GSTR 2003/16 - Goods and services tax: inducements to enter into a lease of commercial premises

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From 1 July 2015, the term 'Australia' is replaced in nearly all instances within the GST, Luxury Car Tax, and Wine Equalisation Tax legislation with the term 'indirect tax zone' by the *Treasury Legislation Amendment (Repeal Day) Act 2015*. The scope of the new term, however, remains the same as the now repealed definition of 'Australia' used in those Acts. This change was made for consistency of terminology across the tax legislation, with no change in policy or legal effect. For readability and other reasons, where the term 'Australia' is used in this document, it is referring to the 'indirect tax zone' as defined in subsection 195-1 of the GST Act.

This document has changed over time. This is a consolidated version of the ruling which was published on *11 December 2013*

Goods and Services Tax Ruling
Goods and services tax: inducements to enter into a lease of commercial premises

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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 Tax Office 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 explains how inducements provided by a landlord (lessor) or a tenant (lessee) for the entry, or agreement to enter, into a lease of commercial premises are treated under the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act). Such inducements are referred to in the Ruling as **lease inducements** and include **lease incentives** and **lease premiums**.

2. This Ruling does not consider in detail the GST implications of supplies of leases of residential premises or inducements for such supplies. The relevant provision for supplies of this nature is section 40-35 of the GST Act. However, see paragraphs 114 and 115 for a general summary of the GST treatment of a lease incentive or premium in respect of residential premises.

3. Certain terms used in this Ruling are defined or explained in the Definitions section of this Ruling. These terms, when first mentioned, appear in **bold** type.

4. In the examples used in this Ruling, all parties are registered for GST unless otherwise specified.

5. All legislative references in this Ruling are to the GST Act unless otherwise specified.

Date of effect

6. This ruling applies 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).

7. [Omitted.]

Background

8. Inducements may be provided by a landlord or a tenant. An inducement provided *by a landlord* for a tenant to enter, or agree to enter, into a lease is commonly referred to as a 'lease incentive'. A landlord may offer this form of inducement for a variety of reasons including recognition that the market requires that some inducement be offered to attract key tenants, maintaining the **face rent** for the property, or improving occupancy rates. Various types of incentives are discussed later in this Ruling.

9. An inducement provided *by a tenant* for a landlord to grant a lease is commonly referred to as a 'premium'. This inducement may be provided by a tenant for a number of reasons, including a shortage of desirable premises, or to obtain preferential treatment.

10. Premiums are consideration for the grant of a lease, rather than for an agreement to grant a lease.[1] However, it is possible for an inducement to be provided by a landlord or tenant in return for the *agreement* of the landlord or tenant to enter into the lease.[2]

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[1] *Frazier v. Commissioner of Stamp Duties (NSW)* 85 ATC 4735; (1985) 17 ATR 64; *Matthews v. Timothy* 87 ATC 4606; *FC of T v. Krakos Investments Pty Ltd* (1996) 61 FCR 489; 96 ATC 4063; (1996) 32 ATR 7.

[2] *O'Connell v. Commissioner of Taxation* (2002) 121 FCR 562; 2002 ATC 4628; (2002) 50 ATR 331 is an example of an inducement provided for the tenants' agreement to enter into a lease.

11. Inducements may consist of monetary consideration, or non-monetary consideration or a combination of each.

12. Monetary inducements may include a reimbursement of expenses, or a payment made for a particular purpose, for example:

- a contribution to the whole or part of the tenant's costs of fitting out the premises;
- a payment for removal expenses; or
- a landlord paying a tenant's rental under an existing lease.

13. Non-monetary inducements may include:

- building works (e.g. fitouts) to adapt the premises to the particular requirements of the tenant;
- income guarantees;
- the provision of plant, computer equipment, motor vehicles, holidays, art work, etc; and
- rent-free (rent holiday) and rent discount periods.

14. Where the arrangement is such that there is a separate supply of the entry, or agreement to enter, into a lease, and the inducement is consideration for that supply, then it is necessary to consider if the supply may have a different GST treatment to the supply of the premises. This Ruling provides guidance on how to determine whether a payment or other consideration is consideration for a separate supply from the supply of the premises and considers the GST treatment of these separate supplies.

Ruling with Explanation

15. The definition of a taxable supply requires, among other things, that you make a supply for consideration.[3] Therefore there needs to be a supply, consideration and a sufficient nexus between the supply and the consideration.[4] In addition, the supply must be made in the course or furtherance of an enterprise that you carry on.[5]

16. In the following paragraphs we discuss the following matters:

- characterising the supply (discussed at paragraphs 17 to 29);

[3] Paragraph 9-5(a).
[4] The nexus test is discussed in GSTR 2001/6 Goods and services tax: non monetary consideration at paragraphs 55 to 72.
[5] Paragraph 9-5(b)

- supply for consideration (discussed at paragraphs 30 to 41);
- supply made in the course or furtherance of an enterprise (discussed at paragraphs 42 to 47); and
- inducement provided to or paid by an associate (paragraphs 48 to 52).

Characterising the supply

17. It is necessary to characterise what is being supplied. This is achieved by examining the terms of the agreement between the parties and the facts and circumstances in which the transaction is carried out.[6] This will determine whether the transaction is, for example, a supply made by the landlord which is separate from the supply of the premises.

18. The mere fact that a payment is referred to as a lease incentive or a premium will not determine the character of the supply and the GST consequences.[7] Once the supply or supplies have been characterised, each supply must be considered separately.[8]

19. Lease transactions involve the granting of various rights and entry into various obligations by the parties to the transaction. However, not every obligation that arises under a lease is a separate supply made for consideration.[9]

20. For example, the terms of a lease may include an obligation by the tenant to repair any damage done and return the premises to their condition as at the commencement of the lease (i.e. a 'make good' provision). The entry into this obligation is not a supply made by the tenant, nor is it part of the consideration for a supply made by the landlord. It is merely part of the terms and conditions of the lease.[10]

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[6] This point is made in relation to the nexus test at paragraph 96 of GSTR 2001/4 Goods and services tax: GST consequences of out of court settlements.

[7] Whether an amount is a lease incentive, is a question of fact, and is not determined solely by the description given to it by the parties. *Frazier v. Commissioner of Stamp Duties* 85 ATC 4735 at 4737-4738; (1985) 17 ATR 64 at 67; *Radaich v. Smith* (1959) 101 CLR 209, paragraph 133 TR 2002/14 Income tax: taxation of retirement village operators*; Rotherwood Pty Ltd v. FC of T* (1996) 64 FCR 313*;* 96 ATC 4203, (1996) 32 ATR 276*; Reuter v. FCT* 93 ATC 5030 at 5036*;* (1993) 27 ATR 256 at 261-2; *FCT v. Cooling* (1990) 22 FCR 42 at 53 per Hill J; 90 ATC 4472 at 4481-4482; (1990) 21 ATR 13 at 23-24.

