


GIR/TPIP-ch14 -

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TPIP Issues register

This issues register, originally published on our main website, provides guidance on issues identified during past consultation with industry participants.

Issues in this register that are a public ruling can now be found in the *Public Rulings* section of this Legal Database.

Issues in this register that have not been labelled as public rulings, constitute written guidance. We are committed to providing you with accurate, consistent and clear information to help you understand your rights and entitlements and meet your obligations.

If you follow our information on these issues and it turns out to be incorrect, or it is misleading and you make a mistake as a result, we must still apply the law correctly. If that means you owe us money, we must ask you to pay it but we will not charge you a penalty. Also, if you acted reasonably and in good faith we will not charge you interest. If correcting the mistake means we owe you money, we will pay it to you. We will also pay you any interest you are entitled to.

If you feel that the guidance in this issues register does not fully cover your circumstances, or you are unsure how it applies to you, you can seek further assistance from us.

The Australian Taxation Office (ATO) is decommissioning this issues register (previously called the TPIP Issues Register) and replacing it with a new public ruling product called GST Advice.

Redundant and out-dated issues have been moved from the issues register to the archive in consultation with representatives from the tax professional peak bodies. Issues that are still relevant are being progressively withdrawn and replaced by GST Advice.

You can view withdrawn issues by clicking on the View Archive links located throughout the register. In addition, you can read the Tax Office's position on current issues by clicking on the additional links provided.

GST Advice are located in the ATO [Legal Database](#) under GST public rulings. They are identified by distinctive numbers, starting from GSTA TPP 001 (where GSTA refers to GST Advice, and TPP refers to the tax professional partnership). You can quickly locate a particular GST Advice in the Legal Database by using the Quick Access function.

For GST, Luxury Car Tax and Wine Equalisation Tax purposes, from 1 July 2015, where the term 'Australia' is used in this document, it is referring to the 'indirect tax zone' as defined in subsection 195-1 of the GST Act.

Issue no. 1 – Registration

Schedule:

- The postscript (a) indicates the date the original issue was placed on the register
- The postscript (u) indicates the date the original issue was updated
- The postscript (w) indicates the date the issue was withdrawn from the register
- Withdrawn issues have been placed in the NTLG-GST Issues Register Archive (Issue 1 archive)

| Date | Question | Further information |
|-----------------------------|---|---|
| 28/02/05(w) | 1.1 Once-off acquisition, no enterprise. | This issue has been withdrawn and placed in the archive. |
| 02/05/01(u) 14/06/05(w) | 1.2 How should a joint venture outside the scope of Division 51 be registered for ABN/GST? There seems to be provision for ABN registration, but not GST. | This issue has been withdrawn and placed in the archive. |
| 02/05/01(u) 14/06/05(w) | 1.3 Are participants in a managed agricultural business such as grape, olive tree plantation required to register for an ABN and GST, or can the manager of these operations register on behalf of the individuals? | GSTA TPP 001 replaces this issue. The original issue has been archived. |
| 22/03/01 (u) 14/06/05(w) | 1.4 Registration and sale of input taxed properties | This issue has been withdrawn and placed in the archive. |
| 28/02/05(w) | 1.5 GST registration and isolated transactions | This issue has been withdrawn and placed in the archive. |
| 19/02/04(a) 14/06/05(w) | 1.6 Supplies by overseas supplier made through an Australian resident agent | GSTA TPP 010 replaces this issue. The original issue has been archived |

Issue no. 2 – Input tax credits

Schedule:

- The postscript (a) indicates the date the original issue was placed on the register
- The postscript (u) indicates the date the original issue was updated
- The postscript (w) indicates the date the issue was withdrawn from the register
- Withdrawn issues have been placed in the NTLG-GST Issues Register Archive (Issue 2 archive)

| Date | Question | Further information |
|----------------------------|--|---|
| 28/02/05(w) | 2.1 How will a supplier under a long-term contract confirm the input tax credit status of a recipient? | This issue has been withdrawn and placed in the archive. |
| 28/02/05(w) | 2.2 What are the circumstances in which the ATO will consider that a supplier has acted in a manner to sufficiently establish the input tax credit entitlement of the recipient? | This issue has been withdrawn and placed in the archive. |
| 22/03/01(u) 14/06/05(w) | 2.3 Can an employer claim input tax credits for expenses incurred on behalf of a super fund? | GSTA TPP 003 replaces this issue. The original issue has been archived |
| 06/04/01(a) 14/06/05(w) | 2.4 Entities on a cash basis who enter into a hire purchase agreement after 1 July 2000 How do they claim input tax credits on the monthly payments where the principal component of each payment varies on each instalment? Does the financier have to provide this schedule in advance? | GSTA TPP 004 replaces this issue. The original issue has been archived |
| 28/02/05(w) | 2.5 Input tax credits and income tax deductions | This issue has been withdrawn and placed in the archive. |
| 28/02/05(w) | 2.6 Lease payments for a luxury car | This issue has been withdrawn and placed in the archive. |
| 12/03/02(a) 09/05/05(w) | 2.7 GST and income tax deductibility –depreciation | This issue has been withdrawn and placed in the archive. |
| 28/02/05(w) | 2.8 GST and income tax deductibility where cents per km used | This issue has been withdrawn and placed in the archive. |
| 28/02/05(w) | 2.9 GST and compulsory third party insurance | This issue has been withdrawn and placed in the archive. |
| 10/08/04(a) 04/11/05(w) | 2.10 GSTR 2003/13 and partnerships and ITCs | GSTA TPP 086 , GSTA TPP 087 and GSTA TPP 088 replace this issue. The original issue has been archived. |

| Date | Question | Further information |
|----------------------------|---|--|
| 10/08/04(a) 14/06/05(w) | 2.11 Communication strategies about input tax credits for luxury car lease payments | This issue has been withdrawn and placed in the archive. |
| 01/09/04(a) 04/11/05(w) | 2.12 ITC claim after deregistration | GSTA TPP 089 replaces this issue. The original issue has been archived |

Issue no. 3 – Property

Schedule:

- The postscript (a) indicates the date the original issue was placed on the register
- The postscript (u) indicates the date the original issue was updated
- The postscript (w) indicates the date the issue was withdrawn from the register
- Withdrawn issues have been placed in the NTLG-GST Issues Register Archive (Issue 3 archive)

| Date | Question | Further information |
|-----------------------------|--|---|
| 28/02/05(w) | 3.1 When will guidelines be issued to confirm what actions a taxpayer wishing to adopt the margin scheme should take to value the property as at 30 June 2000? | This issue has been withdrawn and placed in the archive. |
| 28/02/05(w) | 3.2 What will be the valuation requirements under Division 75? | This issue has been withdrawn and placed in the archive. |
| 28/02/05(w) | 3.3 Why is the valuation necessary under Division 75 different from the one that applies to section 19 of the Transition Act? | This issue has been withdrawn and placed in the archive. |
| 28/02/05(w) | 3.4 Will it be necessary to individually value units in an incomplete apartment block? How do you value individual units that may not physically be commenced? | This issue has been withdrawn and placed in the archive. |
| 22/03/01(u) 14/06/05(w) | 3.5 Will lease agreements be treated as a single taxable supply at the point in time when the lease agreement is entered into? Otherwise, what is the value of the agreement to lease? | GSTA TPP 009 replaces this issue. The original issue has been archived. |
| 28/02/05(w) | 3.6 For the purposes of the A New Tax System (Goods and Services Tax) Act 1999, is the sale of a commercial building which has a commercial lease in place (so that it is an enterprise) the sale of a going concern for the purposes of Subdivision 38-J? | This issue has been withdrawn and placed in the archive. |
| 28/02/05(w) | 3.7 Is the sale of land and/or a new building by a builder previously acquired as zoned residential land an input taxed supply? | This issue has been withdrawn and placed in the archive. |
| 28/02/05(w) | 3.8 Can an entity use the cost to completion method to value land on hand as at 1 July 2000? | This issue has been withdrawn and placed in the archive. |
| 28/02/05(w) | 3.9 New residential premises | This issue has been withdrawn and placed in the archive. |
| 20/08/01 (a) 14/06/05(w) | 3.10 Zoning and GSTR 2000/20 | This issue has been withdrawn and placed in the archive. |
| 28/02/05(w) | 3.11 Properties acquired after 1 July 2000 Can the formula in GSTR 2000/21 (paragraph 75) be used to work out the GST-inclusive price of a | This issue has been withdrawn and placed in the archive. |

| Date | Question | Further information |
|------------------------------|---|---|
| | property acquired after 1 July 2000 by GST registered entities? | |
| 19/02/04(a) 14/06/05(w) | 3.12 Sale of Property to an Associate under the Margin Scheme | GSTA TPP 011 replaces this issue. The original issue has been archived. |
| 19/02/04(a) 14/06/05(w) | 3.13 Fixtures and fittings | GSTA TPP 012 and GSTA TPP 013 replace this issue. The original issue has been archived. |
| 19/02/04(a) 14/06/05(w) | 3.14 Sale of going concern – debtors | GSTA TPP 014 replaces this issue. The original issue has been archived. |
| 24/08/04(a) 14/06/05(w) | 3.15 Margin schemes, Division 75 and fractional interests | This issue has been withdrawn and placed in the archive. You can find the ATO's view on this issue in the GST and the Margin Scheme Guide . |
| | 3.16 Margin scheme and valuations | This issue has been withdrawn and placed in the archive. You can find the ATO's view on this issue in the GST and the Margin Scheme Guide . |
| 24/04/05 (a) 26/06/13 (u) | 3.17 Residential premises and commercial residential premises | Please see below for the existing ATO view. |
| 19/02/04(a) 14/06/05 (w) | 3.18 Margin scheme press release | This issue has been withdrawn and placed in the archive. You can find the ATO's view on this issue in the GST and the Margin Scheme Guide . |
| | 3.19 GST Transition Act and the acquisition of land | This issue has been withdrawn and placed in the archive. You can find the ATO's view on this issue in the GST and the Margin Scheme Guide . |
| | 3.20 GSTR 2000/21 and the margin scheme | This issue has been withdrawn and placed in the archive. |
| 24/08/04 (a) | 3.21 Division 135 and the sale of a farm as a going concern | GSTA TPP 092 replaces this issue. The original issue has been archived. |

3.17 Residential premises and commercial residential premises

- Non-interpretative – other references: [GSTR 2012/5](#) *Goods and Services Tax: residential premises*,
- [GSTR 2012/6](#) *Goods and Services Tax: commercial residential premises*.

Issue

Can the ATO please provide guidance on the GST treatment in the following scenario? A property owning company wishes to lease 2 floors of a multi-storey building to another company. The lessee company will use the premises to provide hostel -style accommodation to both secondary and tertiary students. The secondary student accommodation will be in connection with a school.

The issue concerns the lease payments to be made to the property owning entity by the lessee ie are these payments:

- a. input taxed (view 1)
- b. taxable supplies (view 2), or
- c. partly taxable and partly input taxed (view 3).

According to the ATO in GSTR 2000/20*, it is the physical characteristics of premises that mark them out as both 'residential premises' and 'residential premises to be used predominantly for residential accommodation'. Further, according to the ATO, the premises need only provide sleeping accommodation and the basic facilities for daily living, even if for a short time, to be considered 'residential premises used predominantly for residential accommodation'. This approach to the construction of the meaning of 'residential premises' may have the effect of treating the whole of the lease payments to the property owning company as being input taxed.

An alternative view is that in determining the question of whether particular premises are 'residential premises to be used predominantly for residential accommodation', one should have regard to the actual use to which the premises are put by the recipient of a particular supply. In this case this could mean that the lease of the 2 floors would be a taxable supply because the recipient lessee would not intend to occupy the floors itself for residential purposes.

