

GSTD 2000/1 - Goods and services tax: is the scope of Division 99 of the A New Tax System (Goods and Services Tax) Act 1999 limited to holding deposits?

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! This document has changed over time. This is a consolidated version of the ruling which was published on *12 April 2000*



Goods and Services Tax Determination

Goods and Services Tax: is the scope of Division 99 of the *A New Tax System (Goods and Services Tax) Act 1999* limited to holding deposits?

Preamble

*This document is a ruling for the purposes of section 37 of the **Taxation Administration Act 1953**. You can rely on the information presented in this document which provides advice on the operation of the GST system.*

Date of Effect

*This Ruling applies on and from 8 July 1999 (the date of Royal Assent to the *A New Tax System (Goods and Services Tax) Act 1999* and may be relied on immediately.*

1. No. Division 99 of the *A New Tax System (Goods and Services Tax) Act 1999* ('the GST Act') does not apply only to holding deposits that are held under a hire agreement as security for the return of the goods. It applies to any deposit that is subject to forfeiture by the recipient on failure to perform an obligation under an agreement for a supply.

Explanation

2. Division 99 of the GST Act provides a special rule about attribution for security deposits.
3. A security deposit is an amount paid by the recipient of a supply where the agreement is that the deposit may be forfeited by the recipient to the supplier if the recipient defaults.
4. Many agreements for supplies require the recipient to pay a security deposit. Division 99 applies to those deposits that are at risk of forfeiture on failure to perform an obligation under the agreement. Other payments are sometimes referred to as deposits. If an amount is actually part payment for a supply, Division 99 does not apply. The basic attribution rules apply.
5. The effect of Division 99 is that you do not account for GST payable or input tax credits when a deposit to which the Division applies, is received or provided.
6. You, the supplier, account for GST payable in the tax period in which
 - the deposit is forfeited by the recipient for failure to perform an obligation under the agreement, or
 - you apply the deposit as part or all of the consideration for a supply.

7. You, the recipient, account for input tax credits in the tax period in which
- you forfeit the deposit for failure to perform an obligation under the agreement, or
 - the supplier applies the deposit as part or all of the consideration for a supply.

Note: This is subject to the requirement to hold a tax invoice by the time you lodge your business activity statement for the tax period.

8. Your accounting treatment may be evidence of when a deposit has been either forfeited or applied as consideration for a supply. For example, if you recognise a deposit as revenue when it is no longer refundable, this indicates that it has been applied as consideration.

Division 99 applies to the deposits described in Examples 1, 2 and 3.

Example 1

Bruce pays a holding deposit and a hire fee to a hotel for hire of an umbrella. If Bruce brings back the umbrella in a satisfactory condition, the hotel will refund the deposit. Where this occurs, there are no GST consequences. However, if Bruce damages the umbrella or does not return it, the deposit will be forfeited and kept by the hotel.

Example 2

Harry is a luxury car dealer. He takes an order for a car with a GST-inclusive price of \$440,000. Harry requires a deposit of \$2,000 before he places an order with the overseas manufacturer. The agreement is that the deposit may be forfeited if the customer does not complete the purchase. If the order cannot be filled, Harry is required to refund the deposit to the customer. In the meantime, Harry can do whatever he likes with the deposit. If Harry fills the order, he will apply the deposit as consideration for the supply of the car.

Example 3

The Beach Resort takes a booking for accommodation for the week commencing 1 September 2000. The agreement is that a booking fee of \$100 is to be paid and will be refunded only if the booking is cancelled before 1 August 2000. It is subject to forfeiture on cancellation after that date or failure to take up the accommodation.

Division 99 does not apply in example 4 below.

Example 4

Marilyn purchases expensive electrical equipment from a retailer. As she is a good customer, the retailer agrees that she can pay 20% of the purchase price on delivery and the balance in four monthly instalments. The first payment is clearly understood by both parties to be the first instalment of the purchase price and not a forfeitable deposit. Division 99 does not apply to this payment.

Commissioner of Taxation

12 April 2000

Previous draft:

Not previously issued in draft form

Subject references:

- attribution;
- consideration;
- deposits;
- GST payable;
- holding deposits;

- input tax credits;
- instalment;
- part payment;
- payment;

Legislative references:
ANTS(GST)A Div 99;

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