[8] See paragraph 125 GSTR 2001/6.

[9] GSTR 2001/6 at paragraphs 80 to 85.

[10] See also New Zealand case *Iona Farm Ltd v. Commissioner of Inland Revenue* (1999) 19 NZTC 15,261 where Young J rejected a literal focus on the concept of consideration which would have meant all obligations entered into under a lease should be taken into account separately in determining the value of the supply. Additionally see GSTR 2001/6 paragraphs 55 to 72 and GSTR 2001/8 which is

21. However, where the tenant agrees to carry out work on the premises in addition to the normal obligations of a tenant, there may be a separate supply made by the landlord. If so, that consideration (that is, the work carried out by the tenant) may be for the separate supply of the entry, or agreement to enter, into the lease by the landlord. It is also a separate supply made by the tenant in these circumstances, rather than merely a condition of the lease.

22. The application of GST will need to be considered separately where there is:

- *a lease incentive*, which is consideration paid by the landlord for a supply made by the tenant of entry into a lease, or agreement to enter into a lease; or
- *a lease premium*, which is consideration paid by the tenant for a supply made by the landlord of entry into a lease, or grant of a lease which is separate from the consideration (rent) for the supply of the premises.

23. In either case there may be two separate supplies made for consideration. For example, there may be a taxable supply of the entry, or agreement to enter, into a lease in respect of commercial premises and a separate taxable supply of the leased premises themselves. While there may be two separate supplies, they may both have the same GST treatment as taxable supplies.

24. The concept that a lease inducement is consideration for something different to the lease of the premises was discussed by Beaumont J in *Selleck v. FC of T.*[11] Beaumont J stated:

> The payment is an inducement to a prospective tenant to enter into the leasing transaction. As a separate and collateral arrangement, the agreement to pay this premium or incentive stands apart from, and necessarily precedes, the operation of the lease itself. In conveyancing terms, the incentive payment is an incident of the agreement for lease, rather than of the lease instrument itself … the amount is, I think, paid as a "price" for the grant of the lease; it is a premium in that sense (see *Chelsea Investments Pty Ltd v. FCT* (1966) 115 CLR 1 per Windeyer J at 8). It is the "purchase money which the [prospective lessee or prospective lessor] pays for the benefit which he gets under the lease" (see *King v. Earl Cadogan* [1915] 3 KB 485 per Warrington LJ at 493; *Nixon v. Doney* (1961) SR (NSW) 311 at 316).[12]

25. While the majority of the High Court in *FCT v. Montgomery (Montgomery's case)*[13] expressly declined to adopt the approach of

about apportioning the consideration for a supply that includes taxable and non-taxable parts.

[11] *Selleck v. FC of T* (1997) 36 ATR 558; 97 ATC 4856.

[12] *Selleck v. FC of T* (1997) 36 ATR 558 at 582; 97 ATC 4856 at 4877.

[13] *FCT v Montgomery* (1999) 198 CLR 639; 99 ATC 4749; (1999) 42 ATR 475.

treating lease incentives as necessarily analogous with premiums, the balance of the above comments remain relevant.[14]

26. Where a landlord provides an incentive as an inducement for the tenant's entry, or agreement to enter, into a lease of commercial premises, the consideration for the supply of the premises by the landlord is not reduced by the incentive.[15]

27. It has been argued that a lease incentive is really a payment to the tenant to accept a higher level of rent. In rejecting the treatment of a lease incentive as having the nature of a repayment of rent, the High Court stated in *Montgomery's case* that the market had 'produced an arrangement under which the lessee agreed to pay rent and the lessor agreed to pay an incentive'.[16]

28. Examples of an incentive provided to a prospective tenant which were held to be consideration for a supply made by the tenant in a Value Added Tax context are the UK cases of *Customs and Excise Commissioners v. Mirror Group plc*[17] and *Commissioners of Customs & Excise v. Cantor Fitzgerald International*.[18]

29. While no single fact may be determinative, as a guide, factors that are relevant in considering whether a payment, or other consideration, is consideration for a separate supply made by the landlord or by the tenant include:

- whether the payment or other consideration is required by the contract to be paid or provided to a third party. If so, this may suggest it is consideration for a supply made by the third party, such as procuring the other party to enter, or agree to enter, into the lease;
- whether the payment is to be fully or partly rebated if the lease is terminated early or in case of a certain event occurring, for example, destruction of the premises. If so, this may suggest it is rent by another name; [19]

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[14] In a value added tax context, see Commissioners of *Customs and Excise v. Mirror Group plc* (Case C-409/98) [2002] BVC 16; [2001] ECR I-7175; [2001] STC 1453 and *Commissioners of Customs & Excise v. Cantor Fitzgerald International* (Case C-108/99); [2002] BVC 9.

[15] See also GSTR 2001/6, paragraph 125 where it says in situations of mutual supplies for consideration, the price of one supply is not to be reduced by the price of another.

[16] *FCT v. Montgomery* (1999) 198 CLR 639 at page 668; 99 ATC 4749 at 4764; (1999) 42 ATR 475 at 495.

[17] Commissioners of *Customs and Excise v. Mirror Group plc* (Case C-409/98) [2002] BVC 16; [2001] ECR I-7175; [2001] STC 1453.

[18] *Commissioners of Customs & Excise v. Cantor Fitzgerald International* (Case C-108/99); [2002] BVC 9.

[19] *Frazier v. Commissioner of Stamp Duty* 85 ATC 4735 per Lee J at 4738 and 4740; (1985) 17 ATR 64 at 67 and 71; *Matthews v. Timothy* 87 ATC 4606 per Wright J at 4609.

- where the payment or other consideration is required to be provided by instalments or progressively over a period, whether there is provision for cessation of the payments or other consideration if the lease is terminated early. If so, this may suggest the payment is rent for the lease of the premises;[20]
- where the parties agree any outstanding balance or other consideration will become immediately due in the event of early termination, which may, for instance, tend to distinguish the consideration from rent;[21]
- the fact a party would not have entered into a lease but for the inducement;[22]
- the description the parties give to the payment or other consideration in their written contract.

