

***GSTD 2012/6 - Goods and services tax: when an entity makes a taxable supply of second-hand goods by way of lease before making a taxable supply of the goods by way of sale (or exchange), are both taxable supplies taken into account to quantify and attribute input tax credits under Subdivision 66-A of the A New Tax System (Goods and Services) Tax Act 1999?***

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! From 1 July 2015, the term 'Australia' is replaced in nearly all instances within the GST, Luxury Car Tax, and Wine Equalisation Tax legislation with the term 'indirect tax zone' by the *Treasury Legislation Amendment (Repeal Day) Act 2015*. The scope of the new term, however, remains the same as the now repealed definition of 'Australia' used in those Acts. This change was made for consistency of terminology across the tax legislation, with no change in policy or legal effect. For readability and other reasons, 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.



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## Goods and Services Tax Determination

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Goods and services tax: when an entity makes a taxable supply of second-hand goods by way of lease before making a taxable supply of the goods by way of sale (or exchange), are both taxable supplies taken into account to quantify and attribute input tax credits under Subdivision 66-A of the *A New Tax System (Goods and Services) Tax Act 1999*?

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This publication (excluding appendixes) is a public ruling for the purposes of 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.

### Ruling

1. Yes. When an entity acquires second hand goods and makes a taxable supply of the goods by way of lease before making a taxable supply of the goods by way of sale (or exchange), both taxable supplies are taken into account in quantifying and attributing input tax credits<sup>1</sup> under subsections 66-10(1) and 66-15(1) of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act).<sup>2</sup>

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<sup>1</sup> This Determination assumes the requirements for input tax credit entitlements under section 66-5 and Division 11 of the *A New Tax System (Goods and Services Tax) Act 1999* are satisfied.

<sup>2</sup> All section references are to the GST Act unless specified otherwise.

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2. In these circumstances, the amount of the input tax credit under subsection 66-10(1) will be:
- (a) an amount equal to 1/11<sup>th</sup> of the consideration the entity provided, or was liable to provide for the acquisition of the goods; or
  - (b) if that amount is more than the aggregate of the GST payable on the taxable supply of the goods made by way of lease and the GST payable on the taxable supply of the goods made by way of sale (or exchange), the total amount of GST on those taxable supplies.
3. Under subsection 66-15(1) the input tax credit, to the extent of an amount equal to 1/11<sup>th</sup> of the consideration for the taxable supply of the goods made by way of lease,<sup>3</sup> is attributed to:
- (a) the tax period in which any consideration is received for that supply; or
  - (b) if the invoice issues before consideration is received, the tax period an invoice relating to that supply is issued.
4. Any remaining amount of the input tax credit as quantified in accordance with subsection 66-10(1), is attributed under subsection 66-15(1), to:
- (a) the tax period any consideration for the taxable supply of the goods made by way of sale (or exchange) is received; or
  - (b) if an invoice issues before consideration is received, the tax period an invoice relating to that supply is issued.
5. If the second-hand goods are not the subject of a taxable supply by way of sale (or exchange), the acquisition of the goods may not satisfy the conditions of section 66-5, in which case no input tax credit is available under Division 66.

***Example – Creditable acquisition of a second-hand vehicle that is leased before being sold: quantification and attribution of the input tax credit***

6. *Finance Co is a registered entity that accounts for GST on a non-cash basis and in the course of its enterprise undertakes the following transactions in Australia.*
7. *Finance Co makes a creditable acquisition of a second-hand vehicle from an unregistered vendor to which section 11-5 as modified by section 66-5 applies. The vehicle costs \$5,500. The amount equal to 1/11<sup>th</sup> of the consideration provided by Finance Co to acquire the vehicle is \$500.*
8. *Finance Co then leases the vehicle for consideration and thereby makes a taxable supply of the vehicle by way of lease.*
9. *The lease specifies the consideration to be paid for each month of the lease term and this totals \$4,400. The amount equal to 1/11<sup>th</sup> of the consideration for the taxable supply by way of lease is \$400. This represents the GST payable on that taxable supply.*
10. *After the lease term, Finance Co sells the vehicle for consideration totalling \$2,200 and thereby makes a taxable supply of the vehicle by way of sale. The amount equal to 1/11<sup>th</sup> of the consideration for the taxable supply by way of sale is \$200. This represents the GST payable on that taxable supply.*

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<sup>3</sup> Assuming that amount is less than an amount equal to 1/11<sup>th</sup> of the consideration the entity provided, or was liable to provide for the acquisition of the goods.

