


GSTD 2007/D4 - Goods and services tax: for taxable supplies or creditable acquisitions made by a member entity of a GST group, where the GST or input tax credits are attributable to a tax period other than when the entity is a member of the GST group, is the representative member of the GST group liable to pay the GST or entitled to the input tax credits?

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This document has been finalised.



Draft Goods and Services Tax Determination

Goods and services tax: for taxable supplies or creditable acquisitions made by a member entity of a GST group, where the GST or input tax credits are attributable to a tax period other than when the entity is a member of the GST group, is the representative member of the GST group liable to pay the GST or entitled to the input tax credits?

Preamble

This publication is a draft for public comment. It represents the Commissioner's preliminary view about the way the law applies. It is not a ruling or advice for the purposes of section 105-60 of Schedule 1 to the *Taxation Administration Act 1953*. You can rely on this publication to provide you with protection from interest and penalties as follows. If a statement turns out to be incorrect and you underpay your tax as a result, you will not have to pay a penalty. Nor will you have to pay interest on the underpayment provided you reasonably relied on the publication in good faith. However, even if you don't have to pay a penalty or interest, you will have to pay the correct amount of tax provided the time limits under the law allow it.

Answer

1. No, the member entity, rather than the representative member of the GST group, is liable to pay the GST and is entitled to input tax credits because the GST and input tax credit amounts are attributable to a tax period in which the entity is not a member entity of the GST group.
2. A representative member of a GST group is liable to pay the GST and is entitled to an input tax credit to the extent that the amount of GST or input tax credit is attributable to a tax period in which the entity that made the taxable supply or creditable acquisition is a member entity of the GST group.
3. The tax period in which the member entity made the taxable supply or creditable acquisition is not relevant in determining which entity accounts for GST or input tax credits. Rather, the tax period to which the GST on the supply or the input tax credit for the acquisition is attributable is relevant.

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Explanation

4. Division 48 of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act)¹ sets out the rules for GST groups. Two or more entities can apply to the Commissioner for approval to form a GST group.² Each entity must satisfy certain membership requirements.³ The approval to form or join (or leave or dissolve) a GST group takes effect from the beginning of a tax period applying to the members of the group.⁴

5. A GST group is treated as a single entity for many GST purposes. One of the member entities of the GST group is nominated as the representative member⁵ for the GST group. The representative member typically accounts for GST on taxable supplies and input tax credits for creditable acquisitions made by member entities to entities outside the group. Supplies and acquisitions between group members are usually disregarded.⁶

Accounting for GST and input tax credits on supplies and acquisitions made by member entities to entities outside the group

6. An entity must pay the GST payable on any taxable supply that it makes.⁷ Also an entity is entitled to an input tax credit for any creditable acquisition that it makes.⁸ However, special rules apply in relation to GST groups.

7. Under subsection 48-40(1) the GST payable on any taxable supplies that a member of a GST group makes is payable by the representative member, not the member that made the supplies. Similarly, under subsection 48-45(1) the representative member is entitled to the input tax credit on creditable acquisitions that a member of a GST group makes instead of the member making the acquisition. These subsections make the representative member responsible for the GST consequences of supplies and acquisitions made by members of a GST group.

8. The attribution rules set out in Division 29 establish the time when GST or input tax credits must be accounted for.⁹ The representative member accounts for the GST payable on a taxable supply or the input tax credit for a creditable acquisition made by a member of the group in accordance with these rules. The net amount (GST – input tax credits) for the tax period of the representative member is worked out and the representative member pays the net amount by the prescribed date. The representative member lodges a GST return for the tax period.

¹ All subsequent legislative references are to the GST Act unless otherwise indicated.

² Section 48-5.

³ Sections 48-5 and 48-10.

⁴ Subsection 48-85(3).

⁵ Representative member is defined in section 195-1.

⁶ Subsection 48-40(2).

⁷ Section 9-40.

⁸ Section 11-20.

⁹ If you account for GST on a cash basis you attribute GST on a taxable supply to the tax period in which you receive consideration for the supply, but only to the extent of the consideration received in the tax period. The input tax credit to which you are entitled for a creditable acquisition is attributable to the tax period in which you provide consideration for the acquisition but only to the extent that you provide the consideration in that tax period. If you do not account for GST on a cash basis you attribute all the GST payable on a taxable supply to the earlier of the tax period in which any of the consideration for the supply is received or an invoice for the supply is issued. You attribute all the input tax credit for a creditable acquisition to the earlier of the tax period in which you provide any of the consideration or an invoice is issued for the acquisition.

