

Summary

Managing GST is an ongoing project for businesses and their advisers. This chapter provides a general plan that businesses may follow in meeting this task.

12-000 Dealing with GST

Although the GST has been in full operation since 1 July 2000, many businesses will still be facing it for the first time — either because they are newly established or because recent changes in their turnover have forced them to register. In addition, some businesses will, even now, still be grappling with the challenges of managing the tax.

To be in a position to manage GST, businesses will normally have to make a significant investment in ensuring that they are “GST-ready”. At a minimum, this means that they must:

- understand how the GST applies to them
- ensure that the business is able to handle the necessary changes.

Because of the way GST works, businesses may also need to ensure that their suppliers and customers are sufficiently informed. GST is different from most other taxes that people are familiar with. Most of those taxes, such as income tax, are “private” taxes that are not anyone else’s direct business. With GST, however, many people who deal with you have an interest in knowing whether GST applies to the transaction and, if so, how much. For the system to work properly, you therefore need to ensure that the people you buy from and the people you sell to are aware of their GST obligations.

The costs of preparing for GST, and for ongoing compliance, vary widely. However, in practically all cases, they are significant and, in many cases, they are substantial. In general, the costs are higher for businesses that have not had experience of dealing with sales tax. You also need to keep in mind that:

- start-up and compliance costs are likely to have a significant effect on cashflow, particularly in the early stages of implementation (¶21-070)
- in setting prices, businesses are entitled to *recoup* compliance costs that have been reasonably incurred as a result of changes in the tax system
- a tax deduction may apply for some start-up costs (¶24-100).

12-010 A 20-point plan for managing GST

This is a 20-point plan to help businesses and their advisers to manage GST, together with cross-references to further explanations and planning considerations. Many of these points will, of course, also need to be considered where you are reviewing the tax position of a company that you are planning to purchase.

► 1 Have a coordinator

You should have a qualified person (or team) to identify, and ensure compliance with, the GST requirements that apply to the business.

► 2 Be aware of GST impacts

You need to be aware of how GST affects your business. This includes:

- how GST applies to the various types of supply the business makes — taxable, non-taxable, GST-free or input taxed (¶1-160)
- what types of input tax credits the business will be able to claim on its acquisitions (¶5-000)
- what effect this may have on selling or purchasing decisions (¶21-010)
- how the business may be affected by any exemptions and special rules (¶1-180)
- how customer and supplier relationships may be affected (¶21-010)
- which areas may require professional advice.

► 3 Appreciate that GST is not just another tax

GST is not just another tax that can be added onto your existing business practices. As many of the following points make clear, businesses need to be prepared to make significant changes in business practices in order to comply with the new tax and take advantage of some of the opportunities it offers. While compliance will be a burden, it may also act as a spur to updating procedures, improved record-keeping and better credit control.

► 4 Take advantage of assistance

The business should ensure that it is taking advantage of government assistance, including access to information (¶2-110). Where appropriate, it should also take advantage of any tax concessions available (¶24-100). Assistance from outside advisers may also be necessary or desirable.

► 5 Train management, staff and agents

Management, staff and agents must understand how the GST affects business strategies, business practices and relationships with customers and suppliers.

Some of the areas requiring particular attention are:

- invoicing (point 13)
- credit control (point 11)
- cashflow requirements (point 11)
- timing of sales and purchases (point 11)
- pricing (point 10)
- marketing (point 10)
- return preparation (point 15)
- contracts and legal matters (point 18)
- relationships with suppliers (point 17)
- relationships with customers (point 17).

► 6 Attend to registration requirements

Most businesses do not have any option about registration as they have turnovers above \$75,000. Even for those who are not obliged to register, there are often good reasons to do so — for example, the ability to claim input tax credits. For the pros and cons of registration, see ¶3-010.

You also need to consider whether special registration rules — such as grouping or GST branches — are appropriate for your business.

► 7 Choose your tax periods

You need to decide whether your tax period is quarterly, monthly or annual (¶7-100). Normally, tax periods are quarterly, but monthly tax periods *must* be used in certain situations and *may* be adopted in all cases. There will be some situations where monthly tax periods will be desirable — for example, if you are an exporter (¶21-070). There are also various options for aligning tax periods with balance dates.

► 8 Choose your accounting method

You must identify and, where relevant, choose the accounting method appropriate to your business (¶7-200). Most businesses use the accruals (or invoice) method, but there are some advantages in choosing to use the cash basis where this is available. The choice of accounting method can have important implications for cashflow (¶21-050).

► 9 Differentiate stock and services

You need to differentiate stock and services that are taxable from those which are input taxed or GST-free. This is necessary for pricing and processing.

► 10 Examine implications for pricing and marketing

For a full discussion of pricing and marketing issues, see ¶21-010 and following.

► 11 Examine implications for cashflow

GST typically has a significant effect — positive or negative — on cashflow. This is affected by factors such as:

- whether the business' supplies are taxable, GST-free or input taxed
- the timing of purchases and sales
- whether there are any large capital purchases planned
- the method of accounting for GST
- whether the business has monthly or quarterly tax periods
- whether the business is a net GST payer or is entitled to GST refunds
- whether a business that is input taxed uses outsourced services
- possible changes in customers' purchasing patterns
- the business' credit control, bad debt procedures and time-to-pay rules
- whether there are long-term instalment contracts

- whether contracts are drafted to ensure recovery of GST and entitlement to input tax credits
- the impact of GST compliance costs.

These factors are considered in detail at ¶21-050 and following. Particular care also needs to be taken to ensure that an amount representing the GST collected is still available at the time when it has to be accounted for to the ATO.

► 12 Check labelling and stationery

GST must be incorporated into price tags, price lists and advertising material.

► 13 Have procedures for tax invoices

For all supplies the business makes involving GST, you should have a system which ensures that tax invoices are produced. In practice, most businesses issue tax invoices with all sales, to avoid the effort of having to discriminate between different types of customer. The system should also ensure that tax invoices accompany all purchases of inputs and that they are correctly filled out (¶5-100).

For all business acquisitions, it is normally essential to hold a tax invoice in order to claim input tax credits (¶5-100). It is therefore crucial that you have a system to ensure that all tax invoices for your acquisitions are collected and retained.

► 14 Track adjustments

You need procedures to track changes in the use of items which were purchased for business purposes so that GST adjustments can be made and, where necessary, adjustment notes issued (¶6-000).

► 15 Attend to GST returns

You need to have procedures and record-keeping to ensure that GST returns are prepared and lodged on time (¶8-005). Timing will depend on whether you have monthly, quarterly or annual tax periods. You should be prepared to lodge early if you are entitled to a refund.

► 16 Accounting systems

Accounting software and systems need to be able to include GST on sales and to capture input tax credits on purchases.

Smaller businesses can buy off-the-shelf packages which contain GST capabilities. Upgrades will be more difficult for larger businesses due to their increased size and complexity.

Upgraded systems must be able to:

- identify whether GST is chargeable on the sale of goods and services
- identify whether an input tax credit arises on purchase of an input
- detect any changes to sales and purchases (such as returns and discounts)

- ensure that credit terms with customers and trade terms with suppliers do not jeopardise your cashflow position
- provide the necessary documentation
- provide information to flow into the GST return for the correct tax period.

Be aware that even very small systemic errors can lead to major discrepancies where they recur in a large number of transactions over a period.

You should also be aware that your method of accounting for GST may affect your accounting systems, notably where it differs from the method your system previously used. If you use the cash method for GST purposes, but your accounting system is set up on the accruals method, you may need to make adjustments to many transactions. You may find that it is simply easier to adopt the invoice method of accounting for GST so that it matches your accruals-based accounting system.

Point-of-sale hardware — terminals, cash registers, etc — also needs reviewing.

It is also important to ensure that your systems and processes keep up with changes in your business, especially in times of rapid growth. Be aware that the adequacy and integrity of your business systems in accounting for GST may play a vital role in the event that the ATO is considering audit action (¶18-180).

► 17 Liaise with customers and suppliers

You should ensure that pricing and invoicing requirements are understood by your customers — and can be explained by your staff, including call centres. The requirement for complying tax invoices should be understood by all parties. Your credit control requirements may need tightening (¶21-060) and this should be explained to customers.

If the business provides or uses contractors, the GST implications must be clearly understood by both parties (¶4-090).

► 18 Check status of contracts

All continuing contracts which commenced before 1 July 2000 should have been reviewed to check whether, and how, GST may apply. Particular attention should be paid to transactions such as leases and subscriptions (Chapter 19).

All new supply contracts should take GST into account, where appropriate (¶19-400). You may also need to check on the cashflow implications of standard provisions allowing time for payment (¶21-060) and contracts such as instalment sales (¶21-070). This is an area where professional advice should be sought.

► 19 Carry out a business practice review

In the light of GST, you need to analyse the way you conduct your business to determine whether changes to business practice are desirable. Some typical areas that may be affected are cashflow (¶21-050), groups (¶17-000) and outsourcing (¶4-090).

Existing company structures may also need to be reviewed if they had been set up with superseded sales tax considerations in mind; for example, if companies have been interposed to defer the payment of sales tax at the wholesale level.

Refer to Chapter 21 for general planning considerations.

► 20 Prepare for the future

The planning process is continuous. The ramifications of GST for all future key strategic decisions and transactions should be considered. Procedures to ensure that this is done should be put in place.

¶2-020 Checklist for management of GST administration

The ATO and the Australian National Audit Office have published *A Better Practice Guide for the Management of GST Administration*. Although that Guide is intended primarily for government departments, the ATO says it would be relevant to any large public or private organisation. The Guide identifies and explains the following “indicators of better practice”:

- (1) apply a risk management approach to GST administration
- (2) establish an internal control environment that effectively supports GST processing
- (3) identify and document all GST-impacted transactions in the organisation’s operations and the technical positions that related to them
- (4) process and report GST transactions in an accurate, complete and timely manner
- (5) manage changes that impact on GST administration
- (6) monitor and review the effectiveness of GST administration.

¶2-110 Assistance from ATO and other government departments

GST assistance “visits”

The ATO conducts a program of tax assistance (including GST) visits to businesses. These visits are intended to give practical on-the-spot advice.

The Commissioner has stressed that the visits are not audits and are totally voluntary. It is the taxpayer’s choice as to whether they want a visit, how long the visit lasts, what level of advice they want, and what level of information, if

Summary

Registration is the key to the operation of the GST system. Without registration, GST normally will not apply and input tax credits cannot be claimed. Registration is compulsory for most businesses, but there are some important exemptions if you have a low turnover. In this chapter, we look at the requirements for registration, how you go about it and the procedures for cancellation.

¶3-000 Importance of registration

Registration is important for a number of reasons. The main ones are:

- GST is normally only payable on a sale or supply if you are registered, except in the case of imports (¶4-105)
- input tax credits can only be claimed if you are registered (¶5-010)
- GST returns must be lodged if you are registered (¶8-000).

All of these also apply if you are simply *required* to be registered.

As far as registration is concerned, there are:

- (1) those who cannot be registered
- (2) those who can be registered, but are not required to be
- (3) those who are required to be registered.

You *cannot* be registered unless you are carrying on an enterprise (¶3-020), or are intending to do so from a particular date (s 23-10).

You *can* be registered if you are carrying on an enterprise, or are intending to do so from a particular date (s 23-10). Non-residents as well as residents are eligible.

You are *required* to be registered if you are carrying on an enterprise, and your GST turnover is \$75,000 or more (s 23-5). This is called the registration turnover threshold (s 23-15). For non-profit bodies, the corresponding threshold is generally \$150,000 (¶3-030).

If you are required to register, but fail to do so, you become liable for penalties and even prosecution (¶18-300; ¶18-305).

A taxpayer normally cannot be retrospectively required to register beyond a period of four years (¶3-040).

You can only be registered if you are an "entity" (¶3-015).

Limited registration entities

For simplified rules designed to reduce the impact of the registration rules for certain non-residents, see ¶3-075.

[GSTG ¶5-000]

¶3-010 Pros and cons of registration

Most businesses do not have any choice about whether to register, as they are carrying on an enterprise and exceed the registration threshold. However, even where it is not compulsory, there are strong incentives to register. Here are some of the factors you may consider.

- Unless you are registered, you cannot normally claim input tax credits for the GST you pay on your business inputs, nor pass on entitlement to claim credits to your customers. This may not be so important for businesses that primarily make input taxed supplies (eg superannuation funds), as their ability to claim input tax credits is restricted in any event.
- Business suppliers and customers may prefer, or even insist on, dealing only with other registered businesses.
- Some small businesses may decide to register simply to avoid the administrative chore of continually checking whether their current or projected turnover is approaching the relevant threshold.
- Small businesses such as contractors may decide to register to avoid the embarrassment of "advertising" that their turnover is below the threshold.

Although business customers normally will pay GST-inclusive prices, they will typically be able to recover that GST component by claiming input tax credits. The imposition of GST may therefore not have a significant net effect, except to the extent that there may be some cashflow disadvantage for the customer.

However, this will not apply if the customer is an end-user, or is an input taxed business such as a financial institution. For those customers, the GST will represent an increased cost. A supplier whose customer base falls into this category may therefore find it advantageous not to register, provided the supplier:

- is not concerned with claiming input tax credits itself
- has a GST turnover less than the prescribed threshold.

Apart from pricing issues, the main advantage of not registering is that paperwork will be reduced — records need not be kept of GST or input tax credits, the use of items need not be tracked, returns need not be lodged and so on. These compliance costs can be significant. Businesses, particularly sole traders and smaller businesses, also need to be aware that if they register, then all the enterprises they carry on — not just their main one — are subject to the GST system.

Where a deceased person was registered, registration will also normally be advisable for trustees of the deceased estate in order to avoid automatic GST adjustments arising on death (¶6-415).

Currently, over two million businesses are registered for GST.

Registration and PAYG

Some people claim to operate as independent contractors, outside the PAYG system, when arguably they could be classed as employees. This issue may come to a head if those people apply for registration, as employees are not carrying on enterprises and therefore cannot be registered as such (¶3-020).

Taxpayers that are registered, or that are required to be registered, are not eligible to pay their PAYG instalments annually.

Registration and ABNs

It is normally necessary to quote an Australian Business Number (ABN) on invoices to business customers to avoid tax being withheld (¶3-050). However, it is not necessary to register for GST in order to obtain an ABN. A business may apply for an ABN even though it does not register for GST. Conversely, a business may register for GST even though it is not entitled to an ABN, for example because it is not carrying on business in Australia.

