

GSTR 2005/1 - Goods and services tax: the GST implications of the purchase of fuel using a fuel card

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⚠ 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 Ruling

Goods and services tax: the GST implications of the purchase of fuel using a fuel card

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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.]

What this Ruling is about

1. This Ruling explains the application of the *A New Tax System (Goods and Services Tax) Act 1999* (the GST Act) and the *A New Tax System (Goods and Services Tax) Regulations 1999* (the GST regulations) to transactions involving the purchase of fuel using a fuel card.

2. This Ruling sets out the circumstances in which the entity that provides the fuel card makes a creditable acquisition and a taxable supply of the fuel.

3. This Ruling explains that the entity that provides the fuel card may also provide an interest in or under a credit arrangement, which is a financial supply under item 2 of subregulation 40-5.09(3) of the GST regulations.

4. The examples in this Ruling relate only to transactions between registered entities that satisfy the requirements of

sections 9-5 and 11-5 of the GST Act or regulation 40-5.09 of the GST regulations.

5. This Ruling deals only with fuel card arrangements where the commercial dealings between the parties reflect what is contained in the underlying contracts.

6. All legislative references in this Ruling are to the GST Act or the GST regulations unless otherwise specified.

Date of effect

7. This Ruling applies [to tax periods commencing] both before and after its date of issue. However, this Ruling 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 Ruling (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10).

8. [Omitted.]

Background

9. Entities that own fleets of motor vehicles use fuel cards to acquire fuel, and in some cases, other goods and services, from a fuel merchant or retailer.

10. Using fuel cards to acquire fuel has become widespread over recent years. The major advantages of using fuel cards are the convenience of acquiring fuel through different outlets without the need to pay in cash, and that the fuel card customer can more effectively control its motor vehicle fleet costs.

11. The examples to item 2 of subregulation 40-5.09(3) of the GST regulations list *opening, keeping, operating maintaining and closing charge and credit card facilities*. Charge cards are defined in the dictionary to the GST regulations as:

'an article, commonly known as a charge card, for use in obtaining cash, goods or services by incurring a debt with the issuer of the card.'

Fuel cards fall within the definition of a charge card for the purposes of the GST regulations.

12. There are a number of different types of fuel cards:

- a) those which are issued by the oil companies for use in purchasing fuel from their sites only. These cards, when used, activate the contracts particular to that oil company;
- b) multi-branded fuel cards¹ which are accepted at a number of sites and are issued by independent card

¹ Multi-branded fuel cards are fuel cards that can be used to purchase different brands of fuel.

- providers. The use of these cards does not involve a supply of fuel by the card provider;
- c) multi-branded fuel cards that are issued by independent card providers and can be used as oil company fuel cards. This will be the case when the multi-branded fuel card is used by the customer to purchase that particular oil company's fuel; and
 - d) fuel retailers and distributors may also offer their own brand of fuel card or a fuel card that is co-branded with one of the oil companies or independent card providers.

13. In this Ruling, references to fuel card providers include oil companies that issue fuel cards, fuel distributors that issue fuel cards and independent card providers.

14. The entity that receives the supply of the fuel, reporting services, other goods or services and is a party to the fuel card contract is the fuel card customer. The fuel card customer is the entity in whose name the fuel card account is maintained. However, it is the fuel card holder (who may be an employee of the fuel card customer) whose use of the fuel card activates the contracts that form the basis of the fuel card arrangement.

15. In this Ruling, the term 'fuel merchant' refers to the entity that makes the physical delivery of fuel to the fuel card holder. In most cases, this will be the service station operator.

16. Under some fuel card arrangements, the fuel is owned by the fuel merchant prior to the commencement of the transaction in which the fuel card is used to acquire the fuel. Under other arrangements the fuel may be owned at that time by the oil company and not the fuel merchant. In the arrangements described and the examples given in this Ruling, the ownership of the fuel is with the fuel merchant at that time unless otherwise stated.

17. Most fuel card arrangements are designed contractually to provide that, at the commencement of the transaction in which a fuel card is used to purchase fuel, there is a supply of fuel from the fuel merchant to the fuel card provider and then a further supply of the fuel by the fuel card provider to the fuel card customer.

18. However, other fuel card arrangements do not involve any acquisition or supply of the fuel itself by the fuel card provider. Under these arrangements the fuel card provider makes a supply of an interest in a credit arrangement only, to the fuel card customer², with the supply of the fuel being made directly by the fuel merchant to the fuel card customer.

19. Although fuel cards were originally developed as a means for entities to purchase fuel for their motor vehicle fleets, many fuel card

² The fuel card provider may also provide other services – see paragraphs 84 to 95 of this Ruling.

providers now also offer their fuel card customers a range of additional goods, and motor vehicle reporting or information services which can be tailored to meet the individual customer's specific needs.

