Australian Government
Australian Taxation Office

Property and construction - issues register

This issues register, originally published on our main website, provides guidance on issues identified during past consultation with industry participants.

Issues in this register that are a public ruling can now be found in the *Public Rulings* section of this Legal Database.

Issues in this register that have not been labelled as public rulings, constitute written guidance. We are committed to providing you with accurate, consistent and clear information to help you understand your rights and entitlements and meet your obligations.

If you follow our information on these issues and it turns out to be incorrect, or it is misleading and you make a mistake as a result, we must still apply the law correctly. If that means you owe us money, we must ask you to pay it but we will not charge you a penalty. Also, if you acted reasonably and in good faith we will not charge you interest. If correcting the mistake means we owe you money, we will pay it to you. We will also pay you any interest you are entitled to.

If you feel that the guidance in this issues register does not fully cover your circumstances, or you are unsure how it applies to you, you can seek further assistance from us.

The property and construction issues register contains a number of goods and services tax (GST) issues that have been collated as a result of consultation with the property and construction industry.

The issues register is designed to provide guidance on how the GST law applies to the property and construction industry. Some issues have been withdrawn but remain on the register for historical purposes.

How to use this issues register

The Australian Taxation Office (ATO) response to each question is specific to the circumstances described in the question. It does not have general application to other circumstances. Please seek clarification from the ATO if you are not sure if the question fits your particular circumstances or not. You can do this by writing to:

Australian Taxation Office
PO Box 3524
ALBURY NSW 2640

The register is divided into the following sections:

- Section 01 - bodies corporate/owners, corporations and strata managers
- Section 02 - building contracts
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- Section 16 - security and other deposits
- Section 17 - sundry issues
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- Section 19 - water and sewerage – withdrawn

For more information on GST and property:

- visit our website at **www.ato.gov.au**
- refer to of the list of public GST rulings available on our legal database

Section 01 – bodies corporate/owners corporations and strata managers

For GST, Luxury Car Tax and Wine Equalisation Tax purposes, from 1 July 2015, where the term 'Australia' is used in this document, it is referring to the 'indirect tax zone' as defined in subsection 195-1 of the GST Act.

(a) added, (u) updated, (w) withdrawn

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A reference to a body corporate includes a reference to an owners corporation.

the ABN Act	*A New Tax System (Australian Business Number) Act 1999*
the GST Act	*A New Tax System (Goods and Services Tax) Act 1999*
the GST Regulations	A New Tax System (Goods and Services Tax) Regulations 1999
the Transition Act	*A New Tax System (Goods and Services Tax Transition) Act 1999*

the ITAA 1997	*Income Tax Assessment Act 1997*
the TAA	*Taxation Administration Act 1953*
Relevant public rulings	GSTR 2000/29 *Goods and services tax: Attributing GST payable, input tax credits and adjustments and particular attribution rules made under section 29-25* GSTR 2006/2 *Goods and Services Tax: deposits held as security for the performance of an obligation* GSTR 2012/2 *Goods and services tax: financial assistance payments* GSTR 2013/1 *Goods and services tax: tax invoices* IT 2505 *Income Tax: Bodies Corporate constituted under Strata Title legislation* MT 2006/1 *The New Tax System: The meaning of entity carrying on an enterprise for the purposes of entitlement to an Australian business number ('ABN')*
Relevant determination	TD 93/73 *Income Tax: Will a strata title body corporate be taxed as a non-profit company if it includes non-profit clauses in its by-laws?*
Relevant sections	**Section 38** 'Enterprise' of the ABN Act **Section 9-5** 'Taxable supplies' of the GST Act **Section 9-20** 'Enterprises' of the GST Act **Section 27-37** 'Special determination of tax periods on request' of the GST Act **Section 29-70** 'Tax invoices' of the GST Act **Section 99-5** 'Giving a deposit as security does not constitute consideration' of the GST Act **Section 195-1** 'Dictionary' of the GST Act **Section 6** 'Time of supply or acquisition' of the Transition Act **Section 7** 'Start of GST' of the Transition Act **Section 12** 'Progressive or periodic supplies' of the Transition Act **Section 12-190** 'Recipient does not quote ABN' of the TAA **Section 15-15** 'Variation of amounts required to be withheld' of the TAA **Section 16-75** 'When amounts must be paid to Commissioner' of the TAA **Section 16-95** 'Meaning of *Large Withholder'* of the TAA **Section 16-100** 'Meaning of *Medium Withholder'* of the TAA **Section 16-105** 'Meaning of *Small Withholder'* of the TAA **Section 70** 'Keeping of records of indirect tax transactions' of the TAA

1.1 GST administration

1.1.1 Are bodies corporate required to register for GST?

For source of ATO view, refer to:

- paragraphs 222 to 232 of MT 2006/1 – *The New Tax System: the meaning of entity carrying on an enterprise for the purposes of entitlement to an Australian business number*
- general application of the principles in GSTR 2001/7 – *Goods and Services Tax: meaning of GST turnover, including the effect of section 188-25 on projected GST turnover*.

ATO position

The GST Act requires that an entity be registered if its turnover meets or exceeds the registration turnover thresholds of $75,000, or $150,000 for non-profit bodies. A body corporate is an entity for GST purposes.

Division 188 GST Act requires that both current GST turnover and projected GST turnover be considered in determining the registration threshold but supplies that are input taxed, not for consideration or not carried on in connection with an enterprise, are not included in the calculation. Turnover includes GST-free supplies and levies on unit owners.

1.1.2 Are the supplies made by a body corporate in connection with an enterprise?

For source of ATO view, refer to paragraphs 222 to 232 of MT 2006/1 – *The New Tax System: the meaning of entity carrying on an enterprise for the purposes of entitlement to an Australian business number*.

Section 9-20 of the GST Act and section 38 of the ABN Act state that an enterprise is:

> 'an activity, or series of activities, done: (a) in the form of a business; or (b) in the form of an adventure or concern in the nature of trade: ...' A business is defined in section 195-1 of the GST Act as including 'any profession, trade, employment, vocation or calling ...'

The activities of a body corporate would be considered to fall within paragraphs 9-20(1)(a) and/or 9-20(1)(b) of the GST Act.

The fact that activities of a body corporate are limited to making supplies to its members does not prevent those activities being in the form of a business or in the form of an adventure or concern in the nature of trade (subsection 9-20(3) of the GST Act).

1.1.3 Do bodies corporate make taxable supplies?

For source of ATO view, refer to the principles in GSTR 2006/9 – *Goods and services tax: supplies*

Section 9-5 of the GST Act states that if a supply is (a) for consideration, (b) in the course or furtherance of an enterprise, (c) connected with Australia, and (d) the entity is registered or required to be registered, the supply is a taxable supply. Input taxed supplies and GST-free supplies are not taxable supplies.

The supply a body corporate makes to its members is the entry into an obligation to maintain and manage the complex in a sound condition. This comes within the definition of supply contained in the GST Act. The supplies do not qualify as either GST-free or input taxed supplies under the provisions of the GST Act.

The fact that the supplier is an entity of which the recipient of the supply is a member, or that the supplier is an entity that only makes supplies to its members, does not prevent the payment made by the recipient from being consideration. Therefore, a payment from an owner to a body corporate can be consideration for a supply made by the body corporate to the owner.

In summary, a body corporate is considered to be an entity that is carrying on an enterprise which makes supplies for consideration. The entity is required to be registered when it meets the registration turnover threshold, but may elect to be registered if under the threshold.

1.1.4 Consequences of registration or non-registration and members' possible entitlement to input tax credits

For source of ATO view, refer to the principles in:

- GSTR 2006/4 – *Goods and services tax: determining the extent of creditable purpose for claiming input tax credits and for making adjustments for changes in extent of creditable purpose*
- GSTR 2006/9 – *Goods and services tax: supplies* and
- GSTR 2013/1 – *Goods and services tax: tax invoices*.

A registered body corporate will be required to include GST in any taxable supplies it makes, and pay the GST to the ATO. This includes amounts levied on proprietors, including sinking fund levies.

Provided a body corporate acquires goods and services for a creditable purpose and holds a tax invoice for acquisitions over $82.50 (GST inclusive), it will be entitled to claim an input tax credit for the GST included in the cost of goods and services acquired. For example, input tax credits may be claimed for the GST included in acquisitions of electricity, management, cleaning, and repair and maintenance services. The credits will reduce the amount of GST that needs to be paid to the ATO on the business activity statement (BAS).

If the body corporate is not registered, or required to be registered, it cannot claim input tax credits, does not charge GST, does not issue tax invoices and is not required to lodge a BAS.

Generally, no input tax credits would be claimed on GST in the price of the levies imposed upon the members, as the members would not be likely to be the recipient of a creditable acquisition in relation to these payments. However, the members may be entitled to an input tax credit if they are registered and their unit in the body corporate was utilised for their enterprise. For instance, if there were business premises in a commercial complex.

1.1.5 Are bodies corporate non-profit bodies for the purpose of the registration turnover threshold as provided for in section 23-15 of the GST Act?

For source of ATO view, refer to paragraphs 105 to 109 of GSTR 2012/2 – *Goods and services tax: financial assistance payments*

The meaning of 'non-profit body' for GST purposes is discussed at paragraphs 105-109 of GSTR 2012/2.

The Commissioner's view of when a society, association or club is not carried on for the purpose of profit or gain is explained in Taxation Ruling TR 97/22. Paragraph 108 of GSTR 2012/2 provides that a body **is** a non-profit body where, by its constituent documents or by operation of law (for example, a statute governing the body's activities), it is prevented from distributing its profits or assets amongst its members while the body is functional and on its winding-up. The body's actions must be consistent with the prohibition.

Paragraph 109 of GSTR 2012/2 provides that where the law or the constituent documents do not prohibit distributions, whether the body is not carried on for purposes of profit or gain to the individual members is to be determined by reference to the surrounding circumstances. Factors that are considered relevant include whether distributions have been made, whether there is a stated or demonstrated policy to make or not to make such distributions and whether winding-up is contemplated. Where it is clear from the objects, policy statements, history, activities and proposed future directions of the body that there will be no distributions to members, we accept that the non-profit test has been satisfied.

Bodies corporate are permitted by their governing state or territory legislation to make distributions to proprietors in certain circumstances. Such legislative provisions cannot be excluded by a by-law of the body corporate. See:

- Taxation Ruling IT 2505 – *Income tax : bodies corporate constituted under strata title legislation*, and

- Taxation Determination TD 93/73 – *Income tax: will a strata title body corporate be taxed as a non-profit company if it includes non-profit clauses in its by-laws?*

We consider that the circumstances in which profits will be available for distribution by a body corporate to its proprietors will be limited. In some states or territories, the body corporate does not own the common property. In the other states or territories, it holds the common property on trust or as agent for the members. In most cases the only assets that a body corporate will hold in its own capacity will be limited to the balance of the sinking fund and administration fund and any personal property such as washing machines, driers and lawn mowers etc. which are necessary for the basic purposes of the strata scheme.

A return of the members' own funds will not amount to a distribution of profits but a return of capital. The sinking fund and administration fund may include interest income or other income such as income from the rental of common property. The existence of interest income or income from rental or other activities in the various funds held by the body corporate will not preclude the body corporate from being a non-profit body for the purposes of the GST Act. However, an intention to distribute the interest income or profits from rental or other activities, either while the body corporate is functional or upon its winding up, would disqualify the body corporate from being a non-profit body for the purposes of the GST Act.

A non-profit body will be required to register for GST where its GST turnover of taxable supplies and GST-free supplies meets or exceeds $150,000. The making of input taxed supplies (for example, residential rent) is not included in the calculation of the GST turnover for a non-profit body corporate.

The treatment for GST should be contrasted with the treatment for income tax. In subsection 3(1) of the *Income Tax Rates Act 1986,* non-profit company means:

> (a) a company that is not carried on for the purpose of profit or gain to its individual members and is, by the terms of the company's constituent document, prohibited from making any distribution, whether in money, property or otherwise, to its members, or
>
> (b) a friendly society dispensary.

In TD 93/73 it is said that this definition excludes bodies corporate. This is because, as stated earlier, the relevant state and territory legislation provides that a body corporate can make distributions to its proprietors in certain circumstances (for example, on winding up). This power cannot be excluded by a by-law of the body corporate. Accordingly, for income tax purposes, a strata title body corporate fails the statutory test of prohibition on distribution to members set out in paragraph (a) of the definition and is not a non-profit company.

1.1.6 How does a body corporate calculate the GST on taxable supplies?

Non-Interpretative – straight application of the law.

Where a body corporate is registered or required to be registered, it must pay to the ATO the GST on any taxable supplies that the entity makes. This includes levies charged to members. The amount of GST is equal to 10% of the value of the supply. The value of the supply is 10/11 of the price. GST to be paid to the ATO is 1/11 of the price.

1.1.7 Is registration mandatory where there is a mixed strata title scheme (commercial and residential)?

For source of ATO view, refer to paragraph 14 of GSTR 2001/7 – *Goods and services tax: meaning of GST turnover, including the effect of section 188-25 on projected GST turnover*

ATO position

Registration is mandatory where a body corporate's GST turnover of taxable supplies and GST-free supplies meets or exceeds $150,000 where the body corporate is a non-profit body. The making of input taxed supplies, for example residential rent, does not contribute to this threshold.

1.2 Transitional issues

1.2.1 What is the GST treatment of body corporate levies with respect to administration and sinking funds over the transition period?

For source of ATO view, refer to:

- paragraphs 25 to 30 of GSTR 2000/7 – *Goods and services tax: transitional arrangements – supplies, including supplies of rights, made before 1 July 2000 and the extent to which such supplies are taken to be made on or after 1 July 2000*
- the general principles in GSTD 2000/3 – *Goods and services tax: transitional arrangements: to what extent is the supply of services made on or after 1 July 2000, where the supply spans that date?*

ATO position

Under section 7 of the Transition Act, GST is payable on a supply to the extent that it is made on or after 1 July 2000. Section 6 of the Transition Act sets out the general time of supply rule for determining when a supply or acquisition is made for the purposes of that Act. Specifically, section 6(4) provides that a supply or acquisition of services is made when the services are performed.

However, this general rule is modified when the supply is made over a specified period. Under section 12 of the Transition Act, where a supply, under an agreement or enactment, is made for a period or progressively over a period that begins before 1 July 2000 and ends on or after 1 July 2000, the supply is taken to be made continuously and uniformly throughout that period. This is whether the supply is made at regular intervals or not.

The payment of a body corporate levy is consideration for the supply or acquisition of that service.

Where there is a supply for a period that starts before 1 July 2000 and ends on or after 1 July 2000, the supply is considered to have been made continuously and uniformly over that period. As body corporate levies in respect of administration and sinking funds are regarded as being consideration for the supply of services for a period, it will be necessary to apportion the supply over the period covered by the levy.

For example:

> A levy is paid for the three month period 1 May 2000 – 31 July 2000. GST will be payable only on that portion of the levy which relates to the supply made for the period 1 – 31 July 2000.

1.2.2 How are levy arrears attributable to a period ending before 1 July 2000 treated?

For source of ATO view, refer to paragraph 26 of GSTR 2000/7 – *Goods and services tax: transitional arrangements – supplies, including supplies of rights, made before 1 July 2000 and the extent to which such supplies are taken to be made on or after 1 July 2000*.

ATO position

Levy arrears that are attributable to a period ending before 1 July 2000 will attract no GST liability, even though actual payment occurs on or after 1 July 2000.

1.3 Australian business number (ABN)

Issues 1.3.1 to 1.3.4 have been withdrawn. For information about the Australian business number, refer to the ATO website at ABN essentials.

1.4 Business activity statements (BASs)

Issues 1.4.1 to 1.4.3 have been withdrawn. For information about business activity statements, refer to the ATO website at Activity statements – home.

1.5 Tax invoices

Issues 1.5.1 to 1.5.4 have been withdrawn. For information about tax invoices, see GSTR 2013/1.

1.6 Record keeping

Issue 1.6.1 has been withdrawn. For information about record keeping requirements, refer to the ATO web site at Record keeping essentials.

1.7 Pay as you go (PAYG) issues

Issues 1.7.1 to 1.7.6 have been withdrawn. For information about the PAYG withholding requirements, refer to the ATO website at No ABN withholding – questions and answers.

1.8 Miscellaneous

1.8.1 Is it the manager's responsibility to claim input tax credits on behalf of the body corporate or do the owners claim their own?

For source of ATO view, refer to paragraphs 30 to 34 and 222 to 232 of MT 2006/1 – *The New Tax System: the meaning of entity carrying on an enterprise for the purposes of entitlement to an Australian business number*

ATO position

A body corporate is considered to be a separate entity acting on behalf of its members. Where the body corporate makes a creditable acquisition, the right to claim a credit on that acquisition accrues to the entity (that is the body corporate) making the acquisition. It will be the manager's responsibility to claim the credit which is creditable to the body corporate.

1.8.2 What is the GST position when a body corporate pays an honorarium to an office holder?

For source of ATO view, refer to the general principles of GSTR 2012/2 – *Goods and services tax: financial assistance payments*.

ATO position

An office holder is performing services for the body corporate and generally will not be an employee. The office holder will be making a taxable supply if he or she makes the supply for consideration in the course of carrying on an enterprise, the supply is connected with Australia and he or she is registered or required to be registered for GST purposes. If the body corporate is registered or required to be registered for GST purposes and the acquisition is a creditable acquisition, the body corporate may claim an input tax credit in respect of that acquisition.

For more information, refer to GSTA TPP 015 – *Goods and services tax: Is a monetary honorarium consideration for a taxable supply?*

1.8.3 What are the GST implications if an owner of a strata unit is reimbursed for purchases made on behalf of the body corporate, and GST was included in the price of the purchases?

For source of ATO view, refer to paragraphs 48 to 54 of GSTR 2000/37 – *Goods and services tax: agency relationships and the application of the law*

ATO position

The unit owner is not liable for GST on the reimbursement it receives from the body corporate. This is because the reimbursement is not consideration for a supply made by the unit owner. The purchases made by the unit owner on behalf of the body corporate (that is, the unit owner acting as agent for the body corporate) are considered to be the body corporate's own purchases. Therefore, if the purchases are creditable acquisitions for the body corporate, it would be entitled to claim input tax credits for the GST included in the price of those purchases.

1.8.4 Is a nominal amount (for example, $2 per week for car parking) charged by a body corporate subject to the GST?

For source of ATO view, refer to paragraphs 80 to 99 of GSTR 2001/4 – *Goods and services tax: GST consequences of court orders and out-of-court settlements*

ATO position

Yes, if the nominal amount is consideration for a taxable supply. A supply of car parking for $2 will be a taxable supply under section 9-5 of the GST Act if:

- the supply is made in the course or furtherance of an enterprise that the body corporate carries on
- the supply is connected with Australia
- the body corporate is registered, or required to be registered.

1.8.5 What is the GST impact on a key security deposit payment?

Non-Interpretative – straight application of the law

ATO position

For an explanation on how GST applies to security deposit payments, see GSTR 2006/2.

1.8.6 Is a body corporate liable for GST on the provision of inspection and certification services pursuant to the Strata Schemes Management Act 1996 *(NSW) or comparable state or territory legislation?*

For source of ATO view, refer to:

- paragraphs 222 to 232 of MT 2006/1 – *The New Tax System: the meaning of entity carrying on an enterprise for the purposes of entitlement to an Australian business number*
- the general principles in Part 2 of GSTR 2006/9 – *Goods and services tax: supplies*

ATO position

Yes, if the body corporate is registered or required to be registered for GST. The provision of these services by a registered body corporate is a taxable supply. The body corporate would be required to pay to the ATO, 1/11 of the fees charged for the services, and to issue a tax invoice to the recipient of the services, if requested to do so.

Section 02 – building contracts

Issue Number	Index	Date
2.1	What is the GST treatment of 'retention amounts'?	08/01/2004 (u)
2.2	Renovations and second-hand materials A builder, registered for GST, buys a house to renovate and sell as part of an enterprise of selling renovated houses. The house is renovated with second-hand materials bought by the builder from someone who is not required to be registered for GST. (a) Is the sale of the renovated house a taxable supply? (b) Is the builder entitled to an input tax credit for the purchase of the house? (c) Is the builder entitled to an input tax credit for the purchase of the second-hand materials?	08/01/2004 (u)
2.3	You operate a business building concrete swimming pools. Sales tax is currently paid quarterly on the basis of the area of the pool. Sales tax is due after the pool has been concreted. Many new pools remain on new building sites half completed until clients are ready to move. As at 1 July 2000, you have partly completed pools on which sales tax has been paid. (a) How is a pool concreted before 1 July 2000 but completed after 1 July 2000 affected by GST? (b) If such a pool has already been subject to sales tax, is it exempt from GST?	17/05/2013 (u)
2.4	What is the GST treatment of payments for building projects where the consideration is paid on a progressive basis?	08/01/2004 (u)
2.5	If a builder incurs costs related to taxes and charges that are GST-free under the Treasurer's Division 81 Determination; and invoices a client separately for those costs, is the builder liable for GST?	08/01/2004 (u)
2.6	How does a builder claim a credit for Wholesales Sales Tax (WST) when he does not know the amount of WST which has been charged?	09/04/2001
2.7	Am I responsible for ensuring that a supplier's quoted ABN is correct?	24/12/2003 (w)
2.8	If a registered subcontractor makes a taxable supply to a builder and fails to remit the GST to the ATO, can the builder (in the absence of fraud or collusion) be liable to pay this GST to the ATO?	09/04/2001
2.9	If a subcontractor with an ABN does work for a builder and is paid all monies owing for that work, and the subcontractor subsequently fails to pay a PAYG income tax instalment to the ATO, can the builder be liable to pay the subcontractor's income tax?	24/12/2003 (w)
2.10	A subcontractor who is in breach of a construction contract pays liquidated damages to the head contractor. Is the payment of liquidated damages by the subcontractor consideration for a taxable supply?	17/05/2013 (u)
2.11	Is a subcontractor who pays liquidated damages to a contractor entitled to an input tax credit for the payment?	08/01/2004 (u)
2.12	If there is an obligation on a subcontractor who is in breach of a construction contract to pay liquidated damages to the contractor, is the payment made by the subcontractor's insurer in settlement of the contractor's claim consideration for a taxable supply?	09/04/2001

Issue Number	Index	Date
2.13	Does section 12 of the GST Transition Act apply to services provided by architects, engineers and surveyors?	08/01/2004 (u)
2.14	Class of Tax Invoices that may be issued by the recipient of a taxable supply of construction work or related goods and services.	09/04/2001
2.15	Where a manager (not being an employee of a principal contractor) is appointed to supervise the work of subcontractors and is entitled to receive a percentage (for example 10%) of the total value of the construction contract, will the manager now be entitled to claim 10% of the GST-inclusive value of the construction or will the manager's entitlement remain 10% of the GST-exclusive value of the construction contract?	09/04/2001
2.16	Will unaffixed materials that have been paid for before 30 June 2000 be included in the value of head contractors' work and materials as at 1 July 2000?	08/01/2004 (u)
2.17	How are payments made pursuant to a building contract spanning 1 July 2000 treated for GST purposes?	08/01/2004 (u)

'the GST Act'	A New Tax System (Goods and Services Tax) Act 1999
'the GST Regulations'	A New Tax System (Goods and Services Tax) Regulations 1999
'the Transition Act'	A New Tax System (Goods and Services Tax Transition) Act 1999
'the Transition Regulations'	A New Tax System (Goods and Services Tax Transition) Regulations 2000
Relevant Public Rulings	GSTR 2000/8 'Special credit for sales tax paid on stock' GSTR 2000/14 'Transitional valuation of work-in-progress for head contractors in the building or civil engineering industries' GSTR 2000/18 'Construction and building services which span 1 July 2000' GSTR 2000/29 'Attributing GST payable, input tax credits and adjustments and particular attribution rules made under section 29-25' GSTR 2000/35 'Division 156 – supplies and acquisitions made on a progressive or periodic basis' 'When is a sale of real property a sale of new residential premises'? GSTR 2006/2 'Deposits held as security for the performance of an obligation'
Relevant Determinations	GSTD 2000/2 'Can you claim input tax credits under Subdivision 66-A of A New Tax System (Goods and Services Tax) Act 1999 for goods that have been incorporated into second-hand goods prior to 1 July 2000?' GSTD 2000/3 'Transitional arrangements: to what extent is the supply of services made on or after 1 July 2000, where the supply spans that date?'
Relevant bulletins	GSTB 2000/4 'How to calculate and pay GST on a progressive or periodic supply that spans 1 July 2000.'
Relevant sections	**Division 11** 'Creditable acquisitions' of the GST Act **Section 29-25** 'Commissioner may determine particular attribution rules' of the GST Act **Section 40-65** 'Sales of residential premises' of the GST Act

	Division 66 'Second-hand goods' of the GST Act **Section 6** 'Time of supply or acquisition' of the Transition Act **Section 12** 'Progressive or periodic supplies' of the Transition Act **Section 19** 'Construction agreements made before 1 July 2000' of the Transition Act

2.1 What is the GST treatment of 'retention amounts'?

For source of ATO view, refer to:

- Paragraphs 172 to 189 of GSTR 2000/29 – Goods and services tax: attributing GST payable, input tax credits and adjustments and particular attribution rules made under section 29-25
- Paragraphs 121 to 123 of GSTR 2000/35 – Goods and services tax: Division 156 – supplies and acquisitions made on a progressive or periodic basis

ATO position

What are retention amounts?

Building and construction contracts commonly provide for a percentage to be retained from each progress payment made to the builder. The amount is retained as security for adequate performance under the contract. These amounts are commonly referred to as 'retention amounts'. A proprietor's right to retain amounts from progress payments, and the builder's entitlement to the release of the retention money is generally outlined in the agreement between the parties. A builder may be entitled to the release of part of the retention amounts held upon practical completion of the construction, and the release of the balance upon expiration of a defects liability period. Most agreements allow the proprietor recourse to the retention monies in the event that the builder is liable to the proprietor for a default under the contract. The builder may default by failing to complete work to a required standard or by failing to rectify defects. Retention amounts may therefore be used to offset the liability of the builder. As such the builder may not receive the full amount retained from the progress payments. For example, if a builder fails to rectify certain defects, the proprietor may pay a third party to do so, using part of the retained amounts.

How does GST apply to retention amounts?

If the retention amounts are released to the builder, GST applies in the same way as it applies to the progress payments under the building contract. The release of the retention amounts is not consideration for a separate supply made by the builder – it forms part of the consideration for the supply of services under the building contract. This is regardless of whether or not the builder is required to perform rectification work. (For information about how the GST payable on retention amounts is attributed, see paragraphs 172 to 189 of GSTR 2000/29 and paragraphs 121 to 123 of GSTR 2000/35.)

If the retention amounts are not fully released to the builder, the amount withheld is treated as a reduction in the consideration for the supply made under the building contract.

How GST applies to an amount retained before 1 July 2000 but released to the builder on or after that date is explained in paragraphs 37 to 43 of GSTR 2000/18.

2.2 Renovations and second-hand materials

For source of ATO view, refer to:

- the general principles in GSTR 2000/8 – Goods and services tax: special credit for sales tax paid on stock

- the general principles in GSTR 2006/4 – Goods and services tax: determining the extent of creditable purpose for claiming input tax credits and for making adjustments for changes in extent of creditable purpose
- paragraphs 58 to 83 of GSTR 2003/3 – Goods and services tax: when is a sale of real property a sale of new residential premises?
- paragraphs 20 to 22 of GSTR 2005/3 – Goods and services tax: arrangements of the kind described in Taxpayer Alert TA 2004/9 – exploitation of the second-hand goods provisions to obtain input tax credits.

A builder, registered for GST, buys a house to renovate and sell as part of an enterprise of selling renovated houses. The house is renovated with second-hand materials bought by the builder from someone who is not required to be registered for GST.

(a) Is the sale of the renovated house a taxable supply?

(b) Is the builder entitled to an input tax credit for the purchase of the house?

(c) Is the builder entitled to an input tax credit for the purchase of the second-hand materials?

ATO position

(a) Sale of renovated house

Whether the sale of the renovated house is a taxable supply depends on whether the house was renovated to such an extent that it became 'new residential premises'. If the renovated house is new residential premises, its sale by the builder will be a taxable supply. If the renovated house is not new residential premises, its sale will be an input taxed supply under section 40-65 of the GST Act.

(For more information about when a sale of residential property is a supply of new residential premises, see GSTR 2003/3.)

(b) Input tax credit for purchase of house

The builder would be entitled to an input tax credit under Division 11 of the GST Act for the purchase of the house if it had been a taxable supply (but not under the margin scheme – see section 75-20 of the GST Act) to the builder; and the builder later sells the renovated house as a taxable supply. An input tax credit would not be available if the sale of the renovated house is an input taxed supply (paragraph 11-15(2)(a) of the GST Act).

(c) Input tax credit for second-hand building materials

As the second-hand building materials were acquired from an entity that was not registered for GST, no GST would have been payable on the supply of those materials to the builder. Therefore, no input tax credits are available for the purchase of the second-hand materials.

Subdivision 66-A of the GST Act, which allows an input tax credit for acquisitions of second-hand goods, does not apply. This is because for Subdivision 66-A to apply, the second-hand goods must be acquired for the purposes of sale or exchange (but not manufacture) in the ordinary course of a business (section 66-5(1)). This requirement is not met as the purchase of the second-hand building materials were not acquired for the purposes of sale or exchange as goods. The materials, when incorporated into the renovated house, become part of the house which is real property. They no longer retain the character of goods.

2.3 You operate a business building concrete swimming pools. Sales tax is currently paid quarterly on the basis of the area of the pool. Sales tax is due after the pool has been concreted. Many new pools remain on new building sites half completed until clients are ready to move. As at 1 July 2000, you have partly completed pools on which sales tax has been paid.

For source of ATO view, refer to:

- the general principles in GSTR 2000/8 – Goods and services tax: special credit for sales tax paid on stock
- paragraphs 32 and 33 and the general principles in GSTR 2000/14 – Goods and services tax: transitional valuation of work-in-progress for head contractors in the building or civil engineering industries.

(a) How is a pool concreted before 1 July 2000 but completed after 1 July 2000 affected by GST?

(b) If such a pool has already been subject to sales tax, is it exempt from GST?

ATO position

(a) In-ground pool partly complete as at 1 July 2000

As a general principle, GST applies to supplies made on or after 1 July 2000. Supplies generally occur when the item is made available to the recipient, or in the case of services, when the services are performed in accordance with section 6 of the GST Transition Act.

A special rule is contained in section 19 of the GST Transition Act for construction contracts entered into before 1 July 2000 but not completed by that date. The rule ensures that not **all** of the value of work and materials under such contracts is subject to GST. In the absence of this special rule, the entire value of a contract completed after 1 July 2000 may be subject to GST even though some of the work may have been undertaken prior to 1 July 2000. The special rule provides that goods or real property supplied in the construction of a building or civil engineering work in accordance with a written agreement made before 1 July 2000 and made available on or after 1 July 2000 is only subject to GST on the value of the work completed after 1 July 2000.

The supply and installation of an in-ground swimming pool falls within the types of works covered by this rule. To take advantage of the special rule, a valuation must be made as at 1 July 2000 of all work and material permanently incorporated on the site in accordance with the agreement. GST will only be payable on the difference between the total value of the supply and the value as at 1 July 2000. ATO Public Ruling GSTR 2000/14 explains how and when the valuation must be done. Consequently, where the construction of an in-ground swimming pool started before 1 July 2000, however, was not completed until after that date, the GST payable on the supply of the completed swimming pool will be based upon the value of the work done on or after 1 July 2000.

(b) Sales tax and GST

A pool that has been partly completed before 1 July 2000 and has been subject to sales tax would be included in the value of work completed as at 1 July 2000 and would not be subject to a further GST liability (GSTR 2000/8 and paras 32-33 GSTR 2000/14)

The provision (section 16 of the GST Transition Act) that allows a special credit in relation to sales tax already paid does not apply as an in-ground swimming pool does not qualify as goods on hand because it is affixed to the land.

2.4 What is the GST treatment of payments for building projects where the consideration is paid on a progressive basis?

For source of ATO view, refer to:

- paragraphs 105 to 114 of GSTR 2000/29 – Goods and services tax: attributing GST payable, input tax credits and adjustments and particular attribution rules made under section 29-25
- paragraphs 30 to 34 of GSTR 2000/35 – Goods and services tax: Division 156 – supplies and acquisitions made on a progressive or periodic basis.

ATO position

The GST treatment of payments for building projects will depend on whether or not the supply is a progressive supply. The GST Act allows for GST to be attributed on a progressive basis where the relevant supply is made on a periodic or progressive basis and consideration is provided on a periodic or progressive basis. An advance payment for materials, for example, would not satisfy these elements. The building contract may be treated as a progressive supply where it meets the characteristics of such a supply as illustrated in Example 2 below. Further guidance on this can be found in GSTR 2000/35 at paragraphs 105 to 114. For more information about attribution of the GST payable on a progressive or periodic supply see paragraphs 30 to 34 of GSTR 2000/29.

Examples

A supply of a building project contracted for a total consideration of $110,000,000. The completion date is 1 July 2002 and the project commenced after 30 June 2000.

Example 1. Basic attribution (not a progressive supply)

The first payment of $20,000,000 to be made on 10 August 2000, the balance to be paid on completion of the project.

(a) Builder accounts on a non-cash basis and has monthly tax periods

The builder issues a tax invoice for the first payment of $20,000,000 on 1 August 2000. The GST that the builder must include in their BAS for the tax period of August 2000 is $10,000,000 (1/11th of the total consideration for the project). The entire GST attributable to the total consideration for the project will be triggered by the first payment in accordance with the basic attribution rules. The builder will have to attribute the GST to this tax period, even if they had not received the payment, as GST is triggered by the earlier of invoice or any payment.

(b) Builder accounts on a cash basis

In this case the GST attributable on the supply is 1/11th of $20,000,000 in accordance with the basic attribution rule. The balance of the GST payable on the total consideration for the project would be attributable to the tax period(s) in which the rest of the payment was received.

Example 2. Special attribution rule (progressive supply)

Progress payments are to be linked to stages of completion of the project. Four equal payments of $27,500,000 are to be made based on agreed stages.

(a) Builder accounts on a non cash basis

GST of 1/11th of $27,500,000 will be attributable to each of the earlier tax periods in which the builder issues an invoice or receives any payment. Where the relevant supply is made on a progressive basis and consideration is also provided on a progressive basis, the building contract may be treated as a progressive supply. The GST Act allows for GST to be attributed on a progressive basis.

(b) Builder accounts on a cash basis

GST will be attributable to each of the tax periods in which the builder receives any payments. If the builder only receives the four progressive payments, GST of 1/11th of $27,500,000 will be attributable to each of the tax periods in which the builder receives the payments.

2.5 If a builder incurs costs related to taxes and charges that are GST-free under the Treasurer's Division 81 Determination; and invoices a client separately for those costs, is the builder liable for GST?