[GSTG ¶5-000]

¶3-015 Only "entities" can be registered

To be registered, you must be an "entity" (s 23-5; 23-10). An entity means:

- an individual or natural person
- a "body corporate". This includes a company, building society, credit union, trade union, statutory body, strata title body corporate (¶11-200), municipal council, incorporated association, and certain governing bodies of various religious institutions (*Miscellaneous Taxation Ruling MT 2006/1*)
- a "corporation sole". This is a corporation consisting of one person and that person's successors to a particular position, for example, a bishopric
- a "body politic", ie a government. Government departments are technically not entities but can be separately registered (¶3-080)
- a partnership (see below)
- any other unincorporated association or body, for example, charities, clubs or certain syndicates. To qualify, something more than a common aim or purpose is necessary. Typical characteristics would include: members of the association; a contract binding the members among themselves; a constitutional arrangement for meetings of members and for appointing officers; freedom to join or leave the association; continuity of existence; and a moment in time when a number of persons combined to form the association. However, not all these characteristics are essential (*Conservative and Unionist Central Office v Burrell (Inspector of Taxes)* [1982] 2 All ER 1; *Miscellaneous Taxation Ruling MT 2006/1*)

- a trust, or the trustee of the trust at any given time (see below)
- a superannuation fund, or the trustee of the fund at any given time (¶10-080) (s 184-1).

Non-charitable public ancillary and prescribed private funds (¶15-000) may also register and operate as enterprises for GST purposes.

Types of partnership

A partnership means an association of persons carrying on business as partners (a "general law" partnership) and also an association of persons who simply are in receipt of income jointly (a "tax law" partnership). Both are registrable "entities" for GST purposes. The ATO accepts that, for GST purposes, a mere change of membership of a general law partnership does not mean that the old partnership is terminated and a new partnership entity is created, provided there is a continuity clause and no substantial change in the partnership business (*GST Ruling GSTR 2003/13*). In contrast, any change in the membership of a tax law partnership terminates the partnership (*GST Ruling GSTR 2004/6*; see also *Russell v FC of T* 2009 ATC ¶20-143).

The ATO considers that a tax law partnership commences when the persons associate and carry on the activity from which the income will be received — this means, for example, that it can claim input tax credits on the acquisition of the property from which income may be derived jointly (*GST Ruling GSTR 2004/6*).

As to whether an enterprise is being carried on by the partnership or by the partners themselves, see ¶3-020. For the ATO's views on supplies by partners and partnerships, see ¶4-010.

A mere joint venture which does not involve a partnership or the creation of a separate entity is not itself an "entity". These ventures are called non-entity joint ventures. They typically involve a contractual arrangement to jointly control an economic activity in order to obtain individual benefits, as distinct from joint or collective profitability. For ATO views on racing syndicates and groups, see the ATO Fact Sheet *GST for the Racing Industry*.

For example, a property development arrangement was held to be carried on by a partnership, not simply as a non-entity joint venture, where there was:

- a mutual interest in the carrying on of the business for the purpose of profit or gain
- mutual confidence that the parties would engage in the venture for joint advantage only
- sharing of profits and losses from the venture, as distinct from sharing of product (as in some mining ventures)
- mutual agency in the sense that each party was a principal of the business and may bind the other (*Yacoub v FC of T* 2012 ATC ¶20-328).

Trusts

Both the trust and the trustee may be treated as entities (s 184-1(1), (2)). The reason for this is apparently that a trust is not a legal person in its own right and cannot have legal rights or obligations. The ATO interprets this as meaning that the relevant entity is the trust, with the trustee standing as that entity when a legal person is required, eg for transferring property or signing documentation (*GST Ruling GSTR 2006/1*). Accordingly, it considers that the registration should be in the name of the trustee. A public company acting as the "responsible entity" of a managed investment scheme was held to be entitled to register on this basis (*Interpretative Decision ID 2007/7*).

For the ATO's views on supplies by trustees, see ¶4-010. For the *liability* of trustees, see ¶18-270. For the treatment of Investor Directed Portfolio Services (IDPSs), see ATO *GST Industry Issues — Financial Services: Issues 13.3 and 13.4*.

Other aspects

A body that acts in various capacities can be treated as constituting different entities for GST purposes. This means, for example, that a person acting as a trustee can make a taxable supply to itself acting in an individual capacity. However, where a new trustee of a trust is appointed to replace the original trustee, without any change in the underlying trust, the transfer of assets to the new trustee is not treated as a supply to a new entity (s 184-1(2)).

Entities can also include sub-entities of non-profit bodies (¶15-080).

[GSTG ¶5-045]

¶3-020 Carrying on an enterprise

An entity cannot be registered unless it is carrying on an "enterprise" (s 23-5; 23-10). Enterprise is defined very widely (s 9-20). The most common example of an enterprise is a business. More specifically, an enterprise means:

- an activity or series of activities done in the form of a **business, trade, profession, vocation or calling**. The Commissioner interprets this as including business-like activities that are not carried out for profit, for example, by bodies corporate of apartment blocks (*Body Corporate, Villa Edgewater Courts 23092 v FC of T 2004 ATC 2056*), or non-profit clubs or associations (*Miscellaneous Taxation Ruling MT 2006/1; GST Determination GSTD 2006/6*). In determining whether a part of an enterprise is itself an enterprise, the Commissioner will take into account factors such as the degree of autonomy, and whether there is a separate management structure, a system of internal user charging, a separate budget and agreements with internal service providers or external customers (*Miscellaneous Taxation Ruling MT 2006/1; GST Ruling GSTR 2002/5*). Trustees who were appointed and remunerated to carry out the sale of a development site were held to be carrying on an enterprise where they retained agents, solicitors and valuers, gave instructions for the marketing, liaised with the parties, prepared the contract, and arranged

and implemented the sale (*Toyama Pty Ltd v Landmark Building Developments Pty Ltd 2006 ATC 4160*; see also *Touram Pty Ltd v FC of T 2008 ATC ¶10-070*). In a case involving rather exceptional facts, a company controlled by an art collector/investor, which over a period of eight years spent \$4.8m on artworks but sold only a very small number of lesser works, was held to be carrying on an enterprise where: (1) its activities were apparently systematic and organised on a business-like basis; and (2) there was an intention to sell, where appropriate, when the circumstances were right (*FC of T v Swansea Services Pty Ltd 2009 ATC ¶20-100*). Similarly, in what the tribunal considered was a "finely balanced" case, a luxury car collector/dealer was held to be carrying on an enterprise even though only one car was sold and that was at a loss (*Davsa Forty-Ninth Pty Ltd v FC of T [2014] AATA 337*). However, there was no such enterprise in a similar "one car" case where there was an absence of records and little independent evidence that the car had been taken for test drives (*Criterion Prestige Pty Ltd v FC of T [2015] AATA 468*). Similarly, a building project manager who spent a few hours a week researching horse breeding matters and had a minority interest in up to eight horses, but made no profit from these activities, was not carrying on an enterprise of horse breeding (*D'Arcy v FC of T 2008 ATC ¶10-041*; see also *Trnka v FC of T 2012 ATC ¶10-262* and *Taxpayer v FCT [2015] AATA 737* (equine hospital and medical supplies)). A company whose "project management" activities consisted of little more than receiving invoices was held not to be carrying on an enterprise in *Dotrac Pty Ltd & Anor v FC of T [2014] AATA 336*.

- an activity or series of activities done in the form of **one-off ventures in the nature of trade**. This is intended to catch a commercial activity that does not amount to a business. For example, the ATO considers that acquiring and refurbishing a suburban shop for resale at a profit could amount to an enterprise (*GST Ruling GSTR 2001/7*).

Example

A taxpayer's enterprise consists solely of the acquisition and refurbishment of a suburban shop for resale at a profit. That activity, though isolated, is treated as an enterprise. In addition, as noted at ¶3-030, the disposal of the shop is not treated as transfer of a capital asset, with the result that the proceeds of the sale are not excluded from the taxpayer's projected GST turnover.

However, the fact that a profit is made does not necessarily mean that the activity is commercial. So, for example, the sale of the family home, car and other private assets would not normally be caught (*Miscellaneous Taxation Ruling MT 2006/1; GST Determination GSTD 2006/6*). Nor would the *private* sale by a car dealer of his/her own car. The "mere realisation" of an investment asset is also not, in itself, an enterprise. For the position where land is subdivided and sold, see ¶11-063.

The ATO considers that if you provide ride-sourcing services to the public (¶12-130), you are likely to be carrying on an enterprise. This is particularly the case if you operate in a business-like manner where, for example, invoices are provided to your customers. However, if you operate infrequently or your activities are otherwise non-commercial, you may not be carrying on an enterprise.

- **leasing, licensing or granting interests in property**, if this is done on a regular or continuous basis. The Commissioner considers that an activity is "regular" if it is repeated at reasonably proximate intervals, and "continuous" if there is no significant cessation or interruption to the activity (*Miscellaneous Taxation Ruling MT 2006/1; GST Determination GSTD 2006/6*). On this basis, the occasional letting out of a holiday home for a few weeks a year would not be regarded as regular or continuous. However, if the holiday home was actively advertised for lease all year round, and was actually leased for 20 weeks a year, the Commissioner considers that this may constitute leasing on a regular and continuous basis. Similarly, where there is already an enterprise of leasing a building, that enterprise continues during the period of temporary vacancy where a new tenant is being actively sought. However, where the building has not previously been leased to a tenant, but is being actively marketed, an enterprise of leasing is not operating until the activity of leasing actually commences, ie when at least one tenant enters into an agreement to lease, or occupies the building (*GST Ruling GSTR 2002/5*; see also *Cyonara Snowfox Pty Ltd v FC of T* 2012 ATC ¶20-362).

Example

The Commissioner considers that an enterprise of leasing would be carried on in a situation where: (1) a commercial building had been leased for a number of years; (2) various floors were vacant but were being actively marketed; and (3) the remaining floors were being refurbished (*GST Ruling GSTR 2002/5*).

- activities of bodies that are eligible **recipients of tax-deductible gifts**
- activities of a trustee or manager of a **complying superannuation fund** (¶10-080)
- activities of **charities** (but these are also entitled to some exemptions: see Chapter 15)
- activities of the **Commonwealth, a state or a territory** (including government departments and certain local governments: *GST Ruling GSTR 2006/5*), or corporations established for public purposes.

It is not necessary that there be a series of activities. A single activity can be an enterprise.

It may also happen that a single entity carries on more than one enterprise, or carries on some activities that are an enterprise and some that are not.

Examples

- (1) A self-employed doctor also runs a profitable farm. The doctor is carrying on two enterprises. If the doctor registers, that will cover both enterprises.
- (2) A doctor employed by a hospital exercises her rights to private practice. The employment is not an enterprise (see below), but the private practice activities normally would be an enterprise. If the doctor registers, the registration will only apply to the enterprise activities.

Commencing or terminating an enterprise

You are treated as carrying on an enterprise if you are doing anything in the course of commencing or terminating the enterprise (s 195-1). The ATO considers that this would include conducting a feasibility study involving genuine business activities where there has been serious contemplation of developing an enterprise. However, this would not apply where, for example, a person merely undertakes a tour of a wine region to enhance their knowledge of the wine industry with the aim of possibly establishing some future business activity. Similarly, it has been held that there was no commencement of an enterprise where a company had simply undertaken preliminary promotional activities before any activities were actually carried on. These activities were considered to be merely steps taken *in preparation for* the commencement (*Guru 4 U Pty Ltd v FC of T* [2014] AATA 740; *Russell v FC of T* [2011] FCAFC 10). Activities undertaken to establish an entity, for example drawing up of a trust deed and the settlement of trust property, would also not be included (*Miscellaneous Taxation Ruling MT 2006/1*).

The AAT has said that, "[E]very business has to start somewhere. Where the business progresses from its foundations to operation within a reasonable time frame, it is easier to see how initial expenditures can be seen as part of a course of conduct that amounts to carrying on an enterprise. But where there is delay — where the momentum of the activities is lost — it becomes harder to make a connection between initial expenditure and the operations which result. That connection is even more difficult to establish where the business has not, or does not, commence trading in due course" (*Clayton v FC of T* [2013] AATA 428).

Similarly, acts done in the course of *selling* the business will be treated as carrying on the enterprise, for example, finalising accounts, paying creditors, repaying loans, cancelling licences and business registrations (*Miscellaneous Taxation Ruling MT 2006/1*); or the realisation of business assets as part of winding up a partnership (*GST Ruling GSTR 2003/13*). The ATO's view is that an enterprise would normally be taken to have terminated when all assets are

disposed of or converted to another purpose, and all obligations have been satisfied (*Miscellaneous Taxation Ruling MT 2006/1*). As to the treatment of pre-establishment acquisitions for agricultural managed investment schemes, see *Interpretative Decisions ID 2010/198; ID 2010/199*.

Example

A taxpayer decides to purchase a commercial property with the intention of leasing the property to prospective tenants. It acquires services and incurs various costs, such as legal and building inspection fees, in relation to the purchase of the property. It is likely that these acquisitions would be treated as part of the carrying on of the enterprise of leasing by the taxpayer.

The acquisition of a capital asset for the purpose of carrying on a future enterprise may constitute an act performed in the carrying on of the enterprise. In establishing whether this purpose existed, evidence of the taxpayer's intentions may be relevant (*Russell v FC of T* [2011] FCAFC 10). However, there was no enterprise being carried on where a taxpayer acquired a property for the purpose of converting it into an education and accommodation centre, but no educational supplies had been made, only minuscule income had been derived and the venture lacked commercial character (*Educational Pty Ltd v FC of T* [2011] AATA 445). There was also no enterprise of land subdivision being carried on where there was no objective evidence that the land had ever been acquired (*Bryxl Pty Ltd v FC of T* [2015] AATA 89).

Other examples of enterprises

Where a head company of a group obtains a valuation as part of the process of forming a "consolidated" group for tax purposes, this is treated as being an acquisition made in carrying on the company's enterprise. The same applies to a valuation obtained by a subsidiary company as part of the process of joining such a group. This applies even if the consolidation does not go ahead (*GST Determination GSTD 2003/3*). It would follow that input tax credits could be claimed, provided the other requirements for a creditable acquisition (¶5-010) have been met.

