GSTR 2000/18 - Goods and services tax: construction and building services which span 1 July 2000

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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 Ruling

Goods and services tax: construction and building services which span 1 July 2000

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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.]*

What this Ruling is about

1. This Ruling is about the treatment of supplies of construction and building services[1] which commence before 1 July 2000 and finish on or after that date. It explains how much of the supply will be performed before 1 July 2000 and therefore not subject to Goods and Services Tax ('GST').

2. This Ruling applies to construction and building services you make under an agreement:

(i) with a head contractor, where your supply forms part only of the construction, major reconstruction, manufacture or extension of a building or civil

[1] Refer paragraph 15 of this Ruling.

engineering work (for example, as a subcontractor in the construction of a building); or

(ii) where your supply does not form part of the construction, major reconstruction, manufacture or extension of a building or civil engineering work (for example, rewiring of an existing office block, or a bathroom renovation in a private house).

3. This Ruling does not apply to:

(i) a supply of goods that is made independently of construction and building services; or

(ii) a supply of real property; or

(iii) a supply of design services, except to the extent made under an agreement for construction and building services; or

(iv) a supply of services to the extent that you make the supply under a PAYG voluntary agreement[2]; or

(v) a supply covered by section 19 of *A New Tax System (Goods and Services Tax Transition) Act 1999* (the Transition Act).

4. Unless otherwise stated, all legislative references in this Ruling are to the Transition Act.

Date of effect

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

[2] GST and voluntary agreements are discussed at paragraph 27 of this Ruling.

Background

6. The Transition Act contains both general and specific provisions in relation to supplies that span 1 July 2000. Section 19 is a specific transitional provision for written agreements entered into before 1 July 2000, for construction projects completed on or after that date. That section provides that the value of work and materials permanently incorporated in or affixed on the construction site before 1 July 2000 will not be subject to GST.

7. Goods and Services Tax Ruling GSTR 2000/14, titled 'Goods and services tax: transitional valuation of work-in-progress for head contractors in the building or civil engineering industries', explains how to determine this value for the purposes of section 19.

8. However, section 19 does not apply to all types of construction. For example, it does not apply to a supply you make under a contract to a head contractor, nor does it apply to some supplies you make directly to a property owner.

9. The intention of the Transition Act is that GST is only payable on a supply to the extent that it is made on or after 1 July 2000[3]. For construction and building services commencing before and finishing on or after 1 July 2000, this effect will be achieved by determining the extent the service is performed before that date.

Ruling

10. In most circumstances a supply of construction and building services is entered into to provide a given result. We consider that, for the purposes of this Ruling, this kind of supply is a supply of a service only. Any materials used in producing the given result are ancillary or integral to the provision of the service (refer paragraph 19).

11. Under this Ruling, there are two approaches to dividing the performance of the service into a portion that is not subject to GST and a portion that is. Under Apportionment Option A (explained in more detail at paragraphs 32 to 35) you may determine the portion of the service you perform before 1 July 2000 on the basis of progress payments received. You may choose this option either:

(i) where the agreement for the supply of the service provides that payments be made only on a progress basis as stages of completion designated under the agreement are reached; or

[3] Subsection 7(1) of the Transition Act.

(ii) where the service you perform forms part of the construction, major reconstruction, manufacture or extension of a building or civil engineering work and progress payments are made to you by the head contractor for that construction project.

12. If you do not apportion the performance of the service under Option A, you should apportion under Option B (explained in more detail at paragraphs 45 to 48). Option B determines apportionment on the basis of records that you maintain which explain the transactions and activities relevant to that supply.

Explanations (this forms part of the ruling)

Section 19

13. Section 19 *only* applies to a supply which is the *whole* of a construction, major reconstruction, manufacture or extension of a building or civil engineering work, made under a written agreement before 1 July 2000.

14. This would generally exclude subcontractors from that section. If section 19 applies to you in respect of a supply you make, you cannot choose to apply this Ruling[4].

Construction and building services

15. For the purposes of this Ruling, construction and building services are only those services supplied in respect of a building or civil engineering work. Construction and building services include, but are not limited to bricklaying, carpentry, plumbing, tiling, electrical, painting, air conditioning installation, lift installation, or any combination of these. Typically these types of services are provided in home renovation, office refurbishment, or by a subcontractor working in a larger construction project.

