GSTA TPP 061 - Goods and services tax: Is there an increasing adjustment when an enterprise asset is transferred to a spouse because of a marital breakdown where the acquisition of the asset was a creditable acquisition?

Goods and Services Tax Advice

Goods and services tax: Is there an increasing adjustment when an enterprise asset is transferred to a spouse because of a marital breakdown where the acquisition of the asset was a creditable acquisition?

Preamble

This document is a ruling for the purposes of section 37 of the Taxation Administration Act 1953. It illustrates the principles contained in ***Goods and Services Tax Ruling GSTR 2003/6 on transfers of enterprise assets to a spouse****. You can rely on the information presented in this document, which provides advice on the operation of the GST system.*

Answer

Yes, there is an increasing adjustment under Division 129 of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act).

Background

A marriage has broken down. One spouse ran a GST registered enterprise that had previously claimed input tax credits on the acquisition of a good used in the enterprise. The Family Court orders that good to be transferred to the other spouse. The other spouse is not registered for GST and does not carry on an enterprise.

Explanation

GSTR 2003/6 deals with enterprise assets or things for which the entity claimed input tax credits used by it in the enterprise. When that asset or thing is transferred to a spouse in marital breakdown circumstances it is applied for private or domestic use by the entity and is a change in creditable purpose. The asset has gone into final consumption and logically input credits previously claimed should be returned. Division 129 of the GST Act provides for this increasing adjustment.

Note: There is no inconsistency between GSTR 2003/6 and the *Income Tax Assessment Act 1997* (ITAA 1997) in relation to the treatment of the transfer of assets as a result of property distributions under the Family Law Act. It is a fact that the ITAA 1997 provides for roll-over relief in these circumstances and the GST Act does not. However, such a concept is not present in the GST regime. Roll-over relief delays the timing of possible exposure to income tax consequences, whereas an increasing adjustment under Division 129 of the GST Act, in marital breakdown circumstances, effectively returns input tax credits. There is no opportunity to 'roll-over' such an adjustment as there is no inherent GST liability of the supplier passing to the recipient when the asset is transferred.

Application of this GST Advice

This Advice is based on GSTR 2003/6. It explains our view of the law as it applied from 1 July 2000. You can rely on this Advice on and from its date of issue for the purposes of section 37 of the *Taxation Administration Act 1953*. Goods and Services Tax Ruling GSTR 1999/1 explains the GST rulings system and our view of when you can rely on our interpretation of the law in GST public and private rulings.

If this Advice conflicts with a previous private ruling that you have obtained, this public ruling prevails. However, if you have relied on a private ruling, you are protected in respect of what you have done up to the date of issue of this public ruling. This means that if you have underpaid an amount of GST, you are not liable for the shortfall prior to the date of issue of this later ruling. Similarly, you are not liable to repay an amount overpaid by the Commissioner as a refund.

Commissioner of Taxation
Date

Subject references:

enterprise assets
property distributions
roll-over relief
marital breakdowns
input tax credits

Legislative references:

ANTS(GST)A 1999 Div 129
TAA 1953 37

ATO references

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