



GSTA TPP 067 - 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 not 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 *14 June 2005*



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 not 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

No, an increasing adjustment does not arise in these circumstances..

Background

A marriage has broken down. One spouse ran a GST registered enterprise. That spouse had bought the enterprise as a GST-free supply of a going concern. The Family Court orders that an asset that formed part of the GST-free supply of the going concern be transferred to the other spouse. The asset was used in the enterprise. The other spouse is not registered for GST and does not intend to carry on the enterprise.

Explanation

Goods and services tax ruling GSTR 2003/6 expresses the view that a transfer of an enterprise asset to a spouse under an order of the Family Court is not a taxable supply.

The ruling does however provide that the transfer may give rise to an increasing adjustment under Division 129 of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act).

An increasing adjustment under Division 129 of the GST Act is calculated on the amount of input tax credit claimed. No input tax credit is claimed by the entity as the acquisition forms part of a GST-free supply of a going concern, so that there can be no adjustment under Division 129 of the GST Act when

the asset is later supplied by the entity to the spouse in the circumstances of GSTR 20003/6.

Application of this GST Advice

This Advice is based on GSTR2003/6. 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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