


GSTA TPP 058 - Goods and services tax: Is the supply of an enterprise that includes a short-term lease of the enterprise premises a GST-free supply of a going concern?

 This cover sheet is provided for information only. It does not form part of *GSTA TPP 058 - Goods and services tax: Is the supply of an enterprise that includes a short-term lease of the enterprise premises a GST-free supply of a going concern?*

 This document has changed over time. This is a consolidated version of the ruling which was published on *31 October 2012*



Goods and Services Tax Advice

Goods and services tax: is the supply of an enterprise that includes a short-term lease of the enterprise premises a GST-free supply of a going concern?

Preamble

*This document was published prior to 1 July 2010 and was a public ruling for the purposes of former section 37 of the **Taxation Administration Act 1953** and former section 105-60 of Schedule 1 to the **Taxation Administration Act 1953**.*

*From 1 July 2010, this document is taken to be a public ruling under Division 358 of Schedule 1 to the **Taxation Administration Act 1953**.*

A public ruling is an expression of the Commissioner's opinion about the way in which a relevant provision applies, or would apply, to entities generally or to a class of entities in relation to a particular scheme or a class of schemes.

If you rely on this ruling, the Commissioner must apply the law to you in the way set out in the ruling (unless the Commissioner is satisfied that the ruling is incorrect and disadvantages you, in which case the law may be applied to you in a way that is more favourable for you – provided the Commissioner is not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any underpaid tax, penalty or interest in respect of the matters covered by this ruling if it turns out that it does not correctly state how the relevant provision applies to you.

[Note: This is a consolidated version of this document. Refer to the Legal Database (<http://law.ato.gov.au>) to check its currency and to view the details of all changes.]

Answer

The supply of an enterprise including the supply of a short-term lease to the recipient may be a GST-free supply of a going concern if all the requirements of section 38-325 of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act) are met.

Explanation

Paragraph 38-325(2)(a) of the GST Act requires the supplier to supply to the recipient all of the things

necessary for the continued operation of an enterprise.

If premises are necessary but they are not supplied because the recipient has, or is able to secure, suitable premises, paragraph 91 of GSTR 2002/5 explains that the supplier is not supplying a thing that is necessary for the continued operation of an enterprise.

If the supplier and recipient enter into a short-term lease of the premises, say for a week, the supply of the interest in the premises will be the supply of a necessary thing if it can be demonstrated that complete possession is granted to the recipient as lessee.

Note: The application of Division 165 of the GST Act has not been considered in relation to the circumstances above. Division 165 must be applied on a case-by-case basis. In each case, the Commissioner must give proper consideration to the individual circumstances of entities before making a decision on the application of Division 165.

Application of this GST Advice

This Advice applies [to tax periods commencing] both before and after its date of issue. However, this Advice 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 Advice (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10).

Commissioner of Taxation
14 June 2005

Previous Rulings/Determinations/GST Advice:

TR 2006/10; GSTR 2002/5

Subject references:

anti-avoidance
supply of a going concern
GST-free

Legislative references:

ANTS(GST)A 99 38-325
ANTS(GST)A 99 38-325(2)(a)
ANTS(GST)A 99 Subdiv 38-J
ANTS(GST)A 99 Div 165

TAA 1953 Sch 1 Div 358

ATO references

NO:	05/3095
ISSN:	1833-0053