Where a parent company holds shares in a subsidiary, the parent may be treated as carrying on an enterprise if it is actively engaged in managing the subsidiary, or provides management services, equipment or loans to the subsidiary, but not if the holding is merely passive (*Miscellaneous Taxation Ruling MT 2006/1*). However, each case will depend on its own facts. The mere fact that the taxpayer is part of an economic group which overall is carrying on an enterprise does not mean that the taxpayer itself is carrying on an enterprise (*Case 5/2010, 2010 ATC ¶1-024*).

A person serving a lengthy prison term would not normally be capable of carrying on an enterprise (*Maksimovic v Registrar of Australian Business Register* [2008] AATA 108).

A participant in an agricultural managed investment scheme was considered to be carrying on an enterprise, where it retained ownership of the produce of the scheme (*Interpretative Decision ID 2010/197*). Previously, the ATO had taken the provisional view that normally an investor in an agricultural managed investment scheme is not carrying on an enterprise (former *Draft GST Ruling GSTR 2008/D1*), but that was withdrawn following an adverse income tax decision in *Hance v FC of T* 2008 ATC ¶20-085.

What is not an enterprise

An enterprise does not include the following activities:

- activities carried out as an employee, or other person subject to specified PAYG withholding rules (company directors, officeholders, labour hire). This means that — subject to the special rule noted below — these people are not treated as carrying on an enterprise themselves. However, their activities are still treated as part of the enterprise of their employer or work provider. For further details, including the position of independent contractors, see ¶4-090
- private recreational pursuits or hobbies. These are normally characterised by their small scale, irregularity and lack of profit motive (*Taxation Ruling TR 97/11; Miscellaneous Taxation Ruling MT 2006/1*)
- activities by an individual, or partnership consisting wholly or mostly of individuals, where there is no "reasonable expectation" of profit or gain. A reasonable expectation requires more than just a possibility (*Miscellaneous Taxation Ruling MT 2006/1; GST Determination GSTD 2006/6*). However, the fact that no profit was in fact made over a significant period does not necessarily mean that there was no reasonable expectation that a profit would eventually be made (*Case 2/2007, 2007 ATC 103*). This issue often arises, with mixed results, in situations where a taxpayer who is already engaged in another business buys a yacht for unrelated "demonstration purposes". One factor that can be taken into account in considering the likely profitability is the fact that the boat is declining in value (see discussion in *Drysdale v FC of T* 2008 ATC ¶10-027). A taxpayer who had been involved in the childcare industry and property development was unsuccessful in showing that his game fishing charter activities amounted to an enterprise, where they were conducted in a haphazard and unbusiness-like way (*Rendyl Properties Pty Ltd v FC of T* 2009 ATC ¶10-082)
- activities by certain members of local governing bodies, for example, councillors (s 9-20(2), (4)).

In a European case, the activity of installing and generating electricity through a photovoltaic installation on a private residence constituted an "economic activity" rather than a private activity, even though the home owner's end object may have been to reduce his domestic electricity bills. As a result, the taxpayer was entitled to a VAT deduction for input VAT costs relating to the installation: *Finanzamt Freistadt Rohrbach Urfahr v Unabhängiger Finanzsenat Außenstelle Linz* (Case C-219/12). However, it is not clear that a similar decision would be reached in Australia. For an article discussing this case, see *CCH Tax Week* ¶1035 (2013).

Religious practitioners carrying out pastoral and related duties are not treated as carrying on an enterprise (¶15-053). For the treatment of marriage breakdown settlements, see ¶4-090.

Directors and other officeholders

A special rule applies where a person accepts a position as an officeholder in connection with other business activities. An example of this is where a partner of a legal or accounting firm becomes a director of one of the firm's client companies. Directors are generally treated as employees, so the services they provide are not normally subject to GST. However, in this particular case, the partner/director will be treated as an enterprise, not an employee, and the supply of the partner/director's services to the company is therefore potentially subject to GST (s 9-20(2)(a)).

A partnership was not carrying on an enterprise where the relevant activities were conducted by a partner in his capacity as a director and employee of another company (*Naidoo & Anor v FC of T* 2013 ATC ¶10-323).

Meaning of "business"

As already noted, the most common form of enterprise is a business. Normally, there is little dispute about whether a business is being carried on. However, borderline situations arise in areas such as primary production, writing, sport or gambling. Some of the indicators used by the Commissioner are as follows. Their importance will vary in any particular situation:

- significant commercial activity
- a purpose of acting in a commercial way
- an intention to make a profit
- a reasonable prospect of profitability
- repetition or regularity of activity
- reasonable size and scale
- conformity with normal business practice
- existence of a business plan
- keeping of detailed business records
- commercial sales of product
- exercise of knowledge or skill (*Taxation Ruling* TR 97/11).

Activities may constitute a business even though they are only carried on in a small way. However, it would normally need to be shown that there was a real expectation of profit emerging. The ATO considers that where activities are of a very small size and scale, they would normally not be treated as a business if they are carried on in an ad hoc manner and there is little repetition or regularity. For example, the ATO would not consider there to be a business where a person occasionally provides translation services on an ad hoc basis and receives payments totalling only \$300 over the year (*Miscellaneous Taxation Ruling* MT 2006/1). On the other hand, it considers that if you provide taxi "ride-sourcing" services to the public, you are likely to be carrying on an enterprise: see ¶12-130. A private tutor was ruled to be carrying on an enterprise, even though his activities were small-scale and consistently unprofitable, where he could show that his activities were recurrent and systematic, reliable records were kept, and the *intention* was to make a profit (*Case 3/2013*, 2013 ATC ¶1-052).

Consistent loss-making from horse-breeding activities was held not to be fatal to a claim that a business was being carried on where the losses were attributable to the capital costs of setting up the business, the subsequent restructuring of the business and a series of unforeseeable setbacks (*Block & Ors v FC of T* 2007 ATC 2735). For the position of participants in the racing industry generally, see the ATO Fact Sheet *GST for the Racing Industry* and *Taxation Ruling* TR 2008/2.

Bodies that only supply members

An entity is still treated as carrying on an enterprise even though it only makes supplies to its own members (s 9-20(3)). This will include, for example, non-profit clubs.

Partnerships

It will normally be the partnership, not the individual partners, that carries on the partnership enterprise. However, a partner may be carrying on an enterprise if it carries on a separate business on its own account. The supply of an interest in a partnership is a financial supply (¶10-010) made by the partnership in the course of its enterprise. For the GST treatment of the transfer of a partnership interest, see ¶11-500.

The ATO considers that an enterprise can be carried on, not only by a general law partnership, but also by a tax law partnership (¶3-015). However, the fact that property is held by the owners as tenants in common, rather than joint tenants, would tend to indicate that the enterprise is being carried on by each co-owner, rather than the tax law partnership. However, this will not always be the case — in the case of certain managed property leasing syndicates, the ATO considers that the enterprise is being carried on by a tax law partnership even though the property is held as tenants in common (*GST Ruling* GSTR 2004/6).

A partnership was held liable for GST on the sale of assets where the evidence of the partners that the partnership had transferred the assets to another entity prior to the sale was vague and inconsistent (*TG & A Martinazzo v FC of T* 2009 ATC ¶10-074).

Trustees

For the position of trustees carrying on an enterprise, see ¶4-010.

[GSTG ¶5-050]

¶3-030 The GST turnover test

As we have seen, an entity is normally required to register if its "GST turnover" is \$75,000 or more (s 23-15; reg 23-15). This means that it must register if *either* of the following applies:

- its *current* GST turnover is \$75,000 or more, except if the ATO is satisfied that the projected GST turnover is below \$75,000, or
- its *projected* GST turnover is \$75,000 or more (s 188-10).

Special threshold for non-profit bodies

If you are a non-profit body, the registration threshold is \$150,000. "Non-profit" is not defined in the GST Act, but the ATO considers that a body will qualify if it is prevented by law or its constituent documents from distributing its profits or assets among its members, either while it is functional, or on winding up, and acts consistently with those restrictions (*GST Ruling GSTR 2012/2*; *Taxation Ruling TR 97/22*). The ATO also says it will accept that the non-profit test is satisfied if it is clear from the body's objects, policies, history, activities and proposed future directions that there will be no distributions to members.

For the position of strata title bodies corporate, see ¶11-200. For other rules relating to not-for-profits, see ¶15-000.

The turnover periods

At any particular time, your *current* GST turnover is measured over the 12-month period *ending* at the end of the current month (s 188-15). Your *projected* GST turnover is measured over the 12-month period starting at the beginning of the current month (s 188-20).

Example

If the current month is December 2018, the current GST turnover is measured from the start of January 2018 to the end of December 2018. The projected GST turnover is measured from the start of December 2018 to the end of November 2019.

This rule means that both your current and projected GST turnover may change every month. It follows that you may need to monitor them closely to work out if an obligation to register has arisen, or is likely to arise as a result of projected growth. Regular monitoring of turnover probably makes sense from a general business point of view in any event.

Example

As at March 2018, your current annual turnover (ie the turnover for the period from 1 April 2017 to 31 March 2018) is \$40,000. Your projected GST turnover (ie the turnover for the period from 1 March 2018 to 28 February 2019) is \$80,000. Assuming that you are not a non-profit body, you are therefore required to register.

Measuring turnover

Current turnover is calculated by adding up the value of all the supplies you have made, or are likely to make, during the 12-month period ending at the end of the current month. Projected turnover is calculated by adding up the value of all the supplies you have made, or are likely to make, during the 12-month period starting at the beginning of the current month.

In determining what supplies are likely to be made, the Commissioner accepts a calculation based on a bona fide business plan, accounting budget or some other reasonable estimate (*GST Ruling GSTR 2001/7*).

In each case, the value does not include the GST component of the supplies. In working out the value, you also *exclude* the following:

- supplies that are input taxed, for example, financial supplies or supplies of residential accommodation (¶1-170)
- supplies where there is no consideration paid, unless they are made to associates (¶17-500)
- supplies that are not made in connection with your enterprise (¶3-020)
- supplies that are not connected with Australia. You also disregard: (1) an offshore supply of rights or options that is deemed to be connected with Australia, unless (from 1 July 2017) it is made to an "Australian consumer" (¶9-120), the underlying supply is not a supply of goods or real property and the supply is not GST-free; and (2) offshore supplies of rights or options to use commercial accommodation in Australia (¶4-100) (s 188-15; 188-20).
- GST-free supplies made by a non-resident that are not made through an enterprise carried on by the non-resident in Australia. The exclusion applies in working out net amounts for tax periods starting on or after 1 October 2016.

Summary

If you are registered or required to be registered, you need to make a GST return in your Business Activity Statement, and account for the GST. Normally, for monthly taxpayers, this must be done for each tax period. However, streamlined requirements for lodgment of returns apply to quarterly taxpayers. Returns may be made electronically — in fact, this is normally a requirement if your GST turnover is \$20m or more. This chapter also explains the procedures for refunds, and directs you to various special rules that might apply.

INTRODUCTION

¶8-000 Various options for lodgment of GST returns

All taxpayers who are registered — or are required to be registered — must provide a GST return to the ATO (s 31-5). The GST return must be in the approved form, ie in a Business Activity Statement (BAS) (¶8-010); however, the precise requirements for lodging returns vary according to the circumstances.

The standard method requires a return to be lodged for each tax period (¶8-002). This may be used by either monthly or quarterly taxpayers.

Two additional options apply specifically to quarterly taxpayers. These are:

- the “quarterly remittance” method, which enables a substantially abbreviated form to be lodged each quarter, with a full information report lodged annually (¶8-036)
- the “instalments” method, which is available only to small taxpayers. This requires quarterly instalments to be paid and an annual return to be lodged (¶8-037).

Simplified BAS for newly-registered businesses . . .

From 19 January 2017, *newly-registered* small businesses have the option of completing a simpler BAS. Under this option:

- if a quarterly GST reporting cycle was selected when registering for GST, select “Option 2: Calculate GST quarterly and report annually” on the first BAS. The ATO will not seek the additional GST information or lodgment of the Annual GST Information Report
- if a monthly GST reporting cycle was selected at registration, insert “0” at G2, G3, G10 and G11 on your BAS
- if an annual GST reporting cycle was selected at registration, the business can leave G2, G3, G10 and G11 blank on its Annual GST Return.

. . . and for small businesses in general from 1 July 2017

From 1 July 2017, small businesses with GST turnover of less than \$10m have simpler requirements for their annual BAS. The effect is that the annual BAS will only need the following information:

- G1 Total sales

- 1A GST on sales
- 1B GST on purchases
- 1H GST instalments.

Information will no longer be required on labels (G2) export sales, (G3) GST-free sales, (G10) capital purchases and (G11) non-capital purchases. Quarterly GST instalments reporting will remain unchanged.

Voluntary registrars

For taxpayers that are *voluntarily* registered, there is an option to report on an annual basis (¶8-040). This may be used by either monthly or quarterly taxpayers.

[GSTG ¶25-000]

STANDARD METHOD

¶8-002 GST return for each tax period

The “standard” method applies to:

- taxpayers with monthly tax periods, and
- quarterly taxpayers who choose to use it.

Under the standard method, you must provide a GST return in your Business Activity Statement (BAS) for each tax period (s 31-5).

The return must be made even if the net amount (¶8-100) is zero, and even if you are not liable for any GST on supplies made during the period (s 31-5).

[GSTG ¶25-040]

¶8-005 Standard method: time for lodgment

Under the standard method (¶8-002), if you have monthly tax periods, the return must normally be made on or before the 21st day of the month following the end of the tax period (s 31-10). For example, the monthly return for March 2018 is due by 21 April 2018.

If you are a quarterly taxpayer using the standard method, the lodgment deadlines are:

| Quarter ending | Deadline |
|----------------|-------------|
| 30 September | 28 October |
| 31 December | 28 February |
| 31 March | 28 April |
| 30 June | 28 July |

Extensions

The Commissioner has the power to extend the time for lodgment. Two-week extensions of the 28 October, 28 April and 28 July deadlines may be allowed for businesses lodging and paying their quarterly returns online via the ATO's Business Portal (¶8-043). Extensions are also allowed where returns are prepared by tax agents. In individual cases, an extension may be appropriate where there are the usual delays in the settlement of affairs following a taxpayer's death. Applications for such individual extensions should be made before the due date to avoid the possibility of penalty. For the position where the deadline date falls on a weekend or public holiday, see ¶25-055.

