


GSTR 2004/D1 - Goods and services tax: the GST implications of the purchase of fuel using a fuel card

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There is an Erratum notice for this document.

This document has been finalised.



Draft 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 is a draft for industry and professional comment. As such, it represents the preliminary, though considered views of the Australian Taxation Office. This draft may not be relied on by taxpayers and practitioners, as it is not a ruling or advice for the purposes of section 37 of the **Taxation Administration Act 1953**. The final Ruling will be a public ruling for the purposes of section 37 and may be relied upon by any entity to which it applies.*

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 the circumstances in which the entity that provides the fuel card provides 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. This Ruling explains when an entity that provides a fuel card needs to determine whether it makes a mixed or a composite supply.
5. 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.
6. This Ruling does not deal with transactions involving the use of a fuel card to purchase goods or services other than fuel.
7. This Ruling deals only with fuel card arrangements where the commercial dealings between the parties reflect what is contained in the underlying contracts.

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

Date of effect

9. This draft Ruling represents the preliminary, though considered view of the Australian Taxation Office. This draft may not be relied on by taxpayers or practitioners. When the final Ruling is officially released, it will explain our view of the law as it applies from 1 July 2000.

10. The final Ruling will be a public ruling for the purposes of section 37 of the *Taxation Administration Act 1953* and may be relied upon, after it is issued, by any entity to which it applies. 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.

11. If the final public ruling conflicts with a previous private ruling that you have obtained, the 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 the final 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 effect of the later ruling. Similarly, you are not liable to repay an amount overpaid by the Commissioner as a refund.

Background

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

13. Using fuel cards to pay for the purchase of fuel has become widespread with one of the major advantages being that it allows the fuel card customer to more effectively control its motor vehicle fleet costs.

14. 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 are issued by independent card providers. These multi-branded fuel cards 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
- c) 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.

15. 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.

16. The entity that receives the supply of the fuel and/or the supply of credit from the fuel card provider 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.

17. 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.

18. 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 tendered as payment for the purchase of 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.

19. 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.

20. 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 credit to the fuel card customer², with the supply of the fuel being made directly by the fuel merchant to the fuel card customer.

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

² The fuel card provider may also provide other services – see paragraphs 68 to 74 of this Ruling.

21. Although fuel cards were originally developed as a means for entities to purchase fuel for their motor vehicle fleets, many fuel card providers now also offer their fuel card customers a range of additional 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

22. Where a fuel card is used to make a purchase of fuel, the question of whether the fuel card provider makes only a financial supply of credit to its fuel card customer or whether it makes a taxable supply of fuel in addition to providing a credit arrangement depends on:

- a) the terms of 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.

23. Where the terms of 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:

- 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;³
- 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.⁴

24. 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

³ Provided all of the requirements of section 11-5 are satisfied.

⁴ Provided all of the requirements of section 11-5 are satisfied.

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.

25. 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.

26. 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 *Harpur* decision⁵ 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.

27. Applying the decision in the *Harpur* case to fuel card arrangements in Australia would 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.

28. A strict legal application following property law principles would 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 have taken a purposive approach to the interpretation of the law in this area.

29. 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 for payment 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 (that is, prior to

⁵ [1995] BVC 841.

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payment) is contemplated in these contracts. However, the contracts also provide for the completion of individual transactions at the point of acceptance of the fuel card by the fuel merchant as payment.

30. At the point of acceptance of the fuel card as payment, the identity of the supplier of the fuel to the fuel card customer is clear under the particular contract. As discussed in paragraph 22, the supplies triggered by the use of the fuel card will vary depending on the contractual relationships in place.

31. In the absence of evidence to the contrary, 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. 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.

Credit arrangement

32. Fuel card arrangements all involve a provision of fuel on credit to the fuel card customer. This is because payment is not required at the time the fuel is supplied. For the purposes of the GST regulations, this is a credit arrangement. Even where 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, there is still an underlying credit arrangement in that the fuel card customer is given time to pay for the purchase of the fuel.

