



***GSTA TPP 073 - Goods and services tax: Can paragraph 139-5(3)(a) of the GST Act apply so that there is no adjustment where separate beneficiaries inherit two commercial properties formerly used by the deceased to carry on a leasing enterprise?***

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 This document has changed over time. This is a consolidated version of the ruling which was published on *25 January 2006*



## Goods and Services Tax Advice

### **Goods and services tax:** Can paragraph 139-5(3)(a) of the GST Act apply so that there is no adjustment where separate beneficiaries inherit two commercial properties formerly used by the deceased to carry on a leasing enterprise?

#### **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**

Yes, paragraph 139-5(3)(a) of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act) can apply where two separate beneficiaries inherit two commercial properties formerly used by the deceased to carry on a leasing enterprise.

#### **Background**

A man acquires two commercial properties shortly before his death. He pays GST and claims input tax credits on each acquisition. He carries on a leasing enterprise of the properties until his death.

The executor of the deceased's estate continues to carry on the leasing enterprise and is registered for GST. The annual rental income from both properties is in excess of \$100,000.

According to the will of the deceased, one of the properties is to be transferred to his daughter; and the remaining property is to be transferred to his two sons as tenants in common.

#### **Explanation**

For the purposes of this response it is assumed that the enterprise carried on by the deceased was an enterprise as defined in paragraph 9-20(1)(c) of the GST Act.

Paragraph 139-5(3)(a) of the GST Act states that an adjustment does not arise in respect of an asset if the asset related to an enterprise that the deceased person carried on, and the beneficiary

intends to continue to carry on that enterprise. Paragraph 139-5(3)(a) does not apply where the beneficiary intends to carry on part of the enterprise of the deceased, but where the beneficiary intends to continue to carry on the enterprise that was previously carried on by the deceased.

Where properties are acquired and leased, an enterprise is carried on in relation to each property. In this case, the deceased carried on two separate enterprises in relation to his commercial properties. Paragraph 139-5(3)(a) of the GST Act will apply if the beneficiary/beneficiaries of each property intend to continue to carry on the enterprise that the deceased carried on in relation to that property which they inherit.

*Note: Where two beneficiaries inherit a property as tenants in common, paragraph 139-5(3)(a) of the GST Act applies so that no adjustment arises provided that **both** beneficiaries to whom the property is transferred intend to continue to carry on that enterprise*

#### **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 ruling that you have obtained, this public ruling prevails. However, if you have relied on a previous 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:**

deceased estate  
beneficiary  
increasing adjustment  
enterprise

**Legislative references:**

ANTS(GST)A 1999 139-5(3)(a)  
ANTS(GST)A 1999 9-20(1)(c)  
TAA 1953 37

**ATO references**

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