection 995-1(1), a supply is made in the ordinary course of carrying on a business if it is a supply of the kind regularly or customarily made by the entity in the course of carrying on its business, arising out of no special circumstance or unusual event.[4]

22. A supply can be made in the ordinary course of carrying on a business even though it is not the main type of supply made by the entity. Similarly, the supply does not need to account for a significant

---

[4] *Downs Distributing Co Pty Ltd v. Associated Blue Star Stores Pty Ltd (in liq)* (1948) 76 CLR 463; (1948) 22 ALJR 286; *Taylor v. White* (1963-64) 110 CLR 129; *Bradford Roofing Industries Pty Ltd (in liq) & Companies Act, Re* [1966] 1 NSWR 674.

part of the entity's overall receipts. It is sufficient that the supply is of a kind made regularly or customarily in the carrying on of a business.[5]

23. Determining whether a supply is of the kind regularly or customarily made by an entity in the course of its business will be a question of fact to be determined on the circumstances of the particular case. See Examples 1A to 2B in the Explanations and Examples section of this Ruling.

Investment income

24. Amounts such as interest on an investment or rental income will only be included in an entity's *STS group turnover if they constitute the value of a supply made by the entity in the ordinary course of carrying on a business.

25. The use by a company of its assets to produce profits for its shareholders prima facie amounts to the carrying on of a business by the company.[6] The effect of this presumption is that where a company uses its assets to produce investment income such as interest or rental income, the activities giving rise to that income will be regarded as activities occurring in the course of the carrying on of the company's business. As a result, the interest or rental income arising from those activities will need to be included in the company's *STS group turnover unless the presumption can be rebutted, or the relevant supply can be shown to have occurred outside of the *ordinary* course of the company's business.

26. If the entity is a trust, investment income such as interest or rental receipts will generally not constitute the value of a supply made by the trust in the ordinary course of carrying on a business. This is because the activities of the trustees of a trust in their capacity as trustees do not prima facie constitute the carrying on of a business.[7] Investment income derived by a trust from the activities of its trustees will therefore only need to be included in *STS group turnover if the trust carries on a business and the investment income constitutes the value of a supply made by the trustees in the ordinary course of carrying on that business.

27. If the entity is an individual or a partnership, the question of whether investment income constitutes the value of a supply made in

---

[5] *Memorex v. FC of T* 77 ALR 299 at 301; 87 ATC 5034 at 5036; (1987) 19 ATR 553 at 554-555.
[6] Lord Diplock in *American Leaf Blending Co Sdn Bhd v Director-General of Inland Revenue* [1978] 3 All ER 1185 at 1189. See also Income Tax Ruling IT2423.
[7] *FC of T v. Radnor Pty Ltd* 91 ATC 4689, (1991) 22 ATR 344, 102 ALR 187; *London Australia Investment Co Ltd v. FC of T* (1977) 138 CLR 106; (1997) 7 ATR 757; 77 ATC 4398; *Charles v. FC of T* (1954) 90 CLR 598; 6 AITR 85.

the ordinary course of a carrying on a business, will depend on the facts of the particular case.

Dividends

28. Generally, an entity will not need to include a dividend in its *STS group turnover for a year. This is because it is unlikely that a dividend will constitute the value of a supply made by the entity in the ordinary course of carrying on its business.

Capital gains

29. The definition of *STS group turnover in section 328-375 has the effect of excluding from *STS group turnover the value of a supply which constitutes the 'mere realisation of an investment'. This is because the 'mere realisation of an investment' is regarded as a transaction occurring outside the course of the carrying on of a business. A common example of an amount resulting from the mere realisation of an investment would be the sale of business premises. Another example is the proceeds from the sale of a capital asset previously used in a business, provided the business does not dispose of its capital assets on a regular basis. See Examples 3 and 4 in the Explanation and Examples section of this Ruling.

Supplies made but consideration not yet received

30. An entity needs to include the value of a supply in its *STS group turnover for an income year if the supply is *made* during that income year in the ordinary course of business either by the entity or its grouped entities.[8] The entity must do so even if it or the grouped entity does not receive the consideration for the supply in the same income year in which the supply is made. This means that an entity's *STS group turnover for an income year may include the value of supplies that have been made, but for which the entity or the grouped entity has not yet been paid.

Making a reasonable estimate of STS group turnover

What is a reasonable estimate of STS group turnover?

31. Paragraphs **Error! Reference source not found.** to **Error! Reference source not found.** of this Ruling explain when an entity

[8] However, the entity does not include the value of the supplies made between it any of its grouped entities or between its grouped entities: paragraphs 328-375(1)(c) to (e).

using the look back or look forward method may need to make a reasonable estimate of its *STS group turnover for an income year.

32. The term 'reasonable estimate' is not defined in Division 328 or the ITAA 1997 generally. In the absence of any definition, these words must be interpreted in a manner consistent with both their ordinary meaning and legislative context.

33. Whether or not a particular estimate is reasonable will depend on the circumstances of the individual case at the time the estimate was made. In some cases there will also be more than one method open to a particular entity that can be regarded as producing a reasonable estimate of its *STS group turnover.

34. In general, an estimate of *STS group turnover will be reasonable where it:

(a) takes into account factors and considerations likely to affect the particular entity's *STS group turnover;

(b) has been undertaken in good faith;

(c) results from a rational and reasoned process of estimation; and

(d) is capable of explanation to a third party.

35. Normally, subject to special circumstances, it makes sense to expect that an entity experiencing a pattern of annually increasing *STS group turnovers, such that it has an *STS average turnover of $1 million or more under subsection 328-370(1), will ordinarily also have an *STS average turnover of $1 million or more using the 'look forward' test in subsection 328-370(3). An exception to this would be if the entity has a genuine and reasonable expectation that its *STS group turnovers will decline materially in the coming years.

Accepted methods of making a reasonable estimate

36. The following are methods of producing reasonable estimates of *STS group turnover in a variety of situations. Other methods may also be used by an entity in these situations provided they have the characteristics of a reasonable estimate as set out above.

Part year businesses

37. An entity may be required to make a reasonable estimate of *STS group turnover under subsection 328-370(2) or subsection 328-370(4) because it or a grouped entity has only carried on a business for part of a year. This estimate will be reasonable where it is worked out as a pro rata calculation of the *STS group turnover for the part of the year when the business was carried on.

