

GST & Property

– Landlord & Tenant

This paper discusses some of the key issues facing practitioners dealing with landlords and tenants in respect of GST.

PREAMBLE

This article discusses some of the key issues facing practitioners dealing with landlords and tenants in respect of GST. These include:

- Determining what will constitute a taxable supply of a leasehold interest;
- Distinguishing between residential premises, new residential premises and commercial residential premises;
- GST treatment of lease incentives;
- Review events and lease agreements that predate GST;
- Recovery of outgoings; and
- The tax invoice requirements for leased premises.

This article only aims to summarise these issues. It is also critical for practitioners to take into consideration the income tax and CGT consequences of a transaction and the interaction between income tax, CGT and GST.

WHAT IS A TAXABLE SUPPLY OF A LEASEHOLD INTEREST IN REAL PROPERTY?

- Under s 9-5 an entity makes a taxable supply if it makes a supply for consideration and:
 - the supply is made in the course or furtherance of an enterprise that the entity is carrying on;
 - the supply is connected with Australia;
 - the entity is registered or required to be registered; and
 - the supply is neither GST-free nor input taxed.

Each of the terms emphasised in the above list are “threshold issues” that define a taxable supply. It is essential that these threshold elements be considered before delving into a complex analysis of the GST law. If the threshold tests are not met there is no taxable supply and a consideration of the complex GST issues will become irrelevant.

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Where a transaction is a supply by way of lease, the supply can be classified as follows:

- vacant land and commercial premises – will be a taxable supply;
- commercial residential premises – will be a taxable supply but sometimes the supply will be taxed at concessional rates (see Div 87);
- residential premises – will be input-taxed;
- farm land and commercial premises sold as a going concern – will be GST-free.

Practice note

Always check that the vendor is required to be registered and the supply is in the course or furtherance of an enterprise.

Entity

Section 184-1 gives the following exhaustive list of the business structures that are considered by the GST Act to be entities:

- (a) an individual;
- (b) a body corporate;
- (c) a corporation sole;
- (d) a body politic;
- (e) a partnership;
- (f) any other unincorporated association or body of persons;

- (g) a trust; and
- (h) a superannuation fund.

Registered or required to be registered

Before a vendor will be required to pay GST on the supply of property they must either be registered for GST or required to be registered for GST. A taxpayer is only required to register for GST if they meet two criteria:

- the taxpayer is carrying on an enterprise; and
- the taxpayer's annual turnover exceeds the registration turnover threshold.

The operation of turnover threshold is outlined in s 188-10, and states that the taxpayer will be required to register for GST when either:

- the current annual turnover is \$50,000 or more and the Commissioner is not satisfied the taxpayer's projected annual turnover is below \$50,000 (\$100,000 for non-profit organisations); or
- the taxpayer's projected annual turnover is \$50,000 or more.

Current annual turnover is defined in s 188-15 as the sum of the values of all supplies the taxpayer has made, or is likely to make (excluding GST), during the current month and the preceding 11 months. This amount does not include:

- supplies that are input taxed (for example renting out residential premises);
- supplies that are not for consideration (and are therefore not taxable supplies under s 72-5 (refers to supplies to associates));
- supplies that are not made in connection with an enterprise that the taxpayer carries on;
- a one-off supply of a capital asset; or
- supplies made solely as a consequence of ceasing to carry on an enterprise or substantially and permanently reducing the size or scale of an enterprise.

(Refer to GSTR 2001/7 for a detailed discussion of these last two exceptions.)

Projected annual turnover is defined in s 188-20 as the sum of the values of all supplies the taxpayer has made, or is likely to make (excluding GST), during the current month and the forthcoming 11 months.

“A supply will only be taxable when it is made in the course or furtherance of an enterprise and this term is defined in s 9-20”

This amount also excludes the five supplies set out above.

The current annual turnover and projected annual turnover threshold tests are to be determined on an objective basis, with an objective assessment considered to be one that a reasonable person could be expected to arrive at having regard to the facts and circumstances which apply to the enterprise at the relevant time. According to GSTR 2001/7, these taxpayers' assessments will be accepted unless the Commissioner has reason to believe that the assessment was not reasonable.