Ruling with explanation

Arrangements that involve a supply of fuel by the fuel card provider

20. Where a fuel card is used to acquire fuel, the question of whether the fuel card provider makes only a financial supply of a credit arrangement to its fuel card customer depends on:

- a) the contracts entered into between the parties to the arrangement; and
- b) whether the commercial dealings between the parties reflect what is contained in the underlying contracts.

21. Where the contracts and what happens commercially between the parties to the fuel card arrangement are effective in creating a supply of the fuel via the fuel card provider (an effective arrangement):

- the fuel card provider makes a creditable acquisition of the fuel from the fuel merchant and is entitled to claim input tax credits for that acquisition;
- the fuel card provider makes a taxable supply of the fuel to the fuel card customer and must account for the GST on that supply; and
- the fuel card provider is also entitled to input tax credits for any other creditable acquisitions it makes that relate to its taxable supply of the fuel.

22. In the United Kingdom case *The Harpur Group Ltd.* [1995] BVC 841 (the *Harpur* case), the British VAT Tribunal considered the VAT implications of various arrangements involving the purchase of fuel and other goods and services using a fuel card. One of the arrangements was designed contractually to provide that, where a fuel card was used to buy fuel, the fuel was supplied from the fuel merchant to the fuel card provider (with an individual card holder acting as the fuel card provider's agent) and then by the fuel card provider to the fuel card customer. The issue before the Tribunal was whether the fuel card provider bought fuel from the fuel merchant which it then sold to its fuel card customers, or whether the fuel card provider operated a credit card service.

23. In its decision, the Tribunal found that ownership in the fuel passed at the pump and that title to the fuel passed directly from the fuel merchant to the card holder. The decision was based on the Tribunal chairman's view that unless the card holder indicated that the supply of fuel was to be made against a Harpur contract by

presenting the fuel card before the supply commenced, property in the goods passed directly to the only other party known to the supply, the card holder.

24. The view expressed in the *Harpur* case is that property in the fuel passes once and for all to the fuel card holder from the fuel merchant as soon as the fuel is delivered into the fuel card holder's tank, even though there may be express provisions in the agreements between the parties to the contrary. Property in the fuel, having already passed to the fuel card holder cannot be further passed on because, once the fuel is commingled in the fuel card holder's tank, it loses any separate identity it may have had. The practical outcome of the decision in the *Harpur* case meant the UK VAT provisions could not readily be administered. Subsequently, the authorities issued a directive to enable fuel card arrangements to become practically effective.³

25. It is unclear whether Australian courts would follow the decision of the British VAT Tribunal in the *Harpur* case when considering fuel card arrangements in the GST context. Applying the decision in the *Harpur* case to fuel card arrangements in Australia may result in the conclusion that for GST purposes, there is no supply of fuel via the fuel card provider. Instead, there would merely be a provision of credit by the fuel card provider, with the supply of the fuel going directly from the fuel merchant to the fuel card holder.

26. A strict legal application following property law principles may result in unworkable administrative requirements such that card holders would need to display their card before fuel is delivered into their tanks. We consider that such a result could not have been intended. Accordingly we accept that, subject to the requirements outlined in this Ruling, contracts that form part of a fuel card arrangement have their intended legal effect for GST purposes.

27. Our approach is that, at the point at which property in the fuel passes it is not yet clear which entity has made a taxable supply of the fuel. The contractual basis for the transactions that occur when a fuel card is proffered already exists at that time. Contracts are on foot at that time between (for example) the fuel card customer and the fuel card provider, and also between the fuel card provider and the fuel merchant (with other contracts sometimes intervening between these). The passing of the property in the fuel prior to the fuel being placed in the tank is contemplated in these contracts.

28. At the point of acceptance of the fuel card by the fuel merchant, the identity of the supplier of the fuel to the fuel card customer is clear under the particular contract. This more closely resembles the reasoning of the Tribunal in relation to the Overdrive bunkerfuel scheme in the *Harpur* case. In that part of the decision the Tribunal held that the bunkerfuel card holder was entitled, if he chose to do so, to take delivery of fuel from the tank on terms that the

³ See Customs & Excise Manual V1-3, Chapter 2A, paragraph 2.12.

transaction would be governed by the Overdrive bunkerfuel agreements.

29. Whether or not the card holder chose to sign the supply voucher determined whether the fuel was appropriated from part of Overdrive's stock or part of the merchant's stock in the commingled fuel. We consider that, on the basis of the arrangements dealt with in this Ruling, whether or not the fuel card holder chooses to use the fuel card determines whether the fuel is purchased from the fuel merchant or from the fuel card provider under the pre-existing contracts.

The *Auto Lease* case

30. The European Court of Justice (ECJ) decision in *Auto Lease Holland v. Bundesamt für Finanzen Case C-185/01*⁴ (the *Auto Lease* case), may also be considered relevant for determining the nature of fuel card transactions in Australia. In that case the ECJ considered the VAT implications of a fuel management agreement between a motor vehicle leasing company and a lessee.

