


***GSTD 2004/4 - Goods and services tax: can consideration for a supply be provided or received without transferring money (such as where the parties only make book entries recording their agreement that the supply is paid for)?***

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 This document has changed over time. This is a consolidated version of the ruling which was published on *31 October 2012*



## Goods and Services Tax Determination

Goods and services tax: can consideration for a supply be provided or received without transferring money (such as where the parties only make book entries recording their agreement that the supply is paid for)?

### **Preamble**

*This document was published prior to 1 July 2010 and was a public ruling for the purposes of former section 37 of the **Taxation Administration Act 1953** and former section 105-60 of Schedule 1 to the **Taxation Administration Act 1953**.*

*From 1 July 2010, this document is taken to be a public ruling under Division 358 of Schedule 1 to 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.*

**[Note:** *This is a consolidated version of this document. Refer to the Legal Database (<http://law.ato.gov.au>) to check its currency and to view the details of all changes.]*

1. Yes. In the absence of the transfer of money (or non-monetary consideration), consideration can be provided or received by way of setting off mutual liabilities in accordance with the doctrine of set-off.
2. A set-off can occur if each party has made a supply to the other and each party is required to pay the other for the supply made to it. A set-off can also occur, in certain circumstances, if one party makes a supply, such as rental premises or management services, to the other and the parties agree that payment is to be achieved by set-off. This Determination explains the circumstances in which this can occur, both generally and with particular reference to associated entities, and to parent entities and GST branches.<sup>1</sup>

<sup>1</sup> The terms 'parent entity' and 'GST branch' are defined in Division 54 of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act).

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3. In each of these cases, the consideration is provided or received on the date that the set-off legally occurs. If this time is known to only one of the entities, the consideration is provided and received by the other entity when it is informed of the date of the set-off, or when that information is first made available to it. In many cases, the date of the set-off is the date on which the set-off is recorded in the books of the entities. This is discussed further at paragraphs 17 to 24.

## Background

4. In this Determination, a 'book entry' is an entry recording the accounting information for a transaction, made in the 'books of account' of an entity. The 'books of account' of an entity are the journals, ledgers or other accounting records of the entity. Book entries are made in accordance with relevant laws and the accounting and professional standards required for accountants in Australia.

5. A liability can be discharged by means other than by transferring money or providing non-monetary consideration. It can be discharged by 'set-off'<sup>2</sup> – see paragraph 11.

6. If an entity makes a supply to an associated entity,<sup>3</sup> normal commercial invoicing and payment may not take place. Instead the entities may have an agreement that discharges the indebtedness arising from the supply without any transfer of money. The discharge of the indebtedness may be recorded solely by making book entries.

7. Similar circumstances may also arise if supplies are made between a parent entity and a GST branch.<sup>4</sup> This Determination applies to parent entities and GST branches in the same way as it applies to associates. In this Determination, a reference to associates or associated entities includes a reference to parent entities and GST branches within the meaning of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act).

8. Book entries are often made after the end of an accounting or tax period or after the end of a financial year, to reflect the true financial position of each entity at the end of the period or financial year. These types of book entries are also commonly referred to as 'balance day adjustments'.

9. Typically, the circumstances in which book entries are made between associated entities for the end of an accounting or tax period or for the end of a financial year are as follows:

- an entity has supplied goods or services to an associated entity throughout a period or financial year and no payments have been made for these supplies;
- after the end of the period or financial year, the value of the supplies and the corresponding acquisitions is calculated and book entries are made in the books of account of both entities to account for these supplies and acquisitions; and

<sup>2</sup> In *Re Harmony and Montague Tin and Copper Mining Co (Spargo's case)* (1873) LR 8 Ch App 407; *Whim Creek Consolidated NL v. FC of T* 77 ATC 4503; 8 ATR 154 and *FC of T v. Steeves Agnew & Co (Vic) Pty Ltd* (1951) 82 CLR 408.

<sup>3</sup> 'Associate' has the meaning given by section 318 of the *Income Tax Assessment Act 1936*: see section 195-1 of the GST Act.

<sup>4</sup> Under sections 54-40 and 54-45 of the GST Act the net amount of a parent entity and the additional net amount relating to a GST branch are worked out as if the branch were a separate entity. All transfers of anything between the parent entity and the branch are treated as if they were supplies or acquisitions made between the parent entity and the branch as a separate entity.

- the book entries record that the amounts payable to, or receivable from, each entity in the books of account of the two entities are discharged. They are typically made when the accounts are closed for reporting purposes or for the preparation of income tax returns. The same accounting personnel may make the entries for both entities. A tax invoice dated with the date the entries are made is usually issued at this time.

