MT 2024/D1 - Miscellaneous tax: time limits for claiming an input tax or fuel tax credit

For information about the status of this draft ruling, see item 3869 on our Advice under development program.

Status: **draft only – for comment**

Miscellaneous Taxation Ruling

Miscellaneous tax: time limits for claiming an input tax or fuel tax credit

Relying on this draft Ruling

This publication is a draft for public comment. It represents the Commissioner's preliminary view on how a relevant provision could apply.

If this draft Ruling applies to you and you rely on it reasonably and in good faith, you will not have to pay any interest or penalties in respect of the matters covered, if this draft Ruling turns out to be incorrect and you underpay your tax as a result. However, you may still have to pay the correct amount of tax.

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Status: **draft only – for comment**

What this draft Ruling is about

1. This draft Ruling[1] sets out the Commissioner's preliminary view on time limits applying to the entitlement to an input tax or fuel tax credit set out in:

- subsection 93-5(1) of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act), and
- subsection 47-5(1) of the *Fuel Tax Act 2006* (FTA).

2. In this Ruling, we use the following terms:

Table 1: Terms used in this Ruling

Term	Refers to
assessment	an assessment of a: • net amount, or • net fuel amount[2]
BAS	business activity statement
4-year entitlement period	the period set out in: • subsection 93-5(1) of the GST Act, and • subsection 47-5(1) of the FTA
limiting provisions	subsection 93-5(1) of the GST Act and subsection 47-5(1) of the FTA
period of review	the periods set out in Subdivision 155-B of Schedule 1 to the *Taxation Administration Act 1953* (TAA)[3]
return	a GST return or a fuel tax return[4]
tax credit	an input tax credit or a fuel tax credit[5]

3. The limiting provisions provide that your entitlement to a tax credit ceases (unless an exception applies) to the extent that the tax credit has not been taken into account in an assessment during the 4-year entitlement period.

4. This Ruling explains:

- when and the extent to which a tax credit has been taken into account in an assessment
- when the 4-year entitlement period ends
- the exceptions to the limiting provisions.

5. This Ruling also explains:

- when an objection to an assessment may preserve your entitlement to a tax credit
- the interaction between the limiting provisions and private ruling and amendment requests.

[1] For readability, all further references to 'this Ruling' refer to the Ruling as it will read when finalised. Note that this Ruling will not take effect until finalised.
[2] See sections 17-5 and 195-1 of the GST Act, sections 60-5 and 110-5 of the FTA and section 155-5 of Schedule 1 to the *Taxation Administration Act 1953*.
[3] The Commissioner may amend an assessment within the period of review for the assessment: subsection 155-35(1) of Schedule 1 to the TAA.
[4] See section 195-1 of the GST Act and section 61-15 of the FTA.
[5] See section 195-1 of the GST Act and section 110-5 of the FTA.

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Key decisions of Courts and Tribunals

6. Our view on the application of the limiting provisions has been determined by reference to decisions of the Administrative Appeals Tribunal (AAT), Federal Court and Full Federal Court. Some of these decisions relate to goods and services tax (GST), while others relate to fuel tax credits. As the limiting provisions for GST and fuel tax credits are substantially identical, we consider that the principles from the cases generally apply in the same way to both taxes.

7. The key decision on when tax credits are taken into account is the decision of the Full Federal Court in *Linfox Australia Pty Ltd v Commissioner of Taxation of the Commonwealth of Australia* [2019] FCAFC 131 (*Linfox*). In *Linfox*, the Full Federal Court considered the question of whether fuel tax credits were taken into account in an assessment where the fuel tax credit was reduced by the road user charge (RUC). The Court stated at [131]:

> … That term [assessment], as defined, describes not an outcome or an amount or a notice of assessment (or BAS), but a *process* the completion of which has the consequence that a specific amount becomes due.

and consequently

> … there is little difficulty in describing an integer representing the taxpayer's unreduced credits as having been taken into account in an assessment by reason of it having formed part of a calculation (the process) which produced the net amount recorded in the taxpayer's BAS that created an entitlement to a refund (the consequence) by the deemed assessment mechanism.

8. The Court further stated at [132] in relation to the words of apportionment 'to the extent that' in section 47-5:

> … those words have ample operation, at least where the taxpayer makes a mistake in the ascertainment of its (unreduced) entitlement to credits under s 43-5(1).

9. While *Linfox* was decided on other grounds[6], we consider these statements express the meaning of 'taken into account in an assessment' for the limiting provisions.

