

***GSTD 2003/3 - Goods and Services tax: are acquisitions made by a head company, or by a subsidiary member, in obtaining valuations in respect of forming or joining a consolidated group, made in carrying on the entity's enterprise?***

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⚠ This document has changed over time. This is a consolidated version of the ruling which was published on *15 October 2003*

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## Goods and Services Tax Determination

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

### *Preamble*

*This document is a ruling for the purposes of section 37 of the **Taxation Administration Act 1953**. You can rely on the information presented in this document which provides advice on the operation of the GST system.*

1. Yes, provided the entity is carrying on an enterprise. Acquisitions made by a **head company** of a **consolidatable group** or a **consolidated group**, or by a **subsidiary member** of either group, in obtaining valuations in respect of forming or joining a consolidated group, are made in carrying on the entity's enterprise.<sup>1</sup> To determine whether the entity is carrying on an enterprise, see the requirements discussed in Miscellaneous Tax Ruling MT 2000/1.<sup>2</sup>

### **Background**

#### *Consolidation valuations*

2. Where a consolidated group is formed all subsidiary members of the group are treated as parts of the head company rather than as separate entities for the purpose of determining the head company's income tax liability.<sup>3</sup> In effect, the tax attributes of the subsidiary members become that of the head company.<sup>4</sup> This also occurs when an entity joins a consolidated group.

3. Upon consolidation the market values of all assets held by subsidiary members will need to be determined where the transitional provisions of adopting existing tax costs have not been utilised. The key purposes of market valuations for consolidation are to enable the head company to determine the tax cost setting amounts for assets that joining entities bring

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<sup>1</sup> The terms in bold have the meanings given to them in section 995-1 of the *Income Tax Assessment Act 1997* (ITAA 1997).

<sup>2</sup> MT 2000/1 The New Tax System: the meaning of entity carrying on an enterprise for the purposes of entitlement to an Australian Business Number ('ABN').

<sup>3</sup> Section 701-1 of the ITAA 1997.

<sup>4</sup> Section 701-5 of the ITAA 1997.

into the group and to assist in calculating how much of a transferred loss can be utilised.<sup>5</sup> Although Part 3-90 of the *Income Tax Assessment Act 1997* (ITAA 1997) dealing with Consolidated groups applies only from 1 July 2002, entities may have obtained market valuations for the purposes of consolidation prior to this date.

### ***Creditable acquisitions***

4. Under the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act)<sup>6</sup> you are entitled to input tax credits for any creditable acquisition that you make.<sup>7</sup> One of the requirements for an acquisition to be a creditable acquisition<sup>8</sup> is that you acquire it solely or partly for a creditable purpose.<sup>9</sup> You acquire a thing for a creditable purpose to the extent that you acquire it in carrying on your enterprise.<sup>10</sup> However, you do not acquire a thing for a creditable purpose to the extent that the acquisition relates to making supplies that would be input taxed or the acquisition is of a private or domestic nature.<sup>11</sup>

### **Carrying on an enterprise**

5. Where a member of a corporate group is carrying on an enterprise, acquisitions made in obtaining valuations in order to consolidate under Part 3-90 of the ITAA 1997 can be creditable acquisitions to the extent that they are made in *carrying on* that enterprise. They can be creditable acquisitions even if they are made prior to the date from which Part 3-90 of the ITAA 1997 applies, that is, 1 July 2002.

6. It follows from the definition of enterprise in section 9-20 that acquiring something in carrying on an enterprise means acquiring something in carrying on an activity or series of activities in the form of a business or in the form of an adventure or concern in the nature of trade, or in carrying on one of the other activities in that section. 'Carrying on' an enterprise is not defined in the GST Act, other than by way of including doing anything in the course of the commencement or termination of the enterprise.<sup>12</sup>

7. The term 'in carrying on a business' has been judicially discussed in the context of general income tax deductions. A deduction from assessable income is allowed to the extent that an outgoing is necessarily incurred in carrying on a business for the purpose of gaining or producing assessable income.<sup>13</sup>

8. The income tax authorities suggest that the outgoing must have the essential character of a business expense (or income producing expense), determined by establishing a sufficient connection between the incurring of the expenditure and the scope of the

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<sup>5</sup> Sections 705-35 and 707-320 of the ITAA 1997.

<sup>6</sup> All section references are to the GST Act unless indicated otherwise.

<sup>7</sup> Section 11-20.

<sup>8</sup> Section 11-5 explains what is a creditable acquisition.

<sup>9</sup> Paragraph 11-5(a). The other requirements for an acquisition to be a creditable acquisition are specified in paragraphs 11-5(b) to (d). The meaning of creditable purpose is given in subsections 11-15(1) to (5).

<sup>10</sup> Subsection 11-15(1). See paragraphs 16 and 17 of this Determination for a discussion of apportionment.

<sup>11</sup> Subsection 11-15(2). See paragraph 17 of this Determination for a discussion of apportionment where the entity making the acquisition makes both taxable and input taxed supplies.

<sup>12</sup> Section 195-1.

<sup>13</sup> Section 8-1 of the ITAA 1997.

operations or activities of the business (or of the income producing activities where there is no business).<sup>14</sup>

9. In the GST context there must be a link between making the acquisition and the enterprise. That is, a link between the acquisition and the activities, or series of activities done in the form of a business, or in the form of an adventure or concern in the nature of trade, or in carrying on one of the other activities in section 9-20.

