SST D5 - Sales tax: credits

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Generated on: 26 November 2026, 04:45:07 AM

Taxation Ruling
Sales tax: credits

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 taxation officers, taxpayers and practitioners. When officially released it will be a public Ruling for the purposes of section 77 of the Sales Tax Assessment Act 1992.

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Chapter 1: What this Ruling is about

1.1 Sales tax is a tax on goods that are manufactured in, or imported into Australia. The broad intention of the sales tax law is to tax goods only once, usually at the time of the last wholesale sale of goods, unless an exemption applies. The credit provisions in the law support this intention by dealing with a range of situations that occur.

1.2 This Ruling explains the sales tax credits that are available under the sales tax law. Chapter 2 sets out the date of effect of the Ruling. Chapter 3 gives an overview of the credit provisions contained in the sales tax law including discussion of the more common types of credit claims.

1.3 Chapter 4 sets out the general rules that apply to a claim for a sales tax credit. Chapter 5 discusses the requirements to be met for some types of credits. Chapter 6 discusses a number of credit related issues that may arise.

1.4 The Ruling is expressed in non-technical language wherever possible. The footnotes cite court decisions, refer to the particular legislation that applies, or give more detail on the point being discussed.

Note: This is the second draft Ruling issued for comment on the subject of 'credits'. The original draft issued on 16 August 1995. This revised draft Ruling takes into account the feedback received and court cases decided since then. We have underlined the text to show additions to the original draft, except where these are obvious from the context, or, in the case of Chapter 6, paragraphs 6.8 to 6.21, dealing with 's*topping the clock*' letters, where the entire section has been re-written.

Chapter 2: Date of Effect

2.1 This Ruling is effective from ... [issue date of the final Ruling]. It replaces any previous public or private rulings that are inconsistent with it. Public or private rulings that are inconsistent with the principles contained in this Ruling will lapse on ... [three months from the date of effect of the final Ruling].

Chapter 3: Overview of the credit provisions

3.1 This Chapter gives a broad overview of the credit provisions in the *Sales Tax Assessment Act 1992* (referred to in this Ruling as *the Act*). Sections 51 to 60 of *the Act* specifically deal with credits.

Definition of 'credit' and 'claimant'

3.2 The term **credit** is used in the sales tax law and in this Ruling to cover both sales tax refunds obtained directly from the Australian Taxation Office (ATO) and sales tax rebates claimed as a deduction from gross sales tax payable on a sales tax return (for more details on how to make a claim see paragraph 4.4).

3.3 The term **claimant** is used in the sales tax law and in this Ruling to identify the person entitled to claim the sales tax credit.

What is a credit ground?

3.4 Table 3 to *the Act*, which is reproduced as **Attachment A** to this Ruling, lists the situations where a sales tax credit is available.[1] Table 3 sets out:

- the particular situation that causes each credit entitlement. Each situation is referred to as a **credit ground** and numbered **CR1**, **CR2** and so on (columns 1 and 2 of Table 3);
- who can claim the credit and details of the entitlement (column 3);
- the amount of the credit entitlement (column 4); and
- the time the credit entitlement arises (column 5).

3.5 Each credit ground has varying requirements (as shown in the columns in Table 3 beside each credit ground) which must be satisfied before the claimant is entitled to a credit under that particular credit ground. Some of the more common requirements are discussed at paragraphs 5.1 to 5.10.

[1] Subsection 51(1) of *the Act*.

3.6 When the claimant has satisfied the requirements of a particular credit ground and so established an entitlement to a sales tax credit, there are some general rules (as discussed at paragraphs 4.1 to 4.8) which apply to all credit claims.

Credits only available under the sales tax law

3.7 The credit grounds listed in Table 3 to *the Act* are a complete list of the situations where an entitlement to a sales tax credit may arise. The ATO will not accept any claim for a sales tax credit that does not fall within a credit ground in Table 3.

3.8 The Full Federal Court[2] has held that the sales tax credit provisions are an exhaustive code for the recovery of all overpayments of sales tax and that the code overrides any common law refund rights in relation to sales tax. It follows that for any credit claim to be successful it must fall within one of the credit grounds set out in Table 3 and also satisfy the terms of that credit ground.

Common types of credit claims

Credits for overpaid tax[3]

3.9 Overpayments can occur where a claimant has paid an amount of sales tax that was not legally payable. Tax may be overpaid in a number of situations including:

- the goods were wrongly classified for sales tax purposes by the claimant;[4] or
- the claimant made an incorrect calculation of sales tax payable.

3.10 For most of the credit grounds in Table 3 the time when the credit arises is self explanatory. In relation to CR1 the time the credit arises is *when the amount became overpaid*. Such an amount is taken to have been overpaid on the date the payment of sales tax was received by the ATO.

3.11 Sales Tax Ruling SST 6 titled *Sales Tax: Taxable Value* gives some simple guidelines, termed Safe Harbours, which provide certainty for taxpayers and make their calculation of taxable value easier. Where sales tax has been overpaid for any transaction, the appropriate Safe Harbour value in SST 6 represents a simple method to calculate the amount of sales tax overpaid.

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[2] Chippendale Printing Co Pty Ltd v. FC of T and Anor 96 ATC 4175

[3] Credits for overpaid tax are covered by credit ground 1 (CR 1) in Table 3 to *the Act*.

[4] Goods are either exempt from sales tax or taxable at a certain rate, depending on how they are classified. For example, goods listed in Schedule 1 to the *Sales Tax (Exemptions and Classifications) Act 1992* are exempt from tax, goods in Schedule 2 are taxable at 12% and goods listed in Schedule 5 are taxable at 32%.

Credits for failure to quote[5]

3.12 Persons registered for sales tax purposes (for example, manufacturers and wholesalers) quote their registration number to obtain certain goods free of sales tax. Unregistered exempt persons (for example, public hospitals, schools and universities) quote an exemption declaration.