10. If the entities are not members of a registered GST group, there may be GST consequences for either or both entities. However, if they are members of a GST group supplies and acquisitions within the group are excluded from the GST. That is, supplies or acquisitions made between members of a GST group are treated as if they were not taxable supplies and not creditable acquisitions.<sup>5</sup>

### **Set-off**

11. For the doctrine of set-off to apply there have to be mutual liabilities of amounts presently payable between two parties.<sup>6</sup> If the liability of the first party to the second party is greater than that of the second to the first, the excess amount may be discharged by transferring money or providing non-monetary consideration. In addition, there must be a binding agreement between the parties to use the set-off method of payment of debts. The agreement must be to discharge the liabilities and may be express or implied. The agreement is the legal basis for discharging the liabilities between the parties.

12. Book entries that are made under such an arrangement are evidence of the carrying into effect of the agreement. The mere making of book entries cannot reflect a payment in the absence of such an agreement.<sup>7</sup> Book entries record transactions having legal consequences but do not themselves constitute transactions. A unilateral action by one of the parties, such as a mere entry in its books of account, does not change the liabilities between the parties.<sup>8</sup>

13. If mutual liabilities to pay for supplies are set off against each other, each of the supplies (some of which may be GST-free or input taxed) are separate supplies with separate consideration. It is the liabilities to pay for the supplies that are set off against each other; the supplies themselves are not set off. The GST Act does not allow the price for one supply to be reduced by the price of another in calculating each party's GST liability. The GST on each supply must be included in the calculation of the net amount by each supplier and each recipient may claim input tax credits for that tax to the extent allowed by the GST Act. Example 1 illustrates this principle.

14. The set-off of the liabilities, as evidenced by the relevant book entries in the entities' books of account, amounts to payment. It is the provision or receipt of consideration, for GST purposes, for each of the supplies. This is discussed further at paragraphs 17 to 24.

<sup>5</sup> Under sections 48-40 and 48-45 of the GST Act a supply or acquisition that an entity makes to or from another member of the same GST group is treated as if it were not a taxable supply or a creditable acquisition. However, these sections also set out some limited situations where this is not the case.

<sup>6</sup> *FC of T v. P Iori & Sons Pty Ltd* 87 ATC 4775; (1987) 19 ATR 201 and in *Lend Lease Corporation Ltd v. FC of T* 90 ATC 4401; (1990) 21 ATR 402.

<sup>7</sup> *Manzi and others v. Smith and Anor* (1975) 132 CLR 671; *Brookton Co-operative Society Ltd v. FC of T* (1981) 147 CLR 441; 11 ATR 880.

<sup>8</sup> *Temples Wholesale Flower Supplies Pty Ltd v. FC of T* 91 ATC 4387; 21 ATR 1606.

**GSTD 2004/4***Example 1 – set-off*

15. *A Ltd (A) and B Ltd (B) have been providing goods and services to each other. A has made taxable supplies to B that have a GST inclusive price of \$8,000 and B has made taxable supplies to A that have a GST inclusive price of \$12,000. A is liable to B for \$12,000 and B is liable to A for \$8,000. No invoices are issued. They both agree to set off their liabilities immediately to the extent of \$8,000, with A handing over a cheque for an additional amount of \$4,000. All of the things supplied are acquired for a creditable purpose.*

16. *On the same day, respective book entries are made for the set-off and the receipt and payment of the cheque. All of the amounts owing are considered to have been paid on that day.<sup>9</sup> A has a GST liability for the taxable supplies it has made of 1/11 of \$8,000 and an entitlement to an input tax credit for its creditable acquisitions of 1/11 of \$12,000. B has a GST liability of 1/11 of \$12,000 and an input tax credit entitlement of 1/11 of \$8,000. All of these amounts are attributable to the tax period that the payments are considered to have occurred.*

**Attribution of GST payable and input tax credits**

17. Under the rules in Division 29 of the GST Act for attributing the GST payable on a taxable supply and the entitlement to an input tax credit for a creditable acquisition, entities that account for GST on a cash basis are required to attribute to the extent that 'consideration' is received or provided for a taxable supply in a tax period. If attribution of GST payable and input tax credits is made on a non-cash basis, under subsections 29-5(1) and 29-10(1) of the GST Act, attribution is in the tax period that any of the consideration is received or provided for the supply or, if before any consideration is received or provided, an invoice is issued for the supply. However, the recipient cannot attribute an input tax credit unless it holds a tax invoice for the creditable acquisition at the time it gives a GST return to the Commissioner.<sup>10</sup>

18. In the case of a set-off, the consideration is provided or received on the date that the set-off legally occurs. If this time is known to only one of the entities, the consideration is provided and received by the other entity when it is informed of the date of the set-off, or when that information is first made available to it (for example, electronically) in accordance with a prior arrangement. In many cases, the date of the set-off would be the date on which the set-off is recorded in the books of the entities. But it is legally possible for the set-off to occur under the agreement between the parties before the parties make the relevant book entries. For example, if there is a written agreement providing for the set-off, it may determine that the set-off legally occurs immediately when both liabilities have been calculated regardless of when the parties make their book entries. Alternatively, there may be other documents or oral evidence as to when the parties agreed the set-off would occur. However, often the book entries will be the most important evidence.

