



TECHNICAL DECISION SUMMARY > PRIVATE RULING

WHAKARĀPOPOTO WHAKATAU HANGARAU > WHAKATAUNGA
TŪMATAITI

GST – supply of accommodation

Decision date | Rā o te Whakatau: 18 December 2023

Issue date | Rā Tuku: 11 June 2024

TDS 24/13

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Subjects | Kaupapa

GST: commercial dwelling; residential establishment; domestic goods and services; input tax deduction; zero-rated for the sale of land

Taxation laws | Ture tāke

All legislative references are to Goods and Services Tax Act 1985 (GSTA) unless otherwise stated.

Facts | Meka

1. The Arrangement involves Company A purchasing land (the Land) with an existing structure, demolishing the existing structure and constructing a building (the Building). Company A has incurred costs in relation to the Building, including for consultants, consenting, demolition and construction (Project Costs).
2. The original intent was to construct a building specifically designed to be used as a hostel. However, the Building was redesigned and reconfigured for use in providing a different kind of shared residential accommodation that targets long-term stays, but short-term stays will also be offered.
3. Upon completion, the Building will be leased to an associated person, Company B, at a market rate. Company B will be responsible for the operation and management of the Building through a Building Manager, acting as agent of Company B.
4. Both companies are Applicants in this ruling and are both registered for GST on an invoice basis.
5. The occupants of the Building will be a mix of short-term occupants (ie occupants who stay for less than 4 weeks) and longer-term occupants (ie occupants who stay for 4 or more weeks in total).
6. For the longer-term occupants, a "boardinghouse tenancy agreement" for the purposes of Part 2A of the Residential Tenancies Act 1986 will be entered into, containing the required terms as prescribed by that Act, including the quiet enjoyment of a particular unit or bedroom and the right to enjoy the communal facilities.
7. The weekly or daily charges for a unit in the Building will include the charge for the supply of accommodation, power, heating, Wi-Fi, water and the use of communal facilities, such as shared kitchen, bathrooms, laundry and other communal

entertainment areas (Regular Accommodation Charges). Additional services, such as laundry or linen service, food-ordering services and on-site cafes and restaurants, will be charged separately (Additional Services).

Issues | Take

8. The main issues considered in this ruling were:
 - whether the Building is a “commercial dwelling” as defined in s 2 and, therefore, not treated as an exempt supply under s 14(1)(c)-(d);
 - whether the concessionary rate of 9% under s 10(6) applies to the supply of accommodation and the communal facilities in the Building;
 - whether the input tax incurred in relation to the Project Costs and the leasing of the Building is deductible and whether an adjustment under ss 21-21HB is required;
 - if Company A sells the Land, Building and all of its contents as a whole to an unrelated third party, whether that supply is to be zero-rated under s 11(1)(mb).

Decisions | Whakatau

9. The Tax Counsel Office (TCO) decided that:
 - the Building is a “commercial dwelling” as defined in s 2 and, therefore, not treated as an exempt supply under s 14(1)(c)-(d);
 - section 10(6) will apply to reduce the amount of GST on the Regular Accommodation Charges to 9% in certain circumstances;
 - the input tax incurred in relation to the Project Costs is deductible and an adjustment under ss 21-21HB is not required;
 - if Company A sells the Land, Building and all of its contents as a whole to an unrelated third party, that supply must be zero-rated under with s 11(1)(mb) if the requirements of that provision are met.

