

STD 96/3 - Title: Credits: tax paid on goods excluded from the business inputs exemption items



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This Document is a Ruling for the purposes of section 77 of the *Sales Tax Assessment Act 1992* and may be relied upon by any person to whom it applies.

Sales Tax Determination

Title: **Credits: tax paid on goods excluded from the business inputs exemption items**

Background

The business inputs exemption provisions allow a registered person to claim exemption, by quoting their registration number, when purchasing certain goods for use exclusively as raw materials or mainly as business inputs. These provisions specify certain goods for which exemption cannot be claimed.

Where registered persons have inadvertently paid sales tax on raw materials or business inputs they can obtain a refund of this tax providing they satisfy certain conditions set out in various credit grounds.

Recently the Australian Taxation Office (ATO) has received refund applications for tax paid on goods for which exemption cannot be claimed under the business input exemption provisions.

This determination sets out the ATO view on the eligibility of these claims for refunds.

Issue

Is a person entitled to a refund of sales tax when that person has been prevented from claiming exemption by exclusions to the business inputs provisions in *Chapter 1* of the *1st Schedule to the (Exemptions & Classification) Act 1992*?

Decision

A person is not entitled to a refund of sales tax paid on goods to which the exclusions to the business inputs provisions apply.

Date of effect

This determination confirms previous ATO advice and is effective immediately.

Reasons

We have based our decision on the following legislative provisions:

CR6, CR7, & CR12, Table 3 to the Sales Tax Assessment Act 1992

Section 52 of the Sales Tax Assessment Act 1992

Section 12 of the Sales Tax (Exemptions & Classifications) Act 1992

[R] Items in Schedule 1 to the Sales Tax (Exemptions & Classifications) Act 1992

Credit grounds CR6, CR7 & CR12 in Table 3 of the Sales Tax Assessment Act 1992 (the Act) allow for a credit or return of sales tax paid on goods used as raw materials or business inputs where the purchaser has failed to quote a registration number at the time of purchase. Those provisions are intended to avoid indirect or unintended taxing and apply whether registered persons produce taxable or exempt goods, or goods for export.

In recent times, the ATO has received numerous credit claims based on the proposition that, although the goods in question are specifically excluded from exemption by *Section 12 of the Exemptions & Classification Act 1992 (the E&C Act)* and similar provisions, one of those credit grounds applies.

Most of these claims argue that the credit grounds are satisfied as the taxpayers are liable to tax on the assessable dealing with output goods and have borne tax on the input goods that have a sufficient link, within the meaning of *section 52 of the Act*, with the output goods.

For these arguments to succeed it must be concluded that, in one part of the legislation, Parliament specifically excluded certain goods from exemption, yet in another, through a complex and circuitous route, they were content for those goods to be exempted. In the face of this sort of absurdity or inconsistency, it is acceptable to turn to extrinsic materials for assistance and have regard to the general principles of statutory interpretation to help resolve the problem.

Chapter 11 of the Explanatory Memorandum (EM) to the Act at page 171 explains that credit ground *CR6* is a provision designed to provide relief for tax paid on input goods, where tax is paid on output goods and the amount of the tax borne on the input goods is incorporated in the price of the output goods. Similar comments are made in relation to credit grounds *CR7* and *CR12*.

The situations contemplated by the EM are those where goods are inappropriately taxed indirectly or to prevent tax being indirectly paid on goods to be exported.

One of the basic principles of statutory interpretation is that legislation should be read as a whole. It is not appropriate to merely look at parts of the legislation in isolation. The intention and operation of the legislation must also be considered. Applying these principles, *Section 52* must be considered in context with the business inputs items to which it makes reference. The business inputs items have been framed in a way that ensures that exemption does not apply to goods excluded from the business inputs provisions.

In relation to *paragraph 52(a)*, the EM to the Act states that inputs will satisfy the sufficient link provision "where the inputs are raw materials" in the manufacture of goods. *Item 19* in *Schedule 1* to the E & C Act provides exemption for raw materials, but does not cover materials or mixes for use in manufacturing thick-shakes or similar goods, biscuit goods or ice-cream goods for retail sale from retail premises or vehicles. The intention of this item is to ensure the exemption for raw materials does not apply to these goods.

With regard to *paragraph 52(b)*, which refers to input goods used in an activity covered by an [R] item, the Macquarie Dictionary definition of *cover* includes *shelter*; *protect*. Thus, to qualify for a refund the goods should be used in an activity which is *protected* or *sheltered* by a business inputs item. The goods specifically excluded from [R] items are not *covered* by the [R] item and therefore *paragraph 52(b)* cannot apply to them.

The specific goods on which exemption as business inputs does not apply are:

- goods that are *generally-excluded property* as defined in *section 12* of the Act, being
 - luxury motor vehicles, (other than 4WD);
 - property for use with staff amenities;
 - construction equipment used mainly in construction;
 - property that is, or forms part of, telecommunications infrastructure; and
 - property used in connection with food preparation retail or catering premises or establishments, unless used in making savoury snacks, confectionery, bread, cakes or pastry;
- general-purpose road vehicles (subject to certain conditions);
- vending machines used for the sale of goods;
- goods used mainly in connection with certain administrative activities by miners and primary producers;
- property for use mainly in producing electricity, gas, steam, compressed air or hydraulic power, unless for sale or use in manufacturing activities;
- property for use mainly in duplicating tax-advantaged computer programs;
- author/secretary equipment used in the manufacture of printed matter.

Communication of the Decision

This determination has been made available for publication by the sales tax publishing houses.

Commissioner of Taxation
20 March 1996

FOI Index Detail: Reference No. I 1218134

Related rulings & determinations:

Subject Ref: Credits: tax paid on goods excluded from the business inputs exemptions items.

Legislative Ref: Credit grounds CR6, CR7 and CR12, Section 52 of the Sales Tax Assessment Act 1992, Section 12 of the Sales Tax (Exemptions & Classifications) Act 1992, [R] Items in Schedule 1 of Sales Tax (Exemptions & Classifications) Act 1992.

Case Ref:

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