



PS LA 2004/2 (GA) - Application of GST grouping rules to representatives of incapacitated entities

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FOI status: may be released

This Practice Statement is issued under the authority of the Commissioner and must be read in conjunction with Law Administration Practice Statement PS LA 1998/1. It must be followed by Tax Office staff unless doing so creates unintended consequences. Where this occurs officers must follow their Business Line's escalation process.

SUBJECT: Application of GST grouping rules to representatives of incapacitated entities

PURPOSE: To provide guidance on the circumstances in which a representative of an incapacitated entity appointed to two or more entities in a GST group may account for GST as if the representative in his or her capacity as representative of each of the incapacitated entities were approved as members of a GST group.

STATEMENT

1. The Tax Office will accept that representatives of incapacitated entities (defined below) may account for GST as if the representative, in his or her capacity as representative of each incapacitated entity were approved as members of a GST group in limited circumstances.
2. Those circumstances are where:
 - The incapacitated entities satisfied the membership requirements for, and were approved as, a GST group, and continued to be approved immediately before the appointment of the representative; and
 - The incapacitated entities continue to satisfy the membership requirements for a GST group, or would continue to satisfy those requirements but for being incapacitated entities; and
 - The representative agrees to account for GST and comply with all other obligations under the GST legislation as if he or she were the representative member of the group.
3. If a representative does not meet the terms and conditions of this Practice Statement (for example, does not meet the due dates of lodgment, payment or

other obligations under GST law), the representative will be required to account for GST as a separate entity for each appointment, that is, not as part of a GST group.

4. Two or more individuals may be appointed in the same capacity as joint representatives of incapacitated entities (for example, as joint receivers of several companies in a group). In that case, the Tax Office will also accept that the joint appointees in their capacity as joint representatives of each incapacitated entity may account for GST as if they were approved as members of a GST group in the same limited circumstances as for single appointees. References in this Practice Statement to a representative should therefore be read with necessary changes to include joint representatives.
5. This Practice Statement only sets out when the Tax Office will accept that the *same* individual appointed as a representative of two or more incapacitated entities may account for GST as if that individual, in his or her capacity as representative of each incapacitated entity, were approved as members of a GST group. It allows a representative appointed over all of the entities in a GST group to account for GST as if that individual, in his or her capacity as representative of each of incapacitated entity, were approved as a GST group. It also allows a representative appointed over two or more entities, but not all the entities, in a GST group to account for GST as if that individual, in his or her capacity as representative of each incapacitated entity, were approved as a GST group, but *only* in respect of the entities to which the individual is appointed as representative. It does not allow other entities for which the individual is not appointed as representative to account for GST as if those entities were members of a group with the representative.
6. Nor does the Practice Statement allow another person appointed as a representative of another entity to account for GST as if that person in his or her capacity as representative were approved as a group with the representative covered by this Practice Statement. This is so whether or not the other person is a representative of an entity that was a member of a group with the incapacitated entities over which the representative is appointed. For example, the Practice Statement does not allow a liquidator appointed over all the entities in a GST group to form a group with a receiver appointed to one entity in the same GST group. It only allows the liquidator appointed over the incapacitated entities in the GST group to account for GST as if he or she, in his or her capacity as liquidator of each incapacitated entity, were approved as a GST group. The individual appointed as receiver is not treated as if he or she were a member of that group.

EXPLANATION

7. Under Division 48 of the *A New Tax System (Goods and Services Tax) Act 1999* (the GST Act), the Commissioner must approve two or more entities as members of a GST group if certain conditions, including membership requirements, are satisfied. In broad terms, such approval allows the representative member of the group to account for the GST obligations of the members and for transactions between group members to be disregarded for GST purposes.
8. An 'incapacitated entity' means an individual who is bankrupt, an entity that is in liquidation or receivership, and an entity that has a 'representative'.¹ A 'representative' means:

¹ Section 195-1 of the GST Act.

- a trustee in bankruptcy
 - a liquidator
 - a receiver
 - an administrator appointed to an entity under Division 2 of Part 5.3A of the *Corporations Act 2001*
 - A person appointed, or authorised, under an Australian law to manage the affairs of an entity because it is unable to pay all its debts as and when they become due and payable; or
 - An administrator of a deed of company arrangement executed by the entity.²
9. A natural person in the capacity of representative of each of two or more incapacitated entities cannot satisfy the membership requirements for a GST group. This is despite the fact that the incapacitated entities may have been approved as members of the same GST group, and continued to be approved, at the time the representative was appointed over them.
 10. The membership requirements for individuals are contained in Regulation 48-10.04 of the A New Tax System (Goods and Services Tax) Regulations 1999. There is no basis under that regulation for an individual to satisfy the membership requirements for a GST group with another individual. That is, a GST group cannot be formed that consists only of individuals. Nor are there grouping provisions specifically covering individuals in their capacity as representatives. Therefore a GST group cannot consist of an individual as the representative of two or more incapacitated entities.
 11. However, this has the potential to cause significant administrative problems for representatives which would increase the costs of administrations and therefore reduce the return to creditors for no apparent benefit.
 12. For reasons of practical compliance, and to avoid unnecessary costs to representatives, the Tax Office accepts that representatives may account for GST as if the representative in his or her capacity as representative of each incapacitated entity were approved as members of a GST group in the circumstances outlined at paragraphs 2 to 6 above.

² Section 195-1 of the GST Act.

<i>subject references</i>	Application of GST grouping rules to representatives of incapacitated entities
<i>legislative references</i>	<i>A New Tax System (Goods and Services Tax) Act</i> 1999 section 27-40 <i>A New Tax System (Goods and Services Tax) Act</i> 1999 Division 48 <i>A New Tax System (Goods and Services Tax) Act</i> 1999 Division 147 <i>A New Tax System (Goods and Services Tax) Act</i> 1999 section 195-1 A New Tax System (Goods and Services Tax) Regulations 1999 Regulation 48-10.04 <i>Corporations Act 2001</i> Division 2 of Part 5.3A
<i>related public rulings</i>	
<i>related practice statements</i>	
<i>case references</i>	
<i>file references</i>	2003/001177

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