3.13 An entitlement to a sales tax credit exists where registered or unregistered persons,[6] who are entitled to quote, fail to do so. This entitlement exists whether the claimant forgets to quote, or the quote was not accepted by the person (for example, the supplier of the goods) to whom it was given.

Credits to avoid goods being taxed twice[7]

3.14 Goods that are subject to sales tax are taxed only once. Circumstances can arise where the claimant becomes liable to sales tax on an assessable dealing[8] with goods on which the claimant has already *borne tax* (for a definition of this term see paragraph 5.8), for example, the claimant may have bought goods at a tax-inclusive price and be required to account for sales tax when reselling by wholesale. A credit for the tax paid on purchase applies in order to avoid double taxation.

Credits for sales tax excluded from sales to quoting purchasers[9]

3.15 An entitlement to a sales tax credit arises where tax has been excluded from the sale price of tax paid goods sold free of tax to a purchaser who quotes either a registration number or an exemption declaration. This credit ground enables claimants, such as retailers, to claim a credit where they sell tax-paid goods on a tax exclusive basis to registered persons such as manufacturers or to unregistered exempt organisations such as public hospitals, schools and universities and public benevolent institutions.

Credits for goods exported[10]

3.16 Assessable goods[11] that are exported or intended to be exported are exempt from sales tax. Accordingly a number of the credit grounds in Table 3 to *the Act* provide

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5 Credits for failure to quote are covered by credit grounds 2 (CR2) and 2A (CR2A) in Table 3 to *the Act*.

6 Credit ground 2A (CR2A) provides the credit entitlement to unregistered persons. This credit ground applies from 16 December 1995.

7 Credits to avoid the same goods being taxed twice are covered by credit ground 4 (CR4) in Table 3 to *the Act*.

8 Sales tax is imposed on assessable dealings with assessable goods (see footnote 11) unless an exemption applies. The most common type of assessable dealing is a wholesale sale of goods.

9 Credit ground 8 (CR8) in Table 3 to *the Act* covers this entitlement.

10 Credits for goods exported are covered by credit grounds 10 (CR10) to 15 (CR15) in Table 3 to *the Act*.

for circumstances where sales tax has been paid or *borne* on goods that are later exported or used as inputs to goods that are later exported.

Credits for bad debts[12]

3.17 Where a claimant has paid tax on an assessable dealing with goods (for example a wholesale sale to a retailer) and has later written off some or all of the price of the goods as a bad debt, then a sales tax credit can be claimed at the time of writing off the amount as a bad debt. The amount of the credit that can be claimed is a proportion of the tax paid which is equal to the proportion of the debt written off.

3.18 Where a credit has been claimed for the sales tax component of a bad debt and that debt (either wholly or in part) is later recovered, the claimant is again required to pay to the ATO the sales tax component of the amount recovered.[13]

Credits for goods returned by the purchaser

3.19 When goods are sold but subsequently returned by the purchaser to the vendor, and the vendor reimburses the purchaser, it is the ATO view for sales tax purposes that effectively no sale has taken place. So, where those goods have been sold subject to sales tax, that tax has been overpaid and CR1 would provide a credit to the claimant (i.e., the vendor).

Objections against credit decisions

3.20 If the Commissioner decides to disallow the whole or part of a particular credit claim, we will notify the claimant of this decision.[14] If the claimant is dissatisfied with this ATO decision, an objection against the decision can be lodged.[15]

3.21 The ATO will provide written reasons explaining decisions which deny credit claims. These reasons will clearly state which (if any) facts are disputed by the ATO and the nature of any disagreement over the interpretation of the sales tax law.

3.22 Where a taxpayer intends to refund tax to customers once an entitlement to a credit is established, the ATO will not use the 'passing on provisions' (see paragraphs 5.2

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[11] Assessable goods are defined as goods which have either been manufactured in Australia or which have been imported into Australia, but do not include goods which have been applied to own use in Australia (known as Australian used or 'second hand' goods).

[12] Credits for bad debts are covered by credit ground 21 (CR21) in Table 3 to *the Act*. Discussion on what constitutes a bad debt is contained in Taxation Ruling TR 92/18, in particular paragraphs 26 et seq.

[13] Section 57 of *the Act*

[14] Subsection 60(1) of *the Act*.

[15] Subsection 60(2) of *the Act* gives this right of objection. The rules relating to objections are set out in Part IVC of the *Taxation Administration Act 1953*.

to 5.7) to deny a person the opportunity to test an issue of principle (for example, the classification of goods) before the Courts or the Administrative Appeals Tribunal. In these cases, the passing on question may be deferred by arrangement until the other issues are determined.

Chapter 4: General rules for claiming a sales tax credit

Documentary evidence

4.1 Before any refund is paid, the ATO will satisfy itself that there is a legal entitlement to the claim that has been made (i.e., there is a credit ground in Table 3 to *the Act* that applies). Documentary evidence (such as sales invoices) or a summary of the evidence supporting the credit claim should only be provided if requested by the ATO. A claimant should attach a summary to their 'Application for Refund of Sales Tax' form if that will assist the ATO to process the claim.

4.2 The ATO processes credit claims with a clear legal entitlement as quickly as possible.[16] Where the entitlement to a credit is not clear, this may not be possible as further enquiries may be necessary before a decision on the claim can be reached.

4.3 Some credit claims may establish a basis for entitlement to sales tax credits in the future. In these cases some delay outside the normal processing time frames may occur before a decision is given. It may be necessary, in some instances, to deal with the issue by way of an interim private or public ruling. Interim rulings (which are discussed further at paragraphs 6.35 to 6.37) apply prospectively and so do not produce an entitlement for a sales tax credit. When the final position on the issue is determined, either an entitlement to a sales tax credit may arise or the credit claim will be disallowed with reasons.