10. In *Coles Supermarkets Australia Pty Ltd v Commissioner of Taxation* [2019] FCA 1582 (*Coles*), the Federal Court considered whether fuel tax credits that had not been claimed in any return were taken into account in an assessment. The Court stated at [137]:

> … The fuel tax credit was not an integer used by Coles in calculating its net fuel amount in its fuel tax returns for the tax periods between July 2012 and January 2014. Indeed, Coles submits that it was not aware of the potential entitlement to a fuel tax credit for the fuel that evaporated or leaked during that period. Nor were the fuel tax credits for that period included in any subsequent fuel tax return.

11. The Court distinguished the *Coles* case from *Linfox*, stating at [138]:

> The situation in the present case is quite different from that considered in *Linfox*. In that case, the fuel tax credits were an integer in the calculation of the taxpayer's net fuel amount. … [T]he taxpayer in that case made a self-assessment, …, under which it calculated its net fuel amount by reducing the amount of its fuel tax credits by the amount of the road user charge for the fuel. … Here, the fuel tax credit was not included as an integer in calculating the net fuel amount in Coles's self-assessment.

[6] See *Linfox* at [120]. Broadly, in *Linfox* the taxpayer was seeking to obtain a refund on the basis it had understated its past fuel tax credit entitlements by incorrectly applying the RUC. The Court concluded the application of the RUC was correct. As a result, it was unnecessary to determine how the limiting provisions would have applied to change in entitlement. However, the matter was fully argued before the Court, and so the Court set out its view on how it would have decided the issue.

12. The Court also considered the consequences of *Coles* objecting to its assessment for the operation of the limiting provisions. It stated at [139]:

> … once a return has been lodged and objected to, there is no scope for the operation of s 47-5 to disentitle a taxpayer to fuel tax credits as the rights of the Commissioner and the taxpayer are, relevantly, preserved and protected by ss 14ZY, 14ZZP and 14ZZQ of the *Tax Administration Act* and s 155-60 of Sch 1 to that Act.

13. While *Coles* was again decided on different grounds[7], we consider these statements express the meaning of 'taken into account in an assessment' for the purposes of the limiting provisions.

14. The AAT has also considered the operation of the limiting provisions, highlighting the fixed and inflexible nature of the 4-year entitlement period.

15. In *Rosebridge Nominees Pty Ltd (IN LIQ) and Commissioner of Taxation* [2019] AATA 426 (*Rosebridge*), the AAT stated at [44]:

> … s 93-5(1) of the GST Act similarly makes it abundantly clear that the entitlement to the ITCs is extinguished in certain circumstances. The use of the word *"ceases"* is unequivocal in describing the end of the entitlement to claim ITCs, unless certain events have occurred.

16. The decision in *Rosebridge* was confirmed in *JHKW and Commissioner of Taxation* [2022] AATA 2875 (*JHKW*), *H & B Auto Repair Centre Pty Ltd and Commissioner of Taxation* [2022] AATA 3561 and *Messenger Media and Information Technology Pty Ltd and Commissioner of Taxation* [2023] AATA 752. In *JHKW*, the AAT further observed at [57]:

> The operation of section 93-5 of the GST [Act] means that if an extension of time to lodge a BAS has not been granted prior to the expiry of 4 years after the day on which it was required to be given to the Respondent, the entitlement to ITCs immediately ceases. Consequently, the provision of further time within which to give a BAS to the Respondent cannot be provided retrospectively outside of the relevant 4 year period.

Ruling

Limiting provisions and tax credits

17. Our view on the operation of the limiting provisions is as follows.

- 'Taken into account':
  - A tax credit is 'taken into account' in an assessment to the extent that the credit has formed part of the calculation of the amount that became the assessed net amount or assessed net fuel amount for the relevant tax period or fuel tax return period (referred to subsequently as the calculation that produced the assessed amount).[8]

[7] *Coles* at [7]. Broadly, in Coles the taxpayer was seeking to obtain a refund on the basis it was entitled to additional fuel tax credits in past tax periods. The Court concluded Coles was not entitled to the additional fuel tax credits in the relevant periods. As a result it was unnecessary to determine if the limiting provisions applied to additional entitlement. However, as the issue had been fully argued, the Court set out its view on how it would have decided the issue.

[8] *Linfox* at [131]. Section 17-5 of the GST Act explains 'net amount' and section 60-5 of the FTA explains 'net fuel amount'. See sections 33-3 and 33-5 of the GST Act and section 61-10 of the FTA, subsection 35-5(1) of the GST Act and section 61-5 of the FTA and definitions of 'assessed net amount' in section 195-1 of the GST Act and 'assessed net fuel amount' in section 110-5 of the FTA. See Examples 1 and 2 of this Ruling.

