GSTD 2003/2 - 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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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.*

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 130 of the *A New Tax System (Goods and Services Tax) Act 1999* ('GST Act') applies because this is an application by a partnership of a private or domestic nature.[1]

2. However, if the goods are assessable goods[2] that were held for sale or exchange at the start of 1 July 2000, section 17 of the *A New Tax System (Goods and Services Tax Transition) Act 1999* ('Transition Act') applies instead of Division 130 of the GST Act. This Determination does not consider the operation of section 17 of the Transition Act.

Division 130

3. Division 130 is an adjustment provision that can result in an increasing adjustment of an amount equal to the input tax credits to which you were entitled upon acquisition or importation of goods. You have an increasing adjustment under Division 130 if the goods were acquired or imported solely for a creditable purpose and you now apply them solely to private or domestic use.

The operation of Division 130 for partnerships that acquire or import trading stock

4. Goods that are acquired or imported as trading stock, by a partnership carrying on an enterprise, are acquired or imported solely for a creditable purpose – the creditable purpose being the resale of the stock by the partnership. If trading stock is sold in the

[1] Note that it is the private or domestic use by the entity that acquired or imported goods for a creditable purpose, that is relevant for Division 130.

[2] The term 'assessable goods' is defined in section 5 of the Transition Act to adopt the same meaning of the term in the *Sales Tax Assessment Act 1992*.

course or furtherance of an enterprise, the supply of goods (being the sale of goods) is an application for a creditable purpose. However, trading stock is not considered to be applied while it is awaiting resale by the enterprise.

5. If goods acquired or imported as trading stock are not applied to any creditable purpose but are instead applied to a private or domestic use by the partnership, Division 130 will operate in respect of such goods.

6. When goods are removed from trading stock by a partnership for private consumption by a partner, there is an application solely to private or domestic use by the partnership to which Division 130 applies.

7. If Division 130 operates in respect of goods held as trading stock by a partnership, an increasing adjustment must be made for the amount of the input tax credits to which the partnership was entitled for the acquisition or importation of the goods (taking account of any adjustments for the acquisition or importation).[3]

Division 72

8. Where there is no consideration or inadequate consideration for a supply Division 72 may apply. Division 72 ensures that a supply to an associate[4] without consideration will be a taxable supply if, except for the lack of consideration, the supply would otherwise be taxable. Division 72 also ensures that supplies to an associate for inadequate consideration are properly valued. There is no consideration when goods are applied to private use by the partnership. In addition, if the supply is not made in the course or furtherance of the enterprise it is not a taxable supply.[5]

9. The application to a private use by a partnership under Division 130 does not involve a supply made in the course or furtherance of an enterprise being carried on. Accordingly, the application to private use by the partnership does not involve a taxable supply being made. Division 72 has no operation.

Example 1

10. *Harvey and Tracey are in partnership trading as Harv's Hardware Store. During a tax period the partnership applies tools ($50 input tax credits previously claimed) and building materials ($80 input tax credits previously claimed) to a private use. An increasing adjustment is made for $130 ($50 + $80) in the partnership's Business Activity Statement (BAS).*

Example 2

11. *Asif and Iqbal are in partnership operating a convenience store. During a tax period the partnership applies bread, milk, soft drinks, confectionery and ice-creams to a private use. Input tax credits of $20 have been claimed by the partnership for the soft*

[3] Subsection 130-5(2).
[4] For the definition of 'associate' see subsection 318(1) of the *Income Tax Assessment Act 1936*.
[5] Paragraph 9-5(b).

drinks, confectionery and ice-creams that have been applied to a private use. An increasing adjustment is made for $20 in the partnership's BAS. (The milk and bread were supplied GST-free to the partnership so there was no entitlement to input tax credits on their purchase. Accordingly there is no requirement to make any increasing adjustment in respect of these items).

Example 3

12. *Wing Fay and Yin Kin operate a Chinese takeaway restaurant in partnership. During a tax period, the partnership provides GST-free ingredients (being meat, fish, vegetables, rice and noodles) and meals (consisting of GST-free ingredients) to each of the partners. This food is supplied GST-free to the partnership so there is no increasing adjustment to be made. However, the partnership also provides the partners with food and drinks that are not GST-free (such as ice-cream, cake, soft drinks and alcoholic beverages) on which input tax credits have been claimed. The partnership will have an increasing adjustment for the sum of the input tax credits claimed on this food and drink that has been applied to a private use*.

Date of Effect

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

14. If this Determination 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 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.

15. In the event that the view in this Determination is unfavourable in comparison with the view expressed in GSTD 2002/1 (now withdrawn) and you have relied upon that view, this Determination will apply from today.

Commissioner of Taxation
26 March 2003

Previous draft:
Previously released as GSTD 2002/D5

Previous Determination:
GSTD 2002/1

Related Rulings/Determinations:
GSTR 1999/1

Subject references:
- assessable goods
- associate
- creditable purpose
- increasing adjustment
- partnership
- private or domestic use
- supply
- trading stock

Legislative references:
- ANTS(GST)A 1999 9-5(b)
- ANTS(GST)A 1999 Div 72
- ANTS(GST)A 1999 Div 130
- ANTS(GST)A 1999 130-5(2)
- ANTS(GSTT)A 1999 5
- ANTS(GSTT)A 1999 17
- ITAA 1936 318(1)
- TAA 1953 37

ATO References
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