

STD 95/13 - Title: Sales tax passed on in retail sales

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Sales Tax Determination

Title: **Sales tax passed on in retail sales**

Background

In Case ST94/49 the Administrative Appeal Tribunal (AAT) considered whether sales tax overpaid by a winery in relation to retail sales had been passed on to its cellar door customers.

The credit provisions of the legislation are currently the subject of a comprehensive Australian Taxation Office (ATO) draft ruling that has been released for public comment. When finalised, the Credits ruling will detail the ATO approach to a whole range of credit related matters. This determination has been issued in advance of the Credits ruling to provide the ATO view on the specific situation considered in the AAT case.

Issue

Whether the passing on provisions of the *Sales Tax Assessment Acts 1930* and *1992* are satisfied where taxpayers set their retail prices by reference to market forces?

What evidence is required to demonstrate that the sales tax has not been passed on?

Decision

The mere assertion that the retail price of goods is set by reference to market forces without other supporting evidence is not sufficient to establish that sales tax has not been passed on in a retail sale.

Whether sales tax has been passed on is essentially a question to be decided by the relevant facts in each case. The factors that assist in demonstrating sales tax has or has not been passed on include:

- the accounting records of the business, in particular the costs of production, any method of price fixing and the calculation and payment of tax;
- any information supplied to purchasers in relation to sales tax obligations;
- price lists; and
- advertising literature.

Date of effect

This determination confirms the existing approach adopted by the ATO and is effective immediately.

Reasons

We have based our decision on the following legislative provisions:

The winery determined its cellar door prices by having regard to the likely value to be procured in the retail market (which was influenced by the previous year's prices, market acceptance of previous vintages and the quality and quantity of the current vintage) less a reduction sufficient to attract customers to the cellar door.

Sub-section 26(1A) of the Sales Tax Assessment Act 1930 and its equivalent provisions in the other 1930 acts

The AAT decision concerned the refund of sales tax overpaid by the winery in relation to retail sales made from its cellar door. The overpayment arose as a result of the taxpayer calculating the sale value in a way that was subsequently found to be incorrect. Although the increase in sales tax liability was tax overpaid, the issue before the AAT was whether the winery had passed on the sales tax in question to its cellar door customers.

Credit Ground 1 in Table 3 of Schedule 1 to the Sales Tax Assessment Act 1992 and its equivalent passing on provisions in the other grounds in the table

A matter of paramount importance to the AAT was the decision of the winery to retain its existing price structure notwithstanding the increase in its sales tax liability. Based on this factor, plus the evidence supplied by the winery in respect of the methodology it used in arriving at the cellar door prices, the AAT found that the winery had not passed on the overpayment to its cellar door customers.

In its reasoning, the AAT considered that the term 'passed on' was descriptive of a process whereby the person carrying a liability takes the decision to shift the burden of that liability to some other person and then gives effect to that decision.

The ATO decided not to appeal against the decision as it takes the view that the case turned on its own particular facts.

and case law:

The limited case law available supports the proposition that determining whether or not sales tax has been passed on is essentially a question of fact. Each case requires a decision to be made on the evidence supplied in support of the contention that sales tax has not been passed on to the consumer.

Biga Nominees Pty Ltd v. FC of T 87 ATC 4915, 19 ATR 451

Otto Australia Pty Ltd v. FC of T 91 ATC 4305, 21 ATR 1453

In *Biga Nominees* Nathan J observed that sales tax generally finds its way into the price paid by the ultimate consumer for the goods. In *Otto*, Shepperd J in considering the passing on provision of *Section 11(1A) of Sales Tax Assessment Act (No 5) 1930* stated that once it is conceded that the charge for the relevant good was computed by reference to costs which included sales tax, that tax was passed on.

Chippendale Printing Co Pty Ltd v. DFC of T 95 ATC 4037, 30 ATR 115

In *Chippendale*, Lindgren J concluded that the obligations otherwise incumbent on the Commissioner to refund overpayment of sales tax had no application because it was conceded that the price charged to the customer included a component for sales tax.

Case Y46 91 ATC 431, 22 ATR 3409

In *Case Y46*, the AAT found that sales tax was passed on in the retail selling price of the goods in question as the costing evidence produced at the hearing showed that sales tax was included in the calculation of the price of the goods.

Whether sales tax has been passed on is a question of fact and each case must be considered in light of its own circumstances. Where a taxpayer claims that sales tax has not been passed on to the consumer, the ATO will require the taxpayer to provide supporting evidence.

Communication of the Decision

This Determination has been made available for publication by the sales tax publishing houses.

FOI INDEX DETAIL: Reference No. I 1014776

Not previously released as a draft STD

Related Determinations:

Related Rulings:

Subject Ref: passing on provisions; retail sales

Legislative Ref: Sub-section 26(1A) Sales Tax Assessment Act 1930; Sub-section 11(1A) Sales Tax Assessment Act (No 5) 1930; Credit Ground 1 in Table 3 of Schedule 1 to the Sales Tax Assessment Act 1992

Case Ref: Biga Nominees Pty Ltd v. FC of T 87 ATC 4915; 19 ATR 451; Chippendale Printing Co Pty Ltd v. DFC of T 95 ATC 4037; 30 ATR 115; Otto Australia Pty Ltd v. FC of T 91 ATC 4305; 21 ATR 1453; Case 45/95 95 ATC 395; AAT Case 10,338 31 ATR 1157 (Case ST 94/49); Case Y46 91 ATC 431; 22 ATR 3409

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