GSTD 2013/4EC - Compendium

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Ruling Compendium – GSTD 2013/4

This is a compendium of responses to the issues raised by external parties to draft GSTD 2013/D3 *Goods and services tax: can the consideration the supplier provides for acquiring capital items be included in calculating whether a supply is GST-free under subparagraph 38-250(2)(b)(ii) of the A New Tax System (Goods and Services Tax) Act 1999?*

This compendium of comments has been edited to maintain the anonymity of entities that commented on the draft ruling.

Summary of issues raised and responses

Issue No.	Issue raised	ATO Response/Action taken
1	**Assets that do not 'diminish in value over time'** The commenting entity disagrees with the proposed limitation of the ruling to acquired items that 'diminish in value over time'. It is argued that this proposed exclusion is inconsistent with the principle that the 'less than 75% test' contained in the paragraph is a measure of the extent to which the price charged for the charitable supply covers the costs of making it. It is submitted that a reasonable allocation of the costs of an asset will have to take account of its intended use over time.[1] If it is intended to use the asset for the charitable purpose, it is	The question in the determination has been narrowed so that it only concerns capital assets that diminish in value. The ATO considers that different analysis is applicable to capital assets that do not diminish in value. This is because such assets are not typically 'used up' in making the relevant supplies. It is accepted that the statement at paragraph 27 in the draft determination that the cost of land could only be taken into account on sale of that land was too restrictive. There may be other cases where land (and other capital assets that do not diminish in value) are not sold but are the subject matter of the supply (or part of the subject matter of the supply). In such cases, it may be appropriate to take into account either the cost of acquisition of the asset, or some portion of the cost of acquisition. This matter is subject to further consideration.

[1] We note that this is the approach taken in GSTR 2009/4.

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	inappropriate to exclude the cost of the asset from the costs of the charitable supplies made in using the asset.	
2	**Refunds of overpaid GST** The commenting entity notes that the application of the Draft may have the consequence that Charities have overpaid GST in relation to their non-commercial supplies but that section 105-65 of Schedule 1 to the *Taxation Administration Act 1953* (TAA) and, for a net amount for a tax period starting on or after 17 August 2012, the Commissioner may refuse a refund of the amount overpaid. The commenting entity considers that this would be an unwelcome outcome, having regard to the non-commercial character of the supplies and the charitable status of the suppliers. The Draft should contain a comment on the matter. During the implementation of GST, refunds that were payable in relation to the interpretation adopted for section 38-250 were able to be used by Charities in funding other non-commercial activities and were not required to be refunded to particular customers.	It is beyond the scope of the Determination to rule on the application of section 105-65 for GST overpaid by charities. In applying section 105-65 of Schedule 1 to the *Taxation Administration Act 1953* (TAA), if the charities have refunded GST overpaid to unregistered recipients then they are entitled to claim a refund of the GST overpaid. Approaching the discretion in section 105-65 requires consideration of the individual facts and circumstances. It is not possible or appropriate to provide a blanket statement about how the Commissioner would exercise the section 105-65 discretion for all charities that have overpaid GST.

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3	**The charities consultative committee resolved issues document (CCCRID)** The commenting entity submits that the CCCRID should be amended to reflect the general principle of a 'reasonable methodology' for all costs – not merely capital costs – to ensure that those sections are, at law and in fact, merely suggestions of possible methodologies that the Commissioner would accept as meeting the 'reasonable' requirement.	Agreed. The CCCRID will be amended to reflect the current approach taken in the final GST Determination.
4	**ATO ID 2012/78** The commenting entity recommends that the ATO ID should be withdrawn to avoid confusion	Agreed. The ATO ID will be withdrawn upon the publication of the final GST Determination.
5.	**Allocation of the full amount up front** The full amount of the consideration should be counted in the tax period when the consideration is provided but not in any of the succeeding tax periods.	A supplier should apply any reasonable methodology that reflects the proportion of the capital costs that relate to each supply made. An example has been added to the final Determination to illustrate that there are circumstances where it can be fair and reasonable to take into account certain capital expenditure in the year it is incurred.
6	**Whether land should be included** If land is purchased to make a supply in one period and the consideration for the acquisition of land is provided in full in that period then the	See the response to issue number 1. In most cases it would not be appropriate to treat the whole cost of acquiring land in the cost of making supplies in the same

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	consideration should be counted in full in that period and not in any subsequent period notwithstanding that the same land may be used to make a supply in one or more of the subsequent periods.	period.
7	There are entities in many cases applying the test at subparagraph 38-250(2)(b)(ii) to determine the GST treatment of supplies in the next year, based upon their budgets for the next year. Where the test is passed based on budget figures available before the start of the budget year but is not passed once audited actual figures are known (after the end of the year), the Commissioner does not (currently) require the relevant supplies to be taxed. Some entities have already set and published their budgets and fees for year 2014 and have assessed that certain of their supplies for that year will be GST-*free*, using the methodology described in the current CCCRID for applying the test at subparagraph 38-250(2)(b)(ii). If the Final Determination makes changes to the current CCCRID rules in this area, there should be transitional arrangements to ensure that these entities that have already applied the current CCCRID rules to year 2014 (and have set and published their fees accordingly) are not required to apply the provisions of the Final Determination to any of their supplies	The Date of Effect that was proposed in the draft Determination has been altered to indicate that compliance action will not generally be taken for tax periods ending on or before 30 June 2013 where the approach of taking into account capital expenditure in the year it is incurred was adopted. However, it is not considered that any more extended transitional rule is warranted.

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	made before the start of year 2015 .	