


ST 2454A - Addendum - Sales tax: Sales tax objection & appeal procedures: Jurisdiction and standing in declaratory proceedings disputing sales tax liability

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Addendum

Sales tax: Sales tax objection & appeal procedures: Jurisdiction and standing in declaratory proceedings disputing sales tax liability

Purpose of this Addendum

1. To the extent that paragraphs 9 to 13 in Taxation Ruling ST 2454 are inconsistent with this Addendum, those paragraphs are withdrawn.

Background

2. Paragraphs 9 to 13 of Taxation Ruling No. ST 2454 deal with the manner in which the Commissioner will respond to declaratory proceedings initiated by taxpayers seeking to clarify or contest their liability to sales tax.

3. The Full Federal Court has since stated in *Bob Jane T-Marts Pty Ltd v Commissioner of Taxation* [1999] FCA 1366 that declaratory proceedings are inappropriate to establish either 'sale value' or 'taxable value'. The Court observed that there would, at least, have been an outcome binding upon the parties had the proceedings commenced in the more orthodox way by issuing an assessment of sales tax and using the objection and appeal procedures set out in Part IVC of the *Taxation Administration Act 1953*. An outcome was not able to be achieved in the *Bob Jane* case.

Explanation

4. If declaratory proceedings are commenced, the Commissioner must assess whether the declarations sought are an appropriate method of resolving the dispute with finality. A declaration will be more likely to be capable of resolving a dispute when the question before the court in declaratory proceedings is a clear objective question of law, with clear criteria against which the court can make a determination one way or another. Most classification disputes will fall into this category.

5. Declaratory proceedings are also more likely to be capable of resolving the dispute where the applicant does not have other review rights.

6. Declaratory proceedings are not an appropriate method for resolving valuation and assessment disputes.

7. Having regard to the circumstances, where the declarations are an appropriate method of providing a final resolution to the dispute, the Commissioner will not object to the declaratory proceedings continuing. Factors to be taken into account in determining if the declarations will offer finality include:

- whether the declarations sought call upon the court to determine questions of judgment in matters that are imprecise; and
- whether the declarations sought will leave the issue unresolved without further litigation.

8. Having regard to the circumstances, where the declarations are not an appropriate method of providing a final resolution to the dispute, the Commissioner will raise with the initiating party and, if necessary, with the court, the inappropriateness of the exercise of the court's jurisdiction. A motion for the dismissal of the declaratory proceedings will be put to the court and the resolution of the issue should proceed by way of the objection and appeal process.

9. A motion for dismissal should be made in these circumstances whether or not the objection and appeal processes have been commenced by the taxpayer. Where an assessment or determination has yet to be made by the Commissioner, the assessment or determination should be made. If the taxpayer objects to the assessment or determination the matter can then proceed by way of the objection and appeal process.

Commissioner of Taxation

20 December 2000

ATO references:

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