GSTR 2000/D9 - Goods and services tax: construction and building services which span 1 July 2000

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Draft 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 is a draft for industry and professional comment. As such, it represents the preliminary, though considered views of the Australian Taxation Office. This draft may not be relied on by taxation officers, taxpayers and practitioners as it is not a Ruling or advice in terms of section 37 of the ***Taxation Administration Act 1953****. When officially released it will be a public ruling for the purposes of section 37 and may be relied upon by any person to whom it applies.*

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 that 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 engineering work;

   (ii) where your supply does not form part of the construction, major reconstruction, manufacture or extension of a building or civil engineering work.

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

[1] Refer paragraph 17 of this Draft Ruling.

(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, when finalised, will take effect on and from 8 July 1999 (the date of royal assent to the Goods and Services Tax legislation).

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. Draft Ruling GSTR 2000/D3, 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.

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[2] GST and Voluntary agreements are discussed at paragraph 27 of this Draft Ruling.
[3] Subsection 7(1) of the Transition Act.

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 18).

11. You and the recipient may agree that a supply spanning 1 July 2000 be treated as made wholly on or after that date. In this case GST will be paid on the whole of the supply. Whether the parties wish to follow this course will depend on their own individual circumstances (refer paragraph 27).

12. Where you do not wish a supply spanning 1 July 2000 to be treated as being made wholly on or after that date, you will need to divide the service into a portion that is not subject to GST and a portion that is.

13. You may use progress payments to determine the portion of the service you perform before 1 July 2000 where the progress payments are in respect of a completed stage, or the payment is made by a head contractor (refer paragraph 33).

14. If you do not use progress payments, you should be able to support any apportionment you make with records that explain the transactions and activities relevant to that supply (refer paragraph 41).

Explanations (this forms part of the Ruling)

Section 19

15. 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.

16. 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

17. Construction and building services include bricklaying, carpentry, plumbing, tiling, electrical, painting, roofing, joining, concreting and rendering, or any combination of these. Typically these types of services are provided in home renovation, office

[4] See paragraph 7 of this Draft Ruling.

refurbishment, or by a subcontractor working in a larger construction project.

18. 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.

Special credit for sales tax paid

19. Entitlement to a special credit for sales tax paid on stock may be allowed under section 16. 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 on hand at 1 July 2000. 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

20. 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.

21. 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

22. 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.

23. Section 12 applies where the supply is made for a "specified division or portion of time which begins before 1 July 2000 and

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[5] See paragraphs 38 to 40 of GSTR 2000/8

concludes on or after 1 July 2000."[6] Examples of the kinds of supplies to which section 12 will apply are:

- 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.[7]

Subsections 7(1) and 6(4)

24. As section 12 does not apply, it is necessary to consider the general provisions of the Transition Act. 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. 'Performed' is not defined in the Transition Act. Taking its ordinary meaning, 'performed' denotes some finality, or a stage of completion.

26. However, 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

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[6] See paragraph 29 of 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."

[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.

voluntary agreements in the "PAYG Voluntary agreement" Fact Sheet and the "Guide to PAYG for Business" booklet.[9]

Treating the supply as wholly subject to GST

29. Where both parties prefer not to undertake the apportioning process, you and the recipient may agree that a supply spanning 1 July 2000 be treated as made wholly on or after that date. In this case, GST is payable on the whole of the supply and you as the supplier will be liable for the GST. This may be the preferred course with smaller jobs where the recipient is fully entitled to input tax credits.

Example 1 – GST on full supply

30. Angelo is an electrician engaged by Heapsa Sparks, a large electrical contractor, to do a specific job on a subcontract basis. Angelo commences the job on 25 June and finishes on 3 July 2000. It is a small supply and neither party wants to apportion it for GST purposes.

31. By agreement between Angelo and Heapsa Sparks, the supply is treated as being wholly made on 3 July 2000, the date of its completion. Angelo will be subject to GST on the full supply. Heapsa Sparks agree to Angelo's claim being inclusive of GST on the entire supply, but may claim the appropriate input tax credits.

Records you must maintain

32. Subsection 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.*

33. 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 be satisfy the requirements of section 70 for the purposes of this Ruling.

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

34. 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, and any materials used.

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

35. 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.

36. You may use this option where either:

(i) the payment is in respect of a completed stage of the total service, for which you are entitled under the agreement to be paid; or

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

37. Under this option, where the payer withholds a retention amount from the progress payment, the amount withheld still forms part of the progress payment for purposes of determining the extent of the service performed.

38. Under this option, if further service is performed between the date of your progress claim and 30 June 2000, that further service will not be reflected in the extent of the service you perform before 1 July 2000. However, Apportionment Option B, as described in paragraph 41, may allow you to determine the portion of the further service you perform to 30 June.

Example 2 – Section 19

39. 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[10].

Example 3 – progress claim by subcontractor

40. Lotsa Pipes (plumbing subcontractor) has contracted with Bonza Constructions (the head contractor) to provide plumbing requirements for the above building. 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 4 – reduced progress payment

41. 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 5 – completed stage

42. 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.

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.

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[10] See GSTR 2000/D3.

However, Apportionment Option B, as described in paragraph 41, may allow you to determine the portion of the further service Splasha performs to 30 June.

Apportionment Option B – apportionment based on your records

43. 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 records.

Example 6 – comprehensive record system

44. 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 to determine the extent the service is performed before 1 July 2000.

Example 7 – home renovation apportionment

45. 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. As at 30 June, $5,000 worth of materials have been incorporated into the verandah and entertainment area, and half of the job has been completed.

Lars' records 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 the records, $11,000 ($5,000 materials plus $6,000 labour) represents the portion of the service performed before 1 July 2000.

Example 8 – home renovation – owner buys materials

46. 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 will not be subject to GST provided Lars maintains records of the service as outlined in example 7.

Advance payments

47. Progress payments that you receive for services performed on or after 1 July 2000 will be subject to GST. Where you receive advance payments before 1 July 2000 for services that are to be performed on or after that date, for GST purposes those payments will be taken to be received in the first tax period after that day[11].

Detailed contents list

48. Below is a detailed contents list for this draft Ruling:

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[11] Section 10 of the Transition Act

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Your comments

49. Due to consultation that has already occurred with industry on the issues discussed in this ruling, the period for providing comments is reduced. If you wish to comment on this draft Ruling, please send your comments promptly by **26 May 2000** to:

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Commissioner of Taxation
10 May 2000

Previous draft:
Not previously issued in draft form

Related Rulings/Determinations:
GST 2000/7; GSTR 2000/D3

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 19
- ANTS(GST)A Division 113
- TAA 70
- TAA 70(1)(a)

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