

FACT SHEET | PUKA MEKA

# GST – Supplies of properties used for transitional housing

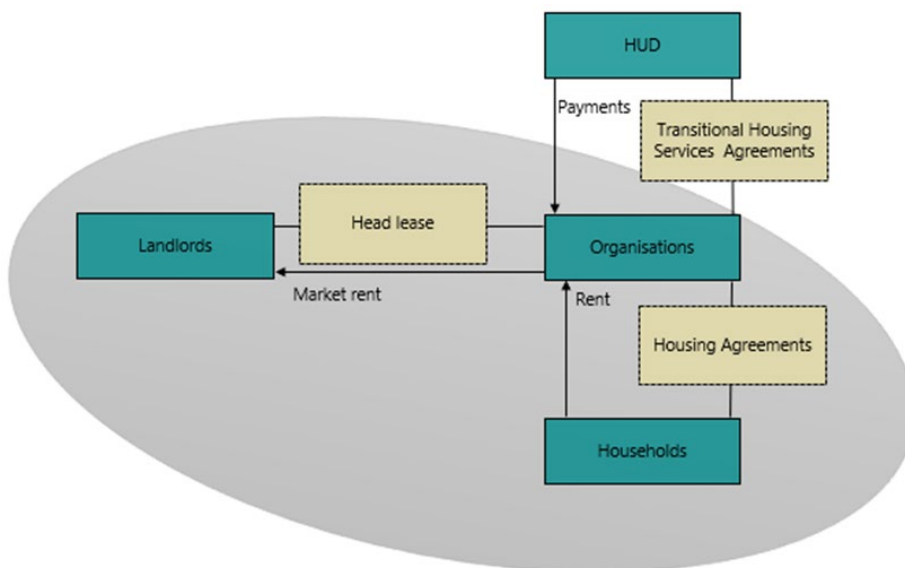
Issued | Tukuna: 7 June 2024

BR Pub 24/01 – 24/03 FS

This fact sheet accompanies BR PUB 24/01 – 24/03, which consider the GST treatment of properties supplied by landlords to organisations for use in the Ministry of Housing and Urban Development’s (HUD’s) Transitional Housing programme.

## Introduction | Whakataki

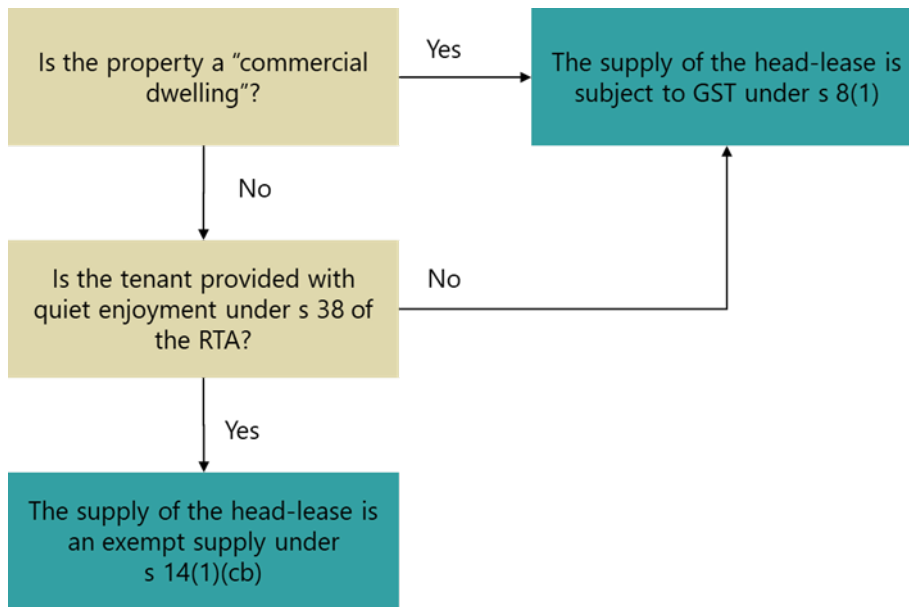
1. Organisations that provide transitional housing services on behalf of HUD generally lease properties from landlords under a head-lease and pay market rent. The organisations then enter into Housing Agreements with the transitional housing tenants (Households). These arrangements are shown in the following diagram:



2. The GST treatment for the landlords will, in many cases, depend on the terms of the Housing Agreement (which the landlord is not a party to). Therefore, it is necessary that when entering a head-lease with organisations, landlords find out the terms on which the organisations will be providing the properties to the Households.
3. BR PUB 24/01 – 24/03 consider when the head-lease between the landlord and the organisation is subject to GST and when it is exempt. This depends on:
  - the type of property provided; and
  - whether the terms of the Housing Agreement between the organisation and Households provide the Households with the right to quiet enjoyment as that term is used in s 38 of the Residential Tenancies Act 1986 (RTA).

## How GST applies to properties used for transitional housing

4. If the landlord provides a commercial dwelling, then the supply will be subject to GST at 15%.
5. If the landlord provides a property that is not a commercial dwelling, and the organisation does not include the relevant right to quiet enjoyment (as that term is used in s 38 of the RTA) in the Housing Agreements with the Households, the supply will be subject to GST at 15%.
6. If the landlord provides a property that is not a commercial dwelling, and the organisation includes the right to quiet enjoyment (as that term is used in s 38 of the RTA) in the Housing Agreements with the Households, then the supply will be exempt from GST.
7. Landlords should apply the following steps to determine their GST treatment.



