GPO Box 9990 IN YOUR CAPITAL CITY

Australian Government
Australian Taxation Office

The Trustee for
Lift Shop Trust
[redacted]
Sydney NSW 2001

[redacted]
CHARTERED ACCOUNTANTS
- SYDNEY -
20 JUN 2013

Reply to: PO Box 6382
Upper Mt Gravatt QLD 4122
Our reference: 1-4G1P17G
Contact officer: [redacted]
Phone: 07 [redacted]
Fax: 07 32133850
ABN: 65193317692

17 June 2013

Finalisation of review
For your information

Dear Sir

The ATO position on the supply of lifts that meet the requirements of Parts 15, 16 or 17 of Australian Standards AS 1735 has not changed. This position is set out in ATO ID 2006/37 (see attachment A for a copy of ATO ID 2006/37)

An ATO review was recently carried out in relation to lifts that meet AS 1735.16, because of possible confusion in the industry due to similarities between features and components of lifts being installed under AS 1735.16 and AS 1735.18.

The outcome of this review is that the lifts installed under AS 1735.16 will still be GST-free as explained in ATO ID 2006/37. However, suppliers should take care that not only the components and features of the lift comply with AS 1735.16, but also that the lift is installed in a situation that falls within the scope of AS 1735.16.

As the installation of a lift is integral to the supply of a lift, the situation in which the lift is installed can be considered in deciding whether the supply is of a thing specifically designed for people with an illness or disability and not widely used by people without an illness or disability.

AS 1735.16 sets out the required components and features of a lift, but also sets out the situations in which lifts are to be installed to comply with the standard.

The heading to AS 1735.16 is:

> Lifts for persons with limited mobility – restricted use – automatically controlled.

Clause 1.2 of AS 1735.16 states:

> It is intended that this Standard be applied only where the lift is used infrequently, primarily by persons with limited mobility.

In note 5 to clause 1.1 it also states:

> This Standard applies to lifts that are primarily intended to be used by people with limited mobility who infrequently require a means of elevation to upper floors of their home, and in special cases, small community buildings that are not provided with lifts that comply with AS 1735.2 or 1735.3, subject to approval of the regulatory authorities.

AS 1735.16 only applies to installations of lifts in situations where the usage of the lift will be restricted primarily to people with limited mobility. Therefore, the ATO accepts that a supply of a lift meeting all the requirements of AS 1735.16 is specifically designed for people with an illness or disability and not widely used by people with an illness or disability. However, the supply must meet all the requirements of AS 1735.16, including the requirements about the appropriate situations to install such lifts mentioned above.

The ATO is concerned that some lifts may be supplied in situations not within the intended scope of AS 1735.16 and mistakenly treated as GST-free.

Example 1 – appropriate GST-free treatment of a lift installed under AS 1735.16

Hoist Away installs lifts in residential settings. They are contacted by Angela, who has a mobility impairment that makes it difficult for her to use stairs in her two level home. She engages Hoist Away to install a lift in her home. Angela provides a signed statement to Hoist Away confirming that she needs the lift installed in her home due to her mobility impairment, and the lift will primarily be used by her. The lift complies with all requirements of AS 1735.16. The supply of the lift to Angela will be GST-free.

Example 2 – supply of lift being installed in small commercial retail premises

The ATO considers that lift installations in small commercial premises intended to be used for retail activities are unlikely to be installations that fall under the scope of AS 1735.16. These are not 'small community buildings'. As stated in note 5 to clause 1.1, AS 1735.16 applies to lifts for homes of people who require the lift to access upper floors of their home because of limited mobility, and 'in special cases, small community buildings'.

Our enquiries have also found that it is a common practice for lifts installed in such settings to have the key-lockable controls (designed to limit access and use of the lifts) left in an unlocked position during trading hours, which indicates that the lifts are likely to be used by the general public and not limited to infrequent use primarily by persons with limited mobility. Such installations would not fall within the scope of AS 1735.16 and the supply of the lift in such situations is not GST-free.

Example 3 – supply of lift in a home but not primarily for use by people with limited mobility

A builder undertakes construction of a luxury home over four levels, including a basement car garage. The builder intends to market and sell the home after completion. The builder installs a lift for convenience, going from the basement car park to the upper floors of the home. The design allows for the lift to access the kitchen which is two levels above the car park, to better cater for goods being carried from the basement to the upper levels. This supply of the lift in this situation should not be treated as GST-free, as the circumstances surrounding the installation indicate that it is not intended that the usage of the lift will be limited to infrequent use primarily by persons with an illness or disability. The circumstances indicate that it is likely that the lift will be used frequently by persons without an illness or disability.

More information

If you have any questions in relation to this matter please contac[redacted]

Yours faithfully

James O'Halloran
Deputy Commissioner of Taxation

Attachment A

ATO ID 2006/37

Goods and Services Tax
GST and the supply of vertical lifts specifically designed for use primarily by people with limited mobility

FOI status: may be released
Status of this decision: Decision Current

CAUTION: This is an edited and summarised record of a Tax Office decision. This record is not published as a form of advice. It is being made available for your inspection to meet FOI requirements, because it may be used by an officer in making another decision.

This ATOID provides you with the following level of protection:

If you reasonably apply this decision in good faith to your own circumstances (which are not materially different from those described in the decision), and the decision is later found to be incorrect you will not be liable to pay any penalty or interest. However, you will be required to pay any underpaid tax (or repay any over-claimed credit, grant or benefit), provided the time limits under the law allow it. If you do intend to apply this decision to your own circumstances, you will need to ensure that the relevant provisions referred to in the decision have not been amended or repealed. You may wish to obtain further advice from the Tax Office or from a professional adviser.

