

GSTD 2005/5 - Goods and services tax: are supplies of membership and membership services made by a trade exchange to its members taxable supplies?

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Goods and Services Tax Determination

Goods and services tax: are supplies of membership and membership services made by a trade exchange to its members taxable supplies?

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. Supplies of membership and membership services made by a trade exchange to its members are taxable supplies provided the requirements in section 9-5 of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act) are satisfied.

Background

Membership of trade exchanges

2. Trade exchanges provide a mechanism for reciprocal trading between members and supply a range of services to their members in administering their barter schemes. The types of services supplied vary between barter schemes.

3. Membership of a barter scheme may be attained in a variety of ways. Some schemes require a prospective member to purchase a share in the capital of the trade exchange. In the most common scheme of this type, the share is given only a nominal value, for example, one cent. At the same time as acquiring the share, the potential member enters into a membership agreement and pays a commercial sum for membership. Other schemes only require the payment of a membership fee and do not require potential members to contribute capital.

4. Under the terms and conditions of a typical trade exchange, the entitlement of a member may include the provision by the trade exchange of:

- participation in the trading program;
- a membership card;
- an account in which credits or debits are recorded;
- the recording of transactions in its account by the trade exchange;
- access to a procedure for authorisation of trades;
- monthly statements of activity in the trade account and fees;

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- stationery for the conduct of trades;
- the enforcement of the rules of the exchange; and
- the maintenance of the integrity of the exchange (including maintenance of a debt reserve).

5. Members of the barter scheme may be required to pay the fees charged by the trade exchange for supplies of these membership services in cash and/or by the trade exchange debiting the member's trading account.

The financial supply rules

6. Section 40-5 of the GST Act provides that a financial supply, as defined in the A New Tax System (Goods and Services Tax) Regulations 1999 (GST Regulations), is input taxed. A supply is not a taxable supply under section 9-5 of the GST Act to the extent that it is GST-free or input taxed.

7. The supply of an interest in or under a matter mentioned in any of the items listed in the table in subregulation 40-5.09(3) of the GST Regulations is a financial supply provided that the conditions in subregulation 40-5.09(1) are also satisfied.

8. Prior to amendments being made to the GST Regulations,¹ paragraph (c) of item 10 of subregulation 40-5.09(3) included a supply of an interest under a scheme described in paragraph (e), (i), (k) or (m) of the definition of 'managed investment scheme' in section 9 of the *Corporations Act 2001*. A scheme described in paragraph (k) of that definition is a barter scheme under which each participant may obtain goods or services from another participant for consideration that is wholly or substantially in kind rather than in cash. Therefore a supply of an interest in, or under, a barter scheme was an input taxed financial supply whilst there was a reference to paragraph (k) of the definition of 'managed investment scheme' and the other conditions in regulation 40-5.09 of the GST Regulations were satisfied.

9. The GST Regulations were amended to ensure that the supply of an interest in or under a barter scheme is not treated as an input taxed financial supply, including where the right to participate in the scheme is attached to the supply of an interest in some other form of security.

10. The amendments removed the reference to paragraph (k) from paragraph (c) of item 10 in the table in subregulation 40-5.09(3) and inserted subregulation 40-5.09(5), which states that:

A reference in item 10, in the table in subregulation (3), to a security, a debenture, a document, scheme or capital in a partnership or trust does not include a security, debenture, document, scheme or capital in a partnership or trust, in relation to which an entity is given a right to participate in a barter scheme under which each participant may obtain goods or services from another participant for consideration that is wholly or substantially in kind rather than in cash.

¹ Regulation 40-5.09 was amended by the A New Tax System (Goods and Services Tax) Amendment Regulations 2004 (No. 1), effective from 15 July 2004.

Explanation

11. Under section 9-5 of the GST Act, a supply is not a taxable supply to the extent that it is GST-free or input taxed. Subsection 40-5(1) of the GST Act provides that a financial supply is an input taxed supply. Under subsection 40-5(2) of the GST Act, a financial supply is defined to have the meaning given by the GST Regulations.

12. Regulation 40-5.09 of the GST Regulations sets out the supplies that are financial supplies. A supply is a financial supply if there is a provision, acquisition or disposal of an interest mentioned in subregulation 40-5.09(3) or (4), and the requirements in paragraph 40-5.09(1)(a)² and (b)³ are satisfied.

Supplies of membership*Supplies of membership not attaching to a security*

13. The supply of membership in a barter scheme which does not attach to a security is no longer specifically included in paragraph (c) of item 10 in the table in subregulation 40-5.09(3) of the GST Regulations. The supply of membership in this form is therefore a taxable supply if the conditions in section 9-5 of the GST Act are otherwise satisfied.

