MT 2024/1EC - Compendium

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Australian Government
Australian Taxation Office

Public advice and guidance compendium – MT 2024/1

Relying on this Compendium

This Compendium of comments provides responses to comments received on draft Miscellaneous Taxation Ruling MT 2024/D1 *Miscellaneous tax: time limits for claiming an input tax or fuel tax credit*. It is not a publication that has been approved to allow you to rely on it for any purpose and is not intended to provide you with advice or guidance, nor does it set out the ATO's general administrative practice. Therefore, this Compendium does not provide protection from primary tax, penalties or interest for any taxpayer that purports to rely on any views expressed in it.

Summary of issues raised and responses

Issue number	Issue raised	ATO response
1	Example 6 of the draft Ruling contains references to 'December 2018' where this appears to contradict the other facts set out in the example. Should these references instead refer to 'December 2017'?	We agree. The references in Example 6 of the draft Ruling to 'December 2018' should have been to 'December 2017'. This error has been corrected in the final Ruling.
2	How do adjustment periods work with the 4-year entitlement period?	The 4-year entitlement period applies only to input tax credits and fuel tax credits. It does not apply to increasing or decreasing adjustments or any other kinds of indirect tax entitlements or liabilities. We have included additional information at paragraph 4 in the final Ruling to reflect this and made it clear that the Ruling does not address adjustments at paragraph 7.
3	Does the exception to the 4-year entitlement period discussed in paragraph 91 of the draft Ruling mean that you have an unlimited amendment period if the reason you missed claiming a tax credit was because you thought it was in relation to an input taxed supply?	No. The exception in subsection 93-10(4) of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act) addresses a specific situation in which the Commissioner amends an assessment for a supply that was incorrectly treated as an input taxed supply after the 4-year entitlement period for input tax credits for related acquisitions had expired. There are numerous requirements that must be met for the exception to apply.

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		We have made updates at paragraphs 105 to 113 of the final Ruling to clearly set out the scope and purpose of this exception. We also note that nothing in Division 93 of the GST Act affects the amendment period under Division 155 of Schedule 1 to the *Taxation Administration Act 1953* (TAA) – the 4-year entitlement period and the period of review are separate concepts. Further information has been added at paragraphs 60 to 62 of the final Ruling to highlight the different subject matter and start dates for each concept.
4	How do the 4-year entitlement period and adjustment provisions apply in circumstances where the ATO backdates the registration of a taxpayer who had undertaken transactions and made related acquisitions while being required to be registered?	The 4-year entitlement rule does not apply to increasing and decreasing adjustments. The operation of the various adjustment provisions is outside the scope of this Ruling (see paragraph 7 of the final Ruling). The 4-year entitlement period applies to tax credits arising in relation to taxpayers that are required to be registered in the same way as it applies to other tax credits. In the event a taxpayer was entitled to input tax credits that were attributable to a period in which they were required to be registered, if the credits are not taken into account in an assessment within the 4-year entitlement period, the taxpayer will have ceased to be entitled to the credit following the end of the period unless an exception applies.
5	The decisions in *Linfox Australia Pty Ltd v Commissioner of Taxation of the Commonwealth of Australia* [2019] FCAFC 131 (*Linfox*) and *Coles Supermarkets Australia Pty Ltd v Commissioner of Taxation* [2019] FCA 1582 (*Coles*) do not support the position of the Commissioner that an input tax credit is only taken into account to the extent that the amount of the input tax credit is actually included in the calculation of the net amount. Instead, the better view is that where any amount of an input tax credit is included in the total amount of input tax credit s used in calculating a net amount or net fuel amount then the full amount of the input tax credit has been taken into account. This follows from the wording of the legislation under which section 11-25 of the GST Act provides that the amount of an input tax credit is equal to the GST payable on the supply of	We do not agree with the view that the position set out in the final Ruling is inconsistent with the decisions in *Linfox* and *Coles*. Our analysis of both decisions and the reasoning underlying our position is set out in the final Ruling, in particular at paragraphs 8 to 15 and paragraphs 20 to 30. We also explained in Appendix 1 to the draft Ruling why we do not consider that a similar view of what was decided in *Linfox* is the better view of the law or of what was said by the Court in *Linfox*. We also do not consider that a view that what is taken into account in an assessment is the acquisition or the full amount of a partially claimed credit can be reconciled with what is said in paragraph 131 of *Linfox* about an integer having been taken into account by reason of it 'having formed part of a calculation (the process) which produced the net amount' or what is said in paragraph 132 of *Linfox* about mistakes. Our view does not turn on whether an amount was actually claimed on a business activity statement but is simply that amounts that a taxpayer has decided not to include in the calculation of a net amount or net fuel amount