A third view is that the lease payments would be taxable to the extent that the floors will be used to provide accommodation to students in connection with a school (ie secondary students). This is because, to this extent the premises will be commercial residential premises (see the definition of 'commercial residential premises' in section 195-1 of the GST Act) and therefore not subject to input taxation under section 40-35 of the Act. To the extent that the building will be used to provide accommodation to students in connection with an education that is not a school, the supplies under the lease will be input taxed. This is because, to this extent, the premises will be residential premises that are not commercial residential premises (in accordance with the proviso at the end of definition of 'commercial residential premises' in section 195-1). The problem in this case appears to stem from the fact that in determining whether premises come within paragraph (b) or the proviso to the definition of 'commercial residential premises' in section 195-1 an inquiry must be made as to the actual use of the premises.

This is in conflict with the approach adopted by the Commissioner in relation to characterising 'residential premises'. In the above case, if the proportion of secondary and tertiary students using the premises changes from month to month (eg in one month 60% of the students are secondary students, while in the next month, 60% are tertiary students) then the GST treatment of the rental payments may vary from one month to the next depending on the institution which students are attending (a fact which the property owning company will not know).

It is submitted that, in the above scenario, the Commissioner's approach to the interpretation of the expression 'residential premises' in GSTR 2000/20 is flawed and that the premises should be treated as a taxable supply to the lessee.

* Please note that effective from 19 December 2012, Goods and Services Tax Ruling GSTR 2000/20 has been withdrawn and replaced with Goods and Services Tax Rulings GSTR 2012/5, GSTR 2012/6 and GSTR 2012/7.

ATO response

Characterisation of the supply of two floors of a building from a property owner to a lessee

To determine the GST treatment of this supply we have to look at what the property owner is supplying to lessee.

The supply made by the property owner will be a taxable supply unless the supply is input taxed or GST-free.

The supply is not GST-free as it does not come within any of the provisions contained in Division 38. The supply will be input taxed if section 40-35 applies (this is the only relevant section within Division 40).

The supply will be input taxed under section 40-35 if it is a supply by way of lease of residential premises other than commercial residential premises.

Whether the supply of the two floors is a supply of residential premises will depend on the physical character of the units located on the floors supplied, considered with other objective characteristics. It is assumed that the units are capable of being occupied as a residence.

Is the supply of units by the property owner to lessee the supply of 'commercial residential premises'?

When the premises are supplied by the property owner through entry into the lease with the lessee, the property owner is not supplying commercial residential premises. The premises that the property owner is supplying, the units, do not have the characteristics of commercial residential premises. It is the lessee who puts the premises together with the management services and then offers accommodation to students. The property owner does not use the premises to supply accommodation in connection with a school nor does the property owner supply a hostel or anything similar to a hostel. On the assumption that the units contain the characteristics and facilities referred to in paragraphs 14 and 15 respectively of GSTR 2012/5, the supply made by property owner will be an input taxed supply.

If, however, as discussed at paragraphs 86 to 88 of GSTR 2012/6, it is determined from the physical character of the premises and other objective characteristics that the premises are commercial residential premises (for example premises similar to a hostel under paragraph (f) of the definition in section 195-1 of the GST Act**), the supply of the premises by the property owner will be a taxable supply of commercial residential premises.

If the part of the building that the property owner leases does not contain the ability for day to day living that enable it to be occupied as a residence, it will not be residential premises. By this we mean, if the property owner leases empty floors of a commercial office building, the supply will not be input taxed. In this case the floors leased will not have the physical characteristics of residential premises.

** See example 6 of Goods and Services Tax Ruling GSTR 2012/6.

Issue no. 4 – Transitional

Schedule:

- The postscript (a) indicates the date the original issue was placed on the register
- The postscript (u) indicates the date the original issue was updated
- The postscript (w) indicates the date the issue was withdrawn from the register
- Withdrawn issues have been placed in the NTLG-GST Issues Register Archive (Issue 4 archive)

| Date | Question | Further information |
|----------------------------|--|--|
| 28/02/05(w) | 4.1 How widely will the refund entitlement under section 16 of the Transition Act be applied? | This issue has been withdrawn and placed in the archive. |
| 28/02/05(w) | 4.2 Will stock on hand for use in what might have been 'applications to own use' because of paragraph (b) of the definition in the Sales Tax Assessment Act 1992 qualify for a refund? | This issue has been withdrawn and placed in the archive. |
| 28/02/05(w) | 4.3 What is the meaning of 'review opportunity' for the purposes of section 13 of the GST Transition Act? | This issue has been withdrawn and placed in the archive. |
| 28/02/05(w) | 4.4 In section 13 of the Transition Act, it specifies that a review opportunity will occur for an agreement where the supplier can 'change the consideration directly or indirectly...' What is the meaning of 'indirectly' in this context? | This issue has been withdrawn and placed in the archive. |
| 28/02/05(w) | 4.5 In the context of s.13, what will constitute a 'written agreement?' | This issue has been withdrawn and placed in the archive. |
| 28/02/05(w) | 4.7 What is the current position regarding lay-by sales agreements that span 1 July 2000? | This issue has been withdrawn and placed in the archive. |
| 28/02/05(w) | 4.8 There is a ruling on the operation of s.19 of the Transition Act re valuing WIP of head contractors in the construction industry. Is this a re-release of the Bulletin on the same subject released last year? | This issue has been withdrawn and placed in the archive. |
| 28/02/05(w) | 4.9 There are some cases where an agreement will allow for the review of one element of the consideration. For example, a rental agreement may have a base rent component and a component based on the turnover. | This issue has been withdrawn and placed in the archive. |
| 28/02/05(w) | 4.10 Lease and Sales Tax | This issue has been withdrawn and placed in the archive. |
| 02/08/01(a) 09/05/05(w) | 4.11 Trailer and ITC entitlements | This issue has been withdrawn and placed in the archive. |
| 05/06/01(w) | 4.6 What are the implications for long-term supply contracts that have separately identified considerations, only some of which are reviewable? | This issue has been withdrawn and placed in the archive. |

Issue no. 5 – GST groups

Schedule:

- The postscript (a) indicates the date the original issue was placed on the register
- The postscript (u) indicates the date the original issue was updated
- The postscript (w) indicates the date the issue was withdrawn from the register
- Withdrawn issues have been placed in the NTLG-GST Issues Register Archive (Issue 5 archive)

| Date | Question | Further information |
|-----------------------------|--|--|
| 28/02/05(w) | 5.1 Is there an intention to promulgate Regulations to extend the grouping provisions beyond the circumstances currently specified in Division 48? | This issue has been withdrawn and placed in the archive. |
| 28/02/05(w) | 5.2 When will the form for GST group registration be available? | This issue has been withdrawn and placed in the archive. |
| 28/02/05(w) | 5.3 Are applications for GST groups required to be lodged before 31 May to be processed before the start of GST? | This issue has been withdrawn and placed in the archive. |
| 28/02/05(w) | 5.4 Will there be a public ruling on GST groups? | This issue has been withdrawn and placed in the archive. |
| 28/02/05(w) | 5.5 Can an employer group with a superannuation fund? | This issue has been withdrawn and placed in the archive. |
| 24/07/01(a) 09/05/05(w) | 5.6 GST on tax loss transfers Can the ATO comment on the press article appearing in the AFR 23/10 which noted the view of Ernst and Young that GST may apply to tax loss transfers between group entities? Does the ATO agree that such a transaction will attract GST? | This issue has been withdrawn and placed in the archive. |
| 28/02/05(w) | 5.7 Update on Individual Grouping Regulations | This issue has been withdrawn and placed in the archive. |
| 28/02/05(w) | 5.8 Audit trail of groups | This issue has been withdrawn and placed in the archive. |
| 01/09/04(a) 26/06/13 (u) | 5.9 Formation and revocation of GST groups | This issue has been withdrawn and placed in the archive. |

5.9 Formation and revocation of GST groups

Attribution of supplies pre and post GST grouping

Non-interpretative – straight application of the law.

Issue

If a company, say, groups from 1 July 2002, does that mean intra-group supplies made prior to 1 July 2002 (ie under the time of supply concept, which is not part of the GST Act, but is inherent in parts of the GST Act) are subject to GST, or only supplies attributed prior to 1 July 2002. The same issue also arises (in reverse) for entities which degroup.

Does the date of effect of grouping or degrouping affect supplies made after that time or rather, supplies attributed after that time?

ATO response

Basically, Division 48 of the GST Act aims to simplify the administration of GST for related entities by treating supplies between members of a group as being out of the GST net and allowing a single entity to account for the amount that is payable to the Commissioner by each entity of a GST group.

The first is achieved by ss48-40(2) overriding the general provisions of s9-5 and s11-5 resulting in supplies and acquisitions between members of a GST group being treated as if they are out of the scope of the GST legislation. That is, the supplier or recipient considers the application of ss48-40(2) at the time the entity determines if the supply or acquisition is a taxable supply or a creditable acquisition – which is when the supply or acquisition is made.

The second objective is achieved by assigning to the representative of a GST group the various components of a member's net amount for a tax period. This means that the representative of the GST group is liable to account for GST for all of the taxable supplies and entitled to claim the ITCs for all of the creditable acquisitions that are attributed to a tax period for which they act as the representative of the GST group.

Where a supply or acquisition is made in a tax period that is different to the tax period in which the supply or acquisition is to some extent attributed, the supply or acquisition does not change its character. The character, determined when the supply or acquisition is made, remains the same regardless of when the supply or acquisition is attributed. Consequently for GST groups, where a supplier and recipient become members of the same GST group after the taxable supply or creditable acquisition is made, the supply or acquisition does not change its character. Rather the liability to GST or entitlement to ITCs becomes the responsibility of the representative of the GST group, if the supply or acquisition is attributed to some extent while the entities are members of the GST group.

Issue no. 6 – Adjustments

Schedule:

- The postscript (a) indicates the date the original issue was placed on the register
- The postscript (u) indicates the date the original issue was updated
- The postscript (w) indicates the date the issue was withdrawn from the register
- Withdrawn issues have been placed in the NTLG-GST Issues Register Archive (Issue 6 archive)

| Date | Question | Further information |
|-----------------------------|--|---|
| 28/02/05(w) | 6.1 How does a supplier with an adjustment event (eg allowing volume rebates) issue an adjustment note enabling the making of a decreasing adjustment? | This issue has been withdrawn and placed in the archive. |
| 28/02/05(w) | 6.2 When a customer takes a settlement discount, in general business practice no document is issued to recognise this. Will there be any exceptions to the adjustment note rules allowed in these circumstances? | This issue has been withdrawn and placed in the archive. |
| 22/03/01(u) 14/06/05(w) | 6.3 Can an interest charge be a change in consideration and therefore an adjustment event (as opposed to a financial supply)? | GSTA TPP 018 replaces this issue. The original issue has been archived. |
| 10/08/04(a) 26/06/13 (u) | 6.4 Interaction between Divisions 27, 129 and 162 | NA |
| 24/08/04(a) 02/02/06(w) | 6.5 Division 138 and substantive renovations | GSTA TPP 094 replaces this issue. The original issue has been archived |
| 24/08/04(a) 14/06/05(w) | 6.6 Division 129 increasing/decreasing adjustments | This issue has been withdrawn and placed in the archive. |
| 01/09/04(a) 27/08/05(w) | 6.7 Division 132 adjustment | This issue has been withdrawn and placed in the archive. |

6.4 Interaction between Divisions 27, 129 and 162

Non-interpretative – straight application of the law.

Issue

Barry is a GST registered taxpayer. For the 2003 income year (ie from 1 July 2002 to 30 June 2003), Barry has elected to pay his GST by instalments, under Division 162 –ie annually.

