

GSTR 2003/6A1 - Addendum - Goods and services tax: transfers of enterprise assets as a result of property distributions under the Family Law Act 1975 or in similar circumstances

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Addendum

Goods and Services Tax Ruling

Goods and services tax: transfers of enterprise assets as a result of property distributions under the *Family Law Act 1975* or in similar circumstances

This Addendum amends Goods and Services Tax Ruling GSTR 2003/6 as a consequence of a change in the Commissioner's view in relation to the meaning of 'apply' in Division 129 of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act). The meaning of 'apply' in Division 129 of the GST Act is also relevant to Division 130 of the GST Act. The reference to 'apply' in Division 130 of the GST Act refers to the meaning of 'apply' in Division 129 of the GST Act.

The meaning of 'apply' in Division 129 of the GST Act was reconsidered in the context of Goods and Services Tax Ruling GSTR 2009/4. GSTR 2009/4 explains how Division 129 of the GST Act applies in circumstances where an entity constructs new residential premises for sale but rents the premises prior to sale. This Addendum amends GSTR 2003/6 as it relates to whether or not trading stock is applied while it is being held for sale and the application of Division 130 of the GST Act in circumstances where goods, including trading stock, are removed from an enterprise for private or domestic use.

GSTR 2003/6 is amended as follows:

1. Header

Omit 'Draft'.

2. Preamble

Omit 'section 37 of'; substitute 'section 105-60 of Schedule 1 to'.

3. Paragraph 10

Omit 'section 37 of the *Taxation Administration Act 1953*'; substitute 'section 105-60 of Schedule 1 to the *Taxation Administration Act 1953* (TAA)'.

4. Paragraph 11

After the paragraph insert:

Note: the Addendum to this Ruling that issued on 24 June 2009 explains the Commissioner's view of the law as it applies from its date of issue. You can rely upon this Addendum on and from its date of issue for the purposes of section 105-60 of Schedule 1 to the TAA.

If this Addendum conflicts with a previous private ruling that you have obtained or a previous public ruling, this Addendum prevails. However, if you have relied on a previous ruling (including the public Ruling that the Addendum amends), you are protected in respect of what you have done up to the date of issue of the Addendum or, if there is a change to the legislation, you are protected in respect of what you have done up to the date the legislative change takes effect. This means that if you have relied on the earlier ruling and have underpaid an amount of GST, you are not liable for the shortfall prior to either the issue date of the Addendum or the date the legislative change takes effect, as appropriate. Similarly, if you have relied on the earlier ruling you are not liable to repay an amount overpaid by the Commissioner as a refund.

5. Paragraphs 74 to 81

Omit the paragraphs including headings; substitute:

Meaning of the term 'apply the goods solely'

74. For Division 130 to apply, the goods must be applied *solely* to private or domestic use.³⁶ The application of this Division depends on the meaning of the word 'solely' and whether goods that have been applied to a business or enterprise use can be subsequently applied 'solely' for private and domestic use. The meaning of the term 'apply' is discussed at paragraphs 50 to 52 of this Ruling.

75. We take the view that Division 130 can operate in relation to goods that have been previously applied to a business or enterprise use. We consider that the reference to application of the goods solely to private or domestic use in paragraph 130-5(1)(c) is a reference to the point in time when goods are removed from an enterprise. Past applications of the goods are not relevant for the purposes of paragraph 130-5(1)(c).

³⁶ Paragraph 130-5(1)(c).

76. On this view, Division 130 may have some application to enterprise assets transferred under an MPD. However, the application of Division 130 will be limited to those enterprise assets acquired or imported solely for a creditable purpose and for which there has not been a previous adjustment under Division 129.

77. We are of the view that Division 130 has application not only to trading stock but also to all of the entity's goods including plant, building materials and office equipment. This is because Division 130 is stated to apply to 'goods' and not only to goods that are trading stock.³⁷

Example 7: Supplying goods solely to private use

78. *Sven, a sole trader, is required by an FLA court order to give to his ex-wife two antique chairs that were acquired as part of his enterprise. The chairs form part of the enterprise's office furniture and were acquired solely for a creditable purpose. When the chairs are given to Sven's ex-wife, the chairs are applied solely to private use and the input tax credits previously claimed will need to be adjusted under section 130-5.*

Alternative view

79. An alternative view is that Division 130 can only apply where goods have never been applied or used in the enterprise before being applied to a private or domestic purpose. However, the adoption of this view would result in trading stock removed from an enterprise for private consumption by the owner of the enterprise not being subject to a Division 130 adjustment or possibly any other adjustment. We believe that this outcome would be contrary to the intention of Division 130.

Trading stock

80. We consider that trading stock is 'applied' while it is held for the purpose of sale in an entity's enterprise. When the trading stock is set aside and removed for private consumption it is, at that time, applied solely to private and domestic use to which Division 130 may apply.

³⁷ See for example, paragraphs 130-5(1)(a) and (c).

Example 8: Trading stock

81. James a furniture retailer, transfers as a result of an MPD, a \$5,500 new lounge suite from his showroom floor to his former spouse. James bought the lounge suite for \$5,500. While awaiting sale the lounge has been applied to a creditable purpose. When it is removed from the showroom and given to James' former spouse, at that time, it is applied solely to a private use. James has an increasing adjustment for \$500 under Division 130.

6. Legislative references

Omit:

- TAA 1953 37

Insert:

- TAA 1953 Sch 1 105-60

This Addendum explains the Commissioner's view of the law as it applies from its date of issue. You can rely upon this Addendum on and from its date of issue for the purpose of section 105-60 of Schedule 1 to the *Taxation Administration Act 1953*.

Commissioner of Taxation

24 June 2009

ATO references

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