Supply for consideration

30. Once the supply has been characterised it is then necessary to consider if the supply is made for consideration. The definition of taxable supply requires, amongst other things, that you make a supply for consideration.[23] Subsection 9-15(1) states that consideration includes any payment or any act or forbearance for a supply if the payment, act or forbearance is 'in connection with', 'in response to or for the inducement' of a supply.

31. There needs to be a sufficient nexus between the supply and the payment, act or forbearance.

32. As stated at paragraph 72 of GSTR 2001/6 Goods and services tax: non-monetary consideration:

> The test as to whether there is a sufficient nexus is an objective test. The motive of the supplier and the recipient also may be relevant in determining whether the supply was made for consideration, if a reasonable assessment of the evidence supports that motive.

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[20] *Matthews v. Timothy* 87 ATC 4606 per Wright J at 4608.
[21] *Matthews v. Timothy* 87 ATC 4606 per Wright J at 4608.
[22] In *Lees & Leech Pty Ltd v. FC of T* 97 ATC 4407 at 4419; (1997) 36 ATR 127 at 140, the tenant covenanted to effect improvements on the basis that it would be reimbursed by the landlord to the extent of $40,000. 'The work which the applicant [tenant] undertook … produced no direct gain to it other than what appears to have been a valueless right at the expiration of the lease to remove a washbasin and taps for scrap.' Nevertheless, Hill J observed that 'the payment was not, either in form or substance, a cash incentive to encourage the applicant to take the lease, although it is clear that without the agreement of [the landlord] to contribute to the fit out, the [tenant] would not have entered into the lease'.
[23] Paragraph 9-5(a).

For further discussion on the concept of sufficient nexus see paragraphs 64 to 72 of GSTR 2001/6.

33. Where the landlord or tenant is making a supply, the consideration for that supply may be monetary, non-monetary, or a combination of both. As to what is meant by monetary and non-monetary consideration, see GSTR 2001/6.

34. In some cases, where one party provides a non-monetary inducement to another party, each party may be liable for GST on the value of their supply.

35. Where the lease inducement is solely monetary consideration, the entity providing the inducement is not making a supply. For example, the landlord gives money to the tenant for its entry, or agreement to enter, into a lease. The reason for this is that subsection 9-10(4) excludes from a 'supply' a supply of money unless the money is provided as consideration for a supply that is a supply of money.

36. Where the lease inducement wholly or partly consists of non-monetary consideration, there may be two separate supplies for GST purposes, each of which may be a taxable supply. The provision of a thing that forms non-monetary consideration will itself be a taxable supply if all of the requirements of section 9-5 are met.

37. The value of a taxable supply is 10/11th of its price.[24] Where all or part of the consideration for a taxable supply is non-monetary consideration, the price of the taxable supply includes the GST inclusive market value of that consideration. In most circumstances, where parties are dealing at arm's length, we accept that the goods, services or other things exchanged are of equal GST inclusive value. However, other reasonable methods can be adopted to determine the GST inclusive market value of the consideration.[25]

Example 1 - non-monetary consideration and separate supplies

38. *The terms of an agreement for lease provide that a landlord will supply commercial premises for a specified monthly rental. The terms of the agreement also provide that the landlord will supply a motor vehicle to the tenant as consideration for the tenant agreeing to enter into the lease agreement. The agreement makes clear that the motor vehicle is provided specifically as consideration for the tenant's agreement to enter into the lease. The only consideration for the landlord's supply of the commercial premises is the rent to be paid under the lease. There is no provision for return of the vehicle in the event that the lease does not proceed or is terminated early. There are no relevant circumstances to suggest that the parties' bargain is*

[24] Subsection 9-75(1).
[25] GSTR 2001/6, paragraphs 138 to 158.

not as documented in the agreement for lease (see Appendix A for a diagram which illustrates the supplies in this case).

39. *The tenant makes a supply by agreeing to enter into the lease (subparagraph 9-10(2)(g)(i)).*

40. *The landlord is making two supplies, being the supply of the vehicle and the supply of the premises. The consideration for the supply of the vehicle is the agreement by the tenant to enter into the lease and the consideration for the supply of the premises is the rent. We accept in this case that the GST inclusive market value of the agreement to enter into the lease would be the same as the GST inclusive market value of the vehicle. However, other reasonable methods can be adopted to determine the GST inclusive market value of the consideration.*[26]

41. *Based on Appendix A, the GST payable and input tax credits arising from the above described transactions are:*

- *(a) Supply of the agreement to enter into the lease by the tenant:*
  - *(i) Consideration provided by the landlord is the motor vehicle (GST inclusive market value $33,000);*
  - *(ii) GST payable by the tenant $3,000; and*
  - *(iii) Input tax credit to the landlord $3,000.*
- *(b) Supply of the motor vehicle by the landlord:*
  - *(i) Consideration provided by the tenant is the tenant's agreement to enter into the lease (GST inclusive market value $33,000);*
  - *(ii) GST payable by the landlord $3,000; and*
  - *(iii) Input tax credit to the tenant $3,000.*
- *(c) Supply of premises by the landlord:*
  - *(i) Consideration provided by the tenant is the lease payments ($1,100 per month);*
  - *(ii) GST payable by the landlord $100 per month; and*
  - *(iii) Input tax credit to the tenant $100 per month.*

[26] See also GSTR 2001/6, paragraphs 138 to 158.

Supply made in course or furtherance of an enterprise

42. A supply made by a landlord or a tenant in entering, or agreeing to enter, into a lease is not a taxable supply unless 'the supply is made in the course or furtherance of an enterprise' that the supplier carries on.[27]

43. In the context of a lease of commercial premises, such as in *Example 1* at paragraphs 38 to 41, the supply made by a tenant (the agreement to enter into the lease in *Example 1*), in return for a lease inducement (the supply of the motor vehicle) will ordinarily be made in the course of the tenant's enterprise.

44. For a landlord, the leasing of premises is of itself an enterprise. Therefore, a supply made by the landlord (such as the supply of the car in *Example 1*) in return for the tenant's entry, or agreement to enter, into the lease will be made in course of that enterprise.