People affected by major natural disasters may be eligible for concessional extensions of time in lodging returns or paying GST, and accelerated refunds where they are in necessitous circumstances. For details, see "Help for registered agents affected by natural disasters" at www.ato.gov.au. Recent examples include the October 2016 floods in New South Wales and the 2017 Tropical Cyclone Debbie and associated rainfall flooding.

Adjusted monthly tax periods

A special rule applies if your monthly tax period ends during the first seven days of a month. This can happen where the period has been adjusted to fit in with your normal balancing date (¶7-105). In this situation, the time for lodgment is calculated at the beginning of that month, not the following month.

Example

Assume that as a result of the alignment of your GST and commercial accounting periods, your monthly GST tax period ends on 2 October 2018, not 30 September 2018. You must lodge your return for that tax period by 21 October 2018.

BAS and FBT returns

The Commissioner suggests that if your BAS includes fringe benefits tax (FBT) instalments, you should lodge your BAS for the period ending on 31 March before you lodge your FBT return for the FBT year ending on that date. This should ensure that your FBT details are up to date and may therefore avoid delays in processing the FBT return.

Penalties

For details of penalties for late lodgment or incorrect returns, see ¶18-300.

[GSTG ¶25-040]

¶8-010 Standard method: completion of GST return

Under the standard method (¶8-002), the GST return is incorporated in a two-page form called the Business Activity Statement, or BAS. The BAS is also used as a return for income tax withholding and instalments, deferred company tax instalments, FBT instalments, luxury car tax (¶23-000) and wine equalisation tax (¶22-000).

Normally, the ATO will send you a personalised BAS before lodgment time. It will indicate when it needs to be lodged and the tax period it covers.

Although the BAS itself is relatively short, considerable preparation may be needed in order to complete it. Businesses should not underestimate the time needed, particularly, in the case of their first few returns.

In calculating the GST, taxpayers may use the "GST Calculation Worksheet" which is supplied by the ATO but which is not actually lodged with the BAS. Alternatively, they can use the more streamlined "derived from accounts" method, which enables them to identify their GST payable and input tax credits directly from their accounting records. This method may be used if you separately record your GST amounts for supplies and acquisitions. This requirement may be satisfied by the relatively simple procedure of having a GST column in your cash book or spreadsheet.

Net GST or refund

In general terms, you are liable to pay GST for a tax period if the GST payable on supplies is more than the input tax credits claimable on your acquisitions. You are entitled to a refund from the ATO for a tax period if the GST payable on your supplies is less than the input tax credits claimable on your acquisitions (¶8-100).

The GST return therefore requires you to:

- identify the GST payable on your supplies
- identify the input tax credits you can claim
- offset them against each other.

Guidance on completing the return is given in the ATO's *Goods and Services Tax — How to Complete Your Activity Statement* (NAT 7392).

ATO tips on preparing a BAS

The ATO has given the following tips and warnings:

- if you have lost your BAS form, contact the ATO to get a new one sent
- the actual BAS form must be posted in after payment is made at the Post Office or electronically
- use numerics rather than symbols such as \$ + - /
- use only whole dollars

- generally, leave boxes blank if they do not apply to your business. However, you should write a zero (0) at G1 and 1A if you are using GST Option 1 or 2 and have nothing to report due to a suspension of trading. If you are varying your GST instalment down to zero, you should write a zero at 1A
- use black pen only. If a mistake is made, use white-out (for corrections to earlier returns, see ¶8-045)
- if you have not provided your correct bank account details, it may take longer to receive a refund — telephone 13 28 66 to update your details
- do not add attachments or explanatory comments.

Common errors in preparing BAS

For common errors made in complying with GST requirements, see ¶18-170. For corrections to earlier returns, see ¶8-045.

[GSTG ¶25-060]

OTHER REPORTING OPTIONS

¶8-036 Option to use streamlined quarterly remittance form

Quarterly taxpayers have the option — referred to as Option 2 — of making their GST payments on the basis of a “simple remittance form” and lodging a more detailed annual information report.

The quarterly remittance form only requires reports of sales, GST collected on sales, and GST paid on purchases. The annual information report requires details of exports, other GST sales, capital and other purchases for compliance reasons. This report must be lodged by the date the income tax return is due (or 28 February following the end of the financial year if no income tax return is due).

This method is optional. Quarterly taxpayers that fully comply with the standard system (¶8-002) are not under any obligation to change from their previous arrangements.

[GSTG ¶25-040]

¶8-037 Small business option to pay GST instalments

A further option — referred to as Option 3 — applies to certain small businesses that are entitled to lodge quarterly. Under this “instalments” option, GST returns are lodged annually and instalments of estimated GST are paid quarterly, with an annual reconciliation being made. The instalments are generally based on the previous year’s GST. The amount of the instalments may be varied by the taxpayer, but penalties may apply if the varied instalments turn out to be too low.

Who is eligible

You may elect to use the instalments system if you satisfy all the following requirements:

- you are a “small business entity” (¶1-250) in the income year in which you make your election, or you are a non-business taxpayer with a “GST turnover” (¶3-030) that does not exceed \$2m
- you are not required to lodge on a monthly basis and have not elected to do so (¶7-100)
- you have a “current lodgment record” of at least four months
- you have lodged all previous GST returns as required
- you are not in a “net refund position” (s 162-5).

Even if you are eligible, your election can still be disallowed if the Commissioner is satisfied that you have a history of failing to comply with your taxation obligations (s 162-15). Limited registration entities (¶9-120) are not eligible for the instalments system.

GST turnover of non-business taxpayers

A non-business taxpayer’s “GST turnover” is measured in the same way as for registration purposes (¶3-030). This means that it will satisfy the turnover requirement if:

- its current GST turnover does not exceed \$2m, and the Commissioner is not satisfied that its projected GST turnover will exceed \$2m, or
- its projected GST turnover does not exceed \$2m (s 188-10).

Current lodgment record

To satisfy the current lodgment record requirement, you must have lodged GST returns covering at least a four-month period before the current tax period (s 162-10). This would be satisfied by: (1) four monthly returns; (2) two quarterly returns; or (3) one monthly and one quarterly return. This requirement provides the ATO with a payment history so that it can make reasonable instalment calculations. For this reason, if you are a member of a GST group, the period starts again whenever there is a change in membership. Similarly, if you were previously the representative member of a GST group, returns lodged for periods while you had that status are not taken into account in determining your lodgment record.

Net refund position

Whether you are in a net refund position is measured over a period that varies according to how long you have previously been lodging returns (s 162-5). If you have lodged returns for less than seven months, you work out whether you are in a net refund position by looking at the results for the three months preceding the current tax period. If you have lodged returns for eight or nine

months, you look at the six months preceding the current tax period. If you have lodged returns for 10, 11 or 12 months, you look at the nine months preceding the current tax period. If you have lodged returns for at least 13 months, you look at the 12 months preceding the current tax period.

Example

A newly-established quarterly payer has net GST of \$16,000 for its first GST return (up to 30 September 2017) and a refund of \$12,000 for its second GST return (up to 31 December 2017). It wishes to elect to adopt the instalment system with effect from its third quarter. As it has lodged returns for tax periods totalling six months (ie less than seven months), it must take into account the three months preceding the third quarter. On this basis, it is in a net refund position (ie for the \$12,000), so it cannot elect to adopt the instalment system at this time.

Assume that the payer subsequently has net GST of \$15,000 for its third GST return (up to 31 March 2018). It wishes to elect to adopt the instalment system with effect from its fourth quarter. As it has now lodged returns for tax periods totalling nine months, it must take into account the six months preceding the fourth quarter (ie the second and third tax periods). The total tax amount over this period is $\$15,000 - \$12,000 = \$3,000$. It is therefore not in a net refund position, and can elect to adopt the instalment system provided that all other requirements are fulfilled.

Making the election to pay instalments

To make the election, you must notify the Commissioner in the approved form (s 162-15). In practice, you will be taken to have exercised the option if you complete the relevant box on the BAS.

The election must normally be made by 28 October of the relevant financial year (s 162-25). However, in certain situations you can make part-year elections. This applies if you first become eligible to use the instalments system after 28 October, and your current lodgment record does not exceed six months — typically, this means that you have lodged no more than two quarterly GST returns. In these circumstances, your election must be made by the date you would otherwise have had to lodge a GST return for the tax period in which you became eligible. The election will then be valid for that tax period until the end of the year.

An election continues in force indefinitely, unless you revoke it or lose your eligibility, or the Commissioner disallows it on the grounds of your bad compliance history (s 162-30). As an exception to this, an entity that is already paying GST by instalments can continue to do so, even if it has moved into a net refund position. In such a case, the instalment amount will be zero. The rules as to loss of eligibility are similar to those applying to annual input tax credit apportionments (¶5-020).

The Commissioner also has power to extend the time for making an election in individual cases. Application for the extension must be made on the approved form. The Commissioner will take into account the taxpayer's previous

compliance history, whether the taxpayer has a valid reason for the late election, whether the failure to elect was isolated, and any exceptional circumstances such as serious illness (*Interpretative Decisions* ID 2004/447 to ID 2004/449).

The representative member of a GST group cannot make an election unless each member of the group is eligible (s 162-20).

Effect of making instalments election

Making the election means that:

- you are called a "GST instalment payer" (s 162-50)
- you have an "instalment tax period" that corresponds to the period for which the election applies (s 162-55). For example, if your election applies to the whole financial year, that financial year will be your instalment tax period
- you must pay the GST for that instalment tax period by quarterly instalments (see below)
- you must lodge a BAS for that instalment tax period (see below). Taxpayers can opt not to lodge the BAS for an instalment period if they: (1) only report GST and PAYG; and (2) accept the instalment amount calculated by the Commissioner.

Amount and timing of instalments

The amount of each instalment will normally be notified to you by the Commissioner (s 162-135). This will typically be calculated as 25% of the previous year's GST, adjusted by a factor that reflects changes in GDP (Gross Domestic Product) (Administration Act, Sch 1, Subdiv 45-L). This adjustment factor is:

- 4% for the 2017/18 income year
- 2% for the 2016/17 income year
- 3% for the 2015/16 income year.

Instalments are payable by 28 April, 28 July, 28 October and 28 February (s 162-70), ie the same dates as for lodgment of quarterly returns under the normal rules (¶8-005).

If any instalments are paid late, the general interest charge will be imposed (s 162-100).

You can also elect to *vary* your notified instalments (see below).

Annual return and reconciliation

In the typical case, where your instalment tax period is the financial year, the ATO will normally send you an annual GST return sometime after 30 June. This return must be completed and lodged by the time your income tax return is due (s 162-60). However, if you are not liable to lodge an income tax return, the GST return must be lodged by the following 28 February.

The Commissioner can extend the time for lodging GST returns (Administration Act, Sch 1, s 388-55).

The annual GST amount is worked out on the annual return. Any shortfall (or "wash up" payment) between this and the amounts already paid must be paid by the time for lodgment of that return (s 162-105; 162-110). If there has been an overpayment, the Commissioner must give a refund (s 35-5).

If the taxpayer has died, ceased to carry on an enterprise or has its registration cancelled during the instalment tax period, there is still an obligation to lodge an annual return for that period as described above (s 162-85). However, there is no requirement to pay instalments for any quarter that starts after the death, etc.

Example

Jan is on the instalments system. She dies on 15 January 2018. An annual return must be lodged by the time her income tax return for 2017/18 is due. Her last quarterly instalment will be for the quarter ending 31 March 2018.

If the taxpayer becomes incapacitated (eg goes bankrupt, goes into liquidation or receivership) or goes out of existence, the instalment tax period ends on the day before that happens, and the return must be lodged by the 21st day of the following month (s 162-90). Any outstanding GST must also be paid by that date.

Example

Assume the same facts except that Jan goes bankrupt instead of dying. An annual return must be lodged by 21 February 2018.

If the membership of a GST group changes, the instalment tax period ends at that time (s 162-95). The representative member must lodge the annual return by the 21st day of the following month, together with any outstanding GST.

Example

A, B and C are members of a GST group and commence paying by instalments from the start of 2017/18. In December 2017, C leaves the group. The GST group must lodge the annual return by 21 January 2018. All parties will revert to ordinary quarterly tax periods and, in accordance with the normal rules, cannot resume paying by instalments until they have current lodgment records of at least four months.

Variation of instalments

Instead of accepting the instalments notified by the Commissioner, you have the option of varying the instalments by using your own estimates (s 162-140). The variation is made by notifying the Commissioner on or before the due date for the instalment.

Variation may be appropriate in a variety of circumstances. The BAS form requires that you provide a numerical "reason code" for the variation. These codes are: current business structure not continuing (21); significant change in trading conditions (23); internal business restructure (24); change in legislation (25); financial market changes (26); entering the Simplified Tax System (28); or leaving that system (29).

Example

Enterprises is paying its GST by instalments. For the September 2018 quarter, the Commissioner notifies Enterprises that its GST instalment is \$50,000 (consistent with an annual GST of \$200,000). Due to a major downturn in business, Enterprises estimates that its annual GST will only be \$160,000 and decides to vary its instalment to $(1/4 \times \$160,000) = \$40,000$.

For the (second) December 2018 quarter, Enterprises revises its annual GST estimate to \$164,000. The varied second instalment will be $(1/2 \times \$164,000) - \$40,000 = \$42,000$.

For the (third) March 2019 quarter, Enterprises does not change its estimate. The third instalment will be $(3/4 \times \$164,000) - \$82,000 = \$41,000$.

For the (final) June 2019 quarter, Enterprises again revises its estimate, to \$168,000. The revised fourth instalment will be $\$168,000 - \$123,000 = \$45,000$.

Enterprises' actual GST liability for the year turns out to be \$170,000. Enterprises will be required to pay the balance of \$2,000 (ie $\$170,000 - \$168,000$) by the time it lodges its annual return.

However, there are a series of penalties that apply if your varied estimates turn out to be too low. These penalties apply if:

- the sum of your instalments is less than 85% of your actual annual GST liability (s 162-175)
- your estimated annual GST amount relating to any quarter is less than 85% of your actual annual GST liability (s 162-180), or
- each varied instalment is not a correct proportion of your estimated annual GST amount (s 162-185). This is designed to ensure, for example, that an entity that correctly estimates its annual GST amount cannot vary its instalments to zero for the first three quarters and then pay 100% of the estimated annual liability in the final quarter.