16. In some circumstances a supplier may enter into an agreement to design and construct. Where these services are supplied under the same agreement then the design component is considered to be part of the construction and building service.

[4] See paragraph 7 of this Ruling.

Special credit for sales tax paid

17. Entitlement to a special credit for sales tax paid on stock may be allowed under section 16. Good and Services Tax Ruling GSTR 2000/8, titled 'Goods and Services Tax: Special credit for sales tax paid on stock', provides guidance as to how section 16 operates in determining the extent of the special credit available in respect of stock held for the purposes of sale or exchange at the start of 1 July 2000.

18. If you supply construction and building services, you should determine any special credit to which you may be entitled, in accordance with that ruling, on the basis that you are a builder[5].

Single supply

19. Where you are engaged to produce a given result, we consider the substance of the agreement is to perform a service. Any materials used in producing the service are ancillary or integral to the work that must be performed to provide the finished job. In such circumstances, you are making a single supply, being a supply of a service.

20. The value of the materials used will be taken into account in determining the extent of the performance of your service that occurs before 1 July 2000. However, for these materials to be characterised as being used, they must be affixed to or incorporated into the construction site or building on which you are performing your service.

Timing of supply under section 12

21. Section 12 provides a different rule for progressive and periodic contracts. We do not consider that section 12 applies to an agreement for the supply of construction and building services. This is because the agreement will be for a particular job to be done, rather than for a supply to be made for a specified period.

22. We consider that section 12 applies where the supply is made for a specified division or portion of time which begins before 1 July 2000 and concludes on or after 1 July 2000. This is consistent with the view taken in Goods and Services Tax Ruling GSTR 2000/7, titled 'Transitional arrangements-supplies, including supplies of rights, made before 1 July 2000 and the extent to which such supplies are taken to be made on or after 1 July 2000'[6].

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[5] See paragraphs 38 to 40 of GSTR 2000/8.
[6] See paragraph 29 of Goods and Services Tax Ruling GSTR 2000/7.

23. Support for this view is found in the examples provided in the Explanatory Memorandum of the kinds of supplies to which section 12 will apply[7]:

- a one year maintenance agreement;
- supply of a right to use a printing press for a 4 year period;
- lease of a building for a 10 year period;
- hire agreements and similar arrangements.

Subsections 7(1) and 6(4)

24. Subsection 7(1) provides that GST is only payable on a supply to the extent it is made on or after 1 July 2000. We consider the word 'extent' allows for the apportionment of a supply that spans 1 July 2000.

25. To determine whether a supply is made before 1 July 2000, it is necessary to consider the transitional timing rules contained in section 6. Subsection 6(4) deals with the supply of services and provides that the supply is made when the services are performed.

26. We consider that subsection 6(4) must be read with subsection 7(1), which means that where the performance of a service spans 1 July 2000, only that portion of the service performed as at the start of 1 July 2000 will not be subject to GST.

Supply under a PAYG Voluntary Agreement

27. You, as an individual, can enter a PAYG voluntary agreement[8] with a payer to bring your work payments into the PAYG withholding system. Both you and the payer must have an Australian Business Number (ABN) and the work payments must not be subject to any other PAYG withholding system.

28. Generally, you will not be subject to GST on supplies you make under a voluntary agreement. You can read more about voluntary agreements in the 'PAYG Voluntary agreement' Fact Sheet and the 'Guide to PAYG for Business' booklet.[9]

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[7] Paragraphs 7.3 to 7.6 of the Further Supplementary Explanatory Memorandum to *A New Tax System (Goods and Services Tax Transition) Act 1999.*

[8] Division 113 of *A New Tax System (Goods and Services Tax) Act 1999* sets out the requirements for a PAYG Voluntary Agreement.

[9] These publications are available electronically on www.taxreform.ato.gov.au

Records you must maintain

29. Paragraph 70(1)(a) of the *Tax Administration Act 1953*, provides that if you make a taxable supply, taxable importation, creditable acquisition or creditable importation, you must:

> *(d) keep records that record and explain all transactions and other acts you engage in that are relevant to that supply, importation, acquisition or dealing; and*
>
> *(e) retain those records for at least 5 years after the completion of the transactions or acts to which they relate.*

30. An accounting system that is sufficiently detailed to allow you to identify actual stages of completion of a job, or to identify the work done and materials used for which you progressively bill the recipient of the supply, will satisfy the requirements of section 70 for the purposes of this Ruling.

