



# ***PS LA 2001/1 - Determinations under subsection 29-25(1) of the A New Tax System (Goods and Services Tax) Act 1999***

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# ATO Practice Statement Law Administration

PS LA 2001/1

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**FOI status: may be released**

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*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 ATO officers unless doing so creates unintended consequences. Where this occurs ATO officers must follow their Business Line's escalation process.*

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**SUBJECT: Determinations under section 29-25 of the A New Tax System (Goods and Services Tax) Act 1999**

**PURPOSE: To explain the operation of section 29-25 where a request for a determination under that section is received**

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## STATEMENT

1. Under section 29-25 of the *A New Tax System (Goods and Services Tax) Act 1999* (the 'GST Act'), the Commissioner may determine, in writing, particular attribution rules for GST on taxable supplies of a specified kind, input tax credits for creditable acquisitions or creditable importations of a specified kind, or adjustments of a specified kind.
2. The Commissioner must only make a determination under this section to prevent the basic attribution rules and any special rules applying in a way that is inappropriate in circumstances involving a situation described in subsection 29-25(2).
3. There is no provision under section 29-25 for the Commissioner to make a determination for an entity or entities. Any request from an entity seeking a determination for a particular kind of supply or acquisition that it makes must only be considered in terms of whether or not a determination should be made for **all** supplies or acquisitions of that kind.
4. If the Commissioner determines a particular attribution rule for a specified kind of taxable supply, creditable acquisition, creditable importation, or adjustment, that rule applies to all taxable supplies, creditable acquisitions, creditable importations or adjustments of that kind.
5. The particular attribution rule as determined by the Commissioner must be applied. An entity cannot choose to apply the attribution rules that would otherwise apply to the supply, acquisition, importation or adjustment.
6. A request for a determination of a particular attribution rule under section 29-25 must be directed to the nominated contact person. This contact person can be found in the 'What correspondence goes where' document which is listed under 'IRS Support' in the IRS icon.

## EXPLANATION

7. The Commissioner may make determinations under the GST legislation. These determinations have been categorised as either legislative or administrative. Legislative determinations must be made by the Commissioner or a delegate. A determination made under section 29-25 of the GST Act is a legislative determination. A delegation has been executed by the Commissioner conferring power on selected SES positions to make determinations under this section.
8. Section 29-25 allows the Commissioner to determine, in writing, particular attribution rules for:
  - (a) GST on taxable supplies of a specified kind; or
  - (b) input tax credits for creditable acquisitions of a specified kind; or
  - (c) input tax credits for creditable importations of a specified kind; or
  - (d) adjustments of a specified kind.
9. The Commissioner must only determine particular attribution rules different from the basic attribution rules and any relevant special rules under the GST Act if satisfied that the application of the basic and any special rules would produce an inappropriate result in circumstances involving the situations described in subsection 29-25(2). These situations are:
  - (a) a supply or acquisition in which possession of goods passes, but title in the goods will, or may, pass at some time in the future; or
  - (b) a supply or acquisition for which payment is made or an invoice is issued, but use, enjoyment or passing of title will, or may, occur at some time in the future; or
  - (c) a supply or acquisition occurring, but still being subject to a statutory cooling off period under an Australian law; or
  - (d) a supply or acquisition occurring before the supplier or recipient knows it has occurred; or
  - (e) a supply or acquisition occurring before the supplier or recipient knows the total consideration; or
  - (f) a supply or acquisition made under a contract that is subject to preconditions; or
  - (g) a supply or acquisition made under a contract that provides for retention of some or all of the consideration until certain conditions are met.
10. If the supply or acquisition described in the request for a determination under section 29-25 does not involve any of the above situations, the Commissioner must not make a determination.

11. A determination under section 29-25 overrides the basic attribution rules and the special rules in Chapter 4 of the GST Act, but only to the extent of any inconsistency and only to the extent provided for in the determination.
12. Determinations have been made under section 29-25. For example, the following Goods and Services Tax Rulings have copies of determinations attached:
  - GSTR 2000/12: attributing GST payable and input tax credits for supplies and acquisitions under lay-by sale agreements;
  - GSTR 2000/29: attributing GST payable, input tax credits and adjustments and particular attribution rules made under section 29-25; and
  - GSTR 2000/32: attributing GST payable on supplies of gas and electricity made by public utility providers.

#### Amendment history

Date of amendment	Part	Comment
22 June 2004	Paragraph 6	References to section 29-25 of the ANTS (GST) Act 1999 updated to subsection 29-25(1).

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*subject references:* attribution rules; determinations; Goods & services tax; GST tax periods,

*legislative references:* ANTS(GST)A99 29-25

*related public rulings:* GSTR 2000/12; GSTR 2000/29; GSTR 2000/32

*file references:* 2001/000208

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