Practice note

A "supply" is defined as "any form of supply whatsoever". It includes supplies of goods, services, advice or information.

Capital asset

The term "capital asset" is not defined in the legislation and so acquires its ordinary usage, meaning an asset associated with the underlying business structure (such as land and buildings), as opposed to assets used in the course of the enterprise's business (such as inventory) (refer to GSTR 2001/7 para 31-36). These structural assets can include a factory, shop, office, fixtures and fittings, machinery and motor vehicles retained to produce income. It also extends to intangible assets such as goodwill.

Enterprise

A supply will only be taxable when it is made in the course or furtherance of an enterprise and this term is defined in s 9-20. It should be noted that the definition of enterprise is broader than the tests for determining whether a taxpayer is conducting a business for income tax purposes. The definition includes an activity or series of activities:

- done in the form of a business; or

- in the form of an adventure or concern in the nature of trade; or
- on a regular or continuous basis, in the form of a lease, licence or other grant of interest in property.

Whether or not a taxpayer is conducting an enterprise is a question of fact. Activities done as a private recreational pursuit or hobby; or without a reasonable expectation of profit or gain, are specifically excluded.

Tax Ruling MT 2000/1 states that the phrase "in the form of" includes an activity or series of activities that may fall short of the established meaning of business, but is or are still conducted in the form of a business. This includes an activity or series of activities that, if they are performed with profit-making motives, will satisfy the ordinary concept test of business as outlined in TR 97/11. Although not a conclusive test, the following factors are indicative of an enterprise conducted in the form of a business:

Checklist – indicia of business for GST purposes

- a business plan exists;
- a significant commercial activity;
- a taxpayer has knowledge or skill;
- an intention to make a profit from the activity;
- purpose and intention of the taxpayer in engaging in the activity;
- records are kept;
- repetition and regularity of the activity;
- size and scale of the activity;
- the activity is not a hobby, recreation or sporting activity;
- the activity is or will be profitable;
- the activity is organised and carried on in a business-like manner and systematically;
- there are commercial sales of products.

Leases

The definition of enterprise in s 9-20 includes activities done on a regular or continuous basis in the form of a lease. This means a taxpayer will be required to pay GST on rent received where the taxpayer is registered or required to be registered for GST.

Residential rent is the exception because s 40-35 provides that these rents are input

taxed. This exception includes rent from new residential premises but does not include rent from commercial residential premises.

Case study – Alison – rental income below \$50,000

Alison is an electrician and registered for GST. Alison owns a shop in a small retail strip as an investment. The total rent she receives from the shop is \$35,000. Alison is required to pay GST on the rent received because she is registered for GST.

The fact that the total rent Alison receives is under \$50,000 is irrelevant. Once a person is registered or required to be registered for GST they must pay GST on all taxable supplies made, even where those supplies do not relate to their primary business. Each business activity is not looked at in isolation as far as the \$50,000 turnover threshold is concerned. The turnover from all enterprises that a taxpayer carries on is aggregated to determine whether the taxpayer has met the \$50,000 turnover threshold.

THE DISTINCTION BETWEEN RESIDENTIAL PREMISES, NEW RESIDENTIAL PREMISES AND COMMERCIAL RESIDENTIAL PREMISES

Section 40-35 provides that a supply of premises by lease, hire or licence is input taxed where there is the supply of:

- residential premises;
- commercial accommodation, subject to Div 87; or
- a berth at a marina is supplied for occupation by a ship used as a residence, subject to Div 87.

Long-term leases of residential premises are input taxed usually under the provisions of s 40-70 rather than s 40-35 (the exception being where the Commonwealth, a state or a territory makes the supply, in which case the supply will be GST-free). Section 195-1 defines a long-term lease as meaning a supply by way of lease, hire or licence (including a renewal or extension of a lease, hire or licence) for at least 50 years if:

- at the time of the lease, hire or licence, or the renewal or extension of the lease, hire or licence, it was reasonable to expect that it would continue for at least 50 years; and
- unless the supplier is an Australian government agency – the terms of the

lease, hire or licence, or the renewal or extension of the lease, hire or licence, as they apply to the recipient are substantially the same as those under which the supplier held the premises.