How to claim a credit

4.4 As mentioned at paragraph 3.2 there are two ways for a claimant to obtain a sales tax credit:

- as a direct refund from the ATO to the claimant. An 'Application for Refund of Sales Tax' form is available from your local ATO; or

[16]. The current standard for refunds processing is 28 days.

- as a rebate on a sales tax return. This is an amount that the claimant is entitled to deduct from the gross tax payable for the period. Only the net tax (that is the gross tax payable less the amount of credit) is shown on the sales tax return sent to the ATO.[17]

4.5 Where the rebate on a sales tax return exceeds the tax payable, the excess credit may be carried forward to be offset against the tax payable on future returns. Alternatively the excess credit can be claimed by completing an 'Application for Refund of Sales Tax' form and sending it with the return. This would be appropriate in those circumstances where it is unlikely that the credit will be absorbed in future returns.

4.6 To ensure that a sales tax credit is not claimed twice, a claimant is not entitled to a credit for an amount of sales tax where a credit entitlement for that amount has previously arisen, whether for the claimant or for some other person.[18]

Time limit on claiming a credit

4.7 A claimant is not entitled to a credit unless the claim is lodged within three years after the time when the credit arose.[19] As mentioned at paragraph 3.4, Table 3 to *the Act* sets out the time each type of credit arises. Paragraphs 6.8 to 6.21 discuss letters that may set the three year period.

Records to be kept

4.8 A claimant for a sales tax credit must keep records, for a period of five years, that document and explain the transactions and other acts that relate to the credit claim.[20]

[17] Although Section 53 of *the Act* can be read as requiring, in these cases, that a credit claim be lodged with the return, the Taxation Office has dispensed with this in the interests of reducing compliance costs. In these cases, claimants only need to supply details in support of a credit claim when requested (e.g., at the time of a field visit by an ATO auditor).

[18] Subsection 51(2) of *the Act*.

[19] Subsection 51(3) of *the Act*.

[20] Section 127 of *the Act*.

Chapter 5: The requirements of certain credit grounds

5.1 The credit grounds listed in Table 3 to *the Act* have varying requirements that must be satisfied before the claimant is entitled to a credit. This Chapter discusses three requirements that are common to certain credit grounds.

The passing on provisions

5.2 A number of the credit grounds require that the amount of the credit available to the claimant is limited to the amount of sales tax that has not been passed on to some other person.[21] This is sometimes referred to as the **passing on provisions**.

5.3 Tax is **not** passed on if a person, although having passed the sales tax on to some other person has refunded the tax to that other person before making a claim for the credit.[22] Column 4 in Table 3 to *the Act* states whether the amount of the particular credit is limited to the amount that has not been passed on.

5.4 Where a person makes a wholesale sale at a price that includes tax, the sales tax law requires the amount of sales tax to be shown on the invoice for the sale.[23] Where tax is shown on an invoice, it is clear that the seller has passed the tax on to the purchaser.

Retail sales by manufacturers[24]

5.5 Where a manufacturer sells by retail, there is no requirement in the sales tax law for the manufacturer to show an amount on the invoice for sales tax, but in most cases, with no evidence to the contrary, the manufacturer will be considered to have passed the tax on to the purchaser in the price charged. This is on the basis that a business will generally seek to recover its costs and make a reasonable return.

5.6 However, any question as to whether tax has been passed on is essentially one that is decided by consideration of the relevant facts in each case,[25] including:

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[21] In *Chippendale Printing Co Pty Ltd v. DFC of T* 95 ATC 4037; 30 ATR 115, Lindgren J states: 'The obligations otherwise incumbent on the Commissioner to refund amounts of sales tax overpaid have no application because Chippendale passed on the sales tax to its customers'.

[22] The definition of *passed on* in Section 5 of *the Act.*

[23] Section 125 of *the Act.*

[24] For further commentary on the ATO view on sales tax passed on in retail sales see Sales Tax Determination STD 95/13.

- the accounting records of the business, in particular the costs of production, any method of price fixing and the calculation and payment of any sales tax;[26]
- any information about sales tax supplied to purchasers;
- price lists; and
- advertising literature.

5.7 In some cases where tax has been passed on, but will be refunded to satisfy the requirement that tax not be passed on, a credit note will be sufficient evidence for the ATO to allow a credit. Paragraphs 6.3 to 6.6 discuss the circumstances where a credit note can satisfy the passing on provisions.

The meaning of 'borne tax'

5.8 A number of the credit grounds (for example, CR2 and CR4 in Table 3) require that the claimant must have previously borne tax. This requirement ensures that a credit entitlement is only available for sales tax that has actually been paid by the claimant. There are three situations in which a claimant is recognised to have borne tax on goods:[27]

- the claimant has become liable to sales tax on an assessable dealing with the goods;
- the claimant purchased the goods for a price that included sales tax; or
- the claimant was the customer in an assessable dealing known as a delivery of customer's materials goods and did not quote in respect of the delivery.[28]

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[25] In *Otto Australia Pty Ltd v. FCT* (1990) 90 ATC 4604; 21 ATR 567, Davies J stated that: ' "passed on" ... must be given a sensible and practical meaning to cover the wide variety of circumstances which may arise in practice in sales tax legislation'.

[26] Two recent decisions of the Administrative Appeals Tribunal indicate that a significant factor in deciding whether sales tax has been passed on is whether the amount of tax has been taken into account in the calculation or determination of the selling price of the goods. In *AAT Case 45/95* 95 ATC 395, Member Trowse observed that 'The decisions in *Otto* and *Chippendale* make it abundantly clear that sales tax has been passed on where the tax has been brought to account in the calculation of the contract price and, if it has, the fact that the amount of the tax has not been shown separately on the documents of sale is of no consequence'. See also AAT case *VT95/30* (as yet unreported), per Deputy President Forrest.