For source of ATO view, refer to:

- the general principles in GSTR 2000/37 – Goods and services tax: agency relationships and the application of the law
- paragraphs 8 and 9 of GSTD 2000/10 – Goods and services tax: are outgoings payable by a tenant under a commercial property lease part of the consideration for the supply of the premises?

ATO position

A tax, fee or charge listed in the Treasurer's Determination under Division 81 of the GST Act is not consideration for a taxable supply and therefore, not subject to GST. If that tax, fee or charge is incurred by the builder, and is included in the price of supplies made by the builder, it no longer has the character of a tax, fee or charge that is subject to the Treasurer's Determination under Division 81. So, it does not matter if the builder invoices a client separately for these costs – they still form part of the price of the supplies made to the client. The builder will be liable for GST if those supplies are taxable supplies.

For example, a builder incurs a fee for the supply of a building permit from the council and seeks to recover this cost by including it in the price of the construction services to the client. The supply to the builder is not subject to GST because of Division 81 of the GST Act. But the builder will be liable to pay GST on the price of the services supplied to the client if the requirements of section 9-5 of the GST Act are satisfied.

However, if a builder pays, as an agent for a client, a tax, fee or charge, and is reimbursed by the client for the payment, the reimbursement will not be subject to GST. This is because the reimbursement is not consideration for a supply made by the builder. In this situation, the tax, fee or charge is effectively incurred by the client, rather than by the builder.

2.6 How does a builder claim a credit for Wholesales Sales Tax (WST) when he does not know the amount of WST which has been charged?

Non-Interpretative – straight application of the law

ATO position

Public ruling GSTR 2000/8 Goods and Services Tax: special credit for sales tax paid on stock states at paragraph 118 that where goods have been purchased from a retailer and the invoice does not show the amount of WST, the following method may be used to calculate the amount of Sales Tax:

Purchase Price x 50% x the sales tax rate

This method reduces the total purchase price by 50% to arrive at an estimated taxable value on which tax would have been charged. Please also refer to page 11 of GSTR 2000/1.

2.7 Am I responsible for ensuring that a supplier's quoted ABN is correct?

This issue has been withdrawn. For information about issues such as this, see No ABN withholding – questions and answers on the ATO website.

2.8 If a registered subcontractor makes a taxable supply to a builder and fails to remit the GST to the ATO, can the builder (in the absence of fraud or collusion) be liable to pay this GST to the ATO?

Non-Interpretative – straight application of the law

ATO position

The entity making the taxable supplies is liable for paying GST. Therefore, if the subcontractor is making taxable supplies it is liable for paying the GST on those supplies.

2.9 If a subcontractor with an ABN does work for a builder and is paid all monies owing for that work, and the subcontractor subsequently fails to pay a PAYG income tax instalment to the ATO, can the builder be liable to pay the subcontractor's income tax?

This issue has been withdrawn. For information about PAYG obligations, please refer to PAYG withholding essentials on the ATO website.

2.10 A subcontractor who is in breach of a construction contract pays liquidated damages to the head contractor. Is the payment of liquidated damages by the subcontractor consideration for a taxable supply?

Non-Interpretative – straight application of the law

ATO position

No. For an explanation of the reasons for the answer, see paragraphs 110 to 114 of. GSTR 2001/4 – Goods and services tax: GST consequences of court orders and out-of-court settlements.

2.11 Is a subcontractor who pays liquidated damages to a contractor entitled to an input tax credit for the payment?

For source of ATO view, refer to paragraphs 110 to 114 of GSTR 2001/4 – Goods and services tax: GST consequences of court orders and out-of-court settlements.

ATO position

No. The payment is not a creditable acquisition under section 11-5 of the GST Act because it is not consideration for a taxable supply: see the answer to Issue 2.10 above.

2.12 If there is an obligation on a subcontractor who is in breach of a construction contract to pay liquidated damages to the contractor, is the payment made by the subcontractor's insurer in settlement of the contractor's claim consideration for a taxable supply?

For source of ATO view, refer to:

- the general principles in GSTR 2006/10 – Goods and services tax: insurance settlements and entitlement to input tax credits
- paragraphs 110 to 114 of GSTR 2001/4 – Goods and services tax: GST consequences of court orders and out-of-court settlements.

ATO position

Payment by the insurer in settlement of the claim will either be made:

(a) to the subcontractor, in reimbursement of the amount paid, or to be paid, by the subcontractor to the contractor by way of liquidated damages; or

(b) to the contractor direct by way of liquidated damages due by the subcontractor.

If payment is made by the insurer to the subcontractor, who is the insured, section 78-45 of the GST Act will apply and the payment will not be treated as consideration for a supply made by the insured.

Although this will be the situation in most cases, the payment will be treated as consideration for a supply made by the insured if:

1. the insured paid all or part of the premium
    a. was entitled to an input tax credit for the premium paid
    b. did not, at or before the time a claim was first made under the insurance policy since the last payment of a premium, inform the insurer that the insured was entitled to the input tax credit.

If the insured understated the entitlement to an input tax credit to the insurer, then the payment is treated as consideration to the extent the entitlement was understated. If the payment is made to the contractor direct (a third party) then the payment will not be treated as consideration for a supply to the insurer by the contractor.

If the subcontractor, having settled its claim with its insurer under the relevant policy of insurance, makes payment of liquidated damages in discharge of its liability to the contractor, the payment will not be treated as consideration for a supply to the subcontractor by the contractor in accordance with the ATO view set out in Issue 2.10 above.

2.13 Does section 12 of the GST Transition Act apply to services provided by architects, engineers and surveyors?

For source of ATO view, refer to general principles in:

- GSTB 2000/4 – How you calculate and pay GST on a progressive or periodic supply that spans 1 July 2000
- GSTD 2000/3 – Goods and services tax: transitional arrangements: to what extent is the supply of services made on or after 1 July 2000, where the supply spans that date?

ATO position

Where services are provided by architects, engineers, surveyors etc it is necessary to determine whether, under the terms of the agreement, the supply is for a particular task or whether it is a supply made for a period or progressively over a period.

Generally, a supply of services is made when those services are performed. This rule is modified where a supply spanning 1 July 2000 is made for a period or progressively over a period.

Where the supply is for a particular task, it will be necessary to determine the extent to which the services have been performed prior to 1 July 2000 as these services will not be subject to GST. Where a supply is for a period or progressively over a period that spans 1 July 2000, the supply is treated as having been made continuously and uniformly over the period. A supply is a progressive or periodic supply if it is made for a specific period (for example, a engineer on a retainer for 12 months, or a landscape gardener engaged under a 12 month maintenance agreement).

However, a supply will not be for a specific period merely because there is a stipulated completion date. This is because the agreement is for the undertaking of a task rather than a supply for a period. If the task is completed before the stipulated completion date, then

the service is completed. For example, a painter who contracts to paint a house by a specified date is not agreeing to provide his services until that date. Instead he is agreeing to complete a task by that date so he is not making a supply for a specific period.

Example 1 Subsection 6(4) of the Transition Act

Kylie is a consulting architect who is registered for GST on 1 July 2000. On 15 June 2000 she enters an agreement to draw up architectural plans for Michael's house. The fee for the drawings is $8000 plus any GST. Kylie also agrees to provide to her client the additional service of supervising the construction. The fee for the additional service is $2000 plus any GST. The plans are completed on 15 July 2000, and the construction of the house commences. Kylie has kept timesheets showing the amount of work that she has done before 1 July 2000. Her time sheets indicate that 80% of the work in producing the drawings was performed before 1 July 2000. The GST payable by Michael to Kylie on the whole supply is $360 (20% x $8000 x 10% +$2000 x 10%).

Example 2 Section 12 of the Transition Act

Joe Garden is a sole trader who has his own landscaping business. He is registered for GST on 1 July 2000. On 1 April 2000 he enters into a 12 month maintenance agreement with Springfield Shire Council to maintain the council's lawns and gardens. The agreement commences immediately. Joe's fee for his services is $6000 plus any GST. This is a supply for a period to which section 12 of the Transition Act applies. Consequently, the supply is taken to be made continuously and uniformly over the 12 month period, despite the fact that Joe mows the lawns more often during the summer months. GST of $450.41 is payable on this supply (274/365 x $6000 x 10%).

GSTB 2000/4 and further expand on this issue.

2.14 Class of tax invoices that may be issued by the recipient of a taxable supply of construction work or related goods and services.

Non-Interpretative – straight application of the law

ATO position

An industry determination A New Tax System (Goods and Services Tax) Act 1999 Classes of Recipient Created Tax Invoice Determination (No 27) – Property and Construction sets out the requirements for Recipient Created Tax Invoices.

2.15 Where a manager (not being an employee of a principal contractor) is appointed to supervise the work of subcontractors and is entitled to receive a percentage (for example 10%) of the total value of the construction contract, will the manager now be entitled to claim 10% of the GST-inclusive value of the construction or will the manager's entitlement remain 10% of the GST-exclusive value of the construction contract?

Non-Interpretative – straight application of the law

ATO position

The question as to whether a manager is entitled to a given percentage of the GST-inclusive or GST-exclusive value of a contract is not a question that may be determined by reference to the Goods and Services Tax legislation. It is a question that may only be resolved by reference to the contract entered into between the manager and the party who appointed or engaged the manager for a given project. Accordingly, the Commissioner of Taxation is unable to provide any advice in relation to this contractual matter.

2.16 Will unaffixed materials that have been paid for before 30 June 2000 be included in the value of head contractors' work and materials as at 1 July 2000?

This issue has been withdrawn. For information about the GST implications of a supply of building work under a contract that spans 1 July 2000, see GSTR 2000/14 and GSTR 2000/18.

2.17 How are payments made pursuant to a building contract spanning 1 July 2000 treated for GST purposes?

This issue has been withdrawn. For information about the GST implications of a supply of building work under a contract that spans 1 July 2000, see GSTR 2000/14 and GSTR 2000/18.

Section 03 – commercial residential premises

(a) added, (u) updated, (w) withdrawn

Issue number	Index	Date
3.1	**General**	n/a
3.1.1	Do all the main characteristics of 'commercial residential premises' have to be satisfied?	17/05/2013 (u)
3.1.2	Are all boarding houses treated as 'commercial residential premises'?	09/04/2001 19/12/2012 (w)
3.1.3	Does the rental of weekend cottages and other different styles of accommodation by a central manager satisfy the characteristics of 'commercial residential premises'?	17/05/2013 (u)
3.2	**Caravan parks and camping grounds**	n/a
3.2.1	Is GST payable on the rental of caravans and camping sites?	17/05/2013 (u)
3.2.2	What sort of accommodation is included in the definition of 'a caravan park or a camping ground'?	17/05/2013 (u)
3.2.3	Are retirement villages or nursing homes included within 'a caravan park or a camping ground; or anything similar to residential premises described' as a caravan park or a camping ground (i.e. a home park)?	09/04/2001
3.2.4	How is GST calculated on the supply of 'commercial accommodation'?	05/11/2003 (u)
3.2.5	Will GST concessions apply to fees and charges related to commercial accommodation?	17/05/2013 (u)
3.2.6	Does the guest in commercial residential premises have to be present at all times during the whole long-term stay to satisfy the continuity requirement?	17/5/2013 (u)
3.2.7	How are the 28 days calculated in relation to commercial residential premises that are not predominantly providing long-term commercial accommodation?	17/05/2013 (u)
3.2.8	How is the 70% calculated when determining whether the commercial residential premises are 'predominantly for long-term accommodation'?	17/05/2013 (u)
3.3	**Marina berths**	n/a
3.3.1	Are marinas similar to caravan parks and therefore treated in the same manner as 'commercial residential premises'?	17/05/2013 (u)
3.4	**Strata title holders**	n/a
3.4.1	When does the letting of strata titled accommodation fall within the scope of 'commercial accommodation'?	17/05/2013 (u)
3.4.2	If multiple strata titled apartments are owned by an individual and used for letting, are those apartments commercial residential premises?	17/05/2013 (u)
3.4.3	Where an owner of a strata titled apartment leases the apartment to a manager who aggregates it with other apartments for letting out as commercial residential premises, what are the GST implications for the owner?	17/05/2013 (u)

'the GST Act'	*A New Tax System (Goods and Services Tax) Act 1999*
'the GST Regulations'	A New Tax System (Goods and Services Tax) Regulations 1999
'the Transition Act'	*A New Tax System (Goods and Services Tax Transition) Act 1999*
'the Transition Regulations'	A New Tax System (Goods and Services Tax Transition) Regulations 2000
Relevant public rulings	GSTR 2012/6 *Goods and services tax: commercial residential premises* GSTR 2012/7 *Goods and services tax: long-term accommodation in commercial residential premises*
Relevant bulletins	GSTB 2001/2 *Accommodation in caravan parks and camping ground* GSTB 2001/3 *Simplified calculation of input tax credits for caravan park operators*
Relevant sections	**Section 40-35** 'Residential Rent' of the GST Act **Division 87** 'Long-term accommodation in commercial residential premises' of the GST Act
Relevant fact sheets	GST and property (NAT 72957)

3.1 General

3.1.1 Do all the main characteristics of 'commercial residential premises' have to be satisfied?

For source of ATO view, refer to paragraphs 11-12 of GSTR 2012/6 – *Goods and services tax: commercial residential premises*.

ATO position

The main characteristics should be shown to some degree.

3.1.2 Are all boarding houses treated as 'commercial residential premises'?

The content for this issue was a public ruling, but has been withdrawn. The wording of this issue as it was can still be viewed here.

This issue is now superseded by Goods and Services Tax Ruling GSTR 2012/6 – *Goods and services tax: commercial residential premises*.

3.1.3 Does the rental of weekend cottages and other different styles of accommodation by a central manager satisfy the characteristics of 'commercial residential premises'?

For source of ATO view, refer to GSTR 2012/6 – *Goods and services tax: commercial residential premises.*

ATO position

GSTR 2012/6 provides that if you supply accommodation in a single detached or semidetached home on its own land, where the guest is granted the right to use the entire premises, they are not commercial residential premises, regardless of the length of stay. These premises are not in the nature of a hotel, motel, inn, hostel or boarding house. Where accommodation of different styles is managed and let centrally and offered by an entity across a range of locations (and not through an agent for others), the various premises must be classified individually using the characteristics that each premises exhibits. It is unlikely that the 'multiple occupancy' characteristic would be satisfied in this

case. However, where separately titled adjacent cottages or villas are combined and then offered for letting by an enterprise, they can form commercial residential premises. Adjacent, in this context, means on adjoining or abutting land. Residential premises making up commercial residential premises by being aggregated and let in this manner are similar to offering resort style accommodation. These forms of accommodation are more or less self contained accommodation offered within the larger precincts of the resort.

3.2 Caravan parks and camping grounds

3.2.1 Is GST payable on the rental of caravans and camping sites?

For source of ATO view, refer to:

- GSTR 2012/6 – *Goods and services tax: commercial residential premises*
- the general principles in GSTB 2001/2 – *Accommodation in caravan parks and camping grounds*.

ATO position

GST is payable on taxable supplies (section 9-5 of the GST Act). Supplies of commercial accommodation in commercial residential premises satisfy the elements of a taxable supply. The definition of 'commercial residential premises' specifically includes 'a caravan park or a camping ground' (section 195-1 of the GST Act). However, special rules apply to the amount of GST payable in relation to long term accommodation in commercial residential premises. See 3.2.4 below. GSTB 2001/2 and GSTB 2001/3, dealing with accommodation in caravan parks and camping grounds, provide further information on this issue.

3.2.2 What sort of accommodation is included in the definition of 'a caravan park or a camping ground'?

For source of ATO view, refer to:

- GSTR 2012/6 – *Goods and services tax: commercial residential premises*
- the general principles in GSTB 2001/2 – *Accommodation in caravan parks and camping grounds*.

ATO position

Section 195-1 of the GST Act provides that 'commercial residential premises' means 'a caravan park or a camping ground or anything similar to residential premises described' as a caravan park or a camping ground. The rental of a caravan, demountable home, permanent cabin or villa on site and the rental of a site for a caravan or a demountable home is caught by this definition even though most individuals who rent sites pay for all associated expenses (for example, electricity, gas) (GSTR 2012/6).

3.2.3 Are retirement villages or nursing homes included within 'a caravan park or a camping ground; or anything similar to residential premises described' as a caravan park or a camping ground (i.e. a home park)?

Non-Interpretative – straight application of the law.

ATO position

No. A separate guideline relating specifically to retirement villages is published on the Australian Taxation Office (ATO) website.

3.2.4 How is GST calculated on the supply of 'commercial accommodation'?

Non-Interpretative – straight application of the law

ATO position

For further information on this issue refer to 'Commercial residential premises' in GST and property (NAT 72957).

3.2.5 Will GST concessions apply to fees and charges related to commercial accommodation?

For source of ATO view, refer to GSTR 2012/7 – *Goods and services tax: long-term accommodation in commercial residential premises*

ATO position

The GST concessional treatment applies to taxable supplies of 'commercial accommodation' that are provided in commercial residential premises and provided as long-term accommodation (section 87-5 of the GST Act). The meaning of 'commercial accommodation' under section 87-15 of the GST Act means the right to occupy the whole or any part of commercial residential premises, including, if it is provided as part of the right to so occupy, the supply of:

(a) cleaning and maintenance, or

(b) electricity, gas, air-conditioning or heating, or

(c) telephone, television, radio, or any similar things.

It does not include the provision of meals, personal laundry, drinks, cost of telephone calls or service charges. Any service that is provided separately to that which is supplied as part of the tariff is unlikely to be considered part of commercial accommodation and therefore the GST concession will not apply, for example, the provision of separately metered electricity, mini bar items, personal laundry or dry cleaning charges, meals and phone calls. These items will attract the full rate of 10% of the value.

For further information on this issue refer to 'Commercial residential premises' in GST and property (NAT 72957).

3.2.6 Does the guest in commercial residential premises have to be present at all times during the whole long-term stay to satisfy the continuity requirement?

For source of ATO view, refer to GSTR 2012/7 – *Goods and services tax: long-term accommodation in commercial residential premises.*

ATO position

Section 87-20 of the GST Act specifically provides that 'long-term accommodation is provided to an individual if commercial accommodation is provided, for a continuous period of 28 days or more'. A guest who is provided with long-term accommodation in a hotel, motel, inn, hostel, boarding house, caravan park, camping ground or similar premises does not need to physically occupy the premises for the entire duration of the stay for the stay to be continuous. For example, a guest who occasionally leaves the premises overnight to travel, will maintain continuity of the stay provided they are charged for the days they are absent and their suite or room may not be let in their absence. If management moves a guest to another room either when a guest is present or away and charges for the new room, this will be treated as one continuous stay.

In relation to caravan parks, the right to occupy is granted when a site is hired for a caravan, even if the caravan is left unoccupied for most of the time. The continuity of the stay is not broken. Where the operator moves a caravan from one site to another, but

effectively maintains the bookings, this is a continuous site rental. However, if the owner of a caravan and the park operator agree to 'store' the caravan in another area of the park for an agreed fee, the continuity of the site rental ceases when the caravan is moved. The storage breaks the continuity of the stay as the storage of the caravan is a separate supply, subject to the basic rules (section 9-5 of the GST Act).

3.2.7 How are the 28 days calculated in relation to commercial residential premises that are not predominantly providing long-term commercial accommodation?

For source of ATO view, refer to:

- GSTR 2012/7 – *Goods and services tax: long-term accommodation in commercial residential premises*
- the general principles in GSTB 2001/2 – *Accommodation in caravan parks and camping grounds*.

ATO position

When calculating the 28 days, the day on which the guest is first provided with the commercial accommodation (including any day prior to 1 July 2000) is included in the count, however, the day on which the guest ceases to be provided with the commercial accommodation is excluded.

3.2.8 How is the 70% calculated when determining whether the commercial residential premises are 'predominantly for long-term accommodation'?

For source of ATO view, refer to:

- GSTR 2012/7 – *Goods and services tax: long-term accommodation in commercial residential premises*
- the general principles in GSTB 2001/2 – *Accommodation in caravan parks and camping grounds*.

ATO position

The 70% figure is based upon the number of supplies or number of bookings rather than the number of individuals. For more information on how to work out whether your commercial residential premises are predominantly for long-term accommodation, see GSTR 2012/7 and page 2 of GSTB 2001/2.

3.3 Marina berths

3.3.1 Are marinas similar to caravan parks and therefore treated in the same manner as 'commercial residential premises'?

For source of ATO view, refer to the general application of the principles in GSTB 2001/2 – *Accommodation in caravan parks and camping grounds*.

ATO position

Pursuant to an amendment to the GST Act, which received royal assent on 21 December 2000, the definition of commercial residential premises in section 195 of the GST Act was broadened to include a new paragraph (da) as follows:

(da) a marina at which one or more of the berths are occupied, or are to be occupied, by ships used as residences.

For information about the GST treatment of long-term accommodation at marinas, see GSTR 2012/6.

3.4 Strata title holders

3.4.1 When does the letting of strata titled accommodation fall within the scope of 'commercial accommodation'?

For source of ATO view, refer to GSTR 2012/6 – *Goods and services tax: commercial residential premises*.

ATO position

The letting of strata titled accommodation will be a supply of accommodation in commercial residential premises when the main characteristics of commercial residential premises listed in GSTR 2012/6 are met. Satisfying the characteristics of 'central management', 'management offers accommodation in its own right' and 'multiple occupancy' will generally not be met by strata titled accommodation.

To establish central management and that management offers accommodation in its own right, the manager will have to show that control over the premises exists. The test for control is whether the manager holds a lease or licence over the premises or has been granted rights that give the manager a legal interest in the premises. Therefore, a distinction has to be made between:

(a) managers who hold a lease or licence from the owner (control exists); and

(b) managers who are allowed to let premises on the owner's behalf under the terms of an agreement or arrangement and the manager merely collects rent on behalf of the owners (control does not exist).

To establish multiple occupancy, the manager will have to show that the premises provide sleeping accommodation to a number of guests in separate apartments/units etc at one time. The letting of a privately owned holiday apartment/unit through a local real estate agent will not satisfy the multiple occupancy characteristic. The letting of a privately owned holiday apartment/unit together with other holiday apartments/units in a complex through an on-site agent may satisfy the multiple occupancy characteristic as the manager aggregates these units/apartments under their own control so that this characteristic is met. However, the central management characteristic is not satisfied (that is, the manager does not hold a lease or licence nor granted rights over the units). See also paragraphs 95 to 98 of GSTR 2012/6.

3.4.2 If multiple strata titled apartments are owned by an individual and used for letting, are those apartments commercial residential premises?

For source of ATO view, refer to GSTR 2012/6 – *Goods and services tax: commercial residential premises*.

ATO position

The test is one of fact and degree. It does not matter whether an individual owns three, ten or forty units/apartments, the main characteristics of commercial residential premises still need to be satisfied. This requirement may be met if an individual owns several units in one complex and makes arrangements for the letting out of the units in such a way that the characteristics of commercial residential premises are satisfied.

3.4.3 Where an owner of a strata titled apartment leases the apartment to a manager who aggregates it with other apartments for letting out as commercial residential premises, what are the GST implications for the owner?

For source of ATO view, refer to GSTR 2012/6 – *Goods and services tax: commercial residential premises*.

ATO position

When the owner of the strata titled apartment leases the apartment to the manager, the owner is making an input taxed supply under section 40-35 of the GST Act. Even though the apartment takes on the character of commercial residential premises when it is aggregated with the other apartments by the manager, it does not by itself have the characteristics of commercial residential premises. Because the owner is making an input taxed supply, the owners cannot claim input tax credits for any acquisitions in relation to that supply.

Section 04 – adjustments for input tax credit claims

All issues in this section have been withdrawn (see View history).

Issue number	Index	Updated	Withdrawn
4	**Adjustments for input tax credit claims**	19/08/2008 View history	24/06/2009 View history
4.1	**Application of Division 129 of the GST Act**	19/08/2008 View history	24/06/2009 View history
4.1.1	How does Division 11 (Creditable Acquisitions) interact with Division 129 (Changes in the extent of creditable purpose)?	19/08/2008 View history	24/06/2009 View history
4.1.2	How does Division 129 operate in respect of new residential premises constructed for sale but subsequently rented prior to sale?	19/08/2008 View history	24/06/2009 View history
4.1.3	How do Divisions 11 and 129 apply to consumables consumed within or relating to a particular tax period?	19/08/2008 View history	24/06/2009 View history

The 'GST Act'	*A New Tax System (Goods and Services Tax) Act 1999.*
Relevant public rulings	GSTR 2009/4 'New residential premises and adjustments for changes in extent of creditable purpose'. GSTR 2006/4 'Determining the extent of creditable purpose for claiming input tax credits and for making adjustments for changes in extent of creditable purpose'. GSTR 2000/24 'Adjusting for changes in the extent of creditable purpose'. GSTR 2000/35 'Division 156 - supplies and acquisitions made on a progressive or periodic basis'.
Relevant sections	**Division 11** 'Creditable Acquisitions' of the GST Act. **Division 129** 'Changes in the extent of creditable purpose' of the GST Act. **Division 156** 'Supplies and acquisitions made on a progressive or periodical basis' of the GST Act.

Section 05 – employee accommodation/housing

(a) added, (u) updated, (w) withdrawn

Issue Number	Index
What are the GST implications for employee housing or accommodation?	21/5/2013(u)

'the GST Act'	A New Tax System (Goods and Services Tax) Act 1999
'the GST Regulations'	A New Tax System (Goods and Services Tax) Regulations 1999
'the Transition Act'	A New Tax System (Goods and Services Tax Transition) Act 1999
'the Transition Regulations"	A New Tax System (Goods and Services Tax Transition) Regulations 2000
Relevant Public Rulings	GSTR 2012/5 Goods and services tax: residential premises GSTR 2012/6 Goods and services tax: commercial residential premises GSTR 2012/7 Goods and services tax: long-term accommodation in commercial residential premises GSTR 2001/3 GST and how it applies to supplies of fringe benefits
Relevant sections	**Section 40-35** 'Residential Rent' of the GST Act **Division 87** 'Long-term accommodation in commercial residential premises' of the GST Act

5.1 What are the GST implications for employee housing or accommodation?

The guidance provided at issue 5.1 is now superseded. GSTR 2000/20 Goods and services tax: commercial residential premises was withdrawn and replaced by GSTR 2012/5 Goods and services tax: residential premises, GSTR 2012/6 Goods and services tax: commercial residential premises and GSTR 2012/7 Goods and services tax: long-term accommodation in commercial residential premises on 19 December 2012.

This issue previously stated:

For source of ATO view, refer to paragraphs 37 to 39 of

GSTR 2000/20 – Goods and services tax: commercial residential premises

ATO position

GSTR 2000/20 provides that if accommodation is provided by an employer, in premises controlled by the employer or their associate, the premises are usually residential premises. This includes premises such as houses, apartments or residential barracks or quarters provided by an employer. The reasoning is discussed below. Section 40-35 of the GST Act states:

> (1) A supply of premises that is by way of lease, hire or licence (including a renewal or extension of a lease, hire or licence) is input taxed if:
>
> (a) the supply is of residential premises (other than commercial residential premises), or
>
> (b) the supply is of commercial accommodation and Division 87 of the GST Act (which considers long-term accommodation in commercial premises) would apply to the supply but for a choice made by the supplier under section 87-25 of the GST Act.

For section 40-35 of the GST Act to apply, the supply must be one of residential premises 'by way of lease, hire or licence'. A residential premise is land or a building that is occupied

as a residence or is intended to be occupied, and is capable of being occupied as a residence and includes a floating home (section 195-1 of the GST Act).

It is considered that the accommodation discussed above falls within the meaning of 'licence' as defined in the Macquarie Dictionary:

> Licence – formal permission or leave to do or not to do something.

The housing accommodation, being a licence to occupy a residential premise, is an input taxed supply under section 40-35 the GST Act. This is regardless of whether the employees are actually charged a rental fee. Whilst consideration is required for there to be a taxable supply under section 9-5 of the GST Act, consideration is not an essential element for there to be an input taxed supply under section 40-35 of the GST Act. Therefore, the supply of residential premises would be input taxed in accordance with section 40-35 of the GST Act, unless the supply is made in commercial residential premises.

Commercial Residential Premise is defined in section 195-1 (the Dictionary section) of the GST Act to mean:

> (a) a hotel, motel, inn, hostel or boarding house, or
>
> (b) premises used to provide accommodation in connection with a school, or
>
> (c) a ship that is mainly let out on hire in the ordinary course of a business of letting ships out on hire, or
>
> (d) a ship that is mainly used for entertainment or transport in the ordinary course of a business of providing ships for entertainment or transport, or
>
> (da) a marina at which one or more of the berths are occupied, or are to be occupied, by ships used as residences; or
>
> (e) a caravan park or a camping ground, or
>
> (f) anything similar to residential premises described in paragraphs (a) to (e).

As this definition is exhaustive, the accommodation must be of a specified type of residential premises or must be similar to the residential premises described in paragraphs (a) to (e). To be considered commercial residential premises, the only possible category the employee accommodation might fall under would be that of a 'hotel, motel, inn, hostel or boarding house' or similar premises. GSTR 2000/20 sets out the main characteristics of commercial residential premises which must be satisfied to some degree. If the premises do not exhibit the characteristics to a sufficient degree, they are not commercial residential premises under paragraph (a) of the definition, nor are they included by paragraph (f) as 'similar' to those things listed in (a).

In the case of employee accommodation provided in premises operated by the employer, the characteristic of 'holding out to the public' is not satisfied. An establishment holds itself out to the public if it will receive travellers who are willing and able to pay for accommodation and/or it will accept reservations or contracts to let accommodation to guests or lodgers (GSTR 2000/20). There is also the probability that other characteristics will not be met. In the case of employee housing these include:

- commercial intention
- accommodation is the main purpose
- services offered
- status of guests.

Thus, regardless of whether there is an employee contribution for the supply of residential accommodation by the employer to their employees, in accordance with section 40-35(1) of the GST Act, the supply of the accommodation is an input taxed supply. This means that GST is not charged on the supply and input tax credits are not available for GST included in the price of purchases made in connection with that supply of accommodation.

Note that there are also measures which may affect the application of the GST on goods and services provided as Fringe Benefits to employees. Further guidance on the interaction of GST and FBT can be found in GST Draft Ruling GSTR 2001/3.

Employee accommodation that is provided by employers in hotels, hostels or the like or in premises not controlled by the employer or their associate, may be commercial residential premises. This will depend on the character of the premises in question. The supplier of the accommodation is responsible for any GST implications of the supply.

Accommodation provided by an employer on a short-term basis, to employees whose occupation carries conditions related to the terms of employment, is not normally accommodation in residential premises, nor, by extension, is the accommodation provided in commercial residential premises. Conditions related to the terms of employment include:

- the requirement to vacate the premises at the end of a tour of duty or set quota of work
- the sharing of accommodation as directed
- limitations on personal possessions.

In the current context, a 'short-term basis' would normally be for a period of less than 28 continuous days.

Accommodation provided in remote mining or prospecting sites on a 'fly-in/fly-out' basis, similar arrangements for accommodating workers on oil rigs, or for itinerant workers on rural properties (for example, fruit pickers or shearers), may be of this kind. Supplies of such accommodation are subject to the basic rules.

Section 06 – farm land

(a) added, (u) updated, (w) withdrawn

Issue Number	Index	Date
6.1	**Sale of farm land**	n/a
6.1.1	You own a five acre property. On three acres of the property, you have been carrying on a farming business for the last five years. On the other two acres is a house which you have been using as your private residence and does not form part of a profit-making activity carried out by you. You are registered for GST for the farming business. You are selling the property to a buyer who does not intend to use the property for carrying on a farming business. (a) Does GST apply to the sale of the property? (b) Can the margin scheme apply to the sale of the entire property or only that part used for the farming business?	21/05/2013(u)
6.2	Lease of farm land (other than long term-leases or a lease by an Australian Government Agency)	n/a
6.2.1	You lease to a farmer a rural property with a residential dwelling. In working out the GST payable, does the rent need to be apportioned between the land and the dwelling?	04/12/03(u)
-	**Subdivision of farm land**	n/a
-	This issue was under revision and removed as of 24/10/2003. The ATO view on this issue is contained in the Primary Production Issues register accessed by the link provided.	21/05/2013(u)
-	**Tenants' fixtures**	n/a
-	What are the GST consequences when a tenant attaches a fixture to farmland?	04/12/03(w)

'the GST Act'	*A New Tax System (Goods and Services Tax) Act 1999*
'the GST Regulations'	*A New Tax System (Goods and Services Tax) Regulations 1999*
'the Transition Act'	*A New Tax System (Goods and Services Tax Transition) Act 1999*
'the Transition Regulations'	*A New Tax System (Goods and Services Tax Transition) Regulations 2000*
Relevant Rulings	GSTR 2001/8 – *Goods and services tax: apportioning the consideration for a supply that includes taxable and non-taxable parts* MT 2006/1 – *The New Tax System: the meaning of entity carrying on an enterprise for the purposes of entitlement to an Australian business number*
Relevant determination	GSTD 2006/6 – *Goods and services tax: does MT 2006/1 have equal application to the meaning of 'entity' and 'enterprise' for the purposes of the A New Tax System (Goods and Services Tax) Act 1999?'*
Relevant sections	**Section 38-475** 'Subdivided Farm Land' of the GST Act. **Section 38-480** 'Farm Land supplied for farming' of the GST Act.

6.1 Sale of farm land

6.1.1 You own a five acre property. On three acres of the property, you have been carrying on a farming business for the last 5 years. On the other two acres is a house which you have been using as your private residence and does not form part of a profit-making activity carried out by you. You are registered for GST for the farming business. You are selling the property to a buyer who does not intend to use the property for carrying on a farming business.

For source of ATO view, refer to:

- MT 2006/1 – *The New Tax System: the meaning of entity carrying on an enterprise for the purposes of entitlement to an Australian business number*
- GSTR 2001/8 – *Goods and services tax: apportioning the consideration for a supply that includes taxable and non-taxable parts*
- GSTR 2006/8 – *Goods and services tax: the margin scheme for supplies of real property acquired on or after 1 July 2000.*

(a) Does GST apply to the sale of the property?
(b) Can the margin scheme apply to the sale of the entire property or only that part used for the farming business?

ATO position

1. Yes, but only to that part of the property used for the farming business. This is because the sale of the property is a mixed supply comprising a taxable part and a non-taxable part (for more information about mixed supplies, see GSTR 2001/8). The taxable part of the sale relates to the farm land (the three acres). The non-taxable part is in relation to that part of the property used as a private residence (the two acres). The sale of a private residence that is not part of a profit-making activity is not a supply made in the course or furtherance of an enterprise (paragraph 13 of GSTD 2006/6) and is therefore not a taxable supply under section 9-5 of the GST Act. To work out the GST payable on the taxable part of the sale, the sale price will need to be apportioned between the taxable part and the non-taxable part. GSTR 2001/8 provides guidance on how the apportionment may be done.

