

# ***STD 95/9 - Title: Statutory period - transfer of goods by government bodies***



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This Document is a Ruling for the purposes of section 77 of the *Sales Tax Assessment Act 1992* and may be relied upon by any person to whom it applies.

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## Sales Tax Determination

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**Title:** **Statutory period - transfer of goods by government bodies**

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### Background

Under various State and Local Government initiatives, certain services and activities formerly conducted or provided by Government Departments or Authorities are being transferred to other entities, such as wholly or partly owned Government corporations. A common feature of these initiatives is that goods originally purchased by the Government body are transferred to the corporation upon its creation.

A number of entities which are taking over Government services are not exempt for sales tax purposes, while others will retain the exempt status of the former body.

Exempt Government bodies are entitled to purchase goods free of sales tax if they *intend* to own and use the goods for the whole of the *statutory period*. The statutory period is normally the lesser of two years or the useful life of the goods, but the Commissioner of Taxation has a discretion to allow some other period in special circumstances. Ordinarily, a purchaser cannot satisfy the statutory period requirement if they know, at the time of purchasing the goods, that the goods will be disposed of within two years or before their useful life has expired.

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**Issue**

Can an exempt Government body purchase goods tax free where those goods are to be transferred within the normal statutory period to either:

- a tax exempt body; or
  - a non exempt body?
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**Decision**

An exempt Government body can purchase goods free of tax as long as it intends to use or believes it will use those goods for the normal statutory period. However, once it is clear that at a particular date in the future goods held by the body will be transferred to another entity, the following rules apply:

- where an exempt Government body purchases goods which will be transferred to another exempt body within the normal statutory period, the period of use prior to transfer of the goods will be accepted by the Commissioner as satisfying the statutory period due to special circumstances. Accordingly these goods can be purchased tax free.
- exemption will not be available for goods purchased by an exempt Government body where those goods are to be transferred to a non exempt body within the normal statutory period.

Consumables, for example stationery supplies, may still be purchased tax free providing those goods are intended to be consumed prior to the transfer.

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**Date of effect**

This determination is effective immediately.

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**Reasons**

*We have based our decision on the following legislative provisions:*

An exempt Government body may purchase goods free of tax providing the body intends to use them for the *statutory period*. The term statutory period is defined to mean the period starting when the goods are first used by a person and ending at the earliest of the following times:

*Subsection 5(1) of Sales Tax  
(Exemptions and  
Classifications) Act 1992*

(a) two years,

(b) the end of the useful life of the goods, or

*Section 5 of Sales Tax  
Assessment Act 1992*

(c) a time that the Commissioner considers to be appropriate in special circumstances.

An exempt body may continue to purchase goods tax free while it intends or believes it will use the goods for the normal statutory period. This means exemption will continue to be available on purchases until such time as the body knows that at some particular date in the future, less than two years from the first use of the goods, a transfer of goods will take place.

The fact that a State or Local Government is seeking expressions of interest from the private sector or has located a potential supplier of a Government service does not mean that this time has been reached.

However at some stage, usually no later than the signing of a legally enforceable transfer agreement, it will become clear that the transfer will occur on a particular date in the future. Once that date has been determined, an exempt Government body will need to consider whether it can still satisfy the use requirement in relation to goods it intends to purchase.

Where goods are purchased in the knowledge that they will be transferred to another tax exempt body before the end of the normal statutory period, the Commissioner of Taxation will exercise his discretion under paragraph (c) of the statutory period definition to end the statutory period at the time of transfer. Therefore sales tax exemption will apply to these goods.

On the other hand, where an exempt Government body purchases goods, after the date of transfer is known and those goods will be transferred to a non exempt entity within the normal statutory period the discretion under paragraph (c) above will not be exercised. Those goods cannot be purchased free of tax.

Exemption will still apply under paragraph (b) to goods purchased by an exempt Government body after the date of transfer is known if the goods will have reached the end of their useful life or they will have been consumed prior to the transfer date.

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## **Communication of the Decision**

This determination has been made available for publication by the sales tax publishing houses. It will be mailed to the Department of Treasury within the various State Governments and also to Local Government Authorities.

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## **Commissioner of Taxation**

13 September 1995

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Related Determinations:

Related Rulings:

Subject Ref: statutory period; privatisation of Government services

Legislative Ref: section 5 of Sales Tax Assessment Act 1992; subsection 5(1) of Sales Tax (Exemptions & Classifications) Act 1992

Case Ref:

ATO Ref: NAT 95/6929-4

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