31. Under the terms of the agreement, Auto Lease allowed the lessee to fill up its motor vehicle with fuel in the name, and at the expense, of Auto Lease. The lessee did this by using a fuel card issued to Auto Lease by a German fuel card provider (DKV). The fuel card named Auto Lease as the DKV customer and Auto Lease was responsible for paying the fuel card account. The fuel card was one under which there was only a provision of credit by DKV, that is, there was no question of DKV claiming to make a supply of fuel to Auto Lease.

32. The lessee paid Auto Lease a monthly amount consisting of one twelfth of the likely annual fuel costs in advance. The lessee was then required to settle its account with Auto Lease at the end of the year on the basis of its actual fuel consumption. A supplementary charge for fuel management was also payable. The question was whether the lessee acquired the fuel from Auto Lease, or the fuel company.

33. The ECJ decided that Auto Lease did not acquire the fuel from the fuel merchant and therefore could not make an on-supply of the fuel to the lessee. Instead, the fuel was supplied by the fuel companies directly to the lessee with Auto Lease acting as a supplier of credit to the lessee.

34. The *Auto Lease* case is different in a number of ways from the arrangements dealt with in this Ruling:

- in the *Auto Lease* case there were no contracts in place purporting to create a supply of fuel from the fuel merchant to the fuel card provider and then from the fuel card provider to the fuel card customer. Arrangements where these contracts are in place form the basis of this Ruling;

⁴ Dated 6 February 2003.

- the issue in the *Auto Lease* case was whether there was a supply of fuel between a fuel card customer and a fuel card holder. The issue for the purposes of this Ruling is whether there is a supply of fuel from the fuel card provider to the fuel card customer;
- part of the reason for the decision in the *Auto Lease* case was the court's finding that the monthly payments were advances only with the lessee being required to settle its account at year end on the basis of actual consumption. In the fuel card arrangements dealt with in this Ruling, the monthly account for actual fuel purchases is billed to the fuel card customer; and
- the decision in the *Auto Lease* case depended on the court's interpretation of Article 5(1) of the Sixth Directive under which a supply of goods means 'the transfer of the right to dispose of tangible property as owner'. The court found that the transfer of economic ownership rather than the transfer of legal ownership was relevant.⁵ A supply for the purposes of the GST Act is determined by the requirements of section 9-5 which does not deal with the concept of 'transfer of the right to dispose of tangible goods as owner'.

35. The German Ministry of Finance has since issued a decree⁶ recognising that there are circumstances where, for VAT purposes there will be a supply of the fuel by the fuel company to the leasing company and an on-supply of the fuel to the lessee, **despite** the decision in the *Auto Lease* case. One of the conditions stipulated by the Ministry of Finance for a dual sale of the fuel is that the price for each transaction needs to be separately agreed between the parties.

36. Because of these differences in both the facts and the law that led to the decision in the *Auto Lease* case, and because of a lack of certainty as to its relevant application even in Europe, we do not follow its findings for the purposes of providing advice on whether the contracts that are the basis of this Ruling are effective in creating a supply of fuel from the fuel merchant to the fuel card provider and then from the fuel card provider to the fuel card customer.

37. As discussed in paragraph 20, the supplies triggered by the use of a fuel card for GST purposes will vary depending on the contractual relationships in place.

38. In the absence of evidence to the contrary, we accept that where a fuel card is used to purchase fuel, the underlying contractual arrangements between the parties determine which entity makes the taxable supply of the fuel to the fuel card customer.

⁵ Case C-320/88 *Shipping and Forwarding Enterprise Safe* [1990] ECR I-285.

⁶ Germany – VAT on leased cars (1 July 2004): Finance Ministry decree on petrol bought for lessor. *World VAT News* [Butterworths Indirect Tax Online]. Available from: shellburne.butterworths.co.uk/taxindirect/index.asp [Accessed 5 July 2004].

39. We accept that the contractual arrangements have this effect only in respect of these particular arrangements for the purchase of fuel by way of a fuel card. There are cogent commercial reasons for the parties entering into these contracts. The profit each party makes is dependent on the difference in the supply and acquisition price specified in the contracts. In particular, the supply of the fuel to the fuel card customer may not be at the pump price. This reinforces the commercial nature of the arrangements in place.

Fuel card provided by oil company

40. Where a fuel card is provided by an oil company, there will normally be a written contract between the oil company and the fuel merchant, and there will also be an agreement between the oil company and its fuel card customer that includes terms and conditions of use. There is not usually a written contract between the fuel merchant and the fuel card customer.

41. Where fuel is acquired using a fuel card provided by an oil company, we accept that the contractual arrangements between the parties will be effective in creating a supply of fuel from the fuel merchant to the oil company and from the oil company to the fuel card customer in circumstances where the contracts provide that:

- the fuel merchant sells the fuel to the oil company; or
- property in the fuel passes from the fuel merchant to the oil company and then to the fuel card customer;

immediately before delivery into the fuel card holder's fuel tank.