9. We consider that subsections 48-40(1) and 48-45(1) apply to any supplies or acquisitions made by an entity that is a group member for which GST or input tax credits are attributable to a tax period accounted for by the representative member on behalf of the group members. The supply may be made by a group member before joining the group, while a member of the group or after leaving the group. The determining factor is the tax period in which the GST or input tax credit amounts are attributable, not the time of making the supply or acquisition.

10. This means that under subsection 48-40(1) the GST on a taxable supply made by a member entity of the GST group to an entity outside of the GST group (irrespective of the time of making the supply) is payable by the representative member to the extent that the GST amount is attributable to a tax period when the member entity is a member of the GST group.

11. Similarly, under subsection 48-45(1) the representative member is entitled to input tax credits for any creditable acquisitions made by a member of the GST group from an entity outside of the GST group (irrespective of the time of making the acquisition) to the extent that the creditable acquisition is attributable to a tax period when the member entity is a member of the GST group.

12. We consider that this approach to the interpretation of subsections 48-40(1) and 48-45(1) is consistent with the purpose of those provisions. The intention as explained in the Explanatory Memorandum (EM) that accompanied the Bill¹⁰ that inserted the GST grouping provisions is that '[o]ne company (the representative member) of the GST group becomes responsible for paying all the GST and is entitled to all the input tax credits that members of the GST group have that relate to supplies and acquisitions made outside the GST group. The representative member makes the return on behalf of the members of the group'.

13. Also the EM indicates that the time of attribution, rather than the time of supply or acquisition, is the relevant operative element in the application of those provisions. Paragraphs 6.22 and 6.23 of the EM, explain that:

- when an entity joins a GST group, an entity ceases to be responsible for accounting for its own taxable supplies and creditable acquisitions (and adjustments), unless the entity is the representative member. If the entity makes a taxable supply before it is a member of a GST group, and only part of the GST on the taxable supply is attributable to a tax period before the entity joined the group, the representative member accounts for the remainder; and
- when an entity leaves a GST group that entity becomes responsible for accounting for its own taxable supplies and creditable acquisitions (and adjustments). If the entity makes a taxable supply while it was a member of a group, and only part of the GST on the taxable supply was attributed to a tax period before the entity left the group, the entity accounts for the rest of the GST.

14. An alternative view is that subsections 48-40(1) and 48-45(1) only apply to supplies or acquisitions made while the entity is a member of the group and the representative member only accounts for GST or input tax credits for those supplies or acquisitions.

¹⁰ A New Tax System (Goods and Services Tax) Bill 1999.

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15. Under this alternative approach if supplies or acquisitions are made, for example, before joining the group but consideration is first received or provided in a tax period while a member of the group, the supplier or recipient would have to continue to account for the GST and input tax credits attributable to that tax period.¹¹

16. This outcome is, in our view, inconsistent with the underlying rationale of the GST grouping provisions to allow a single representative entity to account for all GST and input tax credits for members' supplies and acquisitions while those entities are members of the group. Also, under this approach, it would be necessary to determine when supplies or acquisitions are made. This is inconsistent with the overall scheme of the GST Act, which for the most part focuses on the time of attribution of GST or input tax credits as the core tax timing principle, rather than the time of supply or acquisition. It is for that reason that there is no specific time of supply or acquisition provisions in the GST Act.

In summary

17. If an entity makes a taxable supply or creditable acquisition in a tax period in which that entity is a member of a GST group, but the GST payable or input tax credits are attributable, either wholly or in part, to a tax period when the entity is not a GST group member, the representative member only accounts for any GST or input tax credit amounts that are attributable to the tax period when the entity is a member of the group. The member entity accounts for the GST or input tax credit amounts that are attributable to the tax period when the entity is not a GST group member.

18. If an entity makes a taxable supply or creditable acquisition in a tax period in which the entity is not a member of a GST group, but the GST payable or input tax credits are attributable, either wholly or in part, to a tax period when the entity is a GST group member, the representative member is only responsible for paying any GST amounts, or is entitled to any input tax credits, that are attributable to a tax period in which the entity is a GST group member. The member entity accounts for the GST or input tax credit amounts that are attributable to the tax period when the entity is not a GST group member.

19. Also, if subsequent to making a taxable supply or creditable acquisition the supplier and recipient¹² become members of the same GST group, the representative member of the GST group is liable to pay the GST or is entitled to the input tax credits to the extent that the GST or input tax credit amounts are attributable to the tax period when the entities are members of the GST group.

Examples

Example 1: an entity makes a taxable supply prior to joining a GST group – the GST payable is attributable to a tax period when that entity is a GST group member

20. *Perfect Pencils Pty Ltd (Perfect), a registered stationery supplier, which accounts on a non-cash basis and applies monthly tax periods, made a taxable supply of stationery to King Newsagency on 15 August.*

¹¹ If you do not account on a cash basis, the date of issue of an invoice is also relevant.