   (Note: The sale of the entire property may be GST-free under section 38-480 of the GST Act if the buyer had intended to carry out a farming business on the property. For more information about the application of section 38-480 of the GST Act, see issue 6.2.23 in the Primary Production Industry partnership issues register.)

2. If a supply of real property is a mixed supply, the margin scheme can apply to the taxable part. In the example above, the margin scheme can be used to calculate the GST on the taxable part of the sale, that is, the farmland.

Where the margin for the supply is calculated under subsection 75-10(2) of the GST Act, the margin for the supply is the difference between the consideration for the supply and the consideration for its acquisition. For mixed supplies, the consideration for the supply and the consideration for the acquisition are the amounts of the consideration that relate to the taxable part of the supply.

If the margin for the supply is calculated under subsection 75-10(3) of the GST Act, then it is the difference between that part of the sale price that relates to the three acres of farmland and a valuation of the farmland at the relevant valuation date.

(For more information about the margin scheme, please see Property and Construction Industry Partnership - section 15 - sale of real property).

6.2 Lease of farm land (other than long-term leases or a lease by an Australian Government Agency)

6.2.1 You lease to a farmer a rural property with a residential dwelling. In working out the GST payable, does the rent need to be apportioned between the land and the dwelling?

For source of ATO view, refer to paragraphs 92 to 118 of GSTR 2001/8 – Goods and services tax: apportioning the consideration for a supply that includes taxable and non-taxable parts.

ATO position

Assuming that you are required to be registered, the property is in Australia, the lease is made in the course or furtherance of an enterprise and the lease is made for consideration, the supply will be a taxable supply to the extent that it is not input taxed or GST-free (section 9-5 of the GST Act).

The supply of the residential dwelling by way of lease is an input taxed supply to the extent that the premises are to be used predominantly for residential accommodation (section 40-35 of the GST Act).

Because the supply of the property is partly a taxable supply and partly an input taxed supply (that is, a mixed supply), you will need to apportion the consideration for the lease to work out the GST payable on the supply. For more information on how to apportion the consideration and how to work out the GST payable on the taxable part of a mixed supply, see paragraphs 92 to 118 of GSTR 2001/8.

6.3 Subdivision of farm land

For source of the ATO view, refer to issue 6.2.1(a) of the Primary Production Industry Partnership issues register.

ATO position

This issue has been moved to issue 6.2.1(a) in Primary Production Industry Partnership issues register

6.3.1 What are the GST consequences when a tenant attaches a fixture to farmland?

For source of ATO view, refer to issue 6.5.2 of the Primary Production Industry Partnership issues register.

ATO position

This issue has been moved to issue 6.2.1(a) in Primary Production Industry Partnership issues register

Section 07 – going concerns

(a) added, (u) updated, (w) withdrawn

Issue number	Index	Date
7.1	Can a sale of commercial premises be GST-free as a supply of a going concern under section 38-325 of the GST Act?	29/10/2003 (u)

"the GST Act"	*A New Tax System (Goods and Services Tax) Act 1999*
Relevant Rulings	GSTR 2002/5 'Goods and Services Tax: when is a 'supply of a going concern' GST-free?'
Relevant sections	**Section 38-325** 'Supply of a going concern' of the GST Act **Division 135** 'Supplies of going concerns' of the GST Act

7.1 Can a sale of commercial premises be GST-free as a supply of a going concern under section 38-325 of the GST Act?

For source of ATO view, refer to the general principles in GSTR 2002/5 – Goods and services tax: when is a 'supply of a going concern' GST-free?

ATO position

Yes, where all of the following conditions are satisfied:

a. the sale is a supply under the following arrangement:
   i. the vendor supplies the purchaser with all of the things necessary for the continued operation of an enterprise
   ii. the premises is one of the things necessary for the continued operation of the enterprise
   iii. the vendor carries on the enterprise until the day of the supply.

b. the supply is for consideration

c. the purchaser is registered or required to be registered for GST

d. the vendor and the purchaser have agreed, on or before the day of the supply, in writing that the supply is of a going concern.

For more information about the sale of commercial premises and supply of a going concern, see GSTR 2002/5 'Goods and Services Tax: when is a 'supply of a going concern' GST-free?'.

Section 08 – group training schemes

(a) added, (u) updated, (w) withdrawn

Issue Number	Index	Date
8.1	What are the GST implications of group training schemes?	09/04/2001

Relevant Determinations	GSTD 2000/7 'Is the supply of the services of apprentices or trainees by a Group Training Company to host employers under a Group Training Scheme a taxable supply in terms of section 9-5 of the *A New Tax System (Goods and Services Tax) Act 1999*?'

8.1 What are the GST implications of group training schemes?

For source of ATO view, refer to the general principles in GSTD 2000/7 – Goods and services tax: is the supply of the services of apprentices or trainees by a Group Training Company to host employers under a Group Training Scheme a taxable supply in terms of section 9-5 of the *A New Tax System (Goods and Services Tax) Act 1999*?

ATO position

Is the supply of services by a Group Training Company (in the form of the work done by the apprentices or trainees) to a host employer under a Group Training Scheme a taxable supply under the GST Act?

Yes, if the conditions for a taxable supply under section 9-5 of the GST Act are satisfied:

1. a **supply** of services/labour in the form of apprentices or trainees, is made by a Group Training Company to a host employer
2. **there is consideration** for the supply from the host employer to the Group Training Company
3. the supply of apprentices or trainees is made in the course of the Group Training Company's **enterprise**
4. the supply is **connected** with Australia
5. the Group Training Company is **registered**, or required to be registered.

If the elements of section 9-5 of the GST Act are satisfied then GST is payable in relation to the supply of apprentices or trainees by the Group Training Company to the host employer (section 7-1(1) of the GST Act). However, the host employer is entitled to input tax credits for GST paid for the supply of apprentices or trainees where the other requirements for a creditable acquisition are met (section 11-5 of the GST Act).

For further guidance in this area refer to the GST Determination GSTD 2000/7.

Section 09 – insurance

All the issues in this section have been withdrawn

For information about GST and insurance, see the fact sheet Insurance and GST.

(a) added, (u) updated, (w) withdrawn

Issue Number	Index	Date	History
9.1	What is the GST treatment of insurance?	23/03/04 (w)	View history
9.2	How will GST and Stamp Duty apply to general insurance policies? (Subdivision 78-A of the GST Act)	23/03/04 (w)	View history
9.3	How is the insurer treated? (Subdivision 78-A of the GST Act)	23/03/04 (w)	View history
9.4	How is the insured treated? (Subdivision 78-B of the GST Act)	23/03/04 (w)	View history
9.5	Will an insured entity have to pay GST on any excess the entity is required to pay?	23/03/04 (w)	View history
9.6	What happens when the insured is required to give up the damaged goods which are the subject of the claim?	23/03/04 (w)	View history
9.7	How are payments to third parties treated? (Subdivision 78-C of the GST Act)	23/03/04 (w)	View history
9.8	What is the effect of subrogation?	23/03/04 (w)	View history
9.9	How are insured entities that are not registered or required to be registered treated? (Subdivision 78-D of the GST Act)	23/03/04 (w)	View history
9.10	Treatment of Statutory Compensation Schemes? (Subdivision 78-E of the GST Act)	23/03/04 (w)	View history
9.11	Miscellaneous (Subdivision 78-F of the GST Act)	23/03/04 (w)	View history
9.12	How is compulsory third party motor vehicle insurance to be treated? (Section 23 of the Transition Act)	23/03/04 (w)	View history

Section 10 – leased or rented property

Issue Number	Index	Date
10.1	**Rulings on GST-free supplies under existing agreements**	09/04/01
10.2	**Transitional and general issues**	–
10.2.1	Are supplies of commercial premises by way of lease subject to GST?	21/01/04 (w)
10.2.2	Does a 'rates and taxes' clause under a long term lease give rise to a 'review opportunity'?	21/01/04 (w)
10.2.3	Does an 'option to renew' clause amount to a review opportunity and does the exercise of the option to renew result in the parties entering into a new lease?	21/01/04 (w)
10.2.4	Does a clause which calculates rent based upon the turnover of the lessee's business amount to a review opportunity?	21/01/04 (w)
10.2.5	Will a valuer, asked to conduct a rent review under a lease agreement on or after 8 July 1999, include an uplift for GST or take GST into account directly or indirectly in fixing the value?	21/01/04 (w)
10.2.6	Is a market rent review a review opportunity?	21/01/04 (w)
10.2.7	It may be necessary to establish whether the recipient of the supply is entitled to claim full input tax credits. Will a declaration made by the recipient of the supply be sufficient to satisfy this requirement?	21/01/04 (w)
10.2.8	Can a lessee claim input tax credits for lease payments made on or after 1 July 2005, where all of the requirements in section 13 of the Transition Act have been satisfied?	21/01/04 (w)
10.2.9	Can landlords claim input tax credits for the GST included in the price of building expenses?	21/01/04 (w)
10.3	**General**	n/a
10.3.1	Is GST payable on the supply of commercial premises by way of lease where the lease: • is silent on GST? • payments can be grossed up? • was entered into before 1 July 2000 and a fixed contract price is stated?	21/01/04 (w)
10.3.2	When is GST payable on the supply of commercial premises by way of lease where the lease explicitly states that GST is recoverable?	21/01/04 (w)
10.3.3	Is the supply of a rent free period subject to GST?	09/04/01
10.3.4	Is a lease of commercial property a taxable supply if the lease is supplied to the Commonwealth or a Commonwealth entity?	21/01/04 (u)
10.3.5	An investor, who is registered for GST, purchases new residential premises from a builder who is also registered for GST. The house has all the usual physical characteristics to enable it to be used for residential accommodation. The investor then supplies the house by way of lease to the builder who intends to use it as a display home. (1) Is the investor entitled to claim an input tax credit in relation to his purchase of the house from the builder? (2) Is the supply of the house by the investor to the builder by way of lease an input taxed supply, or a taxable supply?	01/03/02 (a) 19/12/2012 (w)
10.4	**Examples**	–

Issue Number	Index	Date
10.4.1	Entity A, who is not required to be registered for GST, intends to buy a shop to lease to another entity. (a) Is the lease of the shop a taxable supply? (b) If the shop is sold with the lease intact, is the sale a taxable supply?	21/01/04 (u)
10.4.2	Entity B buys a shop to carry on a business (its only enterprise). Entity B is registered for GST, and claims an input tax credit for the purchase of the shop. It later sells the shop for $200,000. (a) What are the GST implications if, six months before the shop is sold, the business ceases trading? (b) If the shop is sold together with the business, is the sale a taxable supply?	21/01/04 (u)
10.4.3	Entity C buys a shopping centre containing a number of shops from which it derives commercial rents. If entity sells the shopping centre, is the sale a taxable supply?	21/01/04 (u)
10.4.4	Entity D buys a shop with the intention of resale for a profit, but leases it out for about 6 months before selling it. Entity D has no other enterprise and is not required to be GST registered for the lease of the shop as the annual rent is less than $75,000. Is the sale of the shop a taxable supply when it is sold for $200,000?	21/01/04 (u)
10.4.5	Is a refundable rental bond paid by a lessee of commercial premises consideration for a taxable supply made by the lessor if it is a security deposit for the lessee to perform all its obligations under the lease?	18/10/02(a)
10.5	**Long term leases**	n/a
10.5.1	If a supplier, who holds a freehold interest in land, supplies that land by way of lease to a lessee, is it possible for the lease to be a long term lease for the purposes of the GST Act?	05/06/01(a)

Table note: (a) added, (u) updated, (w) withdrawn

Legislative references in this document	
Term used	**Details**
GST Act	*A New Tax System (Goods and Services Tax) Act 1999*
GST Regulations	*A New Tax System (Goods and Services Tax) Regulations 1999*
Transition Act	*A New Tax System (Goods and Services Tax Transition) Act 1999*
Transition Regulations	*A New Tax System (Goods and Services Tax Transition) Regulations 2000*
Relevant public rulings	GSTR 2000/16 Goods and services tax: transitional arrangements – GST-free supplies under existing agreements GSTR 2012/5 Goods and services tax: residential premises GSTR 2012/6 Goods and services tax: commercial residential premises GSTR 2001/7 Goods and services tax: meaning of GST turnover, including the effect of section 188-25 on projected GST turnover GSTR 2002/5 Goods and services tax: when is a 'supply of a going concern' GST-free?
Relevant sections	Section 9-5 'Taxable supplies' of the GST Act Section 11-5 'Creditable acquisitions' of the GST Act

	Section 13 'Existing Agreements: no opportunity to review' of the Transition Act Subdivision 38-J 'Supplies of going concerns' of the GST Act Section 40-35 'Residential rent' of the GST Act Division 99 'Deposits as security' Section 188-25 'Transfer of capital assets, and termination (etc) of enterprises, to be disregarded' of the GST Act Section 195-1 'Definition' of the GST Act

10.1 Ruling on GST-free supplies under existing agreements

The GST implications for a supply of a leased or rented property under a transitional arrangement (that is, an arrangement that spans 1 July 2000) are discussed in GSTR 2000/16.

10.2 Transitional and general issues

Issues 10.2.1 to 10.2.9 are concerned with matters that arose during the introduction of GST, and that are adequately dealt with by GSTR 2000/16. These issues have been withdrawn from 21/01/2004.

10.2.1 Are supplies of commercial premises by way of lease subject to GST?

Withdrawn on 21/01/2004.

10.2.2 Does a 'rates and taxes' clause under a long term lease give rise to a 'review opportunity'?

Withdrawn on 21/01/2004.

10.2.3 Does an 'option to renew' clause amount to a review opportunity and does the exercise of the option to renew result in the parties entering into a new lease?

Withdrawn on 21/01/2004.

10.2.4 Does a clause which calculates rent based upon the turnover of the lessee's business amount to a review opportunity?

Withdrawn on 21/01/2004.

10.2.5 Will a valuer, asked to conduct a rent review under a lease agreement on or after 8 July 1999, include an uplift for GST or take GST into account directly or indirectly in fixing the value?

Withdrawn on 21/01/2004.

10.2.6 Is a market rent review a review opportunity?

Withdrawn on 21/01/2004.

10.2.7 It may be necessary to establish whether the recipient of the supply is entitled to claim full input tax credits. Will a declaration made by the recipient of the supply be sufficient to satisfy this requirement?

Withdrawn on 21/01/2004.

10.2.8 Can a lessee claim input tax credits for lease payments made on or after 1 July 2005, where all of the requirements in section 13 of the Transition Act have been satisfied?

Withdrawn on 21/01/2004.

10.2.9 Can landlords claim input tax credits for the GST included in the price of building expenses?

Withdrawn on 21/01/2004.

10.3 General

Issues 10.3.1 to 10.3.2 are concerned with matters that arose during the introduction of GST, and that are adequately dealt with by GSTR 2000/16. These issues have been withdrawn.

10.3.1 Is GST payable on the supply of commercial premises by way of lease where the lease:

- ***is silent on GST?***
- ***payments can be grossed up?***
- ***was entered into before 1 July 2000 and a fixed contract price is stated?***

Withdrawn on 21/01/2004.

10.3.2 When is GST payable on the supply of commercial premises by way of lease where the lease explicitly states that GST is recoverable?

Withdrawn on 21/01/2004.

10.3.3 Is the supply of a rent free period subject to GST?

For source of ATO view, refer to paragraphs 81 to 98 of GSTR 2003/16 - Goods and services tax: inducements to enter into a lease of commercial premises

ATO position

The consideration for the supply is the rent paid by the tenant under the terms of the lease. However, the supply is provided on a progressive or periodic basis. This means that each supply is treated as a separate supply. Therefore, the supply of rent-free periods is not a taxable supply because no consideration is received during this period and consequently no GST is payable.

10.3.4 Is a lease of commercial property a taxable supply if the lease is supplied to the Commonwealth or a Commonwealth entity?

For source of ATO view, refer to paragraph 9 of GSTR 2003/3 - Goods and services tax: when is a sale of real property a sale of new residential premises?

ATO position

Yes, if the requirements under section 9-5 of the GST Act are satisfied. This is the case regardless of the identity of the recipient.

The content for this issue was a public ruling, but has been withdrawn. The wording of this issue as it was can still be viewed here.

This issue is now superseded by Goods and Services Tax Ruling GSTR 2012/5 - Goods and services tax: residential premises.

10.3.5 An investor, who is registered for GST, purchases new residential premises from a builder who is also registered for GST. The house has all the usual physical characteristics to enable it to be used for residential accommodation. The investor then supplies the house by way of lease to the builder who intends to use it as a display home.

(1) Is the investor entitled to claim an input tax credit in relation to the purchase of the house from the builder?

(2) Is the supply of the house by the investor to the builder by way of lease an input taxed supply, or a taxable supply?

The content for this issue was a public ruling, but has been withdrawn. The wording of this issue as it was can still be viewed here.

This issue is now superseded by Goods and Services Tax Ruling GSTR 2012/5 - Goods and services tax: residential premises.

10.4 Examples

10.4.1 Entity A, who is not required to be registered for GST, intends to buy a shop to lease to another entity.

For source of ATO view, refer to:

- MT 2006/1 - The New Tax System: the meaning of entity carrying on an enterprise for the purposes of entitlement to an Australian business number
- GSTR 2001/7 - Goods and services tax: meaning of GST turnover, including the effect of section 188-25 on projected GST turnover
- GSTR 2002/5 - Goods and services tax: when is a 'supply of a going concern' GST-free?
- for part (a) of this issue, paragraphs 29 to 45 of GSTR 2001/7 - Goods and services tax: meaning of GST turnover, including the effect of section 188-25 on projected GST turnover.

(a) Is the lease of the shop a taxable supply?
(b) If the shop is sold with the lease intact, is the sale a taxable supply?

ATO position

(a) Leasing activities

In leasing the shop, Entity A is carrying on an enterprise of leasing. So, if the lease payments meet the GST registration turnover threshold (see GSTR 2001/7), Entity A will be required to be registered for GST and the lease of the shop from 1 July 2000 onwards will be a taxable supply. Even if the GST registration turnover threshold is not met, Entity A may choose to register, and if registered, will be required to pay GST on the supply of the lease. It will also be entitled to claim input tax credits for any creditable acquisitions.

(b) Sale of the shop

Whether the sale of the shop is a taxable supply depends on whether Entity A is registered for its leasing activity. If Entity A is not registered or required to be registered for the leasing activity, the sale of the shop will not require it to be registered. This is because the proceeds from the sale of the shop will not form part of the GST registration turnover threshold (see paragraphs 29 to 45 of GSTR 2001/7). So, if Entity A is not registered or required to be registered for the leasing activity, the sale of the shop will not be a taxable supply. GSTR 2001/7

If Entity A is registered for the leasing activity, the sale of the shop will be part of the leasing enterprise – section 195-1 of the GST Act states that carrying on of an enterprise includes doing anything in the course of the commencement or termination of the enterprise. The sale of the shop will be a taxable supply unless it qualifies as a GST-free supply of a going concern under section 38-325 of the GST Act. (For more information about the requirements of section 38-325 of the GST Act, see GSTR 2002/5.)

10.4.2 Entity B buys a shop to carry on a business (its only enterprise). Entity B is registered for GST, and claims an input tax credit for the purchase of the shop. It later sells the shop for $200,000.

For source of ATO view, refer to:

- GSTR 2001/7 Goods and services tax: meaning of GST turnover, including the effect of section 188-25 on projected GST turnover
- GSTR 2018/1 Goods and services tax: supplies of real property connected with the indirect tax zone (Australia)
- GSTR 2002/5 Goods and services tax: when is a 'supply of a going concern' GST-free?
- for part (a) of this issue, paragraphs 29 to 45 of GSTR 2001/7 - Goods and services tax: meaning of GST turnover, including the effect of section 188-25 on projected GST turnover.

(a) What are the GST implications if, six months before the shop is sold, the business ceases trading?

(b) If the shop is sold together with the business, is the sale a taxable supply?

ATO position

(a) When the business ceases trading, Entity B would be required to cancel its GST registration (section 25-50 of the GST Act). The subsequent sale of the shop will not require Entity B to register. This is because the proceeds from the sale of the shop will not form part of the GST registration turnover threshold (see paragraphs 29 to 45 of GSTR 2001/7). So, if Entity B is not registered or required to be registered when the shop is sold, the sale will not be a taxable supply. However, the cancellation of GST registration will lead to an adjustment, in Entity B's concluding tax period, for any input tax credits claimed for the acquisition of the shop: section 138-5 of the GST Act.

(b) Entity B will be selling the shop as part of its enterprise. As Entity B is registered for GST at the time of sale, the sale will be a taxable supply unless it qualifies as a GST-free supply of a going concern under section 38-325 of the GST Act. (For more information about the requirements of section 38-325 of the GST Act, see GSTR 2002/5.)

10.4.3 Entity C buys a shopping centre containing a number of shops from which it derives commercial rent. Entity C is required to be registered for GST. If Entity C sells the shopping centre, is the sale a taxable supply?

For source of ATO view, refer to:

- GSTR 2018/1 *Goods and services tax: supplies of real property connected with the indirect tax zone (Australia)*
- the general principles in GSTR 2002/5 *Goods and services tax: when is a 'supply of a going concern' GST-free?*

ATO Position

The sale of the shopping centre will be in the course, or furtherance, of the leasing enterprise carried on by Entity C. The sale may be a GST-free supply of a going concern if all of the requirements of section 38-325 of the GST Act are met. (For more information about the requirements of section 38-325 of the GST Act, see GSTR 2002/5.) Otherwise, it's a taxable supply.

10.4.4 Entity D buys a shop with the intention of resale for a profit, but leases it out for about 6 months before selling it. Entity D has no other enterprise and is not required to be GST registered for the lease of the shop as the annual rent is less than $75,000. Is the sale of the shop a taxable supply when it is sold for $200,000?

For source of ATO view, refer to:

- paragraphs 46 to 47 of GSTR 2001/7 - Goods and services tax: meaning of GST turnover, including the effect of section 188-25 on projected GST turnover
- the general principles in GSTR 2002/5 - Goods and services tax: when is a 'supply of a going concern' GST-free?

ATO position

Even though Entity D is not required to be registered for GST for the lease of the shop, it is required to register for GST for the sale of the shop. It is considered to be carrying on an enterprise in the form of an adventure in the nature of trade by acquiring the shop for resale at a profit (see paragraphs 46 to 47 of GSTR 2001/7). Therefore, the sale of the shop will be a taxable supply. If the shop is sold with the lease intact, it may be a GST-free supply of a going concern if all of the requirements of section 38-325 of the GST Act are met. (For more information about the requirements of section 38-325 of the GST Act, see GSTR 2002/5)

10.4.5 Is a refundable rental bond paid by a lessee of commercial premises consideration for a taxable supply made by the lessor if it is a security deposit for the lessee to perform all its obligations under the lease?

For source of ATO view, refer to the general principles in GSTR 2006/2 - Goods and services tax: deposits held as security for the performance of an obligation

ATO position

No, unless the bond is:

- forfeited because of a failure to perform the obligations, or
- applied as all or part of the consideration for a supply.

This is because of Division 99 of the GST Act. For more information about the application of Division 99 of the GST Act, see GSTR 2006/2

10.5 Long term leases

10.5.1 If a supplier, who holds a freehold interest in land, supplies that land by way of lease to a lessee, is it possible for the lease to be a long term lease for the purposes of the GST Act?

Non-interpretative - straight application of the law

ATO position

Yes. An Australian government agency, as defined in section 195-1 of the GST Act, and other entities that hold a freehold interest in land may make a supply by way of long-term lease as defined in section 195-1 of the GST Act. However, where the supplier is not an Australian government agency, they must satisfy the requirement in paragraph (b) of the definition. The ATO is currently preparing further public guidance on this issue.

Section 11 – non-commercial residential premises

For GST, Luxury Car Tax and Wine Equalisation Tax purposes, from 1 July 2015, where the term 'Australia' is used in this document, it is referring to the 'indirect tax zone' as defined in subsection 195-1 of the GST Act.

(a) added, (u) updated, (w) withdrawn

Issue Number	Index	Date	History
11.1	**Vacant Land**	n/a	n/a
11.1.1	Can vacant land be 'residential premises' as defined in section 195-1 of the GST Act	27/05/2013 (u)	View history
11.2	**Supply of Residential Premises**	n/a	View history
11.2.1	Is the sale of the following subject to GST: (a) a private residence; or (b) a residential rental property?	27/05/2013 (u)	View history
11.2.2	Would the answer to Issue 11.2.1 above be different if the sale of the residential premises is to one of the following: • an owner occupier; or • an investor owner; or • an entity carrying on an enterprise?	23/02/2004 (u)	View history
11.2.3	If an entity sells a house that he or she had built and used as a private residence, is the sale subject to GST?	23/02/2004 (u)	View history
11.2.4	If an entity who is carrying on an enterprise of building and selling houses sells a house that he or she had built and used as a private residence, is the sale subject to GST?	23/02/2004 (u)	View history
11.2.5	If an entity that is carrying on an enterprise of building and selling houses sells a house that it had built and rented out, is the sale subject to GST?	23/02/2004 (u)	View history
11.2.6	Is the sale of a newly constructed house by a developer/builder subject to GST?	23/02/2004 (u)	View history
11.2.7	If an entity buys and sells a house in the course of carrying on an enterprise of buying and selling houses, is the sale subject to GST?	27/05/2013 (u)	View history
11.2.8	If the entity in Issue 11.2.7. above had the house renovated before selling it, is the sale subject to GST?	23/02/2004 (u)	View history
11.2.9	Is there a restriction on the area of land that can be included in the definition of 'residential premises' in section 195-1 of the GST Act?	27/05/2013 (u)	View history
11.2.10	Guideline on the meaning of 'substantial renovation' as used in the context of 'new residential premises' as defined in s195-1(b)	23/02/2004 (w)	View history
11.2.11	What is the GST treatment of letting*Goods and services tax* residential premises that are partly commercial in character?	23/02/2004 (u)	View history
11.2.12	What needs to be considered when determining whether residential premises are 'used predominantly for residential accommodation'?	23/02/2004 (u)	View history

'the GST Act'	*A New Tax System (Goods and Services Tax) Act 1999*
'the GST Regulations'	*A New Tax System (Goods and Services Tax) Regulations 1999*
'the Transition Act'	*A New Tax System (Goods and Services Tax Transition) Act 1999*
'the Transition Regulations'	*A New Tax System (Goods and Services Tax Transition) Regulations 2000*
Relevant Public Rulings	GSTR 2012/5 – *Goods and services tax: residential premises* GSTR 2002/5 – *Goods and services tax: when is a 'supply of a going concern' GST-free?* GSTR 2001/7 – *Goods and services tax: meaning of GST turnover, including the effect of section 188-25 on projected GST turnover* GSTR 2001/8 – *Goods and services tax: apportioning the consideration for a supply that includes taxable and non-taxable parts* GSTR 2003/3 – *Goods and services tax: When is a sale of real property a sale of new residential premises* MT 2006/1 – *The New Tax System: the meaning of entity carrying on an enterprise for the purposes of entitlement to an Australian Business Number ('ABN')* TR 97/11 – *Income Tax: Am I carrying on a business of primary production?*
Relevant Determinations	GSTD 2006/6 – *Goods and services tax: does MT 2006/1 have equal application to the meaning of 'entity' and 'enterprise' for the purposes of the A New Tax System (Goods and Services Tax) Act 1999?* GSTD 2000/9 – *Goods and services tax: if you let out a residence do you need to get an ABN for PAYG purposes or register for GST?*
Relevant sections	Section 9-5 'Taxable supplies' of the GST Act Section 9-20 'Enterprises' of the GST Act Section 9-40 'Liability for GST on taxable supplies' of the GST Act Section 11-15 'Meaning of creditable purpose' of the GST Act Section 11-20 'Who is entitled to input tax credits for creditable acquisitions?' of the GST Act Section 23-5 'Who is required to be registered' of the GST Act Section 40-65 'Sales of residential premises' of the GST Act Section 40-75 'Meaning of new residential premises' of the GST Act Section 75-5 'Choosing to apply the margin scheme' of the GST Act Section 75-10 'The amount of GST on taxable supplies' of the GST Act Section 188-15 'Current GST turnover' of the GST Act Section 188-25 Transfer of capital assets, and termination etc. of enterprise, to be disregarded' of the GST Act Section 195-1 'Dictionary' of the GST Act

11 Residential premises

11.1 Vacant land

11.1.1 Can vacant land be 'residential premises' as defined in section 195-1 of the GST Act?

For source of ATO view refer to:

- GSTR 2012/5 – *Goods and services tax: residential premises*
- GSTR 2003/3 – *Goods and services tax: when is a sale of real property a sale of new residential premises?*

ATO position

No. TheATO position is discussed in the public ruling GSTR 2012/5. To be residential premises, land needs to be intended for, and capable of, occupation as a residence. Land that has no buildings attached to it does not fall into this category. Vacant land, of itself, can never have sufficient physical characteristics to mark it out as being able to be, or intended to be, occupied as a residence (see paragraphs 24 and 25 of GSTR 2000/20).

11.2 Supply of residential premises

For more information about the GST implications of a supply of residential premises, refer to GSTR 2000/20 and GSTR 2003/3.

11.2.1 Is a sale of the following subject to GST:

a) a private residence; or

b) a residential rental property?

For source of ATO view refer to:

- MT 2006/1 – *The New Tax System: the meaning of entity carrying on an enterprise for the purposes of entitlement to an Australian Business Number*
- paragraphs 9 and 11 of GSTR 2003/3 – *Goods and services tax: when is a sale of real property a sale of new residential premises?*

ATO position

a) Sale of private residence

It is input taxed under section 40-65 of the GST Act unless all of the following requirements are met:

i. the residence is new residential premises as defined in section 40-75 of the GST Act;

ii. the residence has not been used for residential accommodation before 2 December 1998;

iii. the sale is made for consideration;

iv. the sale is made in the course or furtherance of an enterprise carried on by the vendor;

v. the residence is in Australia; and

vi. the vendor is registered, or required to be registered.

If all of these requirements are met, the sale will be a taxable supply.

(For more information about when a sale of real property is a sale of new residential premises, see GSTR 2003/3.)

Unless the owner of the private residence acquired the residence as part of an activity of acquiring and selling homes for a profit, or used it for carrying on a business, the sale of the private residence would not be made in the course or furtherance of an enterprise carried on by the vendor. This is because the mere realisation of a private residence or a family home is not a supply made in the course or furtherance of an enterprise (paragraph 13 of GSTD 2006/6).

b) Sale of a residential rental property

Similar to the sale of a private residence, a sale of a residential rental property is input taxed under section 40-65 of the GST Act unless all of the requirements (i) to (vi), as set out above, are met.

While the sale of a rental property is part of the rental or leasing enterprise carried on by the owner (section 195-1 of the GST Act states that carrying on an enterprise includes doing anything in the course of commencement or termination of the enterprise), the owner may not be registered, or required to be registered, for GST. This would be so if the renting of the property is the only enterprise carried on by the owner. This is because, in renting out residential premises, the owner is making input taxed supplies. The sale of the rental property would also not require the owner to be registered because the proceeds from the sale will not form part of the registration turnover threshold (sections 188-10 and 188-25 of the GST Act). So, if the owner is not already registered, or required to be registered, the sale of the rental property will not be a taxable supply.

11.2.2 Would the answer to Issue 11.2.1 above be different if the sale of the residential premises is to one of the following:

- *an owner occupier; or*
- *an investor owner; or*
- *an entity carrying on an enterprise?*

For source of ATO view refer to:

- MT 2006/1 – *The New Tax System: the meaning of entity carrying on an enterprise for the purposes of entitlement to an Australian Business Number*
- GSTR 2003/3 – *Goods and services tax: when is a sale of real property a sale of new residential premises?*

ATO position

No. It does not matter to whom the premises is sold.

11.2.3 If an entity sells a house that he or she had built and used as a private residence, is the sale subject to GST?

For source of ATO view refer to MT 2006/1 – *The New Tax System: the meaning of entity carrying on an enterprise for the purposes of entitlement to an Australian Business Number*

ATO position

While the house is new residential premises as defined in section 40-75 of the GST Act, its sale will not be a taxable supply unless all of the following requirements are met:

i. the residence has not been used for residential accommodation before 2 December 1998;

ii. the sale is made for consideration;

iii. the sale is made in the course or furtherance of an enterprise carried on by the entity;

iv. the residence is in Australia; and

v. the entity is registered, or required to be registered.

Unless the entity built the residence as part of an activity of building and selling homes for a profit, or used it for carrying on a business, the sale of the house will not be in the course or furtherance of an enterprise carried on by the entity. This is because the mere realisation of a private residence or a family home is not a supply made in the course or furtherance of an enterprise (paragraph 13 of GSTD 2006/6).

11.2.4 If an entity who is carrying on an enterprise of building and selling houses, sells a house that he or she had built and used as a private residence, is the sale subject to GST?

For source of ATO view refer to:

- MT 2006/1 – *The New Tax System: the meaning of entity carrying on an enterprise for the purposes of entitlement to an Australian Business Number*
- GSTR 2006/8 – *Goods and services tax: the margin scheme for supplies of real property acquired on or after 1 July 2000*

ATO position

See the answer to Issue 11.2.3 above. The fact that the entity had used the premises as a private residence before the sale does not necessarily mean that the sale is not in the course or furtherance of an enterprise carried on by the entity. It will be a matter of fact and degree in each case. For example, if the evidence indicates that the entity had intended to build the house and sell it for a profit, but lived in it temporarily before selling it, the sale would still be considered to be in the course or furtherance of the entity's enterprise.

If the sale is a taxable supply, the entity may be able to apply the margin scheme to work out the GST payable. For more information about the margin scheme, see Section 15 of the Property and Construction Industry Partnership Issues Register.

11.2.5 If an entity that is carrying on an enterprise of building and selling houses sells a house that it had built and rented out, is the sale subject to GST?

For source of ATO view refer to:

- GSTR 2003/3 – *Goods and services tax: when is a sale of real property a sale of new residential premises?*
- GSTR 2006/8 – *Goods and services tax: the margin scheme for supplies of real property acquired on or after 1 July 2000*
- GSTR 2009/4 – *Goods and services tax: new residential premises and adjustments for changes in extent of creditable purpose*

ATO position

Yes, it is subject to GST as a supply of new residential premises unless the house has been:

(a) rented out for a period of at least 5 years since it was built; or

(b) used for residential accommodation before 2 December 1998.

If the house has been rented out for a period of at least 5 years since it was built; or used for residential accommodation before 2 December 1998, its sale will be input taxed (section 40-65 of the GST Act).

If the sale is a taxable supply, the entity may be able to apply the margin scheme to work out the GST payable. For more information about the margin scheme, see Section 15 of the Property and Construction Industry Partnership Issues Register.

11.2.6 Is the sale of a newly constructed house by a developer/builder subject to GST?

For source of ATO view refer to GSTR 2003/3 – *Goods and services tax: when is a sale of real property a sale of new residential premises?*

ATO position

Yes, if it's a sale of new residential premises located in Australia by a GST registered (or required to be registered) entity in the course or furtherance of an enterprise it carries on.