33. If there are monthly or annual fees, interest or late payment charges payable by the fuel card customer under the fuel card terms and conditions, these are consideration for the provision of the interest in or under the credit arrangement. This is a financial supply under item 2 of subregulation 40-5.09(3).

34. The fuel card provider will not be entitled to input tax credits for acquisitions to the extent they relate to making the supply of the credit arrangement unless the fuel card provider is below the financial acquisitions threshold.⁶

⁶ 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).

Fuel card provided by oil company

35. 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.

36. Where fuel is paid for with a fuel card provided by an oil company, 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 express terms of 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.

37. 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 express terms of the contractual arrangements between the parties provide that:

- the fuel card customers are deemed to purchase oil company brand fuel from the oil company;
- the fuel merchant supplies the oil company brand fuel to the fuel card customer as agent for the oil company;
- 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.

38. 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.⁷

⁷ Provided all of the requirements of section 9-5 are satisfied.

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

39. The Good Oil Co provides its fuel card customers with a Good Oil Card which allows them to purchase 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.

40. 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 terms of this agreement provide 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.

41. The effect of the agreements between the parties is that when a Good Oil Card Customer uses a Good Oil Card to purchase 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.⁸ 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

42. Fuel cards are sometimes issued by the distributor rather than the oil company. However, 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.

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

43. 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.

⁸ Provided the requirements of Division 11 are satisfied.

44. *Full Tank Petrol Station is a Good Oil fuel outlet and the terms of the written Merchant Agreement it has entered into with Pump Right Distributor Co provide 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.*

45. *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.⁹ 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

46. Some fuel card arrangements involve the purchase 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 tendered as payment for the purchase of the fuel.

47. Where the fuel is owned by the oil company at that time¹⁰, 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 contract between the independent fuel card provider and the fuel merchant;
- 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 independent fuel card provider and the oil company; and

⁹ Provided the requirements of Division 11 are satisfied.

¹⁰ 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.

- the express terms of the contract between the independent fuel card provider and the oil company provide 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 card provider and then by the independent fuel card provider to the fuel card customer.

48. 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)

49. *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 a number of oil companies including Octane Oil Ltd, various fuel merchants who have agreed to accept the Far & Away Card as payment for fuel, and with its corporate clients.*

50. *The terms of these 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 which has agreed to accept 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.*

51. *When the Card holder uses a Far & Away Card to purchase 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.*

52. *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.¹¹ The fuel card customer may also be entitled to an input tax credit for its acquisition of the fuel (see paragraph 77).*

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

Arrangements involving a chain of taxable supplies

53. 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.

54. 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 express terms of the contracts between these parties must provide that the fuel is taken to be 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.

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

56. All of the parties will 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.¹²

Pay at the pump facilities

57. 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 purchase 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.

58. 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:

¹² Provided the requirements of section 11-5 are satisfied.

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- 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.

Mixed and composite supplies

59. A mixed supply is a supply that consists of separately identifiable taxable and non-taxable parts. A composite supply contains a dominant part plus something that is integral, ancillary or incidental to the dominant part. A composite supply is essentially the supply of a single thing.¹³

60. 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. However, if it is a composite supply, there is no need to separate the part that is a financial interest from the part that is taxable, because one part will be so integral, ancillary or incidental to the other part that it cannot be separated out.

61. There is no entitlement to input tax credits if the supply the fuel card provider makes is a composite financial supply.¹⁴ That is, the fuel card provider is not entitled to input tax credits for acquisitions that relate to the making of the composite financial supply, nor is the recipient entitled to input tax credits for acquisitions that relate to the acquisition-supply that it makes. A supply will be a composite financial supply if it contains a dominant part that meets the requirements of being a financial supply and includes something that is integral, ancillary or incidental to that part.¹⁵

¹³ 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.

