GSTR 2017/D2 - Goods and services tax: supplies of real property connected with the indirect tax zone (Australia)

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This document has been finalised by GSTR 2018/1.

There is a Compendium for this document: **GSTR 2018/1EC** .

Draft Goods and Services Tax Ruling

Goods and services tax: supplies of real property connected with the indirect tax zone (Australia)

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This publication provides you with the following level of protection:

This publication is a draft for public comment. It sets out the Commissioner's preliminary view on how a relevant taxation provision applies, or would apply generally. Until this draft is finalised, you can rely on GSTR 2000/31 to provide you with protection from interest and penalties. Refer to the preamble to GSTR 2000/31 for the protections it provides.

Summary - what this ruling is about

1. This draft ruling discusses when a supply of real property is connected with the indirect tax zone under subsection 9-25(4) of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act).

2. For a supplier to be liable for Goods and Services Tax (GST) on a taxable supply, one of the requirements is that the supply must be connected with the indirect tax zone. [1] In this draft Ruling, the 'indirect tax zone' is referred to as 'Australia'.

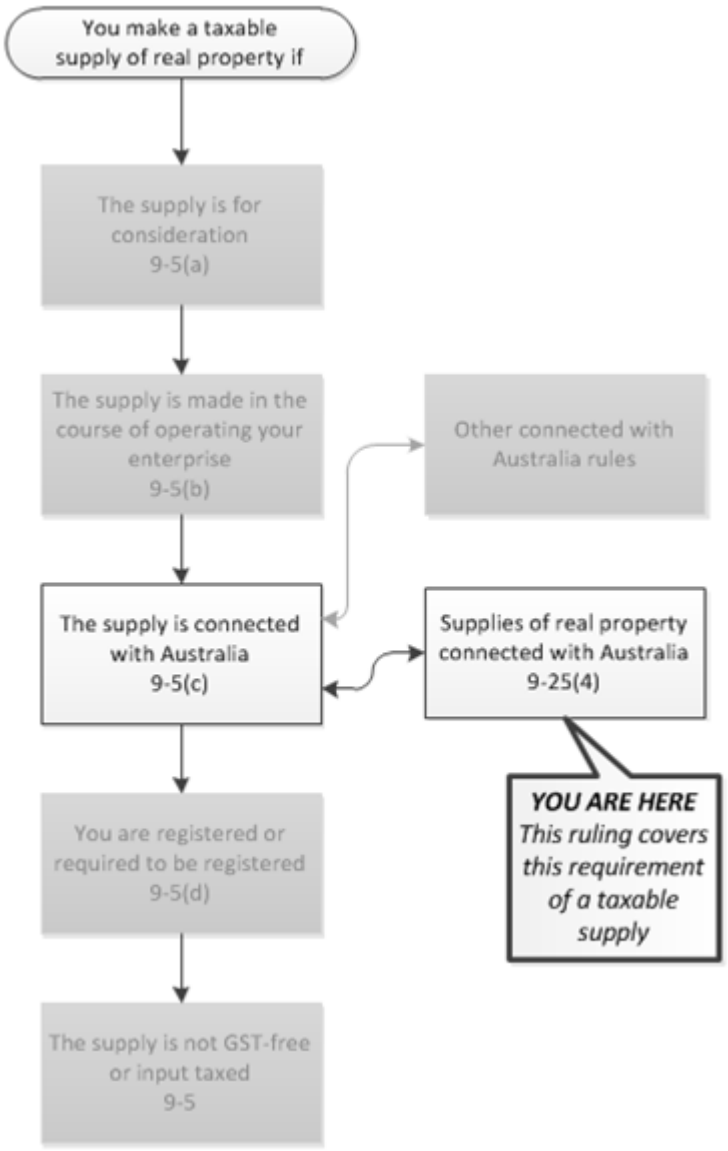
3. While this draft Ruling does not address whether a particular supply of real property is a taxable supply, references and examples are included to explain the effect of certain provisions on whether a supply of real property is a taxable supply.

4. Unless otherwise stated, all legislative references in this draft Ruling are to the GST Act.

Relevant provisions

5. The following diagram shows how the provisions dealt with in this draft Ruling fit in with the other requirements for a supply to be a taxable supply.

[1] The 'indirect tax zone' is the area that Australia's GST applies to.



Previous rulings

6. This draft ruling updates and replaces the Commissioner's view for supplies of real property in GSTR 2000/31 *Goods and services tax: supplies connected with Australia* and GSTD 2004/3 *Goods and services tax: Is a supply of rights to accommodation a supply of real property for the purposes of the A New Tax System (Goods and Services Tax) Act 1999?*

Ruling

Supplies of real property

7. A supply of real property is connected with Australia if the real property, or the land to which the real property relates, is in Australia.[2] 'Land' in this context means the physical land.

