GSTD 2000/10 - Goods and services tax: are outgoings payable by a tenant under a commercial property lease part of the consideration for the supply of the premises?

Goods and Services Tax Determination

Goods and services tax: are outgoings payable by a tenant under a commercial property lease part of the consideration for the supply of the premises?

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.]*

Date of Effect

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

Note: Changes made to this Determination by Addenda that issued on 15 August 2007, 31 October 2012 and 24 April 2013 have been incorporated into this version of the Determination. Refer to each Addendum to see how that Addendum amends this Determination.

1. A supply of premises under a commercial property lease together with the services required by the tenant to use the premises will, subject to paragraph 5 of this Determination, be a single supply of real property[1] for the purposes of the *A New Tax System (Goods and Services Tax) Act 1999* ('GST Act') and the *A New Tax System (Goods and Services Tax Transition) Act 1999*

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[1] 'Real property' is defined as including 'a licence to occupy land or any other contractual right exercisable over or in relation to land' – section 195-1 GST Act.

('Transition Act'). Where a single supply is made the reimbursement or payment of the landlord's outgoings is consideration for the supply of the premises.

2. The consideration for the supply of premises by a landlord includes amounts which are paid by the tenant under the terms of the lease:

- to the landlord for amounts for which the landlord is liable; or
- directly to a third party where the payment is in satisfaction of the landlord's liability.[2]

3. If the supply of premises is a taxable supply, GST is payable on the value of the supply. The value of a supply of premises is equal to the GST-exclusive consideration for the supply of the premises.[3] Therefore the landlord is liable for GST on the outgoings whether paid to the landlord or directly to a third party.

4. A supply under a lease may be GST-free under the transitional arrangements.[4] In this case any outgoings payable by the tenant will form part of the consideration for a GST-free supply and the landlord will not be liable for GST on the outgoings.

Single supply or multiple supplies

5. Whether a single supply or multiple supplies are made under a lease will depend on the nature of the supply and the terms of the individual agreement. There may be services referred to as outgoings which are provided to the tenant in addition to the premises and which are separate from the supply of the premises. For example, if the landlord makes a supply of office services such as typing and photocopying and makes a discrete charge for this supply based on the tenant's use of the services, this is a supply which is separate from the supply of the premises. If a payment is for a service that would normally be expected to form part of the supply of the premises and is merely incidental to the supply of the premises, then that payment will be for the supply of the premises.

6. Other obligations imposed under the lease for the tenant to reimburse the landlord, or pay costs for which the landlord is liable, will also form part of the consideration for the supply of the premises. Examples are insurance, promotional levies, and reimbursement of the landlord's costs of repairs and maintenance. If the tenant is liable for an expense regardless of the terms of the lease, the payment of the expense will not form part of the consideration for the supply of the premises.

Supply to landlord is not a taxable supply

7. If a single supply is made under the lease the payment of outgoings by the tenant is not a payment for a supply that has the same character as the supply made by a third party to the landlord. The payment is made by the tenant for the supply by the landlord of the premises and not for the particular supply made to the landlord to which the outgoings relates. Therefore if the landlord is making a taxable supply, it will not matter whether the outgoing, when incurred by the landlord, was a taxable supply to the landlord. For example, the landlord's cost of acquiring a GST-free supply in order to supply the premises becomes a business cost of the landlord. This has implications where the supply made to the landlord is not subject to GST (e.g., because of Division 81 of the GST Act) or is a GST-free supply (e.g., because of Subdivision 38-I of the GST Act).

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[2] Section 9-15 GST Act and *The Trustee, Executors and Agency Company New Zealand Ltd & Ors v. C of IR* (1997) 18 NZTC 13,076.
[3] Section 9-75 GST Act
[4] Section 13 Transition Act and Goods and Services Tax Ruling GSTR 2000/16

Supply to landlord is not subject to GST

8. Payment by the landlord of local council rates, land tax or other charges may not be subject to GST because of the operation of Division 81. If the tenant is required under the terms of the lease to reimburse the landlord's expenditure of an Australian tax or an Australian fee or charge[5] under Division 81 of the GST Act, this is not the payment of an Australian tax or an Australian fee or charge by the tenant. Division 81 of the GST Act does not apply to the tenant's reimbursement of the rates, land tax or other charges.

9. If the tenant makes payment directly to the entity levying the tax, fee or charge, this payment will be consideration for the supply of the premises not payment for a supply that the entity levying the tax, fee or charge makes to the tenant. Therefore Division 81 does not apply to payments for the supply by a landlord under a lease and the payment of the tax, fee or charge by the tenant forms part of the consideration for the supply of the premises.

