GSTR 2001/D1 - Goods and services tax: how does section 188-25 affect the calculation of 'projected annual turnover' for the purposes of the GST Act?

There is an Erratum notice for this document.
This document has been finalised.

Draft Goods and Services Tax Ruling

Goods and services tax: how does section 188-25 affect the calculation of 'projected annual turnover' for the purposes of the GST Act?

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Preamble

This document is a draft for industry, professional and community comment. As such, it represents the preliminary, though considered, views of the Australian Taxation Office. This draft may not be relied on by taxation officers, taxpayers and practitioners. When the final Ruling is officially released it will be a public ruling for the purposes of section 37 of the Taxation Administration Act 1953 and may be relied upon by any person to whom it applies.

What this Ruling is about

1. This Ruling explains:

(a) how section 188-25 of the *A New Tax System (Goods and Services Tax) Act 1999* (the GST Act) affects the calculation of projected annual turnover;

(b) the relevance of projected annual turnover to your enterprise;[1] and

(c) the meaning of terms 'likely to make', 'likely to be made', 'in connection with', 'transfer of ownership', 'capital asset', 'solely as a consequence of', 'substantially and permanently' and 'connected with Australia' as used in Division 188.

2. This Ruling does not deal with:

(a) the application of sections 188-22, 188-23, 188-24 or 188-40 to the calculation of current annual turnover or projected annual turnover;

(b) the value of a supply as affected by sections 188-32 or 188-35;[2] and

[1] Section 188-10.
[2] For the basic rules on the value of taxable supplies, see Subdivision 9-C.

(c) the application of the instalment turnover threshold or other Streamlined GST and PAYG Reporting measures announced by the Treasurer in his press release No.7 of 22 February 2001.

3. All legislative references are to the GST Act, unless otherwise stated.

Date of effect

4. When finalised, this Ruling applies on and from 1 July 2000.

Background

5. The application of the GST Act to an entity depends upon the concepts of 'turnover threshold', 'annual turnover', 'current annual turnover' and in particular, 'projected annual turnover'. You must calculate both your 'current annual turnover' and your 'projected annual turnover' to determine whether you have an annual turnover that meets, or exceeds a turnover threshold.

6. The level of turnover threshold determines whether you[3]:

(a) are required to register for GST;

(b) select tax periods which are monthly;

(c) can elect to account on a cash basis;

(d) must lodge GST returns electronically; or

(e) must pay net amounts of GST electronically.

7. Your annual turnover is relevant for the following thresholds:

(a) the registration turnover threshold - $50,000 or $100,000 for a non-profit body[4];

(b) the tax period turnover threshold - $20,000,000.[5]

(c) the cash accounting turnover threshold - $1,000,000;[6] and

(d) the electronic lodgment turnover threshold - $20,000,000;[7]

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[3] Section 188-5.
[4] Section 23-15.
[5] Subsection 27-15(3).
[6] Subsection 29-40(3).
[7] Subsection 31-25(4).

Ruling and Explanation

Relevance of 'annual turnover' for determination of turnover threshold

8. Section 188-10 determines whether your annual turnover meets, or does not exceed, a turnover threshold. In calculating the electronic lodgment, registration and tax period turnover thresholds, you have an annual turnover that meets a particular turnover threshold under subsection 188-10(1) when:

(a) your current annual turnover is at or above the turnover threshold, and the Commissioner is not satisfied that your projected annual turnover is below the turnover threshold; or

(b) your projected annual turnover is at or above the turnover threshold.

9. In calculating the cash accounting turnover threshold you have an annual turnover that does not exceed that particular turnover threshold under subsection 188-10(2) when:

(a) your current annual turnover is at or below the turnover threshold, and the Commissioner is not satisfied that your projected annual turnover is above the turnover threshold; or

(b) your projected annual turnover is at or below the turnover threshold.

Current annual turnover and projected annual turnover

10. Section 188-15 defines 'current annual turnover'. Subject to the exclusions listed in paragraph 11, 'current annual turnover' at any time during a particular month is the sum of the values of all the supplies that you made, or are likely to make, during the current month and the preceding 11 months. Section 188-20 defines 'projected annual turnover'. Subject to the exclusions listed in paragraph 11, 'projected annual turnover' at a time during a particular month is the sum of the values of all the supplies that you made, or are likely to make, during that month and the next 11 months. If you are a member of a GST group you must also include the values of supplies made by any member of the group.