38. However, in some cases the *STS group turnover for the part of the year in which the entity carried on the business will not be typical of the *STS group turnover that would be received over the course of a full year. This kind of situation may occur, for example, in industries with significant seasonal fluctuations in turnover. It may also occur where the entity is starting a business in an industry in which a lead time of several months or more between the commencement of activities and the generation of sales income from those activities is typical. In these cases, an adjustment should be made to the amount worked out on the pro-rata basis above to a produce a reasonable estimate. Refer to Example 6 at paragraph 103 below.

Estimate for current and future years

39. An entity using the 'look forward' method to calculate its *STS average turnover for a year will need to make a reasonable estimate of its *STS group turnover for each of the current and following two income years, or just each of the following two income years. These estimates will be reasonable if they are based on a bona fide business plan or accounting budget. Where a business has been recently acquired, these estimates will also be reasonable if based on the historic turnover figures provided by the vendor of the business. See Example 7 at paragraph 105.

40. In some cases these types of information may be unavailable, or the entity may consider them to be an unsuitable basis for estimating its future *STS group turnover. In these cases, an estimate of *STS group turnover is reasonable where it has taken into account such relevant factors as:

(a) planned expansions or contractions in the business' activity and levels of investment in the business;

(b) future orders placed or contracts entered into;

(c) the loss of current orders or contracts;

(d) the arrival or departure of direct competitors in the relevant marketplace;

(e) typical levels of turnover for similar sized businesses in the same industry and area;

(f) whether a lead time between the commencement of business and the receipt of sales income is typical in the relevant industry; and

(g) government initiatives affecting the demand for goods or services supplied by the entity.

See Example 8 at paragraph 107 below.

Estimating the turnover of grouped entities

41. An entity must include the *value of the business supplies made by its grouped entities when working out its *STS group turnover for an income year. This means that when making a reasonable estimate of its *STS group turnover under subsection 328-370(3), the entity will need to include a reasonable estimate of the value of business supplies its grouped entities will make in the current and/or following two income years. To do this the entity will firstly need to know which entities will be its grouped entities in the following two years.

42. For the purposes of making a reasonable estimate under subsection 328-370(3), normally an entity can assume that its grouped entities in the current year will be its grouped entities in the coming years.

Reasonable estimates that prove to be incorrect

43. An entity will make its reasonable estimate(s) of *STS group turnover at the time it makes its election to become an *STS taxpayer in the *approved form or at the time it reviews its eligibility for the relevant income year. So, for example, in years where the income tax return is the *approved form for STS elections, the entity will make its reasonable estimate(s) of *STS group turnover at the time it prepares its return for that year. Whether its estimated *STS group turnover is regarded as reasonable will then depend on the circumstances of the entity at the time of preparing its return.

44. If the estimate can be regarded as reasonable when made, then the estimate will continue to be regarded as reasonable even if it later proves to be wrong.

45. For example, under subsection 328-370(3) an entity may work out its *STS average turnover by using the average of its *STS group turnover for the current year, and estimated *STS group turnovers for the following two income years.

46. The entity may determine during the course of the following two income years that the *STS group turnover it originally estimated for one or both of those years is materially different from the actual *STS group turnover for one or both of those years. In some cases the amount of the difference may be such that if the actual amount of *STS group turnover had been estimated originally, the entity would have had an *STS average turnover of $1 million or more in the earlier year.

47. In these cases, the entity will remain eligible to be an *STS taxpayer for that earlier income year provided the original

estimates of turnover were reasonable at the time they were made. The fact that these estimates later prove to be materially different from the actual *STS group turnover for the year(s) will not operate retrospectively to render the entity ineligible for that earlier year. However, the entity may find that while it remains eligible for the earlier year, it ceases to have an *STS average turnover below $1 million in one or more of the following income years. See Example 5 at paragraph 99 below.

Unreasonable estimates

48. An estimate of *STS group turnover will be unreasonable where it:

(a) has been arrived at arbitrarily, without due regard to the full range of material factors and considerations; and

(b) is reasonably likely to produce a materially inaccurate and misleading account of the entity's *STS group turnover for the relevant years.

Date of effect

49. This Ruling applies to assessments for income years starting on or after 1 July 2001 to which Division 328 applies.

Explanations and Examples

Working out an entity's STS average turnover : the 'look back' method and the 'look forward' method

50. To assess whether it is eligible to be an *STS taxpayer for an income year, an entity will need to determine if its *STS average turnover for that income year is less than $1 million.

51. Subsection 328-370(1) establishes the 'look back method' of calculating an entity's *STS average turnover for a year. Under the look back method, an entity's *STS average turnover for an income year is the average of its *STS group turnovers for any three of the previous four income years (excluding the current income year). If the entity has not carried on a business in each of the four previous income years, its *STS average turnover will be the average of its *STS group turnovers for each of the previous four income years in which it did carry on a business. If the entity or its grouped entities (if any) carried on a business for only part of a relevant past income year, it must make a reasonable estimate of what its *STS group turnover

would have been had it or the grouped entity carried on the business for the whole income year.

52. If an entity has an *STS average turnover of $1 million or more using the look back method it can recalculate its *STS average turnover for the income year using the 'look forward' method in subsection 328-370(2). The look forward method should also be used by an entity that cannot use the look back method because it has not carried on a business in any of the previous four income years.

53. Under the look forward method, an entity makes a reasonable estimate of its *STS group turnovers for the current and following two income years. Its *STS average turnover will be the average of those *STS group turnovers. If it prefers, the entity can use the average of its actual *STS group turnover for the current year plus the reasonably estimated *STS group turnovers for the following two income years. If the entity or its grouped entities (if any) carried on a business for only part of the current income year it must make a reasonable estimate of what its *STS group turnover would have been had it or the grouped entity carried on a business for all of the current year.

54. So, to work out its *STS average turnover for an income year an entity needs firstly to decide which income years' *STS group turnovers it is going to take into account. Having done this it then needs to work out its *STS group turnover for each of those years.

STS group turnover

55. The term *STS group turnover is defined in section 328-375. This measures an entity's *STS group turnover for an income year by reference to the *value of the business supplies made by the entity and its 'grouped entities' during that income year.

56. An entity's 'grouped entities' are the entities whose *value of the business supplies made is grouped with that of the entity under section 328-380.

Value of the business supplies

57. Under the definition in subsection 995-1(1), the *value of the business supplies made by an entity in an income year is the sum of:

(a) the value of any *taxable supplies made by the entity in the ordinary course of carrying on a *business during the year. The value of a *taxable supply is defined in section 9-75 of the *A New Tax System (Goods and Services Tax) Act 1999* ('the GST Act'); and

(b) the prices of any other supplies made by the entity during the year in the ordinary course of carrying on a business. ('Price' is defined in section 9-75 of the GST Act.)