- A tax credit will form part of the calculation that produced the assessed amount to the extent that the amount of the credit forms part of the amount of total tax credits that is used in calculating your assessed amount.[9]
    - For GST, the amount of an input tax credit that is included in the calculation of total input tax credits is the amount which you determined you were entitled to for the tax period under the GST law, worked out under section 11-25 of the GST Act for fully creditable acquisitions or section 11-30 of the GST Act for partly creditable acquisitions.[10]
    - For fuel tax credits, the amount of a fuel tax credit that is included in the calculation of total fuel tax credits is the amount which you determined you were entitled to for the tax period or fuel tax return period under the fuel tax law, worked out under section 43-5 of the FTA (reflecting the taxpayer's entitlement under Subdivisions 41-A or 42-A of the FTA), before any reduction for the RUC.[11]
- If the amount of the tax credit that formed part of the calculation that produced the assessed amount is less than the amount of your entitlement under the GST law or fuel tax law, the tax credit is only taken into account to the extent of the amount actually included in the calculation. The balance of the tax credit has not been taken into account in the assessment.[12]
- If no amount of a tax credit is included as part of the total amount of your tax credits that formed part of the calculation of your assessed amount, the tax credit has not been taken into account in the assessment.[13]

- During the 4-year entitlement period
    - The 4-year entitlement period is the period of 4 years commencing after the day on which you were required to give the Commissioner a return for the tax period or fuel tax return period to which the credit would be attributable under subsections 29-10(1) or (2) of the GST Act or subsections 65-5(1), (2) or (3) of the FTA.
    - The 4-year entitlement period is only altered if, prior to the end of the 4-year entitlement period, there is a formal extension granted by the Commissioner to the due date for the return for the tax period or fuel tax return period to which the tax credit would be attributable under subsections 29-10(1) or (2) of the GST Act or subsections 65-5(1), (2) or (3) of the FTA.[14]
    - Your entitlement to tax credits ceases immediately on the expiry of the 4-year entitlement period. Actions after this time cannot revive your entitlement to the tax credit.[15]

[9] *Linfox* at [131] and [134].
[10] See Example 3 of this Ruling.
[11] *Linfox* at [130].
[12] *Linfox* at [132] and *Coles* at [137] and [138]. See Example 3 of this Ruling.
[13] *Coles* at [137] and [138]. See Example 1 of this Ruling.
[14] *JHKW* at [57].
[15] *JHKW* at [57]. See Example 5 of this Ruling.

- *Objections, requests for amendment and ruling requests*
  - You do not take a tax credit into account in an assessment by lodging an objection, requesting an amendment, or applying for a private ruling.[16]
  - However, the limiting provisions do not apply to disentitle you to a tax credit for a tax period to the extent that entitlement is specified in the grounds of a valid objection lodged within the 4-year entitlement period. To the extent that the objection decision or any subsequent review or appeal process finds that you were entitled to the tax credit and it is attributable to the period in dispute, your entitlement will not cease.[17]

Tax credits taken into account in an assessment

18. The concept of when a tax credit is taken into account in an assessment is central to the operation of the limiting provisions. We consider that this concept has a consistent meaning in limiting provisions. Based on *Linfox*, a tax credit is taken into account in an assessment to the extent that an amount representing the credit forms part of the calculation that produced the assessed amount.

19. This will be the case whether the assessment is made by the Commissioner under section 155-5 of Schedule 1 to the TAA, or whether it is treated as having been made by the Commissioner under section 155-5 as a result of section 155-15 of Schedule 1 to the TAA (a self-assessment). The only difference between these 2 situations is who is performing the calculation. In a self-assessment process, you are calculating the amount, so it will be the amount you include as a tax credit in the calculation that produces the assessed amount that is taken into account. In an assessment process, it will instead be the amount included by the Commissioner when undertaking the calculation.

20. What must form part of the calculation that produces the assessed amount for a tax credit to be taken into account is a specific amount representing the credit (described as an 'integer' by the Court in *Linfox*).[18]

21. Merely identifying or considering an acquisition or a tax credit without including any specific amount in the calculation that produced the assessed amount does not result in any amount forming part of the calculation that produced the assessed amount.[19] As a result, if an acquisition or tax credit is merely considered in this way, it will not be taken into account in an assessment.

22. In *Linfox*, the Court stated that in the specific context of the RUC, both the fuel tax credit and the RUC separately formed part of the calculation that produced the assessed amount. As a result, even though the credits were reduced by the RUC in that calculation, the full credits were taken into account in the resulting assessment.

23. Outside of this specific context, it is only the specific amount representing the credit that will form part of the calculation that produces the assessed amount.

[16] *Coles* at [137] and [139]. See Example 7 of this Ruling.
[17] *Coles* at [139]. See Example 6 of this Ruling.
[18] *Linfox* at [131] and [133].
[19] See for example *Coles* at [137] and [138].