And, s 195-1 defines residential premises as land or a building that:

- (first limb) is occupied as a residence; or
- (second limb) is intended to be occupied, and is capable of being occupied as a residence.

In most cases, the classification of residential premises will be relatively clear. The Macquarie Dictionary defines “to reside” as being “to dwell permanently or for a considerable time”. However, the GST definition focuses more on the premises’ use for private and domestic accommodation rather than whether the premises have been used as a dwelling for an extended period of time.

The relevant factors have been identified in GSTR 2000/20 and include:

- form of the premises;
- purposes of premises;
- services;
- sleeping accommodation and facilities for human habitation;
- status of the occupant; and
- zoning.

GSTR 2000/20 makes it clear that holiday homes and investment properties do not change their character as residential premises simply because the investment is conducted on a commercial scale and in the course or furtherance of an enterprise. The GST status of the property depends on how it is used by the occupier rather than the purpose for which the owner purchased the property or the legal character of the investor.

Non-complying use

Supply of a vacant house in an area that is now zoned for industrial use would not usually be an input taxed supply of residential premises because the premises would fail the second limb of the test, as the planning rules usually mean the house is not legally capable of being occupied as a residence.

However, if the relevant authority has permitted non-complying use of the

premises, as residential premises, it could be argued that the authority is estopped from denying the owner the right to continue using the premises as residential premises, which should overcome the illegality. Further, as long as the premises do not become vacant, the premises will be occupied as a residence and therefore come within the first limb of the test and be input taxed.

New Residential Premises

The term new residential premises is defined in s 40-75 as

- Residential premises not previously sold as residential premises – s 40-75(1)(a);
- New residential premises created through substantial renovations – s 40-75(1)(b); and
- New residential premises that have been built to replace demolished premises on the same land – s 40-75(1)(c).

This definition is deceptively simple, nevertheless has caused practitioners (and their property developer clients) significant problems. However, analysing these problems and the Commissioner’s position on each issue is beyond the scope of this paper. This is because only a sale of a freehold interest in new residential premises will be a taxable supply, and this paper only deals with a leasehold interest in premises. Refer to GSTR 2003/3 for a more detailed discussion on GST and new residential premises.

Although a sale of new residential premises will be a taxable supply, a lease of new residential premises will be input taxed (assuming the property is occupied or is intended and is capable of being occupied as a residence).

Commercial Residential Premises

This term primarily encompasses short term travel accommodation such as a hotel, motel, or serviced apartment and is defined in s 87-15 to mean the right to occupy any part of commercial residential premises where that right also includes the supply of any of the following:

- cleaning and maintenance;
- electricity, gas, air-conditioning or heating; or
- telephone, television, radio or similar items.

The supply of these ancillary services is subject to the same concessional treatment as the supply of commercial residential premises under Div 87, discussed below.

Section 195 defines commercial residential premises as being any of the following:

- a hotel, motel, inn, hostel or boarding house;
- premises used to provide accommodation in connection with a school (eg: boarding school accommodation);
- a ship or a marina in certain prescribed circumstances;
- a caravan park or a camping ground; and
- anything similar to residential premises described in the above.

Hotels – there is some uncertainty as to the correct treatment of the supply of a hotel (or motel etc) by way of lease to an entity who will operate the premises as a separate enterprise. A strict reading of the legislation is that there is no precondition that the owner must operate the hotel as a business. Therefore, it appears that the concessional GST treatment in Div 87 should be available to the owner of the premises, as well as the tenant operating the business.

Serviced apartments – although it appears at first that serviced apartments may come within the definition of commercial residential premises, the Commissioner has taken a broader approach in GSTR 2000/20. The line the Commissioner draws is between residential premises and commercial residential premises. Factors that will tend to indicate that particular serviced apartments are residential premises rather than commercial residential premises include:

- no, or irregular, cleaning service to the apartments;
- multiple owners of apartments;
- management located off premises;
- kitchen facilities in the apartment;

- no room service or restaurant on premises; and
- no other services offered to the residents that are similar to those provided by other commercial residential premises.

