



MT 2024/1 - Miscellaneous tax: time limits for claiming an input tax or fuel tax credit

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Miscellaneous Taxation Ruling

Miscellaneous tax: time limits for claiming an input tax or fuel tax credit

📌 Relying on this Ruling

This publication is a public ruling for the purposes of the *Taxation Administration Act 1953*.

If this Ruling applies to you, and you correctly rely on it, we will apply the law to you in the way set out in this Ruling. That is, you will not pay any more tax or penalties or interest in respect of the matters covered by this Ruling.

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What this Ruling is about

1. This Ruling sets out our view on time limits applying to the entitlement to an input tax or fuel tax credit set out in:
 - (a) subsection 93-5(1) of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act), and
 - (b) subsection 47-5(1) of the *Fuel Tax Act 2006* (FTA).
2. In this Ruling, we use the following terms:

Table 1: Terms used in this Ruling

| Term | Refers to |
|---------------------------|---|
| adjustment | an adjustment within the meaning of the GST Act or the FTA. |
| assessment | an assessment of a: <ul style="list-style-type: none"> • net amount, or • net fuel amount¹ |
| BAS | business activity statement |
| 4-year entitlement period | the periods set out in: <ul style="list-style-type: none"> • subsection 93-5(1) of the GST Act, and • subsection 47-5(1) of the FTA |
| limiting provisions | subsection 93-5(1) of the GST Act and subsection 47-5(1) of the FTA |
| period of review | the periods set out in Subdivision 155-B of Schedule 1 to the <i>Taxation Administration Act 1953</i> (TAA) ² |
| return | a GST return or a fuel tax return ³ |
| tax credit | an input tax credit or a fuel tax credit ⁴ |

3. The limiting provisions provide that your entitlement to a tax credit ceases (unless an exception applies) to the extent that the tax credit has not been taken into account in an assessment during the 4-year entitlement period.
4. In this Ruling, tax credit only refers to an input tax credit or fuel tax credit. It does not include any other entitlements or liabilities under the indirect tax law (within the meaning of the *Income Tax Assessment Act 1997* (ITAA 1997)), including adjustments and entitlements to refunds. No other liabilities or entitlements are subject to the 4-year entitlement period under the limiting provisions.
5. This Ruling explains when and the extent to which a tax credit has been taken into account in an assessment, when the 4-year entitlement period ends and the exceptions to the limiting provisions.
6. This Ruling also explains when an objection to an assessment may preserve your entitlement to a tax credit and the interaction between the limiting provisions and private ruling and amendment requests.

¹ See sections 17-5 and 195-1 of the GST Act, sections 60-5 and 110-5 of the FTA, and section 155-5 of Schedule 1 to the *Taxation Administration Act 1953*.

² The Commissioner of Taxation may amend an assessment within the period of review for the assessment: subsection 155-35(1) of Schedule 1 to the TAA.

³ See section 195-1 of the GST Act and section 61-15 of the FTA.

⁴ See section 195-1 of the GST Act and section 110-5 of the FTA.

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7. This Ruling does not address:
- (a) the operation of section 93-15 of the GST Act, which sets out separate rules under which your entitlement to an input tax credit may cease.⁵
 - (b) time limits in the indirect tax law (within the meaning of the ITAA 1997) other than the 4-year entitlement period for tax credits.⁶
 - (c) adjustments under the GST Act and FTA.⁷

Key decisions of courts and tribunals

8. Our view on the application of the limiting provisions has been informed by decisions of the Administrative Appeals Tribunal (AAT), Federal Court and Full Federal Court. Some of these decisions relate to goods and services tax (GST), while others relate to fuel tax credits. As the limiting provisions for GST and fuel tax credits are substantially identical, we consider that the principles from the cases generally apply in the same way to both taxes.

9. The key decision on when tax credits are taken into account is that of the Full Federal Court in *Linfox Australia Pty Ltd v Commissioner of Taxation of the Commonwealth of Australia* [2019] FCAFC 131 (*Linfox*). In *Linfox*, the Full Federal Court considered the question of whether fuel tax credits were taken into account in an assessment where the fuel tax credit was reduced by the road user charge (RUC). The Court stated at [131]:

... That term [assessment], as defined, describes not an outcome or an amount or a notice of assessment (or BAS), but a *process* the completion of which has the consequence that a specific amount becomes due.

and consequently:

... there is little difficulty in describing an integer representing the taxpayer's unreduced credits as having been taken into account in an assessment by reason of it having formed part of a calculation (the process) which produced the net amount recorded in the taxpayer's BAS that created an entitlement to a refund (the consequence) by the deemed assessment mechanism.

10. The Court further stated at [132] in relation to the words of apportionment 'to the extent that' within section 47-5 (one of the limiting provisions):

... those words have ample operation, at least where the taxpayer makes a mistake in the ascertainment of its (unreduced) entitlement to credits under s 43-5(1).

⁵ Section 93-15 of the GST Act provides that you are not entitled to an input tax credit for a creditable acquisition to the extent that supplier did not include the GST for the related supply in their assessment for the relevant tax period, if:

- the period of review for that assessment has ended, and
- you did not hold a tax invoice for the acquisition at the time that period of review ended.

⁶ In particular, this Ruling does not address the operation of the period of review for assessments under section 155-35 of Schedule 1 to the TAA, other than to confirm that it is distinct from the 4-year entitlement period.

⁷ It should also be noted that ceasing to be entitled to a tax credit does not constitute a change in the use of the acquisition or fuel to which it relates and will not give rise to an adjustment under Division 129 of the GST Act or Division 44 of the FTA.