42. We accept that a fuel card arrangement will also be effective in creating a supply of fuel to the oil company and then from the oil company to the fuel card customer if the contractual arrangements between the parties provide that:

- the fuel card customers are deemed to purchase oil company brand fuel from the oil company; and
- the fuel merchant supplies the oil company brand fuel to the fuel card customer as agent for the oil company; and
- the fuel merchant is deemed to have sold the fuel to the oil company at the commencement of the transaction in which the fuel is delivered to the fuel card customer; or that
- title in the fuel passes from the fuel merchant to the oil company and then from the oil company to the fuel card customer and the fuel merchant sells the fuel as the oil company's agent.

43. We accept that all of the contractual arrangements discussed above will have the effect of creating a taxable supply of the fuel from the fuel merchant to the oil company and then a separate taxable supply from the oil company to the fuel card customer.

Example 1 – fuel card provided by oil company (fuel owned by fuel merchant prior to commencement of transaction)

44. The Good Oil Co provides its fuel card customers with a Good Oil Card which allows them to acquire fuel from Good Oil fuel outlets. The Customer Terms and Conditions provide that when Good Oil Card customers use their Good Oil Card to purchase fuel they are deemed to purchase the fuel from The Good Oil Co.

45. Full Tank Petrol Station has entered into a written agreement with The Good Oil Co under which it agrees to supply customers with Good Oil fuel on production of their Good Oil Card. The agreement provides that, when Full Tank Petrol Station supplies the Good Oil fuel to these customers, it does so as The Good Oil Co's agent. The agreement also provides that Full Tank Petrol Station is deemed to have sold the Good Oil fuel to The Good Oil Co at the commencement of the delivery of fuel to the customer.

46. The effect of the agreements between the parties is that when a Good Oil Card Customer uses a Good Oil Card to acquire Good Oil fuel at Full Tank Petrol Station, there is a taxable supply of the fuel from Full Tank Petrol Station to The Good Oil Co and then a separate taxable supply of fuel from The Good Oil Co to the Good Oil Card Customer. The Good Oil Co must account for the GST on that taxable supply and is entitled to claim input tax credits for its acquisition of fuel from Full Tank Petrol Station. Full Tank Petrol Station must also account for GST on the taxable supply of fuel to The Good Oil Co.

Fuel card provided by distributor

47. Fuel cards are sometimes issued by the distributor rather than the oil company. The same principles apply in determining whether the contracts between the parties to the arrangement are effective in creating a supply of fuel to the distributor and then from the distributor to the fuel card customer.⁷

Example 2 – distributor card (fuel owned by fuel merchant prior to commencement of transaction)

48. Pump Right Distributor Co is a distributor of Good Oil fuel and offers a distributor fuel card to its customers. The distributor card Terms and Conditions allow authorised users of the card to purchase Good Oil fuel from Good Oil fuel outlets on presentation of a valid distributor card.

⁷ The principles in paragraphs 40 to 43 of this Ruling apply.

49. *Full Tank Petrol Station is a Good Oil fuel outlet and the written Merchant Agreement it has entered into with Pump Right Distributor Co provides that, when a customer uses the distributor card to purchase Good Oil fuel, Full Tank Petrol Station supplies the Good Oil fuel to these customers as agent of Pump Right Distributor Co. The agreement further provides that Full Tank Petrol Station is deemed to have sold the Good Oil fuel to Pump Right Distributor Co at the commencement of the transaction in which the fuel is delivered to the customer.*

50. *The effect of the underlying contracts between the parties is that there is a taxable supply of fuel from Full Tank Petrol Station to Pump Right Distributor Co and then a separate taxable supply of fuel from Pump Right Distributor Co to the distributor's fuel card customer when the fuel card is used to purchase Good Oil fuel at Full Tank Petrol Station. Pump Right Distributor Co must account for the GST on its taxable supply and is entitled to claim input tax credits for the acquisition of fuel it makes from Full Tank Petrol Station. Full Tank Petrol Station must also account for its taxable supply of fuel to Pump Right Distributor Co.*

Fuel card provided by an independent fuel card provider

51. Some fuel card arrangements involve the acquisition of fuel using a fuel card issued by an independent fuel card provider. Under such an arrangement, the fuel may be owned by either the oil company or the fuel merchant prior to the commencement of the transaction in which the fuel card is used to acquire the fuel.