¹⁴ Unless they are below the financial acquisitions threshold (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).

¹⁵ As noted in paragraph 91 of Goods and Services Tax Ruling GSTR 2002/2, the word 'incidental' in this context is not to be confused with the term when used in connection with an incidental financial supply.

62. If the supply by the fuel card provider is a composite taxable supply, the fuel card provider will be entitled to full input tax credits for acquisitions that relate to the supply. A supply will be a composite taxable supply if it contains a dominant part that would meet the requirements of being a taxable supply and includes something that is integral, ancillary or incidental to that part.

63. The fuel card provider will need to apportion the input tax credits for its acquisitions if it makes a mixed supply consisting, for example, of both taxable reporting services and an input taxed provision of credit.¹⁶

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

64. 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 access to fleet management information. In these arrangements the provision of the credit arrangement may form part of a mixed or composite supply, or it may be a separate supply, depending on the particular arrangement.¹⁷

Example 4 – composite financial supply

65. *Optimal Performance Co. provides a fuel card called the 'Optimal Performance Card' to its customers. The Optimal Performance Card operates as a charge card facility and 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.*

66. *Under the Optimal Performance Card Terms and Conditions, customers are also entitled to access 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.*

¹⁶ However, apportionment will not be necessary if the fuel card provider does not exceed the financial acquisitions threshold (see Division 189).

¹⁷ See paragraphs 59 to 63 of this Ruling.

67. *The supply made by Optimal Performance Co. is a composite financial supply. The reports provided to customers are integral, ancillary or incidental to the provision of the fuel card and cannot be separated out and treated as taxable parts in their own right. The monthly fee payable by the customer is consideration for the composite financial supply. Where a late payment charge is applicable, that will also be consideration for a financial supply.*

Arrangements that involve the supply of fuel and other services by the fuel card provider

68. Under many fuel card arrangements, the fuel card provider, in addition to making a supply of the fuel, also provides other services (for example, fleet management information or reporting services). The supply of the fuel is a separate taxable supply. However, the fuel card provider needs to determine whether the provision of the underlying credit arrangement forms part of a mixed or a composite supply with the other services, or whether there are separate supplies.

Example 5 – mixed supply (fuel owned by fuel merchant prior to commencement of transaction)

69. *Petroleo Oil Inc (Petroleo) offers two different types of fuel card to business customers – the Petroleo Standard Card and the Petroleo Deluxe Card. The contractual arrangements it has entered into are effective in creating a taxable supply of the fuel from Petroleo to the fuel card customer. The Petroleo Cards allow the fuel card customer to purchase fuel on credit.*

70. *Petroleo sends its customers a monthly statement of account giving details of the amounts owing for purchases of fuel using the Petroleo Cards and a monthly fee for administration of the customer's account. Customers are required to pay the total amount shown on the statement in full. If they do not pay the full amount, interest is charged on the amount outstanding.*

71. *The Petroleo Card Terms and Conditions provide Petroleo Standard Card customers with basic reports which are generated automatically on a monthly basis and e-mailed to the customer. Petroleo Deluxe Card customers are provided with additional reports and detailed statistical information which will assist them to control their fleet costs and to complete their Income Tax and Business Activity Statements. The monthly statements sent to Petroleo Deluxe Card customers show a higher monthly fee than those sent to Petroleo Standard Card customers.*

72. *In its advertising brochures and on its internet website, Petroleo heavily emphasises the benefits to customers of the Petroleo Deluxe Card. Customers who choose the Petroleo Deluxe Card do so on the basis that it provides them with important fleet management information and reports that are tailored to their business needs.*

73. *The supply made by Petroleo to its Petroleo Deluxe Card customers is a mixed supply. This supply can be characterised as consisting of a distinct taxable part (the reports and statistical information) and a distinct non-taxable part (an interest in or under a credit arrangement or right to credit). Petroleo therefore needs to apportion the monthly fee between the taxable and non-taxable parts.¹⁸ Where an interest charge is applicable, that will be consideration for the credit arrangement and need not be apportioned.*