Schools – in ATO ID 2002/971 the Commissioner takes the view that the supply of accommodation to a non student in a university residential college for a period of less than 28 days is taxable as a supply of commercial residential premises.

Caravan parks and camping grounds – these are specifically provided for in the definition of commercial residential premises. The ATO has agreed that “home parks”, where relocatable homes are rented, fall within the definition of caravan park and are therefore also commercial residential premises.

Case Study

Tony operates a large caravan park located within the boundaries of a National Park. The caravan park contains a fully equipped medical centre and during peak times of the year a group of doctors take it in turns to stay at the residence behind the caravan park’s office block. Tony also leases this residence from the relevant government authority however it is physically separate from all the caravan park buildings and has a separate entrance. The doctors are provided with free accommodation in exchange for providing medical services each morning and being available for emergency incident response.

If the premises that are made available to the doctors are part of the caravan park then they are commercial residential premises and the supply of these premises would be a taxable supply.

However, in this case the accommodation was a completely separate house behind the caravan park so it is a supply of input taxed residential premises.

Note: The doctors will receive no input tax credits on the input taxed supply of the

residential premises however they have made a supply of locum services to Tony which, being a taxable supply, creates a GST liability. See GSTR 2001/6 for a discussion of the GST implications of non-monetary consideration.

WHAT IS THE GST TREATMENT OF LEASE INCENTIVES?

An inducement provided by a landlord or tenant so that the other party will agree to enter into a lease is commonly referred to as a ‘lease incentive’. A landlord may offer an inducement for a variety of reasons including recognition that the market requires that some inducement be offered to attract key tenants, maintaining the face rent for the property, and improving occupancy rates. A tenant also may provide an inducement because of a shortage of desirable premises, or as an inducement to obtain priority treatment.

The income tax status of lease incentives has been considered in *FCT v Cooling* (1990) 22 FCR 42. This judgment prompted the Commissioner to issue tax ruling IT 2631, which distinguishes lease incentives that are considered income from those that are not. Lease incentives come in a number of forms – reduced rent over the term of the lease, a rent-free period during the lease, free fit-out of the premises to the tenant’s specifications, an income guarantee or paying out the unexpired portion of an existing lease. The incentives may be given in the form of money or non-monetary consideration or both.

The GST treatment of these incentives will vary depending on whether or not they are given as consideration for the supply of an agreement to enter into a lease. If so, this supply is separate from the supply of the premises. The following features of a commercial arrangement indicate that the lease incentive will be a separate supply to the supply of the premises:

- separate consideration;



- separate undertakings;
- separate agreements;
- property or fixtures passing to an entity other than the entity making payment for the property;
- payments made prior to occupation of the premises.

In the context of GST law, whether an inducement is consideration for a separate supply has been considered in several overseas GST cases. For example, the decisions in the UK case of *Customs and Excise Commissioners v Mirror Group plc* and the New Zealand case *Wattie and Anor v Commissioner of Inland Revenue*. These cases support the view that a lease inducement may be consideration for a separate supply.

GSTR 2002/D7 considers the GST treatment of inducements to enter into a lease of commercial premises. Although the draft ruling was due to be finalised in May 2003, at the time of writing the ATO has yet to release the final ruling on this topic. Paragraphs 49 – 101 consider the GST outcome of various types of lease incentives. The following is a summary of the examples given in the draft ruling:

Fit out incentives

Where a tenant agrees to enter into a lease in consideration of a fit-out being completed by the landlord, and ownership of the fit-out passes on completion to the tenant, this will be separate consideration for the agreement to enter into the lease by the tenant.

In this situation the tenant is making a supply (by agreeing to enter into a lease) and will be liable for GST of one-eleventh of the GST inclusive market value of consideration for the supply. The market value of the fit-out is determined by the value of the fit-out at the time ownership of the fit-out passes. The landlord is also making a supply (providing the fit-out) for non-monetary consideration, that being the agreement to enter into the lease. However, if the lease rentals are struck at the current market value then the agreement to enter into the lease should not have any value.