For more information about the GST implications of a sale of new residential premises, see GSTR 2003/3.

11.2.7 If an entity buys and sells a house in the course of carrying on an enterprise of buying and selling houses, is the sale subject to GST?

For source of ATO view refer to:

- GSTR 2012/5 – *Goods and services tax: residential premises*
- GSTR 2003/3 – *Goods and services tax: when is a sale of real property a sale of new residential premises?*
-

ATO position

No, the sale is input taxed under section 40-65 of the GST Act, unless part of the house is commercial in character (see Issue 11.2.12 below for more information about residential premises that are partly commercial in character). If the house sold is partly commercial in character and the requirements of a taxable supply are met, the sale will be partly a taxable supply and partly an input taxed supply. The consideration for the supply will need to be apportioned between the taxable and input taxed parts to work out the GST payable. See GSTR 2001/8 for guidance on how to apportion the consideration for a mixed supply.

11.2.8 If the entity in Issue 11.2.7 above had the house renovated before selling it, is the sale subject to GST?

For source of ATO view refer to 53-83 of GSTR 2003/3 – *Goods and services tax: when is a sale of real property a sale of new residential premises?*

ATO position

It depends on whether the renovations to the house are substantial renovations that amount to the creation of new residential premises as defined in section 40-75 of the GST Act. If so, the sale may be subject to GST if it meets all the requirements of a taxable supply. For more information about the GST implications of new residential premises created through substantial renovations, see GSTR 2003/3.

If the renovations to the house do not amount to a creation of new residential premises, the answer here would be the same as for Issue 11.2.7.

11.2.9 Is there a restriction on the area of land that can be included in the definition of 'residential premises' in section 195-1 of the GST Act?

For source of ATO view refer to paragraph 46 of GSTR 2012/5 – *Goods and services tax: residential premises*

No, as long as the land has a building affixed to it with the physical characteristics that enable it to be occupied or be capable of occupation as a residence. However, the input tax treatment of a supply of residential premises by way of residential rent, sale or long-term lease only applies to the extent that the land and the building are 'to be used predominantly for residential accommodation'. Whether land and building are 'to be used predominantly for residential accommodation' is a question of fact and degree in each case to be determined by the physical characteristics that mark out the premises as a residence – see GSTR 2012/5.

11.2.10 Guideline on the meaning of 'substantial renovation' as used in the context of 'new residential premises' as defined in s195-1(b)

This issue has been withdrawn. For information about the GST implications of new residential premises created through substantial renovations, see GSTR 2003/3 .

11.2.11 What is the GST treatment of letting residential premises that are partly commercial in character?

For source of ATO view refer to:

- *paragraph 9 of – Goods and services tax: when is a sale of real property a sale of new residential premises?*
- GSTR 2001/8 – *Goods and services tax: apportioning the consideration for a supply that includes taxable and non-taxable parts*

ATO position

Section 40-35 of the GST Act provides that the letting of residential premises is input taxed only to the extent that it is to be used predominantly for residential accommodation. Therefore, if the premises are not to be used predominantly for residential accommodation (that is part of the premises has a commercial character) and the owner is required to be registered for GST, the letting of the premises will be a supply that is partly a taxable supply and partly an input taxed supply. If so, the owner is making a 'mixed supply'. The consideration for the supply will need to be apportioned between the taxable and input taxed parts to work out the GST payable. See GSTR 2001/8 for guidance on how to apportion the consideration for a mixed supply.

For information about the registration requirements of an entity making a mixed supply of residential accommodation, see GSTD 2000/9 (in particular, see paragraphs 27 to 36).

11.2.12 What needs to be considered when determining whether residential premises are 'used predominantly for residential accommodation'?

For source of ATO view refer to GSTR 2012/5 – *Goods and services tax: residential premises*

ATO position

GSTR 2012/5 deals with the term 'predominantly for residential accommodation'. This term indicates that premises that are residential premises are capable of use for purposes other than residential accommodation. It is their physical characteristics that mark them out as a residence. In turn, these characteristics determine when the use or proposed use is for residential accommodation.

The function of this term is to differentiate the GST treatment of any portions of residential premises that are commercial. This would apply, for example, to a house that has been partly converted for use as a doctor's surgery. Several parts of the house may still be used predominantly for residential accommodation, such as bedrooms, bathroom, kitchen, living rooms and gardens, while other areas are not, being turned over to office and consulting room space, and storage for the surgery. In this case these commercial parts are excluded from the input-taxed treatment of the rest of the property.

Whether or not a particular room or part of residential premises is to be used predominantly for residential accommodation, as opposed to commercial purposes, is a question of fact and degree. A home office in a house will not generally be sufficiently separate from the rest of the residential premises to distinguish its use and its predominant use will still be residential accommodation.

Section 12 – off-the-plan sales

(a) added, (u) updated, (w) withdrawn

Issue Number	Index	Date
12.1	What is an 'off the plan' transaction in the context of the sale of real estate?	09/04/01
12.2	What is supplied in an 'off the plan' sale?	(u)
12.3	What is supplied in the resale of 'off the plan' contractual rights?	09/04/01
12.4	Does the transfer of 'off the plan' contractual rights constitute a taxable supply?	09/04/01
12.5	Can an 'off the plan' interest constitute residential premises, which would result in the interest being input taxed?	09/04/01
12.6	If entity A enters into a contract to purchase property 'off the plan' and simultaneously enters into another contract of identical form to sell the property to entity B, is it supplying entity B the property or an 'off the plan' interest?	29/10/03 (u)
12.7	What is the GST treatment of security deposits in relation to 'off the plan' sales?	
12.8	When does attribution occur when a deposit is paid to a trustee?	29/10/03 (w)
12.9	When does attribution occur when a deposit is paid to a vendor?	29/10/03 (w)
12.10	Do bank guarantees or deposit bonds constitute a 'deposit held as security' for the purposes of section 99-5 of the GST Act?	29/10/03 (w)

'the GST Act'	*A New Tax System (Goods and Services Tax) Act 1999*
'the GST Regulations'	A New Tax System (Goods and Services Tax) Regulations 1999
'the Transition Act'	*A New Tax System (Goods and Services Tax Transition) Act 1999*
'the Transition Regulations'	A New Tax System (Goods and Services Tax Transition) Regulations 2000
Relevant Public Rulings	MT 2006/1*The New Tax System : 'the meaning of 'entity carrying on an enterprise' for the purposes of entitlement to an Australian business number ('ABN')'* GSTR 2000/29 *Goods and services tax: 'attributing GST payable, input tax credits and adjustments and particular attribution rules made under section 29-25 '*
Relevant Determination	GSTR 2006/2 *Goods and services tax: deposits held as security for the performance of an obligation*
Relevant sections	**Section 29-5** 'Attributing the GST on your taxable supplies' of the GST Act **Section 40-C** 'Residential premises' of the GST Act **Division 99** 'Deposits as security' of the GST Act

12.1 What is an 'off the plan' transaction in the context of the sale of real estate?

For source of ATO view refer to Capital Gains Tax Determination Number 18, TD 18 - Capital Gains: From what time is indexation available in 'off the plan' purchases?

ATO position

An 'off the plan' purchase is defined in Capital Gains Tax Determination Number 18 as follows:

- An 'off the plan' purchase occurs where the acquisition of land or land and building cannot be completed until certain events have happened. For example, where the owner of the land has not completed all capital works required before building can commence such as finalisation of boundaries, roads and telephone and electricity connections. Another example where 'off the plan' purchase can occur is where an apartment block is in the course of construction.
- In these cases, the purchaser enters into a contract, usually paying a deposit on signing the contract, with settlement and payment of the balance of the purchase price not occurring unless a specified event happens. This could be the finalisation of all capital works needed before building can commence or the completion of the building or apartment.

An 'off the plan' contract is a contract subject to a condition precedent to the performance of the contract (rather than a condition precedent to the existence of the contract). This means that where an obligation depends on a condition being fulfilled, until that condition is fulfilled, there is nothing to be done.

12.2 What is supplied in an 'off the plan' sale?

Non-Interpretative - straight application of the law

ATO position

The date of settlement will determine what is being supplied in relation to 'off the plan sales'. Prior to settlement, the supply is that of a contractual right to the property. At settlement, the supply becomes the supply of new residential premises as defined in section 40-75 of the GST Act.

12.3 What is supplied in the resale of 'off the plan' contractual rights?

Non-Interpretative - straight application of the law

ATO position

One issue arising in relation to 'off the plan' sales concerns the GST implications for purchasers who acquire these interests and resell (ie assign) these contractual interests before completion.

In view of the purchase of the strata unit being a contract subject to a condition precedent and title not passing until the unit is complete, all the vendor of an 'off the plan' unit is assigning is the rights under a contract. Nothing may have even been built at the time the 'off the plan' rights are assigned.

12.4 Does the transfer of 'off the plan' contractual rights constitute a taxable supply?

Non-Interpretative - other references (see MT 2006/1 The New Tax System: the meaning of entity carrying on an enterprise for the purposes of entitlement to an Australian business number)

ATO position

Yes, if the requirements of section 9-5 of the GST Act are met. The principal issue in determining whether a taxable supply has been made where an 'off the plan' contractual

interest is assigned is whether or not the vendor of the 'off the plan' interest is making a supply in the course or furtherance of an enterprise carried on by the vendor.

The answer to this question will ultimately turn on the relevant facts. Generally if an assignment of 'off the plan' contractual rights reflects a significant commercial activity or has characteristics of a business deal, the sale of those rights will be made in the course or furtherance of an enterprise.

An individual may acquire real estate off the plan with no intention of reselling that contractual interest. If this contractual interest is subsequently disposed of because of one or more of the following reasons:

- change in financial circumstances and can't afford to go ahead with the purchase;
- purchaser decides they do not want to live in the real estate; or
- purchaser changes their mind about the judicious nature of the investment and sells to avoid making a loss or greater loss at a later point of time (eg after completion) it would be accepted that a supply was not made in the course or furtherance of an enterprise carried on by the purchaser. The supply lacks the characteristics of a business deal and does not reflect significant commercial activity.

On the other hand a person who acquires an 'off the plan' interest with the sole purpose of reselling that interest at a profit may display the characteristics of a business deal, thus making a supply in the course or furtherance of an enterprise.

12.5 Can an 'off the plan' interest constitute residential premises, which would result in the interest being input taxed?

Non-Interpretative - straight application of the law

ATO position

No. For a sale to be input taxed under Subdivision 40-C of the GST Act, the real property must be residential premises. It is not considered that the vendor is selling 'residential premises' as defined in section 195-1 of the GST Act when off the plan contractual rights are assigned for consideration.

The words 'residential premises' are defined in section 195-1 of the GST Act in the following way means land or a building occupied or intended to be occupied as a residence, and includes a floating home.

12.6 If entity A enters into a contract to purchase property 'off the plan' and simultaneously enters into another contract of identical form (sometimes known as a 'mirror contract') to sell the property to entity B, is it supplying entity B the property or an 'off the plan' interest?

Non-Interpretative - straight application of the law

ATO position

Entity A is supplying entity B the property rather than the 'off the plan' interest. It would be a different situation if entity A was assigning the rights under its purchase contract to entity B - see Issue 12.3.

If the property is residential premises to be used predominantly for residential accommodation, the sale to entity B will not be subject to GST because it is an input taxed supply under section 40-65 of the GST Act. The sale will not be a supply of new residential premises as defined in section 40-75 of the GST Act. However, the sale of the property to entity A would be a supply of new residential premises because it's the first time the property was sold as residential premises and it hadn't previously been the subject of a long-term lease.

12.7 What is the GST treatment of security deposits in relation to 'off the plan' sales?

Non-Interpretative - straight application of the law

ATO position

See the answers to Issues 16.1 to 16.3. The same answers apply regardless of whether the security deposit is made by way of:

- direct payment to a trustee
- direct payment to the vendor with no trustee arrangements
- a bank guarantee which guarantees the payment of the deposit, or
- a deposit bond.

Issues 12.8 to 12.10 have been withdrawn and replaced by Issue 12.7 above.

Section 13 – PAYG

All the issues in this section have been withdrawn. Information about PAYG matters is available at PAYG instalments essentials and PAYG withholding essentials on the ATO website.

For specific information about PAYG and voluntary agreements, see the fact sheet PAYG and voluntary agreements.

For specific information about the ABN and withholding requirements, see No ABN withholding - questions and answers on the ATO website.

For information about whether supplies made by an individual under a PAYG voluntary agreement are included in the calculation of the turnover threshold for GST registration purposes (Issue 13.1.6), see Property and Construction Industry Partnership - issues register - section 17 - sundry issues.

(a) added, (u) updated, (w) withdrawn

Issue Number	Index	Date
13.1	**Voluntary agreement**	n/a
13.1.1	What is a voluntary agreement?	24/12/2003 (w)
13.1.2	What types of arrangements are suitable for a voluntary agreement?	24/12/2003 (w)
13.1.3	What should a voluntary agreement include?	24/12/2003 (w)
13.1.4	Is a new agreement needed for each task?	24/12/2003 (w)
13.1.5	Do payees charge GST?	24/12/2003 (w)
13.1.6	Will the $50,000 threshold apply to a sole trader who enters into a voluntary agreement with a payer? Or is the value of the work performed under the voluntary agreement limited to $50,000?	24/12/2003 (w)
13.2	**General PAYG issues**	n/a
13.2.1	What are the implications for a tradesperson who both runs his own small business, but works part-time as an employee of another?	24/12/2003 (w)
13.2.2	Will an unregistered strata company, which pays a proprietor as a gardener or allows a discount on levies (for services rendered or not) have to participate in the PAYG system and if so how will they account for these sums?	24/12/2003 (w)
13.2.3	Will the owner of residential, commercial or industrial investment property require an Australian business number if the lessee is a business? For example, will the agent and the tenants be required to withhold tax if an ABN is not quoted? Will owners of residential properties be required to obtain ABNs where the rent they charge is input taxed?	24/12/2003 (w)

Section 14 – real estate agent issues

For GST, Luxury Car Tax and Wine Equalisation Tax purposes, from 1 July 2015, where the term 'Australia' is used in this document, it is referring to the 'indirect tax zone' as defined in subsection 195-1 of the GST Act.

(a) added, (u) updated, (w) withdrawn

Issue number	Index	Date
14.1	**Collation of information for business activity statements (BAS)**	21/01/04 (w)
14.2	**Agency relationship and the GST**	09/04/01
14.3	**Tax invoices**	n/a
14.3.1	Will the standard end of month statement, owner statement or tenant statement with the addition of an Australian business number (ABN) suffice as a tax invoice or does a tax invoice need to be issued separately?	09/04/01
14.3.2	Are separate tax invoices required for a lease of commercial premises if lease payments are made periodically over the term of the lease?	04/04/13 (u)
14.3.3	Should tax invoices issued by the agent on behalf of the property owner, be in the agent's identity or the owner's identity?	04/04/13 (u)
14.3.4	Are all lessees required to be supplied with receipts or tax invoices?	04/04/13 (u)
14.3.5	How much information about a supply should be noted on an owner's statement, tenant's statement, tenant's receipt etc?	04/04/13 (u)
14.3.6	Whose ABN must be shown on the tax invoice?	04/04/13 (u)
14.3.7	Will a remittance showing the GST that has been paid to a creditor (for example, a tradesman) be required?	09/04/01
14.4	**GST administration**	n/a
14.4.1	When is an entity required to remit GST to the ATO - monthly or quarterly?	18/10/02 (u)
14.4.2	Where should an agent retain the GST collected before the payment is required by the ATO?	09/04/01
14.4.3	What happens where the supplier incorrectly charges GST and the recipient, in good faith, claims the input tax credits?	21/01/04 (u)
14.4.4	What are the GST obligations for a real estate agent in relation to payment of GST and input tax credit claims?	21/01/04 (u)
14.4.5	Will GST be payable on property maintenance etc and who will collect this?	09/04/01
14.4.6	When can a real estate agent account for GST on a cash basis?	21/01/04 (u)
14.4.7	Does the ATO think there are benefits if all computer programs handle the GST in a standard way?	09/04/01
14.5	**Expenses incurred on behalf of a property owner**	n/a
14.5.1	If an agent incurs advertising, repair, maintenance costs and electronic banking charges etc on behalf of the owner, who is entitled to the input tax credits and what happens if the agent includes a mark up on these costs?	09/04/01

Issue number	Index	Date
14.5.2	Will the charges to the owner's trust account be subject to GST? For example, agent's commission, lease preparation fees, FID, BADT, statement fees, transfer fees, cheque fees.	09/04/01
14.5.3	Does the consideration for a commercial property lease include payments made by the lessee for the lessor (for example, council rates and land tax)?	21/01/04 (u)
14.6	**Commission**	n/a
14.6.1	Is an agent's commission for the sale of a property subject to GST if the sale contract was entered into before 1 July 2000, but settlement occurs on or after that date?	21/01/04 (u)
14.7	**Fees**	n/a
14.7.1	Which of the following fees charged by an agent are subject to GST: letting fees, lease preparation fee charged to the landlord, lease preparation fee charged to the tenant, statement and administration fee, property inspection fees?	21/01/04 (u)
14.7.2	GST treatment of fees charged by real estate agents for preparation of residential tenancy agreements.	23/02/04 (a)
14.8	**GST pricing issues**	n/a
14.8.1	Should fees or even property sale prices be stated as GST inclusive or GST exclusive?	21/01/04 (w)
14.8.2	Is the rent to be shown as GST inclusive? If so, is the agent's commission or property management fee charged on the GST inclusive or exclusive rent?	21/01/04 (w)
14.8.3	Is the auctioneer required to state prior to the commencement of an auction whether bids are to be GST inclusive or exclusive?	21/01/04 (w)
14.9	**Withholding**	n/a
14.9.1	What does the agent have to do if the lessor does not supply an ABN?	21/01/04 (w)
14.9.2	If a supplier does not quote an ABN, does the agent have to withhold tax at the maximum rate?	21/01/04 (w)
14.10	**Non-resident property owners**	n/a
14.10.1	Is a resident agent for a non-resident owner of a commercial property liable for the GST on the lease of the property?	21/01/04 (u)
14.10.2	What is meant by 'resident agent' and 'non-resident'?	21/01/04 (u)
14.11	**Tax exempt property owners**	n/a
14.11.1	Is the GST treatment of a supply of property management services by an agent any different if the recipient of those services is an income tax exempt organisation (for example, a church)?	21/01/04 (u)
14.11.2	Are some commercial lessees GST exempt?	09/04/01
14.12	**Transitional issues and management agency authorities**	
14.12.1	Are supplies made under the management agency authorities (MAA) subject to GST?	21/01/04 (w)
14.12.2	If the period of supply is not specifically identified in the agreement between the real estate agent and the landlord, will section 13 of the Transition Act apply?	21/01/04 (w)

Issue number	Index	Date
14.12.3	Does an opportunity to terminate the agreement give rise to a 'review opportunity'?	21/01/04 (w)
14.12.4	Does the change in the rent resulting from the imposition of GST give rise to a 'review opportunity'?	21/01/04 (w)
14.12.5	Does section 13 of the Transition Act still apply where the managing fees are varied or the MAA is revised?	21/01/04 (w)
14.12.6	Should an agency have new property management agreements with GST inclusions signed by the property owner/lessor? Is there an alternative to this? Can it be done by letter or other methods?	21/01/04 (w)
14.12.7	Are the parties required to complete a new MAA if the MAA has an indefinite term?	21/01/04 (w)
14.12.8	A developer is currently building twelve new holiday apartments behind an existing four year old complex comprising of two shops, an office and a two bedroom flat. The developer is also building an extension onto the two bedroom flat (an extra bedroom and ensuite bathroom). The developer intends to strata title the whole complex upon completion. The twelve holiday apartments have already begun to be sold individually off-the-plan. Also the uncompleted, extended flat has been sold to the manager of the holiday units. Completion of the whole project is expected on 31 August 2000. After which strata titles will be obtained and settlements will take place. (a) Does the manager have to pay GST on the full purchase price of the manager's apartment if the manager intends to use it as a principal place of residence? (b) If the developer chooses to use the margin scheme, does the answer to (a) change? (c) Can the developer apportion the margin scheme to each new apartment based on their level of completion?	
14.12.9	If a tenant breaks a 'fixed term' tenancy agreement and the agency re-lets a property for the tenant and the tenant pays a re-let fee, will GST be payable by the tenant and will a special clause be needed in the tenancy agreement to cover the charge?	21/01/04 (w)
14.12.10	A real estate agent entered into a written agreement with a developer in April 1999 to sell a unit development, off-the-plan, for a set fee. It was expected that the development would be completed before 30 June 2000. The last of the units was sold several months prior to the 30 June 2000. Due to various factors, the project will not be completed before 30 June 2000. It now appears that settlement will occur on 7 July 2000. Does GST apply to the real estate agent's fee?	21/01/04 (w)
14.12.11	A real estate agent entered into a written agreement with a developer in October 1998 to sell a unit development, off-the-plan, for a set fee. It was expected that the development would be completed before 30 June 2000. The last of the units were sold several months prior to the 30 June 2000. Due to various factors, the project will not be completed before 30 June 2000. It now appears that settlement will occur on 7 July 2000. Does GST apply to the real estate agent's fee?	21/01/04 (w)
14.12.12	A real estate agent entered into a written agreement on 18 August 1999 to sell the complex mentioned in issue 14.12.8 above. There was no provision for GST included in the real estate agency appointment contract. At present, the real estate agent has been able to sell four holiday apartments and the manager's unit off-the-plan. (a) As the project will settle in August 2000, will the real estate agent have to pay GST on their real estate commission on the apartments already sold which they can't recover?	21/01/04 (w)

Issue number	Index	Date
	(b) Can the real estate agent renegotiate with the developer to include GST on the unsold apartments? (c) If the contract is renegotiated, can the developer pass the increase due to the GST onto the purchasers of the unsold apartments after 1 July 2000?	
14.13	**Rent roll**	n/a
14.13.1	Is the sale of an agent's rent roll subject to GST?	21/01/04 (u)
14.13.2	What is the GST treatment of the transfer of a real estate agent's rent roll?	21/01/04 (w)
14.14	**General**	n/a
14.14.1	What information and advice should a managing agent give to tradespeople and contractors regarding the GST and the general income tax imposition where more than 80% of their income is received from the agent?	09/04/01
14.14.2	Are commercial premises under residential leases and residential premises under commercial leases subject to GST?	04/04/13 (u)
14.14.3	When do the old taxes such as FID and BADT cease to operate?	18/10/02 (u)
14.14.4	What will the agents have to supply to the ATO if a tenant or owner is being investigated?	09/04/01
14.14.5	In the process of selling farming properties, plant and equipment is usually sold by way of a clearing sale. Assuming the vendor is registered for GST are the sales taxable supplies and therefore subject to GST?	09/04/01
14.14.6	What is the effect of a GST clause in a MAA?	09/04/01
14.14.7	How will the GST affect the sale of properties in regard to the agent? Can the GST be handled outside of the trust account?	09/04/01
14.14.8	Is a GST registered entity entitled to an input tax credit for the purchase of a new holiday apartment (for which the vendor was liable for GST)?	21/01/04 (u)

Acts and regulations	GST Act - A New Tax System (Goods and Services Tax) Act 1999 GST regulations - A New Tax System (Goods and Services Tax) Regulations 1999 **Transition Act - A New Tax System (Goods and Services Tax Transition) Act 1999**
Relevant public rulings	GSTR 2000/1 *Goods and services tax: adjustment notes* GSTR 2000/13 *Goods and services tax: accounting on a cash basis* GSTR 2000/16 *Goods and services tax: transitional arrangements - GST-free supplies under existing agreements* GSTR 2000/37 *Goods and services tax: agency relationships and the application of the law* GSTR 2002/5 *Goods and services tax: when is a 'supply of a going concern' GST-free?* GSTR 2012/5 *Goods and services tax: residential premises* GSTR 2012/6 *Goods and services tax: commercial residential premises*

	GSTR 2013/1 *Goods and services tax: tax invoices*
Relevant determination	GSTD 2000/9 *Goods and services tax: if you let out a residence do you need to get an ABN for PAYG purposes or register for GST?* GSTD 2000/10 *Goods and services tax: are outgoings payable by a tenant under a commercial property lease part of the consideration for the supply of the premises?*
Relevant sections	**Division 57** 'Resident agents acting for non-residents' of the GST Act **Division 111** 'Reimbursement of employees etc' of the GST Act **Division 153** 'Agents and insurance brokers' of the GST Act

14.1 Collation of information for business activity statement (BAS)

Issue 14.1 has been withdrawn. For information about business record keeping and information requirements for your BAS, see Record keeping essentials and Activity statements - home on the ATO website.

14.2 Agency relationship and the GST legislation

Non-Interpretative - other reference (see GSTR 2000/37 - Goods and services tax: agency relationships and the application of the law).

ATO position

Ruling GSTR 2000/37 provides a detailed discussion on the general law in relation to agency relationships. It also discusses factors which indicate an agency relationship, and provides examples. Paragraphs 55 to 71 deal with GST payable and input tax credits under agency arrangements, and also with the issuing of tax invoices and adjustment notes.

There are three special rules in the GST Act that deal specifically with agents and they are:

1. Division 57 of the GST Act which covers resident agents acting for non-residents
2. Division 111 of the GST Act which covers reimbursements to agents for expenses incurred on a registered entity's behalf, and
3. Division 153 of the GST Act which covers agents etc and insurance brokers.

The Explanatory Memorandum to Division 153 of the GST Act states if you make supplies through agents, the general law of agency applies. That is, a thing done by your agent for you is a thing done by you. It further explains that the entity, not the agent, is liable for the GST on taxable supplies and taxable importations made through the agent as section 9-40 of the GST Act states that **you** must pay the GST payable on any taxable supply **you** make. The entity is entitled to input tax credits on creditable acquisitions and creditable importations made through the agent as section 11-20 of the GST Act states that **you** are entitled to the input tax credit for any creditable acquisition that **you** make. Therefore, the agent is not liable for GST and is not entitled to the input tax credits. Section 195-1 of the GST Act defines 'you' to apply to entities generally unless expressly limited by a provision.

Division 57 of the GST Act provides an exception to the general rules where a resident agent is acting for a non-resident. Section 57-20 of the GST Act states that if the non-resident is registered or required to be registered, the resident agent acting for them will be required to be registered. Section 57-5 of the GST Act states that the agent will be required to pay GST on any taxable supplies or taxable importations made through them by the non-resident. Section 57-10 of the GST Act states that the resident agent will be entitled to input tax credits arising from creditable acquisitions or creditable importations

made by the non-resident. The responsibility to complete and lodge the business activity statement will lie with the agent.

14.3 Tax invoices

14.3.1 Will the standard end of month statement, owner statement or tenant statement with the addition of an Australian business number (ABN) suffice as a tax invoice or does a tax invoice need to be issued separately?

Non-Interpretative - straight application of the law

ATO position

A standard end of month invoice with the addition of an ABN would not satisfy the requirements of a tax invoice. The standard end of month, owner statement or tenant statement must be in the approved form and contain enough information to enable the following to be clearly ascertained before it would be considered to be a tax invoice:

1. the ABN and the identity of the supplier (subparagraph 29-70(1)(c)(i) of the GST Act)
2. if the total price of the supply is at least $1,000 or if the document is issued by the recipient-the recipient's identity or ABN (subparagraph 29-70(1)(c)(ii) of the GST Act)
3. what is supplied, including the quantity (if applicable) and the price of the supply (subparagraph 29-70(1)(c)(iii) of the GST Act)
4. the extent to which each supply to which the document relates is a taxable supply (subparagraph 29-70(1)(c)(iv) of the GST Act)
5. the date the document is issued (subparagraph 29-70(1)(c)(v) of the GST Act)
6. the amount of GST (if any) payable in relation to each supply to which the document relates (subparagraph 29-70(1)(c)(vi) of the GST Act
7. if the document was issued by the recipient and GST is payable in relation to any supply-that the GST is payable by the supplier (subparagraph 29-70(1)(c)(vii) of the GST Act
8. it can be clearly ascertained from the document that the document is intended to be a tax invoice or, if it was issued by the recipient, a recipient created tax invoice (paragraph 29-70(1)(d) of the GST Act.

A tax invoice would not need to be issued separately from an end of month statement, if the end of month statement is modified to incorporate the above information.

14.3.2 Are separate tax invoices required for a lease of commercial premises if the lease payments are made periodically over the term of the lease?

Non-Interpretative - other reference (see paragraphs 109 to 111 of GSTR 2013/1 - Goods and services tax: tax invoices).

ATO position

No. See paragraphs 101 to 111 of GSTR 2013/1.

14.3.3 Should tax invoices issued by an agent on behalf of the property owner, be in the agent's identity or the owner's identity?

Non-Interpretative - other reference (see:

- paragraphs 95 and 96 of GSTR 2013/1 - Goods and services tax: tax invoices, and
- paragraphs 61 to 66 of GSTR 2000/37 - Goods and services tax: agency relationships and the application of the law).

ATO position

Subparagraph 29-70(1)(c)(i) of the GST Act provides that a tax invoice contains enough information to enable the supplier's identity and ABN to be clearly ascertainable.

Paragraph 65 of GSTR 2000/37 states that 'If an agent issues a tax invoice for a supply made on behalf of the principal that contains the agent's identity and ABN, the document would not meet the requirements of subsection 29-70(1). However, the Commissioner has made a determination under subsection 29-10(3) to waive the requirement for the recipient to hold a tax invoice before attributing an input tax credit to a tax period, if the recipient or their agent holds a document that contains the identity and ABN of the supplier's agent, and that otherwise satisfies the requirements of subsection 29-70(1).'

For more information, refer to:

A New Tax System (Goods and Services Tax) Waiver of Tax Invoice Requirement (Acquisitions Under an Agency Relationship) Legislative Instrument 2013

14.3.4 Are all lessees required to be supplied with receipts or tax invoices?

Non-Interpretative - other reference (see GSTR 2013/1 - Goods and services tax: tax invoices).

ATO position

A tax invoice for any taxable supply (residential rent is not a taxable supply) made to the lessee must be given to the lessee within 28 days of a request by the lessee. The GST law does not require additional 'receipts' to be issued to the lessee. If a 'receipt' is required for other regulatory or commercial purposes, it may be possible to combine the 'receipt' and the tax invoice into a single document. For more information about tax invoice requirements, see GSTR 2013/1.

14.3.5 How much information about a supply should be noted on an owner's statement, tenant's statement, tenant's receipt etc?

Non-Interpretative - other reference (see GSTR 2013/1 - Goods and services tax: tax invoices).

ATO position

The information requirements for a tax invoice are set out in GSTR 2013/1, and those for an adjustment note, in draft GSTR 2013/D1. The GST law does not prescribe information requirements for documents other than tax invoices and adjustment notes. If the documents are not to be used as tax invoices, or adjustment notes, the information content of those documents will be an ordinary commercial decision for the entities concerned.

14.3.6 Whose ABN must be shown on the tax invoice?

Non-Interpretative - other reference (see GSTR 2013/1 - Goods and services tax: tax invoices)

ATO position

Section 29-70(1) of the GST Act specifies amongst other requirements that a tax invoice is a document that contains enough information to enable the ABN and identity of the supplier to be clearly ascertained. (Refer to 14.3.3 and GSTR 2013/1 for more information).

14.3.7 Will a remittance showing the GST that has been paid to a creditor (for example, a tradesman) be required?

Non-Interpretative - straight application of the law.

ATO position

When a taxable supply is made, the creditor will have issued a tax invoice that identifies how much GST has been charged for the supply. The recipient on payment of that supply is not required to identify to the creditor, the amount of GST they have paid for the supply.

14.4 GST administration

14.4.1 When is an entity required to remit GST to the ATO - monthly or quarterly?

Non-Interpretative - straight application of the law

ATO position

If your GST turnover is less than $20 million, you are required to report and pay GST quarterly unless you elect to do so monthly. You are required to report and pay GST monthly if:

(a) your GST turnover is $20 million or more

(b) your enterprise will be carried on in Australia for less than three months, or

(c) you have a history of failing to comply with your obligations under a taxation law.

The quarterly GST reporting and payment dates are as follows:

Quarter	Due date	Time to complete
Quarter 1 (July-September)	28 October	4 weeks
Quarter 2 (October-December)	28 February	8 weeks
Quarter 3 (January-March)	28 April	4 weeks
Quarter 4 (April-June)	28 July	4 weeks

If you report and pay GST monthly, you must do so no later than the 21st of the following month.

For more information about payment of GST, see the GST for small business on the ATO website

14.4.2 Where should an agent retain the GST collected before the payment is required by the ATO?

Non-Interpretative - straight application of the law

ATO position

There is an obligation on registered entities to remit net amounts of GST collected to the ATO. How entities deal with the funds collected prior to remitting them to the ATO is a commercial decision, which will be based on the entity's individual policies and procedures. If the net amount of GST is not remitted to the ATO on or before the due date, penalties will apply. Where entities are required to make electronic lodgements (that is, where GST turnover is $20 million or greater) any GST collected should be placed into an Australian bank account to facilitate this method of payment.

14.4.3 What happens where the supplier incorrectly charges GST and the recipient, in good faith, claims the input tax credits?

Non-Interpretative - straight application of the law

ATO position

See the fact sheet Correcting GST errors

14.4.4 What are the GST obligations for a real estate agent in relation to payment of GST and input tax credit claims?

Non-Interpretative - straight application of the law

ATO position

It depends on whether the real estate agent is acting in the capacity of agent or principal. Issues 14.2, 14.3.3, 14.3.6, 14.5.1, 14.10 and 14.14.4 discuss the GST implications for an entity acting in the capacity of agent.

If a real estate agent is acting in the capacity of principal, it is liable to pay GST on any taxable supplies it makes and is entitled to claim an input tax credit for any creditable acquisitions. It is required to report and pay GST according to the rules set out in issue 14.4.1.

14.4.5 Will GST be payable on property maintenance etc and who will collect this?

Non-Interpretative - straight application of the law

ATO position

A tradesperson who carries out the maintenance of a property is providing a service to the owner of the property. If the supply is a taxable supply, the supplier (tradesperson) is liable to pay the GST.

14.4.6 When can a real estate agent account for GST on a cash basis?

Non-Interpretative - other reference (see GSTR 2000/13 - Goods and services tax: accounting on a cash basis).

ATO position

See GSTR 2000/13.

14.4.7 Does the ATO think there are benefits if all computer programs handle the GST in a standard way?

Non-Interpretative

ATO position

The type of computer program to be used by an entity to meet their obligations under the GST Act is a commercial decision for that entity to make. The ATO is not in a position to comment on this issue.

14.5 Expenses incurred on behalf of a property owner

14.5.1 If an agent incurs advertising, repair, maintenance costs and electronic banking charges etc on behalf of the owner, who is entitled to the input tax credits and what happens if the agent includes a mark up on these costs?