52. Where the fuel is owned by the oil company at that time,⁸ we accept that the arrangement will be effective in creating a supply of fuel from the oil company to the independent fuel card provider and then from the independent fuel card provider to the fuel card customer in the following circumstances:

- there is a written agreement, or there are written terms and conditions that form part of an agreement, between the independent fuel card provider and its fuel card customer;
- there is a written agreement between the fuel merchant and the oil company;
- there is a written agreement between the independent fuel card provider and the oil company; and
- the contract between the independent fuel card provider and the oil company provides that where the fuel card holder uses the fuel card to acquire fuel from an oil company outlet, the fuel is taken to be supplied by the relevant oil company to the independent fuel

⁸ Under this type of arrangement the oil company sells fuel it owns through retail sites it operates or consigns fuel to retail service stations for sale on its behalf.

card provider and then by the independent fuel card provider to the fuel card customer.

53. We accept that the underlying contracts in existence between the parties have the effect of creating a taxable supply of the fuel from the oil company to the independent fuel card provider, then a separate taxable supply from the independent fuel card provider to the fuel card customer.

Example 3 – supply of fuel by oil company to independent fuel card provider to fuel card customer (fuel owned by oil company prior to commencement of transaction)

54. *The business of Far & Away Pty Ltd involves the provision of a multi-branded fuel card to its clients for the purchase of motor fuel (the Far & Away Card). Far & Away Pty Ltd has entered into contractual arrangements with Octane Oil Ltd, and with its corporate clients.*

55. *The contractual arrangements with Octane Oil provide that, where the Far & Away Card is used to purchase Octane fuel, which is owned by Octane Oil Ltd, from a fuel merchant that accepts Far & Away Cards, there will be a supply of the fuel by Octane Oil Ltd to Far & Away Pty Ltd and then by Far & Away Pty Ltd to the Far & Away Fuel Card Customer.*

56. *When the card holder uses a Far & Away Card to acquire Octane fuel that is owned by Octane Oil Ltd, the contracts which are already in existence between the parties apply such that for GST purposes, there is a taxable supply of the fuel from Octane Oil Ltd to Far & Away Pty Ltd and then a separate taxable supply of fuel from Far & Away Pty Ltd to the Far & Away Card Customer.*

57. *Octane Oil Ltd and Far & Away Pty Ltd must account for the GST on those taxable supplies. Far & Away Pty Ltd is entitled to claim an input tax credit for its acquisition of fuel from Octane Oil Ltd. The fuel card customer may also be entitled to an input tax credit for its acquisition of the fuel (see paragraph 100).*

Arrangements involving a chain of taxable supplies

58. Some fuel card arrangements are designed to create a chain of taxable supplies of fuel for GST purposes. Under this type of arrangement, the fuel is owned by the fuel merchant prior to the commencement of the transaction in which the fuel card issued by an independent fuel card provider is used by the customer to purchase the fuel. The parties to this arrangement are typically an oil company, an independent fuel card provider, fuel merchants who have agreed to accept the relevant fuel card, and the fuel card customer.

59. To be effective in creating a chain of taxable supplies where:

- the fuel card holder receives fuel from an oil company outlet;
- the fuel card holder uses the fuel card to acquire that brand of fuel; and
- the fuel is owned by the fuel merchant prior to the commencement of the transaction in which the fuel card holder uses the fuel card to acquire the fuel,

the contracts between these parties should have the effect that the fuel is supplied by the fuel merchant to the oil company immediately prior to the oil company supplying it to the fuel card provider, which then immediately supplies it to the fuel card customer.

60. We accept that in these circumstances, there is a chain of taxable supplies from the fuel merchant to the oil company, on to the fuel card provider and then to the fuel card customer.

61. All of the parties need to account for the GST on these taxable supplies of fuel and there may be an entitlement to input tax credits for their acquisitions of the fuel.⁹

Pay at the pump facilities

62. Some oil companies offer their fuel card customers the option to use pay at the pump facilities. Under these arrangements, the fuel card is programmed so that fuel card customers can acquire fuel by simply swiping their fuel cards (and, if required, keying in their PIN) at the pump, prior to putting the fuel in the tank of their vehicle.

63. We accept that for GST purposes, there will be a taxable supply of fuel by the fuel merchant to the oil company and then a further taxable supply of fuel by the oil company to the fuel card customer in circumstances where:

- the fuel card holder swipes the fuel card (and, if required, enters a PIN) using pay at the pump facilities to purchase the fuel;
- the underlying contracts between the parties to the fuel card arrangement are designed to create a supply of fuel from the fuel merchant to the oil company, and then a supply of the fuel from the oil company to the fuel card customer; and
- each recipient is liable under the contracts to provide consideration for the supply they receive.

⁹ Provided the requirements of section 11-5 are satisfied.

Non-fuel goods and services

64. Some fuel card arrangements also permit the use of the fuel card to acquire goods or services other than fuel. Things we refer to as non-fuel goods and services include items stocked in the service station convenience store and motor vehicle services such as car washes or repairs.

65. The question of whether the fuel card provider makes a supply of non-fuel goods and services to the fuel card customer in addition to the supply of the fuel and the underlying credit arrangement will also depend on:

- the written agreements entered into between the parties to the fuel card arrangement; and
- whether what happens commercially between the parties is consistent with the terms of the underlying agreements.