11. The following supplies are excluded from the calculation of current annual turnover and projected annual turnover:

- supplies that are input taxed;

- supplies that are not for consideration (and are not taxable supplies under section 72-5);
- supplies not made in connection with an enterprise that you carry on;
- supplies that are not connected with Australia; and
- supplies made from one member of a GST Group to another member of that GST Group.

12. The term 'supplies' in section 188-15 and 188-20 refers to all supplies as defined in section 9-10 and is not limited to taxable supplies as defined in section 9-5. Current annual turnover and projected annual turnover are the sum of the respective GST exclusive values for the 12 months.

Meaning of 'likely to make' or 'likely to be made'

13. The phrase 'likely to make' appears in sections 188-15 and 188-20. The phrase 'likely to be made' appears in section 188-25. Both phrases refer to a similar level of expectancy, although the GST Act defines neither. The words retain their ordinary meaning in the context of the legislation.

14. In *Australian Telecommunications Commission v. Krieg Enterprises Pty Ltd* (1976)14 SASR 303, Bray CJ considered the meaning of 'likely' in the phrase 'likely to interfere with or damage property'. His Honour said at pages 312 - 313:

> 'Here we are concerned with the word "likely" in a statute. As I have said, the ordinary and natural meaning of the word is synonymous with the ordinary and natural meaning of the word "probable" and both words mean,… that there is an odds-on chance of the thing happening. That is the way in which statutes containing the words have usually been construed. …I think that "likely" in the sub-section means "probable" and I think that that means that there is a more than fifty per cent chance of the thing happening.'

15. For the purposes of sections 188-15, 188-20 and 188-25, the expressions, 'likely to make', and 'likely to be made', mean that on the balance of probabilities, it can be predicated that the supply is more likely than not to be made.

16. When a supply is 'made', is determined in each case by reference to the terms of the particular contract, if applicable, and the nature of the supply. For the purpose of calculating supplies likely to be made, we will accept a calculation based on a bona fide business plan, accounting budget or some other reasonable estimate providing the basis of calculation is reviewed monthly.

Meaning of 'in connection with'

17. The words 'in connection with', as used in sections 188-15 and 188-20, are not defined in the GST Act. Such wide formulas are context related and courts have insisted that the words be interpreted in accordance with the intent of the relevant statute.[8] In *Hatfield v. Health Insurance Commission*,[9] Davies J stated:

> 'Expressions such as "relating to", "in relation to", "in connection with" and "in respect of" are commonly found in legislation but invariably raise problems of statutory interpretation. They are terms which fluctuate in operation from statute to statute… The terms may have a very wide operation but they do not usually carry the widest possible ambit, for they are subject to the context in which they are used, to the words with which they are associated and to the object or purpose of the statutory provision in which they appear.'[10]

This passage was approved by the Full Federal Court in *Burswood Management Ltd v. Attorney-General.*[11] Their Honours concluded that reference to reported cases is of little assistance in determining the meaning of the words 'in connection with', because they take their meaning from the particular statute in which they appear.[12]

18. The words 'in connection with' when used in conjunction with the term 'enterprise', should be read as having the same meaning as the words 'in the course or furtherance of' in paragraph 9-5(b) of the GST Act. This is because the requirements in sections 188-15 and 188-20 largely mirror the requirements of paragraph 9-5(b) of the GST Act.

Meaning of 'connected with Australia'

19. Subsections 188-15(3) and 188-20(3) require you to disregard any supplies that are not 'connected with Australia' when calculating your 'current annual turnover' and 'projected annual turnover' respectively. Goods and Services Tax Ruling GSTR 2000/31 explains our view of when a supply of goods, real property, or things other than goods or real property, is connected with Australia under section 9-25. The same principles apply to the meaning of the phrase 'connected with Australia' in subsections 188-15(3) and 188-20(3).

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[8] *AAT Case 7273* (1991) 22 ATR 3402 at 3406; *Case Y43* 91 ATC 412 at 414-415, per Grbich (Senior Member).
[9] (1987) 15 FCR 487.
[10] (1987) 15 FCR 487 at 491.
[11] (1990) 23 FCR 144.
[12] (1990) 23 FCR 144 at 146.

