GSTD 2004/3 - Goods and services tax: Is a supply of rights to accommodation a supply of real property for the purposes of the A New Tax System (Goods and Services Tax) Act 1999?

This cover sheet is provided for information only. It does not form part of *GSTD 2004/3 - Goods and services tax: Is a supply of rights to accommodation a supply of real property for the purposes of the A New Tax System (Goods and Services Tax) Act 1999?*

From 1 July 2015, the term 'Australia' is replaced in nearly all instances within the GST, Luxury Car Tax, and Wine Equalisation Tax legislation with the term 'indirect tax zone' by the *Treasury Legislation Amendment (Repeal Day) Act 2015*. The scope of the new term, however, remains the same as the now repealed definition of 'Australia' used in those Acts. This change was made for consistency of terminology across the tax legislation, with no change in policy or legal effect. For readability and other reasons, where the term 'Australia' is used in this document, it is referring to the 'indirect tax zone' as defined in subsection 195-1 of the GST Act.

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 Determination

Goods and services tax: is a supply of rights to accommodation a supply of real property for the purposes of the *A New Tax System (Goods and Services Tax) Act 1999*?

Preamble

This document was published prior to 1 July 2010 and was a public ruling for the purposes of 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.]*

1. Yes. A supply of rights to accommodation is a supply of real property for the purposes of goods and services tax (GST).

2. A supply of rights to accommodation located in Australia is therefore connected with Australia under subsection 9-25(4).[1]

3. Subject to paragraph 3A of this Determination, supplies of rights to accommodation in Australia are taken into account in determining whether an entity's GST turnover meets the registration turnover threshold[1A] in accordance with Divisions 23 and 188.

[1] All legislative references are to the *A New Tax System (Goods and Services Tax) Act 1999* unless otherwise stated.

[1A] $75,000 unless the entity is a non-profit body in which case it is $150,000.

3A. Supplies of rights or options to use commercial accommodation[1B] in Australia that are made on or after 1 October 2005 are disregarded in determining whether an entity's GST turnover meets the registration turnover threshold if the supplies are not made in Australia and are made through an enterprise that the supplier does not carry on in Australia.[1C] This means that entities making such supplies may not be required to register for GST unless they make other taxable supplies connected with Australia that exceed the registration turnover threshold.

Background

4. In the tourism industry, tour packages are typically sold by tour operators (or resold by a number of tour operators) across the world. Within a typical tour package, a component is the right to accommodation either on specified dates or for a certain number of nights.[2]

5. A right to accommodation may be evidenced by a reservation, coupon, letter or similar document (the reservation letter). The reservation letter is produced only after the accommodation booking is confirmed with the accommodation provider (for example, a hotel, motel or hostel). Where there is a reservation letter, it is presented by the tourist to the accommodation provider in order to receive the accommodation specified.

Explanation

6. Under the definition in section 195-1, 'real property' includes:

(a) any interest in or right over land; or

(b) a personal right to call for or be granted any interest in or right over land; or

(c) a licence to occupy land or any other contractual right exercisable over or in relation to land.

7. When a tour operator supplies a right to accommodation, the tour operator supplies a licence to occupy land or another contractual right exercisable over or in relation to the land on which the accommodation is located.[3]

[1B] Commercial accommodation has the meaning given by section 87-15 and refers to 'commercial residential premises' as defined in section 195-1.

[1C] This is the effect of paragraphs 188-15(3)(c) (current GST turnover) and 188-20(3)(c) (projected GST turnover). A similar transitional provision applies in working out current and projected GST turnover during the months of July, August and September 2005.

[2] This Goods and Services Tax Determination does not deal with the other components of a typical tour package, such as travel components, meals or entry to events.

[3] In *Saga Holidays Limited v. Commissioner of Taxation* [2006] FCAFC 191 (*Saga Holidays*) Stone J (with whom Gyles J agreed) found it unnecessary to consider whether a supply of hotel accommodation was a licence to occupy land. Stone J (at paragraph 38) was 'satisfied that, at the very least, the contract between Saga and the tourist [for hotel accommodation] can be accurately described as including "a contractual right exercisable… in relation to land" and therefore ... it is not necessary to consider the question of a licence'. Young J (who also agreed with Stone J's reasons) similarly found (at paragraph 74) the supply of hotel accommodation to be the supply of a contractual right exercisable in relation to land in Australia. Goods

8. It is immaterial that the tour operator is not the accommodation provider. It is sufficient that the tour operator is entitled to confer a right to accommodation which amounts to a licence to occupy land or any other contractual right exercisable over or in relation to land.

9. As a supply of rights to accommodation is a supply of real property for GST purposes, the supply is connected with Australia where subsection 9-25(4) is satisfied. This subsection provides that a supply of real property is connected with Australia if the real property, or the land to which the real property relates, is in Australia.