24. If the amount that forms part of the calculation that produced the assessed amount is less than the full amount of the credit, the balance of the credit has not been taken into account in the assessment.[20]

25. There is a distinction between a calculation that produces the assessed amount and your decision about what amounts to include in that calculation. We do not consider that an amount of a credit formed part of the calculation that produced the assessed amount merely because you considered the amount then decided to ultimately include a lesser amount.

26. This means that if you:

- understate your extent of creditable purpose for input tax credits or your entitlement under Subdivision 41-A of the FTA for fuel tax credits, the amount that you determined you were not entitled to and did not include in the calculation that produced the assessed amount has not been taken into account in the resulting assessment, and
- make a mistake about the extent to which a tax credit is attributable to a particular tax period or fuel tax return period, any part of the credit that you decide not to include in the calculation that produced the assessed net amount has not been taken into account in the resulting assessment.

27. These processes relate to your decision about what to include in the calculation that produces the assessed amount. They are not themselves part of that calculation.

28. Even if you considered the unclaimed part when determining what amount you should claim, it was then left out of the calculation that gave rise to the assessed amount. You do not take something into account in an assessment to the extent that you decide not to include it in the calculation that produces the assessed amount.

Example 1 – credits not taken into account within the 4-year entitlement period

29. *Lily makes a creditable acquisition of a computer desk for $750 for use in her enterprise on 15 September 2022. Lily lodges returns quarterly.*

30. *The following table sets out the relevant dates:*

Table 2: Relevant dates for Example 1

Due date for GST return	***Last day of the 4-year entitlement period***
28 October 2022	*28 October 2026*

31. *Lily identifies the acquisition when preparing her BAS, but treats it as not being a creditable acquisition. As a result she does not include the input tax credit for the purchase of the desk when working out her total input tax credits. The input tax credit has not been taken into account in the assessment.*

[20] *Linfox* at [130] '… In working out the amount of each credit the integers are, relevantly, the amount of the taxpayer's entitlement to a credit …' and at [131] '… there is little difficulty in describing an integer representing the taxpayer's unreduced credits as having been taken into account in an assessment by reason of it having formed part of a calculation (the process) which produced the net amount recorded in the taxpayer's BAS …'.

32. *On 30 October 2026, Lily realises that she was entitled to an input tax credit in relation to the purchase of the desk. However, under section 93-5 of the GST Act, Lily's entitlement to the input tax credit had ceased at the end of 28 October 2026.*

33. *Lily can no longer claim the additional input tax credit.*

Example 2 – 'taken into account' and the RUC

34. *Mei-Lin starts a small excavation business in early 2016 and registers for GST, choosing to lodge returns quarterly. She lodges a fuel tax return (included on her BAS) for the quarter that ended on 30 June 2016, claiming fuel tax credits for diesel she purchases for use in her bobcat, excavator and truck.*

35. *She correctly determines the amounts of her fuel tax credits and includes these amounts in the calculation of her net fuel amount. However, she incorrectly subtracts the RUC from fuel tax credits for all the diesel purchased for use in the truck, despite the truck being partly intended for off-road use.*

36. *The following table sets out the relevant dates:*

Table 3: Relevant dates for Example 2

Due date for fuel tax return	***Last day of the 4-year entitlement period***
28 July 2016	*28 July 2020*

37. *On 1 October 2020, Mei-Lin realises that, to the extent fuel was acquired for use in the truck while it was operating off public roads, no RUC was applicable. She calculates that the incorrect application of the RUC reduced her net fuel amount by $205.91.*

38. *The additional fuel tax credit amount of $205.91 has been taken into account in an assessment. This is because Mei-Lin included the full amounts of the fuel tax credits as integers in her calculation of her assessed net fuel amount before determining the RUC applied. As the $205.91 has been taken into account in an assessment within the 4-year entitlement period, her entitlement to this amount has not ceased under Division 47 of the FTA.*

Example 3 – 'taken into account' and partly creditable acquisitions

39. *Grace Co carries on a financial services business. It is registered for GST and lodges returns monthly.*

40. *In January 2020, Grace Co acquires marketing services for use in its business for $22,000.*

41. *Sixty per cent of the services relate to the promotion of Grace Co's business activities involving making input taxed financial supplies. The remaining 40 per cent of the services relate to Grace Co's other business activities. As a result, the extent of Grace Co's creditable purpose for the acquisition is 40 per cent.*

42. *When determining its entitlement to input tax credits for the acquisition of these services, Grace Co treats the acquisition as being 25 per cent creditable rather than 40per cent creditable.*

43. *As a result, Grace Co determines its input tax credit entitlement to be $500 (rather than $800). Grace Co uses $500 in calculating the amount it records on its BAS for the tax period. Only $500 has been taken into account in its assessment.*