Income guarantee

A landlord may agree to guarantee a tenant's income from the business operated from the premises if the tenant agrees to enter into a

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lease. The supply by the tenant is the entry into the agreement and the consideration is the GST inclusive value of the guarantee at the time of entry into the guarantee. In my view, this supply would be an input taxed financial supply. However, in paras 65 of GSTR 2002/D7 the Commissioner says that this is not a financial supply and would be taxable on the same basis as the previous example.

Plant

Paragraph 68 of GSTR 2002/D7 provides the following example:

Case study - inducement to enter into a lease

Liz, a landlord, provides computer equipment to Tom as an inducement for Tom to enter an agreement to lease premises. In turn, Tom makes a taxable supply by agreeing to enter into the lease, the consideration for which is the supply of the computer equipment.

Tom must pay GST on the GST inclusive market value of the computer equipment. However Liz makes two taxable supplies:

- the computer equipment, the consideration for which is Tom's agreement to enter into the lease; and
- the premises under the lease, the consideration for which is the rent.

Note: the supply of the computer is known as a “non-monetary” or “contra” supply. Further guidance on the GST implications of “contra” deals is provided in GSTR 2001/6.

Landlord paying out old lease

Where a new landlord agrees to pay the tenant's rental under an old lease the payments made to the old landlord are consideration for a taxable supply by the tenant (agreeing to enter into the new lease) and the tenant is liable for GST of one-eleventh of the amount paid by the new landlord to the tenant's previous landlord.

Landlord taking over old lease

Where a landlord accepts an assignment of a tenant's lease with another landlord, as an inducement for a tenant to agree to enter into a new lease, the landlord's acceptance of the obligations under the lease will be non-monetary consideration for the tenant agreeing to enter into the new lease. The tenant is liable for GST of one-eleventh of the value of the obligations accepted by the new landlord under the assignment of the old lease.

Rent free period

Where the lease incentive comprises a reduced rent there is no separate supply of anything. The only supply is the supply of the leased premises. The granting of the rent discount is not a supply or consideration for a supply. GST will be payable on the supply of the premises at the reduced rental offered by the Landlord. No GST is payable on the incentive. Following the end of the rent-free period, GST will be attributable in accordance with Div 156.

Rent-free period in exchange for services

Case study – rent-free period in exchange for services¹

Property Holdings Ltd approaches Wendy Travel Pty Ltd (Wendy) and offers it a five year lease of the premises in the shopping centre rent-free for the first 6 months on the condition that it provide free travel services to the value of \$20,000. Wendy agrees and enters into a five-year lease.

Property Holdings Ltd has made one supply being the supply of the leased premises. This supply is a taxable supply. However, during the “rent-free” period Wendy actually provides consideration being the GST inclusive market value of the travel services made by Wendy, therefore, Property Holdings must pay GST on the cash rentals and the value of the travel services.

Wendy has also made a supply, being the travel services. The consideration is the GST inclusive market value of the supply of the premises during the rent-free period. The Commissioner accepts that the GST inclusive value of the rent-free period would equal the GST inclusive value of the travel. However, it is important to note that Wendy might make her supply in a different tax period than the supply of premises by Property Holdings.

Case study – lease premium that is an inducement for a separate supply²

Noelene operates a beauty salon. She has been seeking high profile premises in a specific area to open a new shop. She finds premises being constructed by Property Developer Ltd that satisfies her particular requirements but knows that the premises will be in demand. Noelene approaches Property Developer Ltd offering it \$10,000 to ensure her tenancy in the new building.

The payment by Noelene is an inducement for the agreement to grant the lease. Property Developer Ltd is making a taxable supply separate from the supply of the premises and GST payable will be 1/11th of \$10,000.

GST Attribution

While lease rentals will be a periodic supply GSTR 2000/35 correctly provides that a lease premium is consideration for a single supply comprising the grant of the lease. Granting the lease is a separate supply from the actual supply of the premises under the lease and the grant is provided once only, even if the lease premium is payable by instalments. Therefore the basic attribution rules apply to the premium (not Div 156) meaning the GST must be paid, or input credits claimed, in the earlier of the tax periods in which any of the premium is received or provided, or an invoice is issued.

