

GSTR 2001/3A2 - Addendum - Goods and services tax: GST and how it applies to supplies of fringe benefits

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Addendum

Goods and Services Tax Ruling

Goods and services tax: GST and how it applies to supplies of fringe benefits

This Addendum amends Goods and Services Tax Ruling GSTR 2001/3 to explain the interaction of Division 131 of the *A New Tax System (Goods and Services Tax) Act 1999* (the GST Act) (Annual apportionment of creditable purpose) with the special rules in Divisions 69, 71, and 111 which are explained in GSTR 2001/3. Division 131 was inserted into the GST Act by *Tax Laws Amendment (Small Business Measures) Act 2004* and applies, in relation to net amounts, for tax periods starting on or after 1 October 2004 for entities with quarterly tax periods, and 1 November 2004 for all other entities.

This Addendum also amends GSTR 2001/3 to:

- make technical corrections to Example 14 paragraph 77, and paragraph 109;
- update references to GST Rulings that have since been withdrawn and reissued; and
- update and correct the Related Rulings/Determinations section.

This Addendum applies on and from 13 December 2004 (the date of commencement of Division 131) except for:

- the amendment at item 5(b) of this Addendum, which applies on and from 1 July 2000;
- the amendment at item 8(a) of this Addendum, which applies on and from 21 December 2000;
- the amendments made by items 3, 5(a) and 9 of this Addendum. The substitution of the reference to the later ruling applies on and from the date of issue of that later Ruling.

You can rely on this Addendum, for the purposes of section 105-60 of Schedule 1 to the *Taxation Administration Act 1953*, from its date of issue.

GSTR 2001/3 is amended as follows:

1. Paragraph 1

Omit the last two sentences; substitute:

It also explains the operation of the special rules in Divisions 69, 71 and 111 and the interaction of Division 131 with these rules. This Ruling addresses some issues about attribution of GST payable and input tax credits in the context of provision of fringe benefits.

2. Paragraph 52

After the paragraph insert:

Claiming input tax credits if you have made an annual apportionment election under Division 131

52A. You may make an annual apportionment election (election) under Division 131 if you satisfy the eligibility requirements, which are set out in section 131-5 and are explained in the Fact Sheet *GST and annual private apportionment* (which can be accessed at www.ato.gov.au).

52B. If you make the election, you may claim a full input tax credit for a creditable acquisition or importation which is partly for a creditable purpose and partly for private purposes. The election does not, however, allow you to claim an input tax credit for an acquisition or importation to the extent that it relates to making input taxed supplies, or for an acquisition that is to any extent a reduced credit acquisition.

52C. You will have an increasing adjustment in a later tax period to account for the private use of the acquisition or importation. The increasing adjustment is made in the business activity statement (BAS) that covers the last day on which your income tax return is due, or you may choose to make that adjustment in an earlier BAS.

3. Footnote 34

Omit 'GSTR 2000/22'; substitute 'GSTR 2006/3'.

4. Paragraphs 74

After the paragraph insert:

Interaction between Division 131 (annual apportionment election) and Division 71

74A. If you have made an annual apportionment election under Division 131, that election is only applicable to acquisitions or importations that are creditable acquisitions or importations. If Division 71 applies to an acquisition or importation, that acquisition or importation is not a creditable acquisition or importation (see sections 71-5 and 71-10, respectively) and therefore Division 131 does not apply.

74B. However, subsections 71-5(2) and 71-10(2) provide exceptions to the special rule in Division 71. As explained at paragraph 70 of this Ruling, Division 71 does not apply to an acquisition or importation that you make if it relates to making input taxed financial supplies and you do not exceed the financial acquisition threshold. In these circumstances, such acquisitions or importations are creditable acquisitions or creditable importations and Division 131 may apply.

74C. You will have an increasing adjustment in a later tax period to account for the private use.

5. Paragraph 77

(a) Omit 'GSTR 2000/15 and GSTR 2000/22'; substitute 'GSTR 2006/4 and GSTR 2006/3'.

(b) Omit the last two sentences; substitute:

A business segment of Eastbank uses a car which has '80% business use' as determined by a log book. The business segment has also determined that similar acquisitions (such as general overheads) relate 70% to making input taxed supplies. Eastbank would have potential input tax credits for its car running costs reduced to 24% as follows:

- *non-business use of 20%, and*
- *input taxed use of 56%, (70% of the remaining 80%)*

This means that the extent of creditable purpose is:

$$100\% - 20\% - 56\% = 24\%$$

Therefore, if Eastbank Ltd had potential input tax credits of \$100 for car running cost acquisitions, Eastbank Ltd would be entitled to an input tax credit of:

$$\$100 \times 24\% = \$24$$

6. Paragraph 78

After the paragraph insert:

Example 14A

78A. Assume the same facts in Example 14 and that Eastbank Ltd has made an annual apportionment election. The extent of input tax credits able to be claimed for the car running cost acquisitions is worked out according to the following formula under subsection 13-40(2):

$$\begin{array}{rcccl} & & \textit{Extent of} & & \\ & & \textit{non-input} & & \\ \textit{Full input} & \times & \textit{taxed} & \times & \textit{Extent of} \\ \textit{tax credit} & & \textit{purpose} & & \textit{consideration} \end{array}$$

The extent of the input taxed purpose, as worked out in Example 14, is 56%. Therefore the extent of the non-input taxed purposes is 44% (including the 20% non-business use). Thus applying this formula Eastbank Ltd is entitled to claim an input tax credit of \$44 under the Division 131 election. That is:

$$\$100 \times 44\% \times 100\% = \$44$$

78B. Eastbank Ltd will have to make an increasing adjustment of \$20 in a later tax period to account for the 20% non-business use.

7. Paragraph 88

After the paragraph insert:

88A. Although an employee may have made an annual apportionment election under Division 131, this does not affect the extent to which an acquisition is not a creditable acquisition for the employer. In particular, subsection 111-5(3AA) requires that sections 131-40 and 131-50 are disregarded when working out the extent to which an employee is entitled to an input tax credit for the purposes of paragraph 111-5(3)(a).

8. Paragraph 109

(a) Omit the word 'entity'; substitute 'entertainment'.

(b) After the paragraph insert:

109A. Although you may have made an annual apportionment election under Division 131, that election has no application to a meal entertainment or entertainment facility leasing expense that is partly a creditable acquisition or importation and partly a non-creditable acquisition or importation under Division 69. Division 131 is only applicable to a creditable acquisition or importation which is partly for private purposes. Although the meal entertainment or

entertainment facility leasing expense may be a partly creditable acquisition or importation it is not partly for private purposes as it relates to a supply of a fringe benefit by you to your employee. As explained at paragraph 52 of this Ruling an acquisition or importation that an employer makes to provide a fringe benefit to an employee is not of a private or domestic nature.

9. Related Rulings/Determinations

Omit 'GSTR 2000/15', 'GSTR 2000/22' and 'GSTR 2000/4'; substitute 'GSTR 2006/4', 'GSTR 2006/3' and 'GSTB 2000/4'.

10. Legislative references

After:

ANTS(GST)A 99 Div 129

Insert:

ANTS(GST)A 99 Div 131

Commissioner of Taxation

13 September 2006

ATO references

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ATOlaw topic: Goods and Services Tax ~~ Miscellaneous rules ~~ fringe benefits
Goods and Services Tax ~~ General rules and concepts ~~ value of taxable supplies
Goods and Services Tax ~~ Miscellaneous rules ~~ reimbursement of employees etc