44. *The table sets out the relevant dates:*

Table 4: Relevant dates for Example 3

Due date for GST return	***Last day of the 4-year entitlement period***
21 February 2020	*21 February 2024*

45. *In April 2024, Grace Co identifies that it was entitled to an additional credit of $300.*

46. *This amount of the input tax credit was not included in an assessment within the 4-year entitlement period. While a part of the credit was taken into account, neither the additional amount nor the acquisition itself formed an integer in working out Grace Co's total credits for the relevant period. As a result, Grace Co has ceased to be entitled to the input tax credit to this extent.*

Example 4 – 'taken into account' and disentitling provisions

47. *Breanna carries on a trucking business. She is registered for GST and lodges returns monthly.*

48. *In January 2022, Breanna acquires 22,000 litres of fuel for use in her business. Three-quarters of the fuel is for heavy vehicle use, while the remaining quarter is for use in light vehicles on a public road. As taxpayers are not entitled to a fuel tax credit for fuel to the extent that the fuel is for use in a light vehicle travelling on a public road (see section 41-20 of the FTA), Breanna is only entitled to a fuel tax credit for the remaining three-quarters of the fuel.*

49. *When determining her entitlement, Breanna accidentally reverses the proportions of heavy vehicle use and light vehicle use. As a result, she only includes an amount of $929.50 (5,500 litres at $0.169 a litre) rather than $2,788.50 (16,500 litres at $0.169 a litre) when working out her net fuel amount.*

50. *The table sets out the relevant dates:*

Table 5: Relevant dates for Example 4

Due date for GST return	***Last day of the 4-year entitlement period***
21 February 2022	*21 February 2026*

51. *In May 2026, Breanna identifies the shortfall and determines she was entitled to an additional $1,859.00 ($2,788.50 − $929.50).*

52. *This amount of the credit was not included in an assessment within the 4-year entitlement period. While a part of the credit was taken into account, neither the additional amount nor the acquisition itself formed an integer in working out Breanna's total fuel tax credits for the relevant period. As a result, Breanna has ceased to be entitled to the credit to this extent.*

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Within the 4-year entitlement period

53. Absent a statutory exception, your tax credits must be taken into account in an assessment as described in paragraphs 18 to 52 of this Ruling within the 4-year entitlement period in order for the limiting provision not to apply.[21] The assessment must be completed by a notice of assessment being given or treated as having been given to you within that time.[22]

54. As outlined in paragraphs 2 and 17 of this Ruling, the 4-year entitlement period is the period of 4 years commencing after the day on which you were required to give the Commissioner a return for the tax period or fuel tax return period to which the credit would be attributable under subsections 29-10(1) or (2) of the GST Act or subsections 65-5(1), (2) or (3) of the FTA.

55. In some cases, such as where the taxpayer does not hold a tax invoice for an acquisition, the 4-year entitlement period for a credit may commence prior to the tax period to which a tax credit is ultimately attributable. The delayed attribution of a tax credit does not change the 4-year entitlement period for that credit.

56. The due dates for lodging returns are set out in the GST Act and the FTA and may be extended in some circumstances (for example, the Commissioner may allow a further period to provide a GST return under paragraph 31-8(1)(b) of the GST Act or defer the date for lodgment under section 388-55 of Schedule 1 to the TAA).[23] The 4-year entitlement period is only altered by a formal extension by the Commissioner under these provisions. It is not affected by decisions to remit penalties or to defer or cease compliance actions in relation to late lodgment.[24]

57. The end date of the 4-year entitlement period is fixed and your entitlement to tax credits ceases immediately and permanently once it concludes.[25] There is no statutory discretion that may be exercised to extend or waive the 4-year entitlement period.[26] Actions after your entitlement has ceased cannot revive your entitlement – even if an extension of the due date for lodging returns was granted after the 4-year entitlement period has ended, it would not revive your entitlement to any credits for which your entitlement had ceased.[27]

Example 5 – delayed attribution and the 4-year entitlement period

58. *Claire's Crafts Pty Ltd makes a creditable acquisition of art supplies in June 2022, paying in full. Claire's Crafts Pty Ltd lodges returns quarterly and accounts for GST on a cash basis.*

59. *At the time Claire's Crafts Pty Ltd lodges its BAS (which incorporates its GST return) for this tax period, it did not hold a tax invoice for the acquisition.*

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[21] See *Rosebridge* at [44].

[22] Section 155-10 of Schedule 1 to the TAA requires the Commissioner to give a notice of assessment. Where an assessment is taken to have been made under section 155-15 of Schedule 1 to the TAA, subsection 155-15(4) provides for your GST return or fuel tax return for the tax period or fuel tax return period to be treated as a notice of assessment. Under section 155-40 of Schedule 1 to the TAA, applications for amendments to assessments can also be treated as notice of the amended assessment.