45. In recent years, lease inducements, received as part of a business enterprise, have been considered by the Courts on a number of occasions.[28] In *FC of T v. Cooling,*[29] Hill J stated:

> Where a taxpayer operates from leased premises, the move from one premises to another and the leasing of the premises occupied are acts of the taxpayer in the course of its business activity just as much as the trading activities that give rise more directly to the taxpayer's assessable income.[30]

46. Furthermore, when considering the nature of a lease incentive in *Montgomery's case*, the High Court concluded that it was received by the partners of the partnership in the course of carrying on a business.[31]

47. The 'carrying on' of an enterprise 'includes doing anything in the course of commencement or termination of the enterprise'.[32] Therefore, for example, where a tenant establishing a new business receives an inducement from a landlord for entry into a lease, the entry may constitute a taxable supply.

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[27] Paragraph 9-5(b).
[28] See *FC of T v. Cooling* (1990) 22 FCR 42; 90 ATC 4472 ; (1990) 21 ATR 13; *Selleck v. FC of T* 97 ATC 4856; (1997) 36 ATR 558; *Lees & Leech Pty Ltd v. FC of T* 97 ATC 4407; (1997) 36 ATR 127 and *FC of T v. Montgomery* (1999) 198 CLR 639; 99 ATC 4749; (1999) 42 ATR 475; *O'Connell v. Commissioner of Taxation* (2002) 121 FCR 562; 2002 ATC 4628; (2002) 50 ATR 331.
[29] *FC of T v. Cooling* (1990) 22 FCR 42; 90 ATC 4472; (1990) 21 ATR 13.
[30] *FC of T v. Cooling* (1990) 22 FCR 42 at 56; 90 ATC 4472 at 4484; (1990) 21 ATR 13 at 26.
[31] *Montgomery's case* (1999) 198 CLR 639 at page 678; 99 ATC 4749 at 4770; (1999) 42 ATR 475 at 503.
[32] Section 195-1: definition of 'carrying on'.

Inducement provided to or paid by an associate

48. Lease inducements can be provided by or received from any party to the lease as well as their associates or third parties. For example, an associate relationship could exist between a partner and the partnership in which he or she is a partner or a holding company and its subsidiary.

49. Where an inducement is provided to an associate of a party for its entry, or agreement to enter, into a lease, the inducement may be provided in connection with the supply made by that party of its entry, or agreement to enter, into the lease. Alternatively, the inducement may be consideration for that party's supply of procuring the associate's entry, or agreement to enter, into the lease.

50. For example, the service company of a professional firm enters into a lease and the landlord pays the partners of the firm a lease incentive. The payment may be consideration for a supply made by the service company of entering, or agreeing to enter, into the lease, even though the company itself does not receive the payment. Or it may be consideration for a supply made by the partnership of procuring the service company to enter, or agree to enter, into the lease. Whether the inducement is consideration for the service company's entry, or agreement to enter, into the lease, or for the associate firm's procuring of the service company to do so, needs to be ascertained from the facts and circumstances of the transaction.

51. As the New Zealand case *S41, TRA No 31/95*[33] illustrates, it is important to determine the capacity in which a recipient receives an inducement. In that case, the lease agreement provided that the lessor pay the partners (associates) an inducement of $137,000 in return for the taxpayer (the partnership) entering into the lease agreement. The Taxation Review Authority held the supply was made in the course or furtherance of the taxable activity carried on by the taxpayer (partnership). It also held that there was a supply of services by the taxpayer (partnership).

52. The Taxation Review Authority held that the obtaining of business premises was fundamentally part of the taxpayer's business activity. Although the taxpayer was not in the business of entering into leases, the leasing of suitable premises from which to conduct a taxable activity was part and parcel of its taxable activity. When the partners signed the Deed of Lease, they were acting as partners of the taxpayer firm: 'It was artificial to try to separate the inducement payments to the partners from the taxpayer's leasing transaction'.[34]

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[33] Case *S41, TRA No 31/95* 17 NZTC 7280.
[34] Case *S41, TRA No 31/95* 17 NZTC 7280 at 7285.

Types of Lease Inducements

53. Some of the lease inducements commonly provided by landlords are considered in the following paragraphs. In each case, it is assumed:

- a separate supply has been identified;
- the tenant is registered or required to be registered;
- the tenant enters, or agrees to enter, into the lease in the course or furtherance of the tenant's enterprise; and
- the premises are located in Australia.

Cash Incentives

54. Where a cash payment is paid to the tenant as consideration for the tenant entering, or agreeing to enter, into a lease, the tenant makes a supply for consideration. The supply of the premises by the landlord is a separate supply from the supply made by the tenant. Therefore, the payment does not reduce the consideration (rent) for the landlord's supply of the premises.

55. Any requirement for the tenant to expend the payment on a particular item, or for a particular purpose, will not, in itself, alter the analysis of the supply made by the tenant. In relation to fitout incentives refer to paragraphs 57 to 67.

56. If the supply, made by the tenant is a taxable supply the tenant will be liable for GST equal to 1/11th of the consideration. Where a condition of the cash incentive is that it is repaid in part or full if the lease is terminated early, the repayment is an adjustment event under Division 19.

Fitout Incentives

57. A landlord may agree to provide a fitout of premises as an inducement to the tenant to enter, or agree to enter, into a lease of the premises. The terms of the fitout agreement may take a number of forms.

58. The GST treatment may be affected by who has ownership of the fitout as a result of the transaction.

59. For example, it may be a condition of an agreement to enter into a lease that the landlord will fit out the premises to an agreed standard, and the landlord retains ownership of the fitout. In the absence of contrary evidence in the agreement or other relevant circumstances, we would not regard the fitting out of the premises as consideration for the tenant's entry, or agreement to enter, into the

lease. The landlord is only making a supply of premises, albeit fitted out to specifications agreed with the tenant, in return for rental consideration. The fitout is not separate consideration provided by the landlord to the tenant. It is merely part and parcel of the supply of the leased premises.

60. Where the tenant acts as the landlord's agent in fitting out the premises, and the landlord retains ownership of the fitout, a cash payment may be made by the landlord to the tenant. The payment is either to put the tenant in funds to make payments to fitout contractors or to reimburse the tenant for such payments. We consider that the fact that the tenant has arranged the fitout on behalf of the landlord does not change the analysis in the preceding paragraph. Accordingly, in the absence of contrary evidence, in the agreement or other relevant circumstances, we consider the provision of the fitout as merely part and parcel of the supply of the premises.

61. However, where a landlord contributes an amount equivalent to the amount expended by the tenant on a fitout *owned by the tenant*, this will be treated in the same way as other cash incentives paid by a landlord, as discussed above.

