



GSTA TPP 073 - Goods and services tax: Can paragraph 139-5(3)(a) of the GST Act apply so that there is no adjustment where separate beneficiaries inherit two commercial properties formerly used by the deceased to carry on a leasing enterprise?

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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: can paragraph 139-5(3)(a) of the GST Act apply so that there is no adjustment where separate beneficiaries inherit two commercial properties formerly used by the deceased to carry on a leasing enterprise?

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

Yes, paragraph 139-5(3)(a) of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act) can apply where two separate beneficiaries inherit two commercial properties formerly used by the deceased to carry on a leasing enterprise.

Background

A man acquires two commercial properties shortly before his death. He pays GST and claims input tax credits on each acquisition. He carries on a leasing enterprise of the properties until his death.

The executor of the deceased's estate continues to carry on the leasing enterprise and is registered for GST. The annual rental income from both properties is in excess of \$100,000.

According to the will of the deceased, one of the properties is to be transferred to his daughter; and the remaining property is to be transferred to his two sons as tenants in common.

Explanation

For the purposes of this response it is assumed that the enterprise carried on by the deceased was an enterprise as defined in paragraph 9-20(1)(c) of the GST Act.

Paragraph 139-5(3)(a) of the GST Act states that an adjustment does not arise in respect of an asset if the asset related to an enterprise that the deceased person carried on, and the beneficiary intends to continue to carry on that enterprise. Paragraph 139-5(3)(a) does not apply where the beneficiary intends to carry on part of the enterprise of the deceased, but where the beneficiary intends to continue to carry on the enterprise that was previously carried on by the deceased.

Where properties are acquired and leased, an enterprise is carried on in relation to each property. In this case, the deceased carried on two separate enterprises in relation to his commercial properties. Paragraph 139-5(3)(a) of the GST Act will apply if the beneficiary/beneficiaries of each property intend to continue to carry on the enterprise that the deceased carried on in relation to that property which they inherit.

*Note: Where two beneficiaries inherit a property as tenants in common, paragraph 139-5(3)(a) of the GST Act applies so that no adjustment arises provided that **both** beneficiaries to whom the*

property is transferred intend to continue to carry on that enterprise

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

25 January 2006

Related Rulings/Determinations/GST Advice:

TR 2006/10

Subject references:

deceased estate
beneficiary
increasing adjustment
enterprise

Legislative references:

ANTS(GST)A 1999 139-5(3)(a)
ANTS(GST)A 1999 9-20(1)(c)
TAA 1953 Sch 1 Div 358

ATO references

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