



# ***GSTR 2000/19A - Addendum - Goods and services tax: making adjustments under Division 19 for adjustment events***

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## Addendum

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### Goods and Services Tax Ruling

#### Goods and services tax: making adjustments under Division 19 for adjustment events

This Addendum amends Goods and Services Tax Ruling GSTR 2000/19 to:

- clarify the treatment of payments to third parties where an entity (such as a manufacturer) offers to make payments to third parties if they acquire a thing from another entity (such as a retailer);
- clarify the treatment of late payment charges; and
- reflect amendments to the *A New Tax System (Goods and Services Tax) Act 1999* that have occurred since GSTR 2000/19 issued (on 21 June 2000) to:
  - (i) repeal Division 93,<sup>1</sup> which was about returnable containers; and
  - (ii) insert Division 189,<sup>2</sup> which is about the financial acquisitions threshold.

This Addendum applies on and from 17 December 2003. You can rely on this Addendum, for the purposes of section 37 of the *Taxation Administration Act 1953*, from its date of issue.

#### **GSTR 2000/19 is amended as follows:**

##### **1. Paragraphs 29 to 32 - Late payment charges**

Omit paragraphs 29 to 32 and replace with:

29. A charge for late payment that is consideration for the supply of an interest in a credit arrangement does not give rise to an adjustment event. The charge is consideration for a financial supply.<sup>14</sup> Whether a charge for late payment is consideration for the acquisition of an interest in a credit

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<sup>1</sup> Division 93 was repealed by *Taxation Laws Amendment Act (No. 8) 2000*.

<sup>2</sup> Division 189 was inserted by *Indirect Tax Legislation Amendment Act 2000*.

arrangement will depend on the facts of each case. The description given to the charge (for example, as 'damages' or 'liquidated damages') by the parties is relevant but not conclusive. It is necessary to determine the true character of the arrangement having regard to the terms of the agreement and other relevant circumstances.

30. Where an amount is required to be paid by a specified date, but an additional charge becomes payable if the primary amount is not paid by the due date, the additional charge is consideration for the supply of an interest in a credit arrangement and, as such, is consideration for a financial supply. This is so whether the payment is in the nature of an accruing interest charge (for example, 10% per annum), a flat percentage of the amount due (for example, 10% of the amount due) or a fixed amount (for example, \$20).

*Example - interest charge*

31. Henry supplies goods to Andrew under terms that require the amount invoiced to be paid within 30 days, after which time, interest will accrue at 14% per annum. In addition to the amount originally invoiced to Andrew, Henry demands payment of the interest. As the agreement contemplates late payment, Henry has supplied Andrew with an interest in a credit arrangement. The late payment charge is consideration for a financial supply and is not an adjustment event.

*Example - flat charge*

32. George's Plumbing sells goods to Jasper on the basis that if payment is not received within 30 days, a fee of 2% of the amount due will be payable. The terms of trading refer to this as a 'fee for account keeping services'. However, no additional services are provided to Jasper by George's Plumbing. Jasper makes the payment (including the 2% fee) after the due date. Although described by the parties as a fee for account keeping services, the fee is in reality a charge for late payment. The fee is consideration for the supply of an interest in a credit arrangement and is therefore consideration for a financial supply.

**2. Paragraphs 40 to 42 - Payments to third parties**

Omit paragraphs 40 to 42, including the heading, and replace with:

*Payments to third party end users*

40. An entity (such as a manufacturer) may offer to make a payment to a third party end user if the end user acquires a thing from another entity (such as a retailer). Typically, the manufacturer will make the payment directly to the end user independently of the retailer. The payment is made pursuant to a separate agreement between the end user and the manufacturer but not involving the retailer.<sup>17A</sup> A payment made in these circumstances cannot give rise to an adjustment event. It does not change the consideration received by the retailer for the supply by the retailer to the end user, nor does it change the consideration received by the manufacturer for the supply by the manufacturer to the retailer. A change in the consideration for these supplies cannot occur independently of the retailer.