[23] The standard timeframe in which lodgment is required is set out in sections 31-8 and 31-10 of the GST Act and section 61-15 of the FTA.

[24] See for example *JHKW* at [52–63].

[25] *Rosebridge* at [44] and *JHKW* at [49] and [50].

[26] See for example *JHKW* at [58] and *H & B Auto Repair Centre Pty Ltd and Commissioner of Taxation* [2022] AATA 3561 at [63–65].

[27] *JHKW* at [57].

60. *As a result, the input tax credit is not attributable to the June 2022 tax period.*[28] *Claire's Crafts Pty Ltd does not include the credit in its BAS for that tax period and instead claims the credit in the September 2022 tax period after obtaining a tax invoice.*

61. *This delay in attribution does not affect the 4-year entitlement period for the input tax credit. The 4-year entitlement period commences after 28 July 2022, the day the GST return was due for the June 2022 tax period to which the credit would be attributable under subsection 29-10(2) of the GST Act. It concludes at the end of the period of 4 years after that day, 28 July 2026.*

62. *If the input tax credit was not claimed in the September 2022 tax period and had not otherwise been taken into account in an assessment on or before 28 July 2026, Claire's Crafts Pty Ltd would permanently cease to be entitled to the input tax credit at the end of that day. After that day, Claire's Crafts Pty Ltd would not be able to claim the credit in any tax period.*

Objections, amendment requests and applications for private rulings

63. You do not take a tax credit into account in an assessment merely by lodging an objection, requesting an amendment to an assessment, or applying for a private ruling. None of these actions form part of the calculation that produces the assessed amount and they will not themselves result in any amount being taken into account in an assessment.[29]

64. However, in *Coles*, the Federal Court found that the limiting provisions are subject to an implicit qualification and so do not apply in relation to an objection that has been made within the 4-year entitlement period.[30]

65. Given this, the Commissioner considers that the limiting provisions will not apply to disentitle you to a tax credit for a tax period or fuel tax return period to the extent that you have, prior to the cessation of your entitlement, validly objected to your assessment for the period on grounds including your entitlement to the tax credit, and your entitlement is established through the objection process (including any subsequent court or tribunal proceedings relating to the objection decision).

66. In effect, a valid objection[31] made before the end of the 4-year entitlement period may preserve your entitlement to tax credits that are the subject of the objection for the period in dispute, even if they have not been taken into account in an assessment. The limiting provisions will not apply in a way that could render your validly exercised entitlement to review under the objection provisions ineffective.

67. However, a valid objection made after the 4-year entitlement period cannot revive a tax credit that has ceased under the limiting provisions, even if you are still within time to object.[32] At the time of such an objection, there is no longer any entitlement to the tax credit and the objection can only confirm this fact.[33] Subject to the exceptions in

[28] Subsection 29-10(3) of the GST Act.
[29] Instead, such a tax credit that was not taken into account in the original assessment for a tax period will only be taken into account in an assessment to the extent the Commissioner makes an amended assessment that includes the tax credit.
[30] *Coles* at [139].
[31] The requirements for an objection to be valid are discussed at paragraphs 87 to 89 of this Ruling.
[32] Situations where a valid objection could be lodged after the expiry of the 4-year entitlement period include where the taxpayer lodged their GST return or fuel tax return late, deferring the start of the period of review as set out in subsection 155-35(2) of Schedule 1 to the TAA or where the objection is lodged late, but treated as being made within time under section 14ZX of the TAA.
[33] See for example, *JHKW*.

Division 47 of the FTA and Division 93 of the GST Act, the cessation of entitlement to a tax credit under the limiting provisions is final.

68. A valid objection also only preserves your entitlement in relation to the subject of the objection for the period in dispute. It does not preserve any entitlements you may have in relation to other tax or fuel tax return periods or any entitlements that are not raised in the grounds of objection.

69. Other processes such as requesting an amendment to an assessment or applying for a private ruling do not provide the protections that exist for the objection process.

70. Objecting to an assessment engages fundamental rights to review and, consistent with this, receives particular protections under Part IVC of the TAA. This provides the basis for the inference that the limiting provisions do not apply to potentially prevent the exercise of such rights from being effective. Other processes do not engage with such fundamental rights or receive the same statutory protections that were discussed in *Coles*[34], meaning that the same inference does not arise.

