


GSTA TPP 050 - Goods and services tax: Does the transfer of assets constitute a taxable supply under subdivision 72-A when a new trustee is appointed to replace the original trustee of a trust?

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 This document has changed over time. This is a consolidated version of the ruling which was published on *31 October 2012*



Goods and Services Tax Advice

Goods and services tax: does the transfer of assets constitute a taxable supply under Subdivision 72-A when a new trustee is appointed to replace the original trustee of a trust?

Preamble

*This document was published prior to 1 July 2010 and was a public ruling for the purposes of former section 37 of the **Taxation Administration Act 1953** and former section 105-60 of Schedule 1 to the **Taxation Administration Act 1953**.*

*From 1 July 2010, this document is taken to be a public ruling under Division 358 of Schedule 1 to the **Taxation Administration Act 1953**.*

A public ruling is an expression of the Commissioner's opinion about the way in which a relevant provision applies, or would apply, to entities generally or to a class of entities in relation to a particular scheme or a class of schemes.

If you rely on this ruling, the Commissioner must apply the law to you in the way set out in the ruling (unless the Commissioner is satisfied that the ruling is incorrect and disadvantages you, in which case the law may be applied to you in a way that is more favourable for you – provided the Commissioner is not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any underpaid tax, penalty or interest in respect of the matters covered by this ruling if it turns out that it does not correctly state how the relevant provision applies to you.

[Note: *This is a consolidated version of this document. Refer to the Legal Database (<http://law.ato.gov.au>) to check its currency and to view the details of all changes.]*

Answer

No, the transfer of assets in this situation is not a supply; it is therefore not a taxable supply.

Background

Company A is a corporate trustee for a discretionary trust. Company A holds all of the assets including land and buildings in its capacity as corporate trustee. Company B is to be the new corporate trustee and the trust deed is so amended. The assets are transferred from company A to company B including title changes on the land and buildings. Company A and company B are associates for the purposes of Section 72 of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act).

Explanation

There is no new entity created for ABN or GST purposes when there is a change in trustee, provided there is no change in the underlying trust.

A trust is an entity under paragraph 184-1(1)(g) of the GST Act.

However, there is a problem in providing that a trust is an entity. This is because rights and obligations can only be placed on a separate legal entity. A trust is not a separate legal entity.

Subsection 184-1(2) is designed to overcome the problem. It is designed to ensure that the rights and obligations under the GST Act are conferred or imposed on the trustee.

First, it provides that the trustee is *taken to be* an entity. It is as though we are pretending that the trustee is the trust. For instance, Company A is the trustee of the Jones Family Trust. The entity is the Jones Family Trust. For the purposes of the GST Act, Company A is taken to be the trust.

Second, subsection 184-1(2) describes who the trustee is. This person (including a company) is the trustee *at any given time*. The use of the phrase 'at any given time' takes into account that a trustee may change. For example on 1 January, Company A is the trustee of the Jones Family Trust. Company A is the person taken to be the trust at that time. However, on 1 March Company B becomes the trustee of the Jones Family Trust. Company B is then the person taken to be the trust. There is only ever one entity (the Jones Family Trust) but the person who is taken to be that entity changes.

The change of trustee must be notified to the registrar for recording on the Australian Business Register. However, there is no change to the ABN of the trust (trustee). Similarly, there is no change in the trust entity for GST purposes. The transfer of assets from Company A to Company B is therefore not a supply. It follows there is no taxable supply from Company A to Company B.

Related Rulings/Determinations/GST Advice:

TR 2006/10; GSTA TPP 047

Previous Rulings/Determinations/GST Advice:

MT 2000/1

Subject references:

ABN
entity
enterprise
trust
registered

Legislative references:

ANTS(GST)A 1999 184-1
TAA 1953 Sch 1 Div 358

ATO references

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Application of this GST Advice

This Advice applies [to tax periods commencing] both before and after its date of issue. However, this Advice will not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of this Advice (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10).

Commissioner of Taxation

14 June 2005