Example 2 - fitout incentives

62. The terms of an agreement to enter into a lease provide that, in consideration of Grant (the tenant) entering into the lease, Tracey (the landlord) will contribute to the cost of Grant's partitioning of the premises. There are no surrounding circumstances to suggest that the terms of the agreement do not reflect the parties' bargain, nor that it was not implemented in accordance with the written agreement. Grant does not act as Tracey's agent in commissioning the fitout. The fitout is owned by Grant.

63. The fitout of the leased premises is completed and Grant pays $10,000 to the contractor. Tracey pays Grant the equivalent amount ($10,000) to cover the cost of the fitout.

64. Grant makes a supply to Tracey by entering into the lease. The contribution by Tracey to the cost of the fitout is consideration for Grant's entry into the lease. Therefore, the supply made by Grant is a taxable supply. Grant is liable for GST calculated as 1/11th of the consideration.

65. A landlord and tenant may agree that the landlord will provide a fitout on the basis that ownership of the fitout will pass to the tenant on completion of the fitout. In the absence of evidence to the contrary, in the agreement or other relevant circumstances, we consider:

- the landlord makes a supply of the premises and is liable for GST on this taxable supply;
- the landlord makes a supply of the fitout (ownership of which passes to the tenant) and is liable for GST on this taxable supply;
- the consideration for the landlord's supplies is the rent paid by the tenant;
- the tenant is entitled to input tax credits in respect of its acquisitions of the premises and the fitout;
- the provision of the fitout is not consideration for a supply made by the tenant of entering, or agreeing to enter, into the lease; and
- the tenant is not liable for GST in respect of its entry, or agreement to enter, into the lease. There is no input tax credit for the landlord.

66. However, if the analysis of the transaction establishes that the tenant's entry, or agreement to enter, into the lease is specifically in consideration of the landlord providing, or agreeing to provide, the fitout to be owned by the tenant on completion of the fitout, there is separate consideration for the tenant's entry, or agreement to enter, into the lease. In those circumstances, the tenant is liable for GST of 1/11th of the GST inclusive market value of consideration for the supply.[35] The market value of the fitout should be determined by the value of the fitout at the time ownership of the fitout passes to the tenant. The landlord is also making a supply of the fitout for non-monetary consideration, being the tenant's entry, or agreement to enter, into the lease. The landlord therefore makes a taxable supply of the premises for which the consideration is the rent and a taxable supply of the fitout for which the consideration is the tenant's entry, or agreement to enter, into the lease. The tenant makes a creditable acquisition of the premises and of the fitout. The landlord makes a creditable acquisition of the tenant's entry, or agreement to enter, into the lease.

67. *Example 2*, and the above discussion on ownership of the fitout passing to the tenant, assumes the fitout comprises chattels and ownership passes to the tenant immediately. The same principles would apply to the extent that the chattels comprising the fitout become fixtures if the tenant has a right to remove the fixtures on expiry of the lease. Although the tenant does not have legal title to the fixtures, the tenant nevertheless obtains a valuable interest in them.[36]

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[35] See paragraph 37 and GSTR 2001/6, paragraphs 138 and 158.

[36] State or Territory legislation may need to be considered when determining whether property in a fixture remains with a tenant or whether it passes to the

Plant

68. Where the landlord provides plant, ownership of which passes to the tenant, the same principles apply as outlined at paragraphs 57 to 66, which are about fitout incentives.

Income Guarantees

69. A landlord may guarantee a tenant's income from the business operated from the premises if the tenant enters into a lease. In the absence of evidence to the contrary in the agreement or other circumstances, we consider:

- the landlord makes a supply of the premises and is liable for GST on this taxable supply;
- the landlord makes a supply of the income guarantee and is liable for GST on this taxable supply (we are of the view that income guarantees are not financial supplies – see paragraph 73);
- the consideration for those supplies is the rent paid by the tenant;
- the tenant is entitled to input tax credits in respect of its acquisitions of the premises and the income guarantee;
- the supply of the income guarantee is not consideration for a supply made by the tenant of entering, or agreeing to enter, into the lease; and
- the tenant is not liable for GST in respect of its entry into the lease. There is no input tax credit for the landlord.

70. However, if the terms of the agreement and other circumstances clearly establish that the tenant's entry, or agreement to enter, into the lease is specifically in consideration of the landlord providing, or agreeing to provide the income guarantee, there is separate consideration for the tenant's entry, or agreement to enter, into the lease. In these circumstances, the tenant is liable for GST of 1/11th of the GST inclusive market value of consideration for the supply, that is, the provision of the income guarantee.[37]

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landlord in relation to agricultural fixtures. See *Agricultural Tenancies Act 1990* (NSW), *the Property Law Act 1974* (Qld), *the Agricultural Holding Act 1891* (SA), *the Landlord and Tenant Act 1958* (Vic) and *the Landlord and Tenant Act 1935* (Tas).

[37] See paragraph 37 and GSTR 2001/6, paragraphs 138 and 158.

71. Where paragraph 70 applies, the landlord is also making a supply of the income guarantee for non-monetary consideration, being the tenant's entry, or agreement to enter, into the lease. The landlord therefore makes a taxable supply of the premises for which the consideration is the rent and a taxable supply of the income guarantee for which the consideration is the tenant's entry, or agreement to enter, into the lease.

72. [Omitted.]

73. Supplies of income guarantees are not financial supplies. Arrangements of this nature, although described as guarantees, are neither guarantees nor indemnities for the purposes of items 7 and 7A in the table in subregulation 40-5.09(3) of the *A New Tax System (Goods and Services Tax) Regulations 1999*. A guarantee is a 'contract to answer for the debt, default or miscarriage of another who is or is contemplated to be or to become liable to the person to whom the guarantee is given'.[38] An income guarantee does not have the character of a guarantee as there is no third party whose primary obligation it guarantees.

73A. Item 7A, which applies from 1 July 2012, covers an indemnity that holds a person harmless from any loss as a result of a transaction the person enters with a third party. Income guarantees are not such indemnities as the harm against which protection is provided does not arise as a consequence of a transaction with a third party.