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	the thing acquired, before later being reduced as provided for in section 11-30 of the GST Act for partially creditable acquisitions, as demonstrated by the reference to the 'full input tax credit' in section 11-30.	are not taken into account in the resulting assessment as is required by the limiting provisions. We similarly do not agree with the suggested interpretation of sections 11-25 and 11-30 of the GST Act. Section 11-25 of the GST Act does not make you entitled to the 'full input tax credit' amount before this entitlement is reduced under section 11-30 of the GST Act. Rather, section 11-25 expressly identifies that the amount of an ITC for a partially creditable acquisition is always a reduced amount in comparison with what would have been available were it fully creditable. Section 11-30 does not then provide for any reduction in a pre-existing entitlement, but instead simply specifies the formula for how ITCs for partially creditable acquisitions are to be calculated. These 2 provisions stand in contrast to sections 43-5 and 43-10 of the *Fuel Tax Act 2006* (FTA) which were discussed in *Linfox*. Section 43-5 provides an unqualified entitlement and section 43-10 then specifically provides for a reduction to this entitlement rather than a separate formula for calculating the entitlement. This view is also consistent with the use of the term 'full input tax credit' in subsection 11-30(3) of the GST Act. This term is specifically defined to mean 'what would have been the amount of the input tax credit for the acquisition if it had been made solely for a creditable purpose and you had provided, or had been liable to provide, all of the consideration for the acquisition'. Contrary to what is suggested in the issue raised, this definition makes clear that it refers to a hypothetical amount to which the taxpayer has never been entitled. As defined, the term makes clear that the amount of the ITC is only ever the amount worked out under subsection 11-30(3). This supports the Commissioner's position that only the amount of this entitlement forms an integer in the calculation of the assessed net amount.
6	On the Commissioner's view, Division 93 of the GST Act operates separately to the period of review and extensions to the period of review will not affect the 4-year entitlement period. This can produce an asymmetry where a taxpayer may remain liable for goods and services tax (GST) on	We agree that the 4-year entitlement period will often differ from the period of review for the tax period to which the input tax credit could have been, or is, attributable. We have added a further explanation of the different subject matter and dates for the 2 types of periods at paragraphs 60 to 62 of the final Ruling.

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	supplies made in a tax period but will have ceased to be entitled to input tax credits. The ATO should not adopt a view under which Division 93 overrides the TAA. Alternatively, the Commissioner should exercise the Commissioner's remedial power to amend the law to permit the adoption of this view.	We note that this outcome is not limited to cases where the period of review is extended. It will, for example, be the case whenever an input tax credit becomes attributable to a tax period after the tax period to which it was attributable under subsections 29-10(1) or (2) of the GST Act such as where the taxpayer only later obtains a tax invoice. The 4-year entitlement period will often also differ from the period of review for the tax period to which the input tax credit would have been attributable under subsections 29-10(1) or (2). This occurs as the 4-year entitlement period usually commences from a fixed date – the date the GST return for the period was due, while the period of review commences from a flexible date – the date the Commissioner first gives notice of the assessment to you. A necessary consequence of these different start dates is that the periods will differ. The recognition of this difference does not involve Division 93 of the GST Act overriding Part IVC of the TAA (or vice versa). They are different periods that apply for different purposes. In relation to the Commissioner's remedial power (CRP), there is a specific process to follow ahead of any potential use of the CRP as set out on our website at Commissioner's remedial power. It is a matter for stakeholders as to whether to submit a CRP application. However, as an initial observation to assist stakeholders who may be contemplating an application, we do not consider it likely that the CRP could be exercised as proposed. The CRP can be exercised only where the proposed change is, among other things, consistent with the intended purpose or object of the provision. The distinction between the period of review and the 4-year entitlement period is not rare or accidental. Instead, it is a frequent occurrence arising as a necessary result of the design of the 4-year entitlement period. Likewise, the absence of any power of the Commissioner to extend the 4-year entitlement period appears to reflect a policy decision, noting that there is no equivalent of the previous 'stop the clock' notice regime. On this basis, we have doubts about whether it would be possible to utilise the CRP as proposed. We do appreciate that there are concerns about the asymmetrical outcomes in cases where the period of review for a tax period continues after the expiry of the 4-year entitlement period for input tax credits that are or were