58. *Taxable supply has the meaning given by the GST Act and means a supply on which GST is payable. The value of a *taxable supply is worked out using the following formula:

$$\text{Price} \times \frac{10}{11}$$

This has the effect that the *value of the business supplies is calculated using the GST exclusive price of a *taxable supply.

59. For other supplies, the value is simply the price.

60. The price of a supply is generally the amount of consideration for the supply expressed as an amount of money.

61. To work out its *STS group turnover for an income year an entity therefore needs to calculate the value of the supplies made during that year by itself and any grouped entities in the ordinary course of carrying on a business.

Working out an entity's STS average turnover: applying the 'look back' method using section 328-375

62. As discussed at paragraph **Error! Reference source not found.**, an entity may be able to rely on information in its Business Activity Statements, or its assessable income, for a past income year to work out its *STS group turnover for that year. If an entity does not or cannot follow the approach in paragraph **Error! Reference source not found.**, it will need to calculate its *STS group turnover for that year under section 328-375. As explained at paragraphs **Error! Reference source not found.** to 61, under that section an entity's *STS group turnover for a year is worked out using the *value of the business supplies made by the entity and its grouped entities (if any) during that year.

63. The definition of *value of the business supplies in subsection 995-1(1) only includes the value of supplies made by the entity *in the ordinary course of carrying on its business*. If an amount does not constitute the value of a supply made in the ordinary course of carrying on a business it will not be included in *STS group turnover.

'in the ordinary course of carrying on a business'

64. The phrase 'in the ordinary course of carrying on a business' is not defined in Division 328 or the ITAA 1997 generally. In the absence of any defined meaning, the term must be interpreted according to its ordinary meaning and legislative context.

65. The *Macquarie Dictionary* (3rd ed.) defines 'ordinary' to mean:

> '1. such as is commonly met with; of the usual kind . . . 3. customary; normal . . . 7. something regular, customary or usual . . .'
>
> It defines 'course' to mean:
>
> '5. customary manner of procedure; regular or natural order of events. 6. a mode of conduct; behaviour. 7. a particular manner of proceeding . . .'

These definitions emphasise that to be regarded as in the ordinary course of carrying on a business the supply needs to be of a kind that it is usual, regular or customary for the entity to make in the course of carrying on a business.

66. This accords with the interpretation given by the Courts to similar phrases in other relevant contexts. These have been viewed as describing the activities that the entity engages in on a regular day to day basis, or as part of the general flow of the business.

67. For example, in *Downs Distributing Co Pty Ltd v. Associated Blue Star Stores Pty Ltd (in liq)* (1948) 76 CLR 463, at 477; (1948) 22 ALJR 286, at 288, Rich J, when considering the phrase 'ordinary course of business' in section 95 of the *Bankruptcy Act 1924-1933 (Cth)* said:

> 'It means that the transaction must fall into place as part of the undistinguished common flow of business done, that it should form part of the ordinary business as carried on, calling for no remark and arising out of no special or particular situation.'[9]

68. In *Taylor v. White* (1963-64) 110 CLR 129, Dixon CJ observed at CLR 136 that:

> 'The time honoured phrase 'in the ordinary course of business' is meant to refer to transactions regularly taking place in a sustained course of activity or some usual process naturally passing without examination.'

69. In keeping with these authorities and the ordinary meaning of the words, a supply will be made in the ordinary course of carrying on a business for the purposes of the *value of the business supplies definition in subsection 995-1(1) if the supply is of the kind regularly

---

9 Similarly in *Bradford Roofing Industries Pty Ltd (in liq) & Companies Act, Re* [1966] 1 NSWR 674 Street J, when considering a similar phrase in subsection 207(1) of *The Companies Act 1961* (NSW) held at 681: 'The transaction must be one of the ordinary day-to-day business activities, having no unusual or special features.'

or customarily made by the entity in the course of carrying on its business, arising out of no special circumstance or unusual event.

Investment income

70. An entity will need to include investment income such as interest on invested funds or rental income in its *value of the business supplies for the relevant year if that income constitutes the value of a supply made by the entity in the ordinary course of carrying on its business. This will be a question of fact to be determined in light of the facts of the particular case.

71. If the entity is a company, this question needs to be approached bearing in mind that any exploitation by a company of its assets for the benefit of its shareholders prima facie amounts to the carrying on of a business by the company. See for example the following remarks of Lord Diplock in *American Leaf Blending Co Sdn Bhd v. Director-General of Inland Revenue* [1978] 3 All ER 1185 at 1189:

> ' . . . in the case of a company incorporated for the purpose of making profits for its shareholders any gainful use to which it puts any of its assets prima facie amounts to the carrying on of a business. Where the gainful use to which a company's property is put is letting it out for rent, their Lordships do not find it easy to envisage circumstances that are likely to arise in practice which would displace the prima facie inference that in doing so it was carrying on a business.'[10]

72. The effect of this presumption is that where a company makes a supply giving rise to investment income such as rental or interest income, that supply can generally be presumed to be a supply made by the company in the course of carrying on a business. The value of that supply (i.e., the interest or rental income) will therefore need to be included in the company's STS group turnover. This is unless the presumption can be rebutted or it can be demonstrated that the exploitation of the asset is a supply occurring outside of the *ordinary* course of the company's business. Paragraphs 64 to 69 of this Ruling consider when a supply occurs in the ordinary course of carrying on a business.

---

[10] See also paragraph 3 of Income Tax Ruling IT 2423 which states that ' Generally, it is easier for a company that derives income from the letting of property to show that it carries on a business that it is for an individual. If a company's objects are business objects and are, in fact, carried out it carries on a business . . .'. *Ruhamah Property Co Ltd v. FC of T* (1928) 41 CLR 148 provides an example where the character of a company, the purpose of its formation and the ends to which its profits were put were enough to displace this prima facie presumption.

73. If the entity is a trust, the question needs to be approached bearing in mind that prima facie, income received from trust assets is not received in the course of the carrying on of a business by the trustees of the trust. This presumption is based on the general principle that the actions of the trustees giving rise to that income are caused by the trustee's fiduciary obligations to maintain the trust assets for the benefit of the beneficiaries. They are not generally to be characterised as transactions directed toward or resulting from the carrying on of a business by the trustees using the trust assets. See Gibbs J in *London Australia Investment Co Ltd v. FC of T* (1977) 138 CLR 106; (1977) 7 ATR 757; 77 ATC 4398 at CLR 118; ATR 769; ATC 4410; also *Charles v. FC of T* (1954) 90 CLR 598; 6 AITR 85 and *FC of T v. Radnor Pty Ltd* 91 ATC 4689; (1991) 22 ATR 344; 102 ALR 187.

