
Claiming GST credits: sticking to the facts

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In brief

The Full Federal Court decision in Rio Tinto Services Ltd v Commissioner of Taxation (2015) FCA FC 117 addresses the GST concept of ‘creditable purpose’

On 24 August 2015 the Full Federal Court dismissed an appeal from Rio Tinto Services Limited (Rio Tinto) and upheld the original decision of the Federal Court that Rio Tinto was not entitled to claim input tax credits on acquisitions that related to accommodation leased to its workforce in its Pilbara iron ore mining operations. This decision provides some clarification on the test concerning ‘creditable purpose’ under section 11-15(2) of the Goods and Services Tax Act (GST Act).

The case has relevance for any business that makes input taxed supplies including businesses that provide residential accommodation (such as retirement village operators), financial service providers and businesses that undertake mergers and acquisitions (M&A) activity. Businesses should consider how they have determined input tax credit entitlement and in particular revisit circumstances in which ‘purpose’ and the broader relationship between acquisitions and the enterprise as a whole has been used to determine input tax credit entitlement.

In detail

Facts of the case

The case concerned acquisitions made by Hamersley and Pilbara Iron for which Rio Tinto, as representative member of the goods and services (GST) group including Hamersley and Pilbara Iron, claimed it was entitled to input tax credits. The acquisitions were made to provide and maintain residential accommodation for Hamersley’s workforce in its Pilbara mining operations.

Rio Tinto sought a declaration that it was entitled to input tax credits on the acquisitions.

The law

Broadly, the statutory rules for the claiming of input tax credits under the GST Act provide that you are entitled to input tax credits for your creditable acquisitions and that you make a creditable acquisition if, amongst other things, you acquire something solely or partly for a creditable purpose.

You acquire a thing for a creditable purpose to the extent that it is not input taxed pursuant to section 11-15(2)(a) of the GST Act which provides that 'you do not acquire a thing for a creditable purpose to the extent that it relates to making supplies that would be input taxed'.

Therefore, where an acquisition does not relate to input taxed supplies (for example taxable or GST-free supplies), a full input tax credit can be claimed. Where an acquisition relates to both input taxed and GST-free supplies, apportionment of the input tax credit may be appropriate.

Relevant to the Rio Tinto circumstances, the supply of renting residential premises for residential accommodation is an input taxed supply for GST purposes, whereas the supply comprising the sale of iron ore is taxable or GST-free (for example, when exported).

The Issue

The key issue for consideration was the extent to which the acquisitions made by Rio Tinto related to the making of input taxed supplies.

The findings of the Full Federal Court

The Full Federal Court held that the acquisitions related wholly to the input taxed supply (being the leased accommodation) and were, therefore, excluded from creditable purpose under section 11-15(2)(a) of the GST Act. Accordingly, Rio Tinto was not entitled to claim input tax credits on those acquisitions relating to the leased accommodation.

In forming their view, the Court made a number of key findings, including that:

- determining the relevant relationship requires a factual inquiry to identify the relevant acquisition and relationship between that acquisition and input taxed supplies
- the relevant inquiry should not consider the broader relationship between the acquisition and the enterprise
- the reason or wider purpose of the enterprise making the supply or making the acquisition is not relevant, and
- whilst the supply of the leased accommodation was for the broader business purpose of carrying on Rio Tinto's enterprise, the extent of the relationship between the acquisitions and the supply of residential premises was not reduced by the acquisitions being related to another purpose (that other purpose being related to a taxable supply).

The reasons of the Full Federal Court provide the clearest judicial statement of the interpretation of section 11-15(2)(a) to date. In particular, the Court's focus on the fact that it is a blocking provision to exclude an acquisition from the ambit of creditable purpose is fundamental to its interpretation. Whilst this is not new, the explanation of what this means for the nature of the relationship required is very useful, particularly insofar as it excludes the relevance of certain matters (the relationship with the enterprise more broadly and the reason or purpose of the acquisition and the related supply). Therefore,

where an acquisition relates wholly to an input taxed supply, the relationship with some broader commercial objective is not relevant.

The takeaway

If you are a business that has incurred costs that relate to input taxed supplies such as development costs in relation to retirement villages (i.e. retirement village operators), a financial services provider or a business that undertakes M&A activity – you should be considering the implications of this decision on your input tax credit claims (both historically and going forward). In particular, you should revisit the circumstances where ‘purpose’ and the broader relationship between acquisitions and the enterprise as a whole was used to determine input tax credit entitlement.

A simple example may exist in the context of an M&A transaction. Specifically, advice may be sought on the GST-free supply of assets. Input tax credits should be able to be claimed even if this sale of assets forms part of a broader restructure/or for a broader purpose involving input taxed supplies. Furthermore, if the broader relationship between the acquisitions and the enterprise as a whole has been used to determine an input tax credit entitlement, there may be a need or potentially a benefit to revisit any input tax credit claim i.e. financial service providers incur costs for the provision of giveaways as part of their business.

Let's talk

For a deeper discussion of how these issues might affect your business, please contact:

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