

GSTD 2002/1 - Goods and services tax: are there GST consequences when a partner in a partnership takes goods held as trading stock for private or domestic use?

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! This document has changed over time. This is a consolidated version of the ruling which was published on *27 March 2002*



Goods and Services Tax Determination

Goods and Services Tax: are there GST consequences when a partner in a partnership takes goods held as trading stock for private or domestic use?

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 Determination explains our view of the law as it applied from 1 July 2000. You can rely upon this Determination as 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.

1. Yes. When a partner in a partnership takes goods held as trading stock for the private or domestic use of the partner in his or her individual capacity, Division 72 of the *A New Tax System (Goods and Services Tax) Act 1999* (the GST Act) applies. Division 72 ensures that goods supplied without consideration are brought within the GST system and that goods supplied for no or inadequate consideration are properly valued for GST purposes. The amount of GST payable on a taxable supply under Division 72 is 10 per cent of its GST exclusive market value. Division 130, which deals with goods applied solely to private or domestic use, does not apply.
2. Division 72 cannot apply to a supply of goods that is GST-free, such as a supply of GST-free food.

Division 72

3. A partnership is defined under Division 184 of the GST Act, as an entity separate from the partners who make up the partnership. A partner is an associate of the partnership.¹
4. Division 72 of the GST Act makes a supply of goods to associates, including partners, taxable where the supply would have been a taxable supply but for the lack of

¹ “Associate” is defined in section 195-1 of the GST Act as having the meaning given by section 318 of the *Income Tax Assessment Act 1936*.

consideration. Division 72 also ensures that supplies between associates for no or inadequate consideration are properly valued for GST purposes. Division 72 applies if a recipient of a supply is not entitled to a full input tax credit.

5. If a partner takes goods from a partnership, a supply has been made by the partnership to the partner. If the partner puts goods to a private or domestic use, the partner does not acquire the goods for a creditable purpose and the partner will not be entitled to any input tax credits in respect of those goods.

6. If a supply is made to an associate without consideration, and that supply would be a taxable supply under section 9-5 of the GST Act but for a lack of consideration, section 72-5 treats that supply as a taxable supply. Section 72-5 does not apply to a supply that is GST-free or input taxed.

7. Where a taxable supply is made to an associate for no consideration, section 72-10 states that the value of the supply is its GST exclusive market value.

8. Where a taxable supply is made to an associate for inadequate consideration—that is, the consideration is less than its GST *inclusive* market value—section 72-70 provides that the value of the supply is its GST *exclusive* market value.

9. Market value is regarded as the price that would be negotiated at a specified time between a knowledgeable and willing but not anxious buyer and a knowledgeable and willing but not anxious seller, acting at arm's length in an appropriate market. The market value of goods, taken for private or domestic use, may be calculated by using any method that produces a result that is fair and reasonable in the relevant circumstances. An example of a reasonable method would be to include the market value of identical or similar goods.

10. After calculating the GST exclusive market value of a taxable supply, you multiply this value by 10 per cent to arrive at the amount of GST payable.

11. If a partnership makes a taxable supply of goods to a partner for no consideration, the GST payable is attributable to the period in which the supply is connected with Australia (see section 72-15)². Where a partner takes possession of goods in Australia from a partnership carrying on an enterprise in Australia, GST will be attributable to the tax period in which the goods are taken by the partner.

12. If a partnership makes a taxable supply of goods to a partner for inadequate consideration, the normal attribution rules apply under Division 29.³

Division 130

13. Division 130 can not apply to partners in a partnership. Section 130-5 of the GST Act requires, amongst other things, that '*you* made a creditable acquisition or creditable importation of goods' and that '*you* apply the goods solely to private or domestic use'. The use of the word '*you*' in section 130-5 means that the Division only applies where the same entity, that acquired or imported the goods, also applies the goods to private or domestic use.

² GSTR 2000/31 explains when a supply is connected with Australia under section 9-25 of the GST Act.

³ GSTR 2000/29 explains the attribution rules.

14. In the case of a partnership, the entity that acquired or imported the goods is different from the entity that applies the goods to private or domestic use. The partnership acquired or imported the goods but it is the partners in their individual capacities who apply the goods to private or domestic use.

Example 1

15. *Harvey and Tracey are in partnership trading as Harv's Hardware Store. During a tax period the partnership supplies Harvey with tools and building materials (taxable supplies) with a market value of \$1100 (inclusive of GST) for no consideration. The GST exclusive market value of the supplies is \$1000 (10/11 x \$1100) and the GST payable by the partnership is \$100 (\$1000 x 10%).*

Example 2

16. *Asif and Iqbal are in partnership operating a convenience store. During a tax period the partnership supplies Asif with bread, milk, soft drinks, confectionery and ice-creams. Supplies of milk and bread are GST-free and not taxable supplies. Supplies of soft drink, confectionery and ice-cream are taxable supplies. The market value of the soft drinks, confectionery and ice-creams is \$220 (inclusive of GST). Asif pays consideration of \$100. The GST exclusive market value of the taxable supplies is \$200 (10/11 x \$220) and the GST payable by the partnership is \$20 (\$200 x 10%).*

Example 3

17. *Christos and Maria are partners in a takeaway food shop. They occasionally take meat and salad ingredients to prepare meals for themselves and their family. Christos and Maria also take soft drinks, confectionery and ice-creams. A supply of meat and salad ingredients by the partnership is a GST-free supply and not a taxable supply. A supply of soft drink, ice-cream or confectionery is a taxable supply. Division 72 applies to supplies of soft drink, confectionery or ice-cream and GST is payable in respect of those supplies.*

Example 4

18. *Wanee and Wendy are in partnership. They operate a restaurant and employ a chef who does all of the cooking. Wanee and Wendy are supplied by the partnership with meals that the restaurant prepares. The meals supplied are taxable supplies. During a tax period the market value of the meals supplied is \$3,300 (inclusive of GST). Wanee and Wendy do not pay any consideration for the meals. The GST exclusive market value of the supplies is \$3,000 (10/11 x \$3,300) and the GST payable by the partnership is \$300 (\$3,000 x 10%).*

Previous draft:

Not previously issued in draft form

Related Rulings/Determinations:

GSTR 2000/29; GSTR 2000/31; GSTR 1999/1

Subject references:

- associates
- Disposal of trading stock
- Family partnerships
- Goods & services tax
- goods applied solely to private or domestic use
- goods own use
- GST associates
- GST supplies for inadequate consideration
- GST supplies to associates
- GST supplies without consideration
- GST supply
- Household goods
- market value
- Obligations of partners, directors, trustees etc
- Partnerships
- Sale of goods
- Trading stock

Legislative references:

- TAA 1953 37
- ITAA 1936 318
- ANTS(GST)A99 9-5
- ANTS(GST)A99 9-25
- ANTS(GST)A99 Div 29
- ANTS(GST)A99 Div 72
- ANTS(GST)A99 72-5
- ANTS(GST)A99 72-10
- ANTS(GST)A99 72-15
- ANTS(GST)A99 72-70
- ANTS(GST)A99 Div 130
- ANTS(GST)A99 130-5
- ANTS(GST)A99 Div 184
- ANTS(GST)A99 195-1

ATO references:

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