For source of ATO view refer to GSTR 2000/37 - Goods and services tax: agency relationships and the application of the law

ATO position

When an owner makes acquisitions through agents the general law of agency may apply. That is, a thing done by an agent as agent for the owner is a thing done by the owner. The owner is entitled to the input tax credits on creditable acquisitions and importations made through the agent. The agent is not liable for the GST and is not entitled to the input tax credits. The terms of the agency agreement will determine whether a particular amount recovered from the owner forms part of the consideration for the supply of agency services or is merely a reimbursement of costs incurred by the agent on behalf of the owner. A payment is a reimbursement when the agent is compensated exactly (meaning precisely, as opposed to approximately) for an expense already incurred although not necessarily disbursed. In general, the owner considers the expense to be its own and the agent incurs the expenditure on behalf of the owner.

It should be noted that where an agent incurs a cost that is reimbursed by the owner, the agent is not entitled to claim an input tax credit on the acquisition. Where an amount is incurred and not reimbursed, the cost will represent an ordinary operating cost of the agent's enterprise and an input tax credit will be available to the agent (assuming it is otherwise a 'creditable acquisition' for the agent).

Example

> *An agent purchases a $5,500 air-conditioning unit for the owner of a building and claims the reimbursement. The owner is entitled to the input tax credit if it is a creditable acquisition.*

In the example above, if the agent charges the owner more than $5,500, it would not be a reimbursement, that is, the agent charges a mark-up. Assuming the agent who is registered for GST charges the owner $6,050 and invoices the owner for $6,050 being sale of an air-conditioning unit from the agent to the owner; GST payable by the agent would be 1/11 of $6,050 which is $550. The agent is entitled to claim the input tax credit of $500 which is 1/11 of $5,500. The owner is entitled to claim an input tax credit of $550 if the unit is a creditable acquisition. If the agent claims the reimbursement of $5,500 plus a service fee of $550 for organising the purchase and installation, etc; GST payable by the agent would be $50 being 1/11 of $550. The owner is entitled to an input tax credit of $550 (that is, 1/11 of $5,500 + 1/11 of $550) provided the unit is a creditable acquisition.

Electronic banking charges incurred by the agent and passed on to property owners would not usually be considered a reimbursement. The banking charges relate to activities on the agent's bank account and are a cost to their business, which they then pass on to those whose properties they manage. If the charges to the owner's trust account form part of the consideration for the services performed by the agent, GST will be payable by the agent on these amounts.

A discussion of the agency relationship and disbursements appears in GSTR 2000/37 commencing at paragraph 48.

14.5.2 Will the charges to the owner's trust account be subject to GST? For example, agent's commission, lease preparation fees, FID, BADT, statement fees, transfer fees, cheque fees.

For source of ATO view refer to GSTR 2000/37 - Goods and services tax: agency relationships and the application of the law.

ATO position

Where an agent makes a taxable supply of services to the owner, the agent will be liable to remit 1/11th of the consideration received for the supply as GST. Consideration for the supply by the agent will include fees for services performed for example; agency commissions and lease preparation fees. The agent will be liable for GST on these amounts (assuming the requirements of section 9-5 of the GST Act are otherwise satisfied). Such charges to the owner's trust account will therefore be subject to GST.

However, there may be other fees and charges that the agent has incurred on behalf of the owner, for which the agent is subsequently reimbursed. Such fees and charges are not considered to form part of the consideration for the services performed by the agent. Accordingly, the agent will not be liable for GST when these amounts are recovered from the owner. The terms of the agency agreement will determine whether a particular amount recovered from the owner forms part of the consideration for the supply of agency services (subject to GST), or is merely a reimbursement of costs incurred by the agent on behalf of the owner (not subject to GST). A payment is a reimbursement when the agent is compensated exactly (meaning precisely, as opposed to approximately) for an expense already incurred although not necessarily disbursed. In general, the owner considers the expense to be their own and the agent incurs the expenditure on behalf of the owner.

It should be noted that where an agent incurs a cost that is reimbursed by the owner, the agent is not entitled to claim an input tax credit on the acquisition. Where an amount is incurred and not reimbursed, the cost will represent an ordinary operating cost of the agent's enterprise and an input tax credit will be available to the agent (assuming it is otherwise a 'creditable acquisition' for the agent). In summary, if the charges to the owner's trust account are reimbursements to the agent for costs incurred, GST will not be payable by the agent on these amounts. Therefore, these charges will not be subject to GST. If the charges to the owner's trust account form part of the consideration for the services performed by the agent, GST will be payable by the agent on these amounts.

A discussion of the agency relationship and disbursements appears in GSTR 2000/37 commencing at paragraph 48.

14.5.3 Does the consideration for a commercial property lease include payments made by the lessee for the lessor (for example, council rates and land tax)?

Non-Interpretative - other reference (see GSTD 2000/10 - Goods and services tax: are outgoings payable by a tenant under a commercial property lease part of the consideration for the supply of the premises?)

ATO position

For a discussion on outgoings payable by a tenant under a commercial property lease which represents part of the consideration for the supply of the premises refer to the GST Determination GSTD 2000/10.

14.6 Commission

14.6.1 Is an agent's commission for the sale of a property subject to GST if the sale contract was entered into before 1 July 2000, but settlement occurs on or after that date?

For source of ATO view refer to GSTR 2000/7 - Goods and services tax: transitional arrangements - supplies, including supplies of rights, made before 1 July 2000 and the extent to which such supplies are taken to be made on or after 1 July 2000.

ATO position

The Transition Act states that GST is payable on a supply to the extent that it is made on or after 1 July 2000. In answering the question of whether a GST liability arises on a real

estate agent's commission there are two questions to be answered. Firstly, what is the service, as identified in the agency sale agreement, provided by the agent and secondly, when is this service performed. The time of supply rule for services is that the supply is made when the services are 'performed'. '*Performed*' is not defined in the Transition Act and should be given its ordinary meaning, which infers finality or completion of the service.

The time that a service is performed will depend on the supply identified in each individual agreement. The supply provided by a real estate agent will be provided at a specific point in time and will not be made progressively over a period. Generally, this point in time will be upon settlement. However the agreement may identify the supply as being performed at an earlier point in time. An example of where a supply is identified as being at an earlier point in time is where the agent is engaged to *'inspect, value, market a property, provide an auctioneer and find a buyer at auction'*. Here the supply is made when a buyer is found at auction. Another example is where the agent is engaged to *'find a ready willing and able purchaser'*. Here, the supply would be made when such a purchaser is found. However, if other services are identified in the agreement, the supply may not be made until those other services, as identified in the agreement, are complete.

The ATO considers that where an agreement provides that the agent is to sell the property, the supply of the agent's service is not complete until such time as the sale is complete, which is at settlement. Further, the receipt of consideration does not determine the point in time that the supply is made. Generally, clauses which relate to entitlement to fees are regarded as conditions surrounding payment and are often placed in agreements to protect a real estate agent's entitlement to commission in a competitive market. They do not affect the time of supply for GST purposes. Further, these clauses often do not permit the agent to receive the payment of the commission, they merely establish which agent is entitled to the commission.

Where independent services, such as advertising or valuations, are performed before 1 July 2000 these will be regarded as separate supplies and not subject to GST.

In conclusion, if the agreement provides that the agent is appointed to sell the property and settlement is on or after 1 July 2000, GST will apply. The fact that the contract becomes unconditional before 1 July 2000 does not mean the service is performed before 1 July 2000. It is to be noted that the ability of a real estate agent to recover the GST liability from the vendor will depend on the terms of the individual agreement. This is a question of contract law and is not governed by the GST legislation.

14.7 Fees

14.7.1 Which of the following fees charged by an agent are subject to GST: letting fees, lease preparation fee charged to the landlord, lease preparation fee charged to the tenant, statement and administration fee, property inspection fees?

Non-interpretative- straight application of the law.

ATO position

If a real estate agent is registered for GST, all of the fees listed above will be consideration for taxable supplies. Letting fees charged to the landlords or tenants, lease preparation fees from both landlords and tenants, statement and administration fees and property inspection fees are all paid to the real estate agent as consideration for services provided and will all be subject to GST.

14.7.2 GST treatment of fees charged by real estate agents for preparation of residential tenancy agreements

For source of ATO view refer to GSTR 2000/37 - Goods and services tax: agency relationships and the application of the law.

ATO position

If a real estate agent is registered for GST and the other requirements of section 9-5 of the GST Act are satisfied, the service provided by the real estate agent for the preparation of a residential tenancy agreement is a taxable supply. The agent has a GST liability of 1/11th of the price of the supply (for example, if an agent charges $33 for preparation of an agreement, the real estate agent will have a GST liability of $3 on the supply of the service).

State legislation may place the landlord under a statutory obligation to provide the tenant with a copy of the unsigned and executed agreements. It may also entitle the landlord to seek reimbursement from the tenant for a portion of the preparation costs of the residential tenancy agreement.

A real estate agent may prepare a residential tenancy agreement at the request of the landlord so that the landlord can comply with its obligations under State legislation. This will result in a separate contractual agreement between the landlord and the real estate agent. In this situation the real estate agent makes a taxable supply of services to the landlord. Consequently, it is the landlord, not the tenant who is liable for the consideration payable on the taxable supply.

Any reimbursement made by the tenant is not consideration payable to the real estate agent for the supply made by the real estate agent to the landlord. Nor is the reimbursement made by the tenant consideration for any supply made by either the landlord or the real estate agent to the tenant. It is a payment made under the tenant's statutory obligation to the landlord.

In practice, that reimbursement may, at the implied direction of the landlord, be paid to the real estate agent and retained by the real estate agent against the fee charged to the landlord for the preparation of the agreement. As a result, the amount of the reimbursement may become part of the consideration paid by the landlord for the supply made by the real estate agent to the landlord.

As there is no supply of a lease preparation service by either the landlord or the real estate agent to the tenant, there is nothing in the GST law which would allow either the landlord or the real estate agent to 'gross up' the reimbursement to reflect GST. The amount of any reimbursement is a matter for State law.

Example

> *Peter owns a residential property in NSW that has been advertised for rental through a real estate agent, Lisa, who is registered for GST. Bob is interested in leasing the property. Lisa is asked by Peter to prepare a residential tenancy agreement. Lisa charges Peter $33 for her services. It is assumed that the requirements of section 9-5 of the GST Act are satisfied. The GST implications are as follows:*

As Lisa is making a taxable supply to Peter, her GST liability is $3 (1/11th of $33).

The consideration of $33 is payable by Peter to Lisa. As residential accommodation is an input taxed supply, Peter cannot claim an input tax credit for the GST of $3 paid on the supply. Peter is entitled by NSW legislation to seek a reimbursement of up to $15 directly from Bob or he may allow Lisa to retain that amount from any payment made by the tenant to the agent in relation to the rented property.

14.8 GST pricing issues

Issues 14.8.1, 14.8.2 and 14.8.3 have been withdrawn as at 21 Jan 2004.

For information about whether fees and prices should be quoted GST-inclusive or GST-exclusive, contact the Australian Competition and Consumer Commission (ACCC) on **1300 302 502**.

14.9 Withholding

Issues 14.9.1 and 14.9.2 have been withdrawn as at 21 Jan 2004.

For information about PAYG withholding requirements, refer to the ATO website at No ABN withholding - questions and answers.

14.10 Non-resident property owners

14.10.1 Is a resident agent for a non-resident owner of a commercial property liable for the GST on the lease of the property?

Non-Interpretative- other reference (see paragraphs 97 to 115 of GSTR 2000/37 - Goods and services tax: agency relationships and the application of the law).

ATO position

Yes, if the non-resident owner is registered (or required to be registered) for GST and the lease of the property is a taxable supply. For more information about the GST responsibilities of resident agents acting for non-residents, see GSTR 2000/37 (paragraphs 97 to 115).

14.10.2 What is meant by 'resident agent' and 'non-resident'?

Non-Interpretative- other reference (see GSTR 2000/37 - Goods and services tax: agency relationships and the application of the law).

ATO position

A 'resident agent' means an agent that is an Australian resident for income tax purposes. 'Non-resident' means an entity that is not an Australian resident for income tax purposes.

For more information about when a person is acting as agent or not, see GSTR 2000/37.

14.11 Tax exempt property owners

14.11.1 Is the GST treatment of a supply of property management services by an agent any different if the recipient of those services is an income tax exempt organisation (for example, a church)?

Non-interpretative- straight application of the law

ATO position

No, it makes no difference if the recipient is an income tax exempt organisation. GST is payable if the provision of the services is a taxable supply.

14.11.2 Are some commercial lessees GST exempt?

Non-interpretative- straight application of the law

ATO position

No. The GST law does not provide a GST exemption for lessees of commercial properties. If the lease of the property is a taxable supply, GST applies even if the lessee is exempt from income tax (for example, a charitable organisation).

14.12 Transitional issue and management agency authorities

Issues 14.12.1 to 14.12.12 are concerned with matters that arose during the introduction of GST, and are adequately dealt with by GSTR 2000/16.

These issues have been withdrawn as at 21 Jan 2004.

14.13 Rent roll

14.13.1 Is the sale of an agent's rent roll subject to GST?

Non-Interpretative- other reference (see GSTR 2002/5- Goods and services tax: when is a 'supply of a going concern' GST-free?)

ATO position

Yes, if the agent selling the rent roll is registered or required to be registered for GST. (If the rent roll is sold as part of the sale of the agent's property management business, it may be GST-free as a supply of a going concern. For more information about GST-free supplies of going concerns, see GSTR 2002/5.)

14.13.2 What is the GST treatment of the transfer of a real estate agent's rent roll?

Issue 14.13.2 has been withdrawn as at 21 Jan 2004. It is already dealt with by Issue 14.13.1. For information about whether section 13 of the GST Transition Act will continue to apply to management agreements entered into as a result of a transfer of a rent roll, see GSTR 2000/16.

14.14 General

14.14.1 What information and advice should a managing agent give to tradespeople and contractors regarding the GST and the general income tax imposition where more than 80% of their income is received from the agent?

Non-Interpretative - straight application of the law

ATO position

A managing agent should advise the tradespeople to contact the ATO for advice on GST and income tax matters. They can call the GST hotline on **13 24 78** and a client service representative will assist them by providing oral advice and if need be, provide a written response to the specific queries , to place an order for relevant booklets and/or fact sheets and to submit a request for a field visit. For income tax matters, they can call **13 28 61** for advice.

14.14.2 Are commercial premises under residential leases and residential premises under commercial leases subject to GST?

Non-Interpretative - straight application of the law

ATO position

It depends on the character of the premises being supplied as to whether GST is charged on a lease. If the character is that of residential premises (as defined) then section 40-35 of the GST Act or 40-70 of the GST Act may apply and the supply will be input taxed and no GST payable. However, if the premises are not residential then GST will apply. Refer to the GST Rulings GSTR 2012/5, which discusses residential premises and GSTR 2012/6 which discusses commercial residential premises. It is important to refer to the definition in the GST Act for the type of premises that are considered to be commercial residential

premises as supplies of a lease of this type of premises will be subject to GST. If the lease meets all the criteria in the definition of a taxable supply, then GST will be applicable.

14.14.3 When do the old taxes such as FID and BADT cease to operate?

Non-Interpretative - straight application of the law

ATO position

The States and Territories have ceased to apply the following taxes:

- Bed taxes - taxes levied on the cost of temporary residential accommodation - as from 1 July 2000.
- Financial Institutions Duty - taxes levied on receipts at banks and other financial institutions and on the short term money market - as from 1 July 2001.
- Stamp duty on quoted marketable securities - stamp duties levied on the sale of stocks and shares - as from 1 July 2001.

As set out in the Intergovernmental Agreement of the Reform to the Commonwealth State Financial Relations, the following taxes may also cease to operate:

- Debit tax - taxes on withdrawals from bank accounts with a cheque drawing facility - from 1 July 2005 - subject to a review by a Ministerial Council comprising Commonwealth, State and Territory Treasurers.
- A review will be carried out by the Ministerial Council of the need to retain a range of business stamp duties by 2005. These duties include stamp duties on leases; mortgages, debentures, bonds and other loan securities; credit arrangements, instalment purchase arrangements and rental arrangements; cheques, bills of exchange and promissory notes; non-residential conveyances; and unquoted marketable securities.
- An adjustment of gambling taxes by States and Territories will be made to take account of the impact of the GST on gambling operators.

14.14.4 What will the agents have to supply to the ATO if a tenant or owner is being investigated?

Non-interpretative- straight application of the law

ATO position

Subsection 353-10(1) in schedule 1 to the *Taxation Administration Act 1953* provides that 'the Commissioner may direct a person to:

(a) give to the Commissioner any information that the Commissioner requires; or

(b) to produce to the Commissioner any documents in the custody or under the control of the person;

for the purpose of enabling the Commissioner to apply the GST law in relation to the person on any other person.'

The Commissioner pursuant to subsection 353-10(1), may direct an agent to provide any information or documents required by the Commissioner for the purposes of applying the GST law to the agent or any other entity (including the owner and the tenant).

14.14.5 In the process of selling farming properties, plant and equipment is usually sold by way of a clearing sale. Assuming the vendor is registered for GST are the sales taxable supplies and therefore subject to GST?

Non-interpretative- straight application of the law

ATO position

If the vendor is registered for GST, the sale of equipment at a clearing sale will still be in the course or furtherance of the enterprise that the vendor is carrying on. This is notwithstanding that the sales may be made in the process of terminating the farming business. The clearing sales are still supplies made in the course of the farming enterprise. Accordingly, the clearing sales are taxable supplies and will be subject to GST. The vendor will be liable to remit the GST on these supplies to the ATO.

14.14.6 What is the effect of a GST clause in a MAA?

Non-interpretative- straight application of the law

ATO position

The purpose and effect of a GST clause in an agreement will depend on the terms of the clause and the particular agreement. In general, the purpose of a GST clause is to allow the supplier (the agent) to increase the amount of the consideration by the amount required to cover the GST payable by the supplier on the supply.

14.14.7 How will the GST affect the sale of properties in regard to the agent? Can the GST be handled outside of the trust account?

Non-Interpretative- other reference (see GSTR 2000/37 - Goods and services tax: agency relationships and the application of the law).

ATO position

Supplies made through agents are considered to be supplies made by the principal. Therefore, if the sale of the property is a taxable supply, it is the vendor who is liable to remit the GST on the supply and not the agent. The GST component of the sale price forms part of the sale proceeds and therefore the vendor is entitled to the funds. The total sale proceeds should be treated in accordance with existing trust account procedures.

14.14.8 Is a GST registered entity entitled to an input tax credit for the purchase of a new holiday apartment (for which the vendor was liable for GST)?

Non-Interpretative - straight application of the law.

ATO position

No. It is not a creditable acquisition under Division 11 of the GST Act. This is because the purchase of the apartment, being residential premises, is either of a private or domestic nature; or is for making input taxed supplies by way of sale or rental.

Section 15 – Sale of real property

There have been changes to the law relating to the application of the margin scheme. To view the *Tax Laws Amendment (2005 Measures N 2) Bill 2005* refer to the Parliamentary website aph.gov.au

For GST, Luxury Car Tax and Wine Equalisation Tax purposes, from 1 July 2015, where the term 'Australia' is used in this document, it is referring to the 'indirect tax zone' as defined in subsection 195-1 of the GST Act.

(a) added, (u) updated, (w) withdrawn

Issue Number	Index	Date	History
15.1	**Margin scheme**	n/a	n/a
15.1.1	Is there a Public Ruling on the margin scheme? **Please Note:** Amendments to the margin scheme legislation apply from 17 March 2005	19/06/03(u) 01/07/05(w)	View history
15.1.2	What is the distinction between section 19 of the GST Transition Act and Division 75 of the GST Act?	09/04/01	n/a
15.1.3	Who can use the margin scheme? **Please note:** Amendments to the margin scheme legislation apply from 17 March 2005. The amendments relating to applying the margin scheme apply from 29 June 2005	09/04/01 1/07/05(w)	View history
15.1.4	How is the margin calculated? **Please Note:** Legislative Amendments to the margin scheme provisions apply from 17 March 2005	19/06/03(u) 1/07/05(w)	View history
15.1.5	When are valuations to be made under the margin scheme? **Please note:** Legislative Amendments to the margin scheme provisions apply from 17 March 2005	19/06/03(u) 1/07/05(w)	View history
15.1.6	How does the margin scheme affect input tax credits?	09/04/01	n/a
15.1.7	Is GST payable if a property is sold on or after 1 July 2000 where there has been no capital gain?	09/04/01	n/a
15.1.8	Can different methods of calculating GST on supplies of real estate property be used in the sale of individual parcels of land? **Please note:** Legislative Amendments to the margin scheme provisions apply from 17 March 2005	09/04/01 01/07/05(w)	View history
15.1.9	Does the seller or the purchaser choose which method will be used? **Please note:** Amendments to the margin scheme legislation relating to 'applying the margin scheme', have effect from 29 June 2005	09/04/01 01/07/05(w)	View history
15.1.10	When does an election to use the margin scheme have to be made? **Please note:** Amendments to the margin scheme provisions on 'applying the margin scheme', have effect from 29 June 2005	09/04/01 01/07/05(w)	View history
15.1.11	Will the type of purchaser affect how much GST is payable on the sale of real property? **Please note:** Amendments to the margin scheme provisions apply from 17 March 2005. The	28/06/05(u) 1/07/05(w)	View history

Issue Number	Index	Date	History
	amendments relating to 'applying the margin scheme' apply from 29 June 2005		
15.1.12	In many off-the-plan sales currently transacted, the contract may have a clause that allows for any GST to be added to the contract price, or in the case of an auction, that the GST can be added to the GST-exclusive knock-down price. Do such clauses prohibit the use of the margin scheme in such cases? **Please note:** Amendments to the provisions relating to 'applying the margin scheme' have effect from 29 June 2005.	28/06/05(u) 01/07/05(w)	View history
15.1.13	If the payment of consideration for the purchase of real property is other than money does anything change? Can the purchaser still use the margin scheme? **Please note:** Legislative Amendments apply from 17 March 2005. In relation to 'applying the margin scheme', the amendments apply from 29 June 2005.	28/06/05(u) 1/07/05(w)	View history
15.1.14	The approval for the construction of residential units was granted in December 1998 and the construction of the building was sent to tender in February 1999. The developer entered into a fixed price contract with the builder in April 1999. The construction of the units will span 1 July 2000. 1. (a) What are the GST implications of the contract, particularly over the transition period? (b) Are input tax credits available for building materials purchased post 1 July 2000 on a building contract signed before 7 July 1999? 2. Is the margin scheme applicable to 'off-the-plan' units sold prior to 1 July 2000 but not completed until after 1 July 2000? 3. What are the qualifications required for valuers for the purposes of making a valuation under the margin scheme? 4. Does the ATO require any notification before or after the sale of the properties? There are amendments to the margin scheme provisions relating to 'applying the margin scheme. These amendments have effect 29 June 2005"	28/06/05(u) 1/07/05(w)	View history
15.1.15	Is the margin scheme available for the sale of property acquired on or after 1 July 2000? **Please Note:** Legislative Amendments to the margin scheme provisions relating to 'applying the margin scheme' have effect from 29 June 2005	28/06/05(u) 01/07/05(w)	View history
15.1.16	Does the vendor need to reach an agreement with the purchaser before the margin scheme applies? Legislative Amendments to the margin scheme provisions relating to 'applying the margin scheme' have effect from 29 June 2005	28/06/05(u) 1/07/05(w)	View history
15.1.17	How do you know if a supply was made to you under the margin scheme?	28/06/05(u) 01/07/05(w)	View history

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	Legislative Amendments to the margin scheme provisions relating to 'applying the margin scheme have effect from 29 June 2005		
15.1.18	Where property purchased as a taxable supply on which GST was worked out without applying the margin scheme is subdivided for development purposes, can the margin scheme be applied to the sale of the individual lots? Legislative amendments to the margin scheme provisions apply from 17 March 2005. In relation to 'applying the margin scheme', the amendments will apply from 29 June 2005	28/06/05(u) 1/07/05(w)	View history
15.1.19	Can the margin scheme apply to supplies of allotments subdivided from an amalgamation of two parcels of land, where one of the original parcels was acquired through a taxable supply without using the margin scheme? Legislative Amendments to the margin scheme provisions apply from 17 March 2005. In relation to 'applying the margin scheme', the amendments apply from 29 June 2005	28/06/05(u) 1/07/05(w)	View history
15.1.20	Where land and buildings in the course of construction have not been subdivided into individual lots, can the valuation be attributed to individual lots if the land is in various stages of development as at 1 July 2000? Legislative Amendments apply from 17 March 2005. In relation to 'applying the margin scheme', the legislative amendments apply from 29 June 2005	09/04/01 01/07/05(w)	View history
15.1.21	Can different valuation methods be used for land and buildings that have not been subdivided into individual allotments yet are in different stages of development as at 1 July 2000? **Please Note:** Legislative Amendments apply from 17 March 2005	09/04/01 01/07/05(w)	View history
15.1.22	Can you use the cost of completion method for premises that have been completed several years ago? The cost of completion method only applies to supplies made up to 30 June 2005 (unless the contract for supply was entered into before 1 July 2005)	09/04/01 01/07/05(w)	View history
15.1.23	Using the cost to complete method on a major subdivision, is it appropriate/acceptable to apply this to each stage if the land is being developed in stages? Can infrastructure costs be apportioned equally to each block or on an area basis or either? Cost of completion method only applies to supplies made up to 30 June 2005. Amendments to the margin scheme provisions apply from 17 March 2005	09/04/01 01/07/05(w)	View history
15.1.24	How does the margin scheme apply to this series of transactions: Value of property at 1 July 2000 is $20,000. Improvements of $30,000 are made. Property is sold for $64,000 at the end of 2000. Further improvements of $50,000 are undertaken. Property is sold in 2001 for $163,000.	09/04/01	

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15.1.25	Margin scheme - With the cost of completion method are actual costs only those permanently affixed to the site? Cost of completion method only applies to supplies made up to 30 June 2005 or to contracts for supplies entered into before 1 July 2005. Amendments to the margin scheme provisions apply from 17 March 2005	09/04/01 01/07/05 (w)	View history
15.1.26	Where a valuation for a development project is undertaken by a valuer, is the valuer required to lodge the master valuation report and summaries with the ATO? • What are the reporting procedures? • Who can undertake the valuation using the cost of completion method? • Legislative Amendments to the margin scheme provisions apply from 17 March 2005.	09/04/01 01/07/05(w)	View history
15.1.27	Can a mortgagee in possession (a creditor) exercising power of sale in relation to real property apply the margin scheme in relation to the sale? Amendments to the margin scheme provisions apply from 17 March 2005. In relation to 'applying the margin scheme', the legislative amendments apply from 29 June 2005	29/05/02(u) 01/07/05(w) 19/10/05(u)	View history
15.1.28	Can the representative of an incapacitated entity apply the margin scheme when making a supply of real property which belonged to the incapacitated entity? Amendments to the margin scheme provisions apply from 17 March 2005. In relation to 'applying the margin scheme', the legislative amendments apply from 29 June 2005	29/05/02(u) 01/07/05(w) 19/10/05(u)	View history
15.1.29	What is the meaning of the words 'improvements on the land' for the purposes of subsections 75-10(3) and 75-10(3A) of the GST Act?	26/04/06(w) 24/12/03(u)	n/a
15.1.30	What is the meaning of 'the consideration for your acquisition of the interest, unit or lease' referred to in subsection 75-10(2) of the GST Act?	09/11/02(a)	n/a
15.1.31	What are the record keeping requirements if you make supplies under the margin scheme?	19/06/03(a)	n/a
15.1.32	Can you use the margin scheme when you make a supply of premises and the supply is partly taxable and partly input taxed?	19/06/03(a)	n/a
15.2	**Margin scheme examples**	n/a	n/a
15.2.1	Margin scheme example: - A and B are registered for GST. A buys from B 10 hectares of undeveloped non-residential land for $110,000 (including 1/11 as GST). A claims an input tax credit of $10,000. A subdivides the land into lots each of one hectare. Can A sell any lot under the margin scheme? Would it make a difference if it was residential land? Amendments to the margin scheme provisions apply from 17 March 2005. In relation to 'applying the margin scheme', the legislative amendments apply from 29 June 2005	09/04/01 01/07/05(w)	View history

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15.2.2	Margin scheme example: - A is registered for GST as at 1 July 2000. A owns existing residential premises (a house) on a large parcel of land, all of which he bought from a builder in 1990. After 1 July 2000, A constructs a new house on part of the land and then subdivides the land. Two new certificates of title are issued. A sells both lots as soon as the new house is completed. (a) Must A pay GST on both lots when they are sold? (b) Can A use the margin scheme, and if so at what date must the land be valued? (c) What must A state on the tax invoice he provides?	09/11/02(u) 01/07/05(u)	n/a
15.3	**Land contracts**	n/a	n/a
15.3.1	Is a deposit paid under a standard land contract subject to Division 99 of the GST Act?	09/04/01	
15.3.2	Is a standard land contract an Invoice?	09/04/01	
15.3.3	How do the GST attribution rules apply to sales of land under standard land contracts?	09/04/01	
15.4	**General**	n/a	n/a
15.4.1	What is the GST treatment of adjustments on property settlements?	21/10/03(u)	
15.4.2	What is the GST treatment of rebates paid by a developer to a purchaser of residential premises? Eg; $5,000 paid to the purchaser if the purchaser completes landscaping to an agreed value.	09/04/01	
15.4.3	Is GST applicable to compensation payments resulting from the compulsory acquisition or negotiated purchase of a property by a public authority where the property in question is acquired on or after 1 July 2000?	12/12/03(w)	
15.4.4	A company is a corporate trustee of a family trust. The trust is registered as it is in receipt of commercial rents in excess of $50,000. It also owns residential property which will be input taxed in relation to rentals received. Is GST applicable to the sale of residential property by the trust?	09/04/01	
15.4.5	A company owns land, which is sold as a component of house and land packages. A buyer enters into a contract for a specified purchase price and pays a non-refundable deposit. Settlement does not occur until six months after construction of the house is completed. However, as a condition of the sale contract, the company grants the buyer a licence to occupy the property for a set fee in relation to the six month period prior to settlement. The licence fees immediately become the property of the seller when they are paid. If the buyer is not in default under the terms of the contract and proceeds to settlement, the licence fees paid are then treated as part payment of the balance of the purchase price of the property. The house and land contracts have a number of elements (contract date, the occupancy date of the	09/04/01	

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	property, the settlement date and the dates on which the deposit and licence fees are paid) that span 1 July 2000.		
15.4.6	What are the GST implications on the sale of residential premises (previously occupied by a deceased person as a residence for many years) by an executor of a deceased estate to a purchaser neither of whom are registered for GST?	09/04/01	
15.4.7	Is the sale of a residential dwelling located on a large parcel of land and which is suitable for subdivision, a taxable supply? (The vendors have used the dwelling as their principal residence for over twenty years. The property is zoned for unit development. The vendors are elderly and do not intend to undertake any development themselves. They plan to sell the property with settlement in January 2001. There are currently no development plans before council. It is likely that the purchaser will develop the property in the future. The vendors are retired and not registered for GST).	09/04/01	
15.4.8	Do residential premises which have been substantially renovated (or built to replace demolished premises on the same) land, and sold as a taxable supply continue to be 'new residential premises' and subject to GST if subsequently sold by a registered entity?	09/04/01	
15.4.9	Where an enterprise acquires a property for a creditable purpose, and the use of that property changes to a partly private/domestic purpose, will an adjustment event occur under Division 129 of the GST Act resulting in the owner having to repay the previously claimed input tax credits?	09/04/01	
15.4.10	Where an entity acquires a property for a creditable purpose, and the use of that property changes to a solely private/domestic purpose, will an adjustment event occur under Division 130 of the GST Act resulting in the owner having to repay the previously claimed input tax credits?	09/04/09(u)	
15.4.11	Is the sale of rented flats, which have been converted to strata title for sale purposes, an enterprise and therefore subject to GST?	09/04/01	
15.4.12(a)	By itself, does the process of strata titling a residential apartment building make the strata titled units 'new residential premises'?	30/06/02(u)	View history
15.4.12(b)	Is the sale of individual residential units, after a strata title subDivision of a residential apartment building (purchased on a single property title), an input taxed supply under section 40-65 of the GST Act if the units: • are used predominantly for residential accommodation • are not commercial residential premises • have not been substantially renovated nor been built to replace demolished premises on the same land?	30/06/02(u)	View history
15.4.12(c)	A block of land contains a residential building. The block of land, together with the residential building, has previously been sold as residential premises. Does the	08/11/02(a)	

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	mere subDivision of the block of land into a smaller block of land containing the same residential building make the smaller block of land 'new residential premises'?		
15.4.12(d)	A block of land contains a residential building. The block of land, together with the residential building, which previously has been sold as residential premises, is now increased in area. Is the sale of the residential building on the increased area of land a sale of new residential premises?	08/11/02(a)	
15.4.13	Does 'potential subdivided land' mean that if one residence can be built the definition applies irrespective of the size of the land?	09/04/01	
15.4.14	When is real property 'made available'?	09/04/01	
15.4.15	An enterprise is in the business of buying houses for removal and on-selling them restumped. The roof is sometimes replaced but no other work is performed. Owners arrange their own sub-contractors to connect services. What are the GST implications of the following: 1. House is purchased, moved from it's location to another block (having been purchased before it is removed from it's original site). 2. House is purchased, conveyed to the yard from where it is sold. It is then moved to the purchaser's land and stumped. 3. Property owner contracts to have their house moved to another location. 4. House is purchased, moved to own block of land and subsequently sold.	09/04/01	
15.4.16	Purchase, renovation and sale of residential premises. Once or twice a year you purchase 'second-hand houses', renovate the properties and resell them through real estate agents. Typical renovation includes: • painting • floor polishing • a new kitchen • bathroom updating • minor electricals • minor plumbing • landscaping. 1. Are you carrying on an enterprise of purchasing, renovating and selling residential property? 2. Is the sale of renovated residential homes the sale of new residential premises? 3. Do you have to register to claim input tax credits? 4. Is GST payable on the items you purchase? 5. Can you claim the amount of GST you pay as a business expense? 6. Is GST payable on the purchase of the residential properties?	09/04/01	n/a

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	7. Do you have to charge GST when you sell the residential properties?		
15.4.17	Will land owned by a business and sold to another business be subject to GST?	09/04/01	n/a
15.4.18	Where a business, trading company or trust holds land as an investment or as an asset which is used for their enterprise, is the sale subject to GST if they are registered?	09/04/01	n/a
15.4.19	Is the supply of a separately titled residential unit garage (when supplied with the residential unit itself) input taxed as the supply of residential premises within section 40-65 of *A New Tax System (Goods and Services Tax) Act 1999* ('the GST Act')?	10/05/01(a) 19/12/2012 (w)	n/a
15.4.20	Is the supply of a separately titled residential unit garage (not sold in conjunction with a residential unit) input taxed as a supply of residential premises under section 40-65 of the GST Act?	10/05/01(a) 19/12/2012 (w)	n/a
15.4.21	What are the implications of land exchanges having regard for the provisions of *A New Tax System (Goods and Services Tax) Act 1999* ('the GST Act')? C supplies his land (valued at $100,000) to X in exchange for X's land (valued at $80,000) and X pays $20,000 to C for the fair exchange. C and X are registered. (a) What is the GST treatment of this 'land exchange' where both properties are vacant? (b) What if X is not registered? (c) Can the margin scheme be used to calculate the GST payable? (d) If the margin scheme is only used for calculating the GST payable on one of the supplies will this impact on the GST treatment on the other supply?	10/05/01(a) 01/07/05(u)	n/a
15.4.22	An investor, who is registered for GST, purchases new residential premises from a builder who is also registered for GST. The house has all the usual physical characteristics to enable it to be used for residential accommodation. The investor then supplies the house by way of lease to the builder who intends to use it as a display home. (1) Is the investor entitled to claim an input tax credit in relation to his purchase of the house from the builder? (2) Is the supply of the house by the investor to the builder by way of lease an input taxed supply, or a taxable supply?	01/03/02(a) 19/12/2012 (w) in part 19/12/2012(w)	n/a
15.4.23	Is a supply of a freehold or leasehold interest in a marina berth a supply of 'real property' for GST purposes?	29/05/02(a)	n/a
15.5	**New residential premises - substantial renovations**	n/a	n/a
15.5.1	When are new residential premises created through 'substantial renovations' of a building under paragraph 40-75(1)(b) of the GST Act?	30/06/02(a)	n/a

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15.5.2	Examples - substantial renovations	30/06/02(a)	n/a

'the GST Act'	*A New Tax System (Goods and Services Tax) Act 1999*
'the GST Regulations'	A New Tax System (Goods and Services Tax) Regulations 1999
'the Transition Act'	*A New Tax System (Goods and Services Tax Transition) Act 1999*
'the Transition Regulations'	A New Tax System (Goods and Services Tax Transition) Regulations 2000
'the ABN Act'	*A New Tax System (Australian Business Number) Act 1999*
Relevant Public Rulings	GSTR 2000/14 - *Transitional valuation of work-in-progress for head contractors in the building or civil engineering industries* GSTR 2000/21 - *The margin scheme for supplies of real property held prior to 1 July 2000* GSTR 2000/24 - *Division 129 - making adjustments for changes in extent of creditable purpose*
Relevant sections	**Division 11** 'Creditable Acquisitions' of the GST Act **SubDivision 40-C** 'Residential Premises' of the GST Act **Division 75** 'Sale of freehold interests etc' of the GST Act **Division 99** 'Deposits as security' of the GST Act **Division 129** 'Changes in the extent of creditable purpose' of the GST Act **Section 19** 'Construction agreements made before 1 July 2000' of the Transition Act

15.1 Margin scheme

15.1.2 What is the distinction between section 19 of the GST Transition Act and Division 75 of the GST Act?

For source of ATO view refer to:

- paragraphs 15-17 of GSTR 2000/14 - Goods and services tax: transitional valuation of work-in-progress for head contractors in the building or civil engineering industries
- paragraphs 76-78 of GSTR 2000/21 - Goods and services tax: the margin scheme for supplies of real property held prior to 1 July 2000.