In September 2002, Barry acquired a car for \$33,000 (including \$3,000 GST). Assume that Barry will use the car to the extent of 80% for creditable purposes (on the basis of a valid log book). However, six months later, Barry finds that the car is used more for private

purposes. Barry had originally overestimated the creditable use of the car and, therefore, is required to make one or more adjustments under Division 129.

1. What is Barry's 1st adjustment period under Division 129?
2. Would the conclusion be any different if Barry did not continue paying GST instalments for the 2004 income year (but reverted back to lodging BAS returns quarterly)?

National Tax and Accountants' Association view for Question 1:

Under section 129-20, Barry's 1st adjustment period is the tax period that starts at least 12 months after the tax period for which the acquisition is attributable, and ends on 30 June.

If Barry were not paying GST instalments, and continued to lodge quarterly BAS's, his 1st adjustment period would be the quarter ending 30 June 2005.

However, it appears that section 27-99 'Item 1AAA', and section 162-55(1), produce a different result. That is, it seems the effect of these provisions are to deem that Barry has an 'annual' GST tax period, rather than a 'quarterly' GST tax period. On this basis, Barry's 1st adjustment period would be the annual tax period that ends on 30 June 2006.

Alternative view – the definition of 'tax period' in section 195-1, does not provide a direct link with Division 162, but only refers to Division 27, section 57-35 or section 147-25. On this basis, it could be argued that Barry's 1st tax period is determined on the basis of a 'quarterly' GST tax period, rather than an 'annual' GST tax period. However, we believe that this alternative view is not the preferred view, as there is a link between Division 27 and Division 162, through section 27-99 (Item 1AA).

National Tax and Accountants' Association view for Question 2:

If Barry does not continue paying GST instalments for the 2004 income year, it is not clear as to whether Barry's 1st adjustment period is now determined on a 'quarterly' basis, or can be determined on an 'annual' basis for that particular acquisition.

Division 129 does not make it clear as to how an adjustment period is determined for a taxpayer that has gone from 'quarterly' to 'annually' (and vice versa – as is the case with Barry, above), or even where tax periods have changed from 'quarterly' to 'monthly' (and vice versa) for that matter.

It is submitted that the tax period to which a particular acquisition is attributed, and the tax period relating to any Division 129 adjustments for that acquisition, should be the same (ie 'quarterly', 'monthly' or 'annually'). On this basis, it would be argued that Barry's adjustment periods under Division 129 in respect of the input tax credit for the purchase of the car, would be measured by reference to 'annual' GST tax periods.

ATO response

The issue raised by the TPIP member concerns the delayed adjustment period in the following scenario:

Barry, an instalment taxpayer (Division 162) with an annual tax period (1 July 2002 to 30 June 2003) acquires a car for \$ 33,000 in September 2002. The first adjustment period for Barry in respect of this acquisition is the period ending 30 June 2005. If Barry had quarterly tax periods, his first adjustment period in respect of the same acquisition would be one year earlier, that is the period ending on 30 June 2004.

Relevant provisions

Where an entity elects to pay GST by instalments they have an annual tax period (subsection 162-55(1)). This provision overrides the normal rules about tax periods in Division 27 (subsection 162-55(4)). The effect of these provisions is that the attribution of the input tax credit for Barry will occur in the tax period which ends on 30 June 2003. This is in contrast to an attribution which would occur in the period ending 30 September 2002 if Barry's tax periods were quarterly. As Barry has an annual tax period he would not need to determine the extent of his creditable purpose of the car until he lodges his annual GST return (which could be at the time he lodges his income tax return).

Division 129 deals with adjustments for changes in the extent of creditable purpose. Section 129-20 provides rules for attributing adjustments under Division 129. The number of adjustments that can be made depends upon the value of the acquisition. There is one adjustment period per year.

As per section 129-20, an adjustment period relating to an acquisition:

- starts at least 12 months after the end of the tax period to which the acquisition is attributable, and
- ends on 30 June in any year.

Application of provisions to scenario

Applying these attribution rules to the scenario:

Barry's acquisition is attributable to his annual tax period ending on 30 June 2003. Barry will claim his ITC in his annual GST return for the period 1 July 2002 to 30 June 2003. His first adjustment period will end on the 30 June following 1 July 2004, which is 30 June 2005.

If Barry was a quarterly taxpayer his acquisition in September 2002 would be attributed to his quarterly tax period ending on 30 September 2002. Barry would claim an ITC in his BAS for this period. His first adjustment period would end on the 30 June following 1 October 2003, which is 30 June 2004. However, if Barry acquired the vehicle in the last quarter, say on 2 May 2003, the acquisition would be attributable to the period ending 30 June 2003. The adjustment period would be 30 June 2005, as is the case of an entity with annual tax periods.

Similarly in the case of entities with monthly tax periods the first adjustment period for an acquisition in the month of May is 12 months earlier than for an acquisition made in June. For an acquisition on 2 June 2003, the first adjustment period is the period ending on 30 June 2005, where as for an acquisition on 2 May 2003 the first adjustment period is 30 June 2004.

The second query was whether the outcome would be different if for the 2004 financial year Barry reverted back to quarterly tax periods.

If Barry reverted back to quarterly tax periods in the 2004 financial year, his first adjustment period will remain the same, that is, the period ending on 30 June 2005. His acquisition was attributed to his annual tax period ending on 30 June 2003 and 12 months after the end of this period is 1 July 2004. Although Barry is on quarterly tax periods now, his last quarter ending on 30 June 2005 will still be his first adjustment period in respect of the acquisition.

If Barry was a quarterly taxpayer during the 2003 financial year and elected to pay GST by instalments for the 2004 financial year his adjustment period in respect of the September 2002 acquisition would still be his tax period ending on 30 June 2004.

Changing tax periods from quarterly to monthly and vice versa does not make any difference as the adjustment period is always the last period of the financial year ending on 30 June.

Issue no. 7 – Systems

Schedule:

- The postscript (a) indicates the date the original issue was placed on the register
- The postscript (u) indicates the date the original issue was updated
- The postscript (w) indicates the date the issue was withdrawn from the register
- Withdrawn issues have been placed in the NTLG-GST Issues Register Archive (Issue 7 archive)

| Date | Question | Further information |
|-------------|---|--|
| 28/02/05(w) | 7.2 Will the ATO provide assistance to these entities to make sure that their systems comply with what is required by ATO? Will a testing facility be made available by the ATO? | This issue has been withdrawn and placed in the archive. |
| 28/02/05(w) | 7.3 Is the ATO aware of when external software providers will be making their commercial products available (again to enable taxpayers to test and compare)? | This issue has been withdrawn and placed in the archive. |
| 28/02/05(w) | 7.4 Small businesses and deferral scheme | This issue has been withdrawn and placed in the archive. |
| 28/02/05(w) | 7.5 If a taxpayer is registered for the deferral GST scheme for importers | This issue has been withdrawn and placed in the archive. |
| 05/06/01(w) | 7.1 Many larger taxpayers will be testing their systems in March/April to ensure that they are fully compliant with the BAS requirements. How far has the ATO progressed in finalising its own system requirements to enable taxpayers to electronically transmit information to the ATO? | This issue has been withdrawn and placed in the archive. |

Issue no. 8 – Imports/exports

Schedule:

- The postscript (a) indicates the date the original issue was placed on the register
- The postscript (u) indicates the date the original issue was updated
- The postscript (w) indicates the date the issue was withdrawn from the register
- Withdrawn issues have been placed in the NTLG-GST Issues Register Archive (Issue 8 archive)

| Date | Question | Further information |
|-----------------------------|--|--|
| 28/02/05(w) | 8.1 Will taxpayers who opt to lodge returns monthly and electronically be entitled to take advantage of the payment deferral on importation of goods? | This issue has been withdrawn and placed in the archive. |
| 28/02/05(w) | 8.2 Section 38-185(3) of the GST Act is apparently intended to 'ensure that exports are GST-free when ownership passes to an overseas purchaser, who is not registered or required to be registered, before the goods are removed from Australia'. | This issue has been withdrawn and placed in the archive. |
| 28/02/05(w) | 8.3 Exports are GST-free provided they are physically sent overseas within 60 days of creating an invoice. | This issue has been withdrawn and placed in the archive. |
| 28/02/05(w) | 8.4(a) Would a sale to a customer based in Australia who then delivers the product to an overseas customer be GST-free? | This issue has been withdrawn and placed in the archive. |
| 28/02/05(w) | 8.4(b) What if we send the goods overseas ourselves then invoice the customer based in Australia? | This issue has been withdrawn and placed in the archive. |
| 28/02/05(w) | 8.5 If the vendor (supplier) uses a shipping agent, how does the vendor meet the 60 day requirement to make it GST-free if they don't know that the shipping agent will ship it within 60 days? | This issue has been withdrawn and placed in the archive. |
| 28/02/05(w) | 8.6 Export of goods – a case study from a member: The current GST law requires that all overseas parties who export goods to Australia on a free-into-store basis in excess of \$50,000 per annum are required to register for GST purposes. | This issue has been withdrawn and placed in the archive. |
| 28/02/05(w) | 8.7 Delivered duty payable (DDP) component (a) May the GST component of a delivered duty payable (DDP) invoice be deducted for a taxable importation when determining customs value and the value of the taxable importation? (b) Are there any exceptions or variations other than reducing the invoice value to a VOTI plus GST amount and then stripping out the GST? | This issue has been withdrawn and placed in the archive. |
| 10/08/04 (a) 14/06/05(w) | 8.8 GST status of exports of goods after 60 days | This issue has been withdrawn and placed in the archive. |

Issue no. 9 – Deposits

Schedule:

- The postscript (a) indicates the date the original issue was placed on the register
- The postscript (u) indicates the date the original issue was updated
- The postscript (w) indicates the date the issue was withdrawn from the register
- Withdrawn issues have been placed in the NTLG-GST Issues Register Archive (Issue 9 archive)

| Date | Question | Further information |
|-------------|--|---|
| 28/02/05(w) | 9.1 Division 99 of the GST Act deals with deposits. If funds are placed with a third party stakeholder "held as security for the performance of an obligation", the amount should not be treated as consideration until the funds are applied. | These issues have been withdrawn and placed in the archive. |

Issue no. 10 – Gift vouchers

Schedule:

- The postscript (a) indicates the date the original issue was placed on the register
- The postscript (u) indicates the date the original issue was updated
- The postscript (w) indicates the date the issue was withdrawn from the register
- Withdrawn issues have been placed in the NTLG-GST Issues Register Archive (Issue 10 archive)

| Date | Question | Further information |
|----------------------------|--|---|
| 28/02/05(w) | 10.1 Is it correct that the reimbursement by the franchisor represents a financial supply? | This issue has been withdrawn and placed in the archive. |
| 19/02/04(a) 14/06/05(w) | 10.2 Supply of a Face Value Voucher (FVVs) through a number of entities | GSTA TPP 019 , GSTA TPP 020 , GSTA TPP 021 , and GSTA TPP 022 replace this issue. The original issue has been archived. |
| 19/02/04(a) 14/06/05(w) | 10.3 Is a letter capable of being a voucher? | GSTA TPP 023 replaces this issue. The original issue has been archived. |
| 28/02/05(w) | 10.4 Is an electronic voucher capable of being a voucher? | This issue has been withdrawn and placed in the archive. |
| 28/02/05(w) | 10.5 Monetary value stated on a Face Value Voucher (FVV) | This issue has been withdrawn and placed in the archive. |
| 28/02/05(w) | 10.6 Supply of FVVs and Subdivision 153-B agency arrangements | This issue has been withdrawn and placed in the archive. |
| 28/02/05(w) | 10.7 Vouchers donated or given away for no consideration. | This issue has been withdrawn and placed in the archive. |
| 28/02/05(w) | 10.8 Vouchers supplied with something else | This issue has been withdrawn and placed in the archive. |

