



# ***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?***

 This cover sheet is provided for information only. It does not form part of *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?*

 This document has changed over time. This is a consolidated version of the ruling which was published on *15 August 2007*

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## Goods and Services Tax Determination

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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*?

### **Preamble**

*This document is a ruling for the purposes of section 105-60 of Schedule 1 to 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.*

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

1. Yes. A supply of rights to accommodation is a supply of real property for the purposes of goods and services tax (GST).
2. A supply of rights to accommodation located in Australia is therefore connected with Australia under subsection 9-25(4).<sup>1</sup>
3. Supplies of rights to accommodation in Australia are therefore taken into account in determining whether an entity's GST turnover meets registration turnover thresholds in accordance with Divisions 23 and 188.

### **Background**

4. In the tourism industry, tour packages are typically sold by tour operators (or resold by a number of tour operators) across the world. Within a typical tour package, a component is the right to accommodation either on specified dates or for a certain number of nights.<sup>2</sup>
5. A right to accommodation may be evidenced by a reservation, coupon, letter or similar document (the reservation letter). The reservation letter is produced only after the accommodation booking is confirmed with the accommodation provider (for example, a hotel, motel or hostel). Where there is a reservation letter, it is presented by the tourist to the accommodation provider in order to receive the accommodation specified.

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<sup>1</sup> All legislative references are to the *A New Tax System (Goods and Services Tax) Act 1999* unless otherwise stated.

<sup>2</sup> This Goods and Services Tax Determination does not deal with the other components of a typical tour package, such as travel components, meals or entry to events.

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## Explanation

6. Under the definition in section 195-1, 'real property' includes:
  - (a) any interest in or right over land; or
  - (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.
7. When a tour operator supplies a right to accommodation, the tour operator supplies a licence to occupy land or another contractual right exercisable over or in relation to the land on which the accommodation is located.<sup>3</sup>
8. It is immaterial that the tour operator is not the accommodation provider. It is sufficient that the tour operator is entitled to confer a right to accommodation which amounts to a licence to occupy land or any other contractual right exercisable over or in relation to land.
9. As a supply of rights to accommodation is a supply of real property for GST purposes, the supply is connected with Australia where subsection 9-25(4) is satisfied. This subsection provides that 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.
10. Accordingly, a supply of rights to accommodation located in Australia satisfies the requirements of subsection 9-25(4) and is connected with Australia.
11. Supplies of rights to accommodation in Australia are taken into account in determining an entity's current GST turnover or projected GST turnover for the purposes of Division 188 because these supplies are connected with Australia.
12. As a result, non-resident tour operators are required to be registered where they carry on an enterprise, make supplies of rights to accommodation in Australia and the sum of the values of those supplies in a 12 month period<sup>4</sup> is \$75,000 or more. This is so whether the rights are granted or assigned in or outside Australia.
13. The supply of rights to accommodation relating to accommodation located in Australia is a taxable supply where the tour operator is registered or required to be registered.

## Example

14. *A tour operator in Australia obtains rights to accommodation in Australia from an Australian accommodation provider. This supply is connected with Australia and is a taxable supply where the other requirements of section 9-5 are met. As this supply is connected with Australia, the value of the supply is part of the Australian accommodation provider's GST turnover. The tour operator in Australia makes a creditable acquisition provided all the other requirements of section 11-5 are met.*

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<sup>3</sup> Goods and Services Tax Ruling GSTR 2003/7 at paragraphs 94 and 95 explains the Commissioner's view that a supply of hotel accommodation is a supply of real property.

<sup>4</sup> As determined by the relevant tests in Division 188.

15. *The tour operator in Australia sells the rights to accommodation in Australia to a tour operator outside Australia. This supply of rights to accommodation in Australia is connected with Australia and is a taxable supply where the other requirements of section 9-5 are met. As this supply is connected with Australia, the value of the supply is part of the Australian tour operator's GST turnover. The tour operator outside Australia makes a creditable acquisition provided the requirements of section 11-5 are met, in particular that the tour operator outside Australia is registered or required to be registered.*

16. *The tour operator outside Australia sells the holiday package (including rights to accommodation) to a tourist intending to visit Australia. The supply of rights to accommodation in Australia is connected with Australia and is a taxable supply where the other requirements of section 9-5 are met. As this supply is connected with Australia, the value of the supply is part of the overseas tour operator's GST turnover for the purpose of determining whether it meets the registration turnover threshold.*

### **Date of effect**

17. This Determination explains our view of the law as it applied from 1 July 2000. You can rely upon this Determination 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.

18. If this Determination conflicts with a previous private ruling that you have obtained, this public ruling prevails. However, if you have relied on a private 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 the later ruling. Similarly, you are not liable to repay an amount overpaid by the Commissioner as a refund.

Note: The Addendum to this Determination that issued on 15 August 2007, explains our view of the law as it applied from 1 July 2007. You can rely upon the Addendum on and from its date of issue for the purposes of section 105-60 of Schedule 1 to the *Taxation Administration Act 1953*.

If this Addendum conflicts with a previous private ruling that you have obtained or a previous public ruling, this Addendum prevails. However, if you have relied on a previous ruling (including the public Determination that the Addendum amends), you are protected in respect of what you have done up to the date of issue of the Addendum or, if there is a change to the legislation, you are protected in respect of what you have done up to the date the legislative change takes effect. This means that if you have relied on the earlier ruling and have underpaid an amount of GST, you are not liable for the shortfall prior to either the issue date of the Addendum or the date the legislative change takes effect, as appropriate. Similarly, if you have relied on the earlier ruling you are not liable to repay an amount overpaid by the Commissioner as a refund.

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FOI status: **may be released**

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## Commissioner of Taxation

31 March 2004

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*Previous draft:*

Not previously issued in draft form.

*Related Rulings/Determinations:*

GSTR 1999/1; GSTR 2003/7

*Subject references:*

- connected with Australia
- current annual turnover
- GST turnover
- projected annual turnover
- real property
- rights to accommodation
- tour operator

*Legislative references:*

- ANTS(GST)A99 9-25(4)
- ANTS(GST)A99 9-5
- ANTS(GST)A99 11-5
- ANTS(GST)A99 Div 23
- ANTS(GST)A99 Div 188
- ANTS(GST)A99 195-1
- TAA 1953 37

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ATO references

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