[27] Section 11 of *the Act* sets out these three situations.

[28] Section 22 of *the Act* gives the circumstances of a delivery of customer's materials goods. This is where there is an assessable dealing with assessable goods that are manufactured by a person, in the course of a business, for the **customer**, wholly or partly out of materials that were either supplied by the customer or purchased from the manufacturer by the customer.

The meaning of 'sufficient link'

5.9 One of the requirements of credit grounds CR6, CR7 and CR12 in Table 3 to *the Act* is that sales tax has been borne on input goods which have a *sufficient link* with the output goods that are then the subject of a subsequent assessable dealing.

5.10 This sufficient link between the input goods and the output goods can be demonstrated in one of the following ways:[29]

- the input goods, or some essential element of these goods, have become an integral part of the output goods. This covers raw materials that are used as input goods in the manufacture of output goods;

- the input goods (such as machinery and equipment) have been used in connection with the output goods in carrying out an activity covered by an exemption item marked [R]. Exemption [R] items[30] are business inputs exemptions that are only available to persons who are registered for sales tax purposes[31] and cover activities such as mining, primary production and the manufacture of goods. The input goods will satisfy this sufficient link test only where they qualify for exemption under the particular exemption [R] item. This means that goods specifically excluded from exemption under an exemption [R] item cannot satisfy this test;[32] or

- something that formed part of the input goods has become an integral part of the output goods. This covers the situation where some part of defective goods that are returned by the purchaser has been reused in manufacturing other output goods.[33]

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[29] Section 52 of *the Act* sets out these ways where the link is demonstrated.

[30] Schedule 1 to the *Sales Tax (Exemptions and Classifications) Act 1992* lists the sales tax exemption items marked [R] along with the other sales tax exemptions available.

[31] Section 9 of *the Act*.

[32] For example, generally-excluded property as defined in Section 12 of the *Sales Tax (Exemptions & Classifications) Act 1992* would fail this sufficient link test.

[33] Sales Tax Determination STD 96/3 titled *Credits: tax paid on goods excluded from the business inputs exemption items*, states the ATO view that there is no entitlement to a sales tax credit under CR6, CR7 or CR12 for tax paid on goods which are excluded from sales tax exemption under the business inputs exemption provisions.

Chapter 6: Credit related issues

The $200 limit

6.1 The sales tax law[34] does not require the ATO to consider credit claims of less than $200 that are not claimed on a sales tax return. However, the ATO will consider the merit of such claims on a case by case basis. Two examples of circumstances where the ATO may refund an amount less than $200 are where the claim is a one off with little chance of being repeated, or the claim relates to cessation of a business. Several smaller claims may be added together to reach $200.

6.2 Where a credit is treated as a rebate by a claimant when preparing a sales tax return there is no restriction as to any minimum amount.[35] Also, if the result after preparing a return is a net credit amount then the ATO may pay any resulting refund after processing the return, even if that amount is less than $200.

Credit notes

6.3 An issue that arises is whether a credit note given to a customer is sufficient to satisfy the passing on provisions. The usual situation is where a sale of goods has been made and the sales tax has initially been passed on to the customer but then a credit note has been issued to that customer for the sales tax. The credit claim is lodged with the ATO before the credit note has been drawn on by the customer.

6.4 The ATO will normally accept a credit note as satisfying the passing on provisions if more than the correct amount of tax has been paid and the claimant and the customer are in a continuous trading arrangement.

6.5 There are some exceptions to this statement. Although it is not possible to list them all, some situations where a credit note alone might **not** be sufficient to satisfy the passing on provisions include circumstances where:

- the claimant and the customer are not in a continuous trading relationship;
- there is some reason to doubt that the credit note could be honoured (for example, where the claimant is in liquidation);

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[34] Subsection 54(1) of *the Act*.

[35] Section 53 and subsection 54(2) of *the Act*.

- the credit note is legally insufficient to constitute a refund of tax (for example, the note is subject to some condition that must be met before it is drawn on, and the condition cannot occur or has not yet occurred) see, for example, paragraph 6.7 regarding *Administration fees*

- the credit claim is considered to be part of an arrangement to avoid tax;

- there is a formal dispute between the claimant and the ATO and the question of the passing on provisions is likely to be raised in the course of the dispute; or

- for any other reason there is cause to doubt that the full amount in question will find its way to the person who was charged the amount of sales tax.

6.6 Where credit notes are used by a claimant, the customer would need to be aware of the credit note and be able to draw on the credit at any time, otherwise it would not be accepted as satisfying the passing on provisions. Similarly, if the claimant is not aware of the whereabouts of a customer, the issue of a credit note obviously would not satisfy the passing on provisions.

Administration fees

6.7 On occasions, credit notes are issued by a claimant to customers if the customer pays a fee (often referred to as an administration fee). The fee covers the work undertaken by the claimant in calculating the amount involved and lodging the credit claim with the ATO. Some claimants elect to offset the administration fee against the amount of the credit and pay a net amount to the customer. This practice raises doubts as to whether the full amount of sales tax has in fact been passed back to the customer. In the event of an audit, the ATO would expect to see that the full amount of sales tax in question has been passed back to the customer and that the administration fee has been treated as a separate charge.

'Stopping the clock' letters

Further time to calculate amounts

6.8 As stated at paragraph 4.7, a claimant is not entitled to a credit unless the claim is lodged within three years after the time when the credit arose. A credit claim must be made in the form and manner approved by the ATO, and accompanied by any evidence required by this Office.[36]

[36] This requirement is set out in subsection 51(4) of *the Act*.