11. *The amount equal to 1/11<sup>th</sup> of the consideration provided by Finance Co to acquire the vehicle (\$500) is less than the total of the GST payable on the taxable supply of the vehicle made by way of lease and the GST payable on the taxable supply of the vehicle made by way of sale (\$600). The amount of the input tax credit for the creditable acquisition of the second-hand vehicle made by Finance Co is \$500.*

12. *Finance Co attributes \$400 of the input tax credit to the tax period that any of the consideration is received for the taxable supply of the vehicle made by way of lease. However, if Finance Co issues an invoice relating to that supply before consideration is received for the lease, the \$400 is attributed to the tax period in which the invoice issues.*

13. *The remaining input tax credit of \$100 is attributed to the tax period that any of the consideration is received for the taxable supply of the vehicle made by way of sale. However, if Finance Co issues an invoice relating to that supply before consideration is received for the sale, the \$100 is attributed to the tax period in which the invoice issues.*

**Date of effect**

14. This Determination applies both before and after its date of issue. However, this Determination 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 Determination (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10).

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**Commissioner of Taxation**1 August 2012

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## Appendix 1 – Explanation

**❶** *This Appendix is provided as information to help you understand how the Commissioner's view has been reached. It does not form part of the binding public ruling.*

### Entitlement to an input tax credit for creditable acquisitions of second-hand goods

15. Division 11 contains the basic rules about whether an acquisition is a 'creditable acquisition'. Under section 11-20, an entity is entitled to an input tax credit for any creditable acquisition they make provided the entity satisfies section 11-5.

Paragraph 11-5(b) requires that the supply of the thing to the entity is a 'taxable supply' within the meaning of section 9-5.

16. The sale by an unregistered entity of second-hand goods to a registered entity is not a taxable supply under section 9-5.<sup>4</sup> As it is not a taxable supply, the acquisition of the second-hand goods by the registered entity is not a creditable acquisition under section 11-5.

17. However, if subsection 66-5(1) is satisfied and the requirements of section 11-5 are otherwise met, the acquisition of second-hand goods by a registered entity will be a creditable acquisition.

18. Subsection 66-5(1) is satisfied if the goods are acquired for the purposes of sale or exchange (but not manufacture) in the ordinary course of business. However, subsection 66-5(1) does not apply if any of the exceptions in subsection 66-5(2) apply.<sup>5</sup>

### Quantification and attribution of the input tax credit

19. Subsection 66-10(1) quantifies the input tax credit available for a creditable acquisition of second-hand goods if the consideration for the acquisition is more than \$300.

20. Subsection 66-10(1) provides:

The amount of the input tax credit for a \*creditable acquisition of \*second-hand goods for which the \*consideration is more than \$300 is:

- (a) an amount equal to 1/11 of the \*consideration that you provide, or are liable to provide, for the acquisition; or
- (b) if that amount is more than the amount of the GST payable on a \*taxable supply of the goods that you make – the amount of GST on that taxable supply.

21. Section 66-15 deals with the attribution of the input tax credit as quantified under section 66-10.<sup>6</sup> For entities that do not account for GST on a cash basis, subsection 66-15(1) provides:

If:

- (a) you are entitled, under this Division, to the input tax credit for a \*creditable acquisition of \*second-hand goods; and

<sup>4</sup> Unless Division 105 applies.

<sup>5</sup> See Goods and Services Tax Ruling GSTR 2005/3: arrangements of the kind described in *Taxpayer Alert TA 2004/9 - exploitation of the second-hand goods provisions to obtain input tax credits* for further discussion on when a second-hand good is acquired for the purposes of sale or exchange (but not manufacture) in the ordinary course of business.

<sup>6</sup> This provision also applies where the consideration for the acquisition was less than \$300 and the acquirer chose, in accordance with paragraph 66-15(1)(b), to apply section 66-15.

- (b) either the \*consideration for the acquisition was more than \$300 or you choose to have this section apply to the acquisition;

the input tax credit for the acquisition is attributable to:

- (c) the tax period in which any \*consideration is received for a subsequent \*taxable supply of the goods; or
- (d) if, before any of the consideration is received, you have issued an \*invoice relating to the supply – the tax period in which the invoice is issued.

22. The quantification and attribution of an input tax credit for a creditable acquisition of second-hand goods requires a taxable supply of the goods to be made: see the reference to 'a taxable supply of the goods that you make' in paragraph 66-10(1)(b), and the reference to 'a subsequent taxable supply of the goods' in paragraph 66-15(1)(c).