Supply to landlord is GST-free

10. Supplies of water and sewerage services to the landlord may be GST-free.[6] Where the supply under the lease to the tenant involves an incidental provision of water this will not be a supply of water for the purposes of the GST Act. Unless the lease agreement specifies that the landlord will make a separate supply of water to the tenant, any contribution by the tenant to the landlord's expenditure on water will not be consideration for a GST-free supply of water. Where a single supply is made by the landlord, the amount payable by the tenant in respect of water or sewerage will be subject to GST if the supply of the premises is a taxable supply.

Tenant pays estimated outgoings

11. Outgoings may be paid by a tenant on the basis of a budgeted or monthly estimate. The lease may provide for the amount paid to be reconciled against actual outgoings at set intervals. The estimated outgoings are paid by the tenant as part of the consideration for the taxable supply of the premises and therefore the landlord will be liable for GST on these payments.

12. The reconciliation of the estimated outgoings paid by the tenant with the actual outgoings is likely to result in a change to the consideration for the supply and acquisition of the premises, so will give rise to an adjustment event.[7] Therefore, both the GST payable on the supply and the entitlement to input tax credits will need to be adjusted. The landlord will be required to issue an adjustment note to the tenant. A tax invoice can also be an adjustment note if it satisfies the requirements for an adjustment note.[8]

GST turnover

13. The landlord of a commercial property will be carrying on an enterprise and must register if GST turnover is $75,000 or more. Other turnover thresholds may also be relevant, i.e.,

- the cash accounting turnover threshold;
- the electronic lodgement turnover threshold; and
- the tax period turnover threshold.

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[5] The terms 'Australian tax' and 'Australian fee or charge' are defined in section 195-1 of the GST Act.
[6] Subdivision 38-I GST Act; for further information see Goods and Services Tax Ruling GSTR 2000/25.
[7] Paragraph 19-10(2)(a) GST Act and Goods and Services Tax Ruling GSTR 2000/19.
[8] Subsection 29-75(1) GST Act.

14. A landlord will have a GST turnover that meets a particular turnover threshold if the current or the projected GST turnover meets a particular threshold.[9] The GST turnover of a landlord will include any outgoings reimbursed by the tenant or paid directly to a third party in satisfaction of the landlord's liability. This is because these amounts form part of the value of the supply of the premises.

Examples

15. In the following examples, unless otherwise stated, all parties are registered for GST and the landlord is making a taxable supply.

Example 1 – more than one supply is made to the tenant

16. *Rick leases a shop in a shopping centre to Elizabeth. Under the lease Elizabeth agrees to pay a percentage of the outgoings Rick incurs in operating and maintaining the centre which includes the electricity used in lighting the common area and air conditioning the centre. Elizabeth has an agreement with the electricity utility to supply electricity directly to her shop. This electricity is a metered supply and the amount payable is based on Elizabeth's actual use of electricity.*

17. *The amount Elizabeth pays for electricity used in the common area and for air conditioning the centre is part of the consideration for the supply of the premises. However, the electricity supplied to Elizabeth's shop is a separate supply from the supply of the premises. In paying for electricity supplied to her shop, Elizabeth is not paying on behalf of Rick. She has incurred this expense independently of the lease of the shop.*

Example 2 – tenant has liability for expense

18. *Under the relevant legislation in certain States, the stamp duty payable on the stamping of a lease is the joint liability of both parties to the agreement. Lease agreements executed in those States may specify that the stamp duty is payable by the tenant. Under such an agreement, because the tenant already has liability for the stamp duty, the payment of the stamp duty by the tenant is not part of the consideration for the supply of the premises.*

Example 3 – lease allows GST to be recovered from tenant

19. *On 1 July 2000 Kathleen leases commercial premises to Bob. The consideration under the lease agreement consists of $1,000 base rent per month plus reimbursement of Kathleen's expenses relating to the premises including insurance, electricity, cleaning and maintenance. Under the agreement Kathleen can recoup from Bob any GST payable by her in relation to the lease.*

20. *Kathleen pays a contractor $220 for cleaning and maintenance work during July. This includes $20 GST. She claims an input tax credit for the $20. Kathleen provides a tax invoice (via her managing agent) to Bob for $1,320. This amount is made up of $1,000 base rent, $200 outgoings and $120 GST.*

Example 4 - lease does not allow GST to be recovered from tenant but supply is taxable

21. On 1 August 1999 Liz leases commercial premises to Tom. The lease does not allow Liz to recover GST payable by her in relation to the lease. As at 1 July 2000 the consideration under the lease agreement consists of $1,000 base rent per month plus Liz's expenses relating to the maintenance of the common areas of the premises.