8. Real property is defined 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.[3]

9. The reference in subsection 9-25(4) to 'land to which the real property relates' means that an interest in, or right over land is connected with Australia if the physical land to which the interest or right over it relates, is in Australia. The test is the location of the land and not the location of the right.[4]

10. A supply of real property is connected with Australia if it involves, for example:

- the sale of land situated in Australia
- the grant, assignment or surrender of a lease or licence of land situated in Australia
- a personal right to call for or be granted any interest or right over land in Australia
- the grant of a put or call option over land situated in Australia
- a licence to occupy land in Australia, or
- the grant of contractual rights to occupy or stay at accommodation in Australia. This would include a stay at a hotel or motel on presentation of a voucher or travel document.[5]

Supplies of rights to accommodation in Australia

11. There are a variety of different means by which accommodation in Australia may be provided. The supply of such accommodation, including a supply of rights to the accommodation,

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[2] Subsection 9-25(4).
[3] Section 195-1.
[4] Explanatory Memorandum to the A New Tax System (Goods and Services Tax) Bill 1998 at 3.11.
[5] *Saga Holidays Limited v. Commissioner of Taxation* [2006] FCAFC 191.

will be a supply of real property connected with Australia when the accommodation is in Australia. This is because the supply is:

- the supply of a licence to occupy property situated in Australia, or
- a contractual right exercisable over or in relation to land situated in Australia.

12. The supply of rights to accommodation will be a supply connected with Australia irrespective of whether it provides any actual accommodation to the guest. For example, the supplier could be a tour operator which grants a traveller the right to stay at a hotel in Australia, where the hotel is operated by a different entity.[6] The tour operator is making a supply of rights to accommodation in Australia which is a supply of real property connected with Australia.

Example 1 – Contractual right exercisable over or in relation to land – Australian tour operator

13. Australian tour operator Big Bight Pty Ltd acquires 140 nights of accommodation in Perth from an Australian hotel chain. This entitles Big Bight Pty Ltd to on-sell these nights of accommodation to its customers. The reservations will then be honoured by the Australian hotel chain. Big Bight Pty Ltd makes the following supplies of the accommodation rights they acquired:

- *supply the rights to 20 nights accommodation to an Australian traveller*
- *supply the rights to 110 nights accommodation to a New Zealand tour operator, and*
- *supply the rights to 10 nights accommodation as part of a package tour of Australia to an Argentinian tourist.*

14. In each of these cases, Big Bight Pty Ltd is making a supply of real property connected with Australia. This because the accommodation is situated in Australia.

[6] *Saga Holidays* [2006] FCAFC 191 at [38] and [74]. In addition, paragraphs 94 and 95 of GSTR 2003/7 *Goods and Services Tax: what do the expressions 'directly connected with goods or real property' and 'a supply of work physically performed on goods' mean for the purposes of subsection 38-190(1) of the A New Tax System (Goods and Services Tax) Act 1999?* explain the Commissioner's view that a supply of hotel accommodation is a supply of real property.

Example 2 – A supply of real property – non-resident tour operator

15. Following on from Example 1 above, the New Zealand tour operator on-sells (as principal) 5 nights accommodation in Perth to 2 New Zealand resident tourists, as part of a package tour of Western Australia. The supply of accommodation by the New Zealand tour operator to the New Zealand tourists is also a supply of real property connected with Australia, even though it is supplied by a non-resident tour operator.[7]

Date of effect

16. When the final Ruling of this draft is issued, it is proposed to apply from its date of issue. It is also proposed that GSTR 2000/31 will be withdrawn on and from the date that the final ruling issues. GSTR 2000/31 will cease to apply from that date.

17. Additionally, the final Ruling will not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of this Ruling (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10).

Commissioner of Taxation
6 December 2017

[7] Under paragraphs 188-15(3)(c) and 188-20(3)(c) these supplies may not be counted in the operator's turnover when determining if the New Zealand Tour operator is required to be registered. GSTR 2001/7 *Goods and services tax: meaning of GST turnover, including the effect of section 188-25 on projected GST turnover* considers the supplies included and disregarded in determining if a supplier is required to register.

Appendix 1 – Your comments

18. You are invited to comment on this draft Ruling, including the proposed date of effect. Please forward your comments to the contact officer by the due date.

19. A compendium of comments is prepared for the consideration of the relevant Rulings Panel or relevant tax officers. An edited version (names and identifying information removed) of the compendium of comments will also be prepared to:

- provide responses to persons providing comments, and
- be published on the ATO website at www.ato.gov.au.

Please advise if you do not want your comments included in the edited version of the compendium.

Due date: **19 January 2018**

Contact officer: Contact officer details have been removed following publication of the final ruling.

Appendix 2 – Detailed contents list

20. The following is a detailed contents list for this Ruling:

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References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 2006/10; GSTR 2001/7; GSTR 2003/7

Previous Rulings/Determinations:

GSTR 2000/31; GSTD 2004/3

Legislative references:

- ANTS(GST)A1999
- ANTS(GST)A1999 9–5
- ANTS(GST)A1999 9–5(a)
- ANTS(GST)A1999 9–5(b)
- ANTS(GST)A1999 9–5(c)
- ANTS(GST)A1999 9–5(d)
- ANTS(GST)A1999 9–25(4)
- ANTS(GST)A1999 38–190(1)
- ANTS(GST)A1999 188–15(3)(c)
- ANTS(GST)A1999 188–20(3)(c)
- ANTS(GST)A1999 188–25
- ANTS(GST)A1999 195–1

Cases relied on:

- Saga Holidays Ltd v. Commissioner of Taxation - [2006] FCAFC 191; 2006 ATC 4841; (2006) 64 ATR 602; (2006) 156 FCR 256; (2006) 237 ALR 559

Other references:

- Explanatory Memorandum to the A New Tax System (Goods and Services Tax) Bill 1998

ATO references

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