



GSTA TPP 070 - Goods and services tax: Is a party to a contract for the sale of a commercial property who deregisters for GST before settlement required to pay GST?

 This cover sheet is provided for information only. It does not form part of *GSTA TPP 070 - Goods and services tax: Is a party to a contract for the sale of a commercial property who deregisters for GST before settlement required to pay GST?*

 This document has changed over time. This is a consolidated version of the ruling which was published on *25 January 2006*



Goods and Services Tax Advice

Goods and services tax: Is a party to a contract for the sale of a commercial property who deregisters for GST before settlement required to pay GST?

Preamble

*This document is a ruling for the purposes of section 37 of the Taxation Administration Act 1953. It illustrates the principles contained in **Goods and Services Tax Ruling GSTR 2001/7 on annual turnover**. You can rely on the information presented in this document, which provides advice on the operation of the GST system.*

Answer

No, the unregistered party is not required to pay GST. However, the Commissioner will not cancel the party's registration unless certain requirements are satisfied.

Background

A GST registered taxpayer enters into a contract for the sale of a commercial property on 1 April 2003. The settlement date is 1 December 2003. The taxpayer deregisters on 1 August 2003.

Explanation

The Commissioner must cancel an entity's registration if the entity is not required to be registered and the other requirements of section 25-55 of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act) are satisfied. Under paragraph 188-10(2)(b) an entity is not required to be registered if its projected annual turnover is at or below the turnover threshold. In calculating projected annual turnover, section 188-25 provides that any supplies made, or likely to be made, by way of transfer of a capital asset are disregarded.

Paragraphs 31 to 36 of Goods and Services Tax Ruling *GSTR 2001/7* discuss capital assets. The disposal of a single asset in an isolated transaction may amount to an enterprise if it is an activity in the form of an adventure in the nature of trade. For example, if a commercial property is purchased and

refurbished for the purpose of resale at a profit, the commercial property is not a capital asset.

Commercial property is not a capital asset

If the commercial property is not a capital asset, the Commissioner is not required to cancel the supplier's registration. The value of the supply is included in the supplier's projected annual turnover, which is likely to exceed the registration turnover threshold. The supplier is required to be registered. The GST payable is attributable to the tax period where any part of the consideration is received, which is likely to be the period in which settlement occurs. The supplier is required to give the recipient a tax invoice if requested (subsection 29-70(2)), unless the supplier chooses to use the margin scheme (section 75-30).

Commercial property is a capital asset

If the commercial property is a capital asset, and the value of all other projected supplies is less than the registration turnover threshold, the supplier is not required to be registered. If the requirements of a taxable supply under section 9-5 are tested upon entry to the contract, the supply is a taxable supply. If they are tested upon settlement of the contract, the supply is not a taxable supply.

Section 9-5 does not express when the requirements for a taxable supply should be tested. The Commissioner's view is that the elements of section 9-5 should be tested at the earlier of when the supply is made, or when an event triggers attribution. The commercial property is supplied at settlement. Thus, as the supplier does not issue an invoice or receive consideration for the supply before settlement, the supplier does not need to examine the requirements of 9-5 until settlement. As the supplier is not registered or required to be registered at settlement, no taxable supply is made. Therefore no GST is payable and no tax invoice must be issued.

Adjustments

If the supplier issues an invoice or receives partial consideration for the supply before cancelling its registration, the supplier must examine at that time if the supply is a taxable supply. As the

requirements of section 9-5 are satisfied at that time, the supplier should attribute the GST payable to the period in which the invoice issued or the payment was received.

Deregistration may be an event which has the effect of causing the supply to stop being a taxable supply within the meaning of paragraph 19-10(1)(c). The Commissioner views a cancellation of the supplier's registration before supply is made as an adjustment event under paragraph 19-10(1)(c). Therefore, if the supplier attributes GST payable on the supply to a tax period prior to de-registration, the supplier is entitled to a decreasing adjustment in its final tax period.

Division 138 – Cessation of Registration

Where the registration of a supplier who accounts on the cash basis is cancelled, section 138-15 operates to attribute GST payable on taxable supplies to the supplier's concluding tax period. On the current facts the supply of the premises is no longer a taxable supply once the supplier is deregistered so there is no GST payable to be attributed to the concluding tax period. However, section 138-5 may apply to impose an increasing adjustment to the supplier's concluding tax period in respect of the commercial property held as an asset at the time of cancelling registration.

Application of this GST Advice

This Advice is based on GSTR 2001/7. It explains our view of the law as it applied from 1 July 2000. You can rely on this Advice on and from its date of issue for the purposes of section 37 of the *Taxation Administration Act 1953*. Goods and Services Tax Ruling GSTR 1999/1 explains the GST rulings system and our view of when you can rely on our interpretation of the law in GST public and private rulings.

If this Advice conflicts with a previous ruling that you have obtained, this public ruling prevails. However, if you have relied on a previous ruling, you are protected in respect of what you have done up to the date of issue of this public ruling. This means that if you have underpaid an amount of GST, you are not liable for the shortfall prior to the date of issue of this later ruling. Similarly, you are not liable to repay an amount overpaid by the Commissioner as a refund.

Commissioner of Taxation

Date

Subject references:

registration
deregister
settlement
commercial property

Legislative references:

ANTS(GST)A 1999 25-55
ANTS(GST)A 1999 188-10(2)(b)
ANTS(GST)A 1999 188-25
ANTS(GST)A 1999 29-70(2)
ANTS(GST)A 1999 75-30
ANTS(GST)A 1999 9-5
ANTS(GST)A 1999 29-5(1)
ANTS(GST)A 1999 19-10(1)(c)
ANTS(GST)A 1999 138-15
TAA 1953 37

ATO references

NO:	05/3095
ISSN:	1833-0053