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		attributable to that tax period. These concerns are policy matters and have been referred to Treasury. In the final Ruling, we have updated paragraph 62 to make it clear that extensions to a period of review have no effect on the 4-year entitlement period. We encourage taxpayers who are concerned about this issue to engage with ATO early to avoid the losses of entitlements to tax credits. We especially encourage taxpayers who may not have lodged GST or fuel tax returns to engage with the ATO as soon as possible to ensure they can claim their tax credits in their GST or fuel tax returns before the end of 4-year entitlement period. Recent AAT decisions such as *Messenger Media and Information Technology Pty Ltd and Commissioner of Taxation* [2023] AATA 752 have highlighted, there is nothing that can be done after the end of the 4-year entitlement period to restore entitlements to input tax credits that have ceased.
7	The draft Ruling states that a credit entitlement is preserved where an objection asserting entitlement is lodged within the 4-year entitlement period. We request that the Commissioner confirm that an objection will be treated as being lodged within time for this purpose where the Commissioner has granted a request under section 14ZX of the TAA for an extension of time to object.	An objection that is made **after** the end of the 4-year entitlement period does not preserve or revive a credit entitlement. Any entitlement permanently ceased at the end of the 4-year entitlement period. The Commissioner does have a discretion that can allow a late objection to be treated as being lodged within time for the purposes of Part IVC of the TAA. However, this discretion applies only for the purposes of Part IVC of the TAA. It does not apply to Division 93 of the GST Act – there is no comparable discretion of the Commissioner available in that context. As discussed in Issue 6 of this Compendium, while this would be a matter to be considered in the context of any formal application for the use of the CRP, the fixed nature of the 4-year entitlement period appears to reflect a policy decision and, on this view, would be outside of the scope of the CRP to change. As the underlying concerns are policy matters, they have been referred to Treasury. We have updated the final Ruling to expressly indicate that an objection will only be effective to preserve entitlement to a tax credit if it is actually made within the 4-year entitlement period and the discretion under section 14ZX of the TAA does not apply in the context of Division 93.

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8	The Commissioner should only apply the view prospectively from the date the Ruling is published. The view should not be applied to amendment requests received by the Commissioner before the publication of the draft Ruling.	We have carefully considered whether the ATO's views of the limiting provisions should be applied prospectively and consider there is no basis for doing so because there is no practical effect on amendment requests received before the draft Ruling was published. In reaching this conclusion, we have considered the following law administration practice statements: • PS LA 2009/4 *Decisions made by the Commissioner in the general administration of the taxation laws* (as updated 31 July 2024) • PS LA 2011/27 *Determining whether the ATO's views of the law should be applied prospectively only.* The Commissioner's duty is to apply the law as he understands it to be (see *Macquarie Bank Limited v Commissioner of Taxation* [2013] FCAFC 119 at [11]). Where the Commissioner amends an assessment, this must be done consistently with his view of the law as he understands it to be. This is the view set out in the Ruling. He does not have the power to give effect to an amendment request now that is inconsistent with that view.