10. However, the scope of the operations or activities in carrying on an enterprise in the GST Act is not limited to activities for an income making purpose, in the way that the concept of carrying on a business is so limited in the income tax context by the words 'for the purpose of gaining or producing your assessable income.' Similarly, the GST Act does not limit the entitlement to input tax credits to acquisitions made for the purpose of making taxable supplies, as is the case in the equivalent provisions of other VAT jurisdictions.<sup>15</sup>

11. For these reasons, acquisitions made in carrying on an enterprise is clearly a wider concept than the scope of expenditure incurred in carrying on a business.

12. This is consistent with the Explanatory Memorandum to the A New Tax System (Goods and Services Tax) Bill 1998, which states at paragraph 3.25:

3.25 The creditable purpose test is broader than the test of deductibility for income tax in section 8-1 of the *Income Tax Assessment Act 1997*. For example, input tax credits may be available in relation to the acquisition of capital items whereas your capital purchases are not deductible for income tax. The acquisition of services for preparing your tax returns may satisfy the creditable purpose test, even though these are only deductible under a specific provision for income tax.

13. In the GST context, where the head company is carrying on an enterprise which includes the activities of fulfilling the income tax obligations of the consolidated group, acquisitions made in carrying on these activities are made in carrying on the head company's enterprise, even though the acquisitions are not directly for the purpose of gaining or producing income.

14. Similarly, where a subsidiary member is carrying on an enterprise, acquisitions by the subsidiary member in joining a consolidated group are made in carrying on the subsidiary member's enterprise.

15. This will also be the case for both a head company and a subsidiary member where either acquires the valuation for the purpose of entering into a consolidated group even though the consolidation does not go ahead.

### **Apportionment**

16. If the acquisition of the market valuation is only acquired partly for consolidation valuation purposes and partly for some other reason, the acquisition may be made in carrying on an enterprise only to the extent that it is made for the purposes of consolidation

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<sup>14</sup> *Ronpibon Tin N.L and Tongkah Compound N.L. v. FC of T* (1949) 78 C.L.R. 47, *Magna Alloys & Research Pty Ltd v. FC of T* 80 ATC 4542, 11 ATR 276.

<sup>15</sup> See for example the meaning of 'input tax' at section 3A(1) of the *Goods and Services Tax Act 1985* (New Zealand) and Article 4(2) of the Sixth Council Directive 77/388/EEC on the harmonisation of the laws of the Member States relating to turnover taxes, in relation to the EEC.

valuation. This will depend on what the other purpose for the acquisition is, and whether that other purpose also is in carrying on the enterprise. If it is not, the acquisition is only partly for a creditable purpose. A reasonable method of apportionment will be required in accordance with the principles in GSTR 2000/15.<sup>16</sup>

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

### **Date of Effect**

18. This Determination explains our view of the law as it applied from 1 July 2000. You can rely upon this Determination on and from its date of issue for the purposes of section 37 of the *Taxation Administration Act 1953*. Goods and Services Tax Ruling GSTR 1999/1 explains the GST rulings system and our view of when you can rely on our interpretation of the law in GST public and private rulings.

19. If this Determination conflicts with a previous private ruling that you have obtained, this public ruling prevails. However, if you have relied on a private ruling, you are protected in respect of what you have done up to the date of issue of this ruling. This means that if you have underpaid an amount of GST, you are not liable for the shortfall prior to the date of issue of this later ruling. Similarly, you are not liable to repay an amount overpaid by the Commissioner as a refund.

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<sup>16</sup> GSTR 2000/15 Goods and Services Tax: determining the extent of creditable purpose for claiming input tax credits and for making adjustments for changes in extent of creditable purpose.

<sup>17</sup> However certain financial supply acquisitions may be creditable acquisitions if they do not exceed the financial acquisitions threshold (subsection 11-15(4)) or if they are reduced credit acquisitions (Division 70).

<sup>18</sup> GSTR 2000/22 Goods and Services Tax: determining the extent of creditable purpose for providers of financial supplies.

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**Commissioner of Taxation**15 October 2003

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*Previous draft:*

Previously released as GSTD 2003/D1.

*Related Rulings/Determinations:*GSTR 2000/15; GSTR 2000/22; MT 2000/1;  
TD 2003/10; TD 2003/11*Subject references:*

- acquisitions
- creditable acquisitions

*Legislative references:*

- A New Tax System (Goods and Services Tax) Bill 1998
- A New Tax System (Goods and Services Tax) Act 1999
- ANTS(GST)A99 9-20
- ANTS(GST)A99 11-5
- ANTS(GST)A99 11-5(a)
- ANTS(GST)A99 11-5(b)
- ANTS(GST)A99 11-5(c)
- ANTS(GST)A99 11-5(d)
- ANTS(GST)A99 11-15
- ANTS(GST)A99 11-15(1)

- ANTS(GST)A99 11-15(2)
- ANTS(GST)A99 11-15(3)
- ANTS(GST)A99 11-15(4)
- ANTS(GST)A99 11-15(5)
- ANTS(GST)A99 11-20
- ANTS(GST)A99 129
- ANTS(GST)A99 195-1
- ITAA 1997 Part 3-90
- ITAA 1997 8-1
- ITAA 1997 701-1
- ITAA 1997 701-5
- ITAA 1997 705-35
- ITAA 1997 707-320
- ITAA 1997 995-1
- GSTA(NZ)85 3A(1)
- TAA 1953 37

*Case references:*

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

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