74. The effect of this presumption is that amounts received by a trust, for example interest on invested funds or rental income, will only give rise to an *STS group turnover on the part of the trust if the trust is shown to be carrying on a business and to have made the supplies giving rise to those amounts in the ordinary course of that business. In considering this last point it is noted that a trustee will be in breach of trust if it carries on a business unless expressly authorised to do so by the trust deed or a court.[11]

75. If the entity is an individual or partnership, the question will need to be approached having regard to the nature of the business in question and whether the supply giving rise to the investment income occurred in the ordinary course of that business.

Dividends

76. For the reason given at paragraph **Error! Reference source not found.** of this Ruling generally entities will not need to include dividends in their *STS group turnovers.

Capital gains

77. The Courts have drawn a distinction between a transaction that is 'mere realisation or change of investment and a transaction that is an act done in what is truly the carrying on, or carrying out, of a business.'[12] This distinction is based on the following statement by

---

[11] Meagher RP & Gummow WM, *Jacobs Law of Trusts* (Sixth edition), Butterworths, 1997, Sydney at 591.

[12] *Memorex Pty Ltd v. Commissioner of Taxation* (1987) 77 ALR 299; 87 ATC 5034; (1987) 19 ATR 553; *FC of T v. GKN Kwikform Services* Pty Ltd (1991) 21 ATR 1532; 91 ATC 4336; *FC of T v. The Myer Emporium Ltd* (1987) 163 CLR 199; 87 ATC 4363; (1987) 18 ATR 693; *RAC Insurance Pty Ltd v. FC of T* (1990)

Lord Justice Clerk in *Californian Copper Syndicate v. Harris (Surveyor of Taxes)* (1904) 5 TC 159, at 165-166:

> ' . . . enhanced values obtained from realisation or conversion of securities may be so assessable, where what is done is not merely a realisation or change of investment, but an act done in what is truly the carrying on, or carrying out, of a business. What is the line which separates the two classes of cases may be difficult to define, and each case must be considered according to its facts.'

78. In *London Australia Investment Co Ltd v. FC of T* (1977) 138 CLR 106, (1977) 7 ATR 757, 77 ATC 4398 Gibbs J, when considering the criterion of whether a sale was a business operation carried out in the course of the business of profit-making, remarked that:

> 'To apply this criterion it is necessary to make both a wide survey and an exact scrutiny of the taxpayer's activities. Different considerations may apply depending on whether the taxpayer is an individual or a company. In the latter case it is necessary to have regard to the nature of the company, the character of the assets realised, the nature of the business carried on by the company and the particular realisation which produced the profit.'[13]

79. In working out its *STS group turnover, an entity will therefore need to determine whether an amount relates to the mere realisation of an investment, or a supply made in the ordinary course of carrying on its business. It will then need to exclude amounts that can be properly described as merely relating to the realisation of an investment from the calculation of its *STS group turnover.

80. A common example of the mere realisation of an investment would be the sale of a capital asset used previously in the business by an entity that does not regularly dispose of its capital business assets. Another example is the sale of an entity's business premises. As mere realisations of an investment, these transactions are not regarded as taking place in the ordinary course of an entity's business and their value will therefore not need to be included in *STS group turnover.

Example 1A – general bank interest

81. The Smith Family Partnership runs a residential building business. Payments from customers for building work by the partnership are deposited in the partnership's bank account twice a

95 ALR 515; (1990) 21 ATR 709; 90 ATC 4737; *Jennings Industries Ltd v. FC of T* (1984) 2 FCR 273; (1984) 15 ATR 577; 84 ATC 4288.

[13] at CLR 116; ATR 762; ATC 4403.

week. The interest paid by the bank on the funds deposited will be included in the partnership's *STS group turnover. The interest paid by the bank on the funds deposited constitutes the value of supplies made by the partnership to its bank as a regular part of carrying on its business.[14]

Example 1B – interest on an investment account excluded from STS group turnover

82. Following on from Example 1A, recently the partnership sold several old pieces of equipment which it no longer needed or wished to replace. It hadn't sold any items of plant or equipment for about four years. The partners had assumed that they would simply have to scrap any items they could not sell. The partners agreed to deposit the sale proceeds in a short term cash deposit account to earn some interest until payment for the replacement equipment became due in a few months time. The partnership had not followed this practice before and is unlikely to do so again as it has no further assets planned for sale or scrapping in the next year or so. The partnership will not need to include the interest paid on this account in its *STS group turnover. The interest is the value of an unusual, irregular supply made outside of the ordinary course of the partnership's business.

Example 1C – interest on an investment account included in STS group turnover

83. Following on from Example 1B, the partnership later finds that it routinely has more funds at hand than needed to discharge its current liabilities. Encouraged by the interest paid on the sale proceeds that had been deposited, the partnership decides to place all its surplus business funds in a short term money market account. Amounts are transferred from the partnership's general banking account to this investment account whenever the partnership's managing partner decides that the partnership has a temporary surplus of funds. Over the course of the past year this has happened about once a month. The partnership will need to include this interest in its *STS group turnover as the interest paid on this investment account represents the value of supplies made on a regular and recurrent basis, ie supplies made in the ordinary course of carrying on the partnership business.

---

[14] See *FC of T v. Marshall and Brougham Pty Ltd* (1987) 17 FCR 541, at 549; 87 ATC 4522, at 4529; (1987) 18 ATR 859, at 866 where the Full Federal Court held that: ' . . . placing money in the bank is part of any business carried on involving payments in and out in the ordinary course of business.'

Example 2A – rental income included in STS group turnover

84. Greg runs a gardening centre. His business premises are made up of the customer centre, a number of greenhouses and two warehouses. Greg has only ever had a need to use one of these warehouses. Several years ago he decided to lease the spare warehouse on a yearly basis to another business as a way of generating some extra income. Greg will need to include the income he receives under the lease each year in his *STS group turnover. This is because the leasing of the spare warehouse is a supply which Greg's business makes on a regular basis. The rental income therefore constitutes the value of a supply made in the ordinary course of Greg's business.

