GSTD 2002/D5 - Goods and Services Tax: are there GST consequences when a partner in a partnership takes goods held as trading stock for private or domestic use?

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This document has been finalised.

Generated on: 28 November 2026, 02:57:01 AM

Draft Goods and Services Tax Determination

Goods and Services Tax: are there GST consequences when a partner in a partnership takes goods held as trading stock for private or domestic use?

Preamble

Draft Goods and Services Tax Determinations (DGSTDs) present the preliminary, though considered, views of the Australian Taxation Office. DGSTDs should not be relied on; only final Goods and Services Tax Determinations represent authoritative statements by the Australian Taxation Office.

Date of Effect

See paragraphs 12 to 15.

1. Yes. When a partner in a partnership takes goods held as trading stock for the private or domestic use of the partner in his or her individual capacity, Division 130 of the *A New Tax System (Goods and Services Tax) Act 1999* (the GST Act) applies.

Division 130

2. Division 130 is an adjustment provision that can result in an increasing adjustment of an amount equal to the input tax credits to which you were entitled upon acquisition or importation of goods. You have an increasing adjustment under Division 130 if the goods were acquired or imported solely for a creditable purpose and you now apply them solely to private or domestic use.

The operation of Division 130 for partnerships that acquire or import trading stock

3. Goods that are acquired or imported as trading stock, by a partnership carrying on an enterprise, are acquired or imported solely for a creditable purpose — the creditable purpose being the resale of the stock by the partnership. If trading stock is sold in the course or furtherance of an enterprise, the supply of goods (being the sale of goods) is an application for a creditable purpose. However, trading stock is not considered to be applied while it is awaiting resale by the enterprise.

4. If goods acquired or imported as trading stock are not applied to any creditable purpose but are instead applied to a private use by the partnership[1], Division 130 will operate in respect of such goods.

5. When goods are removed from trading stock by a partnership for private consumption by a partner, there is an application solely to private and domestic use by the partnership to which Division 130 applies.

6. If Division 130 operates in respect of goods held as trading stock by a partnership, an increasing adjustment must be made for the amount of the input tax credits to which the partnership was entitled for the acquisition or importation of the goods (taking account of any adjustments for the acquisition or importation).[2]

Division 72

7. Where there is no consideration or inadequate consideration for a supply Division 72 may apply. Division 72 ensures that a supply to an associate[3] without consideration will be a taxable supply if, except for the lack of consideration, the supply would otherwise be taxable. Division 72 also provides that supplies for inadequate consideration are properly valued. There is no consideration when goods are applied to private use by the partnership. However, if the supply is not made in the course or furtherance of the enterprise it is still not a taxable supply.[4]

8. The application to a private use by a partnership under Division 130 does not involve a supply made in the course or furtherance of an enterprise being carried on. Accordingly, the application to private use by the partnership does not involve a taxable supply being made. Division 72 has no operation.

Example 1

9. *Harvey and Tracey are in partnership trading as Harv's Hardware Store. During a tax period the partnership applies tools ($50 input tax credits previously claimed) and building materials ($80 input tax credits previously claimed) to a private use. An increasing adjustment is made for $130 ($50 + $80) in the partnership's Business Activity Statement (BAS).*

Example 2

10. *Asif and Iqbal are in partnership operating a convenience store. During a tax period the partnership applies bread, milk, soft drinks, confectionery and ice-creams to a private use. Input tax credits of $20 have been claimed by the partnership for the soft drinks, confectionery and ice-creams that have been applied to a private use. (The milk and bread were supplied GST-free to the partnership so there was no entitlement to input*

[1] Note that it is the private or domestic use by the entity that acquires or imports the goods that is relevant for the purpose of Division 130.
[2] Subsection 130-5(2)
[3] For the definition of associate see subsection 318(1) of the *Income Tax Assessment Act 1936*.
[4] Paragraph 9-5(b).

tax credits on their purchase. Accordingly there is no requirement to make any increasing adjustment in respect of these items). An increasing adjustment is made for $20 in the partnership's BAS.

Example 3

11. *Wing Fay and Yin Kin operate a Chinese takeaway restaurant in partnership. During a tax period, the partnership provides GST-free ingredients (being meat, fish, vegetables, rice and noodles) and meals (consisting of GST-free ingredients) to each of the partners. This food is supplied GST-free to the partnership so there is no increasing adjustment to be made. However, the partnership also provides the partners with food and drinks that are not GST-free (such as ice-cream, cake, soft drinks and alcoholic beverages) on which input tax credits have been claimed. The partnership will have an increasing adjustment for the sum of the input tax credits claimed on this food and drink that has been applied to a private use.*

Date of Effect

12. This draft Determination represents the preliminary, though considered, view of the Australian Taxation Office. This draft may not be relied on by taxation officers, taxpayers or practitioners. When the final Determination is officially released, it will explain our view of the law as it applies from 1 July 2000.

13. The final Determination will be a public ruling for the purposes of section 37 of the *Taxation Administration Act 1953* and may be relied upon, after it is issued, by any entity to whom it applies. Goods and Services Tax Ruling GSTR 1999/1 explains the GST Rulings system and our view of when you can rely on our interpretation of the law in GST public and private rulings.

14. If the final public ruling conflicts with a previous private ruling that you have obtained, the public ruling prevails. However, if you have relied on a private ruling, you are protected in respect of what you have done up to the date of issue of the final public ruling. This means that if you have underpaid an amount of GST, you are not liable for the shortfall prior to the later ruling. Similarly, you are not liable to repay an amount overpaid by the Commissioner as a refund.

15. In the event that the view in the final Determination is unfavourable in comparison with the view expressed in GSTD 2002/1 (now withdrawn), the final Determination will apply on and from its date of issue.

Your comments

16. We invite you to comment on this draft Goods and Services Tax Determination. We are allowing 6 weeks for comments before we finalise the Determination. If you want your comments considered, please provide them to us within this period.

Comments by Date: **8 January 2003**

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Commissioner of Taxation
27 November 2002

Previous draft:
Not previously issued in draft form

Related Rulings/Determinations:
GSTR 1999/1; GSTD 2002/1; GSTD 2002/1W

Subject references:
- goods own use
- partnerships
- private or domestic use
- supply
- trading stock

Legislative references:
- ANTS(GST)A 1999 9-5(b)
- ANTS(GST)A 1999 Div 72
- ANTS(GST)A 1999 Div 130
- ANTS(GST)A 1999 130-5(2)
- ITAA 1936 318(1)
- TAA 1953 37

ATO References
NO: 2002/003439
ISSN: 1443-5179