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[9] Subsection 188-10(1) GST Act

22. *Liz pays a contractor $220 for the maintenance work during July. This includes $20 GST. She claims an input tax credit for the $20. Liz provides a tax invoice (via her managing agent) to Tom for $1,220. This amount is made up of $1,000 base rent and $220 outgoings. Because the lease allows Liz to recover the full amount of the outgoing she is able to pass on the gross amount of the outgoing. Liz will comply with the Australian Competition and Consumer Commission (ACCC) guidelines on price exploitation when she passes on the total cost of the outgoings rather than net cost because her net dollar margin has not increased. In this case even though Liz cannot increase the amount charged under the lease because of GST, the price is inclusive of GST because she is making a taxable supply and she is liable for GST of $110.91 (1/11 of $1,220).*

Example 5 - the supply under the lease is GST-free under section 13 of the Transition Act

23. On 1 July 1998 Tracey makes a written agreement to lease part of a commercial premises for a period of five years to Grant. The agreement satisfies subsection 13(1) of the Transition Act and does not contain a review opportunity.[10] As at 1 July 2000 the consideration payable under the lease agreement consists of $1,000 base rent per month plus Grant's share base on floor area of Tracey's expenses for the cleaning, security and electricity relating to the common areas of the premises. The amount Tracey pays for each of these expenses includes GST.

24. *Grant's share of the cleaning, security and electricity outgoings for July is $220. The cleaning, security and power for the common areas of the premises are not separate supplies to the supply of the premises. Tracey is making a single supply. As section 13 of the Transition Act applies to the agreement the supply is GST-free. She is entitled to an input tax credit in relation to the cleaning, security and electricity, of which $20 relates to Grant's lease. Tracey invoices Grant for $1,200. This amount is made up of $1,000 base rent and $200 outgoings.*[11]

Example 6 - the outgoing is not subject to GST - Division 81 of the GST Act

25. On 1 July 2000 Annette leases commercial premises to Matthew. The consideration under the lease agreement consists of $1,000 base rent per month plus reimbursement of Annette's expenses for the property including rates. Under the agreement Annette can recoup from Matthew any GST payable by her in relation to the lease.

26. *Annette pays the local authority $220 for rates for July. The rates are an Australian tax for the purposes of Division 81 of the GST Act. Therefore the payment of the rates is not consideration for a supply that the local authority makes to Annette and the local authority does not make a taxable supply to Annette. She is not entitled to an input tax credit in relation to the rates. Annette provides a tax invoice to Matthew for $1,342. This amount is made up of $1,000 base rent, $220 outgoings and $122 GST.*

Example 7 - the outgoing is paid directly to the landlord's supplier

27. *Assume the same facts as Example 6 except that the lease provides that Matthew is to pay, directly to the local authority, the rates for which Annette is liable. Matthew pays the rates in connection with the supply of the premises and the amount of GST payable by Annette is the same as Example 6.*

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[10] For the definition of 'review opportunity' see subsection 13(5) Transition Act and Goods and Services Tax Ruling GSTR 2000/16.

[11] As another issue Tracey could be in breach of the ACCC guidelines on price exploitation if she passed on the total cost of the outgoings rather than the net cost.

28. *Division 81 does not preclude the payment by Matthew to the local authority from being consideration for the supply of premises under the lease. The tax invoice Annette gives to Matthew will show a total consideration of $1,342.*

The tax invoice that Annette gives Matthew could include the following information:[12]

Rent	*$1,000*
Rates as outgoing	*$220*
GST	*$122*
Total	*$1,342*
less Rates payable to Council	*$220*
Net amount payable	*$1,122*

Example 8 - the outgoing is GST-free under Subdivision 38-I of the GST Act

29. *On 1 July 2000 Vanessa leases a shop to John. The consideration under the lease agreement consists of $1,000 base rent per month plus Vanessa's expenses relating to the water supplied to the property. Under the agreement Vanessa can recoup from John any GST payable by her in relation to the lease.*