If the first of these penalties applies, the other two will not apply. The second can only apply if the first does not apply. The third can only apply if the other two do not apply.

In each case, the amount of penalty is imposed at the rate of the general interest charge (§18-300), calculated up to the date when the net amount is due. If you make up an earlier underestimate by a top-up payment for a later quarter, the penalty is only calculated up to the date of the top-up (s 162-190; 162-200). These penalties are tax deductible (ITAA 1997 s 25-5).

No penalties apply where an underestimate results simply from the adoption of the Commissioner's notified instalments. This applies even if the taxpayer is aware that the notified instalments are not representative of its current position. This can provide some cashflow benefits (§21-070).

Primary producers and averaging professionals

A special concession applies to primary producers and others who are entitled to average their income for tax purposes. The concession recognises that these bodies are susceptible to wide fluctuations in income. It means that they will only have to pay *two* instalments for any financial year. These are due on 28 April and 28 July (s 162-80).

The concession applies if:

- you carry on a primary production business in the year in which you elect to use the instalments system, and you had at least \$1 of net primary production income in your last tax assessment
- you are a "special professional" entitled to average your income (eg an author, inventor, performing artist or sportsperson), and you had at least \$1 of net professional income in your last tax assessment.

In effect, this means that the first two instalments are deferred until the net annual GST amount is paid. This may incidentally provide some cashflow benefits (§21-070).

[GSTG §25-230]

§8-040 Option to report and pay annually

A taxpayer that is *voluntarily* registered for GST may elect to adopt an annual tax period, so that it reports and pays GST on an annual basis, instead of monthly or quarterly (s 151-5). This applies to ordinary enterprises with a GST turnover of less than \$75,000 and non-profit organisations with a GST turnover of less than \$150,000 (§3-030).

The election is not available to taxpayers if the only reason that they are not required to be registered is because offshore supplies of rights or options have been disregarded in calculating their turnover (§3-030). Nor does it apply to taxi operators (§12-130) or to taxpayers on the instalments system (§8-037).

Making the election

The election is called an "annual tax period election". Normally, it must be made on or before 28 October in the financial year to which it relates (for quarterly taxpayers) or on or before 21 August in that financial year (for monthly taxpayers). The election applies from the start of the financial year (s 151-10; 151-20).

However, a special rule applies where a taxpayer first becomes eligible to make an election after 28 October in any financial year, and their current GST lodgment record is no more than six months. This taxpayer may make the election on or before the date their next GST return becomes due. The election takes effect from the start of the tax period to which that return relates.

The Commissioner has the power to grant extensions of these deadlines.

Effect of election

Making a valid election means that the taxpayer has an annual tax period (s 151-40). This takes the place of the monthly or quarterly tax periods that would otherwise apply (§7-100). If the election takes effect part-way through the year, the balance of that year is still called an annual tax period.

An annual GST election also applies to WET (§22-000) and LCT (§23-000). However, it does not affect PAYG obligations.

Lodgment of return

The taxpayer must lodge an annual GST return and pay its GST for the annual tax period. This must be done on or before the date the taxpayer is required to lodge its annual income tax return for that year (s 151-45; 151-50). The ATO has the power to extend this deadline.

If the taxpayer is not required to lodge an income tax return, it must lodge its annual GST return and pay its GST by 28 February following the end of the financial year.

Duration of election

Once made, an election continues in force indefinitely unless:

- the taxpayer revokes it. A revocation is effective for the whole of the financial year if made on or before 28 October in that year; otherwise, it does not apply until the start of the next financial year
- the taxpayer's circumstances (eg turnover) are such that it is *required* to be registered as at 31 July in the financial year. In this case, the election ceases to have effect from that start of that year. In effect, this means that a taxpayer must review its eligibility each 31 July, or
- the Commissioner disallows the election on the ground of a bad compliance record. If the disallowance occurs during the financial year in which the election *first* took effect, the election will have no effect. For later financial years, a disallowance is effective for the whole of the financial year if made on or before 28 October in that year; otherwise, it applies from the start of the next financial year (s 151-25).

If an individual taxpayer who has made an election dies during a financial year, the annual tax period continues until the end of that financial year (s 151-25; 151-55). The same applies if a taxpayer ceases to carry on its enterprise, or has its registration cancelled. However, a different rule applies if the taxpayer becomes incapacitated (eg goes bankrupt, goes into liquidation or receivership), or ceases to exist. In this case, the annual tax period ends at the

end of the day before the bankruptcy, etc, occurs. Unless the Commissioner grants an extension, the GST return will become due and GST will become payable for that period on or before the 21st of the following month (s 151-25; 151-60).

GST groups

The representative member of a GST group (¶17-010) can only make an election if all members of the group are eligible (s 151-15).

Alignment with PAYG instalments

Voluntarily-registered taxpayers who choose to remit GST annually may also, in certain circumstances, be eligible to make their PAYG tax instalments annually (Administration Act, Sch 1, Div 45).

[GSTG ¶25-045]

OTHER PROCEDURAL ISSUES

¶8-042 Authorised BAS preparers

A national registration and regulation system governs those who are in the business of providing "BAS services" for a fee or other reward. Under the *Tax Agent Services Act 2009* (TASA), these providers have to be registered with the Tax Practitioners Board (TPB) as tax agents, or as BAS agents. BAS agents have to meet minimum educational and experience tests, though at a lower level than that required of tax agents. There are penalties for failing to comply.

From 2016, registered tax and BAS agents have to complete an annual declaration with the TPB, showing that they meet their registration requirements: see "Annual declaration" at www.tpb.gov.au.

What are BAS services?

BAS services which registered BAS agents or tax agents may provide include:

- preparing or lodging a return or other approved form about a taxpayer's liabilities, obligations or entitlements under a "BAS provision" (this includes the GST, WET and LCT laws)
- giving a taxpayer advice about a BAS provision that the taxpayer can reasonably be expected to rely on to satisfy their taxation obligations
- dealing with the Commissioner on behalf of a taxpayer in relation to a BAS provision.

They do *not* include:

- installing computer accounting software without determining default codes tailored to the client
- coding tax invoices and transferring data onto a computer program for clients under the instruction and supervision of a registered BAS agent, or

- general training in relation to the use of computerised accounting software, preparing bank reconciliations or entering data.

Under its power to declare that certain services are BAS services, the Tax Practitioners Board has indicated that it will not require BAS agents to register as tax agents for work such as:

- superannuation guarantee and superannuation guarantee charge services
- superannuation contribution payment and reporting services, and taxable payments reporting. This practice has now been formalised, effective from 2 June 2016 (*Tax Agent Services (Specified BAS Services) Instrument 2016*).

Further details of what constitutes BAS services are at the TPB website: www.tpb.gov.au.

Requirements for registration

The requirements for registration as a BAS agent are as follows:

- (1) *Individuals* must be aged 18 years or more, be a fit and proper person and satisfy the following tests:
 - the individual must have been awarded at least a Certificate IV Financial Services (Accounting) or a Certificate IV Financial Services (Bookkeeping) from a registered training organisation or an equivalent institution. They must also have successfully completed a course in basic GST/BAS taxation principles, and
 - if the individual is a voting member of a recognised tax agent or BAS agent association, they must have undertaken at least 1,000 hours of relevant experience in the preceding three years. Otherwise they must have undertaken at least 1,400 hours of relevant experience in the preceding three years (TASA, s 20-5; Tax Agent Services Regulations 2009, reg 7, Sch 2).
- (2) For *partnerships and companies*, the partners and directors will need to pass fit and proper person requirements, the entity must not be under external administration, and there must not be any disqualifying taxation offences. In addition, the partnership or company will need to have a sufficient number of individuals who are registered tax agents or BAS agents, to provide BAS services to a competent standard, and to carry out supervisory arrangements (TASA, s 20-5).

Licensed customs brokers may provide BAS services that relate to imports or exports affected by GST, WET or LCT without being registered. Employees of BAS agents are not necessarily required to be registered. The same applies to legal practitioners providing BAS services in the course of acting for a trust or deceased estate.

The AAT does not have the jurisdiction to review a decision by the Board to grant registration for a period shorter than the standard three-year period (*Kuan v Tax Practitioners Board* [2013] AATA 254).

Code of practice and "safe harbours"

BAS agents are also governed by a Code of Professional Conduct (TASA, s 30-10). The Code contains 14 principles dealing with honesty and integrity, independence, confidentiality, competence and other responsibilities. Sanctions for breach of the Code include cautions, compulsory re-education, imposition of restrictions (such as working under supervision or providing only limited services), suspension or termination of registration (TASA, s 30-15 to 30-30). For an Information Sheet on the Code, see the Tax Practitioners Board website (www.tpb.gov.au).

Under "safe harbour" rules, a taxpayer who uses a registered agent may, in certain circumstances, not be liable for administrative penalties for making false or misleading statements, or failing to lodge documents, where the statement or failure to lodge is attributable to the agent. Details are at ¶18-300.

ATO's BAS Agent Portal

The ATO has a portal especially for bookkeepers and other non-tax agents that provide BAS services for a fee. The BAS Agent Portal enables them to:

- prepare, lodge, view and print activity statements
- receive confirmation of lodgments
- view and update client registration details
- view client account information
- view payment options and print payment slips, and
- communicate with the ATO using secure portal mail.

See "BAS agents portal" at www.ato.gov.au.

¶8-043 How a GST return is lodged

If your GST turnover is \$20m or more (¶3-030), you must lodge your GST return electronically in a format approved by the ATO, unless the ATO approves some other method (s 31-25). In other cases, you can choose whether to lodge your return physically (by mail) or electronically.

To lodge electronically, go to the ATO's Business Portal (www.bp.ato.gov.au), which operates 24 hours, seven days a week. At this Portal, businesses can also view previously lodged BASs, view and update registration details and carry out certain other transactions. To use the portal, businesses must have a valid ABN, an ATO digital certificate (available from the ATO) and, of course, internet access. Businesses lodging quarterly returns via the Business Portal may be entitled to automatic extensions of time (¶8-005).

If there is nothing to report for the tax period (nil amounts at all labels), the ATO may allow you to lodge by telephone (s 31-15). This may apply, for example, where your business is seasonal, intermittent, or has no staff or turnover activity in the period. You will need to have your BAS on hand and be able to quote your Australian Business Number or tax file number, and the BAS document identification number.

GST turnover test for electronic returns

As already noted, you must normally lodge electronically if your GST turnover is \$20m or more (s 31-25). This means that you must lodge electronically if either of the following applies:

- your current GST turnover is \$20m or more, except if the ATO is satisfied that the projected GST turnover is below \$20m, or
- your projected GST turnover is \$20m or more (s 188-10).

Example

As at March 2018, your current GST turnover (ie the turnover for the period from 1 April 2017 to 31 March 2018) is \$18.5m. Your projected GST turnover (ie the turnover for the period from 1 March 2018 to 28 February 2019) is \$21.3m. You will therefore be required to lodge electronically.

The way you work out your current and projected GST turnover is explained at ¶3-030.

[GSTG ¶25-080]

¶8-045 Correcting and revising an earlier BAS

If you have made an error in your Activity Statement, you may lodge a revised Statement. You can ring the ATO on 13 28 66 and request a revised form to complete.

In certain situations, however, the Commissioner can allow you to simply make the appropriate change in a subsequent BAS, rather than making a revision of the earlier form (s 17-20). This is beneficial for taxpayers, as it may enable them to avoid liability for general interest charge or administrative penalties (¶18-300).

The ability to make a correction is not limited to errors in the immediately preceding BAS. However, if the earlier BAS started on or after 1 July 2012, the correction should be made in a BAS for a tax period that started during the statutory period of review (normally four years: ¶8-100). For corrections of wine equalisation tax, see ¶22-300.

Guidelines on corrections

The Commissioner has issued guidelines on how this concession may be administered (*Goods and Services Tax: Correcting GST Errors Determination 2013*). These apply to corrections made in activity statements lodged on or after 10 May 2013 relating to tax periods starting on or after 1 July 2012. Under these guidelines:

- the concession applies to quantified overstatements (credit errors) or understatements (debit errors) of the net GST payable for an earlier tax period. These may arise, for example, from clerical or typographical errors, double counting, omissions or other mistakes. Although it would include overstating or understating an input tax credit, it would not include the situation where the taxpayer simply delays attributing the whole of an input tax credit and takes it into account in a later tax period, in accordance with the rules at ¶5-125. Nor does it include normal GST adjustments to reflect changed circumstances (¶6-000)
- an error cannot be corrected in a return if at the time of lodging the return the taxpayer is subject to a GST audit or other compliance activity (¶18-160)
- in the particular case of a debit error, the error must be corrected in the first return after it is identified. It must not have resulted from recklessness or intentional disregard for the GST law (¶18-300), and must comply with the limits set out in the following table:

| Current GST turnover | Debit error value limit | Debit error time limit |
|----------------------------|-------------------------|--|
| Less than \$20m | Less than \$10,000 | The error must be corrected on an activity statement that is lodged within 18 months of the due date of the incorrect activity statement. |
| \$20m to less than \$100m | Less than \$20,000 | The error must be corrected on an activity statement that is lodged within 12 months of the due date of the incorrect activity statement. |
| \$100m to less than \$500m | Less than \$40,000 | The error must be corrected on an activity statement that is lodged within 12 months of the due date of the incorrect activity statement. |
| \$500m to less than \$1b | Less than \$80,000 | The error must be corrected on an activity statement that is lodged within 12 months of the due date of the incorrect activity statement. |
| \$1b and over | Less than \$450,000 | The error must be corrected on an activity statement that is lodged within 12 months of the due date of the incorrect activity statement. |

A taxpayer cannot correct an error from an earlier tax period by requesting an amendment of a GST return of a later tax period. Credit errors from an earlier tax period can only be corrected in a later tax period if the GST return for the later tax period is lodged within the period of review for the earlier

assessment in which the error was made (*Correcting GST Errors Amendment Determination 2017 (No 1)*: GSTE 2017/1).

Pre-1 July 2012 position

For tax periods starting before 1 July 2012, s 17-20 only authorised retrospective corrections in the immediately preceding BAS. However, as a matter of practice, the Commissioner exercised the power of general administration to allow corrections of any earlier returns according to guidelines set out in the ATO's *Correcting GST mistakes*, at www.ato.gov.au.