41. In some circumstances, it may be necessary to consider whether a separate supply is made by the end user to the manufacturer in return for the payment. This will depend on the precise contractual arrangement between the parties. For example, where the end user is merely accepting the manufacturer's standing offer by way of making a purchase from the retailer, the end user does not enter any binding obligation in favour of the manufacturer and as such, makes no supply. By contrast, the manufacturer may offer a rebate to the end user under a separate agreement entered into by both parties. Where the agreement requires the end user to do something specific, such as participate in a publicity promotion for the manufacturer, the end user is making a supply for consideration. The supply is the entry into a binding obligation and the consideration is the rebate.

*Example*

42. Manufacturer Pty Ltd (M) offers \$1,000 to end users who purchase its products. M makes this offer independently of the retailer. The supply chain for the products is:

Manufacturer => Retailer => End User.

M sells a product to Retailer Pty Ltd (R) for \$22,000. R sells this product to an end user (EU) for \$33,000. As a result of the purchase, EU receives a \$1,000 payment from M.

The \$1,000 payment from M to EU does not change the consideration either for the supply from M to R or for the

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supply from R to EU. The payment does not give rise to an adjustment event in respect of either supply.

There is a binding unilateral obligation by M to EU in relation to the payment.<sup>17B</sup> EU accepts the manufacturer's standing offer to make the payment by purchasing a product from the retailer. However, EU makes no supply to M as EU has not entered any binding obligations in favour of the manufacturer.

The payment from M to EU, being a payment of money, is not a supply. Nor is it consideration for a supply. M has a GST liability of \$2,000 on its taxable supply to R (1/11<sup>th</sup> of \$22,000). R is entitled to an input tax credit of \$2,000 on its creditable acquisition from M and has a GST liability of \$3,000 on its taxable supply to EU (1/11<sup>th</sup> of \$33,000). If EU is registered or required to be registered for GST and acquires the product solely for a creditable purpose, it will be entitled to an input tax credit of \$3,000.

### *Example*

42A. This example is factually similar to the example above, except that R applies EU's entitlement at the point of sale for customer convenience, rather than M making the payment directly to EU.

EU pays R \$32,000 and M subsequently forwards \$1,000 to R on behalf of, or at the direction of, EU.<sup>17C</sup>

The analysis remains as in the previous example. There is no adjustment event. As the payment from M to R is paid on behalf of and at the direction of EU, it forms part of the consideration liable to be provided by EU to R for the supply from R to EU. The GST liabilities and input tax credit entitlements of the parties are as outlined in the previous example.

However, it should be noted that where the payment is not made independently of the retailer, the GST consequences will depend on the nature of the agreement between the parties and the surrounding facts and circumstances.

### *Payments to third parties other than end users*

42B. An entity (such as a manufacturer) may also make a payment to a third party entity that is neither an end user of its products nor a direct recipient of its supply. Provided such a payment is made directly by the manufacturer to that third party entity and does not involve any other entity, it does not

give rise to an adjustment event. Whether the payment is consideration for a separate supply made by the third party entity to the manufacturer will depend on the surrounding facts and circumstances of the case.

*Example*

42C. Manufacturer Pty Ltd (M) manufactures motor vehicles that are sold to customers by dealers. Due to the high value of the motor vehicles, the trading stock of a dealer is financed under a bailment arrangement. Under the finance arrangement the financier has title in the vehicles and allows the dealer to display and sell the vehicles for a fee.

The supply chain for the vehicle is:

Manufacturer => Financier => Dealer => Customer.

Dealer Pty Ltd (D) acquires its stock of vehicles as follows:

D orders a vehicle from M on behalf of Financier Pty Ltd (F). M sells the vehicle to F for \$22,000. F bails the vehicle to D. When D finds a retail customer, F supplies the vehicle to D, also for \$22,000. D subsequently sells the vehicle to a customer for \$25,000.

After the retail sale, pursuant to a separate agreement between M and D, M makes a payment to D of \$1,100. The agreement provides an incentive to D to take part in a special promotion and marketing of M's vehicles for the purpose of boosting M's market share. D does not have to enter into this agreement, but in doing so, is entering into a binding obligation.

D is making a supply to M, being the entry into the binding obligation. The payment from M is consideration for this supply.

### **3. After footnote 17**

After footnote 17 add footnotes 17A, 17B and 17C:

<sup>17A</sup> The contract is formed by way of the end user's acceptance of the manufacturer's standing offer to make the payment (*Carlill v. The Carbolic Smoke Ball Company* [1893] 1 QB 256).