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11. While *Linfox* was decided on other grounds⁸, we consider these statements express the meaning of ‘taken into account in an assessment’ for the limiting provisions.

12. In *Coles Supermarkets Australia Pty Ltd v Commissioner of Taxation* [2019] FCA 1582 (*Coles*), the Federal Court considered whether fuel tax credits that had not been claimed in any return were taken into account in an assessment. The Court stated at [137]:

... The fuel tax credit was not an integer used by Coles in calculating its net fuel amount in its fuel tax returns for the tax periods between July 2012 and January 2014. Indeed, Coles submits that it was not aware of the potential entitlement to a fuel tax credit for the fuel that evaporated or leaked during that period. Nor were the fuel tax credits for that period included in any subsequent fuel tax return.

13. The Court distinguished the circumstances of *Coles* from *Linfox*, stating at [138]:

The situation in the present case is quite different from that considered in *Linfox*. In that case, the fuel tax credits were an integer in the calculation of the taxpayer’s net fuel amount. As noted in *Linfox* at [122], the taxpayer in that case made a self-assessment, deemed to be an assessment, under which it calculated its net fuel amount by reducing the amount of its fuel tax credits by the amount of the road user charge for the fuel. (The taxpayer later contended that it should not have so reduced its fuel tax credits.) The question was whether, in these circumstances, the fuel tax credits had been “taken into account” in the assessment. The Full Court held that the fuel tax credits had been taken into account in the assessment: *Linfox* at [128]-[134].

before concluding later in [138]:

... The present case is quite different. Here, the fuel tax credit was not included as an integer in calculating the net fuel amount in Coles’s self-assessment.

14. The Court also considered the consequences of the taxpayer objecting to its assessment for the operation of the limiting provisions. It stated at [139]:

... once a return has been lodged and objected to, there is no scope for the operation of s 47-5 to disentitle a taxpayer to fuel tax credits as the rights of the Commissioner and the taxpayer are, relevantly, preserved and protected by ss 14ZY, 14ZZP and 14ZZQ of the *Tax Administration Act* and s 155-60 of Sch 1 to that Act. ...

15. While *Coles* was decided on different grounds⁹, we consider these statements express the meaning of ‘taken into account in an assessment’ for the purposes of the limiting provisions.

16. The AAT has also considered the operation of the limiting provisions, highlighting the fixed and inflexible nature of the 4-year entitlement period.

17. In *Rosebridge Nominees Pty Ltd (IN LIQ) and Commissioner of Taxation* [2019] AATA 426 (*Rosebridge*), the AAT stated at [44]:

... s 93-5(1) of the GST Act similarly makes it abundantly clear that the entitlement to the ITCs is extinguished in certain circumstances. The use of the word “ceases” is unequivocal in describing the end of the entitlement to claim ITCs, unless certain events have occurred.

⁸ See *Linfox* at [120]. Broadly, in *Linfox* the taxpayer was seeking to obtain a refund on the basis it had understated its past fuel tax credit entitlements by incorrectly applying the RUC. The Court held, however, that the taxpayer had correctly applied the RUC. As a result, it was unnecessary to determine how the limiting provisions would have applied to change in entitlement. However, the matter was fully argued before the Court, and the Court set out its view on how it would have decided the issue.

⁹ *Coles* at [7]. Broadly, in *Coles*, the taxpayer was seeking to obtain a refund on the basis it was entitled to additional fuel tax credits in past tax periods. The Court concluded the taxpayer was not entitled to the additional fuel tax credits. As a result, it was unnecessary to determine if the limiting provisions applied to additional entitlement. However, the issue had been fully argued and the Court set out its view on how it would have decided the issue.

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18. The decision in *Rosebridge* was confirmed in *JHKW and Commissioner of Taxation* [2022] AATA 2875 (*JHKW*), *H & B Auto Repair Centre Pty Ltd and Commissioner of Taxation* [2022] AATA 3561 and *Messenger Media and Information Technology Pty Ltd and Commissioner of Taxation* [2023] AATA 752. In *JHKW*, the AAT observed at [57]:

The operation of section 93-5 of the GST [Act] means that if an extension of time to lodge a BAS has not been granted prior to the expiry of 4 years after the day on which it was required to be given to the Respondent, the entitlement to ITCs immediately ceases. Consequently, the provision of further time within which to give a BAS to the Respondent cannot be provided retrospectively outside of the relevant 4 year period.

Ruling

Limiting provisions and tax credits

19. Our view on the operation of the limiting provisions is as follows:

'Taken into account'

- (a) A tax credit is taken into account in an assessment to the extent that the tax credit has formed part of the calculation of the amount that became the assessed net amount or assessed net fuel amount for the relevant tax period or fuel tax return period (referred to subsequently as the 'calculation that produced the assessed amount').¹⁰
- (b) A tax credit will form part of the calculation that produced the assessed amount to the extent that the amount of the tax credit forms part of the amount of total tax credits that is used in calculating your assessed amount.¹¹
 - For GST purposes, the amount of an input tax credit that is included in the calculation of total input tax credits is the amount which you determined you were entitled to for the tax period, worked out under section 11-25 of the GST Act for fully creditable acquisitions or section 11-30 of the GST Act for partly creditable acquisitions.¹²
 - For fuel tax credit purposes, the amount of a fuel tax credit that is included in the calculation of total fuel tax credits is the amount which you determined you were entitled to for the tax period or fuel tax return period, worked out under section 43-5 of the FTA (reflecting the taxpayer's entitlement under Subdivisions 41-A or 42-A of the FTA), before any reduction for the RUC.¹³
- (c) If the amount of the tax credit that formed part of the calculation that produced the assessed amount is less than the amount of your entitlement under the GST law or fuel tax law, the tax credit is only taken into account to the extent of the amount actually included in the calculation. The balance of the tax credit has not been taken into account in the assessment.¹⁴

¹⁰ *Linfox* at [131]. See sections 17-5, 33-3 and 33-5, subsection 35-5(1) and the definition of 'assessed net amount' in section 195-1 of the GST Act and sections 60-5, 61-5 and 61-10 and the definition of 'assessed net fuel amount' in section 110-5 of the FTA. See also Examples 1 and 2 of this Ruling.