Reasons for decisions | Pūnga o ngā whakatau

Issue 1 | Take tuatahi: Commercial dwelling

10. Under s 14(1)(c)-(d), a supply of accommodation in a “dwelling” is an exempt supply.

11. "Dwelling" is defined in s 2. A "dwelling" excludes a "commercial dwelling". Therefore, if the Building is a "commercial dwelling", then the Building is not a "dwelling" and the supply of accommodation in the Building is not at exempt supply.
12. A "commercial dwelling" is relevantly defined in s 2 to mean a hotel, motel, homestay, farmstay, bed and breakfast establishment, inn, hostel, or boardinghouse, or a similar kind to the type of premises listed.
13. TCO considered the different types of premises and concluded that the Building is similar to a boardinghouse for the purposes of the "commercial dwelling" definition.
14. From case law, it was determined that a boardinghouse will usually have the following features:¹
 - It will provide shared accommodation for a number of separate occupants.
 - Occupants will usually stay on a short-term basis of weeks or months, although some occupants may stay on a longer-term basis.
 - It will provide lodging (as opposed to tenancy) and may also provide board (such as, meals).
 - It will have common areas, such as shared communal kitchens, bathrooms, and living areas.
 - There will be a high level of control or management by the owners, and often the owners will live on site.
 - It will involve the provision of cleaning and maintenance services.
15. TCO considered that while the Building is not a boardinghouse, it shares many of the same features as a boardinghouse, in particular:
 - The scale of the shared accommodation in the Building will provide for a number of separate occupants.
 - Each unit will be under a separate occupancy agreement.
 - Occupants are expected to be a mix of short-term and long-term occupants.
 - Rent is to be paid weekly or sometimes daily depending on the length of stay. Weekly charges will be at least 40% higher than rent for accommodation only in a similar sized room.

¹ *Case L75 (1989) 11 NZTC 1,435; Case Q46 (1993) 15 NZTC 5,227; Karmel & Co Pty Ltd (As Trustee for Urbanski Property Trust) v FCT [2004] AATA 418; [2004] ATC 2075.*

- Significant communal facilities are available for all guests to use, which are paid for as part of the rent.
 - The Building Manager will exercise significant control over the premises and the outer door of the Building through or by, a full-time onsite manager, reception desk and concierge, security resource, setting house rules to govern the use of the premises and the provision of services.
 - The Building Manager is responsible for all facility maintenance of the premises, and cleaning of the exterior of the premises and communal facilities.
 - Despite the occupant's right to the quiet enjoyment of their unit, the Building Manager has the discretion to relocate occupants to a comparable unit when necessary.
16. Therefore, it was concluded that the Building meets the definition of "commercial dwelling". Thus, it is not a "dwelling" and the supply of accommodation in the Building will not be exempt supplies under s 14(1)(c)-(d).

Issue 2 | Take tuarua: Reduced GST rate in s 10(6)

17. Under s 10(6), when individuals occupy a "commercial dwelling" for more than 4 weeks, a reduced effective GST rate of 9% applies to that part of the occupancy. That is, the first 4 weeks of occupancy will be subject to GST at the standard rate and the periods that occur subsequently will be subject to GST at the reduced rate.
18. The proviso to s 10(6) (the Proviso) extends this concessionary treatment to apply the reduced rate from the start of the occupancy. The Proviso applies when the following requirements are met:
- The supply is a supply of domestic goods and services;
 - The domestic goods and services are supplied in a commercial dwelling that is residential establishment; and
 - The supplier and the recipient have agreed that the supply of domestic goods and services will be for a period of 4 or more weeks in total.

Domestic goods and services

19. The term "domestic goods and services" means the right to occupy all or part of a commercial dwelling, including the following services where they are provided as part of the right to occupy:
- cleaning and maintenance;

- electricity, gas, air-conditioning, or heating;
 - telephone, television, radio, or any other similar chattel.
20. Considering the components of the Regular Accommodation Charges, TCO concluded that the supplies covered by the Regular Accommodation Charges will be domestic goods or services because:
- The accommodation charge gives the person the right to occupy a unit in the Building.
 - Power and heating are items listed in the definition.
 - Water and Wi-Fi are facilities that are part of a person's enjoyment of their right to occupy a unit in the Building and are considered supplies of domestic goods and services.
 - The right to use the applicable communal facilities is also considered to be a supply of domestic goods and services because the use of the communal facilities naturally goes with occupying a unit in the Building. It is not an optional or additional service as part of the person's occupation and enables a person's enjoyment of their right to occupy the Building.
21. The supplies included in the Additional Services, however, are not supplies of domestic goods or services. The Additional Services are optional services that are not necessary to enable a person's enjoyment of their right to occupy the Building.
22. Therefore, the first requirement in the Proviso is met.
23. The third requirement in the Proviso will also be met where there is an agreement with longer term occupants that they will stay for 4 weeks or more in total.
24. Thus, the remaining issue to be considered is whether the Building will be a "residential establishment".