Supplies to be disregarded under section 188-25

20. Section 188-25 moderates the effect of section 188-20 by excluding certain supplies made when working out your projected annual turnover. Section 188-25 requires you to disregard the following when calculating your projected annual turnover:

(a) any supply made, or likely to be made, by you by way of transfer of ownership of a capital asset of yours; and

(b) any supply made, or likely to be made, by you solely as a consequence of:

(i) ceasing to carry on an enterprise; or

(ii) substantially and permanently reducing the size or scale of an enterprise.

21. When calculating your projected annual turnover, you do not include the sum of supplies which fall within the description in either section 188-25 paragraph (a) or section 188-25 paragraph (b) listed above. When you make a supply which is capable of satisfying the description in both paragraphs, you must exclude the supply only once. (See Example 3 at paragraph 38.)

Meaning of 'capital assets'

22. The term 'capital assets' refers to those assets that make up 'the profit yielding subject'[13] of an enterprise, rather than an asset which forms part of the circulating capital of an enterprise. Capital assets are 'radically different from assets which are turned over and bought and sold in the course of trading operations'.[14] They may be described as 'the business entity, structure or organisation set up or established for the earning of profits'.[15]

23. 'Capital assets' will include tangible assets such as your factory or office, your land on which they stand, fixtures and fittings, plant, furniture, machinery and motor vehicles and intangible assets, such as your goodwill and business name.

24. An asset which is acquired for resale in the course of carrying on an enterprise (for example, trading stock[16]) is not a 'capital asset' for the purposes of paragraph 188-25(a).

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[13] *United Collieries Ltd v. Inland Revenue Commissioners* (1930) SC 215 at 220 per Blackburn J.
[14] *Sun Newspaper Ltd v. FC of T* (1938) 61 CLR 337 at 356 per Latham CJ.
[15] *Sun Newspaper Ltd v. FC of T* (1938) 61 CLR 337 at 359 per Dixon J.
[16] See *FC of T v. Raymor (NSW) Pty Ltd* 90 ATC 4461 at 4471; (1990) 21 ATR 458 at 468.

Meaning of 'transfer of ownership'

25. The GST Act does not define the concept, 'transfer of ownership'. The words retain their ordinary meaning in context, and mean a transfer of beneficial ownership with or without legal title.

Meaning of 'solely as a consequence'

26. The GST Act does not define the term 'solely as a consequence of'. In the case of *Reseck v. FC of T.*[17] Gibbs J examined the meaning of 'in consequence' in the context of the phrase 'in consequence of termination of employment'. His Honour interpreted the words to mean that an event follows as an effect or result of some primary event. However, in the same case, Jacobs J rejected the notion that the words 'in consequence of' import causation. In his view, they connote a 'following on'.

27. The addition of the word 'solely' in 'solely as a consequence' is considered to clearly require that there be an exclusive causal connection.

28. In *Perpetual Trustee Company Ltd v. Commissioner of State Revenue*[18], Hansen J considered the phrase 'solely in consequence' within Exemption 23 of the *Stamps Act 1958 (Vic)*. After discussing the purpose of the exemption, (that being to provide an exemption from stamp duty in specific cases), Hansen J said at pages 286-287:

> 'In its common understanding in its present context the word "solely" in conjunction with the words "in consequence of" means that the exemption will apply only if the instruments of transfer were executed in consequence of the change in trustee and in order to vest the real property of the trust in the name of the new trustee and not in consequence of any other factor.'

29. For the purposes of section 188-25 a supply would be made, or is likely to be made, 'solely as a consequence' where the supply is made only as a result of the ceasing of an enterprise, or the substantial and permanent reduction in size or scale of an enterprise. (See Example 1 at paragraph 36).

