GSTR 1999/1 - Goods and Services Tax: the GST rulings system

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This document has changed over time. This is a consolidated version of the ruling which was published on *15 October 2003*

Goods and Services Tax Ruling

Goods and Services Tax: the GST rulings system

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Preamble

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

[Note: This is a consolidated version of this document. Refer to the Tax Office Legal Database (http://law.ato.gov.au) to check its currency and to view the details of all changes.]

What this Ruling is about

1. This Ruling sets out our interpretation of section 37 of Part VI of the *Tax Administration Act 1953* ('TAA') in regard to the Goods and Services Tax ('GST'), Wine Equalisation Tax ('WET') and Luxury Car Tax ('LCT').

2. This Ruling considers:

- how we will rule;
- when you can rely on a ruling;
- how to apply for a GST private ruling;
- when we will not rule;
- withdrawal of rulings; and
- review rights.

3. For the purposes of this Ruling, a reference to GST includes a reference to WET and LCT.

4. All legislative references are to the TAA unless otherwise stated.

Date of effect

5. This Ruling applies on or from 8 July 1999 (the date of Royal Assent to the GST legislation).

Definitions

6. 'Net amount' has the meaning given by section 17-5 and section 126-5 of the *A New Tax System (Goods and Services Tax) Act 1999* ('the GST Act'). Amounts payable or refundable under the WET and the LCT are adjustments to the net amount.

Ruling

7. The GST rulings system has a legislative basis. The procedures are administratively based. Section 37 sets out the binding nature of rulings. However, it does not provide a mechanism for the release of GST public rulings or the procedures for applying for a GST private ruling. The GST rulings procedures outlined in this Ruling have their basis in section 63 that gives the Commissioner the general administration of each indirect tax law.

How the Commissioner will rule

8. A 'ruling' for the purposes of section 37 means any ruling, advice given or published by the Commissioner including one that has been previously altered, but not including one given orally or an assessment.

GST private rulings

9. A letter or any other written advice we give to a particular entity is a GST private ruling. When we issue a GST private ruling it will be for a set period. Unless otherwise advised, the period will be three years.

GST public rulings

10. All forms of written advice involving the interpretation of GST law that we produce other than GST private rulings are public rulings within the terms of the TAA and are binding on the Commissioner.

11. GST public rulings, as defined in the TAA, include GST public rulings and determinations identified on the public Rulings program (such as this one). In addition, GST bulletins, GST Product Rulings, general information booklets, guides and fact sheets published by the Australian Taxation Office and notices in the Government Gazette or special publications of the Australian Government Printer are also GST public rulings. However, GST Practice Statements and GST Case Decision Summaries are not GST public rulings. We consider that these documents are not 'rulings' for the purposes of section 37 of the TAA because they do not constitute 'advice given or published by the Commissioner'.[1]

12. GST rulings identified on the Public Rulings Program deal with issues which:

- are interpretative in nature;
- relate to the GST obligations of a particular industry or cross- section of taxpayers; or
- potentially affect a large number of taxpayers across many or all industries.

13. As with other rulings on the Public Rulings Program, GST public rulings on that Program are monitored regularly by the National Tax Liaison Group.

14. A draft GST Taxation Ruling identified on the Public Rulings Program is not a ruling for the purposes of section 37 as it is not a 'ruling' or 'advice'. It is a consultative document which sets out the Commissioner's preliminary view only.

15. The whole of a public ruling identified on the Public Rulings Program is binding under section 37, not just the 'Ruling' part.

16. All GST rulings and publications are available on the ATO website at www.ato.gov.au.

When you can rely on our interpretation

17. All our GST public and GST private rulings will contain either of the following words:

> 'You can rely on the information presented in this document which provides advice on the operation of the GST system.' or

[1] Practice Statements do not contain interpretative advice (see Practice Statement PS1998/1), and Case Decision Summaries are an indication only of the Commissioner's view on a particular issue (see Practice Statement PS 2000/1).

> 'Businesses can rely on the information presented in this publication which provides advice on the operation of the GST system.'

However, the inclusion or non-inclusion of these words cannot override the legislation.

18. If you rely on a GST ruling that says that the law applies to you in one way and another GST ruling is subsequently issued advising that the law actually applies in a different way, you will not be liable for any more tax than would have been payable under the original GST ruling for the period prior to the alteration.