19. This is the case even if the entries are recorded as having an earlier date of effect such as the end of an accounting or tax period or the end of a financial year. Unless there is evidence that the agreement to set off was made before the date the book entries were made, and that set-off legally occurred, it can be assumed that the agreement was made on the same day as the book entries were made.

<sup>9</sup> For attribution of cheque payments, see paragraph 24 of Goods and Services Tax Ruling GSTR 2003/12: *Goods and services tax: when consideration is provided and received for various payment instruments and other methods of payment.*

<sup>10</sup> Subsection 29-10(3) of the GST Act. However, this subsection does not apply if circumstances determined by the Commissioner in writing apply to you.

20. However, if entities have an agreement to set off mutual liabilities, there may be circumstances where the knowledge of the amounts set-off is temporarily peculiar to one entity until such time as the information is received by, or made available to, the other party. This may be due to the types of supplies being made, the terms of other agreements, invoicing practices and the accounting systems used and other such matters. For the entity that has the peculiar knowledge, the consideration is provided and received on the date that set-off legally occurs. For the other entity, consideration is provided and received on the date that it receives the information or, if the information is made available to it under a prior arrangement (for example, by being posted on a website), the date the information is made accessible to it.

*Example 2 – knowledge of set-off peculiar to one entity*

21. *A real estate agent may, under an agreement with a client landlord, offset the commissions it is owed from the rent due from commercial premises to the landlord and pay the remaining amount of rent to the landlord. It must do this on the last day of each calendar month. It then mails a statement of account together with a cheque to the landlord. Both parties have monthly tax periods.*

22. *The real estate agent attributes the GST payable on the amount of the commissions set off to the tax period in which the set-off legally occurs. The landlord attributes any relevant GST and input tax credits to the tax period in which it receives the statement of account (that is, the next tax period).*

23. For associated entities, book entries will normally be made on the same day, particularly if the same accounting personnel make these entries for both entities. A tax invoice dated with this date will also normally be prepared and issued at this time.

24. The onus is on each entity to establish when the set-off legally occurred, and then ensure that it attributes GST and input tax credits to the correct tax period. Identifying the correct tax period will depend on the entity's basis of accounting for GST, how the attribution rules explained in paragraph 17 apply and when the entity first became aware of the amounts set off.

**Line of credit/overdraft**

25. Some book entries that indicate either, or both, discharge of the obligation to pay and payment for a taxable supply may not appear to be a set-off, although a set-off has occurred.

26. Paragraph 77 of Goods and Services Tax Ruling GSTR 2003/12 gives one set of circumstances that the Tax Office accepts that book entries indicate the provision or receipt of consideration for GST purposes, even though superficially there is no obvious set-off. It states:

**Line of credit/overdraft**

77. Where a supply is made by a supplier who also provides a line of credit or overdraft facility (with interest accruing) to the recipient of the supply, and if the payment for the supply is reflected by an increase in the amount owing in relation to the debt facility, consideration is both provided and received at the time the increase in the debt is recorded in the accounts of the supplier. Whether the line of credit or overdraft is provided by the supplier or another person is immaterial.

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27. On closer examination there is a set-off in this situation. The supplier agrees that, instead of accepting payment directly from the recipient, the supplier will lend the required amount, or arrange for the required amount to be lent, to the recipient. Rather than go through the formality of then advancing those loan moneys to the recipient only to have the recipient immediately return the amount by way of payment for the supply, the parties simply set off the obligation to advance the loan moneys to the recipient against the recipient's obligation to pay for the supply. In this way the recipient's obligation to pay for the supply under a contract of sale is discharged and replaced with an obligation to repay the money lent (together with any interest that will accrue on the money lent) under the loan contract.

28. This is to be contrasted with a supply made on credit. Paragraph 78 of GSTR 2003/12 goes on to say that if a supply is made on credit (for example, 30 days to pay) consideration is provided when the actual payment is eventually made. In the absence of a line of credit or overdraft facility, the mere recording of an account receivable and account payable in the books of account is not the receipt of consideration for GST purposes. The recipient remains obliged to pay for the supply under the original supply contract. There is no set-off.

## ***Set-off and associated entities***

29. The requirement that interest accrue on the line of credit or overdraft facility ensures that the agreement to discharge the obligation to pay for the supply, and to reflect payment by making book entries, genuinely exists and is not merely an agreement to supply a thing on credit. However, to impose the requirement that interest accrue in the case of liabilities arising from supplies made between associated entities would not be commercially realistic. Associated entities frequently lend money to each other interest-free.