74. *The supply of the credit arrangement and the reports by Petroleo to its Petroleo Standard Card customers is a composite financial supply. The reports provided to these customers are integral, ancillary or incidental to the provision of the credit and cannot be separated out and treated as taxable parts in their own right. The monthly fee payable by the customer is consideration for the composite financial supply. Where an interest charge is applicable, that will also be consideration for a financial supply.*

Arrangements which may not be effective

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

76. 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

77. 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. 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,

¹⁸ See section 9-80.

an employee, or a partner. In these situations, the fuel card customer would be the person themselves, the employer and the partnership respectively. These entities are the recipients of the supply of fuel and may be entitled to input tax credits for their acquisition of the fuel provided the requirements of Division 11 are satisfied.

Invoice and tax invoice requirements

78. 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 must be consistent with the taxable supplies that arise under the arrangement. The invoices and the tax invoices issued by the parties to the arrangement must 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

79. 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.¹⁹

80. 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.

81. Where an entity that makes a creditable acquisition as part of a fuel card arrangement accounts for GST on a non-cash basis, 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. However, the entity cannot claim an input tax credit until it holds a valid tax invoice.²⁰

¹⁹ 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.

²⁰ 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.

Tax invoices

82. The requirements for a document to be considered a valid tax invoice are outlined in subsection 29-70(1).²¹ An entity that makes a taxable supply of fuel under a fuel card arrangement must issue a tax invoice within 28 days after the recipient of the supply requests it, unless it is a recipient created tax invoice.²²

83. 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.²³ Similarly, a recipient may claim an input tax credit for a creditable acquisition made through an agent if the agent holds the tax invoice.²⁴

84. 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.²⁵

Your comments

85. We invite you to comment on this draft Goods and Services Tax Ruling. Please forward your comments to the contact officers by the due date.

Due date:	12 May 2004
Contact officers:	Wendy Armstrong or Sue Stewart
E-mail address:	Wendy.Armstrong@ato.gov.au
Telephone:	(07) 3213 5773 or (07) 3213 6652
Facsimile:	(07) 3213 5055
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²¹ See also Goods and Services Tax Ruling GSTR 2000/17.

²² 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.

²³ Paragraph 153-15(1)(b).

²⁴ Section 153-5.

²⁵ See paragraph 36 of Goods and Services Tax Ruling GSTR 2000/17.

Detailed contents list

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Commissioner of Taxation

31 March 2004

Previous drafts:

Not previously released in draft form.

Related Rulings/Determinations:

GSTR 1999/1; GSTR 2000/10;
 GSTR 2000/17; GSTR 2000/26;
 GSTR 2000/29; GSTR 2001/8;
 GSTR 2002/2

Subject references:

- agent
- composite supply
- composite financial supply
- credit arrangement
- creditable acquisition
- distributor
- distributor card
- 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
- oil company
- passing of title

- pay at the pump facilities

- recipient
- supplier
- tax invoice
- taxable supply

Legislative references:

- TAA 1953 37
- ANTS(GST)A99 9-5
- ANTS(GST)A99 Div 11
- ANTS(GST)A99 11-5
- ANTS(GST)A99 Div 29
- ANTS(GST)A99 29-10(3)
- ANTS(GST)A99 29-70(1)
- ANTS(GST)A99 29-70(2)
- ANTS(GST)A99 Div 153
- ANTS(GST)A99 153-5
- ANTS(GST)A99 153-15(1)(b)
- ANTS(GST)A99 Div 189
- *Regulations: Div 189*
- ANTS(GST)R99 40-5.09
- ANTS(GST)R99 40-5.09(3), item 2
- ANTS(GST)R99 40-5.09
- ANTS(GST)R99 70-5.02(2)

Case references:

- The Harpur Group Ltd. [1995] BVC 841

ATO references

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