10. Accordingly, a supply of rights to accommodation located in Australia satisfies the requirements of subsection 9-25(4) and is connected with Australia.[3A]

11. As supplies of rights to accommodation in Australia are connected with Australia such supplies are ordinarily taken into account in determining an entity's current GST turnover or projected GST turnover for the purposes of Division 188. This is so whether the rights are granted or assigned in or outside Australia. However, from 1 October 2005 supplies of rights or options to use commercial accommodation in Australia that are made on or after that date are disregarded in determining an entity's current GST turnover or projected GST turnover, if the supplies are not made in Australia and are made through an enterprise that is not carried on in Australia.[3B]

12. Thus tour operators are required to be registered where they carry on an enterprise, make supplies of rights to accommodation in Australia (other than those that are to be disregarded) and the sum of the values of those supplies in a 12 month period[4] meets or exceeds the registration turnover threshold of $75,000. However, on and from 1 October 2005 a non-resident tour operator is not required to register where the non-resident tour operator only makes supplies of rights or options to use commercial accommodation in Australia and those supplies are not made in Australia and are made through an enterprise that the non-resident tour operator does not carry on in Australia.

13. The supply of rights to accommodation relating to accommodation located in Australia is a taxable supply where the tour operator is registered or required to be registered.

Example

14. *A tour operator in Australia obtains rights to accommodation in Australia from an Australian accommodation provider. This supply is connected with Australia and is a taxable supply where the other requirements of section 9-5 are met. As this supply is connected with Australia, the value of the supply is part of the Australian accommodation*

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and Services Tax Ruling GSTR 2003/7 at paragraphs 94 and 95 explains the Commissioner's view that a supply of hotel accommodation is a supply of real property.

[3A] This is consistent with the findings of the Full Federal Court in *Saga Holidays*. In *Saga Holidays* it was held that the supply of the accommodation component of an Australian tour package by a United Kingdom tour operator (Saga) to non-residents was a taxable supply of real property connected with Australia.

[3B] See footnote 1B.

[4] As determined by the relevant tests in Division 188.

provider's GST turnover. The tour operator in Australia makes a creditable acquisition provided all the other requirements of section 11-5 are met.

15. *The tour operator in Australia sells the rights to accommodation in Australia to a non-resident tour operator. This supply of rights to accommodation in Australia is connected with Australia and is a taxable supply made by the Australian tour operator where the other requirements of section 9-5 are met. As this supply is connected with Australia, the value of the supply is part of the Australian tour operator's GST turnover.*

16. *The non-resident tour operator sells the holiday package (including rights to accommodation) to a tourist intending to visit Australia. The supply of rights to accommodation in Australia is connected with Australia and is a taxable supply if the other requirements of section 9-5 are met, which includes the requirement that the non-resident tour operator is registered, or required to be registered, for GST.*

16A. *The non-resident tour operator, in determining whether it meets the registration turnover threshold and thus is required to be registered for GST, disregards supplies that it made on or after 1 October 2005 if those supplies are of a right or option to use commercial accommodation in Australia, are not made in Australia and are made through its enterprise that is not carried on in Australia. Because of such supplies being disregarded in working out GST turnover the non-resident tour operator, which might otherwise have been required to register, may not be required to do so.*

16B. *If the non-resident tour operator is not required to register, and does not register, it is not entitled to claim any input tax credits with respect to any acquisitions that it makes from suppliers in Australia (for example, rights to accommodation in Australia), and is not required to account for GST in respect of any supplies that it makes that are connected with Australia (for example, supplies of rights to accommodation to tourists). If, however, the non-resident tour operator does register for GST it is entitled to claim input tax credits for any creditable acquisitions that it makes and is required to account for GST in respect of any taxable supplies that it makes, including supplies of rights or options to tourists to use commercial accommodation in Australia.*

Date of effect

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

18. Changes made to this Determination by Addenda that issued on 15 August 2007, 10 October 2007 and 31 October 2012 have been incorporated into this version of the Determination.[5]

[5] Refer to each Addendum to see how it is that the Addendum amends this Determination.

Commissioner of Taxation
31 March 2004

Previous draft:

Not previously issued in draft form.

Related Rulings/Determinations:

TR 2006/10; GSTR 2003/7

Subject references:

- connected with Australia
- current annual turnover
- GST turnover
- projected annual turnover
- real property
- rights to accommodation
- tour operator

Legislative references:

- ANTS(GST)A99 9-25(4)
- ANTS(GST)A99 9-5
- ANTS(GST)A99 11-5
- ANTS(GST)A99 Div 23
- ANTS(GST)A99 87-15
- ANTS(GST)A99 Div 188
- ANTS(GST)A99 188-15(3)(c)
- ANTS(GST)A99 188-20(3)(c)
- ANTS(GST)A99 195-1
- TAA 1953 Sch 1 Div 358

Case references:

- Saga Holidays Limited v. Commissioner of Taxation [2006] FCAFC 191

ATO references

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