74. Prior to 1 July 2012, when the introduction of item 7A took effect, the provision, acquisition or disposal of an interest in or under an indemnity was covered by item 7. The expression 'indemnity' takes different meanings according to its context. At its broadest, it is used to refer to an undertaking to hold another harmless against loss. In this broad sense, it may embrace recompense for any loss or liability which one person has incurred, arising out of contract or by operation of law. An example of the latter is a guarantor's right of indemnity from a principal.[39]

75. The High Court in *Sunbird Plaza Pty Ltd v. Maloney (Sunbird Plaza)*[40] has described an indemnity as 'a promise by the promisor that he will keep the promisee harmless against loss as a result of entering into a transaction *with a third party*' (emphasis added). Given its use in former item 7 as part of the expression 'Guarantee including an indemnity' in the context of guarantees and indemnities of the type supplied for consideration, we consider that 'indemnity' was used in former item 7 in the sense articulated by the High Court in

[38] *Sunbird Plaza Pty Ltd v. Maloney* (1988) 166 CLR 245 per Mason J. at 254; (1988) 77 ALR 205 per Mason CJ at 207.
[39] J Phillips and J Donovan, *The modern contract of guarantee*, 3rd Edn, LBC Information Services, Sydney, 1996 at page 25.
[40] *Sunbird Plaza* (1988) 166 CLR 245 at 254; (1988) 77ALR 205 at 207.

Sunbird Plaza[41]. Income guarantees are not such indemnities as the harm against which protection is provided does not arise as a consequence of a transaction with a third party.

75A. Although item 7A expressly limits the type of indemnity that it covers, the introduction of item 7A does not indicate that the previous use of the term 'indemnity' in former item 7 had a broader meaning. To the contrary, in discussing the introduction of item 7A, the Explanatory Statement to the *A New Tax System (Goods and Services Tax) Amendment Regulation 2012 (No. 1)* states under the heading 'Guarantees and indemnities':

> It is not intended that these amendments change the existing interpretation of the terms guarantee, indemnity or warranty as set out under item 7 of the table in subregulation 40-5.09(3). The amendments merely clarify the drafting and confirm the existing treatment.

76. Accordingly, where the requirements of section 9-5 are satisfied, a supply of an income guarantee is a taxable supply.

Landlord pays the tenant's rent under an existing lease

77. A tenant may have an existing lease, and a new landlord may pay the tenant's rental under the existing lease as consideration for the tenant's entry, or agreement to enter, into a new lease. This is a form of cash incentive and the same principles apply as discussed at paragraphs 54 to 56. The supply made by the tenant is the entry, or agreement to enter, into the new lease, and the consideration is the payments by the new landlord to the tenant's existing landlord. The new landlord has not made a taxable supply in this case as the provision of the consideration is a supply of money.[42] The tenant's previous landlord continues to make a supply of the existing premises to the tenant.

78. The tenant is liable for GST of 1/11th of the amount paid by the new landlord to the tenant's previous landlord. The new landlord is entitled to input tax credits for the acquisition of the tenant's entry, or agreement to enter, into the new lease.

Landlord accepts the assignment of the tenant's existing lease

79. As part of negotiations with a prospective tenant, a landlord may offer to accept an assignment of a tenant's lease with another landlord as an inducement for a tenant to enter into a new lease. The

[41] *Sunbird Plaza* (1988) 166 CLR 245, (1988) 77 ALR 205.
[42] Subsection 9-10(4).

assignment of the lease is a supply made by the tenant and the landlord's acceptance of the assignment may be a supply.[43]

80. In the absence of evidence to the contrary in the agreement or other circumstances, we consider:

- the landlord makes a supply of the premises and is liable for GST on this taxable supply;
- the rent paid by the tenant is consideration for the supply of the premises;
- the tenant is entitled to input tax credits in respect of its acquisition of the premises;
- the tenant makes a supply of its entry into the lease. The tenant is liable for GST on the GST inclusive market value of the consideration for the supply, being the landlord's acceptance of the assignment. The landlord is entitled to an input tax credit; and
- the landlord makes a supply of the acceptance of the assignment and is liable to GST on the GST inclusive market value of the tenant's entry into the lease. The tenant is entitled to an input tax credit.

Rent-free or rent discounted period – new lease

81. In the absence of contrary evidence, the provision by the landlord of a rent-free or rent discount period is not consideration for a separate supply made by the tenant. It is merely part and parcel of the negotiated terms of the lease.

82. Where a landlord offers a rent-free or rent discount period as part of the original terms of the agreement, there is only a taxable supply of the premises for which the consideration is the rental. The rent-free or rent discount period is a term of the lease and not a separate supply or consideration for a separate supply made by the tenant.

83. The rent-free or rent discount period, while commonly at the beginning of the lease, may also occur during or at the end of the lease. Whether the rent-free or rent discounted period is at the beginning, end or during the term of the lease does not, in itself, affect the analysis of whether it is consideration for a separate supply made by the tenant.

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[43] *Commissioners of Customs and Excise v. Cantor Fitzgerald International* (Case C-108/99).[2002] BVC 9 is an example of a case where an acceptance of an assignment of a lease was held by the Court of Justices of the European Communities to be a supply by the assignee.

84. In the case of a landlord who accounts on a cash basis, the GST payable will be attributed to tax periods progressively as the rent is received. Where the landlord accounts on a basis other than cash, the GST payable will be attributed as if each progressive or periodic component of the supply were a separate supply in accordance with the general attribution rules.[44] In respect of the rent-free periods, no GST will be attributable.

Example 3 - rent-free period – no separate supply

85. Seaside Property Co constructs a new shopping centre and is seeking appropriate tenants to give the centre the desired mix of businesses for that location. Max operates his business from a shop in a nearby shopping centre. Max's existing lease for his current business premises expires in 12 months.

86. Seaside Property Co approaches Max and offers him premises in the new centre rent-free until his existing lease expires in twelve months time, if he moves his business to the new premises. Max agrees and enters into a five-year lease. Seaside Property Co has made one supply being the supply of the leased premises. No GST will be attributable during the rent-free period. There is nothing in the agreement or other circumstances to indicate that the rent-free period is anything more than part and parcel of the terms of the lease. Accordingly, the ATO would accept that it is not consideration for a separate supply made by the tenant. Following the end of the rent-free period, GST will be attributable in accordance with Division 156 as Seaside Property Co accounts for GST on a non cash basis.

87. Where a rent discount (reduced rent) is applicable for a specified period, GST is only payable on the reduced rent for the supply of the premises during this reduced rent period.

Rent-free or rent discount period – existing lease

88. Where a landlord offers a rent-free or rent discount period on an existing lease, in exchange for the tenant entering into a new lease, there is a separate supply for GST purposes. The rent-free or rent discount period is being given in exchange for something that the tenant agrees to do, that is the entry into the new lease. In these circumstances, the rent-free or rent discount period was not a condition of the existing lease.

[44] Division 156 and paragraph 12 of GSTR 2000/35 which is about supplies and acquisitions made on a progressive or periodic basis.

