

# GST alert

Grant Thornton periodical reporting  
on Goods and Services Tax issues  
for clients in business.

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This edition of GST Alert focuses on the **entitlement to input tax credits**. The ATO will examine carefully an enterprise's entitlement to credits; it is expected that many adjustments will be made due to credits being claimed that are not creditable.

## Entitlement to input tax credits

Input tax credits can be claimed unless the recipient is not carrying on an enterprise. Credits cannot be claimed on any sort of private expenditure (unless FBT is accounted for) nor where input taxed supplies have been made.

There are specific non-creditable items such as:

- the acquisition of land under the margin scheme
- recreational club expenses
- expenses for a leisure facility
- entertainment expenses
- non-compulsory uniforms
- non-deductible, non-cash benefits, and
- car parking expenses

These exceptions are a constant source of error. It is necessary to consider the systems that are in place to check and authorise invoices. Usually invoices are authorised by the person ordering the supply or making the purchase and they will expect the GST to be claimable. Accounts payable clerks may be temporary employees, change frequently or maybe ill trained. There is usually a need for a manual or instructions clearly detailing when GST can be claimed and available to any person who either authorises or inputs invoices into the system. Clear expense forms also assist in ensuring that the correct amount of GST is claimed.

## Tax invoices

The first use of an item determines whether the credit is available, although there may be some later adjustments if the use changes. The entity claiming the credit must have evidence to support the claim for GST. When expenditure is below \$55 (including GST) there is no need to retain a tax invoice but the ATO will expect to see other evidence for the credit such as expense sheets. Tax invoices are required for purchases

exceeding \$55 and there are different tax invoice requirements for purchases below \$1,000 and those above \$1,000. Without the tax invoice no input tax credit is claimable.

There are several variations upon the general rules regarding tax invoices. For instance, where there is an offer document (such as an invitation to attend a conference) this document can also be treated as a tax invoice if it bears the legend "this document will be a tax invoice for GST when you make payment". Also, tax invoices for progressive or periodic supplies can be issued annually with a schedule detailing the date of payment and this becomes a tax invoice for that individual payment when it becomes due.

## Input Taxed Supplies

Whilst input tax credits are not available where there are input taxed supplies, there are a number of concessions to allow credit. Firstly, there is the financial acquisitions thresholds (FAT). This allows credits to be claimed where the amount of GST incurred is relatively small. The purpose of the FAT is to allow businesses that are predominantly making taxable or GST-free supplies to claim all input tax credits without needing to restrict the credits that are claimed on relatively minor input taxed financial supplies. Where the FAT is not exceeded all input tax can be claimed.

There are two tests to be satisfied, a backwards and forwards threshold test. The entitlement to input tax credits for acquisitions that relate to making financial supplies are only denied from the time the entity first exceeds a threshold. The threshold for the FAT is less than both \$50,000 and 10% of all credits that the entity is entitled to. It should also be noted that any financial acquisitions relating to borrowings for taxable supplies can also be claimed in full, no matter if it exceeds the FAT.

### Reduced Input Taxed Credits

Where a full input tax credit is not claimable, a reduced input tax credit (RITC) may however be claimed. A reduced input tax credit is an acquisition for which a 75% credit is available. Such acquisitions are usually related to financial supplies. The reduced input tax credit prevents typically larger financial services entities from obtaining a GST advantage over typically smaller financial services entities by in-sourcing its services and administration functions. Each type of business (such as banking, mortgage finance, securities) has its own specific list of RITC eligible supplies. These listings are comprehensive and usually exclusive. In addition, a financial supply facilitator (e.g. a broker) may also supply certain services to facilitate financial supplies and this also qualifies for a RITC. The application of the RITC is a further complexity in the GST Act - there are 114 items listed in the table in the Regulations. GST Ruling GSTR 2004/1 examines each of these items and analyses them in detail, meaning a ruling of over 160 pages!

### Attribution and Apportionment

Where there is a mixture of both input taxed and taxable supplies it is necessary to attribute and apportion GST incurred to determine the amount of credit that can be claimed. It is necessary to attribute input tax incurred, as far as possible, to taxable supplies. This GST can be claimed in full. It is then necessary to attribute input tax as far as possible to input taxed supplies. This GST is not claimable as a credit unless it is below the thresholds already mentioned. There would normally be a balance or residual amount of GST that has been incurred on overheads. This is described by the ATO as 'establishment' or 'enterprise' costs. This needs to be apportioned (split between the taxable supplies and input taxed supplies) so that a proportion of the GST incurred can be claimed as a credit (ie relating to taxable supplies) and a proportion is not claimed (ie relating to input taxed supplies). The apportionment can be undertaken by a variety of methods (such as according to turnover, inputs, transaction counts, staff use, floor space used etc). The ATO's only requirement is that the apportionment method is fair and reasonable.

### New developments

The difficulty of obtaining an accurate valuation is illustrated by *Derring Lane Pty Ltd v Fitzgibbon* [2006] VSC 46, Supreme Court of Victoria, Hargrave J, 21 February 2006. The vendor applied the margin scheme using a professional valuer to provide a valuation. The purchaser, however, obtained a second differing valuation and sued the original valuer for negligent misstatement. The Supreme Court of Victoria confirmed the Tribunal's dismissal of the claim as the purchaser failed to demonstrate any reliance on the original valuation.

**Determination GSTD 2006/4** defines land held by Government Entities for the purposes of the margin scheme. Where land is held in one Government agency since 1 July 2000, but was held by another agency prior to 1 July, then it is treated as being held by the Commonwealth, State or Territory since before 1 July, as long as there are no improvements to the land. GSTR 2006/5 then defines 'what is the meaning of Commonwealth, State or Territory'. This is defined as;

1. departments, executive agencies, statutory agencies
2. an organisation that is not an entity but established by the Commonwealth, State or Territory to carry on an enterprise or is established for a public purpose and can be separately identified.

It is not intended that a Government entity will be limited to these and not all corporations that the Commonwealth, State or Territory has an interest in is part of the Government; but if the entity is discharging Government functions then it is the Commonwealth, State or Territory.

**GSTR 2006/6** outlines the ATO's views in respect of improvements to land (for Subdivision 38N and Division 75 of the GST Act). Unimproved land means land in its natural state. For there to be improvements to land there must be:

- human intervention,
- physical location on the land, and
- enhancement of value

#### For further information please contact:

**Adelaide**  
Philip Paterson  
67 Greenhill Road  
Wayville SA 5034  
T 08 8372 6666  
F 08 8372 6677  
E info@gtsa.com.au

**Melbourne**  
Mark Cummings  
Rialto Towers  
525 Collins Street  
Melbourne VIC 3000  
T 03 9611 6611  
F 03 9611 6666  
E info@gtvic.com.au

**Perth**  
Peter Fallon  
256 St George's Terrace  
Perth WA 6000  
T 08 9481 1448  
F 08 9481 0152  
E pfallon@gtwa.com.au

**Brisbane**  
Bob Lunney  
Grant Thornton House  
102 Adelaide Street  
Brisbane QLD 4000  
T 07 3222 0200  
F 07 3222 0444  
E info@gtqld.com.au

**Sydney**  
Robert Quant  
383 Kent Street  
Sydney NSW 2000  
T 02 8297 2400  
F 02 9299 4445  
E info@gtnew.com.au

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