23. To the extent an entity is registered and makes a supply connected with Australia in the course of an enterprise they carry on, section 9-5 provides that a taxable supply arises where the entity makes the supply for consideration.<sup>7</sup>

24. The grant of a lease of second-hand goods and the sale of the goods are both supplies.<sup>8</sup>

25. Whilst the legal form of the interest that passes from supplier to recipient in each of these transactions varies, the Commissioner recognises that for GST purposes goods can be supplied by way of lease, as well as by way of sale.<sup>9</sup> Hence, the grant of a lease of second-hand goods, as well as the sale of the goods can be regarded as taxable supplies of the goods if made for consideration.<sup>10</sup>

### **Quantification in the context of multiple taxable supplies**

26. To quantify the input tax credit for creditable acquisitions of second-hand goods, paragraph 66-10(1)(b) requires comparison of an amount equal to 1/11<sup>th</sup> of the consideration for the acquisition of the goods, with the GST payable on 'a taxable supply' of the goods.

27. Whilst the words 'a taxable supply' in paragraph 66-10(1)(b) are expressed in the singular, section 23(b) of the *Acts Interpretation Act 1901* (Cth) requires they be read plurally unless there is a contrary intention.<sup>11</sup>

28. When determining whether an intention contrary to pluralisation exists, the expression of a term in the singular is of itself insufficient to preclude plurality.<sup>12</sup> Instead, it is appropriate to '*consider the relevant section in its setting in the legislation*', and '*the substance and tenor of the legislation as a whole*'.<sup>13</sup>

29. Paragraph 66-10(1)(b) forms part of the special rules of the GST Act that modify the basic rules, by allowing an acquisition of second-hand goods to be a creditable acquisition where section 66-5 is satisfied and the requirements of section 11-5 are otherwise met.

<sup>7</sup> However in accordance with section 9-5, a supply is not a taxable supply to the extent it is GST-free or input taxed. GST-free and input taxed supplies are not relevant to this Determination.

<sup>8</sup> As defined for the purposes of section 9-5 by section 9-10.

<sup>9</sup> See paragraph 44 of *Goods and Services Tax Ruling GSTR 2000/31: supplies connected with Australia*.

<sup>10</sup> And the other requirements of section 9-5 are met.

<sup>11</sup> Section 2(2) of the *Acts Interpretation Act 1901* (Cth) provides that a provision of that Act applies, subject to their being no contrary intention.

<sup>12</sup> *Blue Metal Industries Ltd v Dilley* (1969) 117 CLR 651 at 656.

<sup>13</sup> *Blue Metal Industries Ltd v Dilley* (1969) 117 CLR 651 at 656.

30. The GST Act recognises that goods can be supplied by way of lease as well as by way of sale.<sup>14</sup> If section 66-10 required a taxable supply to be made only by way of sale (or exchange) in order to give it effect, this could be expressly provided for in its text.

31. There is nothing evident in the text of section 66-10 which confines the 'GST payable on a taxable supply of goods' to a single taxable supply, where more than one taxable supply of the goods is made.

32. Hence, there appears to be no contrary intention to a plural reading of the words 'a taxable supply' in paragraph 66-10(1)(b) to encompass a taxable supply of goods made by way of lease and a taxable supply of goods made by way of sale.

33. Consequently, the amount of the input tax credit quantified under subsection 66-10(1) will be:

- (a) an amount equal to 1/11<sup>th</sup> of the consideration the entity provided, or was liable to provide for the acquisition of the goods; or
- (b) if that amount is more than the total amount of the GST payable on the taxable supply of the goods made by way of lease and the GST payable on the taxable supply of the goods made by way of sale – the total amount of GST on those taxable supplies.

#### **Attribution in the context of multiple taxable supplies**

34. Under paragraph 66-15(1)(c), the input tax credit quantified under section 66-10 is attributed to the tax period in which any consideration for 'a subsequent taxable supply' of second-hand goods is received.

35. However, if an invoice relating to that taxable supply issues before any consideration for the supply is received, paragraph 66-15(1)(d) provides that the input tax credit is attributed to the tax period in which the invoice is issued.

36. The words 'a subsequent taxable supply' in paragraph 66-15(1)(c) when read in accordance with section 23(b) of the *Acts Interpretation Act 1901* (Cth) in the absence of a contrary intention require a plural reading that encompasses more than one taxable supply of the second-hand goods.