<sup>17B</sup> A unilateral contract involves the offer of a promise in return for the performance of an act. See J.W. Carter and D.J. Harland, *Contract Law in Australia*, 4<sup>th</sup> Ed, Butterworths, 2002, paragraph 249.

<sup>17C</sup> The payment is still made independently of the retailer. The retailer is only involved at an administrative level. It is the end user that is entitled to the payment pursuant to its agreement with the manufacturer. The payment

from the manufacturer to the retailer is paid on behalf of the end user. The end user's liability under its contract with the retailer is \$33,000.

#### 4. **Paragraph 47 – Payments for returns of certain containers and packaging**

Omit the second sentence in paragraph 47 and replace with:

A refund for the return of a container (etc) may give rise to an adjustment event where:

- the terms of the sale allow for the refund to be given should the container (etc) be returned; and
- the amount to be refunded is not an amount to which Division 99, which is about security deposits, applies.

#### 5. **Paragraph 110 – Definition of creditable purpose**

Omit paragraph 110 and replace with:

110. An acquisition is not treated, for the purposes of paragraph (a) above, as relating to making supplies that would be input taxed to the extent that the supply is made through an enterprise, or part of an enterprise, that you carry on outside Australia.<sup>44</sup>

#### 6. **Paragraph 111 – Definition of creditable purpose**

In the second dot point at paragraph 111, omit 'exceed the **financial threshold**' and replace with '**exceed the financial acquisitions threshold**'.

#### 7. **Footnote 45**

Omit footnote 45 and replace with:

<sup>45</sup> Subsection 11-15(4). See also Division 189, which is about exceeding the financial acquisitions threshold.

#### 8. **Paragraph 112**

Omit paragraph 112, including the heading and replace with:

##### **Exceeding the financial acquisitions threshold**

112. Under Division 189, an entity exceeds the financial acquisitions threshold at a time in a particular month if, assuming that all the financial acquisitions<sup>46</sup> it has made, or is likely to make,

during the 12 months ending at the end of that month, or during that month and the next 11 months, were made solely for a creditable purpose, either or both of the following would apply:

- the amount of all the input tax credits to which the entity would be entitled for its financial acquisitions would exceed \$50,000 or such other amount specified in the GST regulations; and
- the amount of the input tax credits to which the entity would be entitled for its financial acquisitions would be more than 10% of the total amount of the input tax credits to which the entity would be entitled for all its acquisitions and importations (including the financial acquisitions) during either of the periods referred to in this paragraph.<sup>46A</sup>

## 9. Footnote 46

Omit footnote 46 and replace with:

<sup>46</sup> Section 189-15 defines ‘financial acquisition’ as ‘an acquisition that relates to the making of a financial supply (other than a financial supply consisting of a borrowing)’.

## 10. After footnote 46

After footnote 46 add footnote 46A:

<sup>46A</sup> For members of a GST group, the financial acquisitions threshold is calculated in accordance with subsections 189-5(2) and 189-10(2).

## 11. Paragraph 117 (Detailed contents list)

(a) Omit:

*Example – financial supply* 30

*Example – change to consideration* 32

and replace with:

*Example – interest charge* 31

*Example – flat charge* 32

(b) Omit:

*Payments to third parties* 40

and replace with:



|     |   |     |
|-----|---|-----|
|     | <i>Payments to third party end users</i>              | 40  |
| (c) | Insert:   |     |
|     | <i>Example</i>  | 42A |
| (d) | Insert:   |     |
|     | <i>Payments to third parties other than end users</i> | 42B |
|     | <i>Example</i>  | 42C |
| (e) | Omit:   |     |
|     | Financial threshold                                   | 112 |
|     | and replace with:                                     |     |
|     | Exceeding the financial acquisitions threshold        | 112 |

## 12. Legislative references

- (a) Omit:
- ANTS(GST)A 1999 Division 93
- (b) Insert:
- ANTS(GST)A 1999 Division 189
  - ANTS(GST)A 1999 189-5(2)
  - ANTS(GST)A 1999 189-10(2)
  - ANTS(GST)A 1999 189-15

## 13. Case references

Insert:

- *Carlill v. The Carbolic Smoke Ball Company* [1893] 1 QB 256

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**Commissioner of Taxation**

17 December 2003

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ATO references

NO: 2003/11684

ISSN: 1443-5160