6.9 It is not always possible for a person to work out the precise amount of a credit claim at the time they discover that tax has been overpaid. In these circumstances, the ATO accepts that a claim can be made by a letter, rather than using a completed refund form. A credit claim can be made in this way, without specifying an amount of sales tax involved, provided that the letter making out the claim sufficiently identifies the basis of the claimant's entitlement to a credit and the amount of the claim is supplied within a reasonable time. A letter of this type is often referred to as a *stopping the clock* letter.

6.10 A *stopping the clock* letter should include the following details:

- the identity of the claimant (tax advisers need written authority from the claimant before being able to act on their behalf);
- a summary of the legal entitlement (or basis) for the credit claim in sufficient detail to allow the ATO to determine whether or not an entitlement to a credit exists in principle; and
- a date when the balance of the information will be supplied.

6.11 A letter claiming that tax has been overpaid, but not adequately describing the circumstances of the claim or the goods to which it relates will not usually be sufficient to constitute a credit claim in the approved form and manner. If a claimant's letter cannot be regarded as setting the period of credit entitlement, the claimant will be notified of the reasons for that conclusion and told what further details or information must be supplied when a subsequent refund claim is lodged. Claimants who provide sufficient details and seek a period of up to three months from the date of their *stopping the clock* letter to calculate the amount of the credit claim, can ordinarily expect to have their request approved in writing.

Testing an entitlement in principle

6.12 Some claimants want to test whether they have overpaid tax in principle, before going to the trouble of calculating the full amount of credit, and still establish a date from which their credit claim will be paid, if successful. A *stopping the clock* letter, giving the information set out in paragraph 6.10, can also be used in these circumstances.

6.13 If the ATO agrees that a credit is payable in principle, then a reasonable time from that decision (e.g., a further three months) will be given for a claimant to calculate the amount of the claim. If the ATO does not agree that a credit is available, the claimant may decide to accept the reasons for that decision or, alternatively, test the correctness of that conclusion through the objection and appeal process. In this case, if the claimant lodges a complete credit claim, which is:

- based on a single transaction for which a precise amount is known; and

- received within a reasonable time of the first letter;

then the ATO will accept the first letter as setting the period for any subsequent refund claims.

6.14 When the completed refund claim is disallowed (in whole or part), the claimant then has the normal objection[37] and appeal rights against this decision. If the objection or subsequent appeal process is concluded in the claimant's favour, a further period for calculating the amount of the full claim will then be given. If the Court rules in favour of the ATO (or the claimant concedes the issue at any time before the decision by the Court) there will be no further right of appeal arising out of the *stopping the clock* letter. When using this approach, claimants should recognise that interest will only be paid on the amount of tax that was subject to the objection.

Requesting the ATO to hold a credit claim pending another's litigation

6.15 *Stopping the clock* letters are also used in other circumstances. Some claimants will want to protect their right to claim a credit in relation to an issue that a Court is considering in another claimant's circumstances, but do not wish to proceed with the objection process themselves. In these instances, there will often be no point in going to the expense of working out the amount of the claim until the Court has decided that there is an entitlement in the first place.

6.16 Requests of this type will need to be considered on their individual merits. The purpose of the time limit in the credit provisions is to provide some certainty for government and taxpayers that taxation liabilities are final after a specified period. The ATO will not generally allow credit claims to remain undetermined while other cases proceed through the Courts, unless there is some clear advantage to both the taxpayer and the ATO in doing so. Claimants similarly will usually not want to have credit claims undecided, because they have no access to interest on overpayments of sales tax until an objection is lodged.

6.17 However, in some circumstances, a claimant might choose this course and bear the consequent risk, rather than proceeding to test the issue themselves. The ATO may agree to a claimant's request not to determine a credit claim, or agree not to ask for the amount of the claim to be calculated for a reasonable period, provided that the information set out in paragraph 6.10 is provided, together with the name of the case upon whose action the claimant's entitlement to a credit depends. In some circumstances there may be further conditions imposed and a review period for the arrangement may be set.

6.18 Where the ATO agrees not to determine a credit claim for the reasons set out in the previous paragraph, the claimant will be advised of this, along with the date by

[37] Subsection 60(2) of *the Act*.

which further information must be provided, and any conditions on which the claim can be left undetermined.

6.19 The ATO may, however, conclude that the circumstances being considered by the Court are not sufficiently similar to the claimant's for there to be any benefit in delaying consideration of the claim or that, for other reasons, there is no entitlement to a credit in the circumstances. In this case, the ATO will advise the claimant accordingly, giving reasons and outlining the claimant's rights under the objection and appeal process.

Where *stopping the clock* letters can't be used

6.20 The ATO will not generally accept *stopping the clock* letters from claimants where, on the face of the claim, we conclude that there is no legal entitlement, or if the claim is made on the basis that there may be, at some time in the future, some dispute over the issue.

6.21 Situations have arisen where tax advisers, acting on behalf of a particular client, lodge a *stopping the clock* letter with the ATO because their client has been overcharged tax by the supplier(s). In cases where it is the supplier who must make the credit claim, a *stopping the clock* letter is only effective if it is lodged by the supplier or by a person properly authorised to act on their behalf.

Credit claims based on estimates

6.22 At times, credit claims are lodged with the ATO where the amount of the claim is based on an estimate or average. Typically these claims provide actual figures for a short period (for example, 3 months) and then extrapolate the figure to arrive at an amount for the period covered by the claim (for example, multiply by 12 for a 3 year period).