30. *Vanessa pays the local authority $220 for water for July. The supply of water to Vanessa is GST-free under Subdivision 38-I of the GST Act. She is not entitled to an input tax credit in relation to the acquisition of water. The supply of water by Vanessa, even if metered to John, is incidental to, and cannot be separated from the supply of the premises. Vanessa invoices John for $1,342. This amount is made up of $1,000 base rent, $220 outgoings and $122 GST.*

Example 9 – GST-free supply of premises but tenant pays taxable outgoing on behalf of landlord

31. Jodie leases premises to Tania under a lease that satisfies subsection 13(1) of the Transition Act and does not contain a review opportunity so the supply of the premises is GST-free until 1 July 2005. Under the lease Tania is required to pay the insurance on the premises on behalf of Jodie. On 1 September 2000 Tania pays to the insurer the annual premium of $1,200 which includes $100 GST.[13] *The insurance is a creditable acquisition by Jodie and she is entitled to an input tax credit for the GST included in the premium.*

32. *By paying the full amount of $1,200 Tania has paid more than she is required to under the lease. To comply with the ACCC guidelines, Jodie should pay $100 to Tania to reflect Tania's actual liability under the lease given that the supply is GST-free. If Tania had reimbursed Jodie rather than pay the insurance company, she would have only paid $1,100 (see Example 5).*

Example 10 – tenant pays a proportion of total outgoings as a monthly estimate

33. *David leases a shop in a shopping centre to Kate. Under the lease Kate is required to pay 8% of the total of David's outgoings on rates, insurance, cleaning and other common area expenses. David is required to provide a budget for the shop's outgoings for the year and each month Kate pays one-twelfth of the budgeted amount. The lease provides for the budgeted outgoings to be reconciled with actual outgoings annually.*

[12] See Goods and Services Tax Ruling GSTR 2013/1 for an explanation of the requirements for tax invoices.

[13] The GST included in the premium is less than 1/11 of the total because GST on insurance premiums is exclusive of stamp duty – section 78-5 GST Act

34. *The estimated outgoings paid by Kate are part of the consideration for the supply of the premises and are subject to GST. On reconciliation Kate has paid $1,100 in excess of actual outgoings including $100 GST. David refunds Kate $1,100. He has paid $100 additional GST to his actual liability. He has an adjustment event and should make the adjustment in his Business Activity Statement (BAS) for the tax period in which the change occurs. Kate has claimed input tax credits of $100 in excess of her actual entitlement. She also has an adjustment event and should make the adjustment on the BAS for the tax period in which the change occurs. The notice of the reconciliation should satisfy the requirements of an adjustment note.[14] This can form part of a tax invoice.*

Example 11 – landlord is not registered for GST

35. *Harvey who is not registered for GST, leases commercial premises to Jamie. The consideration under the lease agreement consists of $1,000 base rent per month plus Harvey's expenses relating to the rates, cleaning, maintenance and insurance of the premises.*

36. *Harvey pays a contractor $220 for maintenance work during July. This includes $20 GST. He cannot claim an input tax credit for the $20 as he is not registered. Harvey provides an invoice (via his managing agent) to Jamie for $1,220. This amount is made up of $1,000 base rent and $220 outgoings. Because he is not registered Harvey is not making a taxable supply and Jamie cannot claim an input tax credit in respect of the payment.*

Commissioner of Taxation
6 September 2000

[14] Subsection 29-75 GST Act

Previously released:

Previously released as draft GSTD 2000/D4

Related Rulings:

TR 2006/10; GSTR 2000/16; GSTR 2000/19; GSTR 2000/25; GSTR 2013/1

Subject references:
- agreements spanning 1 July 2000
- goods & services tax
- GST consideration
- GST free
- GST supply
- GST transitional issues
- GST turnover
- lease & hire expenses
- lease & hire income
- special transitional rules
- taxable supply
- taxation determinations

Legislative references:
- ANTS(GST)A99 9-15
- ANTS(GST)A99 9-75
- ANTS(GST)A99 19-10(2)(a)
- ANTS(GST)A99 29-75
- ANTS(GST)A99 29-75(1)
- ANTS(GST)A99 Subdiv 38-I
- ANTS(GST)A99 78-5
- ANTS(GST)A99 Div 81
- ANTS(GST)A99 188-10(1)
- ANTS(GST)A99 195-1
- ANTS(GSTT)A99 13
- ANTS(GSTT)A99 13(1)
- ANTS(GSTT)A99 13(5)
- TAA 1953 Sch 1 Div 358

Case references:
- *The Trustee, Executors and Agency Company New Zealand Ltd & Ors v. C of IR* (1997) 18 NZTC 13,076

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