Example 2B – rental income excluded from STS group turnover

85. Assume the same facts as in Example 2A, except Greg does not lease out his second warehouse. The normal pattern is for him to use both of his warehouses to store stock that will be sold in the gardening centre. However, Greg determines in late May 2002 that he will not need a large part of his second warehouse for all of the month of June. This is because a supplier will not be able to deliver the consignment of ceramic pots Greg ordered until July. Greg's friend has mentioned to him that he is in need of some temporary storage space. To help overcome a temporary cashflow problem Greg offers his friend the use of his spare warehouse space for a month for a fixed sum. Greg will not need to include the rent he receives from his friend in the value of supplies made by his business. This is because Greg has not supplied the storage space in the ordinary course of operating his garden centre business. The supply of rental storage space is not a supply Greg's business usually makes.

Example 3 – disposal of capital assets outside of the ordinary course of business

86. Mustafa's business ordinarily includes the supply of printing services and printed goods. To keep up with advances in printing technology, Mustafa replaces certain parts of his printing system every three years or so. He generally sells the old parts to other businesses. Mustafa will not need to include any proceeds from these sales in his *STS group turnover. This is because the supply of capital assets such as commercial printing equipment is not an ordinary part of Mustafa's business. Such items do not form part of the business's trading stock and they are not acquired by Mustafa with the intention of on-selling them for profit.

Example 4 – disposal of capital assets in the ordinary course of business

87. Computers Pty Ltd is a distributor of computer hardware and software. Primarily it leases computer hardware to corporate clients. On expiration of a lease, the hardware is either re-leased to the client or taken back by Computers Pty Ltd. Every year Computers Pty Ltd also sells leased hardware to a number of clients at the expiry of the lease. Computers Pty Ltd's business strategy is to use the computers in whichever way will result in profits for the company. Its *STS group turnover will include both the lease payments and the sale proceeds for leased hardware sold during the year to a client at the expiry of a lease. The sale of previously leased hardware forms part of Computers Pty Ltd's overall profit making strategy and is a supply of a kind which Computers Pty Ltd makes as a regular and ordinary part of carrying on its business.

Supplies made but consideration not yet received

88. Under subsection 328-375(1), an entity's *STS group turnover for an income year consists of the *value of the business supplies made by an entity in the income year and the *value of the business supplies made by its grouped entities (if any) in that year.

89. To determine if the value of a particular supply needs to be included in its *STS group turnover for an income year, an entity therefore needs to determine if it or the relevant grouped entity ***made*** that supply in that income year. Once it is established that the supply was made in the year, its value is included in the entity's *value of the business supplies for the year provided it was made in the ordinary course of business.

90. The term 'made' is not defined in section 328-375 or in the ITAA 1997 generally. Accordingly, the term needs to be interpreted according to its ordinary meaning and legislative context.

91. The *Macquarie Dictionary* (Second Edition) defines made to mean the past tense and past participle of make. It defines make to mean:

> '1. to bring into existence by shaping material, combining parts, etc. 2. to produce by any action or causative agency. 3. to cause to be or become; render . . . 5. to put into proper condition for use. 6. to bring to a certain form or condition.'

92. It is important to note that under the definition of *STS group turnover in section 328-375 the value of a supply is included in *STS group turnover for the income year in which the supply is made, not the income year in which the entity receives payment or another form of consideration for the supply.

93. The effect of this is that an entity may need to include the value of supplies it has made in a year but not yet been paid for in its *STS group turnover for that year.

Making a reasonable estimate of STS group turnover

What is a reasonable estimate of turnover?

94. Paragraphs **Error! Reference source not found.** to **Error! Reference source not found.** of this Ruling set out the situations in which an entity may need to make a reasonable estimate of its *STS group turnover for a year.

95. The requirement to make a reasonable estimate of a value, proportion or amount appears in numerous places throughout the income tax law. For example, to calculate the taxable income of a general insurer for a year of income it is necessary to deduct from the premiums derived that year an appropriate amount, arrived at by reasonable estimate, in respect of claims outstanding at the end of the year. In *Mercantile Mutual (Workers Compensation) Ltd v. FC of T* (1998) 39 ATR 467; 98 ATC 4814, Foster J when considering this estimation process noted the reference by Fullagar J in *Ballarat Brewing Co Ltd. v. FC of T* (1951) 82 CLR 364; (1951) 25 ALJR 220; (1951) 9 ATD 254 to the comments of Lord Loreburn in *Sun Insurance Office v. Clarke* (1912) AC 443, at 454; [1911-13] All ER Rep 495, at 498; 6 TC 57, at 77:

> 'There is no rule of law as to the proper way of making an estimate. There is no way of estimating which is right or wrong in itself. It is a question of fact and figures whether the way of making the estimate in any case is the best way for that case.'

96. In *Australia and New Zealand Banking Group Ltd v. FC of T* (1994) 48 FCR 268; 94 ATC 4026; (1994) 27 ATR 559, the Full Federal Court in a similar context considered an argument from the Commissioner that the estimates in question there related to claims of which no reasonable estimate was possible, or if it was, the estimates were unreasonable. Hill J said (Northrop and Lockhardt JJ agreeing) at FCR 280; ATC 4035-4036; ATR 571:

> 'The concept of "estimate" does not involve arbitrarily seizing upon any figure. What is involved is the formation of a judgment or opinion based upon reason. That judgment or opinion must necessarily be made bona fide but it need not be exact for the process of estimation involves a process of approximation .'

97. It is clear from these remarks that while a reasonable estimate need only be an approximation, it must be based on a sound and reasoned process of estimation that has been undertaken in good faith.

Conversely, an unreasonable estimate is one that is not based on a sound and reasoned process of estimation.

98. Whether or not an estimate will be regarded as reasonable will also depend on the circumstances of the entity at the time it makes its estimate(s) of *STS group turnover. As an entity's *STS group turnover relates to its eligibility to be an *STS taxpayer, an entity estimating its *STS group turnover for a year or years will make this estimate at the time of assessing or reviewing its eligibility. In our view this will be at the time the entity is required to make its election to become an *STS taxpayer or notify the Commissioner if it is ceasing to be an *STS taxpayer.

Example 5

99. Annette wants to become an *STS taxpayer in the 2001-2002 income year. When preparing her income tax return for that year Annette assesses her eligibility to become an *STS taxpayer. Annette has just opened her business and therefore works out her *STS average turnover by using the average of her *STS group turnover for the 2001-2002 year and reasonable estimates of her *STS group turnovers for the 2002-2003 and 2003-2004 income years. These were $750,000, $800,000 and $850,000 respectively. On this basis Annette has an *STS average turnover of $800,000 for the 2001-2002 year and she elects to become an *STS taxpayer for that year.