Example 6 – valid objections within the 4-year entitlement period

71. *Elijah purchases computer software on 25 November 2018 that he uses for his enterprise. Elijah lodges his returns quarterly.*

72. *The following table sets out the relevant dates:*

Table 6: Relevant dates for Example 6

Due date for GST return	***Last day of the 4-year entitlement period***
28 February 2018	*28 February 2022*

73. *Elijah does not lodge his BAS for the relevant tax period. He is instead assessed by the Commissioner. He does not advise the Commissioner that he is entitled to an input tax credit for the purchase of the software. The input tax credit is not taken into account in the assessment.*

74. *Elijah discovers at the beginning of 2022 that he is entitled to an input tax credit of $140 in respect of the purchase of the computer for this tax period. He objects to his assessment for the December 2018 quarterly tax period on 18 February 2022 on the ground that it did not include the input tax credit for the software. The objection is made in the approved form within the 4-year entitlement period for any input tax credit for the computer software.*

75. *The Commissioner makes a decision on Elijah's objection on 7 April 2022, at which time the 4-year entitlement period and the period of review had both expired.*

76. *However, because Elijah made a valid objection within the 4-year entitlement period, that is, before the end of 28 February 2022, the limiting provisions do not apply in relation to any entitlement to a credit attributable to the relevant tax period that is identified in the objection decision.*

77. *Likewise, as the objection was valid, the Commissioner may still amend the assessment in response to the objection.*

[34] See *Coles* at [139].

78. *If the Commissioner were to decide in the objection decision that Elijah was not entitled to the credit and Elijah were to subsequently seek review by the Administrative Appeals Tribunal or appeal to the Federal Court, then if the Court or Tribunal found Elijah was entitled to some or all of the credit for the December 2018 quarter, Elijah's entitlement to that part of the credit would have been preserved. The Commissioner would also be able to amend Elijah's assessment to give effect to any decision of the Tribunal or Court.*

Example 7 – requests for amendment within the 4-year entitlement period

79. *Angus carries on a landscape gardening business as a sole trader. He is registered for GST and lodges his returns quarterly. On 5 February 2020, he purchases gardening materials for $11,000 which he uses in carrying on his enterprise.*

80. *This is a creditable acquisition and he is entitled to an input tax credit of $1,000.*

81. *The following table sets out the relevant dates:*

Table 7: Relevant dates for Example 7

Due date for GST return	***Last day of the 4-year entitlement period***
28 April 2020	*28 April 2024*

82. *Angus fails to lodge his BAS for the March 2020 quarterly tax period. He is subsequently assessed by the Commissioner, but forgets to advise the Commissioner about the $1,000 input tax credit to which he is entitled for the gardening materials. The input tax credit is not taken into account in his assessment for the tax period.*

83. *In April 2024, Angus reviews his records from the period and identifies his oversight. He applies in the approved form for the Commissioner to amend his assessment to include the credit on Saturday, 27 April 2024.*

84. *This amendment request does not result in the input tax credit being taken into account or prevent the application of the limiting provisions. Unless, by the end of 28 April 2024, Angus objects to his assessment for the March 2020 tax period on the ground he is entitled to the credit in relation to the tax period or the input tax credit is taken into account in an assessment, Angus's entitlement to the credit will cease.*

85. *On 28 April 2024, Angus realises that his entitlement may cease. He objects to his assessment for the March 2020 quarterly tax period on the ground that it did not include the input tax credit for the software. The objection is made in the approved form within the 4-year entitlement period and the period of review.*

86. *As Angus made a valid objection within the 4-year entitlement period, the limiting provisions do not apply in relation to any entitlement to a credit attributable to the relevant tax period that is identified in the objection decision.*

Information requirements for valid objections

87. To lodge a valid objection, you need to provide all information required on the approved form and state fully and in detail the grounds for the objection within the period of

review.[35] This includes making clear how the proposed grounds are relevant to the correctness of the assessment. These requirements are discussed in the context of income tax in Taxation Ruling TR 2011/5 *Income tax: objections against income tax assessments*.

88. Failure to meet these requirements results in the purported objection being invalid.

89. If you lodge an objection that is not valid, for example because it omits information required on the approved form, the limiting provisions will still apply. You will cease to be entitled to tax credits that were the subject of the invalid objection unless either:

- the credits are taken into account in an assessment within the 4-year entitlement period
- one of the exceptions discussed in paragraphs 90 to 92 of this Ruling applies, or
- you later lodge a valid objection within the 4-year entitlement period.

Exceptions to the limiting provisions

90. There are 2 exceptions to the 4-year entitlement period in the limiting provisions.

91. The first only relates to GST. You may remain entitled to an input tax credit that has not been taken into account in an assessment where the input tax credit is for a creditable acquisition that relates to making a supply which was incorrectly treated as input taxed, and after the end of the 4-year entitlement period the assessment for the tax period to which the GST on the supply is attributable is amended to treat the supply as taxable or GST-free.[36] This exception will only apply where the amendment does not relate to fraud or evasion and where the Commissioner may still amend the assessment for the tax period to which the input tax credit would have been attributable under subsections 29-10(1) and (2) of the GST Act.

