

# ***GSTA TPP 104 - Goods and services tax: When is the day of supply of a going concern that constitutes a property development enterprise?***

 This cover sheet is provided for information only. It does not form part of *GSTA TPP 104 - Goods and services tax: When is the day of supply of a going concern that constitutes a property development enterprise?*

 This document has changed over time. This is a consolidated version of the ruling which was published on *1 February 2006*



## Goods and Services Tax Advice

### **Goods and services tax: When is the day of supply of a going concern that constitutes a property development enterprise?**

#### **Preamble**

*This document is a ruling for the purposes of section 37 of the Taxation Administration Act 1953. It illustrates the principles contained in **Goods and Services Tax Ruling GSTR 2002/5 on going concerns**. You can rely on the information presented in this document, which provides advice on the operation of the GST system.*

#### **Example**

##### **Supply of a property development enterprise as a going concern**

A contract was signed on September 2003 and settled on January 2004 for the supply of a property development enterprise. The purchaser was given access to the property under a lease dated November 2003. The lease gave the purchaser other limited rights.

Titles, off the plan sales and all planning and development permits were assigned at settlement.

The vendor continued to sell lots and physically develop the land in the period up to settlement.

#### **Answer**

The example in this Advice is about property development. If it is assumed that an enterprise is being supplied, the day of supply for this supplier was the day on which -

- the supplier satisfied all of the obligations under the arrangement that are relevant to the identified enterprise supplied, and
- the recipient assumed effective control and possession of all of the things necessary for the continued operation of the enterprise.

#### **Explanation**

In determining the date of effective control and possession the facts of each case need to be considered in relation to –

- the particular enterprise being supplied
- the arrangement between the supplier and recipient
- the necessary things being supplied, and
- when these things are supplied.

Paragraph 38-325(2)(b) of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act) requires that the supplier carries on, or will carry on, the enterprise supplied under the arrangement until the day of the supply. This is discussed in paragraph 161 of *GSTR 2002/5 Goods and Services Tax: when is a 'supply of a going concern' GST-free?* Two examples in paragraphs 162 to 165 of the ruling support the discussion.

When granted limited access under the lease, the recipient gained some rights, but not all of the things necessary for the continued operation of the enterprise. When off the plan sales, titles and planning permits were supplied, assuming there were no other things necessary, the recipient got effective control of **all** things. This was in January 2004.

If the supply is not GST-free as a going concern the normal attribution rules apply to any taxable supplies made by the vendor under the arrangement.

#### **Application of this GST Advice**

This Advice is based on GSTR 2002/5, effective from 16 October 2002. That Ruling replaced GSTR 2001/5, which explained our view of the law as it applied from 1 July 2000. You can rely on this Advice on and from its date of issue for the purposes of section 37 of the *Taxation Administration Act 1953*. Goods and Services Tax Ruling GSTR 1999/1 explains the GST rulings system and our view of when you can rely on our interpretation of the law in GST public and private rulings.

If this Advice conflicts with a previous ruling that you have obtained, this public ruling prevails. However, if you have relied on a previous ruling, you are protected in respect of what you have done up to the date of issue of this public ruling. This means that if you have underpaid an amount of GST, you are not liable for the shortfall prior to the date of issue of this later ruling. Similarly, you are not liable to repay an amount overpaid by the Commissioner as a refund.

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**Commissioner of Taxation**

Date

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***Previous Rulings/Determinations/GST Advice:***

GSTR 2001/5

***Subject references:***

GST-free

GST supply of going concern

GST property and construction

GST sale of real property

GST substantial renovations

***Legislative references:***

ANTS(GST)A 99 38-325(2)(b)

TAA 1953 37

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**ATO references**

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