

PS LA 2004/3 (GA) - The valuation of goods taken from trading stock for private use by sole traders or partners in a partnership

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Practice Statement Law Administration (General Administration)

PS LA 2004/3 (GA)

FOI status: may be released

This Practice Statement is issued under the authority of the Commissioner and must be read in conjunction with Law Administration Practice Statement PS LA 1998/1. It must be followed by Tax Office staff unless doing so creates unintended consequences. Where this occurs officers must follow their Business Line's escalation process.

SUBJECT: **The valuation of goods taken from trading stock for private use by sole traders or partners in a partnership**

PURPOSE: **To outline:**

- **the Commissioner's approach in valuing trading stock taken for private use by sole traders or partners in a partnership; and**
 - **the related record keeping requirements.**
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BACKGROUND

1. This law administration practice statement sets out the approach the Commissioner will accept for valuing trading stock that is taken for private use by sole traders or partners in a partnership.
2. Subdivision 70-D of the *Income Tax Assessment Act 1997* (the ITAA 1997) contains rules about how to include the value of an item of trading stock in a taxpayer's assessable income if:
 - the taxpayer disposes of an item of trading stock outside the ordinary course of business, or
 - the item ceases to be trading stock in certain other circumstances.
3. Where taxpayers value items taken from trading stock for private use as detailed in this law administration practice statement, these values will be accepted by the Commissioner.

STATEMENT

4. Where an item of trading stock is taken from a business for private use, it will be assessed on the basis of its cost or market value depending on whether, following its conversion to private use, the item continues to be held by the same individual(s) that previously held the item as trading stock.

- Where the item of trading stock is taken for personal use by a sole trader, it continues to be held by the same person/persons that carry on the business and it should be accounted for at its cost.
 - Where an item of trading stock is taken by **all** the partners in a partnership for their **joint** personal use the amount to be included in the assessable income of the partnership business is an amount equal to the cost of the item.
5. Where items of trading stock are taken from a business for private use, the Commissioner requires the following records to be kept so that he can establish whether the correct amount is included in assessable income:
- the date the item is taken from stock
 - the reason why the item is taken from stock
 - the description of the item, and
 - the cost or the market value of the item as the case requires.

Where the items taken from trading stock are of small value such that it may be difficult or unreasonable to expect records to be maintained, the Commissioner will accept that the items have been taken from trading stock for the joint personal use of all the partners.

EXPLANATION

6. Where a business is conducted as a partnership or as a sole trader, it will only be able to value an item of trading stock at cost if the special conditions of section 70-110 of the ITAA 1997 are met. In all other circumstances, the business must value the item of trading stock at its market value in accordance with sections 70-90 or 70-100 of the ITAA 1997.
7. Section 70-110 of the ITAA 1997 provides as follows: 'If you stop holding an item as trading stock, but still own it, you are treated as if
- just before it stopped being trading stock, you had sold it to someone else (at arm's length and in the ordinary course of business) for its cost; and
 - you had immediately bought it back for the same amount.'
8. The term 'you' is defined in section 4-5 of the ITAA 1997 as applying 'to all entities generally, unless its application is expressly limited'. For the purposes of the ITAA 1997, an individual; a partnership; or a body of persons can be an entity (see section 960-100 of the ITAA 1997). Accordingly, where a sole trader or partners in a partnership take an item of trading stock for private use, the item is to be assessed on the basis of its cost or market value depending whether, following its conversion to private use, the item continues to be held by the same entity that held the item as trading stock.
9. Where an individual, who carries on a business as a sole trader, takes an item of trading stock for their private use, section 70-110 of the ITAA 1997 applies as the item continues to be held by the same entity (an individual) that held the item as trading stock. The amount to be included in the assessable income of sole trader is an amount equal to the cost of the item.
10. A partnership is defined in section 995-1 of the ITAA 1997 as an association of persons carrying on business as partners or in receipt of ordinary income or statutory income jointly, but does not include a company.