ATO position

Section 19 of the Transition Act and Division 75 of the GST Act do not provide alternative methods of valuing property. Section 19 of the Transition Act applies to certain construction agreements which span 1 July 2000, and require a valuation of work and materials permanently affixed to the construction site as at the start of 1 July 2000, or a later date as determined by the Commissioner. This valuation, which does not include land, means the builder will be subject to GST only on the work and materials supplied on the site on and after 1 July 2000. For more information on section 19 of the Transition Act, see GSTR 2000/14, entitled 'Transitional valuation of work-in-progress for head contractors in the building or civil engineering industries'. Under Division 75 of the GST Act, the need for a valuation as at 1 July 2000 or later date only arises where a freehold interest in land, a stratum unit, or a long term lease which is acquired or held before 1 July 2000 is granted or sold on or after that date. The valuation includes the land.

Example

Andrew owns land on which he is developing a block of units. On 15 March 2000, Andrew enters into an agreement with Bob, a builder, under which Bob carries out the construction work. Construction is in progress as at 1 July 2000. Bob may value, under section 19 of the Transition Act, the work and materials that have gone into the building as at 1 July 2000 and he is not liable for GST on that value. Andrew may choose to apply the margin scheme under Division 75 of the GST Act in working out the GST on the subsequent sale of the units. Andrew will have to obtain a valuation as at 1 July 2000 of the freehold interest in the land and the building being constructed. Andrew may engage a professional valuer to determine the valuation, or he may choose the cost of completion method. In either event the value of the land itself is included.

15.1.6 How does the margin scheme affect input tax credits?

For source of ATO view refer to paragraph 71 of GSTR 2000/21 - *Goods and services tax: the margin scheme for supplies of real property held prior to 1 July 2000.*

ATO position

If you purchase real property under the margin scheme, you are not entitled to an input tax credit for the GST payable on the acquisition. However, you may be allowed input tax credits on any costs of improvements subsequently made to the real property, for example, if you are a developer.

15.1.7 Is GST payable if a property is sold on or after 1 July 2000 where there has been no capital gain?

For source of ATO view refer to GSTR 2000/21 - *Goods and services tax: the margin scheme for supplies of real property held prior to 1 July 2000*

ATO position

The GST Act is independent of the *Income Tax Assessment Act 1997* Part 3-1 and 3-3 (Capital Gains Tax). In circumstances where the margin scheme is applied to the sale of real property, GST is payable on the amount by which the consideration for the supply exceeds the consideration for your acquisition of the real property. If your original purchase price is more than your sale price, then under the margin scheme, no GST is payable on the sale because there is no positive margin.

15.1.24 How does the margin scheme apply to this series of transactions:

Value of property at 1 July 2000 is $20,000. Improvements of $30,000 are made. Property is sold for $64,000 at the end of 2000. Further improvements of $50,000 are undertaken. Property is sold in 2001 for $163,000.

For source of ATO view refer to GSTR 2000/21 - *Goods and services tax: the margin scheme for supplies of real property held prior to 1 July 2000*.

ATO position

First Sale

Sale Price $64,000

Less Valuation at 1 July 2000 $20,000

Margin $44,000

GST = Margin × 1/11 $4,000

Second Sale

Sale Price $163,000

Less consideration for acquisition $64,000

Margin $99,000

GST = Margin × 1/11 $9,000

15.1.27 Can a mortgagee in possession (a creditor) exercising power of sale in relation to real property apply the margin scheme in relation to the sale?

Non-interpretative - straight application of the law

ATO position

This question deals with the interaction between Division 75 - sale of freehold interest etc of the GST Act and Division 105 - supplies in satisfaction of debts of the GST Act.

If all of the requirements for the application of the margin scheme contained in Division 75 of the GST Act are satisfied, the mortgagee in possession (creditor) may apply the margin scheme in respect of the sale.

Division 105 of the GST Act deals with supplies made by creditors of property belonging to a debtor, where the supply is in satisfaction of a debt owed to the creditor. The supply is a taxable supply if it would have been a taxable supply had the debtor made the supply. The creditor is liable for any GST payable on the supply of the debtor's property.

Under Division 105, the supply is not a taxable supply if the debtor gives written notice to the creditor stating that the supply would not have been a taxable supply had the debtor made it. The notice must contain full reasons why the supply would not have been taxable. Alternatively, if the creditor cannot obtain such a notice, the creditor may reach a belief, on the basis of reasonable information, that the supply would not have been a taxable supply if the debtor were to make it.

It does not matter if the supply is made in the course of the creditor's enterprise, or if the creditor is registered, or required to be registered.

Having regard for the provisions of Division 105 of the GST Act, the creditor (which could either be a receiver manager, mortgagee in possession or a liquidator) is taken to be standing in the shoes of the debtor when the creditor makes the supply or is acting as agent for the debtor. As a result, for the purpose of the creditor applying the margin scheme to the sale, the word 'you' as used in Division 75 is taken to mean the debtor.

15.1.28 Can the representative of an incapacitated entity apply the margin scheme when making a supply of real property which belonged to the incapacitated entity?

ATO position

For the source of ATO view, refer to:

- paragraphs 134A and 134B of GSTR 2006/7 - *Goods and services tax: how the margin scheme applies to a supply of real property made on or after 1 December 2005 that was acquired or held before 1 July 2000*
- paragraphs 175A and 175B of GSTR 2006/8 - *Goods and services tax: the margin scheme for supplies of real property acquired on or after 1 July 2000*.

If all the requirements for applying the margin scheme under Division 75 of the GST Act are satisfied when the incapacitated entity is taken to make the supply, the representative of the incapacitated entity may apply the margin scheme in respect of the sale. However,

the representative of the incapacitated entity is liable for the GST calculated under the margin scheme.

Division 58 of the GST Act deals with representatives of incapacitated entities. The terms 'representative' and 'incapacitated entity' are both defined in section 195-1 of the GST Act. In general, they refer to insolvency practitioners such as liquidators, receivers and administrators, and the entity they are appointed over.

The key operative provisions provide that a supply, acquisition or importation by a representative, in its capacity as a representative, is taken for GST purposes, to be a supply, acquisition or importation of the incapacitated entity (section 58-5). The provisions ensure that any method the incapacitated entity would have been eligible to use to work out the amount of GST payable on a supply (such as the margin scheme under Division 75) can be used. However, the representative (and not the incapacitated entity) is liable for or entitled to GST consequences that arise from a supply, acquisition or importation or related acts or omissions during the representative's appointment (section 58-10).

In the light of the provisions of this Division, the incapacitated entity is taken to be making the supply. As a result, for the purpose of the representative applying the margin scheme to the sale, the word 'you' as used in Division 75 is taken to mean the incapacitated entity.

15.1.29 What is the meaning of the words 'improvements on the land' for the purposes of subsections 75-10(3) and 75-10(3A) of the GST Act?

Refer to GSTR 2006/6.

15.1.30 What is the meaning of 'the consideration for your acquisition of the interest, unit or lease' referred to in subsection 75-10(2) of the GST Act?

For source of ATO view refer to:

- GSTD 2006/3 - *Goods and services tax: are settlement adjustments taken into account to determine the consideration for the supply or acquisition of real property?*
- paragraph 16 of GSTR 2000/21 - *Goods and services tax: the margin scheme for supplies of real property held prior to 1 July 2000.*

The consideration for your acquisition of the freehold interest, stratum unit or long-term lease is the original purchase price paid in respect of the interest, unit or lease in question. In the case of subdivided land or premises, the consideration for your acquisition is the corresponding proportion of the original purchase price paid in respect of the relevant land or premises (section 75-15 of the GST Act).

The original purchase price of the interest, unit or lease which you have acquired:

- does not include development costs incurred either prior to or after your acquisition
- does not include incidental acquisition expenses such as legal fees, stamp duty, registration fees and other transfer costs
- is the price arrived at after allowing for the usual settlement adjustments provided for in the relevant contract of sale.

15.1.31 What are the record keeping requirements if you make supplies under the margin scheme?

Non-Interpretative - straight application of the law

If you make a taxable supply, you must keep records that record and explain all transactions and other acts you engage in that are relevant to that supply. Records that are relevant to a supply under the margin scheme will include evidence of your choice to use the margin scheme, and when that choice was made. If you are calculating the margin for the supply under subsection 75-10(3), you will also need to keep records that clearly indicate which valuation method has been used.

You must retain your records for at least five years after the supply has been made.

These record keeping requirements are set out in section 382-5 in Schedule 1 to the *Taxation Administration Act 1953.*

15.1.32 Can you use the margin scheme when you make a supply of premises and the supply is partly taxable and partly input taxed?

For source of ATO view, refer to:

- paragraphs 101-103 of GSTR 2006/7 - Goods and services tax: how the margin scheme applies to a supply of real property made on or after 1 December 2005 that was acquired or held before 1 July 2000
- paragraphs 133-136 of GSTR 2006/8 - Goods and services tax: the margin scheme for supplies of real property acquired on or after 1 July 2000.

If a supply of real property is partly input taxed and partly taxable (a mixed supply), then the margin scheme can apply to the taxable component. A common example of mixed supply is a building that contains areas that are residential and commercial.

If the margin for the supply is calculated under subsection 75-10(2) it is the difference between the consideration for the supply and the consideration for its acquisition. For mixed supplies, the consideration for the supply and the consideration for the acquisition, are the amounts of the consideration that relate to the taxable component of the supply.

Where the margin for the supply is calculated under subsection 75-10(3) it is the difference between the amount of the price that relates to the commercial component of the supply, and an approved valuation of the commercial premises at the relevant valuation date.

If the valuation is obtained for the entire building, then it must be apportioned to ascertain the part of the valuation that relates to the commercial premises.

Note: How to ascertain whether the margin for the supply is calculated under subsection 75-10(2) or 75-10(3) is discussed in more detail at 15-1-4.

15.2 Margin scheme examples

15.2.2 Margin scheme example: - A is registered for GST as at 1 July 2000.

A owns existing residential premises (a house) on a large parcel of land, all of which he bought from a builder in 1990. After 1 July 2000, A constructs a new house on part of the land and then subdivides the land. Two new certificates of title are issued. A sells both lots as soon as the new house is completed.

(a) **Must A pay GST on both lots when they are sold?**

(b) **Can A use the margin scheme, and if so at what date must the land be valued?**

(c) **What must A state on the tax invoice he provides?**

For source of ATO view refer to:

- for part (a), paragraphs 32-37 of GSTR 2003/3 - Goods and services tax: when is a sale of real property a sale of new residential premises?

- for part (b), GSTR 2000/21 - Goods and services tax: the margin scheme for supplies of real property held prior to 1 July 2000; and paragraphs 101-108 of GSTR 2006/7 - Goods and services tax: how the margin scheme applies to a supply of real property made on or after 1 December 2005 that was acquired or held before 1 July 2000
- for part (c), paragraph 136 of GSTR 2006/7 - Goods and services tax: how the margin scheme applies to a supply of real property made on or after 1 December 2005 that was acquired or held before 1 July 2000.

ATO position

(a) Must A pay GST on both lots when they are sold?

The sale of the subdivided portion of land with the newly constructed house will be a supply of new residential premises and will be a taxable supply.

The sale of the house that A bought from the builder will be input taxed unless it was substantially renovated (see Issues 15.5.1 and 15.5.2 as to what constitutes 'substantial renovations'). The mere subDivision of the land, such that the house is situated on a smaller part of the original portion of land, does not make the house 'new residential premises' (see Issue 15.4.12(c)).

(b) Can A use the margin scheme to value the land, and if so at what date?

Yes. A may choose to apply the margin scheme to work out the GST payable on the sale of the new house. This is because he had acquired the land before 1 July 2000 (and therefore, not through a taxable supply on which GST was worked out without applying the margin scheme). For more information on the margin scheme please refer to GSTR 2000/21. (See also Issue 15.1.30).

Note: This is the ATO view that will apply up to 16 March 2005. Legislative Amendments to the provisions relating to 'applying the margin scheme' will have effect from 29 June 2005

(c) What must A state on the tax invoice he provides?

A is not required to provide a tax invoice if he applies the margin scheme (section 75-30 of the GST Act).

15.3 Land contracts

15.3.1 Is a deposit paid under a standard land contract subject to Division 99 of the GST Act?

For source of ATO view refer to paragraphs 27-28, 38-47 and 86-87 of GSTR 2000/28 - *Goods and services tax: attributing GST payable or an input tax credit arising from a sale of land under a standard land contract*.

ATO position

A deposit performs a dual function, acting as both an earnest to bind the contract and forms part payment for the purchase price upon settlement (GSTR 2000/28 at paragraph 14). Where there is a breach of contract and the purchaser is in default, the vendor may claim forfeiture of the deposit without proof of damages. Division 99 of the GST Act states that the giving of a deposit as security does not constitute consideration for a supply until it is forfeited (paragraph 99-5(1)(a) of the GST Act) or applied as part of the consideration (paragraph 99-5(1)(b) of the GST Act). If a vendor defaults under a standard land contract and the deposit is refunded to the purchaser, there are no GST consequences. There is no taxable supply as neither the purchaser nor the supplier has made a supply for consideration, as required by section 9-5(a) of the GST Act. Nor is there a creditable acquisition under section 11-5 of the GST Act.

There may be GST consequences where the purchaser defaults under a standard land contract and the deposit is paid to the vendor. In this case, the vendor has made a supply for consideration and, if the other elements of a taxable supply as defined in section 9-5 of the GST Act are satisfied, the supply will be a taxable supply. GST will be attributable to the tax period during which the deposit is forfeited (paragraph 99-10(1) of the GST Act, GSTR 2000/28 at paragraph 30). This applies whether you account for GST on cash basis or a non cash basis. Where upon the release of the deposit is applied as payment of agent's commission, rather than to the vendor as part payment, the vendor has nevertheless constructively received the money. It is 'in connection with the supply' and therefore will be consideration for the supply (section 9-15 of the GST Act).

Standard land contracts in Victoria - early release of deposit

In Victoria, section 27 of the *Sale of Land Act 1962* (Victoria), under certain conditions, permits the release of deposit monies to the vendor prior to completion of the standard land contract. Although the deposit is released to the vendor, the deposit retains its character as a deposit until it is forfeited or applied as consideration. Division 99 of the GST Act still applies to such a deposit (GSTR 2000/28 paragraphs 28, 86-87).

15.3.2 Is a standard land contract an invoice?

For source of ATO view refer to paragraphs 42-57 of GSTR 2000/28 - *Goods and services tax: attributing GST payable or an input tax credit arising from a sale of land under a standard land contract*.

ATO position

A standard land contract is not an invoice for GST purposes as it does not notify an obligation to make a payment (GSTR 2000/28 paragraph 29). This means that entering into a standard land contract will not trigger attribution of GST payable or input tax credits where you account for GST on a non cash basis. 'Invoice' means a document notifying an obligation to make a payment (section 195-1 of the GST Act). An agreement which is in substance 'subject to contract', or a contract containing a condition or conditions precedent will not satisfy this definition as no legally binding contract is in existence. Condition subsequent contracts are also unlikely to be invoices as the 'obligation to make a payment' is uncertain, as it is determinant upon the satisfaction of the conditions. This occurs, despite the contracts ability to generate a right to damages where the beneficiary party has not made reasonable efforts to satisfy the condition. This can hardly be said to be an 'obligation to make a payment'.

A contract is a legally binding agreement enforceable at law. A contract for the sale of land does not create an immediate debt. The purchaser may sue for specific performance or damages and costs. However, a debt to the settlement amount does not generally arise until the contract has been completed by the execution and acceptance of a conveyance. At that time, the purchaser obtains dispositive power over the property, and the contingency that the sale will not proceed to completion disappears. A presently existing legal 'obligation' to the settlement money does not arise until such time.

15.3.3 How do the GST attribution rules apply to sales of land under standard land contracts?

For source of ATO view refer to GSTR 2000/28 - *Goods and services tax: attributing GST payable or an input tax credit arising from a sale of land under a standard land contract*.

ATO position

Payment at settlement triggers attribution for sales under standard land contracts.

A standard land contract is a written contract for the sale of land that provides for:

- the payment of a deposit that is either to be forfeited if the purchaser defaults or applied as consideration on settlement
- the payment of the balance of the purchase price upon settlement.

When you make a taxable supply of land under a completed standard land contract, you attribute the GST payable to the tax period in which settlement occurs. This applies if you account for GST on a cash basis or if you do not account for GST on a cash basis.

If you hold a tax invoice, you attribute an input tax credit for a creditable acquisition of land under a completed standard land contract to the tax period in which settlement occurs. This applies if you account for GST on a cash basis or if you do not account for GST on a cash basis.

15.4 General

15.4.1 What is the GST treatment of adjustments on property settlements?

For source of ATO view refer to GSTD 2006/3 - *Goods and services tax: are settlement adjustments taken into account to determine the consideration for the supply or acquisition of real property?*

ATO position

(a) Adjustments for rates or land tax

GST liability will depend in the usual case on whether the sale of the land itself is a taxable supply.

- Scenario 1: The liability to pay the land tax and/or rates attaches to the vendor (and possibly the land) prior to settlement, and the vendor pays these charges

  The adjustments in scenario 1 are regarded as part of the sale price, being the increase or decrease in consideration for the supply of land. There is no second supply.

- Scenario 2: The liability attaches to the land prior to settlement, the vendor has not paid the charges, and the vendor directs the purchaser to discharge this liability.

  The adjustments in scenario 2 are regarded as a mere direction to apply some part of the consideration in discharge of the vendor's liability elsewhere. The amount of consideration is not a second supply.

  A different conclusion would be reached where there is an adjustment in settlement to reflect an identifiable second supply, for example, where the consideration for the sale of land requires the supply of something other than money. This could occur for example where land is exchanged in consideration of the supply of a boat and cash.

- Scenario 3: The liability arises or attaches to the owner after the date of settlement (that is, the purchaser) and the vendor is therefore obliged to contribute.

  The adjustments are regarded as part of the sale price, being the increase or decrease in consideration for the supply of land. There is no second supply.

On settlement of property transactions it is usual that certain adjustments be made between the vendor and the purchaser in relation to such matters as rates and land tax. These adjustments are usually made in accordance with the provisions of the contract. For example, rates may be assessed to and paid by the vendor prior to the date of settlement (scenario 1). In such a scenario, the contract will usually require the purchaser to pay an

extra amount to the vendor on settlement in respect of the balance of the period to which the rates relate, corresponding to the purchaser's period of ownership. In this case the purchaser is paying extra consideration for the sale of the land.

Alternatively, rates, having been assessed to the vendor as owner of the land, remain unpaid at the settlement date. In this case the purchaser withholds an amount from the purchase price to meet this outstanding liability and pays a corresponding amount to the municipal authority (scenario 2). In these circumstances there is no adjustment to consideration payable for the land because the purchaser is merely applying part of the agreed consideration to meet the vendor's liability for rates.

In a third scenario, the liability to pay rates may arise only after the date of possession (hence the purchaser is liable to pay these charges). In these circumstances, the terms of the contract require the vendor to make an adjustment in favour of the purchaser, based on an estimate of the future liability. There is a decrease to the consideration payable by the purchaser of the land.

Where settlement adjustments are treated as altering the consideration for the supply of land (as in scenarios 1 and 3), GST will apply to the consideration ultimately arrived at after taking into account the relevant settlement adjustments (if the sale of the land itself is a taxable supply).

However, an adjustment in scenario 2 is a mere direction to apply some part of the consideration to meet the vendor's rates liability. In this circumstance, there is no alteration of consideration for the supply of land. GST will therefore apply to the face value of the consideration payable for the sale of the land (if the sale of the land itself is a taxable supply).

(b) Adjustments for rent

The GST treatment of an adjustment for rent, on settlement of a sale of rental property, is analogous to that of an adjustment for rates or land tax. In other words, a rent adjustment is an adjustment to the consideration paid for the sale of the rental property. It is not consideration for a separate supply. Therefore, GST is applicable only if the sale of the property itself is a taxable supply.

Whether a rent adjustment (where GST applies to the rent payments) should be on a GST-inclusive or a GST-exclusive basis is a contractual matter between the vendor and the purchaser, and is not a matter on which the ATO can offer advice.

The rent adjustment between the vendor and the purchaser does not have any GST implications for the supply of the property to the tenant.

15.4.2 What is the GST treatment of rebates paid by a developer to a purchaser of residential premises?

Eg; $5,000 paid to the purchaser if the purchaser completes landscaping to an agreed value.

How the ATO would view a payment similar to the example given would depend on the terms of the contract between the developer and the purchaser, and the facts of each individual situation. We would consider the nature of the supply being made and whether it is an adjustment event that alters the consideration for a supply. The example given suggests that, rather than being an adjustment event that changes the consideration in relation to the purchase of the residential premises, the supply of landscaping by the purchaser is a separate supply in itself. The purchaser is being paid consideration of $5,000 in exchange for undertaking landscaping of the property to an agreed value. This supply will only be subject to GST if it meets all the requirements of the criteria for a taxable supply.

15.4.3 Is GST applicable to compensation payments resulting from the compulsory acquisition or negotiated purchase of real property by a public authority where the real property in question is acquired on or after 1 July 2000?

Non-interpretative

This issue is currently under revision and has been removed as of 12 December 2003.

15.4.4 A company is a corporate trustee of a family trust.

The trust is registered as it is in receipt of commercial rents in excess of $75,000. It also owns residential property which will be input taxed in relation to rentals received. Is GST applicable to the sale of residential property by the trust?

For source of ATO view refer to GSTR 2003/3 - *Goods and services tax: when is a sale of real property a sale of new residential premises?*

ATO position

GST is payable on taxable supplies - section 9-5 of the GST Act. This section excludes input taxed supplies and GST-free supplies from being taxable supplies. Section 40-65 of the GST Act considers the sale of residential properties. Subsection 40-65(1) of the GST Act states that 'A sale of real property is **input taxed**, but only to the extent that the property is a residential premise to be used predominantly for residential accommodation'

> Subsection 40-65(2) of the GST Act makes an exception that where the sale is of commercial residential premises or 'new residential premises' other than those used for residential accommodation before 2 December 1998 the supply is not input taxed. Under section 40-75 of the GST Act
>
> (1) Residential premises are 'new residential premises' if:
>
> (a) have not been previously sold as residential premises and have not previously been the subject of a long term lease; or
>
> (b) have been created through substantial renovation of a building; or
>
> (c) have been built or contain a building that has been built, to replace demolished premises on the same land.
>
> (2) However, the premises are not new residential premises if, for the period of at least five years since:
>
> (a) if paragraph (1)(a) applies (and neither paragraph (1)(b) nor paragraph (1)(c) applies) - the premises first became residential premises
>
> (b) if paragraph (1)(b) applies - the premises were last substantially renovated, or
>
> (c) if paragraph (1)(c) applies - the premises were last built,
>
> the premises have only been used for making supplies that are input taxed because of paragraph 40-35(1)(a).

'Substantial renovation' is defined in section 195-1 of the GST Act to mean renovations to an existing building in which all or substantially all of the building is removed or replaced, of foundations, external walls, interior supporting walls, floors, roof or staircases. Where the residential property was previously purchased as residential premises, the sale will not be the sale of new residential premises and will be input taxed. Accordingly, the supply will not be a taxable supply and GST will not be applicable. Where the residential premises were constructed or substantially renovated, the sale will be the sale of 'new residential premises'. The supply will be a taxable supply which will attract liability to GST.

15.4.5 A company owns land, which is sold as a component of house and land packages.

A buyer enters into a contract for a specified purchase price and pays a non-refundable deposit.

Settlement does not occur until 6 months after construction of the house is completed. However, as a condition of the sale contract, the company grants the buyer a licence to occupy the property for a set fee in relation to the 6 month period prior to settlement. The licence fees immediately become the property of the seller when they are paid. If the buyer is not in default under the terms of the contract and proceeds to settlement, the licence fees paid are then treated as part payment of the balance of the purchase price of the property. The house and land contracts have a number of elements (contract date, the occupancy date of the property, the settlement date and the dates on which the deposit and licence fees are paid) that span 1 July 2000.

ATO position

Scenario 1 - Pre 1 July 2000

- Contract is executed before 1 July 2000.
- Expected settlement date of contract is before 1 July 2000.
- The buyer occupies the property for a period that ends before 1 July 2000.
- The buyer fails to settle.

In Scenario 1, if the contract fails to settle and the property is sold under another contract after 30 June 2000, is the sale subject to GST?

Yes, given that the supply (that is, the sale) of the property is made on or after 1 July 2000, it is subject to GST: subsections 6(3) and 7(1) of the Transition Act. Section 40-65 of the GST Act, which provides that a sale of residential premises (to be used predominantly for residential accommodation) is input taxed, does not apply. This is because subsection 40-65(2) of the GST Act specifically provides that the sale of 'new residential premises' is **not** input taxed. Section 195-1 of the GST Act defines 'new residential premises' as residential premises that have not previously been sold as residential premises and have not previously been subject of a long term lease ('long term' taken to mean 'for at least 50 years'). The property in question satisfies this definition. Despite the fact that the property was the subject of an earlier sale contract, it had not previously been sold because there could be no sale if the earlier contract did not settle.

For source of ATO view refer to paragraphs 22 and 29-31 of GSTR 2003/3 - *Goods and services tax: when is a sale of real property a sale of new residential premises?*

Scenario 2 - Spans 1 July 2000

- Contract is executed before 1 July 2000.
- Expected settlement date of contract is after 30 June 2000.
- Buyer occupies the property for a period that spans 1 July 2000.

(i) In Scenario 2, if the contract doesn't settle, does GST apply to the:

(a) non-refundable deposit; and

(b) licence fee?

(a) No, the payment of the non-refundable deposit is consideration for a supply that is the 'entry into an obligation to do anything' (subparagraph 9-10(2)(g)(ii) of the GST Act). This is a supply of something other than goods, services or real property and therefore, the time of the supply is when the thing is performed or done (subsection 6(5) of the Transition Act). Here, the 'thing performed or done' refers to the 'entry into an obligation'. Given that the entry into the house and land contract is before 1 July 2000, the supply is made before

1 July 2000. For this reason, the supply is not subject to GST (subsection 7(1) of the Transition Act).

(**Note:** This is not a situation where a deposit is 'forfeited'. Given that the deposit becomes property of the seller immediately upon payment and is not refundable in any circumstances, the issue of 'forfeiture' doesn't arise.)

(b) No, the payment of the licence fee is consideration for the supply of residential premises by way of a licence. If the supply is made for a licence period that spans 1 July 2000, it is taken to be made continuously and uniformly throughout that period (section 12 of the Transition Act). That part of the supply that is taken to be made before 1 July 2000 is not subject to GST because of subsection 7(1) of the Transition Act. That part of the supply that is taken to be made after 30 June 2000 is also not subject to GST. This is because section 40-35 of the GST Act specifically provides that a supply of residential premises that is by way of a licence is input taxed.

For source of ATO view, refer to:

- GSTR 2000/7 - Goods and services tax: transitional arrangements - supplies, including supplies of rights, made before 1 July 2000 and the extent to which such supplies are taken to be made on or after 1 July 2000
- paragraphs 9, 123-124 of GSTR 2006/2 - Goods and services tax: deposits held as security for the performance of an obligation
- paragraph 97C of GSTR 2000/28 - Goods and services tax: attributing GST payable or an input tax credit arising from a sale of land under a standard land contract
- paragraphs 7-8 of GSTR 2000/16 - Goods and services tax: transitional arrangements - GST-free supplies under existing agreements,
- paragraph 28 of GSTD 2000/9 - Goods and services tax: if you let out a residence do you need to get an ABN for PAYG purposes or register for GST?

(ii) In Scenario 2, if the contract settles as expected, does GST apply to the:

(a) sale price

(b) non-refundable deposit, and

(c) licence fee?

(a) Yes, the sale price is consideration for the supply of real property. The supply is made when the property is made available to the recipient (subsection 6(3) of the Transition Act). We interpret 'made available to the recipient' to be the time of settlement of the sale contract. This is because it's at this time that equitable ownership and possession of the property transfers to the recipient and the recipient has full use and enjoyment of the property. Given that the contract settles after 30 June 2000, the supply of property is made after that date and for that reason, the supply is subject to GST (subsection 7(1) of the Transition Act).

(b) On settlement of the contract, the non-refundable deposit that was initially the consideration for a supply that was the 'entry into an obligation to do anything' now becomes part of the consideration for the supply of the property (that is, the sale price). See the answer to 3(a) above.

(c) No, the licence fee is not subject to GST because it is consideration for an input taxed supply. Similar to the case of the non-refundable deposit above, on settlement of the sale contract, the consideration (the licence fee) for the supply of residential premises that is by way of a licence is now reduced to nil. This is because it now forms part of the consideration for the supply of the property.

For source of ATO view, refer to:

- paragraph 16 of GSTR 2003/3 - Goods and services tax: when is a sale of real property a sale of new residential premises?
- paragraph 8 of GSTR 2006/2 - Goods and services tax: deposits held as security for the performance of an obligation.

(iii) In Scenario 2, if the contract fails to settle and the property is sold under another contract after 30 June 2000, is the sale subject to GST?

Yes, the sale is subject to GST. The fact that the property was occupied for a period that spans 1 July 2000 is irrelevant to the definition of 'new residential premises' under section 195-1 of the GST Act.

For source of ATO view, refer to:

- GSTR 2000/7 - Goods and services tax: transitional arrangements - supplies, including supplies of rights, made before 1 July 2000 and the extent to which such supplies are taken to be made on or after 1 July 2000
- paragraphs 9, 123-124 of GSTR 2006/2 - Goods and services tax: deposits held as security for the performance of an obligation
- paragraph 97C of GSTR 2000/28 - Goods and services tax: attributing GST payable or an input tax credit arising from a sale of land under a standard land contract
- paragraphs 7-8 of GSTR 2000/16 - Goods and services tax: transitional arrangements - GST-free supplies under existing agreements,
- paragraph 28 of GSTD 2000/9 - Goods and services tax: if you let out a residence do you need to get an ABN for PAYG purposes or register for GST?

Scenario 3 - After 30 June 2000

- The contract is executed after 30 June 2000.
- The expected settlement date of the contract is after 30 June 2000.
- The buyer occupies the property for a period that starts after 30 June 2000.
- The buyer fails to settle.

In Scenario 3, does GST apply to the:

(a) non-refundable deposit, and

(b) licence fee?

(a) Yes, in this scenario, the non-refundable deposit is subject to GST because it is consideration for a supply that is made after 30 June 2000 (given that the contract is entered into after that date).

(b) No, the licence fee is consideration for an input taxed supply and therefore, not subject to GST. This is despite the fact that the period for which the property is occupied starts after 30 June 2000.

For source of ATO view, refer to:

- paragraph 16 of GSTR 2003/3 - Goods and services tax: when is a sale of real property a sale of new residential premises?
- paragraph 8 of GSTR 2006/2 - Goods and services tax: deposits held as security for the performance of an obligation
- paragraph 28 of GSTD 2000/9 - Goods and services tax: if you let out a residence do you need to get an ABN for PAYG purposes or register for GST?

- paragraph 10 of GSTR 2000/7 - Goods and services tax: transitional arrangements - supplies, including supplies of rights, made before 1 July 2000 and the extent to which such supplies are taken to be made on or after 1 July 2000.

15.4.6 What are the GST implications on the sale of residential premises (previously occupied by a deceased person as a residence for many years) by an executor of a deceased estate to a purchaser neither of whom are registered for GST?

Non-Interpretative - straight application of the law

ATO position

The supply of the residential premises by the executor will be an input taxed supply.

15.4.7 Is the sale of a residential dwelling located on a large parcel of land and which is suitable for subdivision, a taxable supply?

The vendors have used the dwelling as their principal residence for over twenty years. The property is zoned for unit development. The vendors are elderly and do not intend to undertake any development themselves. They plan to sell the property with settlement in January 2001. There are currently no development plans before council. It is likely that the purchaser will develop the property in the future. The vendors are retired and not registered for GST.

Non-Interpretative - straight application of the law

ATO position

No, the sale is not in the course of an enterprise carried on by the vendors and they are not required to be registered for GST.