66. Where a fuel card arrangement is effective in creating a supply of the fuel by the fuel merchant to the fuel card provider and a further supply of the fuel by the fuel card provider to the fuel card customer, we accept that the arrangement may also be effective in creating a supply of the non-fuel goods and services by the fuel merchant to the fuel card provider with a further supply being made by the fuel card provider to the fuel card customer. This will be the case where the contracts provide that the property in the non-fuel goods or the supply of the services is to pass in the same way as the property in the fuel.¹⁰

67. The GST character of the supply of the non-fuel goods and services will depend on the type of goods and services being supplied under the contracts.

Arrangements for supply of fuel

68. When the contracts between the parties to the fuel card arrangement have the effect of creating a taxable supply of the fuel by the fuel card provider, the arrangement entered into by the fuel card customer and the fuel card provider is an arrangement for the supply of fuel on terms including time to pay.

69. The agreement entered into by the fuel card provider and its customer establishes the terms under which fuel will be supplied including the terms on which time will be allowed to pay. This agreement, under which the fuel card arrangement is established, predates and is separate from the individual contracts of sale of the fuel or other goods or services.¹¹

¹⁰ Provided there are no legal restrictions to the supply being made in this way.

¹¹ The position taken follows the rationale in the decision in *Re Charge Card Services Ltd* [1988] All ER 702.

70. When the fuel card agreement is part of an effective arrangement for the provision of fuel, fees that are not for the supply of reports are for the provision of access to the supply of fuel on agreed terms. This is a taxable supply.

71. Fees which vary according to the quality of the information provided in reports, or the way in which they are provided, are for the provision of reports and are consideration for taxable supplies.

Arrangements with no supply of fuel

72. Item 2 in subregulation 40-5.09(3) mentions *a debt, credit arrangement or right to credit including a letter of credit*. A credit arrangement is described in GSTR 2002/2 as:

An arrangement under which an entity lends money on terms that include deferred repayment, or under which payment of a debt owed by one entity to another is deferred, or time is allowed to pay.

73. Fuel card arrangements that do not involve the supply of fuel or other goods or services (except management or reporting services) by the fuel card provider are ongoing credit arrangements under which the fuel card customer can acquire fuel and pay for it (usually) at the end of the month.

74. When the fuel card arrangement is not for the provision of fuel by the fuel card provider, fees, to the extent they are for the provision or maintenance of the credit arrangement are consideration for the provision of the financial interest. Interest or late payment charges (however described) are additional consideration for the provision of the interest in the credit arrangement in this context.

75. The GST treatment of fees depends upon the actual supply for which the fee is payable. Although the contract will be important in deciding what the fee is actually for, the title given to the fee in the contract will not necessarily be decisive.

76. The fuel card provider, unless it is below the financial acquisitions threshold,¹² will not be entitled to input tax credits for acquisitions to the extent they relate to making the supply of the credit arrangement.

77. Where fees are for both the provision of the credit arrangement and taxable supplies, input tax credits will only be available to the extent acquisitions relate to the taxable supplies.¹³ Where acquisitions relate both to the credit arrangement and taxable supplies, apportionment of input tax credits may be required.¹⁴

¹² See Division 189. However, there may be an entitlement to reduced input tax credits if the acquisition is a reduced credit acquisition as listed in subregulation 70-5.02(2).

¹³ In circumstances where the entity exceeds the financial acquisitions threshold.

¹⁴ See paragraph 82 of this Ruling.

Mixed supplies

78. A mixed supply is a supply that consists of separately identifiable taxable and non-taxable parts.¹⁵ Where a supply consists of a part that is taxable and another part that is a financial interest, the treatment of the supply for GST purposes depends on the facts and circumstances surrounding the supply. If on the facts, it is a mixed supply, then the parts of the supply will need to be separated into their taxable and non-taxable parts.

79. Under a fuel card arrangement, the fuel card provider may make supplies of fuel and non-fuel goods and services, credit¹⁶ and fleet management or reporting services. If the agreements are effective in creating a supply of fuel or other goods or services, the supply of the arrangement is a separate supply from the supplies of fuel, non-fuel goods and services and management and reporting services (where provided) under the arrangement.

80. If no fuel, or other goods or services are provided under the arrangement, all that is provided under the agreement is an interest in a credit arrangement and management or reporting services. In this circumstance, the supply of the credit arrangement may form part of a mixed supply with, or be a separate supply from, the fleet management or reporting services.

81. If the statements or reports provided are no more than summaries of the use of the fuel card (and therefore similar to credit card statements) the provision of the report may be an incidental financial supply under GST regulation 40-5.10 if there is no separate consideration for the report. A statement that is provided under an effective arrangement, and is in fact a tax invoice summarising supplies of fuel, is incidental to the supply of fuel.