6.23 The ATO will consider and may accept these credit claims on a case by case basis. Factors that will be looked at when considering these credit claims include whether:

- the claimant supplied valid reasons why a claim based entirely on actual figures was not possible;
- the sample size (for example, 3 months) represents a reasonable portion of the period under review and is based on reliable records;
- a reasonable explanation of the method used has been given. This explanation will, obviously, depend on the circumstances of the particular case but should demonstrate why the sample is considered to be representative of the total period. Relevant matters to be addressed may be whether seasonal fluctuations in the level of sales, changes in

the mix of products sold or changes in pricing policy over the period of the claim have been taken into account; and

- the claim is a 'one off'. As a general rule, ongoing credit claims based on estimates are not acceptable as it is considered that appropriate records should be kept which will enable actual calculations of ongoing credit claims to be made. An exception to this rule is a Section 59 agreement.

Section 59 agreements

6.24 Section 59 of *the Act* reads as follows:

> *'The Commissioner may enter into an agreement with a person regarding the circumstances in which the person is to be entitled to credits and the manner of calculating and claiming such credits.*
>
> *So far as the agreement is inconsistent with this Act, the agreement prevails.'*

6.25 Section 59 does not allow the ATO to authorise a sales tax credit to be granted where the circumstances of that credit are not covered by one of the credit grounds listed in Table 3 to *the Act*. As stated at paragraph 3.7 the credit grounds listed in Table 3 are a complete list of the situations where an entitlement to a sales tax credit arises.

6.26 The ATO may enter into a section 59 agreement with any person regarding a substitute method of calculating the amount of a sales tax credit. For example, an agreement may be used to provide a formula for the calculation of a tax credit for:

- repairers to apply when they have difficulty in calculating the amount of sales tax to claim as a refund when spare parts are sold by them in exempt circumstances;[38] or
- persons selling by wholesale from tax paid stock where it is impractical to calculate the tax paid on purchase of each item of goods sold by wholesale.

6.27 There may be occasions where, although a credit ground is available to a claimant, there is extreme difficulty in determining the amount of credit available. In these cases, section 59 allows the ATO to enter into an agreement with a person to ensure that the correct amount of credit and, therefore, the right amount of sales tax is paid. It is difficult to give a precise example of such a case as it is envisaged that such situations will be rare. Agreements of this kind reflect the intention of section 111 of *the Act*, which states that the Commissioner has the general administration of the

[38] This formula appears in the ATO publication *News and Views Newsletter No 3*.

sales tax law. The courts have interpreted this power to include the ability to enter into an agreement that is necessary for fair and reasonable administration , but does not extend to the ability to remit from payment an amount of tax that *the Act* imposes.

Change in the ATO interpretation of the law

6.28 The ATO sets out its interpretation, or view, of the sales tax law through:

- public rulings including taxation rulings, determinations and bulletins and;
- private rulings to individual taxpayers.

6.29 The question of whether sales tax credits are available arises in a number of situations where the established ATO interpretation of the law is changed. Paragraphs 6.30 to 6.37 discuss these situations.

Court decisions

6.30 A dispute between the ATO and a taxpayer over a sales tax matter may be determined by a Court or the Administrative Appeals Tribunal.

6.31 For example, the ATO and the taxpayer may disagree over the correct sales tax classification of a particular class of goods and the decision is referred to a Court. A decision by the Court may be in favour of the taxpayer, stating that the class of goods should have been classified correctly at a lower sales tax rate than that previously advised by the ATO in a public ruling.

6.32 Assuming there are no appeals, this decision of the Court will result in a change in the established ATO interpretation of the law (which will be explained in a future Sales Tax Determination) and also a *prima facie* entitlement to a credit claim. This credit entitlement would be subject to a claimant satisfying the normal requirements of the relevant credit ground.[39]

Changes in industry practice

6.33 A change in the ATO interpretation of an area of the sales tax law is sometimes brought about by changes that have evolved over time in the way particular goods are treated by industry and consumers.

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[39] In this example the relevant credit ground would be CR1 - tax overpaid. An example of a normal requirement of this credit ground is that the claimant has not passed the tax on (i.e., the passing on provision as per paragraphs 5.2 to 5.7 of this Ruling).

6.34 For example, under the sales tax law, commercial furniture is taxable at the Schedule 4 rate, whereas household furniture is taxable at a concessional rate. A particular class of furniture which has, in the past, been regarded to be of a commercial nature may, due to a change in the normal and regular usage by the furniture industry and consumers, come to be regarded as of a kind ordinarily used for household purposes. Accordingly, from a particular date this class of furniture may be taxed at a lower rate than that which previously applied. In this example no sales tax has been overpaid by industry or consumers in the period before the change in interpretation and so there is no entitlement to a sales tax credit. The date of effect of this change would normally be outlined in either a public ruling or in private rulings to those persons affected by the change.

Interim rulings

6.35 At times it will be necessary for the ATO to issue an interim public or private ruling. An interim ruling may be appropriate in some cases where there has been a change in industry practice (see paragraphs 6.33 to 6.34).

6.36 Another situation where an interim ruling may be issued is where further inquiries need to be undertaken by the ATO. For example, an amendment to the sales tax law may occur and, before arriving at a final position on the question of the individual classification of particular goods, the ATO may find it necessary to conduct a review of industry practice in consultation with the appropriate industry representatives. To provide certainty for any affected taxpayers while this review is completed, the ATO may issue an interim ruling.

6.37 Interim rulings apply prospectively and therefore do not produce an entitlement for a sales tax credit. Of course, when the final position on the particular issue is determined, an entitlement to a sales tax credit may arise.

Income tax consequences

6.38 Where a claimant receives a sales tax credit, it may be necessary to adjust the records of the business for income tax purposes. A sales tax credit can be reflected, for income tax purposes, as an increase in the amount of assessable income or, alternatively, as a decrease in the deduction made for sales tax paid.

Chapter 7: Your comments

7.1 If you wish to comment on this Draft Sales Tax Ruling, please send your comments by 31 January 1997 to:

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Commissioner of Taxation
20 November 1996

ISSN 1039 - 0731

Previously released to the public in draft form on 16 August 1995.