Residential establishment

25. "Residential establishment" is defined in s 2. In relation to the Building, the definition relevantly requires that:
- The Building is a "commercial dwelling". This requirement is met, as concluded in Issue 1.
 - There is a supply of "domestic goods and services". This requirement is met as concluded above.

- At least 70% of the individuals to whom “domestic goods and services” will be supplied must be expected to reside in the Building for 4 or more weeks.

70% of individuals expected to stay for 4 weeks or more

26. As mentioned in the Facts, the occupants of the Building will be a mix of short-term stays of less than 4 weeks and longer-term stays of 4 weeks or more. Therefore, it is expected that there will be periods where the requirement that 70% of occupants will stay, or are expected to stay, for 4 or more weeks in total (the Qualifying Periods) will be met, and periods where this 70% threshold will not be satisfied.
27. TCO considered that the Building will satisfy the s 2 definition of “residential establishment” during each Qualifying Period, even though the longer-term occupancy rate may fall below 70% from time to time.
28. Therefore, the Proviso will apply to a supply of “domestic goods and services” in the Building which commences in periods when the Building satisfies the “residential establishment” definition and the occupant has agreed to stay for a period of 4 or more weeks in total.
29. However, the “residential establishment” definition will not be met, and therefore the Proviso will not apply, in periods where the long-term occupancy rate falls below 70%.

Overall conclusion

30. Consequently, TCO concluded that s 10(6) will apply to reduce the amount of GST on the Regular Accommodation Charges to 9%:
 - from the day that the occupancy commences for a longer-term occupant who in the occupancy agreement has agreed to stay for 4 or more weeks in total and who commences their occupancy during a period in which the Building is a “residential establishment” as defined in s 2; or
 - for any other occupancy agreement, for the period that commences after the occupant has resided in the Building for a period of 4 weeks.
31. For the avoidance of doubt, the following supplies will be subject to GST at 15% on the full consideration charged:
 - the first 4 weeks of any occupancy agreement entered into where one or both of the following is true:
 - the Building is not a “residential establishment”;
 - the occupant has not agreed to stay for 4 weeks or more.

- any separate charges for non-domestic goods and services, such as charges for the Additional Services.

Issue 3 | Take tuatoru: Input tax deductions and adjustments

32. In this issue, TCO considered whether the input tax incurred in relation to the Project Costs is fully deductible.
33. Under s 20(3), the input tax that a registered person has paid when acquiring goods and services may be offset against the GST output tax charged on supplies made by the person in the same period.
34. For the Applicants to claim input tax, the following requirements must be met:
 - There is an amount of output tax;
 - There is an amount of input tax that relates to a supply of goods and services made to the registered person during the taxable period, to the extent those goods or services are used for making taxable supplies.

Output tax

35. Output tax is charged on the supply of goods and services (but not including an exempt supply) by a registered person in the course or furtherance of a taxable activity carried on by that person (s 8).
36. After concluding that the provision of the accommodation, communal facilities and Additional Services in the Building will be supplies of goods or services in a commercial dwelling that are not exempt supplies, TCO considered if those supplies are in the course or furtherance of a taxable activity.
37. "Taxable activity" is defined in s 6. There are four requirements that must be satisfied to show there is a taxable activity under s 6(1)(a):
 - There must be an activity.
 - The activity must be carried on continuously or regularly by a person.
 - The activity must involve, or be intended to involve, the supply of goods and services to another person.
 - The supply or intended supply of goods and services must be for a consideration.