82. Where acquisitions relate both to a credit arrangement which is input taxed and a taxable supply, the fuel card provider needs to apportion the input tax credits for those acquisitions.¹⁷

83. The apportionment methodology chosen should take into account your circumstances and contribute to the correct calculation of the net amount as disclosed on your Business Activity Statement for the relevant tax period. Where overheads are to be apportioned, the methodology should produce a 'fair and reasonable' result.¹⁸ Whatever methodology is chosen in the case of fuel cards needs to represent an appropriate reflection of the relationship between the acquisitions in question and the supplies to which they relate.

¹⁵ See Goods and Services Tax Ruling GSTR 2001/8 and paragraphs 91 to 98 of Goods and Services Tax Ruling GSTR 2002/2 for a discussion of mixed and composite supplies.

¹⁶ See paragraphs 72 to 77 of this Ruling.

¹⁷ Refer to paragraphs 45 and onwards in Goods and Services Tax Ruling GSTR 2000/22. The Ruling notes (paragraph 51) that 'direct' methods of apportionment are preferable.

¹⁸ See *Ronpibon Tin NL v. FC of T (1949) 78 CLR 47*, discussed in Goods and Services Tax Ruling GSTR 2000/22.

Arrangements that do not involve a supply of fuel by the fuel card provider

84. Some fuel card arrangements do not involve a supply of fuel by the fuel card provider. These fuel cards provide the fuel card customer with both the facility to purchase fuel on credit and fleet management and reporting services. In these arrangements the provision of the credit arrangement and other management and reporting services may form part of a mixed supply, or may be separate supplies, depending on the particular arrangement.¹⁹ The provision of the reports may also be an incidental financial supply in certain circumstances.²⁰

Example 4 – Incidental financial supply

85. *Optimal Performance Co. provides a fuel card called the ‘Optimal Performance Card’ to its customers. Optimal Performance Co does not supply fuel to its customers. The Optimal Performance Card operates as a charge card facility under which customers may purchase fuel on credit terms. A monthly fee is payable by the customer together with a late payment charge where the amount owing as advised in the monthly statement of account is not paid in full.*

86. *Under the Optimal Performance Card Terms and Conditions, customers are also entitled to access basic reports which assist them to meet their GST and FBT reporting requirements. The reports are generated automatically whether the customer requests them or not and there is no additional charge for this service. The customer’s use of the Optimal Performance Card enables the reports to be generated. The reports are accessed on Optimal Performance Co’s website using software provided by Optimal Performance Co.*

87. *The provision of the reports by Optimal Performance Co. is an incidental financial supply. The monthly fee payable by the customer is consideration for the financial supply including the incidental financial supply of the reports. Where a late payment charge is applicable, that will also be consideration for a financial supply.*

Example 5 – mixed supply

88. *Petroleo Oil Inc (Petroleo) provides both a card (Petroleo Card) and fleet management reporting services to its business customers.*

89. *The Petroleo Card allows customers to purchase fuel and other fleet related goods and services on credit. The card is provided to the customer under a credit arrangement which is the supply of a financial interest.*

¹⁹ See paragraph 80 of this Ruling.

²⁰ See paragraph 81 of this Ruling.

90. *Petroleo sends its customers a monthly report giving, amongst other things, the details and amounts owing for purchases of fuel and other goods and services. Petroleo charges a monthly fee for the administration of the Petroleo Card and the provision of its fleet management reporting services.*

91. *Customers are required to pay the total amount shown on the statement in full. If they do not pay the full amount, late payment fees are charged. These are consideration for the supply of the credit arrangement.*

92. *Petroleo's reports are specifically developed for their customers. Petroleo negotiates with merchants to ensure they record the required details of purchases and Petroleo's reports provide sufficient detail about purchases to enable customers to identify business purchases, prevent private purchases, control their fleet related costs, comply with their Income Tax obligations and to complete their Business Activity Statements.*

93. *In its advertising brochures and on its Internet website, Petroleo heavily emphasises the benefits to customers of its fleet management reporting services. Customers who contract with Petroleo do so on the basis that it provides both the Petroleo Card credit arrangement and its fleet management reporting services.*

94. *The supply made by Petroleo to its customers is a mixed supply. This supply consists of a distinct taxable part (the fleet management reporting service) and a distinct non-taxable part (the credit arrangement). Petroleo therefore needs to apportion the monthly fee between the taxable and non-taxable parts. Where an interest charge is applicable, that will be additional consideration for the credit arrangement and need not be apportioned.*

95. *Petroleo will also need to apportion the acquisitions it makes between those that relate to the supply of the credit arrangement and those that relate to the supply of the fleet management reporting service.*

Arrangements which may not be effective

96. It should be noted that where the commercial dealings between the parties are inconsistent with what is contained in the underlying written agreements of the kind discussed in this Ruling, the fuel card arrangement may be ineffective in creating a taxable supply of fuel via the fuel card provider for GST purposes.