100. When preparing her tax return for the 2002-2003 income year, Annette reviews whether she will be eligible to be an *STS taxpayer for that year. However, as her business now has a past turnover record she calculates her *STS average turnover for the 2002-2003 income year under subsection 328-370(1), using just the actual *STS group turnover for the 2001-2002 income year. This produces an *STS average turnover of $750,000 and she therefore remains eligible to be an STS taxpayer for the 2002-2003 year.

101. At the end of the 2003-2004 year, Annette realises that her actual *STS group turnover for that year is going to be considerably higher than the amount she estimated when completing her 2001-2002 return. However, Annette could not have foreseen the circumstances that have led to this increase and her estimate of turnover for the 2003-2004 was reasonable at the time she prepared her 2001-2002 return. Annette will therefore remain eligible to be an *STS taxpayer for the 2001-2002 income year. She will also remain eligible for the 2002-2003 year because her calculation of *STS average turnover under the look back method for that year was not affected by her estimate of *STS group turnover for the 2003-2004 year.

Accepted methods of making a reasonable estimate

102. Paragraphs **Error! Reference source not found.** to **Error! Reference source not found.** provide accepted methods for making a reasonable estimate of *STS group turnover in various situations. The following examples demonstrate the application of those methods.

Example 6 - Part year businesses

103. Kathy opens her own business on 1 December 2001. Her business has an *STS group turnover for December of $110,000. In each of the following months the *STS group turnover is as follows:

2002	
January	$68,000
February	$65,000
March	$61,000
April	$59,000
May	$60,000
June	$63,000

104. Kathy wishes to work out a reasonable estimate of her *STS group turnover for the year using a pro-rata calculation based on her turnover for the months she was in business. She believes these are broadly representative of what her turnover for the months July to November would have been had she been in business in those months. However, she knows that December's turnover was not typical of her general monthly turnover. Industry experience confirms that December is always significantly busier than any other month of the year. Given its atypical nature, it would not be reasonable to base the pro rata calculation of Kathy's *STS group turnover for the full year on the turnover for December. Instead, Kathy should work out the average turnover for the months January to June, multiply this by eleven, and add her turnover for December. This would give Kathy an estimated *STS group turnover for the whole year of $799,333.

Example 7 - New businesses

105. Tom has recently obtained a franchise to operate a gym using the name of a nationwide chain of specialist gyms. Tom's business officially begins trading on 1 July 2001. Information provided to Tom as part of the franchise process shows the typical annual turnover for gyms of the same size and in similar locations to Tom's gym that operate under the franchise name. On average this turnover is shown to be $750,000 for the 1998 income year, $800,000 for the 1999 income year and $850,000 for the 2000 year. From his own research,

Tom knows this growth pattern is broadly consistent with the fitness industry generally.

106. The business plans and budgets that Tom was required to prepare for the bank that has financed his acquisition of the franchise show projected turnover figures for the 2003 and 2004 income years of $850,000 and $900,000. These were accepted as sound projections by Tom's bank and reflect the past growth pattern from gyms operated under this franchise. They are therefore a reasonable basis on which Tom can make an estimate of his *STS group turnovers for the 2003 and 2004 income years. Tom's *STS group turnover for the 2002 year is $800,000. Based on these figures, Tom will have an * STS average turnover for the 2002 year of $850,000. He will therefore be eligible to enter the STS in that year. Given this proximity to the $1 million threshold however, Tom will need to take particular care when calculating his *STS average turnover in later years.

Example 8 - Existing businesses

107. Janet has run a small motel for the past eight years. The business' *STS group turnover for 2000-2001 year was $1,100,000. In the 1999-2000 year it was $1,050,000, in the 1998-1999 year it was $1,000,000 and in 1997-1998 it was $960,000. Janet works out her *STS average turnover for the 2001-2002 year by using the average of her *STS group turnovers for the 2000, 1999 and 1998 years. This produces an *STS average turnover of $1,003,333. On this basis Janet will be ineligible to become an *STS taxpayer. Janet can, however, recalculate her *STS average turnover by making a reasonable estimate of her *STS average turnover for the current and following two income years.

108. In making this estimate, Janet will need to have regard to any factors likely to affect her future *STS group turnovers. Janet knows that:

(a) her *STS group turnover has increased in each of the last four income years;

(b) she has no plans to reduce the current operations of the motel business in the next three years;

(c) an existing corporate client has just renewed its arrangement with her for the continued provision of services for its staff for the next two years. This client has provided 20% of her business in each of the previous five years;

(d) there is no expectation in the industry that demand will decline over the coming years in her region; and

(e) another motel in the town has recently closed for a three month period of refurbishment.

109. All of these considerations are matters likely to affect Janet's future *STS group turnovers. On the basis of these, Janet could not reasonably estimate that her *STS group turnover is likely to decline materially below $1 million in either the current year or the following two years. As a result, Janet will not satisfy the *STS average turnover test in paragraph 328-365(1)(b).

Appendix

Calculating STS group turnover using past years' Business Activity Statements or income tax returns

110. As outlined at paragraph 16 of this Ruling, in most cases you will be able to base your STS group turnover for an income year on amounts in your income tax return or Business Activity Statements for that year. The following table sets out the amount the Commissioner will generally accept as your STS group turnover for a particular year.

<table>
<tr><th>Income year</th><th>Type of taxpayer</th><th>Amount that can be used as the taxpayer's STS group turnover for that income year</th></tr>
<tr><td rowspan="4">2001-2002 and later income years</td><td>Taxpayer using GST reporting Option 1</td><td rowspan="2">The sum of the amounts shown at labels G1, G2 and G3 in each Business Activity Statement lodged by the taxpayer in that year.</td></tr>
<tr><td>Taxpayer paying and reporting GST monthly</td></tr>
<tr><td>Taxpayer using GST reporting Option 2</td><td>The sum of:
• the amounts shown at label G1 in each of the taxpayer's four Business Activity Statements for that year; and
• any amounts shown at labels G2 and G3 in their annual GST information report for that year.</td></tr>
<tr><td>Taxpayer using GST reporting Option 3</td><td>The sum of the amounts shown at labels G1, G2 and G3 in the taxpayer's annual GST return for that year.</td></tr>
<tr><td rowspan="4">2000-2001</td><td>Taxpayer using GST reporting Option 1</td><td rowspan="2">As for 2001-2002 and later years.</td></tr>
<tr><td>Taxpayer paying and reporting GST monthly</td></tr>
<tr><td>Taxpayer using GST reporting Option 2</td><td>The sum of the amounts entered at labels:
• G1, G2, G3 and/or G4 in any of the taxpayer's four Business Activity Statements for that year; and
• G2 and/or G3 in the taxpayer's 2001 annual GST information report.</td></tr>
<tr><td>Taxpayer using GST reporting Option 3</td><td>The sum of the following amounts:
• the amounts entered at labels G1, G2, G3 and/or G4 in the taxpayer's September 2000 and December 2000 Business Activity Statements; and
• any amounts entered at labels G1, G2 and/or G3 in their 2001 annual GST return.</td></tr>
<tr><td rowspan="3">1999-2000

