GSTD 2005/4 - Goods and services tax: are 'wholesale holdback' and 'retail holdback' payments made by a motor vehicle manufacturer or importer of new motor vehicles to a dealer consideration for a supply?

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Note: Some provisions ruled on in this ruling may have been amended. As a result, you may no longer be
http://ato.gov.au/General/Rulings-and-ATO-view/In-detail/Public-rulings--overview/Changes-to-GST-public-r
to check how this ruling is likely to be affected by the change in the law. (Note added on the 16 July 2010)

This document has changed over time. This is a consolidated version of the ruling which was published o

Goods and Services Tax Determination

Goods and services tax: are 'wholesale holdback' and 'retail holdback' payments made by a motor vehicle manufacturer or importer of new motor vehicles to a dealer consideration for a supply?

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. No. 'Wholesale holdback' and 'retail holdback' payments made by a motor vehicle manufacturer or importer of new motor vehicles to a dealer that are made under an arrangement that does not form part of a dealership agreement are not consideration for a supply under the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act). There are no supplies made by the dealer in relation to the payments. This means that GST is not payable nor is there an entitlement to input tax credits in relation to the payments.

Background

2. Dealers in new motor vehicles commonly use floor plan arrangements to finance their trading stock. In a typical floor plan arrangement, title to the vehicles passes from the manufacturer or importer to a finance company and the dealer is granted physical possession of the vehicle. This allows the dealer to offer the vehicles for sale without having to purchase them before securing a customer. When the dealer finds a customer for a vehicle, that vehicle is supplied by the finance company to the dealer immediately before the dealer supplies it to the customer.

3. The dealer and the manufacturer or importer usually have a dealership agreement that sets out the obligations of the manufacturer or importer and dealer.

4. Manufacturers and importers of motor vehicles commonly make payments to their dealers known as 'holdback' payments. The information provided to us by the motor vehicle industry in relation to their arrangements with dealers regarding new vehicles indicates that the 'holdback' payment arrangement is not reduced to writing and does not form part of the dealership agreement. Therefore, this Determination applies to 'holdback' arrangements that do not form a part of the dealership agreement between the dealer and the manufacturer or importer.

5. This Determination also applies only to holdback payments made in relation to new motor vehicles supplied under a floor plan arrangement. When we refer to the supply of motor vehicles between manufacturers, importers, finance companies and dealers we are referring to the supply of new cars and trucks between these entities.

6. The two common types of 'holdback' payment are 'wholesale holdback' and 'retail holdback'. A 'wholesale holdback' is credited by a manufacturer or importer to a dealer when the manufacturer or importer invoices a specific motor vehicle to the finance company. A 'retail holdback' is credited by a manufacturer or importer to a dealer after the dealer has reported a retail sale to the manufacturer or importer.

7. The manufacturer or importer credits the holdback payment to the dealer's account. The manufacturer or importer makes a corresponding payment, at a later time, to the dealer or offsets it against debts owed by the dealer to the manufacturer or importer (for example, the outstanding balance of the dealer's parts account).

8. Holdback payments can vary from one manufacturer or importer to another. For example:

- payments can be made to the dealer at different but regular intervals, such as 1, 3 or 6 months;
- the holdback rates can vary as they are 'model' and 'retail sale type' specific. That is, the applicable holdback rate is determined, firstly, by the model of the vehicle and, secondly, by the retail sale type (for example, normal retail sale or government sale) and can change over time; and
- the wholesale holdback and the retail holdback in respect of the one vehicle may be paid to different dealers. Dealers make arrangements for swapping vehicles between themselves and selling vehicles to each other.

No adjustment event

9. Paragraph 42B of Goods and Services Tax Ruling GSTR 2000/19[1] is about making adjustments under Division 19 of the GST Act for adjustment events. In this context the Ruling discusses payments to parties other than end users and states:

> 42B. An entity (such as a manufacturer) may also make a payment to a third party entity that is neither an end user of its products nor a direct recipient of its supply. Provided such a payment is made directly by the manufacturer to that third party entity and does not involve any other entity, it does not give rise to an adjustment event. Whether the payment is consideration for a separate supply made by the third party entity to the manufacturer will depend on the surrounding facts and circumstances of the case.