Property owners

For special rules applying to corrections on certain supplies to non-resident property owners, see the ATO Fact Sheet *GST Paid on Services to Non-resident Property Owners*. For the procedure where a GST adjustment arises from a change in intended business use of a development property, see ¶6-300.

¶8-050 Other special rules for GST returns

Here are some special rules about returns.

- The ATO has the power to require you to provide a GST return, or to make additional or more detailed GST returns (s 31-20). For example, this power may be exercised where you fail to furnish a return at all, or are acting as the agent or trustee of someone else. The information required in these returns may be modified so as to avoid unnecessary duplication of material that has already been provided.
- The Commissioner can treat a GST return as having been duly signed by a taxpayer, or with the taxpayer's authority, unless the taxpayer is able to prove otherwise (Administration Act, Sch 1 s 350-10; former s 31-30). This rule is intended to allow the Commissioner to be able to process assessments without needing to be involved in disputes about who was authorised to lodge a return on the taxpayer's behalf.
- The GST return requirements also apply if you are required to be registered, even if you are not actually registered (s 31-5).
- GST returns must be made for all of an entity's GST branches (¶17-300).
- Only the representative member is required to lodge a return for a GST group (¶17-020).
- A representative that is appointed to two or more incapacitated entities (¶18-250) that are members of a GST group may lodge one return for a tax period for all the entities (s 58-45). The Commissioner can direct a representative to provide a return for an incapacitated entity that has failed to do so (s 58-50). Incapacitated entities need not provide returns for tax periods for which there is no GST liability (s 58-55). The representative must notify the Commissioner of any undisclosed liabilities of the incapacitated entity of which the representative could reasonably be expected to have become aware (s 58-60).

- ▶ The joint venture operator must lodge a return for a GST joint venture (¶17-220).
- ▶ Special rules apply to non-residents and their resident agents (¶17-400).
- ▶ A special GST return may be required by an insured business that has ceased to be registered at the time an insurance settlement is made (¶10-120).
- ▶ GST returns are required for supplies made by creditors in satisfaction of debts in certain circumstances (¶10-070).

ASSESSMENT, PAYMENT AND REFUNDS

¶8-080 GST assessments

GST is a “self-assessment” system (Administration Act, Sch 1, Div 155). This means that:

- a taxpayer’s GST liability is determined by an assessment (Sch 1 s 155-5)
- this assessment may be made at any time, but is normally *deemed* to have been made when the taxpayer lodges their return
- the assessed liability is normally the amount stated in the taxpayer’s return (Sch 1 s 155-15), and
- notice of the assessment must be given to the taxpayer as soon as practicable (Sch 1 s 155-10). However, the return itself is normally deemed to be an assessment notice which is notionally given to the taxpayer on the date of lodgment of the return (Sch 1 s 155-15).

In limited cases, a taxpayer’s return will not contain sufficient information to allow a deemed assessment to occur. An actual assessment must therefore be made. If the taxpayer does not receive notice of the assessment within six months after the return was lodged, the taxpayer can request the Commissioner to issue the notice. If the Commissioner fails to do so within 30 days, the taxpayer can object under the normal objection and appeal provisions (Sch 1 s 155-30): see ¶18-600.

If the taxpayer simply fails to lodge a return, the Commissioner can issue a default assessment at any time (Sch 1 s 155-5). In making an assessment, the Commissioner can treat part of a tax period as the whole tax period (Sch 1 s 155-25). A taxpayer may object to an assessment under the normal objection and appeal provisions (Sch 1 s 155-90): see ¶18-600.

[GSTG ¶25-600]

¶8-090 Amending an assessment

If a taxpayer lodges a return, then later lodges an amended return for the same tax period, the first return gives rise to a deemed assessment, and the second return is treated as an application for amendment of that assessment. Similarly, if the Commissioner makes a default assessment due to the taxpayer’s failure to lodge a return, and the taxpayer later lodges a return for

that period, that return will be treated as an application to amend the default assessment.

An assessment can be amended either on the Commissioner’s own initiative or at the request of the taxpayer. If the request is made in the approved form (such as where the taxpayer lodges a revised return), and the Commissioner makes the amendment in accordance with the revised return, that return is itself deemed to be a notice of the amended assessment. This is treated as being given to the taxpayer on the day when the Commissioner makes the appropriate change to the taxpayer’s running balance account (Sch 1 s 155-40; 155-80).

If the Commissioner makes an amendment that is not fully in accordance with the taxpayer’s request, or the request was not in the approved form (eg it was in a simple letter), an actual notice of amended assessment must be issued.

Period of review

Under the self-assessment system, once there has been an assessment of the taxpayer’s GST liabilities and entitlements, they remain payable without time limit. This means that they are able to be enforced at any time.

However, there is generally a four-year period in which the assessment can be amended, either in favour of the Commissioner or the taxpayer (Sch 1 s 155-35). This “period of review” is measured from the date on which notice of the assessment is given (or deemed to be given) to the taxpayer.

The four-year period can be extended if there is a partly completed examination of the taxpayer’s affairs — eg an audit, investigation or review — that is pending when the period expires. For this to apply, the Commissioner must obtain either the consent of the taxpayer or a Federal Court order. The request for consent, or the application to the court, must be made *before* the period expires. In deciding whether to grant an extension order, the court must be satisfied that the Commissioner’s failure to complete the examination was attributable to actions taken by the taxpayer, or to the taxpayer’s failure to take reasonable steps (Sch 1 s 155-35). This could apply, for example, where the taxpayer has been unreasonably obstructive or non-cooperative. An extended period of review may itself be extended.

As exceptions to the general rule, the Commissioner can amend an assessment at any time where:

- (1) it is made in response to a request for amendment in the approved form made by the taxpayer within the period of review (Sch 1 s 155-45)
- (2) the amendment is necessary to give effect to a decision on review or appeal (Sch 1 s 155-60)
- (3) it is made to give effect to a private ruling requested by the taxpayer during the period of review (Sch 1 s 155-50)

- (4) the Commissioner considers that there has been fraud or evasion (Sch 1 s 155-60)
- (5) the Commissioner has made a declaration under the anti-avoidance rules (¶20-070) (Sch 1 s 155-55).

In each of these cases, except for (1), the Commissioner must issue an actual notice of amendment to the taxpayer.

Where an assessment is amended within the normal four-year review period, there is another four-year period in which that amendment may itself be reviewed (Sch 1 s 155-65; 155-70). This "refreshed" period runs from that date on which notice of the amended assessment was given to the taxpayer. This period cannot itself be extended.

Example

A taxpayer lodges a BAS for the September 2018 quarter on 28 October 2018. The Commissioner's notice of assessment is deemed to be given on the same day, so the period of review is until 27 October 2022. On 1 December 2021, within the period of review, the taxpayer applies for an amendment. The Commissioner allows the amendment on 15 December 2021, so the refreshed four-year period of review for that amendment starts from that date.

If amendments were made in relation to different particulars at different times during the normal four-year period, a separate refreshed review period will apply to each.

These rules about refreshed periods do not apply to those cases noted above where an amendment can be made at any time.

An amended assessment is itself an assessment and the taxpayer can object to it under the normal objection and appeal provisions (Sch 1 s 155-80, 155-90): see ¶18-600.

[GSTG ¶25-615]

¶8-100 Payment of net GST

The standard rule is that you are liable to pay GST for a tax period if the GST payable on supplies you make is more than the input tax credits claimable on your acquisitions. Typically, this will be where the net amount shown in your GST return is more than zero (s 33-5).

The net amount for a tax period is the amount of GST attributable to the period, less the input tax credits attributable to that period (s 17-5). The net amount may be increased or decreased if there are any GST adjustments for the period (s 17-10). It may also be increased by any amounts of wine tax or luxury car tax, or decreased by any wine tax credits or luxury car tax credits (¶22-300; ¶23-260).

Your liability depends on an assessment being made. In the normal case, this is deemed to occur when you lodge your return (¶8-080).

Example

According to your return, the GST on sales that you made which is attributable to a particular tax period is \$50,000. The input tax credits on acquisitions which are attributed to that period are \$35,000. There are no other relevant liabilities or credits. You must account for the net amount of \$15,000 to the ATO.

The deadlines for paying GST are generally the same as the deadlines for lodging returns (¶8-005). For example, for taxpayers with monthly tax periods the net GST must normally be paid on or before the 21st day of the month following the end of the tax period (s 33-5). For quarterly taxpayers, the net GST must normally be paid on or before 28 July, 28 October, 28 February and 28 April (s 33-3). Extensions of time apply in certain situations (¶8-005). Special rules apply to taxpayers paying by instalments (¶8-037) and taxpayers with annual tax periods (¶8-040). For the position where the deadline falls on a weekend or public holiday, see ¶25-055.

Examples

- (1) For the *quarterly* tax period ending on 31 December 2017, your due date for payment is 28 February 2018.
- (2) For the *monthly* tax period ending on 31 January 2018, your due date for payment is 21 February 2018.

If the return is late, interest will be payable (¶18-300). The ATO has the power to extend the time for payment in special circumstances, or to allow the amount to be paid by instalments (¶8-005): see "Help for small businesses experiencing short-term financial difficulties" and "Difficulty in paying your tax debt" at www.ato.gov.au.

On the other hand, the ATO can bring forward the time for payment if there is reason to believe that you may be leaving Australia. The ATO can also issue a Departure Prohibition Order in certain circumstances (Administration Act, s 14U; Sch 1 s 255-20). For the requirement to lodge a security deposit, see below.

If your GST turnover is \$20m or more, you must pay electronically (s 33-10). This mirrors the requirement to lodge your return electronically (¶8-043). In other cases, you can choose whether or not to pay electronically — this applies whether or not you lodge your return electronically.

The ATO says it will accept electronic payment through direct credit, direct debit or BPAY. If you do not pay electronically, payment may be made in cash or by cheque at any post office, or by mail. For special advance payment facilities available to the taxi industry, see ¶12-130.

In making an assessment, the ATO may take into account third party information, audit results, statistical comparisons, or extrapolations from previous years. The production of a notice of assessment is conclusive evidence that the assessment was properly made and — except on normal review or appeal proceedings (¶18-600) — that the amount of the assessment is correct (Administration Act, Sch 1, s 350-10; former s 105-100). However, this may not apply if the assessment was tentative or not bona fide (*DFC of T v Richard Walter Pty Ltd* 95 ATC 4067; *Platypus Leasing Inc & Ors v FC of T* [2005] NSWCA 399). For ATO practice on issuing multiple assessments in relation to the same transaction, see *Practice Statement PS LA 2006/7*.

BAS amounts and the running balance account

In practice, in determining the taxpayer's net BAS tax or credit, the net GST/LCT/WET liability is aggregated with any liabilities or credits for other types of tax covered by the BAS, such as PAYG instalments, FBT instalments or deferred company tax instalments. These are collectively called "BAS amounts". The net amount owing at any particular time is recorded in the taxpayer's running balance account (RBA) (Administration Act, s 8AAZA to 8AAZLH).

However, it is not mandatory for the Commissioner to offset a payment, credit or RBA surplus against a BAS tax debt until that debt is due and payable. This could have particular application to joint ventures, eg a credit in the RBA for a joint venture account will not automatically be offset against a debt on the operator's own BAS account where that debt is due but not yet payable.

GST on importations

Payments of GST on importations are made by the importer, at the same time and in the same way as customs duty (s 33-15). However, the payment may be deferred in certain situations. For further details, see ¶9-000.

Time limit on recovery of GST

Separate rules on recovery of unpaid GST apply according to the tax period to which the GST liability relates.

Under the self-assessment system, there is no time limit on the Commissioner's power to recover unpaid GST relating to tax periods commencing on or after 1 July 2012, once the taxpayer's liability entitlement has been crystallised in an assessment (¶8-080). However, any amendment to an assessment can only be made during a refreshable four-year period, normally four years (¶8-090).

An unpaid net amount of GST relating to a tax period commencing before 1 July 2012 ceases to be payable four years after it originally became payable by the taxpayer, unless the Commissioner has given notice to the taxpayer within those four years, or the payment was evaded, or avoided by fraud (Administration Act, Sch 1, s 105-50; *Practice Statement PS LA 2009/3*; *Interpretative Decision ID 2014/36*). Effective from 1 July 2008, this restriction also applies where the liability results from a reduction in a taxpayer's entitlement to a refund. The "notice" may take the form of a notice of assessment, even if the Commissioner subsequently concedes that the amount stated as owing in that notice was wrong (*Cyonara Snowfox Pty Ltd v FC of T* 2012 ATC ¶20-362). The four-year limit did not apply where the Commissioner was seeking to recover input tax credits incorrectly allowed to the taxpayer (*Wynnum Holdings (No 1) Pty Ltd v FC of T* [2011] AATA 296; *Russell v FC of T* [2009] FCA 124).

Security deposits

The Commissioner may require a taxpayer to provide security for the payment of existing or future tax liabilities, including GST (Administration Act, Sch 1, s 255-100). This applies where the Commissioner has reason to believe that:

- the taxpayer is establishing or carrying on an enterprise, and intends to carry on that enterprise for only a limited time, or
- it is appropriate in the circumstances.

Security may be required to be given in various situations, including where:

- the enterprise is likely to be short-term
- there is a history of non-compliance by the taxpayer or its directors
- the Commissioner has granted the taxpayer the benefit of a payment arrangement, or
- phoenix activity (¶20-000) is involved.

The security may take various forms, including a bank guarantee, mortgage or an EFT transfer of funds.

The Commissioner has validly used this power to require a security deposit to be given by way of a mortgage over land owned by the taxpayer, where GST liabilities were expected to arise from the taxpayer's proposed sale and subdivision of the land and the Commissioner believed that there was a significant risk that this liability would not be paid. This was so even though the taxpayer had not actually commenced carrying out the relevant enterprise: *Keris Pty Ltd v FC of T* [2017] FCAFC 164.

Special rules about payments

Special rules about payment apply to GST branches (¶17-300), joint ventures (¶17-220), insurance settlements (¶10-120), importations (¶9-000) and supplies in satisfaction of debts (¶10-070).

Schemes designed to decrease payments or alter their timing may be caught by special anti-avoidance rules (§20-030).

Penalties

For details of penalties for late payment, see §18-300.