## Step one: is the property a commercial dwelling?

8. Types of properties used for transitional housing that will be commercial dwellings are:
  - a complex that contains units or separate rooms with a private bathroom, kitchenette or both, but otherwise has communal kitchen, lounge, and common area facilities; or
  - a complex that contains rooms with communal bathroom, kitchen, lounge and common area facilities; or
  - a unit within an ordinary, commercially operated motel.
9. The features of these types of properties are the scale of accommodation provided, the level of communal spaces and services provided and the degree of control and management that is exercised over the property.
10. Landlords that supply these types of properties for use in transitional housing will be subject to GST if they are GST registered or liable to be registered. The amount of GST charged is 15%. (There is a reduced GST rate that can apply to some supplies of accommodation in commercial dwellings, but that reduction does not apply in this instance.) Landlords will be able to claim input tax deductions in relation to these supplies.
11. Landlords that supply a self-contained house, unit or apartment with few or no communal facilities which are to be used by a single person or Household will not supply a commercial dwelling. Those landlords need to consider the next step.

## Step two - is the Household provided with the right to quiet enjoyment (as that term is used in s 38 of the RTA)?

12. Transitional housing is not generally subject to the RTA. However, organisations may choose to provide Households with the relevant right to quiet enjoyment, by expressly referring to s 38 of the RTA or including wording that has the same effect as s 38 of the RTA in the Housing Agreements with Households. If there is no specific reference or wording, the Housing Agreements will not be subject to the relevant quiet enjoyment right.
13. To determine whether the relevant quiet enjoyment right is being provided to the Households, landlords will need to ask the organisation whether the Housing Agreements for their property will refer to s 38 of the RTA or otherwise provide the right to quiet enjoyment as that term is used in s 38 of the RTA.
14. Where organisations have specifically provided these rights, and where the property is not a commercial dwelling, then there will be the supply of accommodation in a dwelling. In that case, landlords will be making a GST exempt supply. They should not charge GST to the organisations and should not claim any GST expenses.

## Examples

### Example 1 – Apartment complex with shared facilities developed for use in transitional housing

Megan is a housing developer and decides to develop a new apartment complex for the provision of transitional housing. Each apartment will contain one or two bedrooms, an en suite bathroom, a small lounge and kitchenette (with a hot plate, microwave and sink). The wider complex will contain communal spaces including fully equipped kitchens, dining areas, television rooms, lounge rooms and games rooms, and will have 24/7 on-site reception and security staffed by the organisation providing transitional housing services.

Megan enters into a commercial lease with a transitional housing organisation for a four-year period.

The complex is a commercial dwelling as it is similar to a hostel, boardinghouse or motel. There are communal facilities and a high level of management over the property.

GST output tax is chargeable on the rental income received from the transitional housing organisation. Megan is not able to use the reduced rate in s 10(6) as she is supplying the complex to an organisation.

As the complex is being used to make taxable supplies, Megan can claim GST input tax deductions on development and running costs.

### **Example 2 – Apartment complex without shared facilities used for transitional housing**

Manu is an investor and owns a small apartment complex that she had been renting to a mix of students and families. Manu decides to rent the apartments to an organisation that provides transitional housing services.

The complex has 10 three-bedroom apartments. Each apartment will be provided to a single Household. The apartments each have a kitchen, bathroom and living area. There are no communal areas. A laundromat is down the street.

Manu checks with the organisation, which confirms that it does not provide the Household with a Housing Agreement that provides quiet enjoyment as that term is used in s 38 of the RTA.

Because there is no quiet enjoyment (as that term is used in s 38 of the RTA) provided by the organisation to the Households, Manu's supply of the properties is not the supply of accommodation in a dwelling. This means that the supply will be a taxable supply for GST purposes.

### **Example 3 – Houses used for transitional housing**

Maia is a property investor who owns 15 houses throughout the lower North Island. She was struggling to find long-term tenants for some of her larger properties so decided to lease 10 of the properties to a transitional housing organisation for four years for some income stability.

Eight of the properties are self-contained houses the organisation provides to single families. The Housing Agreements for these properties are subject to a right to quiet enjoyment under s 38 of the RTA. The supply of these properties by Maia to the

organisation is a supply of property by way of lease that is to be used for the principal purpose of accommodation in a dwelling by a person and is exempt.

The other two properties are 10-bedroom boarding houses. The organisation rents the rooms to individual tenants who share bathrooms and other living areas. The organisation kept one room for a staff member to remain on-site. The two boarding houses are commercial dwellings. Therefore, Maia's supply of a head-lease in relation to these properties is not an exempt supply and is subject to GST.

## About this document | Mō tēnei tuhinga

Some of the Tax Counsel Office's longer or more complex items are accompanied by a fact sheet that summarises and explains an item's main points. While it summarises the Commissioner's considered views, a fact sheet should be read alongside the full item to completely understand the guidance. Fact sheets are not binding on the Commissioner. See further [Status of Commissioner's advice](#) (Commissioner's Statement, Inland Revenue, December 2012).