11. Where an item of trading stock is taken by one or more, but not all of the partners of the partnership, for their private use, the entity that owns the item after its conversion to private use is not the same as the entity that held the item as trading stock. Accordingly, section 70-110 of the ITAA 1997 cannot apply and the amount to be included in the assessable income of the partnership business is an amount equal to the market value of the item
12. The entity that held the item as trading stock is the partnership business. This partnership entity includes all the partners in the business as an association of persons carrying on business. In contrast, the entity that holds the item after its conversion to private use may be an individual or a different association of persons who are not carrying on business.
13. Where an item of trading stock is taken by **all** the partners of the partnership for their **joint** private use, there is a strong argument that the entity that owns the item after its conversion to private use is not the same entity that held the item as trading stock.
 - The entity that held the item as trading stock is the partnership business. This partnership entity is made up of all the partners as an association of persons carrying on business.
 - In contrast, the entity that holds the item after its conversion to private use is not, by definition, a partnership – it is simply an association of person jointly owning an asset that previously had been the trading stock of the partnership. Accordingly, section 70-110 of the ITAA 1997 cannot apply.
14. However, it is considered inappropriate as a matter of practical compliance to draw a distinction between sole traders and partnerships in relation to this matter. The broad policy intent was that where trading stock is taken from a business for private use but remains owned by the same person or persons that carries on the business, the item of trading stock should be accounted for at its cost. In the case of any other disposal of trading stock, the item is to be accounted for at its market value.
15. Therefore, the Commissioner will as a matter of sensible administration accept that in relation to an item of trading stock taken by all the partners of the partnership for their joint private use, the amount to be included in the assessable income of the partnership business may be the cost of the item.
16. Paragraph 5 above sets out the details that should be recorded when an item of trading stock is taken from the business for private use. However, in recognition that it is difficult, in certain businesses or industries, to determine the value of an item taken from trading stock for private use, the Commissioner has issued rulings providing a schedule of values of goods taken from trading stock for private use that may be used by taxpayers as a guide.
17. The industries where these difficulties may arise are those where items of trading stock:
 - are used in a transformation process (e.g. baking)
 - are a range of small items or ingredients, usually of low value
 - are not suited to inventory systems, and
 - are subject to a high turnover, often for cash.

18. It is also recognised that greater or lesser values than those contained in a schedule may be appropriate in particular cases. Where a taxpayer considers the values provided by a schedule do not reflect their particular circumstances, they may elect to maintain their own records and return the actual cost of goods taken for private use.
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EXAMPLES

Example 1: Sole trader

1. Peter Purple operates a sole trader business as a butcher. He takes a leg of lamb home for his private use. The leg of lamb is trading stock taken for private use by a person carrying on a business as a sole trader. The cost of the leg of lamb is required to be included in the assessable income of the business.

Example 2: Sole trader – using Schedule in TD 2003/22

2. Over the 2003/04 income year, Peter Purple regularly takes home various cuts of meat (trading stock) for his private use. Peter lives with his wife and 1 child aged 10.
- Peter may account for the items of trading stock taken for his private use by recording the costs of the items as he takes them over the year and include this total amount in the assessable income of the business for the 2003/04 income year.
 - Alternatively, Peter can use the schedule in taxation determination TD 2003/22 to calculate the value of items taken from trading stock for private use. Under TD 2003/22 the amount required to be included in the assessable income of the business in the 2003/04 income year is \$1650.

Example 3: Partnership – Item of trading stock taken for use by all partners

3. Patrick and Peter have a joint birthday party and decide to have a spit roast. They take a whole pig from trading stock for this purpose. An amount equal to the cost of the whole pig is required to be included in the assessable income of the partnership.
4. At other times during the 2003/04 income year, Peter and Patrick have each taken items of trading stock for their joint use. The partnership business may account for the items of trading stock taken at cost. Alternatively, the partnership business can use the Schedule in TD 2003/22 to calculate the value of items of trading stock for private use.

<i>subject references</i>	private use, trading stock, value of goods taken from trading stock
<i>legislative references</i>	<i>Income Tax Assessment Act 1997</i> section 4-5; <i>Income Tax Assessment Act 1997</i> subdivision 70-D <i>Income Tax Assessment Act 1997</i> section 70-90; <i>Income Tax Assessment Act 1997</i> section 70-100; <i>Income Tax Assessment Act 1997</i> section 70-110, <i>Income Tax Assessment Act 1997</i> section 960-100; <i>Income Tax Assessment Act 1997</i> section 995-1
<i>related public rulings</i>	Income Tax Ruling IT 2659 Taxation Determination TD 1999/41 Taxation Determination TD 2001/25 Taxation Determination TD 2002/26 Taxation Determination TD 2003/22 Taxation Determination TD 2004/38 Taxation Determination TD 2005/36
<i>related practice statements</i>	
<i>case references</i>	
<i>file references</i>	2001/001048

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 Other Business Lines
 consulted