

GSTA TPP 089 - Goods and services tax: If the recipient of a supply cancels its GST registration before receiving a tax invoice for a creditable acquisition, is it entitled to an input tax credit for the acquisition?

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! This document has changed over time. This is a consolidated version of the ruling which was published on *31 October 2012*



Goods and Services Tax Advice

Goods and services tax: if the recipient of a supply cancels its GST registration before receiving a tax invoice for a creditable acquisition, is it entitled to an input tax credit for the acquisition?

Preamble

*This document was published prior to 1 July 2010 and was a public ruling for the purposes of former section 37 of the **Taxation Administration Act 1953** and former section 105-60 of Schedule 1 to the **Taxation Administration Act 1953**.*

*From 1 July 2010, this document is taken to be a public ruling under Division 358 of Schedule 1 to the **Taxation Administration Act 1953**.*

A public ruling is an expression of the Commissioner's opinion about the way in which a relevant provision applies, or would apply, to entities generally or to a class of entities in relation to a particular scheme or a class of schemes.

If you rely on this ruling, the Commissioner must apply the law to you in the way set out in the ruling (unless the Commissioner is satisfied that the ruling is incorrect and disadvantages you, in which case the law may be applied to you in a way that is more favourable for you – provided the Commissioner is not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any underpaid tax, penalty or interest in respect of the matters covered by this ruling if it turns out that it does not correctly state how the relevant provision applies to you.

[Note: This is a consolidated version of this document. Refer to the Legal Database (<http://law.ato.gov.au>) to check its currency and to view the details of all changes.]

Answer

No. The recipient of a supply that cancels its GST registration before it receives a tax invoice for a creditable acquisition is not entitled to an input tax credit for the acquisition.

Background

A GST registered entity makes a supply of goods to a GST registered recipient. Both parties account for GST on a cash basis and believe that the supply is

a GST-free supply. The Tax Office audits the supplier and advises that the supply was a taxable supply and GST is payable. The supplier then issues the recipient with a tax invoice. The recipient has since cancelled its GST registration.

Explanation

In the circumstances described, the input tax credit cannot be claimed because it is not attributable to a tax period. As the recipient is neither registered for GST, nor required to be registered, it does not have tax periods applying to it. Therefore, it does not give a GST return to the Commissioner showing a 'net amount' for the periods after it has cancelled its registration.

An entity whose registration is cancelled may still have acquisitions and importations for which entitlements to input tax credits have arisen. Section 138-15 of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act) may allow amounts of GST, input tax credits and adjustments that have not been attributed to a previous tax period to be attributed to the entity's concluding tax period. The tax period in which you cease to be registered is your concluding tax period.

Subsection 138-15(1) states that the input tax credit to which you are entitled for a creditable acquisition is attributable to a particular tax period, and no other, if:

- (a) during the tax period, your registration is cancelled; and
- (b) immediately before the cancellation, you were accounting on a cash basis; and
- (c) the input tax credit on the acquisition was not attributable, to any extent, to a previous period during which you accounted on a cash basis; and
- (d) it would have been attributable to that previous tax period had you not accounted on a cash basis during that period.

You must attribute any amounts of GST, input tax credits or adjustments that you have not yet accounted for and for which you hold a tax invoice to your concluding tax period. If a recipient does not

hold a tax invoice at the time it ceases to be registered and has completed the activity statement for its concluding tax period, it cannot attribute input tax credits to the concluding period.

The normal attribution rules in the GST Act do not allow an input tax credit to be claimed if a tax invoice is not held (subsection 29-10(3) of the GST Act). Therefore, if after an entity ceases to be registered it receives a tax invoice for a creditable acquisition it made while registered, the GST Act does not allow the entity to claim an input tax credit.

Note: The Commissioner has discretion under subsection 29-70(1) of the GST Act to treat a document as a tax invoice that does not meet the requirements for a tax invoice. The Commissioner may exercise his discretion in circumstances where a recipient's registration is cancelled before they hold a tax invoice. However, this would be considered on a case-by-case basis after an analysis of documents the recipient held at the time of preparing a GST return for the concluding tax period and all other relevant circumstances.

Application of this GST Advice

This Advice applies [to tax periods commencing] both before and after its date of issue. However, this Advice will not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of this Advice (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10).

Commissioner of Taxation

26 October 2005

Related Rulings/Determinations/GST Advice:

TR 2006/10

Subject references:

input tax credits
cancellation of registration
tax invoice

Legislative references:

ANTS(GST)A 1999 138-15
ANTS(GST)A 1999 29-10
ANTS(GST)A 1999 29-70
TAA 1953 Sch 1 Div 358

ATO references

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