ATO references
NO NAT 95/6112-9

Price $2.60

ATTACHMENT A

Sales Tax Assessment Act **Schedule 1 - Tables** **Table 3: Credit Grounds**

[1] No	[2] Summary of ground	[3] Details of ground	[4] Amount of credit	[5] Time credit arises
CR1	Tax overpaid	Claimant has paid an amount as tax that was not legally payable	the amount overpaid, to the extent that the claimant has not passed it on	when the amount became overpaid
CR2	Claimant has borne tax, even though entitled to quote registration number	Claimant has borne tax on a tax-bearing dealing for which the claimant was entitled to quote a registration number (whether or not the claimant quoted). Claimant has not sold the goods. If the claimant has applied the goods to own use, the AOU would not have been taxable assuming it were an assessable dealing	the tax borne, to the extent that the claimant has not passed it on	time of the tax-bearing dealing
CR2A[40]	Claimant has borne tax, even though entitled to quote exemption declaration	Claimant has borne tax on a tax-bearing for which the claimant was entitled to quote an exemption declaration (whether or not the claimant quoted). Claimant has not sold the goods. If claimant has applied the goods to own use, the AOU would not have been taxable assuming it were an assessable dealing.	the tax borne, to the extent that the claimant has not passed it on	time of the tax-bearing dealing
CR3	Claimant liable to tax because quote ineffective under section 89	Claimant has become liable to tax on an assessable dealing (or has lost an entitlement to a CR8 credit) because section 89 applied to an otherwise fully effective quote that was made to the claimant.	the tax payable on the assessable dealing (or the amount to which the CR8 credit would have related), to the extent that the claimant has not passed it on	time of the assessable dealing (or time CR8 credit would have arisen)
CR4	Avoiding double tax on the same goods	Claimant has become liable to tax on an assessable dealing **('the current dealing')**, but has borne tax on the goods before the time of the current dealing. If the current dealing is an assessable dealing because of section 9, credit is not available under this ground for tax borne before the goods were exported for alteration as mentioned in that section.	the tax previously borne on the goods	time of the current dealing
CR5	Ensuring exemption where latest assessable dealing is non-taxable	Claimant is the taxpayer for an assessable dealing **('the current dealing')** that is not taxable (for any reason except section 29 or 33) and claimant has borne tax on the goods before the time of the current dealing. If the current dealing is an assessable dealing because of section 9, credit is not available under this ground for tax borne before the goods were exported for alteration as mentioned in that section.	the tax previously borne on the goods	time of the current dealing

[40] Applicable to dealings with goods occurring after 16 December 1995

[1] No	[2] Summary of ground	[3] Details of ground	[4] Amount of credit	[5] Time credit arises
CR5A	AOU in certain cases where exemption Items satisfied	Claimant has borne tax on goods and has applied the goods to own use while still assessable goods. The AOU satisfies exemption Item 192, 193 or 194.	the tax previously borne to the extent that the claimant has not passed it on	time of AOU
CR6	Avoiding 'indirect taxing' resulting from tax on inputs	Claimant is liable to tax on an assessable dealing with goods **('the output goods')** and has borne tax on other goods **('the input goods')** that have a sufficient link (as defined by section 52) with the output goods	the tax borne on the input goods	time of the assessable dealing
CR7	Avoiding 'indirect taxing' of exempt outputs (where inputs have borne tax)	Claimant is the taxpayer for an assessable dealing with goods **('the output goods')** that is not taxable (for any reason except section 29). Claimant has borne tax on other goods **('the input goods')** that have a sufficient link (as defined by section 52) with the output goods. The input goods are not covered by exemption Item 27(3).	the tax borne on the input goods, to the extent that the claimant has not passed it on	time of the assessable dealing
CR8	Tax excluded from sale price of tax-paid goods sold to quoting purchaser	Claimant has sold goods, to a purchaser who quoted on the sale, for a price that excluded some or all of the tax previously borne by claimant on the goods	the tax excluded from sale price	time of sale
CR8A	Ensuring no double tax in respect of containers	Claimant is the taxpayer for an assessable dealing (other than one that is not taxable because of section 29) with goods that are the contents of a container. Container is not covered by exemption Item 27(3). Claimant has borne tax on the container.	the tax borne on the container	time of the assessable dealing
CR9	Replacement of defective parts	Claimant has borne tax on assessable goods used for the purpose of replacing the whole or part of other goods because of defects in the other goods. Replacement was under a warranty the value of which was included in the taxable value of the defective goods or in what would have been the taxable value if the most recent assessable dealing had been taxable.	tax borne on replacement goods	time of replacement
CR10	Tax excluded from sale price of tax-paid goods sold to purchaser for export	Claimant has sold goods to a purchaser who, at the time of sale, had the intention of exporting the goods (otherwise than as accompanied baggage) while they were still assessable goods. The price excluded some or all of the tax previously borne by the claimant on the goods	the tax excluded from sale price	time of sale
CR11	Goods exported by claimant while still assessable goods	Goods on which claimant has borne tax have been exported by the claimant while still assessable goods	the tax borne	time of export