¹¹ *Linfox* at [131] and [134].

¹² See Example 3 of this Ruling.

¹³ *Linfox* at [130].

¹⁴ *Linfox* at [132] and *Coles* at [137] and [138]. See Example 3 of this Ruling.

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- (d) If no amount of a tax credit is included as part of the total amount of your tax credits that formed part of the calculation of your assessed amount, the tax credit has not been taken into account in the assessment.¹⁵

'During the 4-year entitlement period'

- (e) The 4-year entitlement period is the period of 4 years commencing after the day on which you were required to give the Commissioner a return for the tax period or fuel tax return period to which the tax credit would be attributable under subsections 29-10(1) or (2) of the GST Act or subsections 65-5(1), (2) or (3) of the FTA.
- (f) The 4-year entitlement period is only altered if, prior to the end of the 4-year entitlement period, there is a formal extension granted by the Commissioner to the due date for the return for the tax period or fuel tax return period to which the tax credit would be attributable under subsections 29-10(1) or (2) of the GST Act or subsections 65-5(1), (2) or (3) of the FTA.¹⁶
- (g) Your entitlement to tax credits ceases immediately on the expiry of the 4-year entitlement period. No action taken after this time can revive your entitlement to a tax credit.¹⁷

Objections, requests for amendment and ruling requests

- (h) A tax credit is not taken into account in an assessment by lodging an objection, requesting an amendment (including in the course of making a voluntary disclosure), or applying for a private ruling.¹⁸
- (i) However, the limiting provisions do not apply to the extent that an entitlement to a tax credit for a tax period is specified in the grounds of a valid objection lodged within the 4-year entitlement period. To the extent that the objection decision or any subsequent review or appeal process finds that you were entitled to that tax credit and it is attributable to the period in dispute, your entitlement will not cease.¹⁹

Tax credits taken into account in an assessment

20. The concept of when a tax credit is taken into account in an assessment is central to the operation of the limiting provisions. We consider that this concept has a consistent meaning in the limiting provisions. Based on *Linfox*, a tax credit is taken into account in an assessment to the extent that an amount representing the tax credit forms part of the calculation that produced the assessed amount.

¹⁵ *Coles* at [137] and [138]. See Example 1 of this Ruling.

¹⁶ *JHKW* at [57].

¹⁷ *JHKW* at [57]. See Example 5 of this Ruling.

¹⁸ *Coles* at [137] and [139]. See Example 7 of this Ruling.

¹⁹ *Coles* at [139]. See Example 6 of this Ruling.

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21. This will be the case whether the assessment is made by the Commissioner of Taxation (Commissioner) under section 155-5 of Schedule 1 to the TAA, or whether it is treated as having been made by the Commissioner under section 155-5 as a result of section 155-15 of Schedule 1 to the TAA (a self-assessment). The only difference between these two situations is who is performing the calculation. In a self-assessment process, you are calculating the amount, so it will be the amount you include as a tax credit in the calculation that produces the assessed amount that is taken into account. In an assessment process, it will be the amount included by the Commissioner when undertaking the calculation.

22. What must form part of the calculation that produces the assessed amount for a tax credit to be taken into account is a specific amount representing the tax credit (described as an 'integer' in *Linfox*).²⁰

23. If an acquisition or tax credit is merely identified or considered without doing anything more, it will not have been taken into account in an assessment. This is because merely identifying or considering an acquisition or a tax credit does not result in any amount forming part of the calculation that produced the assessed amount.²¹

24. In *Linfox*, the Court stated that, in the specific context of the RUC, both the fuel tax credits and the RUC separately formed part of the calculation that produced the assessed amount. As a result, even though the fuel tax credits were reduced by the RUC in that calculation, the full fuel tax credits were taken into account in the resulting assessment.

25. However, outside of this specific context involving a separate statutory amount, it is only the specific amount representing the tax credit that will form part of the calculation that produces the assessed amount.

26. If the amount that forms part of the calculation that produced the assessed amount is less than the full amount of the tax credit, the balance of the tax credit has not been taken into account in the assessment.²²

27. There is a distinction between a calculation that produces the assessed amount and your decision about what amounts to include in that calculation. We do not consider that an amount of a tax credit formed part of the calculation that produced the assessed amount merely because you identified or considered the amount but then ultimately included a lesser amount in the calculation.

28. This means that if you:

- (a) understate your extent of creditable purpose for input tax credits or your entitlement under Subdivision 41-A of the FTA for fuel tax credits, the amount that you did not include in the calculation that produced the assessed amount has not been taken into account in the resulting assessment, or
- (b) make a mistake about the extent to which a tax credit is attributable to a particular tax period or fuel tax return period, any part of the tax credit that you did not include in the calculation that produced the assessed net amount has not been taken into account in the resulting assessment.

²⁰ *Linfox* at [131] and [133].

²¹ See, for example, *Coles* at [137] and [138].

