


GSTA TPP 072 - Goods and services tax: If a purchaser of residential units is granted possession of the units and demolishes them prior to settlement, is the real property supplied at the time possession is granted?

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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: if a purchaser of residential units is granted possession of the units and demolishes them prior to settlement, is the real property supplied at the time possession is granted?

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; as the contractual arrangements provide for the supply of residential premises at settlement. It is immaterial whether the premises are demolished by the time of settlement.

Background

A property developer who is registered for GST enters a contract on 12 July 2004 to sell three residential units. Settlement is to occur on 11 September 2004. On 30 July 2004 the property developer grants the purchaser possession of the units. The purchaser demolishes the units prior to 11 September 2004.

Explanation

The character of what is supplied is determined by all of the facts and circumstances surrounding the supply, primarily as reflected in the contractual arrangements between the supplier and recipient.

In this case, the contract is for the sale of the real property consisting of residential units, which it is assumed would have the characteristics necessary to satisfy the definition of 'residential premises' before they are demolished. Although the contract for the supply of the premises allows the recipient access to the premises, and the recipient actually demolishes the premises before title to the land passes, the thing supplied to the recipient is the residential premises. The purchaser is only able to demolish the premises pursuant to the agreement between the parties. Since it is residential premises that are supplied by the property developer, the supply is input taxed.

The ATO takes the same approach in relation to builders' terms arrangements, where a vendor selling land to a builder may allow the builder access for the purpose of constructing premises before settlement. Although there may be residential premises in existence when the land is finally transferred to the builder at settlement, the landowner is not making a supply of new residential premises.

If the current facts are varied, and the contract concerns the supply of vacant land, the whole of the circumstances surrounding the supply would result in the supply being a taxable supply of real property rather than residential premises. For example, if the sale contract required the purchaser

to deliver vacant land and provide demolition services, there may be two supplies with the supply by the vendor being for the transfer of vacant land.

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:

real property
settlement
possession
input taxed
residential premises

Legislative references:

TAA 1953 Sch 1 Div 358

ATO references

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