¹² Recipient, in relation to a supply, means the entity to which the supply is made: section 195-1.

21. On 31 August, Perfect applied to form a GST group with Royal Rulers Pty Ltd (Royal), which also accounts on a non-cash basis and applies monthly tax periods. Perfect and Royal meet the other membership requirements to form a GST group for the tax period commencing 1 September. Royal is the representative member of the GST group.
22. On 4 September, Perfect issued an invoice to King Newsagency for the stationery supply and received no payments as consideration prior to this date.
23. The GST payable is attributable to the tax period commencing 1 September. The representative member of the GST group, Royal, is responsible for paying the GST.

Example 2: an entity makes a creditable acquisition as a GST group member – the input tax credits are attributable in part to a tax period commencing after the entity leaves the GST group

24. Sci-Fi Books (Sci-Fi), a GST registered bookshop, is a member of a GST Group, which includes Galaxy Pty Ltd and Star Pty Ltd. The GST group accounts on a cash basis and applies quarterly tax periods. Galaxy is the representative member of the GST group.
25. On 25 June, Sci-Fi made a creditable acquisition of a shipment of children's novels from Spooky Stories, an entity outside of the GST group. The payments for that acquisition are to be made once a month for six months, commencing on 25 June.
26. Sci-Fi ceased to be a member of the GST Group for the tax period commencing 1 October.
27. The input tax credits available for the first four payments are attributable to tax periods in which Sci-Fi was a member of the GST group, and are claimed by Galaxy as the representative member. The remaining input tax credits in respect of the last two payments are attributable to tax periods in which Sci-Fi is not a member of the GST group, and Sci-Fi is entitled to make the claim.

Example 3: an entity makes a taxable supply to a recipient entity prior to both entities joining a GST group – the GST is attributable to a tax period when the entity and the recipient are GST group members

28. Gourmet Delights (Delights), a registered food wholesaler, made a taxable supply of prepared food to Rockies Eatery (Rockies) on 14 September. Delights and Rockies account on a non-cash basis and apply monthly tax periods.
29. On 29 September, Delights and Rockies both applied to form a GST group with Sunrise Bakery Pty Ltd (Sunrise) and Relish in Confectionery Pty Ltd, which also account on a non-cash basis and apply monthly tax periods. Delights and Rockies meet the other membership requirements to form a GST group for the tax period commencing 1 October. Sunrise is the representative member of the GST group.
30. On 8 October, Delights issued an invoice to Rockies for the prepared food supply and received no payments as consideration prior to this date.
31. The GST payable is attributable to the tax period commencing 1 October. The representative member of the GST group, Sunrise, is responsible for paying the GST.

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32. This draft Determination represents the preliminary, though considered view of the Australian Taxation Office. When the final Determination is officially released, it will explain our view of the law as it applies both before and after its date of issue.

33. The final Determination will be a public ruling for the purposes of section 105-60 of Schedule 1 to the *Taxation Administration Act 1953* and may be relied upon, after it is issued, by any entity to which it applies. Goods and Services Tax Ruling GSTR 1999/1 explains the GST rulings system and our view of when you can rely on our interpretation of the law in GST public and private rulings.

Your comments

34. We invite you to comment on this draft Goods and Service Tax Determination. Please forward your comments to the contact officer by the due date. (Note: the Tax Office prepares a compendium of comments for the consideration of the relevant Rulings Panel or relevant Tax officers. The Tax Office may use a version (names and identifying information removed) of the compendium in providing responses to persons providing comments. Please advise if you do not want your comments included in the latter version of the compendium.)

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Commissioner of Taxation

31 October 2007

Previous draft:

Not previously issued in draft form

Related Rulings/Determinations:

GSTR 1999/1

Subject references:

- goods and services tax
- GST groups
- GST input tax credits and creditable acquisitions
- GST supplies and acquisitions
- taxable supply

Legislative references:

- GST Act 9-40
- GST Act 11-20
- GST Act Div 29
- GST Act Div 48
- GST Act 48-5
- GST Act 48-10
- GST Act 48-40(1)
- GST Act 48-40(2)
- GST Act 48-45(1)
- GST Act 48-85(3)
- GST Act 195-1
- TAA 1953 Sch 1 105-60

Other references:

- Explanatory Memorandum to the A New Tax System (Goods and Services Tax) Bill 1999
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ATO references

NO: 2007/6207

ISSN: 1443-5179

ATOlaw topic: Goods and Services Tax ~~ General rules and concepts ~~ attribution