²² *Linfox* at [130] '... In working out the amount of each credit the integers are, relevantly, the amount of the taxpayer's entitlement to a credit ...' and at [131]

'... there is little difficulty in describing an integer representing the taxpayer's unreduced credits as having been taken into account in an assessment by reason of it having formed part of a calculation (the process) which produced the net amount recorded in the taxpayer's BAS ...'.

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29. These processes relate to your decision about what to include in the calculation that produces the assessed amount. They are not themselves part of that calculation.

30. Even if you considered the unclaimed part of the tax credit when determining what amount you should claim, this part of the tax credit was then left out of the calculation that gave rise to the assessed amount. You do not take something into account in an assessment to the extent that you decide not to include it in the calculation that produces the assessed amount.

Example 1 – tax credits not taken into account within the 4-year entitlement period

31. Lily makes a creditable acquisition of a computer desk for \$750 for use in her enterprise on 15 September 2022. Lily lodges returns quarterly.

32. The following table sets out the relevant dates:

Table 2: Relevant dates for Example 1

| Due date for GST return | Last day of the 4-year entitlement period |
|--------------------------------|--|
| 28 October 2022 | 28 October 2026 |

33. Lily identifies the acquisition when preparing her BAS, but treats it as not being a creditable acquisition. As a result, she does not include the input tax credit for the purchase of the desk when working out her total input tax credits. The input tax credit has not been taken into account in the assessment.

34. On 30 October 2026, Lily realises that she was entitled to an input tax credit in relation to the purchase of the desk. However, under section 93-5 of the GST Act, Lily's entitlement to the input tax credit had ceased at the end of 28 October 2026.

35. Lily can no longer claim the additional input tax credit.

Example 2 – 'taken into account' and the road user charge

36. Mei-Lin starts a small excavation business in early 2016 and registers for GST, choosing to lodge returns quarterly. She lodges a fuel tax return (included on her BAS) for the quarter that ended on 30 June 2016, claiming fuel tax credits for diesel she purchases for use in her bobcat, excavator and truck.

37. She correctly determines the amounts of her fuel tax credits and includes these amounts in the calculation of her net fuel amount. However, she incorrectly subtracts the RUC from fuel tax credits for all the diesel purchased for use in the truck, despite the truck being partly intended for off-road use.

38. The following table sets out the relevant dates:

Table 3: Relevant dates for Example 2

| Due date for fuel tax return | Last day of the 4-year entitlement period |
|-------------------------------------|--|
| 28 July 2016 | 28 July 2020 |

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39. On 1 October 2020, Mei-Lin realises that, to the extent fuel was acquired for use in the truck while it was operating off public roads, no RUC was applicable. She calculates that the incorrect application of the RUC reduced her net fuel amount by \$205.91.

40. The additional fuel tax credit amount of \$205.91 has been taken into account in an assessment. This is because Mei-Lin included the full amounts of the fuel tax credits as integers in her calculation of her assessed net fuel amount before determining the RUC applied. As the \$205.91 has been taken into account in an assessment within the 4-year entitlement period, her entitlement to this amount has not ceased under Division 47 of the FTA.

Example 3 – ‘taken into account’ and partly creditable acquisitions

41. Grace Co carries on a financial services business. It is registered for GST and lodges returns monthly.

42. In January 2020, Grace Co acquires marketing services for use in its business for \$22,000.

43. 60% of the services relate to the promotion of Grace Co’s business activities involving making input taxed financial supplies. The remaining 40% of the services relate to Grace Co’s other business activities. As a result, the extent of Grace Co’s creditable purpose for the acquisition is 40%.

44. When determining its entitlement to input tax credits for the acquisition of these services, Grace Co treats the acquisition as being 25% creditable rather than 40% creditable.

45. As a result, Grace Co determines its input tax credit entitlement to be \$500 (rather than \$800). Grace Co uses \$500 in calculating the amount it records on its BAS for the tax period. Only \$500 has been taken into account in its assessment.

46. The following table sets out the relevant dates:

Table 4: Relevant dates for Example 3

| Due date for GST return | Last day of the 4-year entitlement period |
|--------------------------------|--|
| 21 February 2020 | 21 February 2024 |

47. In April 2024, Grace Co identifies that it was entitled to an additional input tax credit of \$300.

48. This amount of the input tax credit was not included in an assessment within the 4-year entitlement period. While a part of the input tax credit was taken into account, neither the additional amount nor the acquisition itself formed an integer in working out Grace Co’s total input tax credits for the relevant period. As a result, Grace Co has ceased to be entitled to the input tax credit to this extent.

Example 4 – ‘taken into account’ and ceasing to be entitled to tax credits

49. Breanna carries on a trucking business. She is registered for GST and lodges returns monthly.

50. In January 2022, Breanna acquires 22,000 litres of fuel for use in her business. One quarter of the fuel is for use in light vehicles on a public road. As taxpayers are not

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entitled to a fuel tax credit for fuel to the extent that the fuel is for use in a light vehicle travelling on a public road (see section 41-20 of the FTA), Breanna is only entitled to a fuel tax credit for the remaining three-quarters of the fuel.

