GSTD 2009/D1 - 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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This document has been finalised.

Draft 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 publication is a draft for public comment. It represents the Commissioner's preliminary view about the way the law applies. It is not a public ruling or advice for the purposes of section 105-60 of Schedule 1 to the *Taxation Administration Act 1953*.

You can rely on this publication to provide you with protection from interest and penalties as follows. If a statement in this publication is later found to be incorrect or misleading and you make a mistake as a result of relying on this publication, you will not have to pay a penalty. In addition, if you have relied on this publication reasonably and in good faith you will not have to pay interest charges. However, you will still have to pay the correct amount of tax, provided the time limits under the law allow it.

1. Yes, when a partner in a partnership takes goods held as trading stock for private or domestic use there is a supply by the partnership to the partner in the course or furtherance of the partnership's enterprise. If the other elements of section 9-5 of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act)[1] are satisfied, there will be a taxable supply by the partnership to the partner. Division 72 will apply where the partner provides no consideration or inadequate consideration for the supply. Division 130, which deals with goods applied solely to private or domestic use, does not apply.

Explanation

2. The partnership is a separate entity to the partner who takes goods held as trading stock from the partnership for private or domestic use.[2] When a partner in a partnership takes goods held as trading stock from the partnership for private or domestic use, the partnership makes a supply of the goods to the partner.[3]

[1] All legislative references are to the GST Act unless otherwise indicated.
[2] See section 184-1 and paragraph 28 of Miscellaneous Taxation Ruling MT 2006/1 The New Tax System: the meaning of entity carrying on an enterprise for the purposes of entitlement to an Australian Business Number.
[3] See subsection 184-5(1).

3. A supply of trading stock by a partnership to a partner will be a taxable supply under section 9-5 where:

(a) the partnership makes a supply for consideration;

(b) the supply is made in the course or furtherance of an enterprise that the partnership carries on;

(c) the supply is connected with Australia; and

(d) the partnership is registered, or required to be registered.

However, the supply will not be a taxable supply to the extent that it is GST-free or input taxed.

4. The Commissioner takes the view that an *in specie* distribution of trading stock by a partnership to a partner is made for consideration.[4] The *in specie* distribution of goods held as trading stock by a partnership to one of its partners has the effect of discharging a claim that the partner has over the assets of the partnership. Consequently when a partnership makes an *in specie* distribution of trading stock to a partner the partner's entitlement or claim over the assets of the partnership is proportionately reduced. The Commissioner considers that the partner's entitlement or claim over the assets of the partnership forms part of the partner's interest in the partnership. The consideration for the supply of the goods to the partner is the proportion of the partner's interest in the partnership, reflected by the value of the goods distributed and may be represented by:

(a) an amount debited to the capital account of the partner

(b) an amount debited to the current account of the partner, or

(c) a combination of amounts debited to both the partner's capital account and current account.

5. The supply of the goods held as trading stock by the partnership is a supply made in the course and furtherance of the enterprise carried on by the partnership.[5] The application of the goods held as trading stock in the enterprise carried on by the partnership establishes the necessary connection between the supply of the goods and the partnership's enterprise.

6. Therefore, where the partnership is registered and the supply of the goods is connected with Australia[6], the supply of goods by a partnership to a partner by way of an *in-specie* distribution will be a taxable supply under section 9-5 to the extent that the supply is not GST-free or input taxed.

7. There may also be circumstances where a partnership supplies goods to a partner for the partner's private or domestic use other than by way of an *in specie* distribution, that is as part of the partnership's usual trading activities. In these circumstances, if the supply is made to the partner for no consideration or for inadequate consideration, Division 72 will apply.[7]

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[4] See paragraphs 85H to 85P of Goods and Services Tax Ruling GSTR 2003/13 Goods and services tax: general law partnerships.
[5] See paragraphs 85A to 85G of GSTR 2003/13.
[6] See paragraphs 44 to 56 and 115 to 151 of Goods and Services Tax Ruling GSTR 2000/31 Goods and services tax: supplies connected with Australia.
[7] See subsection 72-5(1) of the GST Act. The term 'associate' is defined in section 195-1 of the GST Act by reference to section 318 of the *Income Tax Assessment Act 1936*. The definition is very wide. Under the definition, partners in a partnership are associates of each other and the partnership. Associates of a partnership also include spouses and children of a partner of the partnership.

8. In the circumstances described in paragraph 7 of this Determination, where a supply of goods is made to the partner for the partner's private or domestic use and for nil consideration Division 72 will operate to bring the supply within the GST system. The supply will be a taxable supply to the extent that it is not GST-free or input taxed. The value of the taxable supply will be the GST-exclusive market value of the supply.[8]

9. If a supply of goods is made to the partner for consideration less than the GST inclusive market value, the supply will be a taxable supply under section 9-5. Section 72-70 will apply and the value of the taxable supply will be the GST-exclusive market value of the supply.