38. In addition, s 6(2) states that anything done in connection with the beginning or ending of a taxable activity is to be treated as being carried out in the course or furtherance of that taxable activity.
39. TCO concluded that any supplies of goods and services to be made by the Applicants in relation to the Building will be made in the course or furtherance of a taxable activity because:
 - The Applicants are carrying on the activity of providing accommodation and other facilities to the occupants of the Building.
 - The scale of the Building project and the commercial nature of the Building involve a series of acts. The supply of accommodation and facilities in the Building will form a definite course of action which the Applicants carry on recurrently and at uniform intervals.
 - The occupants will pay rent to the Applicants as consideration for the supply of the accommodation and facilities in the Building.
40. Further, it was also considered that the activities relating to the construction of the Building and the leasing of the Building to Company B are carried out in connection with the beginning of the activity to supply residential accommodation and facilities in connection with the Building. As such, it was concluded that these activities are treated as being carried out in the course or furtherance of the Applicants' taxable activity of providing accommodation and facilities in the Building.
41. Consequently, the Applicants will be required to charge tax under s 8(1) when it starts using the Building to make supplies of accommodation, which will qualify as "output tax" as defined in s 2.

Input tax

42. Section 20(3C) provides that input tax may be deducted to the extent to which the goods or services are used for, or are available for use in, making taxable supplies.
43. TCO considers that a property intended for making taxable supplies, but which is not actively being used, is available for making future taxable supplies if there is a well formulated plan for an intended future use that gives a reasonable result.
44. Further, under s 20(3G), a person must estimate, at the time of acquisition, the percentage of total use for which goods or services will be used for making taxable supplies. This determines whether apportionment of the input tax is required.

45. TCO concluded that, prior to the active use of the Building, Company A is entitled to fully deduct the input tax component of the Project Costs at the time of acquisition, both prior to reconfiguring the Building and subsequently because:
- There was a well formulated plan in place for the intended use of the Building that will give a reasonable result. Therefore, the goods and services related to the Project Costs are “available for use” in making taxable supplies, even though the construction of the Building was not yet completed.
 - The intended use of the goods or services reflected in the Project Costs were 100% used for making taxable supplies and the change in the configuration from a hostel to another kind of shared accommodation did not alter this percentage. Therefore, no apportionment is required.

Subsequent adjustments

46. As there was a change in the intended use of the goods or services relating to the Project Costs (ie reconfiguring the Building from a hostel to another kind of shared accommodation), TCO considered if an adjustment to input tax in relation to the Project Costs is required under ss 21-21HB.
47. A registered person is required to adjust their input tax if there is a percentage difference between the “percentage actual use” (ie, the extent to which the goods or services are actually used for making taxable supplies) and, relevantly, the “percentage intended use” (ie, the percentage estimated at the time of acquisition under s 20(3G)).
48. TCO concluded that no adjustment is required because the “percentage intended use” and the “percentage actual use” of the goods and services reflected in the Project Costs are both 100% for taxable supplies. That is, both the hostel configuration (intended use) and the revised shared accommodation configuration (actual use) are fully taxable supplies of accommodation in a commercial dwelling.

Issue 4 | Take tuawhā: Zero-rating under s 11(1)(mb)

49. For the sale of the Land and the Building to be zero-rated, the requirements of s 11(1)(mb) must be satisfied:
- There must be a supply.
 - The supply must consist wholly or partly of land.
 - The supply of land must be a supply that is made by a registered person to another registered person.

- The other registered person must acquire the goods with the intention of using them for making taxable supplies.
 - The supply of land must not be intended to be used as a principal place of residence of the recipient of the supply or a person associated with them under s 2A(1)(c).
50. TCO concluded that the supply of the Land, Building and all of the contents must be zero-rated in accordance with s 11(1)(mb) in these circumstances:
- if the Applicant sells the Land, Building and all of the contents as a whole to an unrelated third-party purchaser who is a registered person and who acquires that property with the intention of using it to make taxable supplies; and
 - it is not a supply of land intended to be used as a principal place of residence of the recipient of the supply or a person associated with them.