51. *When determining her entitlement, Breanna accidentally reverses the proportions of heavy vehicle use and light vehicle use. As a result, she only includes an amount of \$929.50 (5,500 litres at \$0.169 a litre) rather than \$2,788.50 (16,500 litres at \$0.169 a litre) when working out her net fuel amount.*

52. *The following table sets out the relevant dates:*

Table 5: Relevant dates for Example 4

| <i>Due date for fuel tax return</i> | <i>Last day of the 4-year entitlement period</i> |
|--|---|
| <i>21 February 2022</i> | <i>21 February 2026</i> |

53. *In May 2026, Breanna identifies the shortfall and determines she was entitled to an additional \$1,859.00 (\$2,788.50 – \$929.50).*

54. *This amount of the fuel tax credit was not included in an assessment within the 4-year entitlement period. While a part of the fuel tax credit was taken into account, neither the additional amount nor the acquisition itself formed an integer in working out Breanna's total fuel tax credits for the relevant period. As a result, Breanna has ceased to be entitled to the fuel tax credit to this extent.*

Within the 4-year entitlement period

55. Absent a statutory exception, your tax credits must be taken into account in an assessment as outlined in paragraphs 20 to 30 of this Ruling within the 4-year entitlement period in order for the limiting provisions not to apply.²³ The assessment must be completed by a notice of assessment being given or treated as having been given to you within that time.²⁴

56. As outlined in paragraphs 2 and 19 of this Ruling, the 4-year entitlement period is the period of 4 years commencing after the day on which you were required to give the Commissioner a return for the tax period or fuel tax return period to which the credit would be attributable under subsections 29-10(1) or (2) of the GST Act or subsections 65-5(1), (2) or (3) of the FTA.

57. In some cases, including where the taxpayer does not hold a tax invoice for an acquisition, the 4-year entitlement period for a tax credit may commence before the tax credit can be claimed. The delayed attribution of a tax credit does not change the operation of the 4-year entitlement period for that tax credit.

58. The due dates for lodging returns are set out in the GST Act and the FTA.²⁵ The due dates may be extended in some circumstances (for example, the Commissioner may allow a further period to provide a GST return under paragraph 31-8(1)(b) of the GST Act

²³ See *Rosebridge* at [44].

²⁴ Section 155-10 of Schedule 1 to the TAA requires the Commissioner to give a notice of assessment. Where an assessment is taken to have been made under section 155-15 of Schedule 1 to the TAA, subsection 155-15(4) provides for your GST return or fuel tax return for the tax period or fuel tax return period to be treated as a notice of assessment. Under section 155-40 of Schedule 1 to the TAA, applications for amendments to assessments can also be treated as notice of the amended assessment.

²⁵ The standard timeframe in which lodgment is required is set out in sections 31-8 and 31-10 of the GST Act and section 61-15 of the FTA.

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or defer the date for lodgment under section 388-55 of Schedule 1 to the TAA). The 4-year entitlement period is only altered by a formal extension by the Commissioner under these provisions. It is not affected by decisions to remit penalties or to defer or cease compliance actions in relation to late lodgment.²⁶

59. The end date of the 4-year entitlement period is fixed and, subject to the rules for objections and the exceptions discussed at paragraphs 69 to 70, 105 to 109 and 114 of this Ruling, your entitlement to tax credits ceases immediately and permanently once it concludes.²⁷ There is no statutory discretion that may be exercised to extend or waive the 4-year entitlement period.²⁸ Actions after your entitlement has ceased cannot revive your entitlement. Even if an extension of the due date for lodging returns was granted after the 4-year entitlement period has ended, it would not revive your entitlement to any tax credits for which your entitlement had ceased.²⁹

60. The 4-year entitlement period for a tax credit is distinct from the period of review for an assessment.

- (a) The 4-year entitlement period for a tax credit is the period up until your entitlement to the tax credit ceases. The period starts immediately after the due date for the return for the tax period or fuel tax return period to which the tax credit was attributable under subsections 29-10(1) or (2) of the GST Act or subsections 65-5(1), (2) or (3) of the FTA.
- (b) The period of review for an assessment is the period within which the assessment may be amended by the Commissioner. The period starts on the day that we first give you notice of your assessment for the relevant tax period or fuel tax return period.³⁰

61. Apart from their different subject matter, the differences in start date mean that the period of review for the assessment of the net amount or net fuel amount for the tax or fuel tax return period to which a tax credit is attributable will often differ from the 4-year entitlement period for that tax credit. In circumstances where the assessment is delayed or attribution of the tax credit to a tax period is deferred, including where the taxpayer does not hold a tax invoice at the commencement of the 4-year entitlement period, the periods will differ by months or even years.

62. Your entitlement to a tax credit will cease at the end of the 4-year entitlement period regardless of whether the period of review for the assessment for the tax period or fuel tax return period to which it is attributable has ended.³¹ An extension to the period of review for an assessment for a tax period or fuel tax return period does not extend or otherwise alter the 4-year entitlement period for any tax credits.

Example 5 – delayed attribution and the 4-year entitlement period

63. *Claire's Crafts Pty Ltd makes a creditable acquisition of art supplies for \$1,100 in June 2022, paying in full. Claire's Crafts Pty Ltd lodges returns quarterly and accounts for GST on a cash basis.*

²⁶ See, for example, *JHKW* at [52–63].

²⁷ *Rosebridge* at [44] and *JHKW* at [49] and [50].

²⁸ See, for example, *JHKW* at [58] and *H & B Auto Repair Centre Pty Ltd and Commissioner of Taxation* [2022] AATA 3561 at [63–65].

²⁹ *JHKW* at [57].

³⁰ Section 155-35 of Schedule 1 to the TAA.

³¹ This is subject to the exceptions set out in section 93-10 of the GST Act and section 47-10 of the FTA which are discussed in paragraphs 105 to 109 and 114 of this Ruling.

