


GSTA TPP 070 - Goods and services tax: Is a party to a contract for the sale of a commercial property who deregisters for GST before settlement required to pay GST?

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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 a party to a contract for the sale of a commercial property who deregisters for GST before settlement required to pay GST?

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

No, the unregistered party is not required to pay GST. However, the Commissioner will not cancel the party's registration unless certain requirements are satisfied.

Background

A GST registered taxpayer enters into a contract for the sale of a commercial property on 1 April 2003.

The settlement date is 1 December 2003. The taxpayer deregisters on 1 August 2003.

Explanation

The Commissioner must cancel an entity's registration if the entity is not required to be registered and the other requirements of section 25-55 of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act) are satisfied. Under paragraph 188-10(2)(b) an entity is not required to be registered if its projected annual turnover is at or below the turnover threshold. In calculating projected annual turnover, section 188-25 provides that any supplies made, or likely to be made, by way of transfer of a capital asset are disregarded.

Paragraphs 31 to 36 of Goods and Services Tax Ruling *GSTR 2001/7* discuss capital assets. The disposal of a single asset in an isolated transaction may amount to an enterprise if it is an activity in the form of an adventure in the nature of trade. For example, if a commercial property is purchased and refurbished for the purpose of resale at a profit, the commercial property is not a capital asset.

Commercial property is not a capital asset

If the commercial property is not a capital asset, the Commissioner is not required to cancel the supplier's registration. The value of the supply is included in the supplier's projected annual turnover, which is likely to exceed the registration turnover threshold. The supplier is required to be registered. The GST payable is attributable to the tax period where any part of the consideration is received, which is likely to be the period in which settlement occurs. The supplier is required to give the recipient a tax invoice if requested (subsection 29-70(2)), unless the supplier chooses to use the margin scheme (section 75-30).

Commercial property is a capital asset

If the commercial property is a capital asset, and the value of all other projected supplies is less than the registration turnover threshold, the supplier is not required to be registered. If the requirements of a taxable supply under section 9-5 are tested upon

entry to the contract, the supply is a taxable supply. If they are tested upon settlement of the contract, the supply is not a taxable supply.

Section 9-5 does not express when the requirements for a taxable supply should be tested. The Commissioner's view is that the elements of section 9-5 should be tested at the earlier of when the supply is made, or when an event triggers attribution. The commercial property is supplied at settlement. Thus, as the supplier does not issue an invoice or receive consideration for the supply before settlement, the supplier does not need to examine the requirements of 9-5 until settlement. As the supplier is not registered or required to be registered at settlement, no taxable supply is made. Therefore no GST is payable and no tax invoice must be issued.

Adjustments

If the supplier issues an invoice or receives partial consideration for the supply before cancelling its registration, the supplier must examine at that time if the supply is a taxable supply. As the requirements of section 9-5 are satisfied at that time, the supplier should attribute the GST payable to the period in which the invoice issued or the payment was received.

Deregistration may be an event which has the effect of causing the supply to stop being a taxable supply within the meaning of paragraph 19-10(1)(c). The Commissioner views a cancellation of the supplier's registration before supply is made as an adjustment event under paragraph 19-10(1)(c). Therefore, if the supplier attributes GST payable on the supply to a tax period prior to de-registration, the supplier is entitled to a decreasing adjustment in its final tax period.

Division 138 – Cessation of Registration

Where the registration of a supplier who accounts on the cash basis is cancelled, section 138-15 operates to attribute GST payable on taxable supplies to the supplier's concluding tax period. On the current facts the supply of the premises is no longer a taxable supply once the supplier is deregistered so there is no GST payable to be attributed to the concluding tax period. However, section 138-5 may apply to impose an increasing adjustment to the supplier's concluding tax period in respect of the commercial property held as an asset at the time of cancelling registration.

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).

Commissioner of Taxation

25 January 2006

Related Rulings/Determinations/GST Advice:

TR 2006/10

Subject references:

registration
deregister
settlement
commercial property

Legislative references:

ANTS(GST)A 1999 25-55
ANTS(GST)A 1999 188-10(2)(b)
ANTS(GST)A 1999 188-25
ANTS(GST)A 1999 29-70(2)
ANTS(GST)A 1999 75-30
ANTS(GST)A 1999 9-5
ANTS(GST)A 1999 29-5(1)
ANTS(GST)A 1999 19-10(1)(c)
ANTS(GST)A 1999 138-15
TAA 1953 Sch 1 Div 358

ATO references

NO:	05/3095
ISSN:	1833-0053