



GSTA TPP 009 - Goods and services tax: Is an entity that enters into an agreement to make a subsequent supply making two taxable supplies?

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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 Advice

Goods and services tax: is an entity that enters into an agreement to make a subsequent supply making two taxable supplies?

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.]*

Answer

If there is no separate consideration for the agreement that supply is not a taxable supply.

Background

It is common in the case of tenancies for an owner of premises to enter into an agreement to lease with a prospective tenant, because premises may not be in a state ready to be leased. A formal lease is then executed when the premises are available. The definition of supply in section 9-10 of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act) means that there are two supplies, one upon entering into the contract (the agreement to lease) and again when the underlying asset is delivered (the underlying lease).

Explanation

If there are two distinct supplies; being the entry into the agreement to make a subsequent supply and the subsequent supply itself, the GST consequences of each transaction depend on whether there is separate consideration for each supply. If there is no separate consideration for the agreement, that transaction is not a taxable supply under section 9-5 of the GST Act. However, if the recipient provides distinct consideration for an option or right to receive a subsequent supply of something at a later date, the granting of the option or right may be a taxable supply distinct from the subsequent supply.

Application of this GST Advice

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

Related Rulings/Determinations/GST Advice:

TR 2006/10

Subject references:

taxable supply
consideration

Legislative references:

ANTS(GST)A 1999 9-10
ANTS(GST)A 1999 9-5
TAA 1953 Sch 1 Div 358

ATO references

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