

GSTD 2008/1 - Goods and services tax: for taxable supplies or creditable acquisitions made by a member entity of a GST group, is the representative member of the GST group liable to pay GST and entitled to input tax credits if the GST or input tax credits are attributable to a tax period other than when the entity is a member of the GST group?

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⚠ Note: Some provisions ruled on in this ruling may have been amended. As a result, you may no longer be able to rely on this ruling. For more information, see <http://ato.gov.au/General/Rulings-and-ATO-view/In-detail/Public-rulings--overview/Changes-to-GST-public-rulings> to check how this ruling is likely to be affected by the change in the law. (Note added on the 16 July 2010) (1)

⚠ This document has changed over time. This is a consolidated version of the ruling which was published on 16 July 2010.



Goods and Services Tax Determination

Goods and services tax: for taxable supplies or creditable acquisitions made by a member entity of a GST group, is the representative member of the GST group liable to pay GST and entitled to input tax credits if the GST or input tax credits are attributable to a tax period other than when the entity is a member of the GST group?

Preamble

This document is a ruling for the purposes of section 105-60 of Schedule 1 to 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, the member entity, rather than the representative member of the GST group, is liable to pay GST and is entitled to input tax credits because the GST and input tax credits are attributable to a tax period in which the entity is not a member entity of the GST group.
2. A representative member of a GST group is liable to pay GST and is entitled to input tax credits to the extent that the GST or input tax credits are attributable to a tax period in which the entity that made the taxable supply or creditable acquisition is a member entity of the GST group.
3. The tax period in which the member entity made the taxable supply or creditable acquisition is not relevant in determining which entity accounts for GST or input tax credits. Rather, the tax period to which GST on the supply or input tax credits on the acquisition is attributable is relevant.
4. This Determination explains who is liable to pay GST or entitled to input tax credits for transactions between GST group members and entities outside the group. It does not discuss supplies or acquisitions made between group members.

Explanation

5. Division 48 of the *A New Tax System (Goods and Services Tax) Act 1999* (the GST Act)¹ sets out the rules for GST groups. Two or more entities can apply to the Commissioner for approval to form a GST group.² Each entity must satisfy certain membership requirements.³ The approval to form or join (or leave or dissolve) a GST group takes effect from the beginning of a tax period applying to the members of the group.⁴

6. A GST group is effectively treated as a single entity for GST purposes. One of the member entities of the GST group is nominated as the representative member⁵ for the GST group. The representative member is liable to pay GST on taxable supplies made by member entities to entities outside the group; and is entitled to input tax credits on creditable acquisitions made by member entities from entities outside the group.

How to account for GST and input tax credits on supplies to and acquisitions from entities outside the group

7. An entity must pay the GST payable on any taxable supply that it makes.⁶ Also an entity is entitled to an input tax credit for any creditable acquisition that it makes.⁷ However, special rules apply in relation to GST groups.

8. Under subsection 48-40(1) the GST payable on any taxable supplies that a member of a GST group makes is payable by the representative member, not the member that made the supplies. Similarly, under subsection 48-45(1) the representative member is entitled to the input tax credit on creditable acquisitions that a member of a GST group makes, not the member making the acquisition. These subsections make the representative member responsible for the GST consequences of supplies and acquisitions made by members of a GST group.

9. The attribution rules set out in Division 29 establish the time when GST or input tax credits must be accounted for.⁸ The representative member accounts for the GST payable on a taxable supply or the input tax credit for a creditable acquisition made by a member of the group in accordance with these rules.

10. Subsection 48-40(1) means that the GST on a taxable supply made by a member entity of a GST group to an entity outside of the GST group is payable by the representative member to the extent that the GST is attributable to a tax period when the member entity is a member of the GST group.

¹ All subsequent legislative references are to the GST Act unless otherwise indicated.

² Section 48-5.

³ Sections 48-5 and 48-10.

⁴ Subsection 48-85(3).

⁵ Representative member is defined in section 195-1.

⁶ Section 9-40.

⁷ Section 11-20.

⁸ If you account for GST on a cash basis you attribute GST on a taxable supply to the tax period in which you receive consideration for the supply, but only to the extent of the consideration received in the tax period. The input tax credit to which you are entitled for a creditable acquisition is attributable to the tax period in which you provide consideration for the acquisition but only to the extent that you provide the consideration in that tax period. If you do not account for GST on a cash basis you attribute all the GST payable on a taxable supply to the earlier of the tax period in which any of the consideration for the supply is received or an invoice for the supply is issued. You attribute all the input tax credit for a creditable acquisition to the earlier of the tax period in which you provide any of the consideration or an invoice is issued for the acquisition.