[GSTG §25-220]

§8-110 Payment of GST refunds

You are entitled to a refund from the ATO for a tax period if the net amount shown in your GST return (§8-100) is less than zero (s 35-5). In a simple situation, this could occur, for example, if the GST payable on supplies you make is less than the input tax credits claimable on your acquisitions.

The entitlement to a refund arises when the Commissioner issues an assessment of the relevant amount (s 35-10). Where a refund is involved, there is an incentive to lodge the return as soon as possible.

Example

According to your return, the GST on sales that you made which is attributable to a particular tax period is \$50,000. The input tax credits on acquisitions which are attributable to that period are \$80,000. There are no other relevant liabilities or credits. You are entitled to a refund of \$30,000.

Refunds may also become due where there is an amendment of a taxpayer's GST liability as a result of an amendment of an assessment (Administration Act, Sch 1, s 155-75).

Time limit for paying refunds

There is no set time limit within which the ATO must actually credit the refund, but it appears that it must generally be done within a "reasonable" period. However, the ATO has specific power to *retain* the refund in the following situations:

- (1) during any time that it is awaiting a return or information which may affect the amount of that refund and which the taxpayer is under a statutory obligation to provide (Administration Act, s 8AAZLG), or
- (2) pending *verification* of information that the taxpayer has provided (Administration Act, s 8AAZLGA; Practice Statement PS LA 2012/6).

The power to retain pending verification ((2) above) applies only where it would be reasonable to require verification, or the taxpayer has requested that the power be exercised. In deciding whether to retain the refund, the Commissioner must take into account factors such as the likely accuracy of the information provided, the likelihood that it was affected by fraud, evasion or recklessness, the financial impact on the taxpayer, the impact on the revenue,

and the complexity of the verification process. The Commissioner can only retain the refund until:

- it is no longer reasonable to require verification, or
- there is a change to the amount of the refund as a result of an assessment or amended assessment.

The taxpayer must be notified of the retention within 14 days, otherwise the refund becomes payable immediately. The taxpayer can object to a decision by the Commissioner to retain the refund, under the usual objection and appeal provisions (Administration Act, s 14ZW), but this does not apply once the retention period has expired by the subsequent issue of an assessment or amended assessment (*Sanctuary Australasia Pty Ltd v FC of T* [2013] AATA 371). The Commissioner's administration of this refund verification process is the subject of a review by the Inspector-General of Taxation, announced in April 2017 (igt.gov.au/publications/reports-of-reviews/gst-refunds).

Examples

The following examples of the Commissioner's practice are based on *Practice Statement PS LA 2012/6*:

- (1) *Likely level of accuracy*: A taxpayer registered as a commercial land developer lodges a BAS claiming an input tax credit on the acquisition of a block of land. A property search is conducted based on information given by the taxpayer and the search results indicate that the land may not have been purchased by the taxpayer. This would be a factor in favour of it being reasonable to retain the refund for verification.
- (2) *Financial impact*: A company lodges an income tax return that is identified for review. The company is expecting a large refund and claims that the refund is required to fund business reconstruction following a recent natural disaster. Bank statements and other documents show that the viability of the business will be compromised if the refund is retained. This would be a factor against it being reasonable to continue to retain the refund.

If the ATO does *not* pay the refund within 14 days of a complete return being lodged, "delayed refund" interest becomes payable (*Taxation (Interest on Overpayments and Early Payments) Act 1983*, s 12AA). The interest rate is, in effect, seven percentage points less than the rate of general interest charge (§18-300). For example, for the October–December 2017 quarter, when the GIC rate was 8.70%, the delayed refund interest rate was 1.70%.

Offsetting of refunds

Any GST refund will be offset against any liabilities for other types of tax covered by the BAS, ie "BAS amounts" (§8-100). The ATO may also offset any refund against outstanding tax liabilities under other taxation legislation administered by the ATO, for example, income tax (Administration Act, s 8AAZL to 8AAZLB).

which the nominated day occurs. In such a case, the date of formation must be approved by the Commissioner, who has the power to specify some other date if appropriate (s 48-71). The Commissioner's decision on this is reviewable (¶18-600).

Example

A, B and C, which all account monthly, agree to form a GST group with effect from 20 April, with C as the representative member. C notifies the Commissioner on 10 May. This is before the date on which the BAS is due for the tax period in which 20 April occurs (ie 21 May). The date of formation is therefore the nominated date, 20 April.

Assume instead that C makes the notification on 30 May. This is after the date on which the BAS is due for the tax period in which 20 April occurs (ie 21 May). The Commissioner's approval to the 20 April formation date is therefore required.

An entity ceases to be a member of the group if it leaves or is removed from the group (¶17-030), or if it ceases to satisfy the membership requirements (s 48-7). The representative member must notify the Commissioner within 21 days after any member ceases to satisfy the membership requirements.

Consequences of changes during tax period

Where an entity is part of a group for only part of a tax period, its activities in the part of the tax period prior to membership must be accounted for separately (s 48-51; 48-52). This means, for example, that where a group is formed during a tax period, the representative member must lodge a BAS for the group's activities for the part of that tax period after formation, and each joining entity must lodge a BAS for its own activities prior to joining.

The effect is that the entity:

- accounts for any GST on taxable supplies to the extent that the GST on those supplies would be attributed to the period in which the entity was not a member of the group
- accounts for any GST on taxable importations made during the period in which the entity was not a member of the group
- claims any input tax credits attributable to the period in which the entity was not a member of the group, and
- accounts for GST adjustments attributable to the period in which the entity was not a member of the group.

Example

Entities A, B and C form a GST group on 15 April, with B appointed as the representative member. All entities account on a monthly basis.

A March BAS must be lodged, in the normal way, by each of the entities for their own activities up to 31 March.

An April BAS must be made by:

- B — for its own activities from 1 April to 14 April, and for the ABC group's activities from 15 April to 30 April
- A — for its own activities from 1 April to 14 April, and
- C — for its own activities from 1 April to 14 April.

The May BAS is lodged by B for the group's activities from 1 May to 31 May.

Assume now that A leaves the group on 20 June, with B remaining as the representative member.

A June BAS must be made by:

- B — for the group activities from 1 June to 30 June, including A's activities up to 20 June, and
- A — for its own activities from 20 June to 30 June.

A July BAS must be made by:

- B — for the BC group's activities from 1 July to 31 July, and
- A — for its own activities from 1 July to 31 July.

If the representative member is changed during a tax period, the new representative is only responsible for the group activities from that point (s 48-53).

Other aspects

The fact that an entity would be eligible to join the group does not mean that it must actually do so.

The membership requirements prohibit GST group members from having a registered GST branch (¶17-300).

For the modified rules relating to *religious* groups, see ¶15-052.

Transitional rules

The procedure for forming a group, as described above, applies from 1 July 2010. In general, approvals made under the former, more restrictive, rules continue in force provided no relevant changes are made. Pending applications for approval made before 1 July 2010 are taken to be notifications under the new rules (*Tax Laws Amendment (2010 GST Administration Measures No 2) Act 2010*, Sch 1, s 43).

[GSTG ¶43-020]

¶17-012 Ownership requirements for companies and associations

A company is not restricted to the normal concept of a company. It means a body corporate, and also any other unincorporated association or body of persons, other than a partnership (s 195-1).

If the group consists entirely of companies, the ownership requirement is that each company in the group must be a member of the same "90% owned group" as any other companies in the group (s 48-10(1)(b)). Two companies are members of the same 90% owned group if one of them has at least a 90% stake in the other, or if a third company has at least a 90% stake in the other two (s 190-1). To have at least a 90% stake in a company:

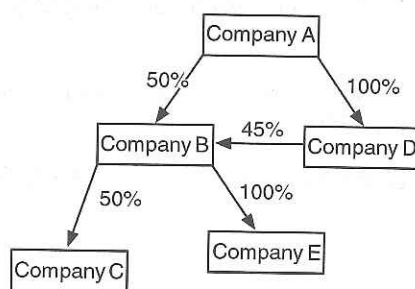
- you must control at least 90% of the voting power in that company, or be able to have that control, and
- you must have the right to receive at least 90% of its dividends and capital distributions (s 190-5).

This 90% stake may be held directly, or indirectly through other companies. It appears that it may also be held indirectly through other entities, such as a nominee individual (*Interpretative Decision ID 2004/201*).

It is important to realise that just because you are in a 90% owned group does not necessarily mean that you must be included in the GST group (s 48-5). In other words, you may choose which of the eligible companies form part of the GST group, as long as you do not infringe the anti-avoidance rules.

The following examples are based on those provided by the ATO.

Example

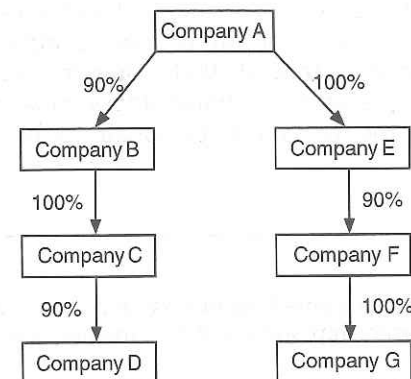


Companies A, B, D and E are part of a 90% group because:

- Company A has a 100% stake in Company D
- Company A has a combined 95% stake in Company B, and also in Company E.

However, Company C is not a member of that 90% group because the maximum stake that any of the other companies has in it is 50%.

Example



Companies A, B, C, E, F and G are part of a 90% group because:

- Company A has a 90% stake in Company B, and a 90% stake in Company C
- Company A has a 100% stake in Company E, and a 90% stake in Companies F and G.

However, Company D is not a member of that 90% group, because Company A only has an 81% stake in it. Company D could be part of a different 90% group containing Companies B and C but that would mean that those two companies could not be part of the first 90% owned group, because you cannot be a member of a GST group if you are a member of another GST group.

Companies would not satisfy the ownership requirements simply because an individual has 100% direct ownership of each of the companies (*Interpretative Decision ID 2002/492*).

Groups of companies and other entities

If the group consists of companies and other entities, the ownership requirements for the *companies* are:

- (1) each of the companies must satisfy the "90% owned group" requirement, and
- (2) at least one of the companies must have the required relationship with the non-company members. This required relationship is as follows:
 - a partnership, trust or individual member has at least a 90% stake in the company
 - all the shareholders in the company are partners in a partnership that is a member of the group, are individuals that are members of the group, or are family members of any of those partners or individuals. Unless the company is a one-shareholder company, at least two partners in the partnership must be represented, either personally or by a family member, or

- a trust that is a member of the group only makes distributions of income or capital to: (a) the company; (b) other companies that are members of the group; (c) endorsed charities or gift-deductible entities; or (d) members of any of those companies, or their family members, provided that if that company has more than one shareholder, at least two shareholders must be represented as beneficiaries of the trust either personally or by a family member (s 48-15).

Example

Three individuals each have a one-third interest in a partnership and in each of two companies. The partnership and the two companies intend to form a GST group.

The partnership satisfies the membership requirements for grouping with each company (¶17-014), and each company satisfies the membership requirements for grouping with the partnership (see (2) above). However, the companies do not satisfy the membership requirements of grouping with each other because they do not satisfy the "90% owned group" test (see (1) above). The entities therefore cannot form a GST group (based on *Interpretative Decision ID 2002/524*).

A "family member" means the same as under the partnership and trust rules (¶17-014).

Non-profit bodies

The 90% requirement does not apply if all the members are non-profit bodies which form part of a non-profit association (s 48-10(2)). However, all the other requirements (registration, etc) continue to apply. For the special grouping rules that apply to sub-entities which operate as independent branches of non-profit bodies, see ¶15-080.

[GSTG ¶43-120]

¶17-014 Ownership requirements for partnerships, individuals and trusts

The ownership requirements for partnerships, trusts and individuals are as follows.

Partnerships

A GST group may consist only of partnerships. In this case, there is no further ownership test for one of the partnerships, but the others must satisfy the conditions in (5) below.

The ownership test for a partnership to join a GST group that includes entities other than partnerships requires that:

- (1) the partnership must have at least a 90% stake (¶17-012) in a company that is a member of the group

- (2) the shares in a company that is a member of the group are held in such a way that at least two shareholders are representatives of different partners in the partnership (if there is only one shareholder, it must be a representative of a partner in the partnership)
- (3) each of the partners is an individual who is a member of the group, or a family member of such an individual
- (4) a trust which is a member of the group has beneficiaries that include at least two representatives of different partners in the partnership, or
- (5) there must already be a partnership that is a member of the group under one of the above rules, and this partnership must have specified connections with the applicant partnership. This will apply, for example, where each partner of the applicant is an individual, and each of those individuals is a partner in the member partnership. The required connection may also be established in various ways via family trusts, family companies or family members (GST Regulations reg 48-10.02).

A "representative" of a partner means the partner itself, or a family member.

Trusts

The ownership test for a trust to join a GST group requires that:

- (1) if the group consists only of fixed trusts, the trust must be a member of the same 90% owned group as all the other fixed trusts, or must satisfy any of the other tests noted below
- (2) the trustee of the trust must have at least a 90% stake (¶17-012) in a company that is a member of the group
- (3) the trustee distributes any income or capital of the trust only to "permitted beneficiaries"
- (4) the trustee is the sole beneficiary of any distribution of income or capital by the trustee of another member trust, or
- (5) distributions of income or capital by the trustee, and by the trustee of another member trust, are only to persons who are all family members of the same individual (GST Regulations reg 48-10.03; 48-10.03A).

Distributions may be either direct or indirect (GST Regulations reg 48-10.01A).

Permitted beneficiaries are:

- a company that is a member of the group
- shareholders in a company that is a member of the group, and their family members. The beneficiaries of the trust must include at least two beneficiaries who are shareholders or family members of shareholders. If the company has only one shareholder, the beneficiaries of the trust must include the shareholder or a family member
- partners in a partnership that is a member of the group, if the trust beneficiaries include partners, or family members of the partners. The beneficiaries of the trust must include at least two beneficiaries who are partners or family members of partners

- an individual who is a member of the group, or a family member of such an individual
- a trustee of a trust that is a member of the group, or
- a charitable institution, a trustee of a charitable fund, or a gift-deductible body.

These rules apply to trusts whether they are fixed, discretionary or hybrid. They also apply to superannuation funds operated through a trust structure.

Example

The members of a self-managed superannuation fund are the directors of the trustee company and also hold shares in that company. The fund can group with the company as the only beneficiaries are permitted beneficiaries, ie shareholders in the company.

