



Technical Advisory
Volume 1 Issue 3; Issued 2004, January.

Re: Tax Credit (Interpretation of Regulation 14(3) (b))

Issue

The Advisory seeks to give an interpretation of the GCT Regulation 14(3) (b).

Legislation

All legislative references made are to the General Consumption Act 1991, unless otherwise stated.

Law

GCT Regulation 14

14(3) Subject to paragraphs (4) and (5), where a registered taxpayer makes taxable supplies and exempt supplies, he shall be entitled to claim as a credit-

- (a) In respect of the taxable supplies, all of the input tax paid or payable in respect thereof;*
- (b) In respect of exempt supplies, **all the input tax paid or payable in respect thereof, if and only if the exempt supplies are not more than five percent of the value of the total supplies or \$48,000, whichever is less.***

14(4) where the taxpayer is unable to identify the input tax paid or payable in respect of the supplies referred to in paragraph (3), he shall be entitled to claim as a credit, such proportion of the input tax as is attributable to the total supplies. (Emphasis supplied)

General Rule

- 1 As a general rule, tax paid in relation to exempt supplies is not allowable as a tax credit. For input tax to be allowed, it must be incurred for *the purpose of making taxable supplies*.
- 2 Regulation 14(3) deals with tax, which is *directly attributable* to
 - ⌘ Taxable supply (3a);
 - ⌘ Exempt supply (3b).
- 3 Regulation 14(4) deals with residual input tax, i.e. tax incurred for the general business, and are not directly identifiable to taxable or exempt supplies.
- 4 Regulation 14(3)(b) is making an exception to the general rule. It allows the taxpayer to claim full credit of tax paid in relation to exempt supplies if
 1. The exempt supplies are not greater than 5% of total supplies; or
 2. \$48,000, whichever is less.

Interpretation

1. Issue

The input tax in dispute, are those, which are specifically attributable to exempt supplies (specified input tax). Please note, apportionment of tax relates to where one is unable to directly attribute tax to a particular supply. This allowance is found in Regulation 14(4).

2 Rules of interpretation – Regulation 14(3)(b)

1. The amount to be computed must be in relation to a taxable period.
2. The exempt supplies should not be greater than \$48,000.
3. If exempt supplies are greater than \$48,000, the specified tax is not allowable.
4. If the exempt supplies are less than \$48,000 compute the percentage of exempt supplies to total supplies.

5. If the percentage computed is less than five percent of total supplies, then all the specified input tax is allowable.
6. If the percentage computed is greater than five percent of total supplies, then the specified input tax is not allowable.

Example 1:

1. taxable period May 2003
2. total supplies - \$3M
3. exempt supplies \$ 52,000
4. tax paid in relation to exempt supplies \$15,000

Answer:

As the value for exempt supplies is greater than \$48,000, the \$15, 000 will not be allowed as a tax credit against output tax

Example 2:

1. taxable period May 2003
2. total supplies - \$300,000
3. exempt supplies \$ 10,000
4. tax paid in relation to exempt supplies - \$5,000

Answer:

1. Exempt supply is less than \$48, 000; compute the ratio of exempt supply to total supply to ascertain whether or not the ratio is greater than 5%.
2. applying the formula [exempt/total supplies] $\frac{\$10,000}{\$300,000} = 3\%$
3. As the exempt supply is less than \$48,000 and also less than 5% of total supplies, the taxpayer will be able to claim a tax credit \$5,000 against output tax.

Example 3

1. taxable period May 2003
2. total supplies - \$100,000
3. exempt supplies \$ 30,000

4. tax paid in relation to exempt supplies - \$5,000

Answer

1. Exempt supply is less than \$48, 000, compute the ratio of exempt supply to total supply to ascertain whether or not the ratio is greater than 5%.
2. applying the formula [exempt/total supplies] $\$30,000/\$100,000 = 30\%$
3. The exempt supply is less than \$48,000 but not less than 5% of total supplies.
4. The taxpayer will not be able to claim a tax credit \$5,000 against output tax.