19. If you have underpaid a net amount, the amount underpaid will cease to be payable if the underpayment occurred in reliance on a GST ruling. Similarly, an amount overpaid as a GST refund by the Commissioner will be taken to have been payable if the overpayment occurred in reliance on a GST ruling.

20. However, the underpayment will remain payable, or you will be liable to pay the overpaid refund, if we are satisfied that you made a material misstatement of fact or suppressed an important fact causing the first ruling to be given or continued.

21. If a GST private ruling is given to an entity and a subsequent GST public ruling is issued which conflicts with the GST private ruling, the GST public ruling will prevail from the date of issue of the GST public ruling.

22. If a GST private ruling is issued which conflicts with an earlier GST public ruling then the GST private ruling will prevail.

23. If you have an existing GST private ruling and there is a change in the law, you will be protected in respect of what you have done up to the date of that change.

How to apply for a GST private ruling

24. GST rulings are an important part of the GST system. Although there is no provision in the legislation requiring us to issue a private ruling, we will not refuse a request without good reason. Where we decide not to give a GST private ruling, we will provide you with the reasons for that decision. A decision not to issue a ruling is reviewable under the provisions of the *Administrative Decisions (Judicial Review) Act 1977* ('ADJRA').

25. You do not need to seek confirmation that the terms of a GST public ruling apply to you unless you believe there is some reason why your particular circumstances differ from those outlined in the GST public ruling. However, if you seek such advice, we will give

you a GST private ruling clarifying how the GST public ruling applies to you.

26. You may seek a GST private ruling on how the general anti-avoidance provisions apply to transactions you enter into or arrangements you undertake. In these cases, you should be especially careful to explain all material facts, to set out why you think they do not fall within the specified terms of the provision (including addressing the criteria in section 165-15 of the GST Act), and to ensure that you implement the arrangement (if approved) as described.

27. You can make a request for a GST private ruling by using the form 'Application for GST private ruling'. Alternatively, you can submit a written request which must contain the following information:

- your name, address and a telephone contact number (this should be a business hours number to enable us to clarify details with you quickly);
- your Australian Business Number, if you have one, or your Tax File number;
- the facts on which your request is based including, where relevant, the tax period;
- the industry you operate in;
- whether you are aware of any GST private rulings given to anyone else on the topic;
- whether you have sought a previous ruling on the matter before; and
- whether the matter to be ruled on is subject of an audit or dispute.

28. If you are a professional adviser seeking a ruling on behalf of another person, you should also state that you are authorised by that person to act on their behalf in relation to GST matters.

When we will not rule

29. We will not give a GST private ruling if:

- you already have a ruling on the issue and we consider the particular request to be unnecessary;

- you are, at the time of the request, the subject of an audit relating to the particular question being raised. (Note, however, that this will not usually prevent you seeking clarification from the auditor);
- it relates to a GST reviewable decision under section 62 of the TAA;
- the topic to be covered is, at the time of the request, the subject of a formal dispute with the Commissioner (for example, an objection); or
- we have decided the matter for the purposes of an assessment.

Withdrawal of rulings

30. We may withdraw either the whole or a part of a GST public ruling by publishing a new ruling which is inconsistent with it or part of it and identifying that it is inconsistent or by publishing a notice of withdrawal.

31. A GST public ruling has effect until such time as it is withdrawn or replaced by another GST public ruling. However, as outlined in paragraph 30 above, part of it may be withdrawn by a subsequent inconsistent ruling or by partial withdrawal of the ruling.

32. You can request that we withdraw a GST private ruling at any time.

Review rights

33. A GST ruling cannot be reviewed under the TAA as it is not a reviewable decision under subsection 62(2). Nor can it be reviewed under the ADJRA.

34. However, where you carry out a transaction that results in a net amount for a tax period, you can, under section 23, request us to make an assessment under section 22 of your net amount for that tax period. Under section 62, you may object to the making of that assessment in the manner set out in Part IVC.

Detailed contents list

35. Below is a detailed contents list for this Ruling:

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Commissioner of Taxation
15 December 1999

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Not previously issued in draft form

Related Rulings/Determinations:

Subject references:
- GST private ruling
- GST public ruling
- public rulings
- taxation administration

Legislative references:
- ANTS(GST) 17-5
- ANTS(GST) 126-5
- ANTS(GST) 165-15
- TAA 22
- TAA 23
- TAA 37
- TAA 62
- TAA 62(2)

Case references:

ATO references:
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