Issue no. 11 – Turnover

Schedule:

- The postscript (a) indicates the date the original issue was placed on the register
- The postscript (u) indicates the date the original issue was updated
- The postscript (w) indicates the date the issue was withdrawn from the register
- Withdrawn issues have been placed in the NTLG-GST Issues Register Archive (Issue 11 archive)

| Date | Question | Further information |
|-------------|---|--|
| 28/02/05(w) | 11.1 Is an enterprise that has an annual turnover less than \$50,000 required to register if it disposes of assets of the enterprise? | This issue has been withdrawn and placed in the archive. |
| 28/02/05(w) | 11.2 What types of supplies will be disregarded in calculating projected annual turnover for the purposes of section 188-25? | This issue has been withdrawn and placed in the archive. |
| 28/02/05(w) | 11.3 What does a non-resident who is registered for GST need to show as the income/turnover figure on the BAS? There was a suggestion that this would only be the turnover/income with a connection with Australia (ie only Australian sourced income). | This issue has been withdrawn and placed in the archive. |

Issue no. 12 – Attribution

Schedule:

- The postscript (a) indicates the date the original issue was placed on the register
- The postscript (u) indicates the date the original issue was updated
- The postscript (w) indicates the date the issue was withdrawn from the register
- Withdrawn issues have been placed in the NTLG-GST Issues Register Archive (Issue 12 archive)

| Date | Question | Further information |
|----------------------------|--|---|
| 22/03/01(u) 14/06/05(w) | 12.1 Attributing GST on your taxable supplies | GSTA TPP 024 replaces this issue. The original issue has been archived. |
| 28/02/05(w) | 12.2 Section 29-10(2) ANTS (GST) Act 1999 states the attribution rules that apply if you account on a cash basis. Timing is an important factor in determining in which period a taxpayer is able to claim the input tax credit. | These issues have been withdrawn and placed in the archive. |
| 22/01/02(a) 14/06/05(w) | 12.3 GST treatment of hire purchase agreements when accounting on a cash basis | GSTA TPP 026 replaces this issue. The original issue has been archived. |

Issue no. 13 – Tax invoices

Schedule:

- The postscript (a) indicates the date the original issue was placed on the register
- The postscript (u) indicates the date the original issue was updated
- The postscript (w) indicates the date the issue was withdrawn from the register
- Withdrawn issues have been placed in the NTLG-GST Issues Register Archive (Issue 13 archive)

| Date | Question | Further information |
|----------------------------|---|---|
| 28/02/05(w) | 13.1 Do you have to be registered for GST to issue a tax invoice? | This issue has been withdrawn and placed in the archive. |
| 28/02/05(w) | 13.2 Is it an offence to issue a tax invoice without being registered for GST? | This issue has been withdrawn and placed in the archive. |
| 06/08/01(u) 14/06/05(w) | 13.3 Section 29-70 refers to a 'tax invoice for a taxable supply'. Can there be a tax invoice for a supply that is not a taxable supply? | This issue has been withdrawn and placed in the archive. |
| 28/02/05(w) | 13.4 The draft ruling on recipient created tax invoices suggests that parties must be registered before entering into the agreement. | This issue has been withdrawn and placed in the archive. |
| 02/05/01(u) 14/06/05(w) | 13.5 Invoicing on behalf of participants in a managed agricultural project | GSTA TPP 027 replaces this issue. The original issue has been archived. |
| 28/02/05(w) | 13.6 Do persons using simplified accounting methods (SAMs) need to issue tax invoices? | These issues have been withdrawn and placed in the archive. |
| 05/06/01(u) 14/06/05(w) | 13.7 What should the content of a tax invoice be when issued by or on behalf of a person who adopts a simplified accounting method? | GSTA TPP 028 replaces this issue. The original issue has been archived. |
| 05/06/01(u) 14/06/05(w) | 13.8 What is the amount to appear in a tax invoice that relates to a contract subject to a retention? In draft ruling GSTR 2000/29 deals with the attribution rules where a contract amount was subject to a retention. | GSTA TPP 029 replaces this issue. The original issue has been archived. |
| 28/02/05(w) | 13.9 ABN and ACN requirements on invoices - In the case of a corporate trustee, whether a trustee company name and ACN have to appear on tax invoices in addition to the trust name and ABN? | This issue has been withdrawn and placed in the archive. |
| 28/02/05(w) | 13.10 RCTI Determinations - Why have the Determinations re-included the indemnity from the recipient that was part of the draft ruling GSTR 1999/D5 but was deleted in the final ruling GSTR 2000/10? | This issue has been withdrawn and placed in the archive. |
| 22/03/01(u) 14/06/05(w) | 13.11(a) Names on tax invoices | GSTA TPP 030 replaces this issue. The original issue has been archived. |

| Date | Question | Further information |
|----------------------------|--|--|
| | 13.11(b) Variations of names | GSTA TPP 030 replaces this issue. The original issue has been archived. |
| | 13.11(c) Misspelt names | GSTA TPP 030 replaces this issue. The original issue has been archived. |
| 09-07-01(u) 14/06/05(w) | 13.11 (d) Invoices issued to group entities | GSTA TPP 031 replaces this issue. The original issue has been archived. |
| 06-04-01(a) 14/06/05(w) | 13.11(e) Discretion to treat non-complying documents as tax invoices It would be very helpful if the ATO could issue some guidelines on the practicalities of tax invoices, perhaps the circumstances where the ATO, or individual auditors, will exercise the discretion contained in the final part of section 29-70. | Law Administration Practice Statement PSLA 2004/11 gives guidelines to Tax officers on how to apply the Commissioner's discretion in relation to tax invoices. |
| 22/03/01(u) 14/06/05(w) | 13.12(a) Some software programs show an amount labelled 'WEG' which represents combined GST and wine equalisation tax ('WET') on invoices the software produces for use by small wine makers. Is this practice acceptable? | GSTA TPP 032 replaces this issue The original issue has been archived. |
| 22/03/01(u) 14/06/05(w) | 13.12(b) Is it satisfactory for tax invoices to simply include a reference to 'GST included in total' where the supply involves some combination of GST-free, input taxed and taxable supplies? | GSTA TPP 033 replaces this issue The original issue has been archived. |
| 24/07/01(a) 14/06/05(w) | 13.13 Single tax invoice made out for supplies to multiple entities | GSTA TPP 034 replaces this issue The original issue has been archived. |
| 06/08/01(a) 14/06/05(w) | 13.14 CPD enrolment/professional membership renewal forms | GSTA TPP 025 replaces this issue. The original issue has been archived. |
| 01/09/04(a) 14/06/05(w) | 13.15 Tax invoices and representatives of a GST group | These issues have been withdrawn and placed in the archive. |

Issue no. 14 – Agency relationships and tax invoices

Schedule:

- The postscript (a) indicates the date the original issue was placed on the register
- The postscript (u) indicates the date the original issue was updated
- The postscript (w) indicates the date the issue was withdrawn from the register
- Withdrawn issues have been placed in the NTLG-GST Issues Register Archive (Issue 14 archive)

| Date | Question | Further information |
|----------------------------|--|---|
| 22/03/01(u) 14/06/05(w) | 14.1 Can a tax invoice include amounts collected as agent for a principal? | GSTA TPP 035 replaces this issue. The original issue has been archived. |
| 02/05/01(u) 14/06/05(w) | 14.2 Where a tax invoice includes amounts collected as agent for a principal, are the amounts to be shown on the agent's Business Activity Statement, or are they excluded altogether from the BAS of the agent? | GSTA TPP 036 replaces this issue. The original issue has been archived. |
| 02/05/01(u) 14/06/05(w) | 14.3 How do the tax invoice rules work for invoices issued by an agent who agrees under new subdivision 153B to become a 'principal'? | GSTA TPP 037 replaces this issue. The original issue has been archived. |
| 06-04-01(a) 14/06/05(w) | 14.4 Subdivision 153-B and GST-free supplies | GSTA TPP 038 and GSTA TPP 039 replace this issue. The original issue has been archived. |
| 16/10/03(a) 14/06/05(w) | 14.5 Does a supplier satisfy the requirement of paragraph 29-70(1)(a) when a tax invoice is prepared by an agent appointed solely for the purpose of invoicing for supplies to third party recipients? | This issue has been withdrawn and placed in the archive. |
| 01/09/04(a) 04/11/05(w) | 14.6 Agency relationships | GSTA TPP 091 replaces this issue. The original issue has been archived |

Issue no. 15 – BAS

Schedule:

- The postscript (a) indicates the date the original issue was placed on the register
- The postscript (u) indicates the date the original issue was updated
- The postscript (w) indicates the date the issue was withdrawn from the register
- Withdrawn issues have been placed in the NTLG-GST Issues Register Archive (Issue 15 archive)

| Date | Question | Further information |
|----------------------------|---|--|
| 02/05/01(u) 09/05/05(w) | 15.1 Larger corporates and adjustments on the BAS | This issue has been withdrawn and placed in the archive. |
| 22/03/01(u) 09/05/05(w) | 15.2 Business Activity Statements – two monthly returns followed by a quarterly return | This issue has been withdrawn and placed in the archive. |
| 02/05/01(u) 09/05/05(w) | 15.3 Where do fees charged etc appear on the BAS when these are GST-free under Division 81? ie It appears they are not supplies under Division 81, and should therefore go in either G4 on the supply side or G13 or G14 on the input side | This issue has been withdrawn and placed in the archive. |
| 22/03/01(u) 09/05/05(w) | 15.4 If the due date for the lodgment of the BAS falls on a weekend, a public holiday or a bank holiday, what is the last day that the lodgment and payment can be made to avoid incurring late lodgment and late payment penalties? If the ATO answer is the last working day before the required date, how does the legislation override section 36A(2) of the Acts Interpretation Act? Are the rules different if the BAS is posted? | This issue has been withdrawn and placed in the archive. |
| 06/04/01(a) 09/05/05(w) | 15.5 Substituted Accounting Periods (SAP) & BAS | This issue has been withdrawn and placed in the archive. |
| 28/02/05(w) | 15.6 Lodgment due date falling on weekend or public holiday Why BAS payments cannot be processed on a weekend or public holiday? | This issue has been withdrawn and placed in the archive. |
| 02/08/01(a) 09/05/05(w) | 15.7 SAM and GST instalment option | This issue has been withdrawn and placed in the archive. |
| 28/02/05(w) | 15.8 BAS: List of gazetted public holidays | This issue has been withdrawn and placed in the archive. |
| 10/09/01(a) 09/05/05(w) | 15.9 Failure to lodge on time penalty on BAS | This issue has been withdrawn and placed in the archive. |
| 28/02/05(w) | 15.10 Pre-printed date on BAS | This issue has been withdrawn and placed in the archive. |

| Date | Question | Further information |
|-------------|--|--|
| 28/02/05(w) | 15.11 List of public holidays for the calendar year 2002 | This issue has been withdrawn and placed in the archive. |
| 28/02/05(w) | 15.12 List of public holidays for the calendar year 1/1/2003 to 1/1/2004 | This issue has been withdrawn and placed in the archive. |

Issue no. 16 – Incapacitated entities

Schedule:

