



GSTA TPP 062 - Goods and services tax: Can a large capital purchase resulting in a net refund of GST in the annual return be ignored for the purposes of the Division 162 instalment option?

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 This document has changed over time. This is a consolidated version of the ruling which was published on *14 June 2005*



Goods and Services Tax Advice

Goods and services tax: Can a large capital purchase resulting in a net refund of GST in the annual return be ignored for the purposes of the Division 162 instalment option?

Preamble

This document is a ruling for the purposes of section 37 of the Taxation Administration Act 1953. You can rely on the information presented in this document, which provides advice on the operation of the GST system.

Answer

No, a large capital purchase cannot be ignored in determining whether or not the entity is in a net refund position and thus able to elect to pay GST by instalments

Explanation

Generally, an entity must elect to pay GST by instalments on or before 28 October in the relevant financial year. However, the Commissioner has discretion to allow a later election to do so if the entity submits a request in the approved form. A refusal of this request by the Commissioner is a reviewable decision.

In determining eligibility for paying GST by instalments, the Commissioner has regard to the most current information on hand - the latest lodged GST returns. An entity's annual GST return is due by the time their income tax return is due. If an entity lodges its income tax return through a tax agent, this return is not due until after 28 October.

Consequently, an entity in a GST net refund position for the previous financial year may still be able to elect to pay GST by instalments in the current financial year. If it has not yet lodged its annual GST return the Commissioner will not know the entity is in a net refund position. Once the return has been lodged, the entity still pays GST by instalments for the remainder of the financial year. However, the entity's notified instalment amount is nil for the quarters following lodgement of the annual return. This entity may be liable for a large GST net amount at the end of the instalment tax period.

This also means the entity is not eligible to pay GST by instalments in the next financial year. The Commissioner's latest information shows the entity in a GST net refund position, making it ineligible to elect to pay GST by instalments. However, if the entity lodges its GST annual return by 28 October the Commissioner's information is updated to show the entity no longer in a net refund position, thus being eligible to pay GST by instalments for that financial year as well.

Note:

1. In this situation, the purchase of a large capital acquisition means that the entity is in a net refund position for the twelve months preceding its current tax period. Since the entity is in a net refund position for their last annual GST return, it is not eligible to pay GST by instalments in the next financial year. The entity must wait until it is no longer in a GST net refund position in the previous year before being eligible to elect to pay GST by instalments.

2. This response was prepared prior to the passing of the Tax Laws Amendment (Small Business Measures) Act 2004. Schedule 3 of this Act amended Division 162 of the A New Tax System (Goods and Services Tax) Act 1999 (GST Act) to allow instalment elections to roll-over from one financial year to the next. The amendments take effect from 1 July 2005.

Application of this GST Advice

This Advice 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:

capital purchase
instalment option
net refund position

Legislative references:

ANTS(GST)A 1999 Div 162
TAA 1953 37

ATO references

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