The meaning of 'substantially and permanently'

30. The word 'substantial' will vary according to context.[19] In *Terry's Motors Ltd v. Rinder*,[20] Mayo J noted that the word 'substantial' is not a word with a fixed meaning. The word commonly

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[17] (1975) 133 CLR 45 at 51; 75 ATC 4213 at 4216; (1975) 5 ATR 538 at 541.
[18] (2000) 44 ATR 273; Affirmed on appeal (2000) VSCA 233 (12 December 2000).
[19] *Butterworth's Australian Legal Dictionary*, Sydney: Butterworths, 1997, p.1128.
[20] [1948] SASR 167 at 180.

refers to something real or of substance, as distinct from ephemeral or nominal, when, for example, describing 'substantial loss or damage'.[21] 'Substantial' also describes something which is greater rather than less, as in the case of 'substantially lessening competition'.[22]

31. We will accept that, in the context of section 188-25, a 10% reduction in the size or scale is substantial in the case of most enterprises. In some enterprises a reduction of less than 10% may be substantial. This would depend on the facts of each case. (See Example 2 at paragraph 37)

32. The concept of 'permanently' implies that the reduction in size and scale of the enterprise is enduring. A change which could foreseeably affect only one or two years, such as a farmer reducing a crop during a dry spell, would not be regarded as permanent.

Isolated Transactions

33. In many instances an enterprise may consist of an isolated transaction or a dealing with only one asset. For example an enterprise may consist solely of the acquisition and refurbishment of a suburban shop for resale at a profit. The disposal of that one asset, or the completion of that transaction, is neither the transfer of a capital asset, nor a transfer solely as a consequence of ceasing to carry on an enterprise.

34. Where an entity engages in acquiring a single asset for resale at a profit, the activity will be an enterprise under paragraph 9-20(1)(b), that is an activity in the form of an adventure in the nature of trade.[23]

35. In such circumstances the enterprise ceases as a consequence of the disposal of the single asset, rather than the single asset being disposed of in consequence of the ceasing to carry on the enterprise.

Examples

Example 1 Ceasing to carry on an enterprise

36. James, a grazier, aged seventy, decides to retire from his farm. He holds a clearing sale and sells all his stock, machinery and implements to various buyers. He receives $55,000 from the sale. He

[21] *Tillmanns Butcheries Pty Ltd v. Australasian Meat Industry Employees' Union* (1979) 27 ALR 367; (1979) 42 FLR 331.
[22] *Dandy Power Equipment Pty Ltd v. Mercury Marine Pty Ltd* (1982) 44 ALR 173; (1982) 64 FLR 238.
[23] *Edwards (Inspector of Taxes) v. Bairstow* [1956] AC 14.

is not registered for GST, as his annual turnover is usually around $35,000 from selling stock.

If James had an annual turnover over $50,000 he would have to register for GST. Although he will normally have sold some of this stock in his day to day operations, the whole herd has been sold at this time solely as a consequence of ceasing to carry on his enterprise. The effect of subparagraph 188-25(b)(i) means that the $55,000 can be excluded from his projected annual turnover, and since the Commissioner is satisfied that his projected annual turnover will be below the registration turnover threshold, he is not required to register.

Example 2 Substantially and permanently reducing the size and scale of an enterprise

37. Property Developer Pty Ltd develops tourist resorts in each of the six states in Australia. Its business in each state is approximately the same size, and overall it has an annual turnover of approximately $18.0M. The company is in the process of updating its accounting and payment system to facilitate electronic lodgment and payment of GST. This process is not expected to be completed for another 6 months, at which time the company intends to elect to lodge and pay electronically.

The board decides to permanently close its operations in one State, reducing the size of its total operations by approximately 17%. As a consequence of this decision, it sells its stock of land holdings in that State to another developer for $2.75M. The supply made in disposing of the trading stock would be made solely as a consequence of a substantial and permanent reduction in the size and scale of the company's enterprise. Therefore, the $2.75M would be excluded from the calculation of its projected annual turnover. As a result, the annual turnover of Property Developer Pty Ltd would not meet or exceed the electronic lodgment turnover threshold, and it would not be required to lodge and pay electronically. (However Property Developer could voluntarily choose to do so.)

Example 3 Sample calculation of current annual turnover and projected annual turnover

38. Alan, a retiree, owns a group of three shops next to a suburban railway station. Each of the shops has been continuously rented to tenants whose 2 year leases expire on 14 December 2000. The railway department is planning an expansion of the station. Alan sells the shops with vacant possession to the railway department for $100,000. Alan does not carry on any other activities and is not registered for GST. He does not intend to carry on any other

enterprise in the next 12 months. Settlement takes place on 20 December 2000.