- The postscript (a) indicates the date the original issue was placed on the register
- The postscript (u) indicates the date the original issue was updated
- The postscript (w) indicates the date the issue was withdrawn from the register
- Withdrawn issues have been placed in the NTLG-GST Issues Register Archive (Issue 16 archive)

| Date | Question | Further information |
|-------------|---|--|
| 28/02/05(w) | 16.1 Is the definition of projected annual turnover, in relation to ceasing or scaling down an enterprise, intended to cover a representative's activities? | This issue has been withdrawn and placed in the archive. |
| 28/02/05(w) | 16.2 Is the stock of a representative of an incapacitated entity held in "the ordinary course of business" thereby allowing a special credit to be claimed? | This issue has been withdrawn and placed in the archive. |

Issue no. 17 – Trusts

Schedule:

- The postscript (a) indicates the date the original issue was placed on the register
- The postscript (u) indicates the date the original issue was updated
- The postscript (w) indicates the date the issue was withdrawn from the register
- Withdrawn issues have been placed in the NTLG-GST Issues Register Archive (Issue 17 archive)

| Date | Question | Further information |
|----------------------------|---|--|
| 22/03/01(u) 14/06/05(w) | <p>17.1 A very common method of business operation that will involve making taxable supplies is through a trust. For GST purposes, the trust is the entity making the supply and that entity will have an ABN and GST registration.</p> <p>The public face of the entity is the trustee, often a company. The trustee is the person with the legal capacity to carry on the business. Even though the trust is the entity for taxation purposes, that trust is not a 'person' for other purposes.</p> | <p>GSTA TPP 047 replaces this issue. The original issue has been archived.</p> |
| 22/03/01(u) 14/06/05(w) | <p>17.2 When a trustee company acts for a trust, there is an issue with the application of the tax invoice requirements, particularly the obligation to show 'the ABN of the entity that issues [a tax invoice]'.</p> <p>The only name on the invoice will be say KC Nominees Pty Ltd. As an interim measure, the ACN of the company must also be shown. Eventually, the ABN of KC Nominees Pty Ltd must be shown.</p> <p>The entity making the supply, from the context of the GST legislation is The KC Family Trust, but this is not the entity that will issue the tax invoice.</p> | <p>GSTA TPP 048 replaces this issue. The original issue has been archived.</p> |
| 24/07/01(u) 14/06/05(w) | <p>17.3 Distributions in specie - please provide some guidance on distributions in specie particularly where distributions are made to beneficiaries and where rights are surrendered by beneficiaries upon a distribution.</p> | <p>GSTA TPP 049 replaces this issue. The original issue has been archived.</p> |
| 19/02/04(a) 14/06/05(w) | <p>17.4 Transfer of assets as a result of change in trustee</p> | <p>GSTA TPP 050 replaces this issue. The original issue has been archived.</p> |

Issue no. 18 – FBT/GST

Schedule:

- The postscript (a) indicates the date the original issue was placed on the register
- The postscript (u) indicates the date the original issue was updated
- The postscript (w) indicates the date the issue was withdrawn from the register
- Withdrawn issues have been placed in the NTLG-GST Issues Register Archive (Issue 18 archive)

| Date | Question | Further information |
|----------------------------|---|---|
| 24/07/01(u) 09/05/05(w) | 18.1 What is the linkage between the GST and FBT regimes? | This issue has been withdrawn and placed in the archive. |
| 05/06/01(u) 14/06/05(w) | 18.2 What is the extent of creditable purpose where employer uses the 50/50 split method for entertainment fringe benefits? | GSTA TPP 051 replaces this issue. The original issue has been archived. |
| 12/03/02(a) 14/06/05(w) | 18.3 FBT/GST-Entitlement to ITC on Motor Vehicle | GSTA TPP 052 replaces this issue. The original issue has been archived. |

Issue no. 19 – General

Schedule:

- The postscript (a) indicates the date the original issue was placed on the register
- The postscript (u) indicates the date the original issue was updated
- The postscript (w) indicates the date the issue was withdrawn from the register
- Withdrawn issues have been placed in the NTLG-GST Issues Register Archive (Issue 19 archive)

| Date | Question | Further information |
|----------------------------|---|---|
| 28/02/05(w) | 19.1 Is it intended that the ATO will announce that the ruling on what constitutes an enterprise (MT 2000/1) will be a public ruling for GST purposes? | This issue has been withdrawn and placed in the archive. |
| 28/02/05(w) | 19.2 What is the process for making ministerial determinations? | This issue has been withdrawn and placed in the archive. |
| 28/02/05(w) | 19.3 How do you find regulations on the internet? | This issue has been withdrawn and placed in the archive. |
| 28/02/05(w) | 19.4 What happens to a refund where the entity has not provided bank account details to allow the refund to be paid? | This issue has been withdrawn and placed in the archive. |
| 02/05/01(u) 14/06/05(w) | 19.5 "Sale or return" basis supplies | GSTA TPP 053 replaces this issue. The original issue has been archived. |
| 02/05/01(u) 14/06/05(w) | 19.6 Consideration and section 9-15 | GSTA TPP 054 replaces this issue. The original issue has been archived. |
| 22/03/01(u) 14/06/05(w) | 19.7 Are diesel fuel grants going to be subject to GST? | GSTA TPP 055 replaces this issue. The original issue has been archived. |
| 28/02/05(w) | 19.8 Deferred GST scheme. Can the ATO comment on whether it conducts any integrity checks on the data supplied by Customs before issuing the BAS? | This issue has been withdrawn and placed in the archive. |
| 28/02/05(w) | 19.9 Deferred GST scheme. The ATO relies on Customs details to pre-populate the relevant field on the BAS for GST on imports. | This issue has been withdrawn and placed in the archive. |
| 24/07/01(a) 14/06/05(w) | 19.10 Novated Lease Arrangements | GSTA TPP 056 replaces this issue. The original issue has been archived. |
| 24-07-01(a) 09/05/05(w) | 19.11 What is my income tax deduction if I am a GST registered taxpayer who incurs an expense partly for business purposes and partly for private purposes? | This issue has been withdrawn and placed in the archive. |
| 28/02/05(w) | 19.12 Date of effect for rulings other than 1 July 2000 | This issue has been withdrawn and placed in the archive. |

| Date | Question | Further information |
|----------------------------|---|--|
| 28/02/05(w) | 19.13 Rulings removed from website | This issue has been withdrawn and placed in the archive. |
| 15/10/01(a) 14/06/05(w) | 19.14 Application of ACCC measures after 30 June 2002 | GSTA TPP 057 replaces this issue. The original issue has been archived. |
| 28/02/05(w) | 19.15 When is the taxpayer advised that credits are available? | This issue has been withdrawn and placed in the archive. |
| 28/02/05(w) | 19.16 Is interest payable on negative net amounts where no bank account details have been provided? | This issue has been withdrawn and placed in the archive. |
| 28/02/05(w) | 19.17 GSTR 2001/5 addendum | This issue has been withdrawn and placed in the archive. |
| 28/02/05(w) | 19.18 Role of State representative | This issue has been withdrawn and placed in the archive. |
| 12/03/02(a) 14/06/05(w) | 19.19 GSTR 2001/5 and the application of Division 165 | GSTA TPP 058 replaces this issue. The original issue has been archived. |
| 28/02/05(w) | 19.20 Rulings and Escalation process | This issue has been withdrawn and placed in the archive. |
| 14/11/03(a) 14/06/05(w) | 19.21 Denial of input tax credits | Law Administration Practice Statement PS LA 2004/11 gives guidelines to Tax Officers on how to apply the Commissioner's discretion in relation to tax invoices |
| 28/01/04(a) 09/05/05(w) | 19.22 Private use for Individuals and Partnerships | This issue has been withdrawn and placed in the archive. |
| 28/01/04(a) 14/06/05(w) | 19.23 Simplified Accounting for Food Retailers | GSTA TPP 060 and GSTA TPP 066 replace this issue. The original issue has been archived. |
| 02/02/04(a) 14/06/05(w) | 19.24 GSTR 2003/6 and Family Law Court Orders | GSTA TPP 061 and GSTA TPP 067 replace this issue. The original issue has been archived. |
| 02/02/04(a) 14/06/05(w) | 19.25 GST and Division 162 | GSTA TPP 062 replaces this issue. The original issue has been archived. |
| 10/08/04(a) 14/06/05(w) | 19.26 GST and motor vehicles | This issue has been withdrawn and placed in the archive. |
| | 19.27 GST treatment of non-resident tour operators | This issue has been withdrawn and placed in the archive. |

| Date | Question | Further information |
|------------------------------|--|---|
| | 19.28 Relying on suppliers' private rulings | This issue has been withdrawn and placed in the archive. You can find the ATO's view on this issue in the GST Food Guide . |
| | 19.29 WET 2002/2 and the definition of 'mead' | This issue has been withdrawn and placed in the archive. |
| | 19.30 WET credits | This issue has been withdrawn and placed in the archive. You can find the ATO's view on this issue in ATO IDs 2004/16 and 2004/30 . |
| 10/08/04 (a) 26/06/13 (u) | 19.31 GST and WET | |
| 10/08/04 (a) | 19.32 GSTR 2003/1 GST-free education courses | Please see below for the existing ATO view. |
| 24/08/04 (a) | 19.33 GST and rebates | Please see below for the existing ATO view. |
| 24/08/04 (a) 02/02/06 (w) | 19.34 Definition of an asset for GST purposes | GSTA TPP 095 and GSTA TPP 096 replace this issue. The original issue has been archived. |
| 01/09/04 (a) 26/06/13 (u) | 19.35 GST and ETPs | |

19.31 GST and WET

Non-interpretative – straight application of the law.

Other reference - see [WETR 2009/1](#) *Wine equalisation tax: the operation of the wine equalisation system*.

Issue

Could the ATO please clarify the following GST and WET issues. Based on paragraph 88, 158-160 of [WETR 2009/1](#) *Wine equalisation tax: the operation of the wine equalisation tax system*, it appears that supplies to staff and shareholders at discounted prices may not be considered at arm's length and may therefore be subject to GST under Division 72 of the GST Act. Most companies supply goods (and services) to staff at discounted prices where the discount falls short of constituting a fringe benefit. It is of concern to us to suggest that these sales are not at arm's length - see paragraph 159.

1. Would the ATO please explain the rationale behind its ruling at paragraph 158 of WETR 2009/1 that 'Sales to staff, shareholders and grape growers at discounted prices are considered to be non-arm's length sales?'
2. Where a retailer makes sales of wine to staff and shareholders at discounted prices are such sales regarded as non-arm's length dealings?
3. Does Division 72 of the GST Act apply to sales of wine to staff and shareholders at discounted prices? How about similar sales of goods other than wine (and services) at discounted prices?

ATO response

Wine Equalisation Tax and non-arm's length sales

Question 1

The legislation

Section 27-10 in the *A New Tax System (Wine Equalisation Tax) Act 1999* provides as follows:

27-10 Alteration of wine tax liability or wine tax credit if affected by non - arm's length transaction

- (1) This section applies to you if:
 - (a) you (or your associate) has been a party to a non-arm's length transaction; and
 - (b) if the transaction had instead been an arm's length transaction, it would have been the case (or could reasonably be expected to have been the case) that:
 - (i) your liability to wine tax on the non-arm's length transaction, or any other transaction, would have been increased; or
 - (ii) your entitlement to a wine tax credit in connection with the non-arm's length transaction, or any other transaction, would have been reduced.
- (2) The liability or wine tax credit is taken always to have been the amount that it would have been (or could reasonably be expected to have been) if it had been based on an arm's length transaction instead of on the non-arm's length transaction.

The Explanatory Memorandum to the Wine Equalisation Tax Bill in paragraph 10.9 states:

'The parties to a transaction will be required at all times to ensure that wine is sold at an arm's length price. Where the wine is not sold at an arm's length price the law will operate to apply an arm's length price to the sale or other taxable dealing.'