While not specifically stated in GSTR 2002/D7, the views expressed by the Commissioner in paras 87 – 105 are consistent with GSTR 2000/35.

WHAT IS A “REVIEW EVENT” IN THE CONTEXT OF A LEASE AGREEMENT THAT PREDATES THE GST REGIME?

Lease agreements entered into before 1/7/2000 which involve a supply made after that date (and therefore predate the GST regime) covered for by s 13 of the *A New Tax System (Goods and Services Tax Transition) Act 1999* (“GST Transition Act”). These supplies are considered in GSTR 2000/16 and if the tests in s. 13 of the GST Transition Act are met the supplies will be GST-free.

In order for a lease agreement to attract the protection of s 13, the agreement must:

- be a written agreement;
- specifically identify a supply;

“...an agreement which allows the parties to vary the terms of an agreement at any time will not give rise to a review event”

- identify the consideration in money, or a way of working out the consideration in money, for the supply; and
- be made before the relevant date.

The relevant date will be:

- 8 July 1999, if the recipient of the supply would be entitled to a full input tax credit for the supply; or
- 2 December 1998, if the recipient would not be entitled to a full input tax credit for the supply.

If these conditions are satisfied, the supply identified in the agreement is GST-free where it is made before the earlier of 1 July 2005, or a review event that arises on or after the relevant date.

A point that should be noted in passing (because it will rarely apply) is that a supply made on or after 1 July 2005 will also be GST-free if all the consideration was paid before 2 December 1998 and the supply was made before a review event that arises on or after the relevant date.

A review event is defined in s 13(5) as an opportunity under the arrangement:

- (a) for the supplier under the agreement to change the consideration directly or indirectly because of the imposition of the GST; or
- (b) for the supplier under the agreement to conduct, on or after 1 July 2000, a general review, renegotiation or alteration of the consideration; or
- (c) for the supplier under the agreement to conduct before 1 July 2000, a general review, renegotiation or alteration of the consideration that takes account of the imposition of the GST.

Where such an event arises, the supply will cease to be GST-free from the time the event arises. It does not matter whether the supplier takes advantage of the opportunity

or event. The review event arises when the change or review of the consideration may first take effect, and this is not necessarily the same time the review process takes place.

It is important to note that an agreement which allows the parties to vary the terms of an agreement at any time will not give rise to a review event. However, if the consideration is changed under such a clause, it will be a variation that will give rise to a review event.

DIVISION 81 AND THE RECOVERY OF OUTGOINGS

The supply of premises under a commercial property lease, together with the services required by the tenant to use the premises, is a single supply of real property³ (not separate supplies of premises and each of the services eg: water, power, cleaning etc). The fact that the contractual terms of the lease agreement provide that the price for which the lease is granted is made up of several elements does not make each element a separate supply. This issue becomes commercially significant where s 81-5(2) applies. This section of the GST Act has the effect of making certain payments of tax, fees, or charges, exempt from GST by deeming that the payment is not the provision of consideration. If a supply is not made for consideration, it cannot be a taxable supply.⁴

Case Study – recovering outgoings

Stuart leases an indoor sports complex in suburban Sydney to Vincent at a lease rental of \$8,000 per month plus a contractual right to recover the cost of outgoings such as water rates and water usage charges.

The local authority has not charged GST on the invoice they send Stuart, the owner, for water rates and charges.

In due course Stuart sends Vincent a tax invoice for recovery of the outgoings. Should Stuart charge GST on this invoice?

Section 81-5(2) refer to a written determination made by the Treasurer. The current determination is Treasurer’s Determination 2000 (No. 3)⁵. And, for example, Part 2 item 16.5 & 16.7 of the Determination provides that fees payable in respect to water rates, charges and levies by a Local Government Authority in NSW is not consideration. This is why Stuart has not been charged GST on his water rates. As the

supply of the sports complex, together with the services such as water, is a single supply of real property. Stuart is required to pay GST on the gross rental he receives from Vincent. This means that, subject to Stuart's contractual right to gross up invoices to cover GST, he should charge GST on the invoice that he issues to recover the water rates and usage charge.