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64. *At the time Claire's Crafts Pty Ltd lodges its BAS (which incorporates its GST return) for this tax period, it did not hold a tax invoice for the acquisition.*

65. *As a result, the input tax credit is not attributable to the June 2022 tax period.³² Claire's Crafts Pty Ltd does not include the input tax credit in its BAS for that tax period and instead claims the input tax credit in the September 2022 tax period after obtaining a tax invoice.*

66. *This delay in attribution does not affect the 4-year entitlement period for the input tax credit. The 4-year entitlement period commences after 28 July 2022, the day the GST return was due for the June 2022 quarterly tax period to which the input tax credit would be attributable under subsection 29-10(2) of the GST Act. It concludes at the end of the period of 4 years after that day, 28 July 2026.*

67. *The following table sets out the relevant dates.*

Table 6: Relevant dates for Example 5

| Due date for GST return | Last day of the 4-year entitlement period |
|--------------------------------|--|
| 28 July 2022 | 28 July 2026 |

68. *If the input tax credit was not claimed in the September 2022 tax period and had not otherwise been taken into account in an assessment on or before 28 July 2026, Claire's Crafts Pty Ltd would permanently cease to be entitled to the input tax credit at the end of that day. After that day, Claire's Crafts Pty Ltd would not be able to claim the input tax credit in any tax period.*

Objections, amendment requests and applications for private rulings

69. A tax credit is not taken into account in an assessment merely by lodging an objection, requesting an amendment to an assessment, or applying for a private ruling. None of these actions form part of the calculation that produces the assessed amount and they will not themselves result in any amount being taken into account in an assessment.³³

70. However, in *Coles*, the Federal Court held that the limiting provisions are subject to an implicit qualification and do not apply to an objection made within the 4-year entitlement period.³⁴

71. The limiting provisions will not apply to disentitle you to a tax credit for a tax period or fuel tax return period to the extent that:

- (a) you have, prior to the cessation of your entitlement, validly objected to your assessment for the period on grounds including your entitlement to the tax credit, and
- (b) your entitlement is established through the objection process (including any subsequent court or tribunal proceedings relating to the objection decision).

³² Subsection 29-10(3) of the GST Act.

³³ Instead, such a tax credit that was not taken into account in the original assessment for a tax period will only be taken into account in an assessment to the extent the Commissioner makes an amended assessment that includes the tax credit.

³⁴ *Coles* at [139].

Status: **legally binding**

72. A valid and correct objection³⁵ made before the 4-year entitlement period ends will preserve your entitlement to tax credits that are the subject of the objection for the period in dispute, even if they have not been taken into account in an assessment. The limiting provisions will not apply in a way that could make the valid and timely exercise of your entitlement to review under the objection provisions ineffective.

73. However, a valid objection made after the 4-year entitlement period ends cannot revive a tax credit that has ceased under the limiting provisions. This will apply even if:

- (a) you are still within time to object to your assessment for the tax period or fuel tax return period to which the tax credit is attributable³⁶, or
- (b) the Commissioner has agreed to a request under subsection 14ZW(2) of the TAA to treat a late objection to your assessment for that tax period or fuel tax return period as having been made within time for the purposes of Part IVC of the TAA under section 14ZY of the TAA.

74. At the time such an objection is made, there is no longer any entitlement to the tax credit and an objection relating to the tax credit would be futile.³⁷ The objection is only treated as being made within time for the purposes of Part IVC of the TAA, not for the limiting provisions. Subject to the exceptions in Division 47 of the FTA and Division 93 of the GST Act that are discussed at paragraphs 105 to 109 and 114 of this Ruling, the cessation of entitlement to a tax credit under the limiting provisions is final.

75. A valid objection made within the 4-year entitlement period also only preserves your entitlement to tax credits in relation to the extent the tax credits are the subject of the objection and found to be attributable to the tax period or fuel tax return period in dispute. It does not preserve any entitlements you may have to tax credits to the extent they are attributable to other tax or fuel tax return periods or any entitlements that are not raised in the grounds of objection.

76. Other processes, including requesting an amendment to an assessment or applying for a private ruling, do not provide the protections that exist for the objection process.

77. Objecting to an assessment engages fundamental rights to review and appeal. Consistent with this, objections have particular protections under Part IVC of the TAA. This provides the basis for the conclusion in *Coles* that the limiting provisions do not apply to potentially prevent the exercise of these rights from being effective. Other processes do not engage with fundamental rights or receive the same statutory protections that were discussed in *Coles*³⁸, meaning that the same conclusion does not arise.

Example 6 – valid objections within the 4-year entitlement period

78. *Elijah purchases computer software on 25 November 2017 that he uses in carrying on his enterprise. Elijah lodges his returns quarterly.*

³⁵ The requirements for an objection to be valid are discussed at paragraphs 95 to 97 of this Ruling.

³⁶ Situations where a valid objection could be lodged after the expiry of the 4-year entitlement period include where the taxpayer lodged their GST return or fuel tax return late, deferring the start of the period of review as set out in subsection 155-35(2) of Schedule 1 to the TAA.

³⁷ See, for example, *JHKW*.

³⁸ See *Coles* at [139].