30. Accordingly, in cases if it is not otherwise clear that a set-off has occurred in accordance with the principles described above, the act of making book entries indicates the provision and receipt of consideration for GST purposes if:

- an entity (Entity A) has an obligation to provide consideration to another entity (Entity B) for a supply;
- entities A and B are associates of one another within the meaning of the GST Act;
- entities A and B have a binding agreement, whether express or implied, that, instead of Entity A making any payment (whether monetary or non-monetary) in respect of the obligation to Entity B, the entities will dispense with the obligation by making book entries in each entity's books of account;
- the agreement contemplates that, once the entries are made, the obligation to pay for the supply will no longer be recorded as an obligation in either entity's books of account and the statement of financial position of each entity at the end of the relevant financial year will reflect that the obligation has been replaced with an obligation to repay an equal amount lent to A (that is, the obligation to pay is not treated as forgiven or otherwise discharged for less than its original amount); and
- the book entries made in each entity's books of account reflect the carrying into effect of the agreement and correspond with each other.

The payment will be taken to have been provided and received on the date that the book entries are made, unless the agreement provides otherwise. This is so even if the book entries are recorded as having an earlier date of effect such as the end of an accounting or tax period or the end of a financial year.

*Example 3 – set-off and associated entities*

31. A Ltd (A) and B Ltd (B) are associated entities and have a management agreement. The management agreement is not an invoice for the purposes of the GST Act.<sup>11</sup> Under the agreement B provides management services to A in return for an annual management fee. The fee is based on the gross sales made by A during the year. A and B agree that B will lend the amount owing to A but will not go through the formality of advancing the loan moneys to A and being immediately repaid the same amount. Book entries will be made in the books of account of A and B when the fee is quantified after the end of their financial year.

32. B will credit its revenue account and debit A's loan account to B. A will credit its loan account to B and debit its expense account. These book entries indicate that payment has occurred and effectively amount to the provision and receipt of consideration for attribution purposes. In this way A's obligation to pay for the supply under the management agreement is discharged and replaced with an obligation to repay a loan.

33. A and B also agree that B will issue a tax invoice at the same time that the book entries discharging the debt are made. Book entries are made in the books of account of each entity on 23 September 2005 and a tax invoice is issued with this date.

34. For GST purposes, consideration for the supply of management services is provided by A and received by B on 23 September 2005. GST and input tax credits are attributable to the tax period in which 23 September 2005 falls for each entity.

**Date of effect**

35. This Determination applies [to tax periods commencing] both before and after its date of issue. However, this Determination will not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of this Determination (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10).

36. [Omitted.]

**Commissioner of Taxation**

1 December 2004

*Previous draft:*

GSTD 2004/D3

*Related Rulings/Determinations:*

TR 2006/10; GSTR 2000/34; GSTR 2003/12

*Subject references:*

- attribution

- consideration
- creditable acquisitions
- tax invoice
- taxable supply

*Legislative references:*

- ANTS(GST)A 1999 29-5(1)
- ANTS(GST)A 1999 29-10(1)
- ANTS(GST)A 1999 29-10(3)

<sup>11</sup> See paragraph 30 of Goods and Services Tax Ruling GSTR 2000/34: *Goods and services tax: what is an invoice for the purposes of the A New Tax System (Goods and Services Tax) Act 1999 ('GST Act')?*



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- ANTS(GST)A 1999 48-40
- ANTS(GST)A 1999 48-45
- ANTS(GST)A 1999 Div 54
- ANTS(GST)A 1999 54-40
- ANTS(GST)A 1999 54-45
- ANTS(GST)A 1999 195-1
- ITAA 1936 318
- TAA 1953 Sch 1 Div 358

*Case references:*

- Brookton Co-operative Society Ltd v. FC of T (1981) 147 CLR 441; (1981) 11 ATR 880
- FC of T v. P Iori & Sons Pty Ltd 87 ATC 4775; (1987) 19 ATR 201
- FC of T v. Steeves Agnew & Co (Vic) Pty Ltd (1951) 82 CLR 408
- Re Harmony and Montague Tin and Copper Mining Co (1873) 8 Ch App 407
- Lend Lease Corporation Ltd v. FC of T 90 ATC 4401; (1990) 21 ATR 402
- Manzi & Others v. Smith & Anor (1975) 132 CLR 671
- Temples Wholesale Flower Supplies Pty Ltd v. FC of T 91 ATC 4387; (1991) 21 ATR 1606
- Whim Creek Consolidated NL v. FC of T 77 ATC 4503; (1977) 8 ATR 154

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