11. Similarly, under subsection 48-45(1) the representative member is entitled to input tax credits for any creditable acquisitions made by a member of the GST group from an entity outside of the GST group to the extent that the creditable acquisition is attributable to a tax period when the member entity is a member of the GST group.

12. This approach means that the time that the member entity makes the supply or acquisition (either before joining the group, while a member of the group or after leaving the group) is not relevant in determining how much GST or input tax credit is accounted for by the representative member. The relevant factor is the tax period to which the GST or input tax credits are attributable, not the time of making the supply or acquisition.

13. We consider that this approach to the interpretation of subsections 48-40(1) and 48-45(1) is consistent with the purpose of those provisions. The intention as explained in the Explanatory Memorandum (EM) that accompanied the Bill⁹ that inserted the GST grouping provisions is that '[o]ne company (the representative member) of the GST group becomes responsible for paying all the GST and is entitled to all the input tax credits that members of the GST group have that relate to supplies and acquisitions made outside the GST group. The representative member makes the return on behalf of the members of the group'.

Alternative view

14. An alternative view is that subsections 48-40(1) and 48-45(1) apply only to supplies or acquisitions made while the entity is a member of the group. On that view the representative member only accounts for GST or input tax credits in respect of those supplies or acquisitions. However, this approach would defeat the intention that one entity, the representative member, account for all the GST and input tax credits of group members and a single return be lodged on behalf of group members.

15. For example, if supplies or acquisitions are made before joining the group but consideration is first received or provided in a tax period while a member of the group, then under the alternative view the supplier or recipient would have to continue to account for the GST and input tax credits attributable to that tax period.¹⁰ This outcome is inconsistent with the underlying rationale of the GST grouping provisions, which is to allow a single representative entity to account for all GST and input tax credits for members' supplies and acquisitions while those entities are members of the same group.

16. Our approach in applying subsections 48-40(1) and 48-45(1) is supported by the EM that accompanied the Bill¹¹ that introduced the GST grouping provisions. In paragraphs 6.22 and 6.23 it is explained that:

- when an entity joins a GST group, an entity ceases to be responsible for accounting for its own taxable supplies and creditable acquisitions (and adjustments), unless the entity is the representative member. If the entity makes a taxable supply before it is a member of a GST group, and only part of the GST on the taxable supply is attributable to a tax period before the entity joined the group, the representative member accounts for the remainder; and

⁹ A New Tax System (Goods and Services Tax) Bill 1998.

¹⁰ If you do not account on a cash basis, the date of issue of an invoice is also relevant.

¹¹ A New Tax System (Goods and Services Tax) Bill 1998.

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- when an entity leaves a GST group that entity becomes responsible for accounting for its own taxable supplies and creditable acquisitions (and adjustments). If the entity makes a taxable supply while it was a member of a group, and only part of the GST on the taxable supply was attributed to a tax period before the entity left the group, the entity accounts for the rest of the GST.

17. Further support for the approach in this Determination is found in the grouping provisions themselves.

18. For example, section 48-60 provides that an entity, which is a member of a GST group for a whole tax period, is not required to lodge a GST return for that tax period. Rather, the representative member is required to lodge a return on behalf of all member entities of that group for that tax period. It would be inconsistent with the application of section 48-60 to require an entity to lodge a separate GST return to account in its own right for GST or input tax credits that are attributable to a tax period when that entity is a member of a GST group.¹²

19. Another example is provided by section 48-50. That section provides that any adjustment that a member entity has is to be accounted for by the representative member. That adjustment may be in respect of a supply or acquisition that a member entity made before joining the group. Under the alternative view this could mean that both the member entity and the representative member need to lodge GST returns. Any GST or input tax credits attributable to a tax period when the entity is a member of the GST group would continue to be accounted for by that entity. Any adjustment in respect of those supplies or acquisitions attributable to the same tax period would be accounted for by the representative member. This is clearly inconsistent with section 48-60 and the policy intention to have a single entity account for all GST and input tax credits for members' supplies and acquisitions while those entities are members of the group.

20. The operation of section 48-110 is also consistent with the approach in this Determination. That section provides that when a member entity leaves a GST group and an adjustment arises afterwards in relation to a supply or acquisition made while a member of the GST group, the entity that has left the group is responsible for accounting for that adjustment, not the representative member. To the extent that GST or an input tax credit is also attributable to a tax period subsequent to the member entity leaving the group, the alternative view would require the representative member to account for the GST or input tax credit and the member entity to account for any adjustment. Under the approach in this Determination the member entity would account for both the adjustment and any GST or input tax credit.

