



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?

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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: 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 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

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 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).

14 June 2005

Related Rulings/Determinations/GST Advice:

TR 2006/10

Subject references:

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

Legislative references:

ANTS(GST)A 1999 Div 129
TAA 1953 Sch 1 Div 358

ATO references

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