Status: **legally binding**

79. *The following table sets out the relevant dates:*

Table 7: Relevant dates for Example 6

| <i>Due date for GST return</i> | <i>Last day of the 4-year entitlement period</i> |
|---------------------------------------|---|
| <i>28 February 2018</i> | <i>28 February 2022</i> |

80. *Elijah does not lodge his BAS for the December 2017 quarter (the relevant tax period). He is instead assessed by the Commissioner. He does not advise us that he is entitled to an input tax credit for the purchase of the computer software. The input tax credit is not taken into account in the assessment.*

81. *Elijah discovers at the beginning of 2022 that he is entitled to an input tax credit of \$140 for the purchase of the computer software for this tax period. He objects to his assessment for the December 2017 quarterly tax period on 18 February 2022 on the ground that it did not include the input tax credit for the software. The objection is made in the approved form and within the 4-year entitlement period for any input tax credit for the computer software.*

82. *We make a decision on Elijah's objection on 7 April 2022, at which time the 4-year entitlement period and the period of review had both expired.*

83. *However, because Elijah made a valid objection within the 4-year entitlement period (that is, before the end of 28 February 2022) the limiting provisions do not apply to any entitlement to an input tax credit attributable to the relevant tax period that is identified in the objection decision.*

84. *Likewise, as the objection was valid, we may still amend the assessment in response to the objection.*

85. *If he disagreed with our objection decision, Elijah would be entitled to seek external review by the Tribunal or the Court. If this occurred, and the Tribunal or the Court found Elijah was entitled to some or all of the input tax credit for the December 2017 quarter, Elijah's entitlement to that part of the input tax credit would have been preserved by the objection. We would also be able to amend Elijah's assessment to give effect to any decision of the Tribunal or the Court.*

86. *If Elijah had instead objected on 3 March 2022, the 4-year entitlement period would have already ended. As a result, his entitlement to the input tax credit would have ceased under the limiting provisions. Even if his objection was valid and made within the period of review, it would not change the fact that he had already permanently ceased to be entitled to the input tax credit before it was made.*

Example 7 – requests for amendment within the 4-year entitlement period

87. *Angus carries on a landscape gardening business as a sole trader. He is registered for GST and lodges returns quarterly. On 5 February 2020, he purchases gardening materials for \$11,000 which he uses in carrying on his enterprise.*

88. *This is a creditable acquisition and Angus is entitled to an input tax credit of \$1,000.*

Status: **legally binding**

89. *The following table sets out the relevant dates:*

Table 8: Relevant dates for Example 7

| <i>Due date for GST return</i> | <i>Last day of the 4-year entitlement period</i> |
|---------------------------------------|---|
| <i>28 April 2020</i> | <i>28 April 2024</i> |

90. *Angus fails to lodge his BAS for the March 2020 quarterly tax period. He is subsequently assessed by us but forgets to advise us about the \$1,000 input tax credit to which he is entitled for the gardening materials. The input tax credit is not taken into account in his assessment for the tax period.*

91. *In April 2024, Angus reviews his records from the period and identifies his oversight. On Saturday, 27 April 2024, he applies in the approved form for us to amend his assessment to include the input tax credit.*

92. *This amendment request does not result in the input tax credit being taken into account or prevent the application of the limiting provisions. Angus's entitlement to the input tax credit will cease unless, on or before 28 April 2024, either:*

- (a) *he objects to his assessment for the March 2020 tax period on the ground he is entitled to the input tax credit in relation to the tax period, or*
- (b) *the input tax credit is taken into account in an assessment.*

93. *On 28 April 2024, Angus realises that his entitlement may cease. He objects to his assessment for the March 2020 quarterly tax period on the ground that it did not include the input tax credit for the gardening materials. The objection is made in the approved form within the 4-year entitlement period and the period of review.*

94. *The Commissioner considers Angus' objection and agrees that the gardening materials were a creditable acquisition and that the input tax credit would be attributable to the March 2020 tax period. As Angus made a valid objection within the 4-year entitlement period, the limiting provisions do not apply to the \$1,000 input tax credit and the Commissioner allows the objection in full.*

Information requirements for valid objections

95. To lodge a valid objection, you need to provide all information required on the approved form and state fully and in detail the grounds for the objection within the period of review.³⁹ This includes making clear how the proposed grounds are relevant to the correctness of the assessment. These requirements are discussed in Taxation Ruling TR 2011/5 *Income tax: objections against income tax assessments*.

96. Failing to meet these requirements results in the purported objection being invalid.

³⁹ For the requirements to lodge a valid objection, see section 14ZU of the TAA. For the time period within which the taxpayer must lodge an objection, see paragraph 14ZW(1)(bg) of the TAA.

Status: **legally binding**

97. If you lodge an invalid objection, the limiting provisions will still apply. You will cease to be entitled to tax credits that were the subject of the invalid objection unless:

- (a) the tax credits are taken into account in an assessment within the 4-year entitlement period
- (b) one of the exceptions discussed in paragraphs 105 to 109 and 114 of this Ruling applies, or
- (c) you later lodge a valid objection at a time that is still within the 4-year entitlement period.

Example 8 – invalid objection

98. *Bill carries on a business of selling clocks and watches. He is registered for GST and lodges returns quarterly.*

99. *Bill does not lodge his BAS for the tax period for the June 2022 quarter, which was due by 28 July 2022. He is instead assessed by the Commissioner.*

Table 9: Relevant dates for Example 8

| Due date for GST return | Last day of the 4-year entitlement period |
|--------------------------------|--|
| 28 July 2022 | 28 July 2026 |

100. *In July 2023, Bill forms the view that he is entitled to further input tax credits that are attributable to the June 2022 quarterly tax period that were not taken into account in the assessment.*

101. *Bill lodges a document that is not a valid objection. While it states Bill has an objection and wants further input tax credits, among other things, it does not identify the assessment to which Bill is objecting or the amount of the further input tax credits he is seeking to claim.*

102. *Unlike a valid objection, this document does not preserve Bill's entitlement to the further input tax credits. He will cease to be entitled to the further input tax credits at the end of 28 July 2026, the last day of the 4-year entitlement period unless, prior to that time, either:*