1998-1999

1997-1998</td><td>Company</td><td>amount shown at the 'Total income' label in that year's income tax return.</td></tr>
<tr><td>Partnership or trust</td><td>amount shown at 'Total business income' plus any amount shown at 'Gross interest' and/or 'Gross rent' in that year's income tax return.</td></tr>
<tr><td>Sole trader (i.e., an individual)</td><td>amount shown at 'Total business income' in the Business and professional items schedule to that year's income tax return plus any amount shown at 'Gross rent' in the supplementary section to that return plus any amount shown at 'Gross interest' in that return.</td></tr>
</table>

The amount must be less than $1 million

111. You can only use the amount worked out using the table above as your STS group turnover for the relevant year if that amount is less than $1 million.

112. If the amount is $1 million or more, you need to confirm your STS group turnover for the relevant year by applying the legislative definition of STS group turnover discussed at paragraphs 18 to 30 of this Ruling. You may find that your STS group turnover for that year is lower if worked out by applying this definition. This is because various amounts taken into account in your income tax return or BASs

may not be taken into account in calculating your STS group turnover under the legislative definition. For example, proceeds from the sale of capital assets are generally excluded under the definition of STS group turnover.

Important note

113. Using the amount shown in the table above as your STS group turnover for one or more past income years may cause you to exceed the $1 million STS average turnover eligibility threshold sooner than if you had worked out your STS group turnover for each of those past years applying the legislative definition of STS group turnover discussed at paragraphs 18 to 30 of this Ruling. This is due to the cumulative effect of using the potentially higher amounts from your BASs or income tax return as your STS group turnover rather than an amount worked out using the legislative definition. If this happens, you can recalculate your STS group turnovers for the relevant years applying the legislative definition of STS group turnover.

Taxpayers that are grouped under the STS grouping rules

114. You can still work out your STS group turnover for an income year using the table above if you are grouped with another taxpayer for that year under the STS grouping rules.

115. In this case you will need to identify the relevant amounts from both your own **and** the grouped taxpayer's BASs, annual GST return, annual GST information report or income tax return as applicable using the table above. You can use the sum of all of these amounts as your STS group turnover for the year. See Example Two below.

116. If you are grouped with another taxpayer for an income year in which that taxpayer did not lodge BASs, you need to include the relevant amount from the following table in your STS group turnover for that year. See Example Three below.

Grouped taxpayer	Amount to include in your STS group turnover
Company	amount shown at the 'Total income' label on that company's income tax return for the relevant year.
Partnership or trust	amount shown at 'Total business income' plus any amount shown at 'Gross interest' and/or 'Gross rent' on that partnership's or trust's income tax return for the relevant year.
Sole trader (ie an individual)	amount shown at 'Total business income' on the Business and professional items schedule to that sole trader's income tax return for the relevant year plus any amount shown at 'Gross rent' in the supplementary section to that return plus any amount shown at 'Gross interest' on that return.

Businesses carried on for only part of a year

117. As discussed at paragraphs 11 and 12 of this Ruling, if you are working out your STS group turnover for a past income year and you or a taxpayer you are grouped with only carried on a business for part of that year, you need to make a reasonable estimate of what your STS group turnover would have been if the business was carried on for the full year.

118. You can still use the BAS or income tax return amounts detailed above when making this reasonable estimate. As explained at paragraphs 37 and 38 of this Ruling, this estimate will generally be regarded as reasonable if it is worked out as a pro rata calculation of your STS group turnover for the part of the year when the business was carried on. This pro rata calculation can be based on the total of the relevant amounts shown on the BASs lodged for the part of the year in which the business was carried on. If an income tax return is being used, the pro rata calculation can be based on the amount shown in that income tax return as set out in the table under paragraph 110.

Example One - Using a past year's Business Activity Statements

119. Kim owns and operates a retail clothing business in partnership with her sister. She wants to work out the partnership's STS group turnover for the 2000-01 income year using its Business Activity Statements for that year. The partnership used GST reporting Option 1 in the March and June 2001 quarters. The following table shows the amounts shown at labels G1 to G4 on the partnership's BASs for that year.

The partnership's 2000-01 Business Activity Statements

BAS label	Sept 2000 quarter	Dec 2000 quarter	March 2001 quarter	June 2001 quarter	
G1	$200 000	$230 000	$215 000	$190 000	
G2	$0	$0	$0	$0	
G3	$0	$0	$0	$0	
G4	$0	$0	$0	$0	
Total	**$200 000**	**+ $230 000**	**+$215 000**	**+$190 000**	**= $835 000**

120. The total of the amounts shown at labels G1 to G4 of the partnership's BASs for the 2000-01 year is $835 000. As this is less than $1 million, Kim can use this figure as the partnership's STS group turnover for the 2000-01 year.

Example Two – using a grouped taxpayer's Business Activity Statements

121. Marco is a sole trader. Marco is grouped with Alpha Pty Ltd under the STS grouping rules because he can exercise 40% of the voting power in Alpha Pty Ltd. To work out his STS group turnover for the 2000-01 year Marco needs to include Alpha Pty Ltd's turnover with his own turnover. The following tables set out the amounts shown on the BASs for Marco and Alpha Pty Ltd for the 2000-01 year. Both use GST reporting Option 1.

122. Marco's Business Activity Statements

BAS labels	Sept 2000 quarter	Dec 2000 quarter	March 2001 quarter	June 2001 quarter	
G1	$20 000	$25 000	$22 000	$26 000	
G2	$0	$0	$0	$0	
G3	$0	$0	$0	$0	
G4	$0	$0	$0	$0	
Total	**$20 000**	**+ $25 000**	**+ $22 000**	**+ $26 000**	**= $93 000**

Alpha Pty Ltd's Business Activity Statements

BAS labels	Sept 2000 quarter	Dec 2000 quarter	March 2001 quarter	June 2001 quarter	
G1	$100 000	$120 000	$90 000	$100 000	
G2	$70 000	$100 000	$100 000	$80 000	
G3	$0	$0	$0	$0	
G4	$0	$0	$0	$0	
Total	**$170 000**	**+ $220 000**	**+ $190 000**	**+ $180 000**	**= $760 000**

123. The total of the amounts at labels G1 to G4 on all of Marco's BASs for the 2000-01 year is $93 000. The total of the amounts shown at labels G1 to G4 on all of Alpha Pty Ltd's BASs for the 2000-01 year is $760 000. The sum of these amounts is $853 000. As it is less than $1 million, Marco can use the $853 000 figure as his STS group turnover for the 2000-01 year.