In summary

21. If an entity makes a taxable supply or creditable acquisition in a tax period in which that entity is a member of a GST group, but the GST payable or input tax credits are attributable, either wholly or in part, to a tax period when the entity is not a GST group member, the representative member accounts for any GST or input tax credits that are attributable to the tax period when the entity is a member of the group. The member entity accounts for the GST or input tax credits that are attributable to the tax period when the entity is not a GST group member.

¹² Section 31-20 provides that additional returns may be required in addition to the GST returns required under section 31-5. However in this case the member entity is not required to give the Commissioner a GST return under section 31-5.

22. If an entity makes a taxable supply or creditable acquisition in a tax period in which the entity is not a member of a GST group, but the GST payable or input tax credits are attributable, either wholly or in part, to a tax period when the entity is a GST group member, the representative member is responsible for paying any GST, or is entitled to any input tax credits, that are attributable to a tax period in which the entity is a GST group member. The member entity accounts for the GST or input tax credits that are attributable to the tax period when the entity is not a GST group member.

Examples

Example 1: an entity makes a taxable supply prior to joining a GST group – the GST payable is attributable to a tax period when that entity is a GST group member

23. *Perfect Pencils Pty Ltd (Perfect), a registered stationery supplier, which accounts on a non-cash basis and applies monthly tax periods, made a taxable supply of stationery to King Newsagency on 15 August.*

24. *On 31 August, Perfect applied to form a GST group with Royal Rulers Pty Ltd (Royal), which also accounts on a non-cash basis and applies monthly tax periods. Perfect and Royal meet the other membership requirements to form a GST group for the tax period commencing 1 September. Royal is the representative member of the GST group.*

25. *On 4 September, Perfect issued an invoice to King Newsagency for the stationery supply and received no payments as consideration prior to this date.*

26. *The GST payable is attributable to the tax period commencing 1 September. The representative member of the GST group, Royal, is liable to pay the GST.*

Example 2: an entity makes a creditable acquisition as a GST group member – the input tax credits are attributable in part to a tax period commencing after the entity leaves the GST group

27. *Sci-Fi Books (Sci-Fi), a GST registered bookshop, is a member of a GST Group, which includes Telescope Pty Ltd and Star Pty Ltd. The GST group accounts on a cash basis and applies quarterly tax periods. Telescope is the representative member of the GST group.*

28. *On 25 June, Sci-Fi made a creditable acquisition of a shipment of children's novels from Spooky Stories, an entity outside of the GST group. The payments for that acquisition are to be made once a month for six months, commencing on 25 June.*

29. *Sci-Fi ceased to be a member of the GST Group for the tax period commencing 1 October.*

30. *The input tax credits available for the first four payments are attributable to tax periods in which Sci-Fi was a member of the GST group, and are claimed by Telescope as the representative member. The remaining input tax credits in respect of the last two payments are attributable to tax periods in which Sci-Fi is not a member of the GST group, and Sci-Fi is entitled to make the claim.*

Date of effect

31. This Determination explains the Commissioner's view of the law as it applies both before and after its date of issue. You can rely upon this Determination on and from its date of issue for the purposes of section 105-60 of Schedule 1 to 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.

32. If this Determination conflicts with a previous private ruling that you have obtained or a previous public ruling, this public ruling prevails. However, if you have relied on a previous ruling, you are protected in respect of what you have done up to the date of issue of this public ruling or, if there is a change to the legislation, you are protected in respect of what you have done up to the date the legislative change takes effect. This means that if you have relied on the earlier ruling and have underpaid an amount of GST, you are not liable for the shortfall prior to either the issue date of this Ruling or the date the legislative change takes effect, as appropriate. Similarly, if you have relied on the earlier ruling you are not liable to repay an amount overpaid by the Commissioner as a refund.

Commissioner of Taxation

28 May 2008

Previous draft:
GSTD 2007/D4

Related Rulings/Determinations:
GSTR 1999/1

Subject references:
GST groups
GST supplies & acquisitions
Taxable supply
Creditable acquisition

Legislative references:

- ANTS(GST)A 1999 9-40
- ANTS(GST)A 1999 11-20
- ANTS(GST)A 1999 Div 29
- ANTS(GST)A 1999 31-20

- ANTS(GST)A 1999 31-5
- ANTS(GST)A 1999 Div 48
- ANTS(GST)A 1999 48-10
- ANTS(GST)A 1999 48-40(1)
- ANTS(GST)A 1999 48-45(1)
- ANTS(GST)A 1999 48-5
- ANTS(GST)A 1999 48-50
- ANTS(GST)A 1999 48-60
- ANTS(GST)A 1999 48-85(3)
- ANTS(GST)A 1999 48-110
- ANTS(GST)A 1999 195-1
- TAA 1953 Sch 1 105-60

Other references:

- Explanatory Memorandum to the A New Tax System (Goods and Services Tax) Bill 1998

ATO references

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