


# ***GSTD 2013/2EC - Compendium***

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## **Ruling Compendium – GSTD 2013/2**

This is a compendium of responses to the issues raised by external parties to draft GSTD 2013/D2 – *Goods and services tax: what are second-hand goods and when are they acquired for the purposes of sale or exchange (but not manufacture) in the ordinary course of business under Division 66 of the A New Tax System (Goods and Services Tax) Act 1999 (GST Act)?*

This compendium of comments has been edited to maintain the anonymity of entities that commented on the draft ruling.

### **Summary of issues raised and responses**

| <b>Issue No.</b> | <b>Issue raised</b>   | <b>ATO Response/Action taken</b>   |
|------------------|---|--|
| 1                | <b>Distinguishing goods from fixtures</b><br>GSTD 2013/D2 could benefit from further guidance on distinguishing between a 'good' and a 'fixture'. More examples in drawing this distinction would be useful, including the particular example of a business, the activities of which involve acquiring existing houses (without acquisition of any land) that are removed from the land on which they are situated and subsequently sold to purchasers who wish to relocate those houses to new land. | <p>To the extent it is necessary to determine whether an item is a good or a fixture in applying Division 66 of the GST Act, a range of factors need to be considered, including whether the item is annexed to land, and the degree and object of annexation.</p> <p>The ATO view on what comprises second-hand goods recognises this. That view is contained in Goods and Services Tax Ruling GSTR 2000/8 and Goods and Services Tax Ruling GSTR 2005/3, and applies for the purposes of the final determination.</p> <p>To conclude whether an item is a good or a fixture in the specific circumstances of the suggested example requires consideration of all relevant facts and circumstances surrounding the contemplated acquisition. Where, in addition to reliance on the final determination, further certainty is sought on the application of Division 66 of the GST Act to a particular acquisition, a private binding ruling may be requested. We have therefore not included the suggested example in the final determination.</p> |
| 2.               | <b>Scope and title of determination</b><br>GSTD 2013/D2 is too broad in that it does not fully clarify when goods are regarded as 'second-hand'. Goods should be regarded as 'second-hand' for the  | <p>The title of the final determination has been changed consistent with the suggestion that the title better match the intended focus of the determination.</p> <p>Consequently, discussion on the meaning of 'second-hand goods' has been</p>  |

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|           | <p>purposes of Division 66 of the GST Act provided that:</p> <ol style="list-style-type: none"> <li>1. they have been the subject of a taxable supply to an input-taxed end user; and</li> <li>2. they are being acquired from an unregistered person for sale or exchange.</li> </ol> <p>Additionally, GSTD 2013/D2 gives too much attention on distinguishing between situations in which the decision in <i>LeasePlan Australia Limited v. Commissioner of Taxation</i> [2009] FCA 1309 will and will not apply.</p> <p>These issues can be addressed by changing the title of the final determination so that it focuses on when second-hand goods are acquired for the purpose of sale under Division 66 of the GST Act.</p> | <p>removed from the final determination.</p> <p>The definition of 'second-hand' that applies for the purposes of Division 66 of the GST Act is in section 195-1 of the GST Act. The definition relies on the ordinary meaning of the term 'second-hand', which in the context of Division 66 of the GST Act is explained in GSTR 2005/3. GSTR 2005/3 also refers to GSTR 2000/8 for explanation of the ATO view on the meaning of 'second-hand' goods.</p> <p>The final determination will therefore refer to GSTR 2005/3 and GSTR 2000/8 for guidance on the meaning of 'second-hand goods' under Division 66 of the GST Act.</p>   |
| 3.        | <p><b>Further discussion of 'sale', 'exchange' and 'manufacture'</b></p> <p>GSTD 2013/D2 should address and explain the meaning of key terms such as 'sale', 'exchange' and 'manufacture', as they are integral to Division 66 of the GST Act.</p> <p>A reasonable discussion of 'sale' can be found at paragraphs 92 to 96 of Wine Equalisation Tax Ruling WETR 2009/1. If the Commissioner believes that 'exchange' encompasses 'barter', he might wish to say so and consider including an example of say a retired bank manager and his wife swapping their sedan cars</p>  | <p>The terms 'sale' and 'manufacture' are not defined for the purposes of Division 66 of the GST Act. As such they take their ordinary meaning, which we would expect to be readily understood by entities that sell or manufacture second-hand goods and need to consider the application of Division 66 of the GST Act.</p> <p>In line with the suggestion that the title of the determination be revised, the final determination will not consider when second hand goods are acquired for the purpose of exchange.</p> <p>Where, in addition to reliance on the final determination, further certainty is sought on the application of Division 66 of the GST Act to a particular acquisition, a private binding ruling may be requested.</p> |

This edited version of the Compendium of Comments is not intended to be relied upon. It provides no protection from primary tax, penalties, interest or sanctions for non-compliance with the law.

Page status: **not legally binding**

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| <b>Issue No.</b> | <b>Issue raised</b>  | <b>ATO Response/Action taken</b> |
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|                  | <p>to a car dealer in exchange for a motor home in which they intend to travel around Australia.</p> <p>The discussion on 'manufacture' should explain the meaning of the term and compare and contrast it with other terms, such as repair, recondition, recycle, renovate, refurbish and remodel. A useful discussion of the meaning of 'manufacture' can be found at paragraphs 15 to 75 of Excise Ruling 2012/1.</p> <p>It is important that registered persons who purchase and process second-hand goods in the ordinary course of their business are able to establish their input tax credit entitlements.</p> |                                  |