WHAT ARE THE TAX INVOICE REQUIREMENTS FOR LEASED PREMISES?

Invoices

An invoice is a document that notifies an obligation to make a payment. For the purposes of the Act, a number of documents used in commercial practice may satisfy the requirements of the term "invoice". These may include delivery dockets or a monthly invoice issued for a running account. The essential requirement is that the document notifies of a presently existing obligation to make payment. Issuing a document that satisfies the GST definition of the term invoice will trigger a GST liability for non-cash taxpayers.

Tax Invoices

"Tax invoices" are a special class of invoice and must be distinguished from ordinary invoices because only tax invoices create a right to claim input tax credits.

GST regulation 29-70.01 specifies the information that must be contained within a tax invoice. The requirements of a tax invoice for supplies of less than \$1,000 are:

- "Tax invoice" stated prominently;
- the date of issue;
- name of the supplier;
- ABN of the supplier;
- a brief description of each thing supplied;
- GST-inclusive price of the taxable supply; and
- where the GST payable is 1/11th of the total price – a statement that "the total price includes GST", or a statement of the total amount of GST; or
- where the GST payable is less than 1/11th of the total price – both the amount payable and the total amount of GST.

Where supplies are of more than \$1,000, there are the additional requirements of:

- the name of the recipient;
- address or ABN of the recipient; and
- for each description, the quantity of the goods or the extent of the services supplied.

This means that a taxpayer who is unable to obtain a tax invoice from a supplier can make a submission to the Commissioner requesting that a document other than a tax invoice be accepted as evidence that input tax credits can be claimed. I am aware that the Commissioner has exercised his discretion in favour of a recipient of a taxable supply on several occasions.

Section 156-22 specifically provides that a supply by way of lease, hire or licence is subject to the progressive or periodic payment provisions found in Div 156. Each periodic or progressive payment is treated as a separate supply and is taxable accordingly.

Despite being separate supplies in GSTR 2000/17⁶, the Commissioner has accepted that despite the usual tax invoice rules it is not necessary to provide a separate tax invoice for each month's rent. A single tax invoice can be used if it complies with the usual requirements for tax invoices and shows the price of each component of the supply. As there is no particular form that a tax invoice must take, the lease agreement itself can constitute the tax invoice if the agreement contains all the information required to satisfy the tax invoice rules.

Where the price is not the same for every component of the lease, the landlord can meet the tax invoice requirements by providing:

- a schedule attached to the lease setting out the price for each part of the supply (for example, a schedule setting out the rent review mechanism where the review is a fixed percentage increase each year); or
- another document can be provided to the recipient once the different components are known (for example, once the cost of the outgoings are determined). It is important to note that this separate document must also comply with all the tax invoices requirements.

While lease rentals will be a periodic supply as previously discussed in this paper, GSTR 2000/35⁷ provides that a lease premium is consideration for a single supply comprising the grant of the lease. This is a separate supply from the actual supply of the premises under the lease and is not a periodic supply even if the premium is payable by instalments. This means that only one tax invoice is required for a lease premium, even when the premium is paid in instalments.

Practice note

Notwithstanding the technical tax invoice rules, the Commissioner has discretion under s 29-70 to recognise any document as a tax invoice (see GSTR 2000/34 para 58). ♦

Keith Harvey
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Reference Notes

- 1 Extracted from paras 84 – 86 of GSTR 2002/D7.
- 2 Extracted from paras 98 – 99 of GSTR 2002/D7.
- 3 Paragraph 1 of GSTD 2000/10.
- 4 As the definition of taxable supply requires the provision of consideration.
- 5 The full citation is *A New Tax System (Goods and Services Tax) (Exempt Taxes, Fees and Charges) Determination 2000 (No. 3)*. The Assistant Treasurer issued a supplementary determination on 28 June 2002. The full citation is: *New Tax System (Goods and Services Tax) (Exempt Taxes, Fees and Charges) Determination 2002*. A copy of both determinations can be accessed via: <http://www.treasury.gov.au>
- 6 paragraphs 68 - 70
- 7 paragraphs 68 - 76