- (a) *the further input tax credits are taken into account in an assessment; or*
- (b) *he lodges a valid objection for the tax period in which the further input tax credits are attributable and is later found to be entitled to the input tax credits for that tax period.*

103. *In August 2023, Bill lodges a valid objection.*

104. *As Bill has lodged a valid objection to his assessment for the tax period within the 4-year entitlement period, the limiting provisions do not apply to any entitlement to an input tax credit attributable to the tax period that is identified in the objection decision.*

Status: **legally binding**

Exceptions to the limiting provisions

105. There are two exceptions to the 4-year entitlement period in the limiting provisions.

106. The first exception only relates to GST. It addresses a specific situation where the Commissioner amends your assessment for a supply incorrectly treated as input taxed after the 4-year entitlement period for input tax credits for related acquisitions had expired.

107. In this situation, you may remain entitled to an input tax credit despite the expiry of the 4-year entitlement period if:

- (a) the input tax credit is for a creditable acquisition that relates to making a supply
- (b) during the 4-year entitlement period for the input tax credit, the supply was incorrectly treated as input taxed in the assessment of your net amount for a tax period
- (c) after the end of the 4-year entitlement period for the input tax credit, the assessment for the tax period in which the supply is attributable was amended on the basis that the supply is not input taxed
- (d) the amendment was not one that the Commissioner could only make because the Commissioner was of the opinion that there was fraud or evasion (that is, it was not an amendment allowed only under paragraph 155-60(c) of Schedule 1 to the TAA), and
- (e) the input tax credit is taken into account in an assessment at a time when the Commissioner could still amend the assessment for the tax period to which the input tax credit would have been attributable under subsections 29-10(1) and (2) of the GST Act.⁴⁰

108. This exception only applies if the supply is incorrectly treated as being input taxed. It does not apply where you incorrectly allocate or apportion an acquisition between supplies that are input taxed and supplies that are taxable or GST-free.

109. All the listed conditions must be satisfied for the exception to apply. If, for example, the Commissioner cannot amend the assessment for the tax period to which an input tax credit would have been attributable under subsection 29-10(1) or (2) of the GST Act, then the exception cannot apply to that input tax credit. This applies even if all the other conditions are met and means that this exception has limited application.

Example 9 – exception for supply incorrectly treated as input taxed

110. *On 11 April 2020, Brandon makes an acquisition that relates to making a supply which he believes will be input taxed. Accordingly, he does not claim an input tax credit for this acquisition in the GST return for the tax period ending 30 April 2020, lodged on the due date on 21 May 2020, or in any other tax period in the 4 years after 21 May 2020. He makes the supply on 16 September 2020. On 21 October 2020, he lodged the GST return for the tax period ending 30 September 2020, treating the supply as input taxed.*

111. *At the start of April 2024, we commence an audit of Brandon's assessments for the tax periods ending 30 April 2020 (when the acquisition was made) through to 30 September 2020 (when the supply was made). We agree with Brandon to an extension of the period of review for the April 2020 tax period to 31 July 2024.*

⁴⁰ Subsection 93-10(4) of the GST Act.

Status: **legally binding**

112. On 1 June 2024, we amend Brandon's assessment for the tax period ending 30 September 2020 to treat the supply as taxable. Brandon has not claimed the input tax credit in the 4 years specified in section 93-5 of the GST Act (the 4-year entitlement period ended on 21 May 2024). However, his entitlement to the input tax credit has not yet ceased as all the requirements set out in subsection 93-10(4) of the GST Act could still be satisfied. In particular, the input tax credit relates to a supply the treatment of which has been changed from input taxed to taxable after the end of the 4-year entitlement period and the Commissioner may still amend the assessment for the tax period ending 30 April 2020 as a result of the agreement to extend the period of review until 31 July 2024.

113. As a result, Brandon will remain entitled to the input tax credit provided it is taken into account in an assessment by 31 July 2024.⁴¹ If the related input tax credit is not taken into account in an assessment by 31 July 2024, his entitlement will cease.

114. The second exception ensures that you remain entitled to a tax credit where:

- (a) you have asked us to treat a document as a tax invoice
- (b) the request was made before the end of the 4-year entitlement period, and
- (c) we agree to your request after the end of the 4-year entitlement period.⁴²

Date of effect

115. This Ruling applies both before and after its date of issue. However, this Ruling will not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of this Ruling (see paragraphs 75 to 76 of Taxation Ruling TR 2006/10 *Public Rulings*).

Commissioner of Taxation

4 December 2024

⁴¹ Due to the extension of the period of review, 31 July 2024 is the last date on which the Commissioner can amend the assessment for the tax period to which the input tax credit is attributable, assuming that there is no further extension to the period of review and no other exception to the period of review applies.

⁴² Subsection 93-10(5) of the GST Act and section 47-10 of the FTA.

Status: **not legally binding**

References

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Related Rulings/Determinations:

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- H & B Auto Repair Centre Pty Ltd and Commissioner of Taxation [2022] AATA 3561; 2022 ATC 10-651; 115 ATR 130
- JHKW and Commissioner of Taxation [2022] AATA 2875; 2022 ATC 10-643
- Linfox Australia Pty Ltd v Commissioner of Taxation of the Commonwealth of Australia [2019] FCAFC 131; 271 FCR 365; [2020] ALMD 3305; [2020] ALMD 3320; [2020] ALMD 3321
- Messenger Media and Information Technology Pty Ltd and Commissioner of Taxation [2023] AATA 752; 2023 ATC 10-666; 116 ATR 46
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