Supplies of membership attaching to a security

14. Membership of a barter scheme may also be supplied by way of acquisition of an interest in a security to which a right to participate in the barter scheme attaches. An interest in or under a security is an interest contemplated by the opening words of item 10 in the table in subregulation 40-5.09(3) of the GST Regulations. However, subregulation 40-5.09(5) provides that if the security gives the right to participate in a barter scheme under which each participant may obtain goods or services from another participant for consideration wholly or substantially in kind rather than cash, it is specifically excluded from the scope of item 10 in the table in subregulation 40-5.09(3).

15. The supply of a security to which a right to participate in a barter scheme attaches is therefore not a financial supply and will be a taxable supply if the conditions in section 9-5 of the GST Act are otherwise satisfied.

Supplies of securities without membership rights attached

16. Trade exchanges may, in the course of their enterprise, seek to raise capital by issuing securities. An issue of securities by a trade exchange to which no participation rights in the exchange attach is not excluded by subregulation 40-5.09(5) of the GST Regulations from the scope of item 10 in the table in subregulation 40-5.09(3) and is therefore a financial supply⁴. A supply of securities to which no participation rights in the exchange attach in normal trading by a trade exchange is similarly not excluded from the application of item 10 in the table in subregulation 40-5.09(3) of the GST Regulations and is therefore also a financial supply.

² This paragraph requires the provision, acquisition or disposal to be for consideration, in the course or furtherance of an enterprise and connected with Australia.

³ This paragraph requires the supplier to be registered or required to be registered and to be a financial supply provider in relation to the interest.

⁴ Provided the other requirements of regulation 40-5.09 are satisfied.

Supplies of membership services

17. Supplies of membership services by a trade exchange to its members for which fees are payable by the members are taxable supplies provided the conditions in section 9-5 of the GST Act are satisfied. The consideration for supplies of these membership services may be money or in kind or in some instances a combination of these.

18. Supplies of membership services are not supplies of an interest mentioned in subregulation 40-5.09(3) or (4) of the GST Regulations, and therefore are not capable of being financial supplies.

Examples**Example 1 – supply of share with membership attached**

19. *YourCard Trade Exchange is registered for GST. Under the YourCard Trade Exchange rules, prospective members are required to purchase a share which entitles them to participate in the barter scheme and to pay an additional fee for the supply of membership services on becoming a member. Under the constituent documents all of the participation rights under the scheme attach to ownership of the share. The supply of the share is a taxable supply by YourCard Trade Exchange to the prospective member because subregulation 40-5.09(5) of the GST Regulations excludes the shares from the scope of item 10 of the table in subregulation 40-5.09(3). The additional fee is consideration for a taxable supply of membership services because the supply is not a financial supply and the requirements in section 9-5 of the GST Act are satisfied.*

Example 2 – services provided by trade exchange to its members

20. *Better Barter Exchange operates a barter scheme and is registered for GST. Under the rules of their trading program, Better Barter Exchange requires members to pay fees for administration services such as production and distribution of monthly statements, the updating and distribution of membership lists and the dissemination of current information on the scheme. Some of these fees are payable in money and some by a debit to the members' trading account. The administration services are taxable supplies to members because they are not financial supplies and the supplies otherwise satisfy the requirements in section 9-5 of the GST Act.*

21. *Members are entitled to claim input tax credits for the acquisitions of these services where they are creditable acquisitions. Better Barter Exchange is entitled to claim input tax credits for creditable acquisitions relating to the taxable supplies of services to its members.*

Example 3 – supply of shares with no membership attached

22. *Better Barter Ltd (BBL) operates the Better Barter trade exchange and makes taxable supplies of membership and membership services to its members. BBL needs to raise more capital and after discussions with its financial advisers it decides to float on the Stock Exchange. This involves the issue of equity in the form of ordinary shares. The supply of the ordinary shares is a financial supply under item 10 of subregulation 40-5.09(3) of the GST Regulations. Even if the members of the Better Barter trade exchange subscribe for the ordinary shares, the supply of the shares to them is not excluded by subregulation 40-5.09(5) of the GST Regulations because there are no participation rights attached to the shares.*

Date of Effect

23. This Determination explains our view of the law as it applied from 15 July 2004. 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.

24. 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 public 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.

Commissioner of Taxation

13 July 2005

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

GSTR 1999/1

Subject references:

- barter scheme
- financial supply
- taxable supply
- trade exchange

Legislative references:

- TAA 1953 37

- ANTS(GST)A 1999 9-5
- ANTS(GST)A 1999 40-5
- ANTS(GST)A 1999 40-5(1)
- ANTS(GST)A 1999 40-5(2)
- ANTS(GST)R 1999 40-5.09
- ANTS(GST)R 1999 40-5.09(1)
- ANTS(GST)R 1999 40-5.09(1)(a)
- ANTS(GST)R 1999 40-5.09(1)(b)
- ANTS(GST)R 1999 40-5.09(3)
- ANTS(GST)R 1999 40-5.09(4)
- ANTS(GST)R 1999 40-5.09(5)
- A New Tax System (Goods and Services Tax) Amendment Regulations 2004 (No. 1)
- Corporations Act 2001 9

ATO references

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