

GSTA TPP 072 - Goods and services tax: If a purchaser of residential units is granted possession of the units and demolishes them prior to settlement, is the real property supplied at the time possession is granted?

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⚠ 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: If a purchaser of residential units is granted possession of the units and demolishes them prior to settlement, is the real property supplied at the time possession is granted?

Preamble

This document is a ruling for the purposes of section 37 of the Taxation Administration Act 1953. You can rely on the information presented in this document, which provides advice on the operation of the GST system.

Answer

No; as the contractual arrangements provide for the supply of residential premises at settlement. It is immaterial whether the premises are demolished by the time of settlement.

Background

A property developer who is registered for GST enters a contract on 12 July 2004 to sell three residential units. Settlement is to occur on 11 September 2004. On 30 July 2004 the property developer grants the purchaser possession of the units. The purchaser demolishes the units prior to 11 September 2004.

Explanation

The character of what is supplied is determined by all of the facts and circumstances surrounding the supply, primarily as reflected in the contractual arrangements between the supplier and recipient.

In this case, the contract is for the sale of the real property consisting of residential units, which it is assumed would have the characteristics necessary to satisfy the definition of 'residential premises' before they are demolished. Although the contract for the supply of the premises allows the recipient access to the premises, and the recipient actually demolishes the premises before title to the land passes, the thing supplied to the recipient is the residential premises. The purchaser is only able to demolish the premises pursuant to the agreement between the parties. Since it is residential premises

that are supplied by the property developer, the supply is input taxed.

The ATO takes the same approach in relation to builders' terms arrangements, where a vendor selling land to a builder may allow the builder access for the purpose of constructing premises before settlement. Although there may be residential premises in existence when the land is finally transferred to the builder at settlement, the landowner is not making a supply of new residential premises.

If the current facts are varied, and the contract concerns the supply of vacant land, the whole of the circumstances surrounding the supply would result in the supply being a taxable supply of real property rather than residential premises. For example, if the sale contract required the purchaser to deliver vacant land and provide demolition services, there may be two supplies with the supply by the vendor being for the transfer of vacant land.

Application of this GST Advice

This Advice 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:

real property
settlement
possession
input taxed
residential premises

ATO references

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