

GSTR 2008/D1W - Withdrawal - Goods and services tax: registered agricultural managed investment schemes



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Notice of Withdrawal

Draft Goods and Services Tax Ruling

Goods and services tax: registered agricultural managed investment schemes

Draft Goods and Services Tax Ruling GSTR 2008/D1 is withdrawn with effect from today.

1. Draft Goods and Services Tax Ruling GSTR 2008/D1 contains the Commissioner's preliminary view of the application of the *A New Tax System (Goods and Services Tax) Act 1999* to agricultural managed investment schemes registered under the *Corporations Act 2001*. The preliminary view in GSTR 2008/D1 is essentially that in a typical registered agricultural managed investment scheme the investor is making an investment on capital account and is not carrying on an enterprise. Instead, the Responsible Entity of the scheme is carrying on the agricultural business and is also in a trust relationship with the investors as beneficiaries. The reasoning underlying this preliminary view was based on the Commissioner's view in Taxation Ruling TR 2007/8.
2. The view contained in TR 2007/8 was judicially tested in *Hance v. FC of T; Hannebery v. FC of T* [2008] FCAFC 196; 2008 ATC 20-085. On 19 December 2008, the Full Federal Court handed down its decision, finding that the expenses incurred by the applicants pursuant to the scheme were incurred in the course of carrying on a business and had the character of outgoings on revenue account rather than on capital account.
3. The Commissioner has decided not to seek special leave to appeal the Full Federal Court's decision and to withdraw TR 2007/8 and GSTR 2008/D1.
4. Goods and Services Tax Advice GSTA TPP 001 deals with the question 'Are investors (participants) in an agricultural managed investment scheme required to register for GST?' That advice says that an individual investor is required to be registered for GST if the investor meets the registration threshold and is carrying on an enterprise. It notes that agricultural managed investment schemes are often structured so that investors carry on individual enterprises, but notes that these questions need to be answered on a case by case basis. The preliminary views expressed in the GSTR 2008/D1 were only for community comment and therefore the current treatment as set out in GSTA TPP 001 will continue to apply.

GSTR 2008/D1

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Commissioner of Taxation

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ATO references

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ATOlaw topic: Goods and Services Tax ~~ General rules and concepts ~~
course or furtherance of enterprise
Goods and Services Tax ~~ General rules and concepts ~~
entitlement to input tax credits
Goods and Services Tax ~~ Primary production ~~ other