10. The payment described in paragraph 42B of GSTR 2000/19 (made directly by a manufacturer to the dealer) does not give rise to an adjustment event because it does not have the effect of changing the consideration for the supply either from the manufacturer to the finance company, or from the dealer to an end user.

[1] GSTR 2000/19 Goods and services tax: making adjustments under Division 19 for adjustment events (as amended).

11. Wholesale and retail holdback payments are similar to payments described in paragraph 42B of GSTR 2000/19 in that payments are made directly by a motor vehicle manufacturer or importer to a dealer although the manufacturer or importer has supplied the vehicle to a finance company, not to the dealer. A wholesale holdback payment does not change the consideration for the supply by the manufacturer to the finance company. A retail holdback payment does not change the consideration for the supply by the dealer to the end user. Neither payment gives rise to an adjustment event.

No supply for consideration

12. Paragraph 42B of GSTR 2000/19 also explains that whether the payment is consideration for a separate supply[2] made to the manufacturer will depend on the surrounding facts and circumstances of the case. Further, not all flows of money are consideration for a supply. This is discussed in Goods and Services Tax Ruling GSTR 2000/11[3] in relation to grants of financial assistance by government. That Ruling discusses when a payment of financial assistance by governments will be consideration for a supply. While that Ruling relates to government, the principles relating to the circumstances in which there will be a supply for which the payment of money is consideration apply more broadly.

13. For example, that Ruling discusses[4] the New Zealand case of *C of IR v. New Zealand Refining Co. Ltd*[5] (*New Zealand Refining*) concerning certain payments made by the New Zealand government to New Zealand Refining Co Ltd that were only to be made on condition that the refinery remained operational. The New Zealand Court of Appeal found that the expectation that the refinery remain operational was not enough to mean that there was a supply by New Zealand Refining Co Ltd to the New Zealand government. There was no contractual requirement to the effect that the refinery remain operational.[6] There was no binding obligation on the part of New Zealand Refining Co Ltd. As noted in GSTR 2000/11:[7]

> The only recourse the government had was to cease making payments once the condition failed to be met. The payments were directed to maintaining the structural framework within which supplies of services were expected to be made. The purpose that the refinery remain operational was distinct from any supply of services to be made. Thus, on the particular facts of this case the requisite link between a supply of particular services and consideration was not established.[8]

14. In relation to holdbacks, the payments by the manufacturer or importer are made to maintain the dealer's profit margin on the sale of a vehicle so that they remain a viable business.[9] The payments are made to maintain the existence of the dealers through which the manufacturer or importer's vehicles are sold. Maintaining the dealer network is analogous to maintaining the operational structure in *New Zealand Refining*. Within this operational structure through which the dealer operates there may be other supplies made by the dealer to the manufacturer or importer in relation to the performance of their dealer services.

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[2] Consideration is defined in section 195-1 and section 9-15, supply is defined in section 9-10 of the GST Act.
[3] GSTR 2000/11 Goods and services tax: grants of financial assistance.
[4] Relevantly, at paragraphs 35 to 36 and 74 to 75.
[5] (1997) 18 NZTC 13187.
[6] (1997) 18 NZTC 13187 per Blanchard J, at 13192.
[7] At paragraph 75.
[8] (1997) 18 NZTC 13187, at 13193 – 13194 per Blanchard J.
[9] See the following websites: www.edmunds.com; www.autonetdirect.com; www.wheelsdirect2u.com.

15. However, the dealer supplies no goods or services to the manufacturer in return for the wholesale and retail holdback payments, nor does the dealer come under any obligation in return for the payments. As the dealer does not make a supply in relation to the payments, the holdback payments are not consideration for a supply. Further, being payments of money, they are not supplies in themselves.[10]

16. GST is payable on taxable supplies. Because there is no supply, there is no taxable supply, and no GST is payable in relation to the payment. Input tax credits are only available if there has been GST payable. As there is no GST payable in relation to the payment, there is no entitlement to input tax credits.