Rent-free or rent discount period in exchange for service

89. As part of the negotiations for a lease, a landlord may offer a rent-free period or rent discounted period. The tenant may also agree to do something (e.g. carrying out repairs) which benefits the landlord. Where this occurs there is a supply of the premises by the landlord, the consideration for which may be a combination of monetary (the rent) and non-monetary (the thing the tenant agrees to do). By providing the non-monetary consideration the tenant is also making a supply of the thing that the tenant does (e.g. carrying out the repairs).

90. Depending on the transaction, the consideration for the tenant's supply of services may be non-monetary consideration, that is, the supply of the premises during the rent-free period or at the discounted rent.

91. In those circumstances, in the case of a rent-free period, the consideration for the tenant's supply would be the GST inclusive market value of the supply of the premises for that period. In the case of a rent-discounted period, the consideration for the tenant's supply would be the difference between the GST inclusive market value of the supply of the premises during that period and the discounted rent for the period.

92. The supply made by the tenant would form part of the consideration for the supply of the premises by the landlord in those circumstances. That is, the consideration for the supply of the premises would be the sum of the rental and the GST inclusive market value of the thing the tenant agreed to do (e.g. the repairs).

Example 4 - rent-free period in exchange for services

93. *Property Holdings Ltd owns a shopping centre and is seeking appropriate tenants to give the centre the desired mix of businesses for that location. Wendy Travel Pty Ltd (WT) operates a travel business, from a shop in a nearby shopping centre.*

94. *Property Holdings Ltd approaches WT and offers it a five year lease of the premises in the shopping centre rent-free for the first 6 months on the condition that it provide 'free' travel services to the value of $20,000. WT agrees and enters into a five-year lease. The lease specifically provides that there will be no rental for the first 6 months of the lease and that the consideration for the provision of the premises in that period will be in the form of travel services to be provided by WT.*

95. *Property Holdings Ltd has made one supply being the supply of the leased premises. This supply is a taxable supply. During the rent-free period the consideration is the GST inclusive market value of the supply made by WT, being the value of the travel provided.*

Following the end of the rent-free period, the consideration is the lease rentals.

96. *WT has also made a supply, being the travel services. The consideration is the GST inclusive market value of the supply of the premises during the rent-free period.*[45]

97. However, it is to be emphasised that the correct analysis depends upon the precise terms of the bargain between the parties as evidenced primarily by any written agreement and any other relevant circumstances. For example, the agreement may record that the tenant will carry out minor work (such as, cleaning and minor touching up of paint) at its own expense, which is not stated to be specifically in consideration of the rent-free or rent discounted period.

98. In the absence of contrary evidence, we consider the work carried out by the tenant to be part and parcel of the terms of the lease. We would not regard it as a separate supply made by the tenant. It follows that we would not regard the rent-free or rent discounted period as consideration for a separate supply, but merely part of the terms relevant to the calculation of the consideration for the landlord's supply of the premises.

Other supplies as consideration

99. Where the landlord provides a holiday package or other kinds of non-monetary consideration to the tenant as an inducement for the tenant's entry, or agreement to enter, into a lease, again an analysis of the true nature of the transactions is required. The same principles outlined above in paragraphs 17 to 47 must be applied.

Lease Premiums

100. A tenant may provide consideration to a landlord for the granting of a lease of premises. The supply made by the landlord is the granting of the lease, rather than the supply of the premises, and the consideration for the granting of the lease is the premium paid by the tenant. Alternatively, a prospective tenant might provide consideration to a landlord to induce the landlord to *agree* to enter into a lease, rather than as consideration for the *grant* of the lease. These scenarios would be less common. As the cases cited below indicate, the expression 'premium' refers to the price or consideration for the *grant* of a lease.

101. This is to be contrasted with those situations where an amount is paid over and above the lease payments but that amount is still for the premises rather than for the granting of the lease.

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[45] See also GSTR 2001/6, paragraphs 138 to 158.

102. The Full Federal Court in *FC of T and Krakos Investments Pty Ltd*[46] characterised a lease premium as follows:

> A sum will be a premium where it is paid as consideration for the grant of a lease. The expression is used in contradistinction to rent, which is the consideration payable under the lease for the right of use and occupation of the leased premises during the term of the lease:….[47]

103. In *Frazier v. Commissioner of Stamp Duties (NSW)* [48] the Court stated:

> …the whole of the circumstances must be looked at, for the question to be decided is whether in fact - and this involves the construction of the deed as well as other relevant evidence if any - this amount was paid as a consideration for the granting of the lease or whether it is a payment intended as rent for the use of the premises.[49]

104. Whether a payment to a landlord by a prospective tenant is rent or a lease premium must be determined in light of the surrounding facts and circumstances. There are occasions when, based on all the facts, an amount referred to as a lease premium should be characterised as a rental payment as shown in *Example 5* at paragraphs 106 to 107.

105. Where the characterisation of the transaction is that the consideration provided by the tenant is not a genuine premium, but is part of the consideration for the premises, the payment will be treated as rent for GST purposes.[50] See paragraph 29 above for factors relevant to determining whether a payment is consideration for the grant of the lease.

Example 5 - an up front payment that is for the supply of the premises and is 'rent'

106. *Jo, a landlord, is experiencing cash flow difficulties. She offers Retail Holdings Co the lease of a building on very attractive terms, including a reduced monthly rental, if Retail Holdings Co will make an up-front payment of a 'premium' of $50,000. The lease provides for a pro rata rebate of the 'premium' if the lease is terminated early.*

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[46] *FC of T v. Krakos Investments Pty Ltd* (1996) 61 FCR 489; 96 ATC 4063; (1996) 32 ATR 7.
[47] *FC of T v. Krakos Investments Pty Ltd* (1996) 61 FCR 489 at 503; 96 ATC 4063 at 4074; (1996) 32 ATR 7 at 20.
[48] *Frazier v. Commissioner of Stamp Duties* 85 ATC 4735; (1985) 17 ATR 64.
[49] *Frazier v. Commissioner of Stamp Duties* 85 ATC 4735 at 4740; (1985) 17 ATR 64 at 70.
[50] See GSTR 2000/35, paragraph 71.

107. *In the circumstances, the true character of the payment is a prepayment of rent, not an inducement to enter into the lease. The payment is not consideration for the grant of the lease. It is part of the consideration for the supply of the premises.*

Example 6 - lease premium that is an inducement for a separate supply

108. Noelene, who operates Noelene's Beauty Salon, has been seeking premises in a specific location, and with high exposure, to open a new shop. She finds premises being constructed by Property Developer Ltd that satisfies her particular requirements but knows that the premises will be in demand. Noelene approaches Property Developer Ltd offering it $10,000 to secure her tenancy in the new building. The agreement describes the payment as a premium and there is no provision for a refund or rebate in the case of early termination of the lease.