The intention of the provision is therefore quite clear. The WET liability for an assessable dealing is always the amount it would have been (or could reasonably be expected to have been) if it had been based on an arm's length transaction.

What is a non-arm's length transaction?

In relation to non-arm's length transactions the courts have held that a transaction is not at arm's length where the parties are not dealing with each other as arm's length parties normally would, with the result that the outcome of their dealing is not a matter of real bargaining (see *Australian Trade Commission v WA Meat Exports Pty Ltd* (1987) 75 ALR 287; *Barnsdall v FC of T* 88 ATC 4565; 19 ATR 1352; *The Trustee for the Estate of the late AW Furse No 5 Will Trust v FC of T* 91 ATC4007; 21 ATR1123; *Granby Pty Ltd v FC of T* 95ATC 4240; (1995) 30 ATR 400; *Copperart Pty Ltd v FC of T* 93 ATC 4779; (1993) 26 ATR 327; *Pontifex Jewellers (Wholesale) Pty Ltd v FC of T* (1999) 2000 ACT 4642).

It should be noted that the body of case law supports the view that a transaction is not necessarily a non-arm's length transaction merely because the parties to the transaction are not at arm's length. However, the fact that the parties are not at arm's length may have some relevance in concluding that the transaction is not at arm's length.

WET approach

It is common in the wine industry for wine manufacturers to sell wine to employees, shareholders, and growers at heavily discounted prices. Where this occurs it is our view that the price of the transactions has not been determined as a result of real bargaining and hence the transactions are considered to be non-arm's length. This is supported by the fact that a relationship exists between the parties (although it is accepted that the existence of the relationship does not, of itself, mean the dealings are non-arm's length).

In these circumstances the WET liability is the amount it would have been (or could reasonably be expected to have been) if it had been based on an arm's length transaction.

Question 2

The WET Act imposes wine tax on assessable dealings with wine in Australia. WET is normally a once only tax designed to fall on the last wholesale sale - for example a sale to a retailer such as a bottle shop, hotel or restaurant. In normal circumstances, a retailer purchases wine at prices which include WET and does not have a further liability when the wine is sold by retail.

This means that the amount of WET paid on wine sold by a retailer from WET-paid stock is the same whether sold at the normal retail price or at a discounted price.

Question 3

Division 72 of the GST Act does not apply to sales of wine (or other goods or services) to staff and shareholders unless they are 'associates' of the supplier. For the purposes of GST, 'associate' takes the meaning given by Section 318 of the ITAA 1936. Under that section, staff who are merely employees are not 'associates'. Shareholders are only considered to be 'associates' where they are in a position to 'sufficiently influence' a company or exercise a 'majority voting interest' {see subsection 318(2)}. This means that, in the vast majority of cases where staff or shareholders are entitled to a discount, Division 72 of the GST Act would not be applicable and GST would simply be payable on the actual amount they paid for the supply of the wine (or other goods or services).

19.32 GSTR 2003/1 GST-free education courses

Non-interpretative – other reference - see [GSTR 2003/1](#) – *Goods and services tax: supplies that are GST-free as professional or trade courses.*

Issue

In general the supply of an education course is GST-free under Section 38-85 of the GST Act. Paragraph (j) of the definition of "education course" in Section 195(1) of the GST Act includes a "professional or trade course". A "professional or trade course" is in general a course leading to a qualification that is an "essential prerequisite". A qualification is an "essential pre-requisite" in relation to the entry to or the commencement of the practice of a particular profession or trade if the qualification is imposed by 'and includes (a) an industrial instrument'.

Paragraph 50 of GSTR 2003/1 states that an 'industrial instrument means an Australian Law or an award, order, determination or industrial agreement in force under an Australian Law'.

Bearing this in mind there arises an issue in our view with Example 9 in the GST Ruling. The GST Ruling assumes that because Graeme already holds a heavy vehicle drivers license, for Graeme to obtain a dangerous goods heavy vehicle drivers license, the training would only constitute a course providing additional skills and would not be considered an

essential pre-requisite in relation to the entry to or the commencement of the practice of a particular profession or trade. However it has been brought to our attention that this is not necessarily the case. It is our understanding that Graeme even though he has the heavy vehicle license cannot drive a dangerous goods heavy vehicle unless he obtains a further “essential prerequisite” ie this new license and that this is a condition set out in an industrial instrument eg an Australian Standard requires this license. If Graeme does not obtain this license he cannot and is not permitted to drive a heavy vehicle carrying these dangerous goods.

It is thus our view that the conclusion reached in this GST Ruling needs re-consideration in light of this information.

An additional example

To illustrate the concern further lets take the example of electricians. The electrician's award outlines nine different grades of electricians of which the 'base' electrician is a grade 5 leading all the way up to grade 9. For the electrician to be able to enter that grade and thus undertake that occupation/job there is a pre-requisite in the award that requires the person to undertake an additional course. If the ATO example is correct then each course offered to increase from the base electrician would be treated as a taxable supply and not GST-free.

The Institute of Chartered Accountants is also concerned as to how a supplier of education courses will be able to establish whether a supply of an education course to an entity is an “essential pre-requisite” for the entities acquiring the benefit and thus fulfilling the requirements for GST-free status for the purposes of Section 38-85 of the GST Act. For example in the example above what if the initial heavy vehicle license was obtained by an accountant who was interested in driving a truck on weekends for pleasure. How would the supplier be able to establish that this is not an essential pre-requisite for a trade for this person? Or do they simply assume it is and thus automatically assume a GST-free status on these transactions. To do otherwise in our view would seem to be creating a huge compliance burden for taxpayers. Could the ATO please clarify its views on this issue?

The ICAA would also like some additional guidance and examples of what would satisfy the definitions of an order and determination for the purposes of the definition of an “industrial Instrument”.

Further

In the Joint Professional Bodies submission to the above Ruling the below concerns were raised:

- Introduction

The professional bodies welcome the draft goods and services tax ruling and its attempt to clarify the meaning of ‘professional or trade course’ in section 195-1 of the A New Tax System (Goods and Services Tax) Act 1999. However we raise the following concerns that require addressing.

- Essential prerequisite

The ATO at paragraph 54 and following would appear to be applying a very narrow interpretation for the term “essential prerequisite”. The ATO states that there can only be one professional or trade association at the national level imposing the “essential prerequisite”.

In section 195-1 of the GST Act paragraph (b) states that:

'If there is no industrial instrument for that profession or trade association but there is a professional or trade association that has uniform national requirements relating to the entry to, or the commencement of the practice of, the profession or trade concerned – by that association; or'

Section 195-1 of the GST Act does not set any limits to the number of professional associations.

There are instances where two professional associations can exist in tandem however they offer very different and varied 'essential prerequisite' qualifications that lead to specific employment opportunities in a trade area within the profession. Furthermore it is not possible in these instances for only one of these professional or trade associations to impose the 'essential prerequisites'.

It is thus recommended that paragraph 54 and following be amended to reflect commercial reality that there may be instances where two or more professional or trade associations could meet the "essential prerequisite" requirements.

- Entry into a profession or trade

The issue of what constitutes entry into a trade or profession is unclear in the draft ruling. For example often a person can work in a trade or profession while preparing for or awaiting for the opportunity to undertake the course that is finally required for entry into the profession. For example, in New South Wales a person may work for a firm of solicitors while awaiting a place in the College of Law program, which is required to become a Legal Practitioner of the Supreme Court of NSW.

When is the time that they have entered the profession in question? Was it when they started to work for the firm of solicitors? If so, then they would have already entered the profession and so it would be arguable that the "College of Law" program would not be GST-free. This is obviously not the intention of the provision.

A clarifying statement explaining that working in the profession while waiting for or undertaking the essential prerequisite course will not effect the operation of Subdivision 38C of *A New Tax System (Goods and Services Tax) Act 1999* would be of assistance to taxpayers.

The ICAA and the TIA have recently had a look at the final version of GSTR Ruling 2003/1 dealing with professional or trade courses which are GST-free. Paragraph 60 of this ruling states the following:

If more than one professional or trade association, either at national level or for a particular State or Territory, has requirements relating to the entry to, or the commencement of the practice of, the profession or trade concerned, no qualification, set by any of the associations as a requirement for entry or commencement, would be 'an essential prerequisite'.

This was also in the draft ruling issued in October 2002 and the Professional Bodies made comments to get this view amended.

At face value, this interpretation of the meaning of the term 'professional or trade course' in the GST Act would appear to mean that none of the courses run by the various accounting bodies which lead to entry into the profession of accounting or commencement of practice would now qualify for GST-free status as a "professional or trade course". This is on the assumption that the relevant 'profession' for the purposes of the trade and professional course concession in the GST Act is that of an accountant, rather than that of a 'chartered accountant', CPA etc. The definition in section 195-1 does use the term "particular" profession but the way the ATO is interpreting this term is as per paragraphs 65 to 68 of GSTR 2003/1.

Can the ATO please clarify its position on this issue and why the comments in the joint submission were not reflected in the final Ruling? The ICAA and the TIA are further calling for the recommendations made in the Joint submission to be reflected in the final ruling and for the final ruling to be amended.

Additional information

The ICAA are of the view that in some cases the course will constitute an 'essential prerequisite' into a particular trade and not merely as the ATO has outlined as 'merely recognising additional skills'.

For example in the case of an electrician the award outlines separate courses that need to be undertaken for an electrician to be able to undertake the particular trade.

The ICAA have attached the award for an electrician and the different types of courses it requires for an electrician or an alarm installer etc to undertake to be able to undertake the trade. These have been highlighted and begin at 2.5.6. In summary there are nine grades of electrical trades and in order to undertake a different electrical related trade the person is required to undertake a specified course outlined in the award.

The ICAA are of the view that these courses meet the definition of an essential prerequisite for they are required by an industrial instrument. If the course is not undertaken the person cannot enter the respective trade. Therefore they should be GST-free.

Could the ATO reconsider its response taking the award into account by way of an example?

ATO response

Goods and Services Tax Ruling GSTR 2003/1: supplies that are GST-free as professional or trade courses

In response to questions and issues raised by members of the Tax Practitioners' Industry Partnership (TPIP) in relation to the above ruling, the following advice is provided:

| | |
|-------------|---|
| Question 1: | Is a course which provides a base electrician (grade 5 qualification) with a grade 6 or above electrician qualification GST-free as a professional or trade course? |
| Question 2: | Is a course which provides a licensed heavy vehicle driver with a license to carry dangerous goods GST-free as a professional or trade course? |

Response to Questions 1 and 2

Paragraphs 92-94 of GSTR 2003/1 and the example at paragraph 95 deal with specialisations within a particular profession or trade as opposed to separate professions or trades.

Once you have entered a profession or trade, any additional qualifications gained need to be examined to determine whether they are for entry into a different profession or trade or are merely recognising additional skills.

The two examples above (heavy vehicle driver and electrician) are both situations where the person has already entered the profession or trade. The qualifications obtained (dangerous goods, above-base level grade electrician), albeit covered by an industrial instrument, are not for entry into the particular profession or trade (heavy vehicle driver, electrician). Therefore, courses which lead to either of these qualifications will not be GST-free as a professional or trade course.

Only the heavy vehicle license and the base grade electrician qualification are essential prerequisites for entry into the profession or trade of heavy vehicle driver and electrician respectively. Example 9 at paragraph 95 of GSTR 2003/1 deals sufficiently with this scenario.