31. If your accounting system does not do the above, you must maintain other records that evidence the time spent and the nature of activities undertaken on those days. These records should also evidence details of materials affixed on-site, where the supply of your service includes provision of materials.

Apportioning a supply spanning 1 July 2000 – how to determine the extent of the service performed before 1 July 2000

Apportionment Option A - apportioning the supply based on progress payments

32. If you receive progress payments for the supply of the service, you may use these payments to determine the extent the service has been performed before 1 July 2000, provided the payment is only for service performed before 1 July 2000.

33. Advance payments, that is payments received before 1 July 2000 in respect of performance of services on or after that date, will not be taken into account under this option in determining the extent the service has been performed before 1 July 2000. These payments will be attributed for GST purposes to your first tax period on or after 1 July 2000[10].

34. You may use this option where either:

(i) the agreement for the supply of the service provides that payments be made only on a progress basis as stages of completion designated under the agreement are reached; or

[10] Section 10 of the Transition Act.

(ii) the progress payment is made to you by a head contractor, in respect of your supply forming part of the head contractor's construction, major reconstruction, manufacture or extension of a building or civil engineering work.

35. This option will not reflect any additional work done between the date of your last pre-1 July 2000 progress claim and 30 June 2000.

36. If you wish to include this additional progress in your determination of the extent to which you have performed the service by 1 July, you may do so by using Option B.

Retention amounts

37. Commonly under agreements for the supply of construction and building services, the recipient of the supply (the payer) may retain an amount from the total amount payable as a means to ensure that the supplier will satisfactorily perform its obligations under the agreement.

38. Under the progress payment option explained above, where the payer retains such an amount from a progress payment to you, the amount retained still forms part of the progress payment for purposes of determining the extent of the service you have performed before 1 July 2000.

39. Where amounts retained for this purpose are subsequently paid to you, they will not be subject to GST to the extent that they relate to the portion of the service you perform before 1 July 2000. This will be the case regardless of whether, on or after 1 July 2000, you perform rectification work as required in accordance with the terms of the agreement relating to the retained amounts.

40. Where an amount less than the total amount retained is paid to you because you do not perform rectification work as required, and the recipient of the supply engages someone else to perform that work, that person will be making a separate supply. If performed on or after 1 July 2000 (and the person is registered or required to be registered for GST), it will be a taxable supply and subject to GST.

Example 1 – section 19

41. Under a written agreement with XYZ Enterprises, Bonza Constructions commenced building an office block on XYZ's land in March 2000. Construction of the office block will not be finished until March 2001.

Bonza receives progress payments based on certification by a quantity surveyor of its progress claims. In putting together these progress claims, Bonza assembles progress claims from all its subcontractors. The supply Bonza is making is subject to section 19[11].

Example 2 – progress claim by subcontractor

42. Lotsa Pipes (plumbing subcontractor) has contracted with Bonza Constructions (the head contractor) to provide plumbing requirements for the building in the example above. On 26 June 2000, Lotsa Pipes submits a progress claim of $10,000 to Bonza for work done to that date.

Some weeks later, Bonza makes payment in respect of that claim, but withholds 5% ($500) under a retention arrangement. In this case, the retention amount represents part of the supply made by Lotsa Pipes before 1 July 2000. No part of the $10,000 will be subject to GST. The progress payment represents the extent of the performance of the services before 1 July 2000.

Example 3 – reduced progress payment

43. As in the above example, but in this case Bonza does not agree that Lotsa Pipes' claim for work and materials to 30 June justifies payment of $10,000. After discussion, part of the claim, worth $600, is agreed not to have been performed. Bonza makes payment in respect of the remaining $9,400, withholding 5% ($470).

In this case, the progress payment for purposes of determining the extent of the performance of the service will be $9,400. The $600 portion will be subject to GST when it is performed.