Issue
Is the entity, a supplier of lifts, making a GST-free supply under subsection 38-45(1) of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act), when it supplies a slow speed vertical lift that is specifically designed for use primarily by people with limited mobility?

Decision
Yes. The entity is making a GST-free supply under subsection 38-45(1) of the GST Act when it supplies a slow speed vertical lift that is specifically designed for use primarily by people with limited mobility.

Facts
The entity is a supplier of lifts. It supplies a slow speed vertical lift that is for use primarily by people with limited mobility.
The lift is electrically operated.
The lift complies with the relevant part of the Australian Standard (AS 1735) in relation to passenger lifts that are for use primarily by persons with limited mobility (Part 15, 16 or 17 as the case may require).
There is no agreement between the entity and the recipient of the supply that the supply will not be treated as a GST-free supply.
The entity is registered for goods and services tax (GST).

Reasons for Decision
Under subsection 38-45(1) of the GST Act, the supply of a medical aid or appliance is GST-free where the medical aid or appliance:

- is covered by Schedule 3 to the GST Act (Schedule 3), or specified in the A New Tax System (Goods and Services Tax) Regulations 1999 (GST Regulations)
- is specifically designed for people with an illness or disability, and
- is not widely used by people without an illness or disability.

Item 88 in the table in Schedule 3 (Item 88) lists 'manual, electric, ceiling track or pool hoists specifically designed for people with disabilities'.

The ordinary meaning of 'hoist' as defined in *The Macquarie Dictionary* , 1997, 3rd edn, The Macquarie Library Pty Ltd New South Wales is:

4. an apparatus for hoisting, as a lift.
5. a lift for heavy goods: goods lift.

The usual devices that are covered by Item 88 are used to lift an individual and transfer them, for example, from a bed to a wheelchair or from a wheelchair into a pool. The ordinary meaning of 'hoist' also covers lifts. The lift is electrically operated. Therefore, it is included in the range of hoists to which Item 88 relates subject to it satisfying Item 88 in relation to specific design requirements.

Item 88 restricts the device to those which are specifically designed for people with disabilities.

The Australian Standards in relation to lifts, escalators and moving walks (AS 1735) have parts which relate to people with limited mobility, for example, AS 1735.15 applies to 'passenger lifts that are intended primarily to provide vertical access for persons with limited mobility'. This evidences that some lifts are specifically designed for people with disabilities and are not merely general purpose passenger lifts with additional facilities for people with disabilities such as Braille information and lower buttons which are accessible by people in wheelchairs.

Therefore, vertical lifts that are specifically designed for people with disabilities are covered by Item 88. This satisfies the first requirement in subsection 38-45(1) of the GST Act.

The second requirement in subsection 38-45(1) of the GST Act is that the item must be specifically designed for people with an illness or disability. The vertical lift complies with the relevant part of the Australian Standard (AS 1735) in relation to passenger lifts that are for use primarily by people with limited mobility. As the requirements of Item 88 are that the device must be specifically designed for people with disabilities, and Item 88 has been satisfied, this requirement is also satisfied.

The third requirement in subsection 38-45(1) of the GST Act is that the thing supplied is not widely used by people without an illness or disability. The entity supplies a slow speed vertical lift that is for use primarily by people with limited mobility. It is not a lift that is widely used by people without an illness or disability. Therefore, this requirement is also satisfied.

All the requirements in subsection 38-45(1) of the GST Act are satisfied. The entity is making a GST-free supply under subsection 38-45(1) of the GST Act when it supplies a slow speed vertical lift that is specifically designed for use primarily by people with limited mobility.

Note: In circumstances where the lift is intended to be used by the wider community, the third requirement will not be satisfied. For example, AS 1735.12 applies to 'newly installed lifts in the public access path, in newly constructed lift wells in other than private residence, and for which a building authority having jurisdiction stipulates the provision of facilities for person with disabilities'. The facilities for persons with disabilities include such things as handrails, tactile or Braille symbols on the control panels, audible, visible and tactile information, etc. Therefore, while these lifts have additional facilities for people with disabilities, they are general purpose lifts which would be widely used by people without illnesses or disabilities.

Date of decision: 7 February 2006

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18 June 2013

Finalisation of review
For your information

Dear Sir

We have completed our review of The Trustee for Lift Shop Trust in relation to the period 1 July 2010 to 30 June 2012.

As we discussed during the course of the review, due to the apparent uncertainty that exists within your industry regarding the circumstances in which lifts may be sold GST-free, this matter was escalated to our technical areas for their consideration.

They have now concluded their deliberations and have produced the attached letter for your future reference.

Based on their findings, we have found no errors in the records, documents or information you provided and no further action is required. Thank you for providing the information we needed to complete the review. Your time and cooperation are appreciated.

Record keeping
You need to keep your business records for five years, including all records examined as part of this review.

We do not intend reviewing your activity statements for the period 1 July 2010 to 30 June 2012 again. However, we may need to look at the records again if new information suggests the need for further enquiries.

More information
If you have any questions, please phone **13 28 69** between 8.00am and 5.00pm, Monday to Friday, and ask for [redacted] on extension [redacted]

Yours faithfully

James O'Halloran
Deputy Commissioner of Taxation