Each of the shops is rented for $200 a week. Alan's current annual turnover as calculated in December is the sum of the values of all the supplies that he has made or is likely to make during the 12 months ending on 31 December 2000. Alan has no supplies which would be excluded under sections 188-15 or 188-20 (such as input taxed supplies).

Alan's current annual turnover is 50 weeks rent of $600 per week (up to 14 December) plus the $100,000 from the sale of the shops. That is, a total of $130,000. Alan's current annual turnover is above the registration turnover threshold. However to say that Alan's annual turnover meets the registration threshold the Commissioner must not be satisfied that his projected annual turnover is below the turnover threshold.

Alan's projected annual turnover is the sum of the values of all the supplies that Alan has made or is likely to make in December and up to 30 November 2001. Alan has made or will make supplies of 2 weeks rent of $600 per week (up to 14 December) plus the $100,000 from the sale of the shops. His projected annual turnover calculated under section 188-20 is $101,200

However, Alan has disposed of a capital asset in addition to ceasing to carry on his enterprise. Therefore he would qualify to have the sale proceeds excluded from the calculation of his projected annual turnover under both paragraph 188-25(a) and 188-25(b). While he qualifies under both paragraphs, he can only exclude those proceeds once. (Refer to paragraph 21.) Therefore, Alan can disregard the $100,000 from the sale of the shops pursuant to section 188-25

As Alan's projected annual turnover is $1,200, his annual turnover does not meet the registration turnover threshold. He will not be required to register for GST.

Detailed contents list

39. Below is a detailed contents list for this draft Ruling:

Your comments

40. If you wish to comment on this Draft Ruling, please send your comments promptly by **22 June 2001** to:

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Commissioner of Taxation
9 May 2001

Previous draft:
Not previously issued in draft form

Related Rulings/Determinations:
GSTR 2000/31

Subject references:
- annual turnover
- capital asset
- connected with Australia
- goods and services tax
- in connection with
- likely to be made
- likely to make
- projected annual turnover
- solely as a consequence
- substantially and permanently
- transfer of ownership
- turnover threshold

Legislative references:
- ANTS(GST)A99 9-5
- ANTS(GST)A99 9-5(b)
- ANTS(GST)A99 9-10
- ANTS(GST)A99 9-20(1)(b)
- ANTS(GST)A99 9-25
- ANTS(GST)A99 Subdiv 9-C
- ANTS(GST)A99 23-15
- ANTS(GST)A99 27-15(3)
- ANTS(GST)A99 29-40(3)
- ANTS(GST)A99 31-25(4)
- ANTS(GST)A99 72-5
- ANTS(GST)A99 Div 188
- ANTS(GST)A99 188-5
- ANTS(GST)A99 188-10
- ANTS(GST)A99 188-10(1)
- ANTS(GST)A99 188-10(2)
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- ANTS(GST)A99 188-25(b)(i)
- ANTS(GST)A99 188-32
- ANTS(GST)A99 188-35
- ANTS(GST)A99 188-40

Case references:
- Burswood Management Ltd v. Attorney-General (1990) 23 FCR 144
- Dandy Power Equipment Pty Ltd v. Mercury Marine Pty Ltd 44 ALR 173; 64 FLR 238
- Edwards (Inspector of Taxes) v. Bairstow [1956] AC 14
- Hatfield v. Health Insurance Commission (1987) 15 FCR 487
- Reseck v. FC of T (1975) 133 CLR 45
- Sun Newspapers Ltd v. FC of T (1938) 61 CLR 337.
- AAT Case 7273 (1991) 22 ATR 3402.
- Case Y43 91 ATC 412
- Terry's Motors Ltd v. Rinder [1948] SASR 167
- Tillmanns Butcheries Pty Ltd v. Australasian Meat Industry Employees' (1979) Union 27 ALR 367; (1979) 42 FLR 331
- United Collieries Ltd v. Internal Revenue Commissioners (1930) SC 215
- FC of T v. Raymor (NSW) 90 ATC 4461; (1990) 21 ATR 458
- Australian Telecommunications Commission v. Krieg Enterprises Pty Ltd (1976) 14 SASR 303
- Perpetual Trustee Company Ltd v. Commissioner of State Revenue (2000) 44 ATR 273

ATO references:
NO 2000/017375
BO
ISSN: 1443-5160