

GSTD 2016/1 - Goods and services tax: can an employer claim an input tax credit under Division 11 of the A New Tax System (Goods and Services) Tax Act 1999 for an expense paid on behalf of a superannuation fund that makes an acquisition?

⚠ This cover sheet is provided for information only. It does not form part of *GSTD 2016/1 - Goods and services tax: can an employer claim an input tax credit under Division 11 of the A New Tax System (Goods and Services) Tax Act 1999 for an expense paid on behalf of a superannuation fund that makes an acquisition?*

⚠ This Ruling contains references to provisions of the *A New Tax System (Goods and Services Tax) Regulations 1999*, which have been replaced by the *A New Tax System (Goods and Services Tax) Regulations 2019*. This Ruling continues to have effect in relation to the remade Regulations.


Paragraph 32 of [TR 2006/10](#) provides further guidance on the status and binding effect of public rulings where the law has been repealed and rewritten.

A [comparison table](#) which provides the replacement provisions in the *A New Tax System (Goods and Services Tax) Regulations 2019* for regulations which are referenced in this Ruling is available.



Goods and Services Tax Determination

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ⓘ This publication provides you with the following level of protection:

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.

Ruling

1. No. In these circumstances, the supply is not made to the employer; it is made to the superannuation fund. The employer is not entitled to an input tax credit if the employer pays an expense on behalf of a superannuation fund because the employer has not

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acquired anything for the payment and cannot satisfy the requirements in section 11-5 of the *A New Tax System (Goods and Services) Tax Act 1999* (GST Act)¹ for making a creditable acquisition. However, the superannuation fund may be entitled to claim a reduced input tax credit if the requirements in Division 70 are otherwise satisfied.

Example

2. *Lazy Days Pty Ltd is the employer sponsor of the Lazy Days Superannuation Fund. Lazy Days Pty Ltd is registered for GST and employs 15 staff. The Lazy Days Superannuation Fund is registered for GST purposes.*

3. *The Lazy Days Superannuation Fund engaged a legal firm to provide advice about its activities. Lazy Days Pty Ltd pays the legal fees associated with this advice.*

4. *Lazy Days Pty Ltd is not entitled to an input tax credit as a result of paying for the advice provided to the Lazy Days Superannuation Fund. This is because the supply of the advice was made by the legal firm to the Lazy Days Superannuation Fund which, is a separate entity from Lazy Days Pty Ltd. Lazy Days Pty Ltd has not acquired anything for the payment and therefore has not satisfied the requirements in section 11-5 for making a creditable acquisition.*

5. *The Lazy Days Superannuation Fund may be entitled to a reduced input tax credit in relation to the payment if the requirements in Division 70 are otherwise satisfied.*

Date of effect

6. This Determination applies both on 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).

Commissioner of Taxation

27 January 2016

¹ All legislative references in this Determination are to the GST Act unless otherwise indicated.

Appendix 1 – Explanation

1 *This Appendix is provided as information to help you understand how the Commissioner's view has been reached. It does not form part of the binding public ruling.*

7. Sometimes employers may pay expenses on behalf of superannuation funds for administrative convenience.² This is reflected in the accounts of the employer by re-classifying the expense payment as a superannuation contribution. In the accounts of the superannuation fund, entries are made to recognise the making of the contribution and payment of the expense.³

8. If the requirements of Division 11 are met, input tax credits are available to a registered entity for their creditable acquisitions.

9. An entity makes a creditable acquisition if they acquire anything solely or partly for a creditable purpose.⁴ An entity acquires a thing for a creditable purpose to the extent that they acquire it in carrying on their enterprise.⁵

10. A superannuation fund is a separate entity carrying on a separate enterprise to that of the employer.⁶ Where the employer pays for an expense that the superannuation fund is liable for, the employer is not entitled to an input tax credit. This is because, although the employer is providing consideration for the supply, the employer has not acquired anything. The entity that made the acquisition in this case is the superannuation fund. The employer has not made a creditable acquisition in accordance with the requirement in paragraph 11-5(a) and consequently, will not be entitled to an input tax credit.

11. The supply of an interest in or under a regulated superannuation fund is an input taxed supply under section 40-5.⁷ Where an entity makes an acquisition in the course of an enterprise of supplying interests in a regulated superannuation fund, to the extent its acquisitions relate to making input taxed supplies, they are not for a creditable purpose. The entity is not entitled to input tax credits for those acquisitions.

12. Superannuation funds can, however, claim reduced input tax credits under Division 70 for certain acquisitions such as in relation to administration expenses.⁸

13. In the circumstances explained in this Determination, if:

- the superannuation fund is liable to pay the expense that the employer ultimately pays, and
- the requirements in Division 70 are satisfied,

the superannuation fund will be able to claim reduced input tax credits.

² While it is acknowledged that this practice occurs, a clearer approach is for all superannuation fund expenses to be paid directly out of the fund itself and for the superannuation contributions to be made directly to the fund.

³ See paragraph 172 of Taxation Ruling TR 2010/1 *Income tax: superannuation contributions*.

⁴ See paragraph 11-5(a).

⁵ See subsection 11-15(1).

⁶ See paragraph 9-20(1)(da). Activities done by the trustee or person managing a complying superannuation fund are an enterprise. Activities done by a non-complying superannuation fund would need to meet one of the other criteria in subsection 9-20(1).

⁷ Item 4 in the table in subregulation 40-5.09(3) of the *A New Tax System (Goods and Services Tax) Regulation 1999* (GST Regulations) states that the provision, acquisition or disposal of an interest in a regulated superannuation fund is a financial supply. A financial supply is input taxed.

⁸ Item 24 in the table in subregulation 70-5.02(2) of the GST Regulations states that the acquisition of certain administrative functions in relation to superannuation funds are a reduced credit acquisition. See also Goods and Services Tax Ruling GSTR 2004/1 which provides guidance on which acquisitions are reduced credit acquisitions that entitle an entity to a reduced input tax credit under Division 70.

References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

GSTR 2004/1; TR 2006/10; TR 2010/1

Previous Rulings/Determinations:

MT 2005/1; GSTA TPP 003

Legislative references:

- ANTS(GST)A 1999
- ANTS(GST)A 1999 9-20(1)

- ANTS(GST)A 1999 9-20(1)(da)
- ANTS(GST)A 1999 Div 11
- ANTS(GST)A 1999 11-5
- ANTS(GST)A 1999 11-5(a)
- ANTS(GST)A 1999 11-15(1)
- ANTS(GST)A 1999 40-5
- ANTS(GST)A 1999 Div 70
- ANTS(GST)R 1999
- ANTS(GST)R 1999 40-5.09(3)
- ANTS(GST)R 1999 70-5.02(2)
- TAA 1953

ATO references

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