Individuals

The ownership test for an individual to join a GST group requires that:

- the individual has at least a 90% stake (¶17-012) in a company that is a member of the group, or each shareholder of that company is either the individual or a family member of the individual
- the individual and/or family members comprise the partners in a partnership that is a member of the group, or
- the individual and/or family members are beneficiaries — direct or indirect — in a trust that is a member of the group, and the trustee of that trust distributes income or capital only to “permitted beneficiaries” (see above) (GST Regulations reg 48-10.01A; 48-10.04).

Accordingly, there cannot be a GST group that consists solely of two individuals.

Who are “family members”

For the purposes of the above rules, your family members include any parent, grandparent, brother, sister, nephew, niece, child, or child of a child, of you or your spouse. They also include your spouse and the spouses of any of your family members (GST Regulations reg 48-10.01).

[GSTG ¶43-130; ¶43-140; ¶43-150]

¶17-016 Requirements for government departments

Government departments can form GST groups. The membership requirements for each department in the group are:

- it must be registered for GST purposes
- it must not be a member of any other GST group
- it must have the same tax periods as the other members

- it must account on the same basis as the other members
- all the other members must be government departments (s 149-25).

“Government departments” is used here as shorthand for the term “government related entity” which is used in the legislation (s 195-1). In broad terms, this covers Commonwealth, state and territory departments, agencies, statutory bodies and local governing bodies.

[GSTG ¶43-170]

¶17-020 Effect of having a GST group

The main effects of having a GST group are as follows.

Single body. A GST group is treated as if it were a single body for GST purposes. This means that, generally speaking, supplies and acquisitions made wholly within the group are effectively ignored. In technical terms, they are not taxable supplies or creditable acquisitions (s 48-40; 48-45). However, if there are transactions outside the group, they are treated like normal transactions and are covered by the normal GST rules. For these reasons, it will be important to be able to identify and track all internal transactions between group members. In some cases, this may represent a significant administrative burden.

The acquisition of an interest in a unit trust of which a fellow group member was the trustee was not sufficient in itself to make it an intra-group transaction (*AXA Asia Pacific Holdings Ltd v FC of T* 2008 ATC ¶20-074; [2008] FCA 1834).

If a supply is made partly when both parties were members of the group and partly when they were not, there will need to be an apportionment (*Interpretative Decision* ID 2012/34). The treatment of the supply as non-taxable will therefore apply only to the extent that the supply was carried out during the period of joint membership. This could happen, for example, where there is a supply of services that continues over a period.

Special rules ensure that the grouping rules cannot be used to exploit the margin rules (¶11-140) or the rules covering new residential premises (¶11-020).

GST payable by representative member. One resident member of the group must be nominated as the representative member (s 48-5). This is the entity that will be responsible for paying the GST on all sales made to parties outside the group (s 48-40), although tax invoices should be issued in the name of the member actually making the supply (*GST Ruling* GSTR 2013/1). The representative member also claims all the input tax credits for purchases and other acquisitions made from outside the group (s 48-45), and makes the GST return on behalf of all members of the group (s 48-60).

Where the GST or input tax credit on a supply or acquisition is attributable to a tax period in which the relevant member was not a member, that member remains liable for the GST or entitled to the input tax credit, not the representative member.

It is not essential that the representative member be the biggest or most important member. For the situation where the group is formed during a tax period, or the representative member changes during a tax period, see ¶17-010.

Example

Company X is the representative member of a GST group. The other members are Companies Y and Z. Company X has taxable sales to outside parties of \$550,000 and makes creditable acquisitions of \$330,000. Companies Y and Z make supplies to Company X of \$100,000 and pay \$50,000 for services from that company. They have taxable sales to outside parties of \$66,000 and creditable acquisitions of \$44,000.

For GST purposes, the transactions within the group may be ignored. As the representative member, Company X will account for GST calculated as:

| | |
|--|-----------------|
| $1/11 \times (\$550,000 + \$66,000)$ | \$56,000 |
| Less: $1/11 \times (\$330,000 + \$44,000)$ | 34,000 |
| | <u>\$22,000</u> |

If the representative member does not pay the tax, or there is a history of non-payment, the ATO may be able to claim it from any of the members in the group under the "joint and several liability" rule (Administration Act, Sch 1, s 444-90). In determining which member(s) to pursue, the factors that the ATO may consider include:

- whether there is an ability to collect payment promptly from the member
- whether there is an opportunity to include the group debt in an action being initiated against a particular member for that member's other tax-related liabilities
- whether there is a need to prove a debt in an insolvency administration of a member
- whether there is the opportunity to collect an amount due to a member from a third party (ATO *Receivables Policy*, Ch 34, para 70; *Practice Statement PS LA 2013/6*).

Joint and several liability does *not* apply in situations where members are statutorily barred from meeting the requirement, for example, certain financial institutions. These entities will nevertheless remain liable for liabilities arising from their own acts or omissions. Group members may also limit their liability by entering into an "indirect tax sharing agreement" (¶17-025).

Further ATO guidelines on collecting group debts are in *Practice Statement PS LA 2013/6*.

Refunds. The representative member is also entitled to any GST refund or credit, but the ATO can offset this against the tax debts of any of the group members (Administration Act, s 8AAZLA; 8AAZLB).

Importations. The representative member claims any input tax credit for importations made by any group member (s 48-45). However, if the GST on the importation is payable at the time customs duty is payable (¶9-005), the GST should be paid by that member. In other cases, the GST is payable by the representative member in the usual way (s 48-40).

Input tax credits. In determining whether a purchase outside the group by a group member has been made for business purposes and is eligible for an input tax credit, the purpose of the group as a whole is taken into account (s 48-45; 48-55). An election to make annual apportionments of input tax credits (¶15-020) can only be made if each group member satisfies the eligibility criteria. For special rules relating to the contents of tax invoices that are required to support claims for input tax credits, see ¶15-100.

Increasing or decreasing adjustments should be made where entities that have made acquisitions enter or leave a GST group, and there is a change in the extent of business use.

GST adjustments. The representative member is also responsible for any net GST adjustments that arise (s 48-50).

Example

A group member acquires equipment from outside the group and uses it to make taxable supplies to an outsider. The input tax credit on this purchase is claimed by the representative member. Later, the group member uses the equipment to make supplies to a group member who itself makes input taxed supplies. This is a change in purpose which means that an adjustment must be made to the input tax credit already allowed on the purchase of the equipment.

GST turnover thresholds. Various thresholds based on GST turnover apply under the GST rules, for example, the thresholds for registration. Where there is a GST group, these thresholds are based on the GST turnover of the group as a whole, excluding supplies made within the group (s 188-15; 188-20). Similarly, the "de minimis" test for determining input tax credit entitlements for financial acquisitions is applied as if the group were a single entity (¶10-032).

Annual tax periods. The representative member may elect to adopt annual tax periods, where applicable, where all members are eligible (¶8-040).

GST instalments. The representative member may elect to pay GST under the instalments system if all the group members are eligible. Special rules cover eligibility and the consequence of changes of membership (¶8-037).

Reverse charge. The "reverse charge" rules (¶9-100) still apply where an offshore supply is made from one group member to another. In this situation, the supply is still treated as a taxable supply. Similarly, the recipient group member can claim an input tax credit in this situation (s 48-45(3)). This is an

exception to the general rule that transactions within groups are outside GST (s 48-40(2)).

Joint venture property. It may happen that a group member is also a participant in a GST joint venture (¶17-200). If it sells joint venture property to another group member, GST may be payable. This is an exception to the general rule that transactions within groups are outside GST (s 48-40(2)).

Income tax. The income tax liabilities of group members are calculated as if they had personally paid the GST or claimed the input tax credit, even though this in fact was done by the representative member (ITAA 1997 s 17-20; 27-25). For the position where tax losses or net capital losses are transferred within wholly-owned groups, see ¶24-070.

[GSTG ¶43-200]

¶17-025 Indirect tax sharing agreements

The possibility of becoming directly liable for the group's tax liabilities if the group representative defaults (¶17-020) can create considerable uncertainty among group members, especially as the liability can arise even after the member has left the group. To overcome this problem, group members have the option of entering into an indirect tax sharing agreement ("ITSA" or "ITXSA") (Administration Act, Sch 1, s 444-90).

The protection provided by an ITSA will no doubt encourage many groups to implement them. The fact that there is an ITSA will, of course, also be relevant to a prospective purchaser of a former group member. Prospective purchasers will normally wish to ensure in any event that there is an adequate indemnity in respect of any residual GST liability.

Requirements for agreement

The requirements for the agreement are:

- it must be entered into between the representative member and one or more members
- it must be entered into before the date on which the representative member is required to lodge a BAS for the relevant tax period
- each participating member's "contribution amount" for the relevant tax period must be ascertainable from the agreement, and
- the contribution amount must represent a "reasonable allocation" of each participating member's liability for the group's indirect tax payable for that period. ATO guidelines on what it considers will qualify as a reasonable allocation are at www.ato.gov.au, "Indirect tax sharing agreement — reasonable allocation of indirect tax law liability".

The agreement is not effective if:

- the representative member fails to comply with a written notice from the Commissioner requiring it to provide a copy of the agreement in the approved form within 21 days (see below)

- the agreement was entered into as part of an arrangement which had a purpose of prejudicing the Commissioner's recovery of the group's BAS liability, or
- the representative member enters into more than one agreement for the same period. However, more than one group member can be included in one agreement.

The agreement may apply to amounts due under "indirect tax laws", ie GST, wine equalisation tax, luxury car tax or fuel tax.

Approved form of agreement

The "approved form" for any ITSA that the Commissioner requires to be produced (see above) has the following minimum requirements (see *Indirect Tax Sharing Agreement* at www.ato.gov.au). While these requirements must be met, the actual legal form of the agreement is open to the taxpayers and their advisers, provided that ITSA legally binds the parties concerned.

The requirements are that the ITSA must:

- (1) be in writing
- (2) show the date of execution
- (3) specify the names of the representative and each contributing member
- (4) specify what indirect tax law liability or liabilities it covers
- (5) specify the tax period that the indirect tax law liability or liabilities relate to
- (6) specify the method used to allocate group liability or liabilities. This must provide for a reasonable allocation of the total amount of the indirect tax law liabilities for that tax period
- (7) be properly executed by or on behalf of the representative and each contributing member and either:
 - specify the exact contribution amount for each contributing member for the relevant liability, or
 - include a schedule signed by the representative (if and when required to be produced to the Commissioner)
- (8) if and when required to be produced to the Commissioner, include any Deeds of Assumption in relation to the particular liability or liabilities for the particular period (or periods).

If the ITSA includes a schedule signed by the representative, it must:

- specify the relevant liability or liabilities and period (or periods) as specified in the Commissioner's notice to produce
- state the name and ABN or ACN of the representative and each contributing member

- state the contribution amount of each contributing member in respect of that liability or each of the liabilities, and
- declare that "the schedule includes the names of all the ITSA contributing members in relation to that liability or liabilities for that period (or those periods) and the contribution amount or amounts as calculated under the ITSA".

Further guidelines on the contents of the agreement are in *Practice Statement PS LA 2013/6*.

Effect of agreement

The effect of the agreement is that the member's potential liability for that tax period is limited to the contribution amount.

Furthermore, if the member has left the group before the group BAS is required to be given for that tax period, and has paid its contribution amount (or a reasonable estimate) for that period to the representative member, the member has no further potential liability for that period. This "clear exit" rule does not apply, however, if leaving the group was part of an arrangement that had a purpose of prejudicing the Commissioner's recovery of the group's BAS liability.

The existence of the agreement does not affect the representative member's primary liability for the tax.

Example

Entities A, B, C and X are the members of a GST group, with X as the representative member. On 31 July 2017, they enter into an indirect tax sharing agreement. This is before the date on which the group's monthly July BAS is due (21 August).

Entity A leaves the group on 15 April 2018. This is before the date on which the group's March 2018 BAS was due.

X, as representative member, is responsible for the group's indirect tax liability. Assume, however, that X defaults for the July 2017 BAS onwards. The effect is as follows:

- A, B and C are jointly and severally liable for amounts payable under the July 2017–February 2018 BASs. However, their liabilities are limited to their contribution amounts under the agreement
- B and C are jointly and severally liable for amounts payable under the March 2018 and subsequent BASs, though their liabilities are limited to their contribution amounts. Provided that entity A duly pays its relevant contribution amounts in relation to both the March BAS (and its proportionate contribution amount for the April BAS), it will have no further liability. Entity A would, however, retain responsibility for any adjustments arising out of supplies or acquisitions that it made while it was a member (¶17-030).

Technically, there is a supply for GST purposes where an entity enters into an indirect tax sharing agreement, or is released from an obligation as a result of the agreement. Those supplies are not taxable (s 110-60; 110-65).

[GSTG ¶43-245]

¶17-030 Change of group membership or dissolution

Groups are able to "self-assess" their eligibility to change the membership of the group, and to implement this at any time during a tax period. There is normally no need to obtain the Commissioner's approval, as was required under the former rules (see below). The effect is that:

- the representative member may add an entity to the group, provided that the entity satisfies the membership requirements (¶17-010) and agrees in writing
- the representative member may leave the group, and may be replaced by another resident group member nominated by the members
- the representative member may remove any member from the group
- if a member is an incapacitated entity (see below), that entity's representative (eg the liquidator) may remove the entity from the group, and
- the representative member may dissolve the group (s 48-70).

The change must be notified to the Commissioner in the approved form. The change takes effect from the start of the day specified in the notification. This may be on, before or after the date on which the notification is given. There are two provisos to this rule:

(1) if the notification is made after the required date for lodgment of the BAS for the tax period in which the nominated day occurs, the date of the change must be approved by the Commissioner, who has the power to specify some other date if appropriate (s 48-71). The Commissioner's decision on this is reviewable (¶18-600).

Example

A GST group consists of A, B and C, with C as the representative member. It accounts on a monthly basis. C notifies the Commissioner on 10 May that a new member D was added with effect from 20 April. As this is notified before the date on which the BAS is due for the tax period in which 20 April occurred (ie 21 May), the effective date of the change is therefore the nominated date, 20 April.

Assume instead that C made the notification on 30 May. This is after the date on which the BAS is due for the tax period in which 20 April occurs (ie 21 May). The Commissioner's approval to the 20 April change date is therefore required.