



GSTA TPP 095 - Goods and services tax: Are there circumstances in which repairs and additions to plant and equipment are not included as 'assets' for the purposes of an increasing adjustment under Division 138 of the GST Act upon cessation of registration?

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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: are there circumstances in which repairs and additions to plant and equipment are not included as 'assets' for the purposes of an increasing adjustment under Division 138 of the GST Act upon cessation of registration?

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 are circumstances in which repairs and additions to plant and equipment are not included as 'assets' for the purposes of an increasing adjustment under Division 138 of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act) upon cessation of registration. If the items of repair or additions made to an asset have been consumed over the life of the asset or do not exist

as a discrete asset in their own right at the time of cessation of registration, there is no increasing adjustment under Division 138 for these acquisitions. If spare parts are included in the entity's assets on hand at the cessation of registration, Division 138 applies in determining the amount of any increasing adjustment.

Background

A mining company owns plant and equipment worth \$5M. The equipment has undergone various repairs and additions over its life worth \$0.5M. The company ceases business and abandons the plant and equipment as its scrap value is zero. The entity was entitled to input tax credits for its acquisitions. There are no adjustment periods relating to the plant, equipment, or spare parts.

Explanation

Division 138 of the GST Act deals with increasing adjustments for cessation of GST registration. Subsection 138-5(1) of the GST Act provides that an entity has an increasing adjustment if its registration is cancelled and, immediately before the cancellation, its assets include anything for which it was, or is, entitled to input tax credits.

The term 'asset' is not defined in the GST legislation and takes its ordinary meaning. *The Macquarie Dictionary* defines 'asset' as, '1. a useful thing or quality. 2. an item of property; an economic resource.' The existence of an asset for GST purposes is a matter of fact.

Section 195-1 of the GST Act defines 'thing' as 'anything that can be supplied or imported'. The thing referred to in Division 138 of the GST Act is the thing supplied to the entity or imported by the entity, for which the entity was or is entitled to an input tax credit, and which is included in the assets of the entity immediately before the cancellation of registration takes effect.

The 'GST inclusive market value' of a thing, or supply or acquisition of a thing, is defined in section 195-1 of the GST Act. It means the market value of

the consideration or thing, without any discount for any amount of GST or luxury car tax payable on the supply.

'Market value' is not a defined term but an objective test. Goods and Services Tax Ruling GSTR 2001/6, which is about non-monetary consideration, gives some guidance regarding how 'market value' is determined. It states at paragraph 141:

Market value is regarded as the price that would be negotiated at a specified time between a knowledgeable and willing but not anxious buyer and a knowledgeable and willing but not anxious seller acting at arm's length in an appropriate market.

You may determine the GST inclusive market value of the thing by applying a method that produces a reasonable GST inclusive market value. The method will differ depending on the particular circumstances.

Examples of reasonable valuation methods are outlined in GSTR 2001/6 at paragraph 144. They include:

- the market value of an identical good, service or thing;
- the market value of a similar good, service or thing;
- the market value of the supply; or
- a professional appraisal.

Although Division 138 of the GST Act applies in relation to each item of plant and equipment that is included in the assets of an entity immediately before the cancellation of its registration takes effect, whether it will result in there being an increasing adjustment will depend on the circumstances of the entity at that time. For example:

- if a thing does not exist as a discrete asset in its own right, Division 138 does not apply. For example, an increasing adjustment for painting repairs does not arise when the entity's registration is cancelled as the repair does not exist in its own right at that time;
- a thing may exist but there is no increasing adjustment if its GST inclusive market value is zero. For example, old machinery or spare parts with a scrap value of zero; or
- the item may exist as an integral part of an item of plant or equipment. For example, spare parts used to repair a machine. The GST inclusive market value of the spare parts can be calculated using a reasonable method. Once

this value has been calculated, the applicable value can be determined and applied in the formula contained in subsection 138-5(2) of the GST Act to calculate the amount of the increasing adjustment.

Note: Taxation Ruling TR 2002/20, which is about thin capitalisation and the definition of assets and liabilities, is limited to the operation of Division 820 of the Income Tax Assessment Act 1997. It has no application in determining the value of assets for purposes of Division 138 of the GST Act.

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

1 February 2006

Related Rulings/Determinations/GST Advice:

TR 2006/10
GSTR 2001/6
GSTA TPP 094

Subject references:

adjustment events
asset
increasing adjustment
market value
GST registration
registration cancellation

Legislative references:

ANTS(GST)A 1999 Div 138
ANTS(GST)A 1999 138-5(1)
ANTS(GST)A 1999 138-5(2)
ANTS(GST)A 1999 195-1
TAA 1953 Sch 1 Div 358

Other references:

The Macquarie Dictionary, Revised Third Edition

ATO references

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