[1] No	[2] Summary of ground	[3] Details of ground	[4] Amount of credit	[5] Time credit arises
CR12	Tax on 'input goods' where 'output goods' are exported while still assessable goods	Claimant has borne tax on goods **('the input goods')** that have a sufficient link (as defined by section 52) with other goods **('the output goods')** that are exported while still assessable goods	the tax borne on the input goods	time of export
CR13	Export of container where first AOU in Australia of the container was a packing AOU	This ground relates to goods **('the container')** for which the first AOU in Australia was a packing AOU by the claimant. The container was exported while still a container for the property that was its contents immediately after the packing AOU. The claimant has borne tax on the container before the time of export	tax borne on the container	time of export
CR14	Goods sold for tax-exclusive price to eligible Australian traveller who subsequently exported them	Claimant sold goods to an eligible Australian traveller in accordance with the prescribed rules for export sales for a price that excluded some or all of the tax previously borne by the claimant on the goods. The goods have been exported by the purchaser within the time, and in the manner, prescribed by the regulations	tax excluded from sale price	time of export
CR15	Goods sold for tax-exclusive price to eligible foreign traveller	Claimant sold goods to an eligible foreign traveller, in accordance with the prescribed rules for export sales, for a price that excluded some or all of the tax previously borne by the claimant on the goods	tax excluded from sale price	time of sale
CR16	Refund of customs duty following destruction of imported goods	Claimant has become liable to tax on a local entry of goods that were imported under a contract of sale. The claimant rejected the goods for non-compliance with the contract & the goods were destroyed under Customs supervision. The Commissioner is satisfied that the destruction is or would be ground for remission of customs duty on the goods	tax payable on the local entry	time of destruction of the goods
CR17	Drawback of customs duty on imported goods	Claimant has become liable to tax on a local entry of goods for which drawback of customs duty has been allowed under section 168 of the Customs Act (or, in the Commissioner's opinion, would have been allowed if goods had been liable to duty)	tax payable on the local entry	time when drawback was allowed (or would have been allowed)
CR18	First lease is an eligible long-term lease and claimant has previously borne tax	First AOU in Australia of goods consisted of the claimant granting an eligible long-term lease of the goods. The claimant has borne tax on the goods before the time of granting the lease	tax previously borne	time of granting lease

[1] No	[2] Summary of ground	[3] Details of ground	[4] Amount of credit	[5] Time credit arises
CR18A	First lease is an eligible short-term lease and claimant has previously borne tax	First AOU in Australia of goods consisted of the claimant granting an eligible short-term lease of the goods. The claimant has borne tax on the goods before the time of granting the lease	the tax previously borne multiplied by the exempt percentage specified in the agreement under sub-section 15A(2)	time of granting lease
CR18B	Post-trial sale or post-trial lease	Post-trial sale or post-trial lease, within the meaning of section 15B, by the claimant. The claimant has borne tax on the goods before the time of the sale or granting of the lease	the tax borne, to the extent that the claimant has not passed it on	time of sale or granting lease
CR19	Goods exported without being used by lessee of first lease	First AOU in Australia of goods consisted of the claimant granting a lease of the goods. The goods were exported before being used by the lessee. The claimant has borne tax on the goods before export.	tax previously borne	time of export
CR20	Claimant has obtained retrospective R&D registration or approval	Claimant has borne tax on a tax-bearing dealing for which the claimant would have been entitled to quote if there had been in force at the time of the dealing an agreement that was later entered into, or a registration that was later obtained, by the claimant under the *Industry Research and Development Act 1986*.	the tax borne	time when the agreement was entered into or the registration was obtained
CR20A[41]	Tax borne before claimant became an exempt child care body **('an ECCB')**	Claimant became an ECCB under subsection 3B(1) of the Exemptions and Classifications Act within 3 months after it first began to provide any kind of child care referred to in paragraph 3B(1)(a) of that Act. Claimant has borne tax on a tax-bearing dealing: (a) after 23 December 1993; and (b) not more than 12 months before it became an ECCB. The claimant was not entitled to quote for the dealing, but would have been if it had been an ECCB at the time of the dealing.	the tax borne	the time the claimant became an ECCB

[41] Effective 23 December 1993

[1] No	[2] Summary of ground	[3] Details of ground	[4] Amount of credit	[5] Time credit arises
CR21	Sale price or making-up charge written off as bad debt	Claimant has: (a) paid tax on an assessable dealing that is a sale or AD4a and later written off some or all of the price for which the goods were sold or the making-up charge, as the case requires; or (b) paid tax on an assessable dealing that is a local entry (other than an LE5) and later written off some or all of the price for which the goods were first sold by the claimant after the local entry	a proportion of the tax paid that is equal to the proportion of the debt written off	time of writing off
CR22	Tax on eligible repair goods	Claimant has borne tax on eligible repair goods	(a) if the exemption user mentioned in section 15C is an always-exempt person - the tax borne on the goods to the extent that the claimant has not passed it on; or (b) in any other case - the tax borne on the goods	when the goods became eligible repair goods
CR23	Transitional credit for exemption Item 163A	Claimant has borne tax on a tax-bearing dealing with goods. The claimant was not entitled to quote for the dealing, but would have been if exemption Item 163A had been in force at the time of the dealing. **Applicable to dealings from 13/03/93 to 24/12/93 only**.	the tax borne	at the commencement of Part 9 of the *Taxation Laws Amendment Act (No 3) 1993* (commenced on 24 December 1993)
CR23	Tax on export alteration goods	Claimant has borne tax on export alteration goods	the tax borne on the goods to the extent that the claimant has not passed it on	when the goods became export alteration goods
CR24	Transitional credit for a transitional RHQ company dealing	Claimant has borne tax on a transitional RHQ company dealing within the meaning of subsection 156(3) of the *Taxation Laws Amendment Act(No 3) 1994*	the tax borne, to the extent that the claimant has not passed it on	at the commencement of section 156 of the *Taxation Laws Amendment Act (No 3) 1994* (commenced on 28 November 1994)
CR25	Transitional credit item for amended exemption item 169	Claimant has borne tax on a tax-bearing dealing with goods. The claimant was not entitled to quote for the dealing, but would have been if exemption 169 as amended by the *Taxation Laws Amendment Act(No 3) 1994* had been in force at the time of the dealing.	the tax borne	at the commencement of section 165 of the *Taxation Laws Amendment Act (No 3) 1994* (commenced on 28 November 1994)