



# ***GSTR 2001/5PW - Partial Withdrawal - Goods and services tax: when is a 'supply of a going concern' GST-free?***

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## **Notice of Partial Withdrawal**

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### **Goods and Services Tax Ruling**

Goods and services tax: when is a 'supply of a going concern' GST-free?

**Delete paragraph 63 and replace with the following:**

63. Where a supplier occupies premises pursuant to a mere tenancy at will, eg, during a brief holding over upon expiration of a lease, the supplier is unable to supply those premises because a tenancy at will is not capable of assignment. However, if upon expiration of a lease, the tenant is allowed to continue in possession pursuant to a short term periodic tenancy, the new periodic tenancy may be capable of assignment. The law of the States and Territories may prescribe certain requirements which will have to be met in respect of the creation or assignment of such leases. A supplier who occupies premises under a periodic tenancy therefore can supply the right to occupy the premises to a recipient.

**At paragraph 120 change the word premises in line 3 to business enterprise.**

**Paragraph 120 should now read:**

120. Where the owner of both the business enterprise and the premises grants a lease of the premises in favour of the second entity prior to the day of the supply of the business enterprise to that second entity, the supplier is supplying the second entity with all of the things that are necessary for the continued operation of the enterprise. The requirement that the premises are supplied to the second entity is met even if the property is subsequently sold to a third entity subject to a lease.

**Delete paragraph 123 and replace with the following:**

123. Where both supplies occur on the same day, each enterprise which is the subject of the separate supplies must be capable of continued operation by the recipient. The supplier of each enterprise can supply all of the things necessary to the recipient to enable them

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to continue to operate both enterprises. When the supply of both enterprises occurs simultaneously, the recipient of the reversionary interest at the time of the supply of that interest is therefore capable of receiving the benefits of the covenants under the lease.

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**Commissioner of Taxation**

5 September 2001

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ATO references:

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