97. Where this is the case, or in circumstances where the contracts in place do not fit one of the arrangements described in this Public Ruling, you may apply for a private ruling.

The fuel card customer

98. A legal person, including a company, can have a number of different roles or act in different capacities. In each of these roles or capacities, the person is or is taken to be a different entity for GST purposes.²¹

99. A fuel card holder may use a fuel card in a number of different capacities, depending upon the entity which is the fuel card customer. For example, a person may use a fuel card as an individual, an employee, or a partner. In these situations, the fuel card customer is the person, the employer and the partnership respectively. These entities are the recipients of the supply of fuel provided effective contracts are in place, and may be entitled to input tax credits for their acquisition of the fuel provided the requirements of Division 11 are satisfied. In this instance, a fuel card holder will not be entitled to input tax credits unless it is also the fuel card customer.

Invoice and tax invoice requirements

100. Where the underlying contracts between parties to a fuel card arrangement are effective for GST purposes in creating a taxable supply of fuel by the fuel card provider or a chain of taxable supplies of fuel, the invoices and the tax invoices needs to be consistent with the taxable supplies that arise under the arrangement. The invoices and the tax invoices issued by the parties to the arrangement needs to follow the transactions. An input tax credit will only be available to the recipient of each supply in the supply chain if it holds a valid tax invoice for that supply. The relevant parties should ensure that only one tax invoice is issued for each supply. The recipient may claim an input tax credit only once for each acquisition it makes.

Invoices

101. The rules for when an entity attributes the GST payable on its taxable supplies and the input tax credits for its creditable acquisitions are set out in Division 29 and apply to entities that make taxable supplies and creditable acquisitions under a fuel card arrangement.²²

102. Where an entity that makes a taxable supply of fuel as part of a fuel card arrangement accounts on a non-cash basis, it attributes the GST payable to the tax period in which any of the consideration is received. If an invoice is issued prior to any of the consideration being received, the GST payable is attributed to the tax period in which the invoice is issued.

²¹ See subsection 184-1(3).

²² See Goods and Services Tax Ruling GSTR 2000/29 for an explanation of the attribution rules that apply in relation to entities that account for GST on a cash basis or a non-cash basis.

103. Where an entity that makes a creditable acquisition as part of a fuel card arrangement accounts for GST on a non-cash basis, provided it holds a valid tax invoice,²³ it is entitled to claim input tax credits in the tax period in which it provides any consideration or an invoice is issued, whichever is earlier

Tax invoices

104. The requirements for a document to be considered a valid tax invoice are outlined in subsection 29-70(1).²⁴ An entity that makes a taxable supply of fuel under a fuel card arrangement is required to issue a tax invoice within 28 days after the recipient of the supply requests it, unless it is a party to an agreement under which a recipient created tax invoice is issued.²⁵

105. Under Division 153, there are special rules about tax invoices and agents. If a taxable supply is made through an agent, the agent can issue a tax invoice for the supplier.²⁶ Similarly, a recipient may claim an input tax credit for a creditable acquisition made through an agent if the agent holds the tax invoice.²⁷

106. In circumstances where supplies or acquisitions under a fuel card arrangement are made through an agent and Division 153 applies, the Commissioner will treat a document as a tax invoice if it shows the agent's name or address or ABN instead of the name and address or ABN of the supplier or the recipient.²⁸

²³ See Goods and Services Tax Ruling GSTR 2000/26 for an explanation of the determination that the Commissioner has made under subsection 29-10(3) which sets out the circumstances in which a registered entity that holds a corporate card statement issued by certain organisations can claim an input tax credit for a creditable acquisition without holding a tax invoice.

²⁴ See also Goods and Services Tax Ruling GSTR 2000/17.

²⁵ Subsection 29-70(2). See Goods and Services Tax Ruling GSTR 2000/10 for an explanation of the circumstances in which the recipient of a supply may issue a tax invoice.

²⁶ Paragraph 153-15(1)(b).

²⁷ Section 153-5.

²⁸ See paragraph 36 of Goods and Services Tax Ruling GSTR 2000/17.

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Commissioner of Taxation

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Previous draft:

GSTR 2004/D1

Related Rulings/Determinations:

TR 2006/10; GSTR 2000/10;
 GSTR 2000/17; GSTR 2000/22;
 GSTR 2000/26; GSTR 2000/29;
 GSTR 2001/8; GSTR 2002/2

Subject references:

- agent
- credit arrangement
- creditable acquisition
- distributor
- distributor card
- employee
- employer
- financial supply
- fuel card
- fuel card arrangement
- fuel card holder
- fuel card customer
- fuel card provider
- fuel merchant
- independent fuel card provider
- input tax credit
- invoice
- mixed supply
- non-fuel goods and services
- oil company
- partner
- partnership
- passing of title
- pay at the pump facilities
- recipient
- supplier
- tax invoice
- taxable supply

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