Example 4 – completed stage

44. Splasha Paints is a large painting contractor. It has an agreement with a building owner to paint the entire building inside and outside. The agreement price is $250,000 and the service is expected to take 3 months. Splasha may make progress claims in respect of certain stages of completion of the job, as designated under the agreement.

[11] See Goods and Services Tax Ruling GSTR 2000/14.

The work starts on 20 May and the first stage is completed on 26 June. Splasha lodges a progress claim in respect of this stage of completion for $70,000. Splasha does more work between 26 June and 30 June, but chooses to adopt the progress payments option to determine the extent of its service performed before 1 July 2000. In this case, $70,000 will represent the extent of the service performed before 1 July 2000.

However, Apportionment Option B, as described in paragraph 45, may allow you to determine the portion of the further service Splasha performs to 30 June.

Apportionment Option B – apportionment based on your records

45. Where:

(i) you wish to determine the service performed from the date of your last progress claim up to 1 July 2000; or

(ii) you lodge a progress claim for service performed before 1 July 2000 that does not fall within paragraph 34; or

(iii) you are not entitled to receive progress payments,

you must determine the extent of the service you perform before 1 July 2000 based on your records, maintained in the manner explained in paragraphs 29 to 31.

Example 5 – comprehensive record system

46. Beaut Refurbishments offers a range of design and construction services. They enter into a single agreement with a client to design and construct a fitout of the client's building, relying on their own resources together with construction contractors to complete their commitments under the agreement.

The total agreement price is $2,100,000. The professional services component is $100,000. This covers largely design and construction management. The balance covers the construction cost of the fitout. The design phase commences in early May and is expected to be completed by early August.

Beaut invoices its client for an amount of $70,000 for its service performed to 30 June 2000. The invoice is based on its comprehensive record system, which records the time and work undertaken on preparatory drawings, discussions re preparatory drawings and amendments to these drawings. The invoice, supported by these records, is an acceptable method of determining the extent the service is performed before 1 July 2000.

Example 6 – home renovation apportionment

47. Lars is a home renovator. He enters an agreement with Sachin and Indira to renovate their verandah and add an outdoor entertainment area. The job is not a major reconstruction or an extension of the house. The work starts on 10 June and is not expected to be finished until the end of July.

The agreed price (including materials) is $20,000, which is payable upon completion. Lars purchases all the materials for $8,000 and by 30 June, the materials are all on site. Lars' records, maintained from the start to the end of the job, evidence the days and hours spent in providing the service, the nature of the activities undertaken during this time, and materials used.

On the basis of these records, Lars is able to determine that as at 30 June 2000, $5,000 worth of materials had been incorporated into the verandah and entertainment area, and half of the work had been completed. He concludes that $11,000 ($5,000 materials plus $6,000 labour) represents the portion of the service performed before 1 July 2000.

Example 7 – home renovation – owner buys materials

48. As in the above example, except Sachin and Indira purchase all materials for the renovation themselves prior to 1 July 2000 and provide those materials to Lars.

In this case it is not necessary to determine whether the materials have been incorporated into the verandah and entertainment area, since they have been purchased by the home owners prior to 1 July.

Accordingly, the materials will not be subject to GST. The extent of the service performed by Lars prior to 1 July 2000, determined on the basis of his records, will not be subject to GST, provided Lars maintains records of the service as outlined in Example 6.

Detailed contents list

49. Below is a detailed contents list for this Ruling:

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Commissioner of Taxation
14 June 2000

Previous draft

Previously issued in draft form as GSTR 2000/D9

Related Rulings/Determinations:

TR 2006/10; GSTR 2000/7; GSTR 2000/8, GSTR 2000/14

Subject references:

- agreements spanning 1 July 2000
- building or civil engineering work
- construction and building services
- construction project
- head contractor
- performance of service
- real property
- retention amounts
- special transitional rule
- subcontractor
- time of performance
- voluntary agreement

Legislative references:

- ANTS(GSTT)A 6
- ANTS(GSTT)A 6(4)
- ANTS(GSTT)A 7(1)
- ANTS(GSTT)A 10
- ANTS(GSTT)A 12
- ANTS(GSTT)A 16
- ANTS(GSTT)A 19
- ANTS(GST)A Division 113
- TAA 1953 70
- TAA 1953 70(1)(a)
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