Examples

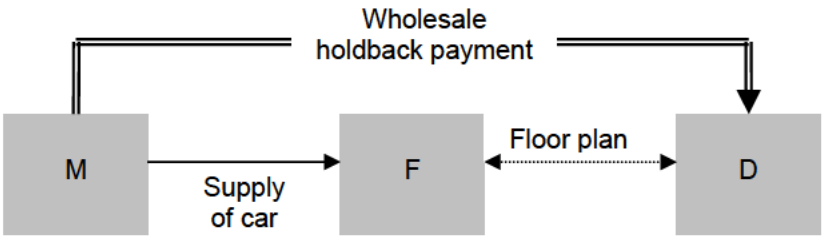
17. The diagrams in Examples 1 and 2 show that the dealer makes no supplies to the manufacturer or importer, and has come under no obligation to the manufacturer or importer, in return for the holdback payments received directly from the manufacturer or importer. The Examples apply in the same way if an importer, instead of a manufacturer, makes wholesale and retail holdback payments in the same circumstances.

Example 1 – Wholesale holdback payment

18. *A manufacturer, M, supplies motor vehicles to a finance company, F, which obtains title to the vehicles. F has a floor plan arrangement with a dealer, D, that covers the vehicles it acquires from M. The arrangement allows D to display and sell the vehicles to its customers. A wholesale holdback will be credited to D's account by M when M invoices F for a particular vehicle.*

19. *D orders a vehicle from M on behalf of F. M supplies the vehicle to F and invoices F. Title in the vehicle passes from M to F and D obtains physical possession of the vehicle.*

20. *A wholesale holdback payment is credited to D's account by M because M has invoiced a specific motor vehicle to F. The arrangement looks like this:*



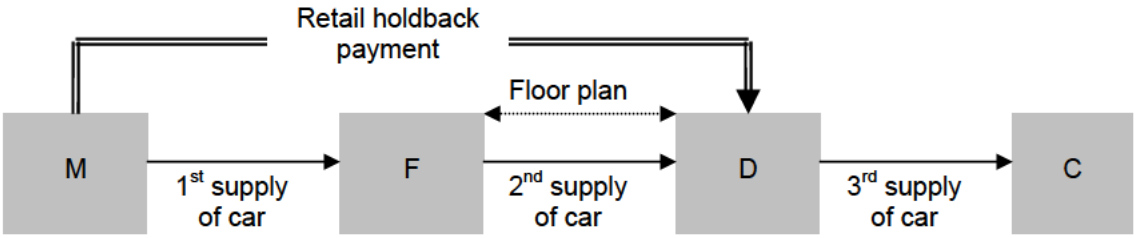
21. *D does not make a supply in relation to the payment as it has supplied no goods or services to M and has come under no obligation to M in return for the wholesale holdback payment.*

[10] Subsection 9-10(4) of the GST Act.

Example 2 – Retail holdback payment

22. *Following on with Example 1, when D finds a customer, C, F supplies the vehicle to D. D then supplies the vehicle to C and reports this supply to M.*

23. *The supply chain for the vehicle now includes the additional steps from F to D and from D to C:*



24. *M makes a retail holdback payment to D because D has reported to M its retail supply to C.*

25. *D does not make a supply in relation to the payment as it has supplied no goods or services to M and has come under no obligation to M in return for the wholesale holdback payment.*

Date of Effect

26. 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.

27. 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 public 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.

Commissioner of Taxation
29 June 2005

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

GSTR 1999/1; GSTR 2000/19;
GSTR 2000/11

Subject references:

- adjustment
- consideration
- holdback payment
- input tax credits
- retail holdback
- supply
- wholesale holdback

Legislative references:

- ANTS(GST)A 1999 9-10
- ANTS(GST)A 1999 9-10(4)
- ANTS(GST)A 1999 9-15
- ANTS(GST)A 1999 Div 19
- ANTS(GST)A 1999 195-1
- TAA 1953 37

Case references

- C of IR v. New Zealand Refining Co. Ltd (1997) 18 NZTC 13187

Other references

- Edmunds.com, http://www.edmunds.com
- AutoNet Direct, http://www.autonetdirect.com
- Wheels Direct 2 U, http://www.wheelsdirect2u.com

ATO references

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