

Joint and several liability -

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Representatives of Incapacitated Entities

Joint and several liability

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This publication (excluding appendixes) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

A public ruling is an expression of the Commissioner's opinion about the way in which a relevant provision applies, or would apply, to entities generally or to a class of entities in relation to a particular scheme or a class of schemes.

If you rely on this ruling, the Commissioner must apply the law to you in the way set out in the ruling (unless the Commissioner is satisfied that the ruling is incorrect and disadvantages you, in which case the law may be applied to you in a way that is more favourable for you – provided the Commissioner is not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any underpaid tax, penalty or interest in respect of the matters covered by this ruling if it turns out that it does not correctly state how the relevant provision applies to you.

Where there are two or more representatives of the same incapacitated entity at the same time, are they jointly and severally liable for GST payable in their capacities as representatives of the same incapacitated entity?

1. Where two or more representatives, are appointed in different capacities as representatives of the same incapacitated entity, each representative is liable for GST on taxable supplies and entitled to input tax credits for creditable acquisitions that are made within the scope of that representative's responsibility or authority for managing the incapacitated entity's affairs. The representatives are not jointly or severally liable to pay GST under subsection 444-70(1) of Schedule 1 to the TAA.
2. An example of this is where a receiver is appointed over an asset of company and a liquidator is separately appointed to wind up the company at the same time. With agreement of the liquidator, the receiver enters into a contract of sale and sells the asset that he/she was appointed over. The receiver will be liable for GST arising on the sale of the asset as the sale is within the scope of his/her responsibility or authority of his/her appointment. The liquidator will not have any GST consequences as the sale is not within the scope of the liquidator's responsibility or authority.
3. Where two or more representatives are appointed in the same capacity, the representatives are jointly liable for GST and jointly entitled to input tax credits for any taxable supplies and creditable acquisitions that are within the scope of their responsibility or authority for managing the incapacitated entity's affairs. Jointly appointed representatives acting in the same capacity are jointly and severally liable to pay GST under subsection 444-70(1) of Schedule 1 to the TAA.