



GSTA TPP 050 - Goods and services tax: Does the transfer of assets constitute a taxable supply under subdivision 72-A when a new trustee is appointed to replace the original trustee of a trust?

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 This document has changed over time. This is a consolidated version of the ruling which was published on *14 June 2005*



Goods and Services Tax Advice

Goods and services tax: Does the transfer of assets constitute a taxable supply under subdivision 72-A when a new trustee is appointed to replace the original trustee of a trust?

Preamble

*This document is a ruling for the purposes of section 37 of the Taxation Administration Act 1953. It illustrates the principles contained in **Goods and Services Tax Determination GSTD 2000/8** and **Draft Miscellaneous Taxation Ruling MT 2004/D3 on the concepts of entity and enterprise**. You can rely on the information presented in this document, which provides advice on the operation of the GST system.*

Answer

No, the transfer of assets in this situation is not a supply; it is therefore not a taxable supply.

Background

Company A is a corporate trustee for a discretionary trust. Company A holds all of the assets including land and buildings in its capacity as corporate trustee. Company B is to be the new corporate trustee and the trust deed is so amended. The assets are transferred from company A to company B including title changes on the land and buildings. Company A and company B are associates for the purposes of Section 72 of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act).

Explanation

There is no new entity created for ABN or GST purposes when there is a change in trustee, provided there is no change in the underlying trust.

A trust is an entity under paragraph 184-1(1)(g) of the GST Act.

However, there is a problem in providing that a trust is an entity. This is because rights and obligations can only be placed on a separate legal entity. A trust is not a separate legal entity.

Subsection 184-1(2) is designed to overcome the problem. It is designed to ensure that the rights and obligations under the GST Act are conferred or imposed on the trustee.

First, it provides that the trustee is *taken to be* an entity. It is as though we are pretending that the trustee is the trust. For instance, Company A is the trustee of the Jones Family Trust. The entity is the Jones Family Trust. For the purposes of the GST Act, Company A is taken to be the trust.

Second, subsection 184-1(2) describes who the trustee is. This person (including a company) is the trustee *at any given time*. The use of the phrase 'at any given time' takes into account that a trustee may change. For example on 1 January, Company A is the trustee of the Jones Family Trust. Company A is the person taken to be the trust at that time. However, on 1 March Company B becomes the trustee of the Jones Family Trust. Company B is then the person taken to be the trust. There is only ever one entity (the Jones Family Trust) but the person who is taken to be that entity changes.

The change of trustee must be notified to the registrar for recording on the Australian Business Register. However, there is no change to the ABN of the trust (trustee). Similarly, there is no change in the trust entity for GST purposes. The transfer of assets from Company A to Company B is therefore not a supply. It follows there is no taxable supply from Company A to Company B.

Application of this GST Advice

This Advice is based on GSTD 2000/8 and MT 2004/D3. It explains our view of the law as it applied from 1 July 2000. You can rely on this Advice on and from its date of issue for the purposes of section 37 of the *Taxation Administration Act 1953*. 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.

If this Advice conflicts with a previous private ruling that you have obtained, this 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 this public ruling. This means that if you have underpaid an amount of GST, you are not liable for the shortfall prior to the date of issue of this later ruling. Similarly, you are not liable to repay an amount overpaid by the Commissioner as a refund.

Commissioner of Taxation

Date

Related Rulings/Determinations/GST Advice:

GSTA TPP 047

Previous Rulings/Determinations/GST Advice:

MT 2000/1

Subject references:

ABN
entity
enterprise
trust
registered

Legislative references:

ANTS(GST)A 1999 184-1
TAA 1953 37

ATO references

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