It is important to note that although a qualification may be imposed under an industrial instrument, it is not necessarily an essential prerequisite for entry to a particular profession or trade. For example, the NSW Electrical, Electronic and Communications Contracting Industry (State) Award sets the qualification levels for various classifications within that industry for the purposes of remuneration only. The qualifications set out in the Award are not essential prerequisites as they are not legal requirements for entry into, or commencing the practice of, the profession or trade of 'electrician'.

| | |
|-------------|--|
| Question 3: | Is a course that leads to a heavy vehicle driver's license GST-free as a professional or trade course if the recipient has no intention of entering, or commencing the practice of, the profession or trade of a heavy vehicle driver? |
|-------------|--|

Response to Question 3

If the course meets all the criteria of a professional or trade course, it will be GST-free, regardless of who the supply is being made to and the recipient's underlying intention for undertaking the course. Paragraph 19 of GSTR 2003/1 states:

The definition of a 'professional or trade course' in section 195-1 requires you to examine the characteristics of the particular course you supply. Your examination does not need to consider the recipients' intention, nor whether the participants actually enter or practise a particular profession or trade.

| | |
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| Question 4: | Is the ATO able to provide additional guidance and examples of what would satisfy the definitions of an order and a determination for the purposes of the definition of an 'industrial instrument'? |
|-------------|---|

Response to Question 4

The definition of 'industrial instrument' for the purposes of the definition of an 'essential prerequisite' and subsequently the definition of a 'professional or trade course' was taken in its entirety from the *Income Tax Assessment Act 1997* (ITAA). Paragraph (b) of the ITAA definition relates principally to allowable work-related deductions based around various amounts received by employees under awards, orders, determinations or industrial agreements, and has little or no practical application to the setting of essential prerequisites for entry into professions or trades.

The ATO is yet to come across an essential prerequisite that has been documented in an award, order, determination or industrial agreement. This is not to say that one doesn't exist or that one may never appear in the future, hence the retention of the whole definition for the purposes of the definition of a 'professional or trade course'.

The vast majority of essential prerequisites for entry into professions or trades are set down in Australian laws (as per paragraph (a) of the definition of 'industrial instrument').

| | |
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| Question 5: | Why has the ATO stated at paragraph 60 of GSTR 2003/1 that there can only be one professional or trade association imposing an 'essential prerequisite'? |
| Question 6: | How does the ATO's interpretation of 'essential prerequisite' and 'professional or trade course' affect the GST status of courses run by the various accounting bodies for entry into, or commencement of the practice of, the accounting profession? |

Background to Questions 5 and 6

In the joint Professional Bodies' submission to the draft Ruling, the following comment was made:

'The ATO at paragraph 54 and following would appear to be applying a very narrow interpretation for the term "essential prerequisite". The ATO states that there can only be one professional or trade association at the national level imposing the "essential prerequisite".

In section 195-1 of the GST Act paragraph (b) states that:

"If there is no industrial instrument for that profession or trade association but there is a professional or trade association that has uniform national requirements relating to the entry to, or the commencement of the practice of, the profession or trade concerned – by the association; or..."

Section 195-1 of the GST Act does not set any limits to the number of professional associations.

There are instances where two professional associations can exist in tandem however they offer very different and varied "essential prerequisite" qualifications that lead to specific employment opportunities or a trade area within the profession. Furthermore it is not

possible in these instances for only one of these professional or trade associations to impose the “essential prerequisites”.

It is thus recommended that paragraph 54 and following be amended to reflect commercial reality that there may be instances where two or more professional or trade associations could meet the “essential prerequisite” requirements.’

Response to Questions 5 and 6

The joint Professional Bodies’ submission was considered by the ATO in the preparation of the final ruling GSTR 2003/1, but the ATO did not agree with the submission on this point, the practical effect (of more than one association imposing entry requirements) being that persons could enter a particular profession or trade without the qualification imposed by one of a number of associations.

However, a new footnote was added in paragraph 60 of the final ruling to note that where more than one association imposes entry requirements for specific employment opportunities in different areas within a broader field or industry, the requirements may relate to specialisations. The footnote reads:

13 However, two associations that, at first, may seem to be imposing qualifications for the same profession or trade, may in fact be representing specialisations that are different professions or trades. Paragraphs 92 to 97 discuss specialisations.

Consistent with the footnote to paragraph 60 of GSTR 2003/1, whether chartered accountants and certified practising accountants are in a separate profession to that of an ‘accountant’ – and to each other – is a matter of fact and degree.

| | |
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| Question 7: | Can the ATO provide a clarifying statement explaining that working in the profession while waiting for or undertaking the essential prerequisite course will not affect the operation of Subdivision 38C of GST Act? |
|-------------|--|

Background to Question 7

In the joint Professional Bodies’ submission to the draft Ruling, the following comment was made:

‘The issue of what constitutes entry into a trade or profession is unclear in the draft ruling. For example often a person can work in a trade or profession while preparing for or awaiting for the opportunity to undertake the course that is finally required for entry into the profession. For example, in New South Wales a person may work for a firm of solicitors while awaiting a place in the ‘College of Law’ program, which is required to become a Legal Practitioner of the Supreme Court of NSW.

When is the time that they have entered the profession in question? Was it when they started to work for the firm of solicitors? If so, then they would have already entered the profession and so it would be arguable that the ‘College of Law’ program would not be GST-free. This is obviously not the intention of the provision.’

Response to Question 7

The ATO recognised the importance of this point made in the joint Professional Bodies’ submission, and inserted into the final ruling paragraph 82 which states:

‘In other cases, a person may work in a profession or trade on a supervised basis without a qualification, pending the gaining of a qualification that will enable the person to enter or commence the practice of a profession or trade. A course leading to such a qualification will also be a professional or trade course providing the qualification is an essential prerequisite.’

19.33 GST and rebates

Non-interpretative – other reference - see [GSTR 2000/19](#) *Goods and services tax: making adjustments under Division 19 for adjustment events*.

Issue

In its ruling/tax facts *Rebates and GST*, the ATO has taken the view that promotional rebates and warehousing rebates are supplies which are made by the purchasers (recipients) of goods acquired. That is, they are payments made by a supplier of goods to a recipient which under the terms of the arrangement the acquirer is required to provide services to the supplier (eg advertising, storage etc).

Question 1

Is this still the ATO's considered position?

The importance of the above question is that in negotiating its trade agreements many purchasers are now moving to bundled terms type arrangements. Under the bundled terms arrangements the volume rebate amount has been increased to incorporate any 'former' promotional rebate and early settlement discount amounts, eg the volume rebate has moved from 3% to 9% to reflect the 3% plus the 'former' promotional rebate of 3% and early settlement discount of 3%.

In line with these bundled terms arrangements, the discount provided is being treated as a reduction in the price of the goods to which the discount has been applied. As a consequence, the discount is also applied to any GST that was charged in relation to the relevant goods thus creating a decreasing GST adjustment.

Prior to moving to bundled terms the volume rebate and early settlement discount were treated as reductions in price and the promotional rebate was treated as consideration for a taxable supply by the purchaser of promotional services.

Question 2

Is the bundling of terms into a total amount labelled as a volume discount sufficient to treat the whole rebate amount as a reduction in price (ie 9% is the reduction in price) or should it be construed that the volume rebate, under bundled terms is a mixed supply? Or put another way, is the essential character of the bundled discount one of the supplying entity granting discounts/rebates together with the provision by the supplying entity of separate consideration for a supply by the purchaser (a promotional rebate component), ie 6% reduction in price due to previous 3% for volume discount and 3% early settlement discount and 3% consideration for promotional services or advertising?

Alternatively, is the total rebate amount in fact consideration for promotional services supplied by the purchaser and therefore, the total discount/rebate amount granted under bundled terms by the supplying entity consideration for a taxable supply by the purchaser? Where this is the case, the supplying entity would be entitled to claim an input tax credit equal to 1/11th of the total discount/rebate amount. Under this scenario, the total 9% would be consideration for the promotional services or advertising.

ATO response

Question 1

Yes, this fact sheet still contains the ATO's considered position on rebates such as promotional rebates and warehousing rebates for GST purposes.

Question 2

The bundling of terms into a total amount under one label is not sufficient to treat the whole rebate amount as a reduction in price or as consideration for a separate supply, where the essential character of the 'bundled discount' is one of the supplying entity granting discounts together with the provision by the supplying entity of separate consideration for a supply by the purchaser. The bundled rebate is not a mixed supply.

Discussion

The ATO's view on promotional rebates is set out in the fact sheet, Rebates and GST and Goods and Services Tax Ruling GSTR 2000/19 Goods and services tax: making adjustments under Division 19 for adjustment events. Such rebates are considered not to adjust the price of goods but are consideration for a separate taxable supply of services. The recipient is considered to supply services for consideration equal to the amount of the rebate received.

The ATO view as set out in GSTR 2000/19 and the fact sheet, distinguishes between volume and payment discounts as a reduction in price leading to an adjustment event, and the promotional rebate being consideration for a taxable supply. The label given to the bundled terms, eg a volume discount does not determine the essential character of the component discounts or rebates. Due to the different nature of each type of discount or rebate a change in label is not sufficient to treat the total bundled components as if they are all a reduction in consideration or all consideration for a separate supply.

The treatment of the discount or rebate for GST purposes is dictated by the identification of the essential nature or substance of the bundled discount/rebate. In this case the bundled term can be identified as a combination of separate volume discount, early settlement discount and consideration for promotional services or advertising. The relevant GST treatment must be given to each of those separate components. A case by case analysis of the bundled terms must be undertaken to determine the GST treatment of the discount or rebate. There may be cases where the separate components of the bundled terms are the same (that is, adjustment event or consideration for a taxable supply). In other cases the relevant GST treatment for each component may be different and the components will need to be separated so that the applicable GST treatment is given to each of the separate components.

The bundling cannot be treated as a mixed supply as a combination of a supply and adjustment event is not considered to be a mixed supply.

19.35 GST and ETPs

Non-interpretative – straight application of the law.

For other references see [GSTR 2001/6](#) - *Goods and services tax: non-monetary consideration*.

Issue

What is the GST liability of an employer who provides goods (eg a motor vehicle) to an employee as, or as part of, a termination payment? Is the answer the same regardless of whether or not the termination payment is an ETP?

Employers at times give departing employees goods rather than cash in satisfaction of the employee's entitlement to a termination payment.

For example, an employer may give an employee a motor vehicle with a GST-inclusive market value of \$22,000 as part of the employee's termination payment.

Where the termination payment is an ETP, the statement to the employee will have a gross value of \$28,820 (\$22,000 x 1.31), the employer's PAYG liability will be \$6,820 with the employee receiving an after tax 'payment' valued at \$22,000.

Does the employer have a GST liability on the supply of the motor vehicle?

Alternatively, if the termination payment does not qualify as an ETP, the statement to the employee will have a gross value of \$32,670 (\$22,000 x 1.485 - assuming the top marginal rate), the employer's PAYG liability will be \$10,670 with the employee receiving an after tax 'payment' of \$22,000.

Does the employer have a GST liability on the supply of the motor vehicle?

It might be argued that the supply will be a taxable supply by the employer. However, if the supply of the motor vehicle is the provision of a fringe benefit by the employer, the valuation rules in section 9-75(3) will apply.

I understand that the supply of the motor vehicle is not regarded as the provision of a fringe benefit in either of the circumstances outlined above.

Therefore, it could be argued that the employer in each case would have a GST liability of \$2,000. Technically, that liability should be calculated by reference to the GST-inclusive market value of the services the employer has received from the employee as consideration for the supply. However, in accordance with GSTR 2001/6, that liability can be calculated as 1/11th of the GST-inclusive market value of the motor vehicle supplied by the employer to the employee.

Alternatively, it might also be argued that the motor vehicle has been supplied to the employee as salary and wages. The employer would have a PAYG (Withholding) obligation but would have no liability for payment of GST on the supply of the motor vehicle. Clearly, the employee is not carrying on an enterprise in connection with the provision of services as an employee. To treat the supply of the motor vehicle to the employee as the payment of salary and wages without any GST liability brings some symmetry to the relative positions of the employer and the employee.