109. The payment by Noelene is an inducement for the grant of the lease. Property Developer Ltd is making a taxable supply separate from the supply of the premises. The GST payable on that supply will be 1/11th of $10,000, that is, $909.09.

Liability for GST on a lease premium

110. Where the landlord receives a lease premium in return for granting a lease, it is the landlord who is making the supply and who will have the liability for GST if it is a taxable supply.

111. Where the landlord receives a cash payment as a lease premium, the GST payable will be 1/11th of this amount.

112. Where the landlord receives non-monetary consideration for granting the lease, the GST payable will be 1/11th of the GST inclusive market value of the consideration. For example, if the tenant agrees to undertake work on the premises, and the terms of the agreement and any other relevant circumstances establish that the work is provided as the price for the landlord granting the lease, the GST payable by the landlord will be 1/11th of the GST inclusive market value of the work undertaken.

113. In this example, the tenant is also making a supply, being the work undertaken, for consideration, which is the granting the lease. The GST payable by the tenant is 1/11th of the GST inclusive market value of the grant the lease. We accept this would ordinarily equal the GST inclusive market value of the work undertaken.[51]

[51] See GSTR 2001/6, paragraphs 138 and 158.

114. Where the premises are residential premises, a supply of the premises by way of lease, hire or licence is input taxed under section 40-35. Both the grant of the lease and the supply of the premises are covered by section 40-35. While the transaction and the circumstances may characterise separate supplies of the grant and supply of the premises for which the premium and the rent are separate consideration, the GST treatment is the same. Both supplies are input taxed as each is a 'supply of the premises that is by way of lease, hire or licence'.

115. In considering lease incentives and leases for residential premises, it is necessary to consider if the tenant is registered or required to be registered for GST. If the tenant is not registered or required to be registered, any supply made by the tenant will not be a taxable supply. Apart from this the principles in this Ruling in relation to lease incentives equally apply to a lease of residential premises.

Definitions

116. Terms used in this Ruling have the following meanings:

Face rent - the rental specified in the lease without discount for any incentive.

Lease inducement - consideration provided by a party in order to persuade the other party to enter, or agree to enter, into a lease.

Lease incentive - an inducement given by a lessor to induce a prospective tenant to enter, or agree to enter, into a lease of premises.

Lease premium - a sum of money or other consideration given for the grant of any lease. A genuine lease premium is an additional amount of consideration given by a lessee over and above the rent to obtain the grant of the lease of the premises.

Detailed contents list

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Commissioner of Taxation
17 December 2003

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Related Rulings/Determinations:

TR 2002/14; TR 2006/10; GSTR 2000/35; GSTR 2001/4; GSTR 2001/6; GSTR 2001/8

Subject references:
- commercial premises
- consideration
- face rent
- lease incentive
- lease inducement
- lease premium

Legislative references:
- Agricultural Holding Act 1891 (SA)
- Agricultural Tenancies Act 1990 (NSW)
- ANTS(GST)A 1999
- ANTS(GST)A 1999 9-5
- ANTS(GST)A 1999 9-5(a)
- ANTS(GST)A 1999 9-5(b)
- ANTS(GST)A 1999 9-10(2)(g)(i)
- ANTS(GST)A 1999 9-10(4)
- ANTS(GST)A 1999 9-15
- ANTS(GST)A 1999 9-75(1)
- ANTS(GST)A 1999 9-75(1)(b)
- ANTS(GST)A 1999 Div 19
- ANTS(GST)A 1999 40-35
- ANTS(GST)A 1999 Div 156
- ANTS(GST)A 1999 195-1
- ANTS(GST)R 1999 40-5.09(3)
- Landlord and Tenant Act 1935 (TAS)
- Landlord and Tenant Act 1958 (VIC)
- Property Law Act 1974 (QLD)
- TAA 1953 Div 358
- A New Tax System (Goods and Services Tax) Amendment Regulation 2012 (No. 1)

Other references:
- Explanatory Statement to the A New Tax System (Goods and Services Tax) Amendment Regulation 2012 (No. 1)

Case references:
- Chelsea Investments Pty Ltd v. FCT (1966) 115 CLR 1
- Commissioners of Customs and Excise v. Cantor Fitzgerald International (Case C-108/99) [2002] BVC 9
- Commissioners of Customs and Excise v. Mirror Group plc (Case C-409/98) [2002] BVC 16; [2001] ECR I-7175; [2001] STC 1453
- FC of T v. Cooling (1990) 22 FCR 42; 90 ATC 4472; (1990) 21 ATR 13
- FC of T v. Krakos Investments Pty Ltd (1996) 61 FCR 489; 96 ATC 4063; (1996) 32 ATR 7
- FC of T v. Montgomery (1999) 198 CLR 639; 99 ATC 4749; (1999) 42 ATR 475
- Frazier v. Commissioner of Stamp Duties (NSW) 85 ATC 4735; (1985) 17 ATR 64
- Iona Farm Ltd v. Commissioner of Inland Revenue (1999) 19 NZTC 15261
- King v. Earl Cadogan [1915] 3 KB 485
- Lees & Leech Pty Ltd v. FC of T 97 ATC 4407; (1997) 36 ATR 127
- Matthews v. Timothy 87 ATC 4606
- Nixon v. Doney (1961) SR (NSW) 311
- O'Connell v. Commissioner of Taxation (2002) 121 FCR 562; 2002 ATC 4628; (2002) 50 ATR 331
- Radaich v. Smith (1959) 101 CLR 209
- Reuter v. FCT 93 ATC 5030; (1993) 27 ATR 256
- Rotherwood Pty Ltd v. FC of T (1996) 64 FCR 313; 96 ATC 4203; (1996) 32 ATR 276
- S41, TRA No 31/95 17 NZTC 7280
- Selleck v. FC of T 97 ATC 4856; (1997) 36 ATR 558
- Sunbird Plaza Pty Ltd v. Maloney (1988) 166 CLR 245; (1988) 77 ALR 205

Other References
- Phillips, J and Donovan, J 1996, The modern contract of guarantee, 3rd edn, LBC Information Services, Sydney

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Appendix A

Non-monetary consideration and separate supplies
(see Example 1 at paragraphs 38 to 41 of this Ruling)

