


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?

 This cover sheet is provided for information only. It does not form part of *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?*

 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: 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 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, 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 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

Related Rulings/Determinations/GST Advice:

TR 2006/10

Subject references:

capital purchase
instalment option
net refund position

Legislative references:

ANTS(GST)A 1999 Div 162
TAA 1953 Sch 1 Div 358

ATO references

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