Example Three – using a grouped taxpayer's income tax return

124. Following on from Example Two, Marco wants to work out his STS group turnover for the 1999-2000 income year. Marco is also grouped with Alpha Pty Ltd for that year under the STS grouping rules. Marco takes the amount of $49 000 shown as his 'total business income' in the business and professional items schedule to his 1999-2000 income tax return. The amount shown on Alpha Pty Ltd's income tax return for that year as 'Total income' was $600 000. As the sum is less than $1 million, Marco can use that amount, i.e.,

$649 000, as his STS group turnover for the 1999-2000 income year.

125. To work out his STS average turnover for the 2001-02 income year, Marco then works out the average of this 1999-2000 STS group turnover figure ($649 000) and the STS group turnover worked out for the 2000-01 income year ($853 000). He does not need to consider the 1997-98 or 1998-99 income years as he did not carry on a business in those years. The average of these two STS group turnovers is $751,000. Marco can use this as his STS average turnover for the 2001-02 income year.

Example Four – making a reasonable estimate using your Business Activity Statements

126. Beta Pty Ltd began business on 1 January 2002. It wants to work out its STS group turnover for the 2001-02 income year. As it only carried on a business for part of that year, it needs to make a reasonable estimate of its STS group turnover for the full year. It lodged BASs for the March and June 2002 quarters using GST reporting Option 1. The amount shown at label G1 on the March BAS was $180 000. The amount shown in the June BAS was $215 000. No amounts were shown at labels G2 or G3. Beta Pty Ltd considers the total of the label G1 amounts, ie. $395 000, to be a reasonable indication of what its turnover would have been for the period July to December 2001 had it traded in those months. It makes a reasonable estimate of its STS group turnover for the 2001-02 income year of $790 000. Beta Pty Ltd can use $790 000 as its STS group turnover for the 2001-02 income year.

Your comments

127. If you wish to comment on this draft Ruling, please send your comments promptly by **26 April 2002** to:

Contact Officer: **George Holton**

E-Mail address: **george.holton@ato.gov.au**

Telephone: **(08) 8208 3853**

Facsimile: **(08) 8208 3947**

Address: **191 Pulteney Street**
ADELAIDE SA 5000

Detailed contents list

128. Below is a detailed contents list for this draft Ruling:

Commissioner of Taxation
13 March 2002

Previous draft:
Not previously released in draft form

Related Rulings:
IT 2423

Subject references:
- grouped entities
- Simplified Tax System
- STS average turnover
- STS group turnover
- STS taxpayers

Legislative references:
- ANTS(GST)A99 9-75
- Bankruptcy Act 1924-1933 (Cth) 95
- Companies Act 1961 (NSW) 207(1)
- ITAA 1936 82KZM
- ITAA 1997 8-1
- ITAA 1997 328-365(1)(b)
- ITAA 1997 328-365
- ITAA 1997 328-370(1)
- ITAA 1997 328-370(2)
- ITAA 1997 328-370(3)
- ITAA 1997 328-370(4)
- ITAA 1997 328-370
- ITAA 1997 328-375(1)
- ITAA 1997 328-375(1)(c)
- ITAA 1997 328-375(1)(d)
- ITAA 1997 328-375(1)(e)
- ITAA 1997 328-375
- ITAA 1997 328-380

- ITAA 1997 328-435
- ITAA 1997 995-1(1)
- ITAA 1997 Subdiv 328-F
- ITAA 1997 Subdiv 328-G
- ITAA 1997 Div 328

Case references:

- American Leaf Blending Co Sdn Bhd v. Director-General of Inland Revenue [1978] 3 All ER 1185
- Australia and New Zealand Banking Group Ltd v. FC of T (1994) 48 FCR 268; 94 ATC 4026; (1994) 27 ATR 559
- Ballarat Brewing Co Ltd v. FC of T (1951) 82 CLR 364; (1951) 25 ALJR 220; (1951) 9 ATD 254
- Bradford Roofing Industries Pty Ltd (in liq) & Companies Act, Re [1966] 1 NSWR 674
- Californian Copper Syndicate v. Harris (Surveyor of Taxes) (1904) 5 TC 159
- Charles v. FC of T (1954) 90 CLR 598; 6 AITR 85
- Downs Distributing Co Pty Ltd v. Associated Blue Star Stores Pty Ltd (in liq) (1948) 76 CLR 463; (1948) ALJR 286
- FC of T v. GKN Kwikform Services Pty Ltd (1991) 21 ATR 1532; 91 ATC 4336
- FC of T v. Marshall and Brougham Pty Ltd (1987) 17 FCR 541; 87 ATC 4522; (1987) 18 ATR 859
- FC of T v. Radnor Pty Ltd 91 ATC 4689; (1991) 22 ATR 344; 102 ALR 187
- FC of T v. The Myer Emporium Ltd (1987) 163 CLR 199; 87 ATC 4363; (1987) 18 ATR 693
- Jennings Industries Ltd v. FC of T (1984) 2 FCR 273; (1984) 15 ATR 577; 84 ATC 4288
- London Australia Investment Co Ltd v. FC of T (1977) 138 CLR 106; (1977) 7 ATR 757; 77 ATC 4398
- Memorex Pty Ltd v. Federal Commissioner of Taxation (1987) 77 ALR 299; 87 ATC 5034; (1987) 19 ATR 553
- Mercantile Mutual (Workers Compensation) Ltd v. FC of T (1998) 39 ATR 467; 98 ATC 4814
- RAC Insurance Pty Ltd v. FC of T (1990) 95 ALR 515; (1990) 21 ATR 709; 90 ATC 4737
- Ruhamah Property Co Ltd v. FC of T (1928) 41 CLR 148; (1928) ALJR 172; (1928) 35 ALR 50
- Sun Insurance Office v. Clarke (1912) AC 443; [1911-13] All ER Rep 495; 6 TC 57
- Taylor v. White (1963-64) 110 CLR 129

ATO references:
NO: T2002/003013

ISSN: 1039-0731