15.4.8 Do residential premises which have been substantially renovated (or built to replace demolished premises on the same) land, and sold as a taxable supply continue to be 'new residential premises' and subject to GST if subsequently sold by a registered entity?

Non-Interpretative - straight application of the law

ATO position

No. A subsequent sale of the premises will be input taxed unless the premises are again substantially renovated, or demolished and rebuilt, and the supplier is registered or required to be registered.

15.4.9 Where an enterprise acquires a property for a creditable purpose, and the use of that property changes to a partly private/domestic purpose, will an adjustment event occur under Division 129 of the GST Act resulting in the owner having to repay the previously claimed input tax credits?

For source of ATO view, refer to:

- GSTR 2000/24 - Goods and services tax: Division 129 - making adjustments for changes in extent of creditable purpose
- GSTR 2009/4 - Goods and services tax: new residential premises and adjustments for changes in extent of creditable purpose.

ATO position

TheATO position is set out in GSTR 2000/24. An enterprise acquires property for a creditable purpose if that property is used in carrying on the enterprise. If an enterprise acquires a property for a creditable purpose, Division 11 of the GST Act states that it will be entitled to claim the input tax credits associated with the creditable acquisition. However, if the property for which full input tax credits were claimed is subsequently applied partly to private or domestic purposes, an increasing adjustment will be required under Division 129 of the GST Act. The amount of the increasing adjustment will be calculated using the following equation:

- Increasing adjustment = Full input tax credits x (Intended or former application minus Actual application)
- The actual application and intended or former application are to be expressed as percentages.

Example: A property which has not been used for carrying on a farming business previously is purchased for use as a farm. The GST-inclusive price of the property is $330,000. The purchaser (if registered for GST) would be entitled to an input tax credit of $30,000. The purchaser subsequently uses 20% of the property as a paddock for the family pony. An increasing adjustment would be necessary.

Increasing Adjustment = $30,000 × (100% - 80%) = $6,000

15.4.10 Where an entity acquires a property for a creditable purpose, and the use of that property changes to a solely private/domestic purpose, will an adjustment event occur under Division 130 of the GST Act resulting in the owner having to repay the previously claimed input tax credits?

For source of ATO view, refer to:

- GSTR 2000/24 - Goods and services tax: Division 129 - making adjustments for changes in extent of creditable purpose
- GSTR 2009/4 - Goods and services tax: new residential premises and adjustments for changes in extent of creditable purpose.

ATO position

The acquisition of the property may involve a number of acquisitions by the entity. The entity may acquire vacant land and then make separate acquisitions of goods or services in constructing premises on the property. Alternatively, the entity may simply acquire real property (with or without premises).

An entity acquires a thing for a creditable purpose if the thing is acquired in carrying on the entity's enterprise. If an entity acquires a thing for a creditable purpose, Division 11 of the GST Act states that the entity will be entitled to the input tax credits associated with the creditable acquisition. However, if the thing acquired solely for a creditable purpose is subsequently applied solely to private or domestic purposes, adjustments need to be considered.

If the entity has made an acquisition of goods in relation to the property, an increasing adjustment will be required under Division 130 of the GST Act. The amount of the increasing adjustment will be equal to the amount of the input tax credits to which the entity was previously entitled (unless other adjustments have been made). However, if the entity has made an acquisition of services (such as a contract for construction or building services - see paragraph 10 of GSTR 2000/18 - *Goods and services tax: construction and building services which span 1 July 2000) or an acquisition of real property*, an increasing adjustment will not be required under Division 130 of the GST Act. This is because Division 130 of the GST Act only provides for increasing adjustments in relation to 'goods' applied solely to private or domestic use. 'Goods' is defined in section 195-1 of the GST Act to mean any form of tangible personal property. This does not include acquisitions of services or real property. The entity may, however, have an increasing adjustment in

relation to the acquisition of the services or real property under Division 129 of the GST Act. For details on Division 129 of the GST Act refer to GSTR 2000/24 - *Goods and services tax: Division 129 - making adjustments for changes in extent of creditable purpose* and GSTR 2009/4 - *Goods and services tax: new residential premises and adjustments for changes in extent of creditable purpose*.

For guidance on the GST consequences of a partner in a partnership taking goods held as trading stock for private or domestic use see Draft Goods and Services Tax Determination GSTD 2009/D1 - *Goods and services tax: are there GST consequences when a partner in a partnership takes goods held as trading stock for private or domestic use?*

15.4.11 Is the sale of rented flats, which have been converted to strata title for sale purposes, an enterprise and therefore subject to GST?

For source of ATO view, refer to:

- MT 2006/1 - The New Tax System: the meaning of entity carrying on an enterprise for the purposes of entitlement to an Australian Business Number,
- Paragraphs 42-43 of GSTR 2003/3 - Goods and services tax: when is a sale of real property a sale of new residential premises?

ATO position

Miscellaneous Ruling MT 2006/1 deals with the meaning of entity carrying on an enterprise for the purposes of entitlement to an Australian business number (ABN). Section 38 dealing with the definition of an enterprise under the ABN Act is a mirror of section 9-20 of the GST Act. The ruling represents theATO position on the definition of an 'enterprise'. Paragraph 3 of Goods and Services Tax Determination GSTD 2000/8 states that the meaning of 'enterprise' in the ABN Act, and as discussed in MT 2000/1, is considered to apply equally to the term 'enterprise' as used in the GST Act and can be relied upon for GST purposes. The conversion of rented flats to strata title for sale purposes is an enterprise under paragraph 9-20(1)(a) of the GST Act and subject to the GST. The definition of business in section 195 of the GST Act is the same as the definition of 'business' in subsection 6(1) of the *Income Tax Assessment Act* 1936. The definition of 'business' for the purposes of the GST legislation will therefore incorporate all the case law developed over the years. The conversion of rented flats to strata title for sale purposes will constitute a business as it is done in a business like-manner requiring a significant capital investment, specialised knowledge, and is performed systematically, with a view to making a profit. This goes beyond the mere realisation of a capital asset. Alternatively, the activity may constitute an enterprise being in the form of an adventure or concern in the nature of trade (pursuant to subsection 9-20(1)(b) of the GST Act).

15.4.12(a) By itself, does the process of strata titling a residential apartment building make the strata titled units 'new residential premises'?

For source of ATO view, refer to paragraph 43 of GSTR 2003/3 - *Goods and services tax: when is a sale of real property a sale of new residential premises?*

ATO position

No, by itself, the process of strata titling an apartment building does not create 'new residential premises' as defined in subsection 40-75(1) of the GST Act.

Physically (rather than a strict legal interpretation that focuses on legal interest), the combination of land and the building as residential premises remain basically the same.

Whether a sale of the strata titled units is an input taxed supply under section 40-65 of the GST Act depends on the extent to which, at the time of sale, the units are:

- commercial residential premises, or
- new residential premises other than those used for residential accommodation before 2 December 1998.

15.4.12(b) Is the sale of individual residential units, after a strata title subDivision of a residential apartment building (purchased on a single property title), an input taxed supply under section 40-65 of the GST Act if the units:

- are used predominantly for residential accommodation
- are not commercial residential premises, and
- have not been substantially renovated nor been built to replace demolished premises on the same land ?

For source of ATO view, refer to paragraphs 42-49 of GSTR 2003/3 - *Goods and services tax: when is a sale of real property a sale of new residential premises?*

ATO position

Yes. This is because subsection 40-65(1) of the GST Act provides that the sale of real property is input taxed to the extent that the property is residential premises to be used predominantly for residential accommodation. The exceptions in subsection 40-65(2) of the GST Act do not apply.

Subsection 40-65(2) of the GST Act provides that a sale of residential premises is not input taxed to the extent that the residential premises are:

- commercial residential premises, or
- new residential premises other than those used for residential accommodation before 2 December 1998.

The residential units in question are neither commercial residential premises nor new residential premises. New residential premises is defined in subsection 40-75(1) of the GST Act to mean residential premises that:

- have not previously been sold as residential premises and have not previously been the subject of a long-term lease
- have been created through substantial renovations of a building, or
- have been built, or contain a building that has been built, to replace demolished premises on the same land.

In this case, paragraphs (b) and (c) of the definition are clearly not satisfied. Paragraph (a) of the definition is also not satisfied because the land and the building together have been sold previously as residential premises (that is, when the apartment building was purchased). It does not matter that the property has been subdivided into strata title units. This is because physically (rather than a strict legal interpretation that focuses on legal interest) the combination of the land and the building as residential premises remain basically the same.

15.4.12(c) A block of land contains a residential building.

The block of land, together with the residential building, has previously been sold as residential premises. Does the mere subDivision of the block of land into a smaller block of land containing the same residential building make the smaller block of land 'new residential premises'?

For source of ATO view, refer to paragraphs 32-35 of GSTR 2003/3 - *Goods and services tax: when is a sale of real property a sale of new residential premises?*

ATO position

No. The mere subDivision itself does not make the premises 'new residential premises' as defined in subsection 40-75(1) of the GST Act.

Under subsection 40-75(1) of the GST Act, residential premises are 'new residential premises' only if they:

- have not previously been sold as residential premises and have not previously been the subject of a long-term lease
- have been created through substantial renovations of a building, or
- have been built, or contain a building that has been built, to replace demolished premises on the same land.

For the purposes of paragraph 40-75(1)(a), it is the ATO view that the residential premises referred to are the land and the residential building on that land (that is, you look at the land and a building as a 'package'). This is because the definition of 'residential premises' specifically refers to land or a building in the context of residential occupation, and vacant land by itself can never have sufficient physical characteristics to mark it out as being able to be or intended to be occupied as a residence.

In deciding whether land and a residential building have previously been sold as residential premises, or been the subject of a long-term lease, or are new residential premises, it is necessary to consider the land and building together. Has that land and that building together previously been sold as residential premises, or been subject to a long-term lease? To do this, it is the ATO view that you look at the land and building as a 'package'. It is necessary to consider whether the building and the land, or part of the land, that you are selling has previously been sold as residential premises, or been subject to a long-term lease.

Where land with a residential building has previously been sold as residential premises, or subject to a long-term lease, and the area of land is reduced in size, it is the ATO view that the sale is not a sale of new residential premises. In this case the smaller block of land containing the original residential building, as a 'package', has previously been sold as residential premises. This is because the 'package' has previously been sold as part of a larger residential premises 'package'.

In this case the newly created block of vacant land (the balance area of land not containing the original residential building) is not residential premises. Vacant land by itself cannot constitute residential premises. It may be necessary to consider whether the sale of the new vacant block of land is a taxable supply under section 9-5. The margin scheme, under Division 75, may also need to be considered to see if it is available to the supplier.

Example

Jo, a property developer, is registered for GST. She bought a house on a large block of land on a single title in February 2002 and subdivided the land into two blocks on separate titles. She built a new house on the second block of land with the intention of reselling it for a profit. She sold both houses in August 2002.

The house that Jo bought in February 2002 is not new residential premises, even though the block of land on which it sits has reduced in size. This is because the house and the land together have previously been sold as residential premises. The sale of this house is an input taxed supply.

The newly built house on the second block of land is new residential premises as the new house and the land together have not previously been sold. The sale of this new house is a taxable supply. Jo is only entitled to claim input tax credits on this taxable supply. As the

sale by Jo of the newly built house on the second block of land is a taxable supply she may be entitled to apply the margin scheme to work out the GST payable. For more information about the margin scheme see Goods and Services Tax Ruling GSTR 2000/21.

15.4.12(d) A block of land contains a residential building.

The block of land, together with the residential building, which previously has been sold as residential premises, is now increased in area. Is the sale of the residential building on the increased area of land a sale of new residential premises?

For source of ATO view, refer to paragraphs 36-37 of GSTR 2003/3 - *Goods and services tax: when is a sale of real property a sale of new residential premises?*

ATO position

It is the ATO view that a different residential premises 'package' is created. In this case only the residential building and part of the land, as the residential premises 'package', have previously been sold or been the subject of a long-term lease. Where there is a subsequent sale of the land by an entity registered for GST, or required to be registered, in the course of its enterprise, an apportionment of the supply will be required.

At the time of the sale there is a different residential premises 'package' to that which originally existed. It is the ATO view that this residential premises 'package' is made up of two parts. One part is the land and residential building that has previously been sold, or been the subject of a long-term lease, as residential premises. This part is input taxed under section 40-65 of the GST Act. The other part is the increased land area that has not previously been sold, or been the subject of a long-term lease, as part of the original residential premises 'package'. This part is excluded from the input taxed treatment of the rest of the property. It will be a taxable supply under section 9-5 of the GST Act.

It is the ATO view that where there is a supply of residential premises that contains both taxable and input taxed parts it is appropriate to apportion the supply. Various acceptable methods of apportionment are discussed in GSTR 2001/8 at paragraphs 97 to 111.

Example

Tony, a property developer, is registered for GST. He bought a house on a block of land with an area of 1,000 square metres in May 2002. The property was on a single title. It was Tony's intention to resell the property at a profit. Tony was later able to purchase an additional 200 square metres of land from a neighbour so that the garden of the house he originally purchased could be expanded. In September 2002 Tony sells the house on the enlarged block.

When Tony sells the property he makes a supply of a residential premises 'package' that is different to that which he purchased. The supply is made up of two parts. One part is the land and residential building that has previously been sold. This part (the house on the original 1,000 square metres of land) is input taxed under section 40-65 of the GST Act.

The other part (the 200 square metres of land added to the original house block) is the increased land area that has not previously been sold as part of the original residential premises 'package'. This part is excluded from the input taxed treatment of the rest of the property. It will be a taxable supply under section 9-5 of the GST Act.

As the supply has both taxable and input taxed parts it will need to be apportioned. Any reasonable method of apportionment will be acceptable. However, the apportionment must be supportable by the particular facts of the case. Various acceptable methods of apportionment are discussed in GSTR 2001/8.

15.4.13 Does 'potential subdivided land' mean that if one residence can be built the definition applies irrespective of the size of the land?

Non-Interpretative - straight application of the law

ATO position

There is no provision relating to 'potential subdivided land' in the GST Act.

'Potential residential' land is referred to in section 38-475 of the GST Act in determining whether a supply of subdivided farm land to an associate of the supplier of the land is GST-free. The sale of subdivided farmland will be GST-free under certain conditions. These are:

- If the land was used for farming for at least the preceding five years.
- The sale is made to an associate of the vendor (for example, son or daughter).
- The price paid by the associate is less than the GST-inclusive market value.
- It is permissible use for residential purposes and does not contain any buildings that are residential premises.

Size may be relevant if the subdivided land is used predominantly for some other enterprise in addition to residential purposes. In such circumstances the land may not fall within the definition of potential residential land.

15.4.14 When is real property 'made available'?

ATO position

Under section 6(3) of the Transition Act, the time of the supply of real property is when it is made available to the recipient. Real property takes the same meaning in the Transition Act as that given in the GST Act. Section 195-1 of the GST Act defines real property to include:

(a) any interest in or right over land

(b) a personal right to call for or be granted any interest in or right over land, or

(c) a licence to occupy land or any other contractual right exercisable over or in relation to land.

As the definition of real property is very broad, it is necessary to identify the nature of the real property that is being supplied. A contract for the sale of real property may provide for separate supplies of different types of real property.

Below is theATO position in relation to various supplies of real property.

1. Sale of land or buildings

The real property here is the freehold interest in land. We consider the property to be made available when the freehold interest in the property is made available, that is, at the time of settlement of the sale contract.

2. Sale of house and the right to occupy before settlement.

This involves 2 separate supplies of real property -the sale being a supply of the freehold interest in the land and the right to occupy being a supply of a ' licence to occupy land'. As explained in (1) above, the supply of the freehold interest is made at time of settlement of the sale contract. The supply of the right to occupy is made when the right is made available at the time provided for by the contract. If the contract provides for the supply of the right to occupy for a specified period and that period spans 1 July 2000, section 12 of the Transition Act applies.

3. Sale of land on builder's terms.

Similar to the situation in (2) above, this involves two separate supplies of real property. One supply is the supply of the freehold interest in the land and the supply is made at the time of settlement of the contract. The other supply is the right to access and build on the land. The time of the supply of that right will be at the time provided for in the contract. Whether the supply of the right is made for consideration will depend on the terms of the contract. For the supply to be made for consideration it has to be identified as an amount separate to consideration for the freehold interest in the land.

15.4.15 An enterprise is in the business of buying houses for removal and on-selling them restumped. The roof is sometimes replaced but no other work is performed. Owners arrange their own sub-contractors to connect services.

What are the GST implications of the following:

1. House is purchased, moved from it's location to another block (having been purchased before it is removed from it's original site).
2. House is purchased, conveyed to the yard from where it is sold. It is then moved to the purchaser's land and stumped.
3. Property owner contracts to have their house moved to another location.
4. House is purchased, moved to own block of land and subsequently sold.

For source of ATO view, refer to paragraph 16 of GSTR 2003/3 - *Goods and services tax: when is a sale of real property a sale of new residential premises?*

ATO position

1. The purchase of the house may be subject to GST where the supply is a taxable supply. Where the supply was a taxable supply input tax credits are available to the purchaser. Generally, no input tax credits would be available on acquisitions that are not taxable supplies, however, GST special rules state that input tax credits may be available if the house qualifies as a second-hand good.

   The sale of the house, as a second-hand good, would be the sale of stock and therefore a taxable supply on which GST is payable.

Section 9-40 of the GST Act provides:

You must pay the GST payable on any **taxable supply** that you make.

Therefore, GST will be payable on any transaction that is a taxable supply.

Section 9-5 of the GST Act provides:

> a taxable supply is:
>
> (a) a supply for consideration
>
> (b) the supply is made in the course or furtherance of an enterprise that the supplier carries on
>
> (c) the supply is connected with Australia, and
>
> (d) the supplier is registered, or required to be registered.

However, the supply is not a taxable supply to the extent that it is GST-free or input taxed.

The supplier is supplying a house which is for consideration as the house is being sold. The supply is in connection with Australia as the house concerned is presumed to be in Australia.

Therefore, where the supplier does not makes such supplies in the course or furtherance of carrying on an enterprise or is not registered, or required to be registered, for GST purposes, the supply is not a taxable supply.

Where the supplier makes such a supply in the course or furtherance of carrying on an enterprise and is registered, or required to be registered, for GST purposes, the supply is a taxable supply unless it is input taxed or GST-free.

Therefore, the issues to be addressed are:

- Is the supply 'input taxed'?
- Are input tax credits available to the purchaser/the removal enterprise?

Is the supply an 'input taxed' supply under section 40-65?

Section 40-65 of the GST Act provides:

> A sale of real property is *input taxed*, but only to the extent that the property is residential premises to be used predominantly for residential accommodation (regardless of the term of occupation).

Section 195-1 of the GST Act provides:

> Real property includes:
>
> (b) any interest in or right over land
>
> (c) a personal right to call for or be granted any interest in or right over land, or
>
> (d) a licence to occupy land or any other contractual right exercisable over or in relation to land.

To be input taxed on sale, the house must be real property which requires that the removed house must be affixed to land. The removed house itself comes within the definition of residential premises, but section 40-65 only allows residential premises that are real property, to be input taxed at sale. Supplies of the removed house not sold together with land are not input taxed upon sale.

Are input tax credits available to the purchaser/the removal enterprise?

Where the vendor/supplier made a supply in the course or furtherance of carrying on an enterprise and is registered, or required to be registered, for GST purposes, the purchase of the house is a taxable supply.

Section 11-20 provides:

> You are entitled to the input tax credit for any creditable acquisition that you make.

Section 11-5 provides:

> You make a creditable acquisition if:
>
> (a) you acquire anything solely or partly for a creditable purpose
>
> (b) the supply of the thing to you is a taxable supply
>
> (c) you provide, or are liable to provide, consideration for the supply
>
> (d) you are registered, or required to be registered

As the supply of the house to the enterprise was a taxable supply and provided the other conditions are satisfied. The enterprise is entitled to an input tax credit for the purchase of the house.

Where the vendor/supplier did not make the supply in the course or furtherance of carrying on an enterprise or is not registered, or required to be registered, for GST purposes, the purchase of the house was not a taxable supply.

Generally, no input tax credits would be available on acquisitions that are not taxable supplies, however, GST special rule section 66 provides that an entity is entitled to a special input tax credit on an acquisition if they:

- are registered or required to be registered
- acquire second-hand goods for the purposes of sale or exchange (but not for manufacture) in the ordinary course of business

- subsequently supply those goods in a taxable supply.

However, the entitlement to an input tax credit on the acquisition using this special rule, does not apply if:

- GST was included in the price of the goods
- GST was not included because the supply was GST-free
- the supply of goods was by hire
- Division 66-B (which relates to the acquisition of second-hand goods that are divided for re-supply), applies, or
- the entity subsequently supplies the goods as a non-taxable supply. (This is because an input tax credit on the acquisition of goods where GST was included in the price, would be available under the normal rules.)

The amount of the input tax credit available under section 66-10 follows:

If acquisition is more than $300 the amount of the input tax credit for the second-hand goods is the lesser of:

- one 11th of the consideration for the acquisition, or
- the amount of the GST payable on the subsequent taxable supply of second-hand goods.

The amount of the input tax credit for a creditable acquisition of consideration is $300 or less is an amount equal to 1/11 of the consideration that you provide, or are liable to provide, for the acquisition.

2. The answer is the same as above.
3. The removal and placement of a house under contract would be a normal taxable supply.
4. Where a house is placed on your own land and the property is sold, the supply would be a taxable supply as it would be a supply of new residential premises. You may choose to apply the margin scheme to the sale.

15.4.16 Purchase, renovation and sale of residential premises. Once or twice a year you purchase 'second-hand houses', renovate the properties and resell them through real estate agents. Typical renovation includes:

- painting
- floor polishing
- a new kitchen
- bathroom updating
- minor electricals
- minor plumbing
- landscaping

1. Are you carrying on an enterprise of purchasing, renovating and selling residential property?
2. Is the sale of renovated residential homes the sale of new residential premises?
3. Do you have to register to claim input tax credits?
4. Is GST payable on the items you purchase?
5. Can you claim the amount of GST you pay as a business expense?

6. Is GST payable on the purchase of the residential properties?

7. Do you have to charge GST when you sell the residential properties?

For source of ATO view, refer to:

- GSTR 2003/3 - Goods and services tax: when is a sale of real property a sale of new residential premises?
- GSTR 2006/4 - Goods and services tax: determining the extent of creditable purpose for claiming input tax credits and for making adjustments for changes in extent of creditable purpose.

ATO position

1. An enterprise is considered to be carried on.

Section 9-20 provides:

> An enterprise is an activity, or series of activities, done:
>
> (a) in the form of a business
>
> (b) in the form of an adventure or concern in the nature of trade, or
>
> (c) on a regular or continuous basis, in the form of a lease, licence or other grant of an interest in property;
>
> However, enterprise does not include an activity or series of activities done:
>
> (b) as a private recreational pursuit or hobby, or
>
> (c) by an individual....without a reasonable expectation of profit or gain.

GST Determination GSTD 2006/6 further develops the meaning of 'enterprise' for the purposes. The Determination states that the discussion in the ruling, Miscellaneous Taxation Ruling MT 2006/1 dealing with the meaning of the term 'enterprise' as used in *A New Tax System (Australian Business Number) Act 1999* is considered to apply equally to the term 'enterprise' as used in and can be relied upon for GST purposes.

The Ruling provides that in order to determine whether or not an entity is carrying on an enterprise, the relevant activities, or series of activities, of the entity need to be identified.

The regular and continuous purchase and renovation of one or two houses each year is generally the carrying on an 'enterprise' as the sale of the houses would generally be an activity being carried on in the form of a business, or an adventure or concern in the nature of trade. Therefore, the supply of the house would generally be in the course of an 'enterprise'.

32. The renovated homes would be new residential premises if they are residential premises that have been created through substantial renovations of the acquired homes. Substantial renovations of a building have been defined in section 195-1 to be renovations in which all, or substantially all of a building is removed or replaced. The renovations need not involve removal or replacement of foundations, external walls, interior supporting walls, floors, roof or staircases.

Whether the renovations made to any particular home will constitute substantial renovations is a question of fact to be determined in each case.

33. You must be registered for GST to be able to claim input tax credits. However will only be able to claim input tax credits for your acquisitions if you make either taxable or GST-free supplies. If the homes you sell do not constitute new residential premises you will be making input taxed supplies and therefore will not be able to claim input tax credits.

34. GST will be included in the price of things you acquire or import for your business unless they are GST-free or input taxed supplies.

35. Division 27 of ITAA 1997 sets out the effect of the GST on income tax deductions.

The following GST amounts will not be deductible:

1. amounts corresponding to input tax credits to which a taxpayer is entitled: section 27-5
2. any decreasing adjustments: section 27-5
3. if the GST transitional provisions operate to make GST payable on an outgoing incurred before 1 July 2000, an amount equal to the input tax credit entitlement relating to that outgoing: section 27-30, and
4. GST payments: section 27-15(1).

If you are entitled to claim input tax credits under the GST Act you will only be entitled to a tax deduction based on the GST-exclusive price of your acquisitions.

If you are unable to claim input tax credits (for example if you make input taxed supplies) you will be entitled to claim tax deductions based on the GST-inclusive price of your acquisitions.

*Note that section 27-30 of the ITAA 1997 was repealed on 14 September 2006.

36. Is GST payable on the purchase of the residential properties?

GST will not apply to the sale of residential properties other than premises that are new residential premises that have not been used for residential accommodation before 2 December 1998.

If you do purchase residential properties that are considered 'new residential premises' that have not been used for residential accommodation before 2 December 1998, then GST may be charged on the sale of the property to you. GST will only be payable on the supply of new residential premises if the supply of the premises constitutes a taxable supply. To be a taxable supply the vendor must make the supply in the course or furtherance of an enterprise and must be registered or required to be registered for GST.

37. Do you have to charge GST when you sell the residential properties?

If the renovation you undertake constitutes substantial renovation the supply you would make is a supply of new residential premises. It you make the supply in the course of your enterprise and you are registered or required to be registered for GST then you would be making a taxable supply and will be required to pay GST in respect of the supply.

If the renovations did not constitute substantial renovations you would be making an input taxed supply under subsection 40-65(1) , which means no GST is charged on the sale of the renovated homes and no input tax credits can be claimed for purchases acquired to make the supply, including sale costs.

15.4.17 Will land owned by a business and sold to another business be subject to GST?

For source of ATO view, refer to MT 2006/1 - *The New Tax System: the meaning of entity carrying on an enterprise for the purposes of entitlement to an Australian business number*.

ATO position

If the sale of the land by a business to another business is made in the course or furtherance of an enterprise that the business is carrying on then the sale of the land will be a taxable supply and subject to GST. However if the sale of the land by the business to another business is a mere realisation of an investment or private asset, the sale of the land would generally not be subject to GST. Whether or not the sale of the land is in the course or furtherance of an enterprise that the business is carrying on is a question of fact and degree.

The supply of real property can only be subject to GST if it constitutes a taxable supply.

Taxable supply is defined in section 9-5 of the GST Act. The requirements of a taxable supply are:

(a) a supply is made

(b) the supply is made for a consideration

(c) the supply is made in the course or furtherance of an enterprise that the supplier carries on

(d) the supply is connected with Australia

(e) the supplier is registered or required to be registered

(f) the supply is not GST-free or input taxed.

If the sale of land is made in the course or furtherance of an enterprise that the business is carrying on, subject to the other criteria of this section being satisfied, then supply of the land would be subject to GST.

In the course or furtherance of an enterprise

The sale of a real property may be done in the course or furtherance of an enterprise. This must be determined from the facts of the case.

Enterprise is defined in subsection 9-20(1) of the GST Act to include an activity, or series of activities, done

(a) in the form of a business, or

(b) in the form of an adventure or concern in the nature of trade.

Accordingly, enterprise covers commercial activities that amount to activities in the form of a business.

In the form of

There is no judicial guidance in Australian or United Kingdom case law concerning the phrase 'in the form of'. The ordinary meaning of the phrase, however, is considered to support a view that 'in the form of', in conjunction with 'business' or 'adventure or concern in the nature of trade', includes an activity or series of activities that, if it or they had been done for profit, would satisfy the ordinary concept test of 'business' or 'adventure or concern in the nature of trade'.

Indicators of a business

Section 195-1 of the GST Act defines business to include any profession, trade, employment, vocation or calling, but does not include occupation as an employee.

Taxation Ruling TR 97/11 discusses the main indicators of carrying on a business and provides examples of the indicators. The indicators are:

- a significant commercial activity
- purpose and intention of the taxpayer in engaging in the activity
- an intention to make a profit from the activity
- the activity is or will be profitable
- repetition and regularity of activity
- activity is carried on in a similar manner to that of the ordinary trade
- activity organised and carried on in a business-like manner and systematically - records are kept
- size and scale of the activity
- not a hobby, recreation or sporting activity

- a business plan exists
- commercial sales of product
- taxpayer has knowledge or skill.

What is an adventure or concern in the nature of trade?

There is no definition of 'trade' and 'concern or adventure in the nature of trade' in the GST Act.

Generally, a business is a trade that is engaged in on a regular or continuous basis, while an adventure or concern in the nature of trade may be an occasional or one-off transaction that does not amount to a business. This is the view of Jacobs J in *AV v. FC of T* (1997) 37 ATR 225 at 242 'that 'an adventure in the nature of trade' is equivalent to an 'isolated business venture' as opposed to a continuing business. I respectfully agree. I also accept that such a transaction must 'exhibit features which give it the character of a business deal (*McClelland v. FC of T* (1970) 120 CLR 487 at 495)'

As a general rule, United Kingdom cases categorise assets as either trading assets or investment assets. Assets purchased with the intention of holding them for a reasonable period of time, to be held as income producing assets or to be held for the pleasure or enjoyment of the person are more likely to be purchased for investment purposes rather than trading purposes (*Johnston v. Heath* (1970) 3 ALL ER 915).

Examples of investment assets are rental properties, business plant and machinery, the family home and other private assets. The realisation of investment assets does not amount to trade. Certain types of assets, such as land and shares can be purchased for either investment purposes or trading purposes. However, they cannot be held at the same time for both purposes. They must be one or the other (*Simmons (as liquidator of Lionel Simmons Properties) v. IR Commrs* (1980) 2 ALL ER 798). The character of an asset can however, change from trade to investment and vice versa.

The following United Kingdom cases have found that there was an adventure or concern in the nature of trade:

In *Simmons (as liquidator of Lionel Simmons Properties) v. IR Commrs* (1980) 2 ALL ER 798, the taxpayers purchased a complete cotton spinning plant in 1946 with the object of selling it as quickly as possible at a profit. They had no intention of holding it by using it as an income producing asset and it was not purchased for their pleasure or enjoyment. It was eventually sold in five separate lots over a fifteen month period.

In *Johnston v. Heath* (1970) 3 ALL ER 915, Heath was offered non-income producing land that had planning permission but had not been developed because of drainage difficulties. He had insufficient funds to purchase the land and his intention was to resell the land as soon as possible after acquisition. The lack of funds was not an obstacle to the purchase, as Heath found a buyer for the land before he contracted to buy it from the original owner. The land was purchased and sold.

The above cases show that more than a mere realisation of an investment asset is required and that the character of the activity as a whole needs to be considered. Whether or not there is a trade or an adventure in the nature of trade is a question of fact and degree (*Simmons (as liquidator of Lionel Simmons Properties) v. IR Commrs* (1980) 2 ALL ER 798). In essence, an adventure or concern in the nature of trade should reflect significant commercial activity. It should have the characteristics of a business deal.

Thus, the sale of land may be in the form of a business or in the form of an adventure or concern in the nature of trade. This will depend on the circumstances surrounding the sale of the land. Generally, if the sale reflects significant commercial activity or has characteristics of a business deal, then the sale of land will be made in the course or furtherance of an enterprise that the seller carries on. However, if it is mere realisation of an investment or private asset, it will not be made in the course or furtherance of an enterprise that the seller carries on. Whether or not the sale is in the form of a business or an adventure in the nature of trade is a question of fact and degree.

The sale of the land will only be subject to GST if it is a taxable supply and satisfies all the criteria of section 9-5 of the GST Act.

Other references

- AV v FC of T (1997) 37ATR225 at 242
- McLelland v FC of T(1970)120CLR487
- Johnson v Heath (1997) 3 ALLER 915.
- Simmons (as liquidator of Lionel Simmons Properties) v IR Commrs (1980) 2 ALL ER 798.

15.4.18 Where a business, trading company or trust holds land as an investment or as an asset which is used for their enterprise, is the sale subject to GST if they are registered?

For source of ATO view, refer to MT 2006/1 - *The New Tax System: the meaning of entity carrying on an enterprise for the purposes of entitlement to an Australian business number.*

ATO position

The sale of the land by a business, trading company or trust is made in the course or furtherance of an enterprise that the business, trading company or trust is carrying on. The sale of the land will be a taxable supply and subject to GST.

The supply of real property will be subject to GST if it constitutes a taxable supply.

Taxable supply is defined in section 9-5 of the GST Act. The requirements of a taxable supply are:

(a) the supply is made for a consideration

(b) the supply is made in the course or furtherance of an enterprise that the supplier carries on

(c) the supply is connected with Australia

(d) the supplier is registered or required to be registered.

However, the supply is not a taxable supply to the extent that it is GST-free or input taxed.

There is clearly a supply of real property which is for consideration as the property is being sold. The supply is in connection with Australia as the property concerned is assumed to be in Australia. The supplier is registered.

Therefore, the issues to be addressed are:

- Is the sale of the land 'in the course or furtherance' of an enterprise?
- Is the supply input taxed?

Is the sale of the land 'in the course or furtherance' of an enterprise?

A transaction is a supply 'in the course or furtherance' of an enterprise that is carried where the supplies can be considered to be connected to the entity's enterprise.

The term 'in the course or furtherance' is not defined in the GST Act, but the term is wide enough to cover any supply made in connection with an enterprise and to cover natural incidents and things incidental to the core enterprise activities. Also, an act done for the purpose or object of furthering an enterprise, or achieving its goals, is a furtherance of an enterprise although it may not always be in the course of that enterprise.

As the business, trading company or trust owns the land, and it was held as part of the business structure, the sale is in the course or furtherance of it's enterprise and will be a taxable supply unless it is an input taxed supply.

Is the supply input taxed?

Section 40-65 provides:

> (1) A sale of real property is input taxed, but only to the extent that the property is residential premises to be used predominantly for residential accommodation (regardless of the term of occupation).
>
> (2) However, the sale is not input taxed to the extent that the residential premises are:
>
> (a) commercial residential premises, or
>
> (b) new residential premises other than those used for residential accommodation before 2 December 1998.

'Residential Premises' is defined in section 195-1 to mean: Land or a building occupied or intended to be occupied as a residence, and includes a floating home. This definition is explained under GST Ruling GSTR 2012/5 and requires that land must have a building affixed to it and that the building must have the physical characteristics that enable it to be occupied or be capable of occupation as a residence.