37. As there is no express or implicit limitation on the form of taxable supply contemplated by section 66-15, section 66-15 in the context of the leasing and selling of second-hand goods applies firstly to the taxable supply of the goods made by way of lease, and then to the later taxable supply of the goods made by way of sale.

38. The input tax credit quantified under subsection 66-10(1) is attributed to the relevant tax periods identified when subsection 66-15(1) is applied to each taxable supply of the goods.

39. Consequently, and subject to the quantification limitation under subsection 66-10(1) discussed above, we consider that under section 66-15, the input tax credit, to the extent of an amount equal to 1/11<sup>th</sup> of the consideration for the taxable supply of the goods made by way of lease, is attributed to:

- (a) the tax period in which any consideration is received for that taxable supply; or

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<sup>14</sup> See for example sections 38-97, 38-100 and 38-187.

- (b) if the invoice issues before consideration is received, the tax period in which an invoice relating to that supply is issued.

40. Any remaining amount of the input tax credit as quantified in accordance with subsection 66-10(1) is then attributed under subsection 66-15(1) to:

- (a) the tax period in which any consideration for the taxable supply of the goods made by way of sale is received; or
- (b) if the invoice issues before consideration is received, the tax period in which an invoice relating to that supply is issued.

41. The input tax credit that is attributed under section 66-15 must first be quantified under section 66-10. Paragraph 66-10(1)(b) requires that a taxable supply of the goods be made before the quantification, and consequently, attribution can occur.

42. Hence, neither quantification under section 66-10 nor attribution under section 66-15 can occur before a taxable supply of goods is made. Sections 66-10 and 66-15 cannot apply by reference to a taxable supply of second-hand goods that is expected to be made in the future. This is consistent with subsection 66-5(2), which negates the application of section 66-5 if a supply is made of the second-hand goods that is not a taxable supply, and if section 66-5 does not apply neither do sections 66-10 and 66-15.

43. Additionally, whilst the amount of an input tax credit for a creditable acquisition of second-hand goods may be quantified by reference to the GST payable on a taxable supply made by way of lease, section 29-10, as modified by Division 156, does not apply to progressively or periodically attribute the input tax credit. This is because the attribution rule prescribed by section 66-15 has effect despite section 29-10.<sup>15</sup>

#### **Quantification and attribution where there is no taxable supply by way of sale**

44. If second-hand goods in respect of which an input tax credit is sought, are not the subject of a taxable supply by way of sale (or exchange), the circumstances surrounding the acquisition of the goods should be re-examined to ensure the conditions of section 66-5 were properly met. This is because the making of a taxable supply by way of lease does not give effect to the purposes of sale or exchange required by subsection 66-5(1) for the acquisition of second-hand goods to be a creditable acquisition.

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<sup>15</sup> Subsection 66-15(4).

## References

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*Previous draft:*

Not previously issued as a draft

*Related Rulings/Determinations:*

TR 2006/10; GSTR 2005/3; GSTR 2000/31

*Subject references:*

- second hand goods
- supply
- input tax credits
- attribution rules

*Legislative references:*

- TAA 1953
- ANTS(GST)A 1999 9-5
- ANTS(GST)A 1999 9-10
- ANTS(GST)A 1999 Div 11
- ANTS(GST)A 1999 11-5
- ANTS(GST)A 1999 11-5(b)
- ANTS(GST)A 1999 11-20
- ANTS(GST)A 1999 38-97
- ANTS(GST)A 1999 38-100
- ANTS(GST)A 1999 38-187
- ANTS(GST)A 1999 Div 66
- ANTS(GST)A 1999 Subdiv. 66-A

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- ANTS(GST)A 1999 66-5(2)
- ANTS(GST)A 1999 66-10
- ANTS(GST)A 1999 66-10(1)
- ANTS(GST)A 1999 66-10(1)(b)
- ANTS(GST)A 1999 66-15
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- ANTS(GST)A 1999 66-15(1)(c)
- ANTS(GST)A 1999 66-15(1)(d)
- ANTS(GST)A 1999 66-15(4)
- ANTS(GST)A 1999 Div 105
- ANTS(GST)A 1999 Div 156
- *Acts Interpretation Act 1901 2(2)*
- *Acts Interpretation Act 1901 23(b)*

*Other references*

- Taxpayer Alert TA 2004/9 – exploitation of the second-hand goods provisions to obtain input tax credits

*Case references:*

- *Blue Metal Industries Ltd v Dilley* (1969) 117 CLR 651

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ATO references

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