

GST, partnerships & trading stock

By Stella Bae, Law Graduate & Luis Batalha, Director

3 May 2009

The ATO recently released *Draft GST Determination* GSTD 2009/D1 explaining the GST implications of a partner in a partnership taking goods held as trading stock for private or domestic use. In short, the taking of such goods could amount to a supply of trading stock by the partnership to its partners and potentially a taxable supply if the conditions of section 9-5 of the GST Act are met (GSTD 2009/D1, paragraph 3).

Supply

When a partner in a partnership takes goods held as trading stock for private or domestic use, there is a supply by the partnership to the partner who takes the goods (GSTD 2009/D1, paragraph 2).

'In the course or furtherance of an enterprise'

A supply of trading stock by the partnership to its partners is a supply made in the course or furtherance of an enterprise carried on by the partnership. The necessary connection between the supply and the partnership's enterprise is established by the application of the trading stock in the partnership's enterprise (GSTD 2009/D1, paragraph 5).

Consideration

An *in specie* distribution of trading stock by a partnership to its partner is made for consideration being a proportionate reduction of the partner's interest in the partnership - ie the partner's entitlement or claim over the assets of the

partnership (GST 2009/D1, paragraph 4). The consideration is represented by an amount equal to the value of the goods distributed debited to the capital account or current account of the partner or a combination of amounts debited to both accounts (GSTD 2009/D1, paragraph 4).

However, where a supply is made other than by way of an *in specie* distribution, that is, as part of the partnership's usual trading activities, Division 72 may apply (GSTD 2009/D1, paragraph 7). If Division 72 applies, the value of the taxable will be the GST-exclusive market value of the supply (GSTD 2009/D1, paragraphs 8 and 9).

Division 130

Division 130, a provision that can result in an increasing adjustment of an amount equal to the input tax credits, is not available to partnerships as the provision requires the entity that acquired the goods to also apply the goods to private or domestic use (GSTD 2009/D1, paragraphs 10 and 11).

In the case of a partnership, however, the entity that acquired the goods ie the partnership is different to the entity that applies the goods to private or domestic use ie the partners (GSTD 2009/D1, paragraphs 10 and 12).

Conclusion

Where a partnership is registered or required to be registered for GST and the supply of trading stock is connected with Australia, an *in specie* distribution of trading stock of the partnership to its partners may amount to a taxable supply (GSTD 2009/D1, paragraph 6). Further, in some circumstances, Division 72 of the GST Act may apply to result in the *in specie* distribution being taken to happen for the market value of the trading stock applied for the private or domestic use of the partner.