The land to be sold does not have a building affixed to it. Therefore, the sale of the land is not input taxed and will be subject to GST as a taxable supply.

The business may choose to apply the margin scheme in working out the amount of GST on the sale of the land under Division 75 and GST Ruling GSTR 2000/21.

15.4.19 Is the supply of a separately titled residential unit garage (when supplied with the residential unit itself) input taxed as the supply of residential premises within section 40-65 of A New Tax System (Goods and Services Tax) Act 1999 ('the GST Act')?

The content for this issue was a public ruling, but has been withdrawn. The wording of this issue as it was can still be viewed here.

This issue is now superseded by Goods and Services Tax Ruling GSTR 2012/5 - *Goods and services tax: residential premises***.**

15.4.20 Is the supply of a separately titled residential unit garage (not sold in conjunction with a residential unit) input taxed as a supply of residential premises under section 40-65 of the GST Act?

The content for this issue was a public ruling, but has been withdrawn. The wording of this issue as it was can still be viewed here.

This issue is now superseded by Goods and Services Tax Ruling GSTR 2012/5 - *Goods and services tax: residential premises***.**

15.4.21 What are the implications of land exchanges having regard for the provisions of A New Tax System (Goods and Services Tax) Act 1999 ('the GST Act')?

C supplies his land (valued at $100,000) to X in exchange for X's land (valued at $80,000) and X pays $20,000 to C for the fair exchange. C and X are registered.

1. What is the GST treatment of this 'land exchange' where both properties are vacant?

2. **What if X is not registered?**

3. **Can the margin scheme be used to calculate the GST payable?**

4. **If the margin scheme is only used for calculating the GST payable on one of the supplies will this impact on the GST treatment on the other supply?**

For source of ATO view, refer to:

- MT 2006/1 - The New Tax System: the meaning of entity carrying on an enterprise for the purposes of entitlement to an Australian business number
- GSTR 2001/6 - Goods and services tax: non-monetary consideration
- GSTR 2012/5 - Goods and Services Tax: residential premises.

ATO position

(a) What is the GST treatment of this 'land exchange' where both properties are vacant?

The supply of vacant land is subject to GST under section 9-5 of the GST Act if:

1. the supplier makes the supply for consideration
2. the supply is made in the course or furtherance of an enterprise that the supplier carries on
3. the supply is connected with Australia
4. the supplier is registered or required to be registered for GST.

However, the supply is not a taxable supply to the extent that it is GST-free or input taxed.

Although the sale of residential premises is input taxed under section 40-65(1) of the GST Act, the supply of vacant land is not input taxed as vacant land does not satisfy the definition of 'residential premises'.

Residential Premises are defined in section 195-1 of the GST Act to mean land or a building that:

(a) is occupied as a residence, or

(b) is intended to be occupied, and is capable of being occupied, as a residence, and includes a floating home.

Land that has no buildings attached to it does not fall into this category. Vacant land of itself can never have sufficient physical characteristics to mark it out as being able to be or intended to be occupied (see paragraphs 47 of the GST Ruling GSTR 2012/5). Therefore, the supply of the vacant land would be subject to GST if the other requirements of section 9-5 of the GST Act noted above are met.

Two supplies:

Supply A C supplies land to X (C's land value = $100,000)	Consideration = X's land which is valued at $80,000 plus $20,000 cash paid for by X
Supply B X supplies land to C (X's land value = $80,000)	Consideration = C's land which is valued at $100,000

Supply A is a taxable supply as:

1. the supply is for *consideration* - the consideration for the supply of the land is $100,000 (that is, X's land at $80,000 together with a cash payment of $20,000). Paragraph 9-75(1)(b) of the GST Act provides that the value of a taxable supply where the consideration is not expressed as an amount of money equals the GST-inclusive market value of the consideration

2. we will assume that the supply is made in the course or furtherance of an *enterprise* that C carries on (refer to Miscellaneous Taxation Ruling MT 2006/1 for a discussion on 'enterprise' and Taxation Ruling 97/11 for a discussion on 'business')
3. the land is situated in Australia, and
4. C is registered.

Therefore, C will have to account for 1/11th of $100,000 (that is, 1/11th of the GST-inclusive market value of C's land) to the ATO.

X is entitled to input tax credits for X's *creditable acquisitions*. Under section 11-5 of the GST Act, X makes a creditable acquisition if:

1. X acquires anything solely or partly for a *creditable purpose*
2. the supply of the land to X is a taxable supply
3. X provides or is liable to provide, consideration for the supply, and
4. X is registered, or required to be registered.

Under subsections 11-15(1) and (2) of the GST Act, X would acquire the land for a creditable purpose to the extent that:

1. X acquired the land in carrying on X's enterprise
2. the acquisition did not relate to making supplies that would be input taxed, and
3. the acquisition was not of a private or domestic nature.

X would be entitled to claim an input tax credit of 1/11th of $100,000.

C would have to account for $9,090.91 GST to the ATO.

X would be entitled to claim an input tax credit of $9,090.91.

Supply B is a taxable supply as:

1. the supply is for *consideration* - the consideration for the supply of X's land is $100,000 (that is, the value of C's land)
2. we will assume that the supply is in the course or furtherance of X's enterprise (refer to the discussion in supply A above)
3. the land is situated in Australia, and
4. X is registered.

Therefore, X will have to account for 1/11th of $100,000 to the ATO.

Under subsections 11-15(1) and (2) of the GST Act, C would be entitled to claim the full input tax credits for the acquisition of the land if:

1. C acquired the land in carrying on C's enterprise
2. the acquisition did not relate to making supplies that would be input taxed, and
3. the acquisition was not of a private or domestic nature.

C would be entitled to claim an input tax credit of 1/11th of $100,000.

X would have to account for $9.090.91 GST to the ATO.

C would be entitled to claim an input tax credit of $9,090.91.

(b) What if X is not registered?

In relation to supply A above:

- C would have to account for $9,090.91 GST to the ATO

- X will not be entitled to claim any input tax credits - the acquisition is not creditable as the recipient is not registered (section 11-5 of the GST Act).
- In relation to supply B above:
- X would not be required to account for GST - the supply is not taxable as the supplier is not registered
- C would not be entitled to claim any input tax credits - the acquisition is not creditable as the supply is not taxable (section 11-5 of the GST Act).

(c) Can the margin scheme be used to calculate the GST payable?

Yes. The margin scheme will apply in the usual way as if the supplies were standard sales. The margin scheme may be used provided the supplier is making a taxable supply of real property by (section 75-5 of the GST Act):

(a) selling a freehold interest in land

(b) selling a stratum unit, or

(c) granting or selling a long-term lease.

However, the margin scheme may not be used to calculate the GST payable if the freehold interest, stratum unit or long-term lease was originally acquired by the supplier through a taxable supply on which the GST was worked out without applying the margin scheme (subsection 75-5(2) of the GST Act).

Note: This is the ATO view that will apply up to 16 March 2005. Legislative Amendments to the provisions relating to 'applying the margin scheme' will have effect from 29 June 2005.

(d) If the margin scheme is only used for calculating the GST payable on one of the supplies will this impact on the GST treatment on the other supply?

No. The two supplies are quite separate and their GST treatment will be considered as such. Therefore, provided the requirements of section 75-5 of the GST Act are satisfied, the margin scheme may be adopted to calculate the GST payable for either supply regardless of whether the margin scheme is used for the other supply.

15.4.22 An investor, who is registered for GST, purchases new residential premises from a builder who is also registered for GST.

The house has all the usual physical characteristics to enable it to be used for residential accommodation. The investor then supplies the house by way of lease to the builder who intends to use it as a display home.

(1) Is the investor entitled to claim an input tax credit in relation to his purchase of the house from the builder?

(2) Is the supply of the house by the investor to the builder by way of lease an input taxed supply, or a taxable supply?

The content for this issue was a public ruling, but has been withdrawn. The wording of this issue as it was can still be viewed here.

This issue is now superseded by Goods and Services Tax Ruling GSTR 2012/5 - *Goods and services tax: residential premises***.**

15.4.23 Is a supply of a freehold or leasehold interest in a marina berth a supply of 'real property' for GST purposes?

Non-Interpretative - straight application of the law

ATO position

Yes. This is because a freehold or leasehold interest in a marina berth includes an interest in or right over the land that forms part of the marina (which includes land above or below the water surface), and therefore, satisfies the definition of 'real property' in section 195-1 of the GST Act.

15.5 New residential premises - substantial renovations

15.5.1 When are new residential premises created through 'substantial renovations' of a building under paragraph 40-75(1)(b) of the GST Act?

For source of ATO view, refer to paragraphs 53-83 of GSTR 2003/3 - *Goods and services tax: when is a sale of real property a sale of new residential premises?*

ATO position

1. New residential premises are created through 'substantial renovations' when an owner of residential premises does work to it that satisfies the definition of 'substantial renovations' in section 195-1 of the GST Act.

2. The term 'substantial renovations' is defined as:
 'renovations in which all, or substantially all, of a building is removed or is replaced. However, the renovations need not involve removal or replacement of foundations, external walls, interior supporting walls, floors, roof or staircases'.

3. As stated in the definition, for a renovation to be a 'substantial renovation', it need not involve removal or replacement of foundations, external walls, interior supporting walls, floors, roof or staircases.

4. For the definition to be satisfied, 2 things must occur:

When do renovations affect the building as a whole?

64. Neither the term 'renovation' nor 'building' is defined in the GST Act, and therefore, take their ordinary meanings. The general usage of the term 'renovate' means 'to make new or as if new again; restore to good condition; repair; to reinvigorate; refresh; revive'. However the term needs to be considered in light of the surrounding words in the definition of substantial renovation. In the context of the definition, we consider 'renovations' can be categorised as structural, non-structural or cosmetic work.

65. The word 'building' means 'a substantial structure with a roof and walls, as a shed, house, department store etc'. For an individual strata title unit that is physically part of an apartment complex, the relevant 'building' is the structure enclosed within the external walls of the unit, rather than the entire complex.

66. For a renovation to affect the building as a whole, work must be done to the whole, or a large part (for example, most of the rooms), of the building itself. For example, if only the kitchen and bathroom of a house are renovated, it would not be a renovation of the whole, or a large part, of the house.

67. Work which is not directly attributable to a building, for example, landscaping of surrounding land or replacement of a boundary fence, are excluded because it is not work to a building.

When does the renovation result in a removal or replacement of a substantial part of the building?

68. This will be when there is a removal or replacement of a substantial part of the:

69. The extent to which these components of a building are removed or replaced will determine whether there is a removal or replacement of a substantial part of the building. This is a matter of fact and degree to be determined in each case.

70. Work on structural components of a building may give rise to a substantial renovation in its own right. Structural work includes work such as:

71. Structural work would also include an extension to a house or adding new bedrooms to a house.

72. Where a substantial part of the structural components of a building are removed or replaced this will often mean that a substantial part of the non-structural components are also removed or replaced. However, a substantial renovation may also occur where a substantial part of the non-structural components are removed or replaced without the structural components being substantially affected.

73. Non-structural building work includes:

74. As part of renovations, work is often undertaken which does not impact on the structure of the building but is more in the nature of renewing or refreshing what is already there. We would consider work of this nature to be cosmetic. Cosmetic work by itself cannot give rise to a substantial renovation. Cosmetic work includes the following:

75. If structural or non-structural work amounts to a substantial renovation that creates new residential premises, any cosmetic work undertaken will form part of the new residential premises.

76. Examples 1, 2 and 3 in Issue 15.5.2 below provide guidance on what we would consider to be substantial renovations or not.

What renovation work is relevant?

77. Only renovations by the current owner which are reflected in the building at the time of sale will be considered to determine whether new residential premises have been created through substantial renovations.

What about renovation work done by previous owners?

78. Renovations undertaken by previous owners are disregarded in determining whether new residential premises have been created through substantial renovations.

How is the 'substantial renovations' test applied when renovations are carried out progressively by the same owner?

79. When renovations are carried out progressively or in stages over a period of time, it is the cumulative effect of the renovations that must be considered in determining whether a substantial renovation of the building has occurred. This is done by comparing the state of the building when first acquired to its state at the time of sale. See Example 4 of Issue 15.5.2 below.

80. If the premises were only used for making input taxed supplies by way of lease, hire or licence, it may also be necessary to determine when the premises were last substantially renovated for the purposes of the five year rule under paragraph 40-75(2)(b) of the GST Act (see paragraph 23 below). In this context, the time at which 'the premises were last substantially renovated', will be when the progressive renovations amount to a substantial renovation.

What about additions undertaken with renovations?

81. Additions that are unconnected with the renovations are excluded in determining whether substantial renovations have occurred, except where that work is done to the existing building to allow the additions. Once it is determined that a building has been substantially renovated and new residential premises are created, all additions form part of the new residential premises.

What about residential premises that have been substantially renovated but have since only been used for making input taxed supplies by way of lease, hire or licence for a period of five years or more?

82. These premises would not be new residential premises (paragraph 40-75(2)(b)).

Does prior use of residential premises for residential accommodation before new residential premises are created through substantial renovations count for the 2 December 1998 date?

83. No. The test for use for residential accommodation is limited to the new residential premises (paragraph 40-65(2)(b)).

What are the GST implications if new residential premises are created through substantial renovations?

84. A sale of the new residential premises created through substantial renovations will be a taxable supply under section 9-5 of the GST Act if:

Unless the above conditions are met, the sale of a person's private residential premises will not be subject to GST, even if the premises are new residential premises.

15.5.2 Examples - substantial renovations

For source of ATO view, refer to paragraphs 53-83 of GSTR 2003/3 - *Goods and services tax: when is a sale of real property a sale of new residential premises?*

Example 1 Not substantial renovation - large part of the building not affected

Indira, a property speculator, acquires a large two storey, four bedroom house with a separate kitchen, living room, music room and bathroom on the ground floor. Indira regularly buys, renovates and sells houses. She employs a builder to undertake the following work.

The old kitchen is refitted with new cupboards, benchtops and cooking appliances. The kitchen walls and ceiling are repainted and the existing floor covering is replaced. A small bathroom that existed off the kitchen is removed and a new bathroom is constructed in one of the upstairs bedrooms. The two walls between the former bathroom and kitchen are removed so that the kitchen is much larger. Indira replaces the door and back window of the kitchen with French doors. The dilapidated slate roof of the house is replaced with a new tile roof. In all of the ground floor rooms, the floorboards, joists and bearers are also replaced.

Although the renovation work is significant we do not consider the renovation to be a substantial renovation. The house in its entirety has not been substantially renovated, as a number of rooms have not been affected. The four bedrooms upstairs are untouched with the exception of one room which has become a bathroom.

When Indira sells the renovated house, she will be making an input taxed supply (section 40-65 of the GST Act).

Example 2 Not substantial renovation - renovation largely cosmetic

Bob, a property speculator, is registered for GST. He acquires Tangalooma, a historic federation style residence in July 2000. Bob does not live in the house and immediately patches some of the walls in all of the bedrooms with gyprock cement, repaints the whole house, inside and out, and replaces the kitchen.

Although Bob has made changes to all the rooms, the work done is largely cosmetic in nature. We do not consider that Bob has substantially renovated Tangalooma. When sold, the property will be input taxed.

Example 3 Substantial renovation

In June 2002, Mary-Anne, an owner-builder who is registered for GST, acquires a dilapidated bungalow that has 3 bedrooms and 1 bathroom. Mary-Anne intends to

renovate and sell the bungalow as part of her enterprise, and lives in the bungalow while she does the renovations. She carries out the following renovations.

Mary-Anne adds an upstairs extension which creates a new bedroom and a bathroom. As part of the extension, the roof of the bungalow and all the ceilings on the lower level are replaced. The renovations to the lower level include rewiring, repairing cracked walls by removing and replacing all of the gyprock, and cement rendering the exposed bricks in the combined family room and kitchen. The installation of stairs necessitated the removal of two walls and replacement of the floor in two of the ground floor rooms. Mary-Anne also does some cosmetic work by repainting, polishing floorboards, replacing all the fittings in the kitchen and bathroom. The work undertaken by Mary-Anne constitutes a substantial renovation. All of the rooms in the house are affected by the work and several of the rooms have undergone structural renovation work. A substantial part of the bungalow is removed and replaced in undertaking the renovation work. The cosmetic work has not been taken into account when deciding whether a substantial renovation has occurred.

When Mary-Anne sells the renovated house, she will be making a taxable supply of new residential premises, which includes all the work done (whether structural, non-structural or cosmetic) to the house.

Example 4 Progressive renovations

Jamie, a property speculator who is registered for GST, acquired a 1920's style house in September 2001 with the intention of renting for short-term periods, and to progressively renovate as his work commitments permit. He intends to sell the house within 12 months of completing the renovations.

The renovations were carried out in the following stages:

September to November 2001

- *replacement of kitchen (including laying of new floor covering)*
- *the existing bathroom was removed but for the framework and a new bathroom installed (ie. new toilet, bath, vanity, shower, tap fittings and tiling)*

February 2002

- *the carpet was removed, floorboards sanded and polished, the house rewired, all light fittings were replaced*
- *the existing verandah was extended by partly demolishing and enclosing it; and modification of the roofline*

March to June 2002

- *exterior brickwork rendered*
- *roof replaced*
- *all windows and doors (interior and exterior) replaced*
- *plaster on the walls and ceilings in the lounge room, hallway and all the bedrooms replaced with gyprock*
- *the house is repainted*

Even though the work carried out in 2001 and February 2002 did not constitute substantial renovations on their own, the cumulative work carried out from September 2001 to June 2002 amounts to a substantial renovation of the house. If Jamie sells the house after the renovations are finished, he will be making a taxable supply of new residential premises, which includes all the work done (whether structural, non-structural or cosmetic) to the house

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Section 16 – security and other deposits

(a) added, (u) updated, (w) withdrawn

Issue Number	Index	Date
16.1	What is the GST treatment of Security Deposits?	09/04/01
16.2	What is the GST treatment of Deposits not subject to Division 99 of the GST Act?	30/05/2013
16.3	Is a deposit paid under a standard land contract subject to Division 99 of the GST Act?	09/04/01
16.4	Does Division 99 of the GST Act apply to rental bonds paid under commercial leases?	18/10/02 (a)

'the GST Act'	*A New Tax System (Goods and Services Tax) Act 1999*
'the GST Regulations'	A New Tax System (Goods and Services Tax) Regulations 1999
'the Transition Act'	*A New Tax System (Goods and Services Tax Transition) Act 1999*
'the Transition Regulations'	A New Tax System (Goods and Services Tax Transition) Regulations 2000
Relevant Determination	GSTD 2000/1 *Goods and services tax: is the scope of Division 99 of the A New Tax System (Goods and Services Tax) Act 1999 limited to holding deposits?*
Relevant Rulings	GSTR 2000/28 *Goods and services tax: attributing GST payable or an input tax credit arising from a sale of land under a standard land contract*
Relevant sections	Division 99 'Deposits as Security' of the GST Act

16.1 What is the GST treatment of security deposits?

For source of ATO view, refer to paragraphs 7–9 of GSTR 2006/2 - *Goods and services tax: deposits held as security for the performance of an obligation*.

ATO position

GSTR 2006/2 deals with the scope of Division 99 of the GST Act which provides a special rule about attribution for security deposits. A security deposit is an amount paid by the recipient of a supply pursuant to an agreement whereby the deposit may be forfeited by the recipient to the supplier if the recipient defaults. Section 99-5 of the GST Act provides that a deposit held as security for the performance of an obligation is not treated as consideration for a supply unless the deposit is forfeited on default or is applied as all or part of the consideration for a supply. As a result you do not account for GST or input tax credits when a deposit to which the Division applies is received or provided. The supplier accounts for the GST payable in the tax period in which the deposit is forfeited, or all or part of the deposit is applied as consideration for the supply. The recipient accounts for input tax credits in the tax period in which the deposit is forfeited or the supplier applies the deposit as all or part of the consideration for a supply.

16.2 What is the GST treatment of deposits not subject to Division 99 of the GST Act?

For source of ATO view, refer to GSTR 2006/2 - *Goods and services tax: deposits held as security for the performance of an obligation.*

ATO position

Where an amount of money represents a part payment or an instalment towards the purchase price of the product it will not be a payment to which Division 99 of the GST Act applies. Paragraphs 31 to 36 of GSTR 2006/2 gives an example of such a transaction. Example 2 illustrates the situation in which a purchaser pays $100 of the purchase price upon delivery with the balance being paid in one months time. The first payment is clearly understood by both parties to be a part payment of the agreed purchase price and not a forfeitable deposit. Division 99 of the GST Act does not apply to this payment.

16.3 Is a deposit paid under a standard land contract subject to Division 99 of the GST Act?

For source of ATO view, refer to:

- GSTR 2000/28 - Goods and services tax: attributing GST payable or an input tax credit arising from a sale of land under a standard land contract
- GSTR 2006/2 - Goods and services tax: deposits held as security for the performance of an obligation.

ATO position

The GST treatment of deposits paid under a standard land contract is discussed in ruling GSTR 2000/28. Division 99 of the GST Act applies to a deposit paid under a standard land contract. As a result, the payment of such a deposit will not trigger attribution of GST payable or input tax credits at the time the deposit is paid. This is the case if you account for GST on a cash basis or if you do not account for GST on a cash basis. Where a vendor makes a taxable supply upon a deposit being forfeited the vendor will attribute the GST payable to the tax period during which the deposit is forfeited. This applies if the vendor accounts for GST on a cash basis or if the vendor does not account for GST on a cash basis. Where a purchaser makes a creditable acquisition upon a deposit being forfeited, and holds a tax invoice, the purchaser attributes the input tax credit to the tax period during which the deposit is forfeited. This applies if the purchaser accounts for GST on a cash basis or if the purchaser does not account for GST on a cash basis.

16.4 Does Division 99 of the GST Act apply to rental bonds paid under commercial leases?

For source of ATO view, refer to GSTR 2006/2 - *Goods and services tax: deposits held as security for the performance of an obligation*.

ATO position

Yes, if the bond is paid as a security deposit for the lessee to perform all its obligations under the lease. See also Issue 10.4.5.

Section 17 – sundry issues

View history of section 17

(a) added, (u) updated, (w) withdrawn

Issue number	Index	Date
17.1	The GST Rulings system	23/12/2003 (w)
17.2	When associations arrange membership concessions on services such as mobile telephones or fuel, who will be subject to GST liability?	09/04/2001
17.3	Is construction equipment which is working and registered for road use eligible for diesel fuel credits?	23/12/2003 (w)
17.4	What is the GST treatment of rubber tyred construction equipment (for example, mobile cranes) which is purchased by a contractor in the carrying on of its business?	09/04/2001
17.5	Are fees paid for membership of an Australian industry association or union of employers subject to GST?	23/12/2003 (u)
17.6	How are embedded tax savings to be handled? Are there any Industry projections as to what might be considered reasonable and how fees should be adjusted to recognise these savings before the application of the GST?	123/12/2003 (w)
17.7	Section 81 Determination - the exemption of certain taxes from GST	23/12/2003 (u)
17.8	Is the sale of a share issued under a 'company title' arrangement that entitles the shareholder to exclusive occupation of a home unit a supply of residential property?	23/12/2003 (u)
17.9(a)	What is the meaning of the words ‘land on which there are no improvements’ and ‘no improvements on the land’ for the purposes of sections 38-445 and 38-450 of the GST Act?	26/04/2006 (u) 24/12/2003 (u)
17.9(b)	Sections 38-445 and 38-450 of the GST Act both refer to the entitlement of the recipient to the grant of a freehold interest in the land once certain lease conditions have been satisfied by the recipient. When does the ATO consider that the recipient is entitled to a grant of a freehold interest in land in such cases?	30/06/2002
17.10	What is the meaning of the words 'the Commonwealth, a State or a Territory' contained in section 38-445 (grants of freehold and similar interests by governments) and section 75-10 (sale of freehold interests etc) of the GST Act?	26/04/2006 (u) 10/05/2001 (a)
17.11	Are supplies made by an individual under a PAYG voluntary agreement included in the calculation of the GST turnover for GST registration purposes?	23/12/2003 (a)

’the GST Act’	*A New Tax System (Goods and Services Tax) Act 1999*
’the GST Regulations’	A New Tax System (Goods and Services Tax) Regulations 1999
’the Transition Act’	*A New Tax System (Goods and Services Tax Transition) Act 1999*
‘the Transition Regulations’	A New Tax System (Goods and Services Tax Transition) Regulations 2000

17.1 The GST Rulings system

This issue has been withdrawn. For information about the GST rulings system please refer to the ATO website at www.ato.gov.au and search for either 'GST public rulings' or 'GST private rulings'.

17.2 When associations arrange membership concessions on services such as mobile telephones or fuel, who will be subject to GST liability?

For source of ATO view, refer to GSTR 2000/19 - Goods and services tax: making adjustments under Division 19 for adjustment events

ATO position

The position of the association, supplier of the service and member must be considered separately if the mobile phone or fuel suppliers are registered or required to be registered for GST purposes, the suppliers will be making a taxable supply to the members when those members access the services and provide consideration in return. The supplier will be liable for the GST.

Where the association will be receiving benefits from the mobile phone or fuel suppliers because it grants a right to the suppliers (such as access to the membership details), the association has made a supply to the mobile phone or fuel suppliers. If the association is registered or required to be registered for GST purposes, the supply will be a taxable supply, and the association will be liable for GST on this supply.

17.3 Is construction equipment which is working and registered for road use eligible for Diesel Fuel Credits?

This issue has been withdrawn as the diesel fuel rebate scheme (off-road scheme) and the diesel and alternative fuels grants scheme (on-road scheme) were replaced on 1 July 2003 by the energy grants credits scheme. For information about the new scheme, refer to the ATO website at Energy grants credits scheme (NAT 9004) - **WITHDRAWN**.

17.4 What is the GST treatment of rubber tyred construction equipment (such as mobile cranes) which is purchased by a contractor in the carrying on of its business?

Non-Interpretative - straight application of the law

ATO position

Each of the following rubber tyred construction equipment are not considered to be 'motor vehicles' for the purpose of section 20 of the Transition Act where they are designed to perform a function unrelated to public road use and their ability to travel on a public road is merely incidental to that design:

- motor graders
- backhoe/ loaders
- skidsteer/ loaders
- telescopic materials handlers
- rubber tyred loaders
- mobile cranes

GST input taxed credits are available for a purchase or importation of plant and equipment on or after 1 July 2000 for creditable purposes provided that the company is registered for GST.

However, if you buy the construction equipment after 1 July 2000, you will pay a 10% GST of the value of the construction equipment. Where you import plant and equipment, its value is the sum of the customs value, the amount paid for transport and insurance, and the customs duty paid or payable.

No credit is allowed for sales tax paid on the purchase of plant and equipment prior to 1 July 2000.

17.5 Are fees paid for membership of an Australian industry association or union of employers subject to GST?

Non-Interpretative - straight application of the law

ATO position

Yes, if the industry association or union charging the membership fee is registered, or required to be registered, for GST. A supply of membership by a GST registered

association or union is a taxable supply under section 9-5 of the GST Act.

17.6 How are embedded tax savings to be handled? Are there any Industry projections as to what might be considered reasonable and how fees should be adjusted to recognise these savings before the application of the GST?

This issue has been withdrawn as it does not concern the administration of the GST law. Information about how fees and prices should be adjusted for GST may be obtained from the ACCC on **1300 302 502**.

17.7 Division 81 Determination - the exemption of certain fees and charges from GST.

Non-interpretative - straight application of the law.

For the administrative treatment of fees and charges under Division 81, refer to PS LA 2013/2 (GA) GST treatment of Australian fees or charges under Division 81 of the *A New Tax System (Goods and Services Tax) Act 1999*, which was issued on 13 June 2013.

This issue previously stated:

ATO position

Where a tax, fee or charge is listed in the Treasurer's Determination under Division 81 of the GST Act, and it is paid by a person to discharge the liability to pay it, it is not consideration for a taxable supply and therefore is not subject to GST. If that tax, fee or charge is incurred by a registered entity, the payment becomes a business cost for that entity. The cost is then included in subsequent supplies made by that entity. In these subsequent supplies, the nature of the payment of the tax, fee or charge has changed and will be subject to the normal GST rules.

Where a person incurs an expense as an agent for an entity, then seeks reimbursement of that expense, if it is the reimbursement of a tax, fee or charge that is covered by the Treasurer's Determination under Division 81 of the GST Act, it will not be subject to GST.

For example, rates for a rental property are an expense incurred by a landlord as owner of the property. The landlord may pass on these costs to a tenant, but is not acting as agent for the tenant when making the initial payment of the rates. However, if a real estate agent

paid these expenses on behalf of a landlord then sought reimbursement, the reimbursement to the agent would not be subject to GST.

17.8 Is the sale of a share issued under a 'company title' arrangement that entitles the shareholder to exclusive occupation of a home unit a supply of residential property?

For source of ATO view, refer to paragraphs 44 to 49 of GSTR 2003/3 - Goods and services tax: when is a sale of real property a sale of new residential premises?

ATO position

No. It is the sale of a share that may be input taxed as a financial supply. For information about the GST implications of converting company title to strata titled residential property, see GSTR 2003/3.

17.9(a) What is the meaning of the words ‘land on which there are no improvements’ and ‘no improvements on the land’ for the purposes of sections 38-445 and 38-450 of the GST Act?

Non-Interpretative

Refer to GSTR 2006/6.

17.9(b) Sections 38-445 and 38-450 of the GST Act both refer to the entitlement of the recipient to the grant of a freehold interest in the land once certain lease conditions have been satisfied by the recipient. When does the ATO consider that the recipient is entitled to a grant of a freehold interest in land in such cases?

Non-Interpretative - straight application of the law

ATO position

Paragraphs 38-445(1A)(d) and 38-450(1)(b) of the GST Act both refer to the entitlement of the recipient to receive the supply of a freehold interest consequent on the satisfaction by the recipient of certain lease conditions.

It is common for legislation providing for such grants to state that the grant always remains subject to ultimate Ministerial consent. This is largely an administrative provision.

For the purposes of sections 38-445 and 38-450 of the GST Act, the recipient is deemed to be entitled to the supply of the grant of a freehold interest if the recipient satisfies all of the conditions in the lease required to be satisfied to enable the grant to be made, without having regard for the formal requirement of Ministerial consent.

17.10 What is the meaning of the words 'the Commonwealth, a State or a Territory' contained in section 38-445 (grants of freehold and similar interests by governments) and section 75-10 (sale of freehold interests etc) of the GST Act?

Non-interpretative

Refer to GSTR 2006/5.

17.11 Are supplies made by an individual under a PAYG voluntary agreement included in the calculation of the GST turnover for GST registration purposes?

For source of ATO view, refer to GSTR 2001/7 - Goods and services tax: meaning of GST turnover, including the effect of section 188-25 on projected GST turnover

ATO position

Yes. Even though supplies made under a PAYG Voluntary Agreement may not be taxable supplies because of Division 113 of the GST Act*, they are not excluded from the calculation of the GST turnover for GST registration purposes. Non taxable supplies are not excluded from the calculation unless they are:

- supplies that are input taxed, or
- supplies that are not for consideration (and are not taxable supplies), and
- supplies that are not made in connection with the carrying of an enterprise (sections 188-15 and 188-20).

Because a PAYG voluntary agreement can only be entered into by an individual who is carrying on an enterprise of providing services for payment, the supplies made under such an agreement are made in the course of the individual's enterprise and for consideration. And a supply of these services is not input taxed under Division 40 of the GST Act. Therefore, the supplies do not fall within any of the exclusions above.

(*Division 113 of the GST Act provides that a supply made under a PAYG Voluntary Agreement is not a taxable supply if the acquisition of the supply by the other entity would otherwise be a fully creditable acquisition.)

Section 18 - time share

Issue number	Index	Date
18.1	Is the supply of an interest in a time sharing scheme an input taxed supply?	09/04/01

'the GST Act'	*A New Tax System (Goods and Services Tax) Act 1999*
'the GST Regulations'	A New Tax System (Goods and Services Tax) Regulations 1999
'the Transition Act'	*A New Tax System (Goods and Services Tax Transition) Act 1999*
'the Transition Regulations'	A New Tax System (Goods and Services Tax Transition) Regulations 2000
"the TAA"	*Taxation Administration Act 1953*

18.1 Is the supply of an interest in a time sharing scheme an input taxed supply?

The content for this issue is a public ruling and can be found here.

Section 19 – Water and Sewerage

All the issues in this section have been withdrawn because they are dealt with in Goods and Services Tax Ruling GSTR 2000/25 *GST-free supplies of water, sewerage and sewerage-like services, storm water draining services and emptying of a septic tank*

(a) added, (u) updated, (w) withdrawn

Issue number	Index	Date
19.1	**Supply of Water**	n/a
19.1.1	Is GST payable on the supply of water?	03/11/03 (w)
19.1.2	What is a supply of water?	03/11/03 (w)
19.1.3	When does a supply of water occur?	03/11/03 (w)
19.1.4	What supplies made by a water supplier will not be supplies of water?	03/11/03 (w)
19.1.5	Is GST payable on the supply of a right to receive a GST free supply of water?	03/11/03 (w)
19.1.6	If a cleaner uses water as part of a carpet cleaning operation, has the cleaner made a GST free supply of water to the recipient?	03/11/03 (w)
19.1.7	If a water supplier treats the water before it is supplied to a recipient, will the water treatment be subject to GST?	03/11/03 (w)
19.1.8	Is the service provided by a plumber in repairing pipes on a recipient's property GST-free as a supply of water?	03/11/03 (w)
19.2	**Sewerage services**	n/a
19.2.1	What is a supply of sewerage services?	03/11/03 (w)
19.2.2	When does a supply of sewerage services occur?	03/11/03 (w)
19.2.3	Is the removal of waste matter from residential premises GST free?	03/11/03 (w)
19.2.4	What is the treatment of the supply of a right to receive a supply of sewerage services?	03/11/03 (w)
19.2.5	Is the installation of a toilet or toilet system GST-free as a supply of sewerage services?	03/11/03 (w)
19.2.6	What supplies made by a sewerage service provider will not be supplies of sewerage services?	03/11/03 (w)
19.3	**Storm water drainage**	n/a
19.3.1	What is a supply of a service of storm water drainage?	03/11/03 (w)
19.3.2	When does a supply of a service of draining storm water occur?	03/11/03 (w)
19.3.3	What is the treatment of the supply of a right to receive a supply of draining storm water?	03/11/03 (w)
19.3.4	What supplies made by a provider of a storm water drainage service will not be supplies of storm water drainage services?	03/11/03 (w)
19.3.5	Does the installation of gutters, pipes, drain covers and grates on a recipient's property constitute the supply of a storm water drainage service?	03/11/03 (w)
19.4	**Septic tanks**	n/a
9.4.1	Is the emptying of a septic tank a GST free supply?	03/11/03 (w)
19.4.2	Is the supply, installation or repair of a septic tank GST free?	03/11/03 (w)
19.4.3	What is the treatment of the supply of a right to receive a supply of sewerage services?	03/11/03 (w)

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