Division 130

10. 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.

11. Division 130 does not apply to partners in a partnership. Subsection 130-5(1) requires, amongst other things, that 'you made a creditable acquisition or creditable importation of goods' and that 'you apply the goods solely to private or domestic use'. The use of the word 'you' in section 130-5 means that the Division only applies where the same entity that acquired or imported the goods also applies the goods to private or domestic use.

12. In the case of a partnership, the entity that acquired or imported the goods is different from the entity that applies the goods to private or domestic use. The partnership acquired or imported the goods but it is the partner in their individual capacity who applies the goods to private or domestic use.

Example 1

13. *Larry and Ralph are in partnership. The partnership is registered for GST and operates a hardware store in Australia. The partnership, as part of a distribution of partnership profits, supplies Larry, by way of an in-specie distribution, tools held as trading stock for Larry's own private and domestic use. The supply of the tools is for consideration[9] and is made in the course or furtherance of the enterprise carried on by the registered partnership. The in-specie distribution of the tools to Larry by the partnership is a taxable supply by the partnership to Larry.*

[8] Section 72-10.
[9] Refer to paragraph 4 of this Determination.

Example 2

14. *Alex and Tom are in partnership operating a corner store in Australia. During the tax period the partnership supplies Alex with bread, milk, soft drinks, confectionary and ice creams. Supplies of milk and bread are GST-free[10] and not taxable supplies. Supplies of soft drinks, confectionary and ice creams are taxable supplies.[11] The market value of the soft drinks, confectionary and ice creams is $330 (inclusive of GST). Alex pays consideration of $100. Division 72 applies to the supplies of the soft drinks, confectionary and ice creams because Alex is an associate of the partnership and has provided inadequate consideration. The GST exclusive market value of the taxable supplies is $300 (10/11 x $330) and the GST payable by the partnership is $30 ($300 x 10%).*

Date of effect

15. This draft Determination represents the preliminary, though considered view of the Commissioner. When the final Determination is officially released, it will explain the Commissioner's view of the law as it applies from the date of issue of this draft Determination.

16. The final Determination will be a public ruling for the purposes of section 105-60 of Schedule 1 to the *Taxation Administration Act 1953* and when issued may be relied upon from the date of issue of this draft Determination by any entity to which it applies. Goods and Services Tax Ruling GSTR 1999/1 explains the GST rulings system and the Commissioner's view of when you can rely on GST public and private rulings.

Your comments

17. You are invited to comment on this draft Determination. Please forward your comments to the contact officer by the due date.

18. A compendium of comments is also prepared for the consideration of the relevant Rulings Panel or relevant tax officers. An edited version (names and identifying information removed) of the compendium of comments will also be prepared to:

- provide responses to persons providing comments; and
- publish on the Tax Office website at www.ato.gov.au

Please advise if you do not want your comments included in the edited version of the compendium.

Due date: **8 May 2009**

Contact officer: **Steven Iselin**

Email address: **Steven.Iselin@ato.gov.au**

Telephone: **(07) 3213 8417**

Facsimile: **(07) 3213 8588**

Address: **PO Box 9977**
Chermside QLD 4032

[10] See section 38-2.
[11] See subsection 38-3(1).

Commissioner of Taxation
8 April 2009

Previous draft:

Not previously issued in draft form

Related Rulings/Determinations:

GSTR 1999/1; GSTR 2003/13;
GSTR 2000/31; MT 2006/1

Previous Rulings/Determinations:

GSTD 2003/2

Subject references:

- associate
- carrying on an enterprise
- distributions in-specie
- GST consideration
- GST inadequate consideration
- GST supply
- GST supplies without consideration
- increasing adjustment
- partnerships
- private or domestic use
- taxable supply
- trading stock

Legislative references:

- ANTS(GST)A 1999 9-5
- ANTS(GST)A 1999 38-2
- ANTS(GST)A 1999 38-3(1)
- ANTS(GST)A 1999 Div 72
- ANTS(GST)A 1999 72-5(1)
- ANTS(GST)A 1999 72-10
- ANTS(GST)A 1999 72-70
- ANTS(GST)A 1999 Div 130
- ANTS(GST)A 1999 130-5
- ANTS(GST)A 1999 130-5(1)
- ANTS(GST)A 1999 184-1
- ANTS(GST)A 1999 184-5(1)
- ANTS(GST)A 1999 195-1
- ITAA 1936 318
- TAA 1953 Sch 1 105-60

ATO references

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