ATO response

Questions

1. Is an employer making a taxable supply when it provides goods (eg a motor vehicle) to an employee as, or as part of, a termination payment?
2. Is an employer making a taxable supply when it provides goods (eg a motor vehicle) to an employee and that payment is not an employment termination payment?

Background

Employment termination payments

An employment termination payment (ETP), as defined by section 82-130 of the *Income Tax Assessment Act 1997* (ITAA 1997), means, 'a payment received by you in consequence of the termination of your employment; or after another person's death, in consequence of the termination of the other person's employment. An ETP must be received no later than 12 months after that termination and must not be a payment mentioned in section 82-135 of the ITAA 1997.

Section 80-15 of the ITAA 1997 states that an ETP may consist of, or include, a transfer of property. In such a case, the amount of the payment is, or includes, the 'market value' of the property.

Fringe benefits

When an employer provides a car fringe benefit to an employee, the employer is making a supply. The consideration for the supply is the employee's services. Therefore, the employer is making a taxable supply of the motor vehicle (assuming the other requirements of section 9-5 of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act) are met). However, the amount of GST payable on the taxable supply is calculated by reference to section 9-75 of the GST Act.

Where the supply is a fringe benefit, subsection 9-75(3) of the GST Act applies in determining the 'price' of the supply. Subsection 9-75(3) states:

In working out under subsection (1) the value of a taxable supply made in a tax period, being a supply that is a fringe benefit, the price is taken to be the sum of:

- (a) to the extent that, apart from this subsection, paragraph (a) of the definition of price in subsection (1) would be applicable:
 - (i) if the fringe benefit is a car fringe benefit – so much of the amount that would be worked out under that paragraph as represented the recipient's payment made in that period, or
 - (ii) if the fringe benefit is a benefit other than a car fringe benefit - so much of the amount that would be worked out under that paragraph as represented the recipients contribution made in that period, and
- (b) to the extent that, apart from this subsection, paragraph (b) of the definition of price in subsection (1) would be applicable:
 - (i) if the fringe benefit is a car fringe benefit - so much of the amount that would be worked out under that paragraph as represented the recipient's payment made in that period, or
 - (ii) if the fringe benefit is a benefit other than a car fringe benefit - so much of the amount that would be worked out under that paragraph as represented the recipient's contribution made in that period.

In order to calculate the amount of GST payable on that taxable supply, the price of the supply must be determined. Section 9-75 of the GST Act provides that the price is the amount of consideration (where the consideration is expressed as an amount of money). Subsection 9-75(3) of the GST Act does not change the 'consideration' provided for the supply, it merely alters the price of the supply to equal the amount of the recipient's payment in relation to that supply.

Therefore, where an employer provides a car fringe benefit, the employer is making a taxable supply to the employee. However, where the employee does not make any recipient's payments, the price of the supply is nil and the amount of GST payable is nil.

Question 1

For the purposes of the GST Act, a 'fringe benefit' is defined by section 195-1 of the GST Act to have the meaning:

'given by section 995-1 of the ITAA 1997 but includes a benefit within the meaning of subsection 136(1) of the *Fringe Benefits Assessment Act 1986* that is an exempt benefit for the purposes of that Act'.

Paragraph 136(1)(lc) of the *Fringe Benefits Tax Assessment Act 1986* (FBTAA) specifically excludes a payment that would be an employment termination payment (ETP) from the definition of a fringe benefit.

The supply of a motor vehicle by an employer as part of an ETP is not a fringe benefit within the meaning given by section 995-1 of the ITAA 1997, nor is it an exempt benefit within the meaning of subsection 136(1) of the FBTAA. As a consequence, the supply of the motor vehicle is not a 'fringe benefit' for the purposes of the GST Act. For a supply that

is not a fringe benefit within the meaning of the GST Act, subsection 9-75(3) of the GST Act does not apply.

Consideration

Paragraph 9-5(a) of the GST Act requires a taxable supply must be 'for consideration'. The term 'consideration' is used both in subsection 80-15(3) of the ITAA 1997 and also in section 9-5 of the GST Act. However, it does not follow that the word must have the same meaning in each. Whilst section 80-15 of the ITAA 1997 does not define 'consideration', for GST purposes, it is defined by section 9-15 of the GST Act and includes:

- any payment, or any act or forbearance, in connection with a supply of anything, and
- any payment, or any act or forbearance, in response to or for the inducement of a supply of anything.

This response reflects the ATO view in respect of the meaning of 'consideration' for the purposes of section 9-15 of the GST Act only. It does not reflect the Tax Office view of the meaning of 'consideration' for any other purpose particularly in regard to subsection 80-15(3) of the ITAA 1997. The Explanatory Memorandum (EM) to the A New Tax System (Goods and Services Tax) Bill 1998 (GST Bill) states:

Consideration

3.9 Section 9-15 defines consideration. Consideration for GST is broader than it is for contractual purposes. Consideration for GST is intended to be very broad and includes any:

- payments, acts, refraining from acting or forbearance that are made for a supply
- payments, acts, refraining from acting or forbearance that are made in response to a supply
- payments, acts, refraining from acting or forbearance that are made to induce a supply, and
- payment for a supply even if paid by a person other than the recipient of the supply.

As stated in the EM to the GST Bill, the term 'consideration', for the purposes of GST, is intended to be very broad and includes more than a monetary payment.

When amending the GST Act, the Parliament was of the opinion that 'services provided by an employee would constitute 'consideration' within the broad definition of that term in section 9-15'. The EM to the A New Tax System (Fringe Benefits) Bill 2000 states:

2.4 ... To the extent an employee provides consideration (other than services as an employee) for goods or services provided by an employer, that amount is to be treated as the price of a taxable supply.

2.6 Consideration given by the recipient, other than the services provided by the employee as an employee, is to be treated as the price of a supply which has not been subject to FBT. GST will therefore be payable on taxable supplies that are fringe benefits and exempt benefits but only if the recipient does give consideration of that kind. The amount of GST will be calculated by reference to the consideration given by the recipient.

2.9 Ordinarily goods and services provided by an employer to an employee or associate of an employee would be taxable supplies, unless the supplies are input taxed or GST-free. Services provided by an employee would constitute 'consideration' within the broad definition of that term in section 9-15 of the GSTA 1999.

Even though the A New Tax System (Fringe Benefits) Act 2000 makes amendments to the GST Act in relation to the supply of fringe benefits, the assertion that the services provided by an employee would constitute 'consideration' applies equally to supplies that are not fringe benefits. Goods and Services Tax Ruling, GSTR 2001/3 discusses how GST applies to supplies of fringe benefits. Paragraph 19 of GSTR 2001/3 articulates the view that the consideration for the supply of a fringe benefit is the services provided by the employee and states that the 'services of an employee can be consideration for the supply of a fringe benefit to that employee'.

Therefore, for the purposes of the GST Act, the employer is making a taxable supply when it provides a motor vehicle to a former employee as part payment of an employment termination payment. The consideration for the supply (as it is with the supply of a fringe benefit) is the employee's services. The price of the supply (when determining the GST payable), when the consideration is not expressed as an amount of money, is the market value of the consideration (services) because subsection 9-75(3) of the GST Act does not apply.

Goods and Services Tax Ruling GSTR 2001/6 provides guidance when determining the price of a supply where the consideration is not expressed as an amount of money. Paragraph 151 of GSTR 2001/6 states:

Where the consideration is difficult to value (for example, an intangible) and where the market value of the supply is readily ascertainable, you may determine the market value of the consideration by reference to the market value of the supply. Using this method, the market value of the non-monetary consideration will be determined by reference to the market value of the supply. However, if there is any monetary consideration provided in addition to any non-monetary consideration in relation to that supply, you need to make an appropriate adjustment.

Therefore, the supply of a motor vehicle as part of an ETP is a taxable supply made by the employer. The GST payable on the supply may be determined by reference to the market value of the supply.

Question 2

The second question raises the issue of whether the response is the same if the payment is not an ETP. If the supply of the motor vehicle is not an ETP, then it will presumably be a fringe benefit. The supply will be a taxable supply and the consideration for the supply will still be the employee's services. However, as the supply is a fringe benefit, subsection 9-75(3) of the GST act will apply to reduce the 'price' on which the GST is calculated, to the amount of the recipient's payment.

Therefore, where the employee does not make any recipient's payments, the price of the taxable supply is nil and the GST payable is also nil where the supply of the motor vehicle is a fringe benefit.

Issue no. 20 – Financial supplies

Schedule:

- The postscript (a) indicates the date the original issue was placed on the register
- The postscript (u) indicates the date the original issue was updated
- The postscript (w) indicates the date the issue was withdrawn from the register
- Withdrawn issues have been placed in the NTLG-GST Issues Register Archive (Issue 20 archive)

| Date | Question | Further information |
|----------------------------|--|---|
| 06/04/01(a) 14/06/05(w) | 20.1 How are dishonoured cheque fees treated for GST purposes? | GSTA TPP 065 replaces this issue. The original issue has been archived. |
| 22/01/02(a) 14/06/05(w) | 20.2 Share for share swap | GSTA TPP 046 replaces this issue. The original issue has been archived. |
| 23/10/03(a) 14/06/05(w) | 20.3 Credit card chargebacks | GSTA TPP 017 replaces this issue. The original issue has been archived. |

Issue no. 21 – PAYG

Schedule:

- The postscript (a) indicates the date the original issue was placed on the register
- The postscript (u) indicates the date the original issue was updated
- The postscript (w) indicates the date the issue was withdrawn from the register
- Withdrawn issues have been placed in the NTLG-GST Issues Register Archive (Issue 21 archive)

| Date | Question | Further information |
|----------------------------|---|---|
| 28/02/05(w) | 21.1. If wages are paid by a bureau that has in the past remitted PAYE, how should PAYG (Withholding) be paid by the bureau? Can it be paid under reference of the ABN of the employer or should there be a branch registration of some kind? | This issue has been withdrawn and placed in the archive. |
| 22/01/02(a) 14/06/05(w) | 21.2 Honorariums and GST | GSTA TPP 015 replaces this issue. The original issue has been archived. |

Issue no. 22 – Compliance

Schedule:

- The postscript (a) indicates the date the original issue was placed on the register
- The postscript (u) indicates the date the original issue was updated
- The postscript (w) indicates the date the issue was withdrawn from the register
- Withdrawn issues have been placed in the NTLG-GST Issues Register Archive (Issue 22 archive)

| Date | Question | Further information |
|----------------------------|--|---|
| 28/02/05(w) | 22.1 ATO notice to release parties bound by confidentiality clause | This issue has been withdrawn and placed in the archive. |
| 13/11/03(a) 14/06/05(w) | 22.2 Compliance and Correcting GST mistakes policy | GSTA TPP 044 replaces this issue. The original issue has been archived. |
| 13/11/03(a) 14/06/05(w) | 22.3 Correcting GST mistakes | GSTA TPP 045 replaces this issue. The original issue has been archived. |

Issue no. 23 – Running balance account (RBA)

Schedule:

- The postscript (a) indicates the date the original issue was placed on the register
- The postscript (u) indicates the date the original issue was updated
- The postscript (w) indicates the date the issue was withdrawn from the register
- Withdrawn issues have been placed in the NTLG-GST Issues Register Archive (Issue 23 archive)

| Date | Question | Further information |
|-------------|-----------------------------------|---|
| 14/06/05(w) | 23.1 Refund issues for GST groups | The ATO's policy in relation to offsetting in GST groups is outlined in paragraphs 7.8.13 and 7.8.14 of the ATO Receivables Policy (January 2004 Version) |

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