92. The second exception ensures that you remain entitled to a tax credit where:

- you have asked the Commissioner to treat a document as a tax invoice
- the request was made before the end of the 4-year entitlement period, and
- the Commissioner agrees to your request after the end of the 4-year entitlement period.[37]

Date of effect

93. When the final Ruling is issued, it is proposed to apply both before and after its date of issue. However, the Ruling will not apply to taxpayers to the extent that it conflicts

[35] For the requirements to lodge a valid objection, see section 14ZU of the TAA and for the time period within which the taxpayer must lodge an objection, see paragraph 14ZW(1)(bg) of the TAA.
[36] Subsection 93-10(4) of the GST Act.
[37] Subsection 93-10(5) of the GST Act and section 47-10 of the FTA.

with the terms of settlement of a dispute agreed to before the date of issue of the Ruling (see paragraphs 75 to 76 of Taxation Ruling TR 2006/10 *Public Rulings*).

Commissioner of Taxation
21 February 2024

Appendix 1 – Alternative view

This Appendix sets out an alternative view and explains why it is not supported by the Commissioner. It does not form part of the proposed binding public ruling.

94. We have considered an alternative view of the meaning of 'taken into account', based on a different reading of the decision in *Linfox*.

95. Under this view, a credit forms part of the process of assessment if the acquisition or credit is identified and its inclusion in the assessment considered.

96. This view differs from the position set out in paragraphs 17 to 28 of this Ruling in 2 key ways.

97. First, under this view the process of assessment extends beyond the determination of the amount forming part of the statutory formula for the net amount or net fuel amount, and encompasses all related and preliminary considerations and calculations relevant to the taxpayer decisions on what to include in that process.

98. Second, under this view the full amount of the GST included in the price of an acquisition or the effective fuel tax payable on fuel formed an integer in the calculation if consideration was given to the inclusion of any part of the amount in this process. It was not necessary for any amount relating to a credit to actually form part of the calculation for it to be taken into account.

99. The Commissioner does not consider this to be the better view of the law or of what was said by the Court in *Linfox*.

100. The process of assessment described in *Linfox* is specifically described as the working out or 'ascertainment' of the net fuel amount as a result of which an amount becomes due.[38] Nothing in the remarks of the Court suggests that amounts of credits that never formed part of the calculation of the net fuel amount, whether because the amounts were not identified or because the taxpayer did not consider they were entitled to that amount, were still somehow taken into account in that process.[39] On the contrary, in those scenarios, these amounts were specifically not used in ascertaining the assessment, whether inadvertently or because of a deliberate choice that they should not be taken into account.

101. This stands in contrast to the situation in *Linfox*, in which the Court emphasised that the relevant credits did form an integer in the process before being reduced by a separate integer being the RUC.[40]

102. This alternative view also cannot be reconciled with the statement of the Court that section 47-5 of the FTA would apply where a taxpayer made a mistake in the ascertainment of its entitlement to credits under subsection 43-5(1) of the FTA[41], or the dicta of Moshinsky J in *Coles* indicating that tax credits were not taken into account as they were not an integer used by *Coles* in calculating its net fuel amount and, in this context, nothing turned on whether *Coles* was unaware of its entitlement when performing these calculations.[42]

[38] *Linfox* at [131].
[39] *Linfox* at [130–134].
[40] *Linfox* at [130].
[41] *Linfox* at [132].
[42] *Coles* at [129], [137] and [138].

Appendix 2 – Your comments

103. You are invited to comment on this draft Ruling including the proposed date of effect. Please forward your comments to the contact officer by the due date.

104. A compendium of comments is prepared when finalising this Ruling, and an edited version (names and identifying information removed) is published to the Legal database on ato.gov.au

Please advise if you do not want your comments included in the edited version of the compendium.

Due date:	**22 March 2024**
Contact officer:	**Tanya O'Callaghan**
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References

Previous draft:
MT 2018/D1

Related Rulings/Determinations:
TR 2006/10; TR 2011/5

Legislative references:
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- TAA 1953 14ZW(1)(bg)
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- H & B Auto Repair Centre Pty Ltd and Commissioner of Taxation [2022] AATA 3561; 2022 ATC 10-651; 115 ATR 130
- JHKW and Commissioner of Taxation [2022] AATA 2875; 2022 ATC 10-643
- Linfox Australia Pty Ltd v Commissioner of Taxation of the Commonwealth of Australia [2019] FCAFC 131; 271 FCR 365; [2020] ALMD 3305; [2020] ALMD 3320; [2020] ALMD 3321
- Messenger Media and Information Technology Pty Ltd and Commissioner of Taxation [2023] AATA 752; 2023 ATC 10-666; 116 ATR 46
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