


GSTA TPP 067 - Goods and services tax: Is there an increasing adjustment when an enterprise asset is transferred to a spouse because of a marital breakdown where the acquisition of the asset was not a creditable acquisition?

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 This document has changed over time. This is a consolidated version of the ruling which was published on 31 October 2012



Goods and Services Tax Advice

Goods and services tax: is there an increasing adjustment when an enterprise asset is transferred to a spouse because of a marital breakdown where the acquisition of the asset was not a creditable acquisition?

Preamble

*This document was published prior to 1 July 2010 and was a public ruling for the purposes of former section 37 of the **Taxation Administration Act 1953** and former section 105-60 of Schedule 1 to the **Taxation Administration Act 1953**.*

*From 1 July 2010, this document is taken to be a public ruling under Division 358 of Schedule 1 to the **Taxation Administration Act 1953**.*

A public ruling is an expression of the Commissioner's opinion about the way in which a relevant provision applies, or would apply, to entities generally or to a class of entities in relation to a particular scheme or a class of schemes.

If you rely on this ruling, the Commissioner must apply the law to you in the way set out in the ruling (unless the Commissioner is satisfied that the ruling is incorrect and disadvantages you, in which case the law may be applied to you in a way that is more favourable for you – provided the Commissioner is not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any underpaid tax, penalty or interest in respect of the matters covered by this ruling if it turns out that it does not correctly state how the relevant provision applies to you.

[Note: This is a consolidated version of this document. Refer to the Legal Database (<http://law.ato.gov.au>) to check its currency and to view the details of all changes.]

Answer

No, an increasing adjustment does not arise in these circumstances..

Background

A marriage has broken down. One spouse ran a GST registered enterprise. That spouse had bought the enterprise as a GST-free supply of a going concern. The Family Court orders that an asset that

formed part of the GST-free supply of the going concern be transferred to the other spouse. The asset was used in the enterprise. The other spouse is not registered for GST and does not intend to carry on the enterprise.

Explanation

Goods and services tax ruling GSTR 2003/6 expresses the view that a transfer of an enterprise asset to a spouse under an order of the Family Court is not a taxable supply.

The ruling does however provide that the transfer may give rise to an increasing adjustment under Division 129 of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act).

An increasing adjustment under Division 129 of the GST Act is calculated on the amount of input tax credit claimed. No input tax credit is claimed by the entity as the acquisition forms part of a GST-free supply of a going concern, so that there can be no adjustment under Division 129 of the GST Act when the asset is later supplied by the entity to the spouse in the circumstances of GSTR 2003/6.

Application of this GST Advice

This Advice applies [to tax periods commencing] both before and after its date of issue. However, this Advice will not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of this Advice (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10).

Commissioner of Taxation

14 June 2005

Related Rulings/Determinations/GST Advice:

TR 2006/10

Subject references:

enterprise assets
property distributions
roll-over relief

marital breakdowns
input tax credits

Legislative references:

ANTS(GST)A 1999 Div 129
TAA 1953 Sch 1 Div 358

ATO references

NO:	05/3095
ISSN:	1833-0053