



**EXPOSURE DRAFT - FOR COMMENT AND DISCUSSION ONLY | HUKIHUKI HURANGA
- MŌ TE TĀKUPU ME TE MATAPAKI ANAKE**

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Send feedback to | Tukuna mai ngā whakahokinga kōrero ki
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Notes | Pitopito kōrero: The issues raised and submissions made on the Officials' Issues Paper – Current GST issues (22 May 2026) regarding the definition of “dwelling” and “commercial dwelling” are still being considered. They may impact on this guidance. This interpretation statement will factor in any further developments as far as practicable.

INTERPRETATION STATEMENT | PUTANGA WHAKAMĀORI

GST – Supplies of residences and other real property

Issued | Tukuna: Issue date

IS XX/XX

This interpretation statement considers how sections 5(15) – (16C) of the Goods and Services Tax Act 1985 (**Act**) apply where a private residence is included as part of a wider supply of land. Section 5(15) deems the residence to be a separate supply from the rest of the land, which must be considered separately for GST purposes.

All legislative references are to the Act unless otherwise stated.

REPLACES | WHAKAKAPIA

- **IS 20/05:** Goods and Services Tax – Supplies of residences and other real property



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Key terms used in this statement

1. Table | Tūtohi 1 explains some of the key terms used in this interpretation statement.

Table | Tūtohi 1 – Key terms

Term	Definition
Apportionment	The process of allocating consideration between separate supplies on a fair and reasonable basis reflecting relative market values.
Appurtenances / curtilage	Land and structures belonging to and used with a residence, forming part of the principal place of residence.
Exempt supply	A supply that is not subject to GST output tax and does not give rise to input tax deductions.
GST benefit	A prior advantage obtained through input tax deductions or zero-rating that may be clawed back on exit from the GST base.
Input tax	The GST paid on goods or services acquired to make taxable supplies.
Nominal GST component	The GST amount that would have been payable if a zero-rated supply were standard-rated.
Non-integral deductions	Input tax deductions for goods or services that do not substantially improve the main goods and do not become integral to them.
Non-taxable supply	A supply that is outside the GST base because it is not made in the course or furtherance of a taxable activity.
Output tax	The GST output tax charged on supplies made.

Principal place of residence	Premises occupied as a person's main residence. It may be occupied by someone other than the owner; the current use is determinative.
Principal purpose test	A test applied to both acquisition and use to determine whether goods were for the principal purpose of making taxable supplies.
Dwelling used as residential rental accommodation	A dwelling used exclusively to make exempt supplies of residential rental accommodation for the preceding 5 year period before sale or disposal. (Residential Tenancies Act 1986).
Separate supply	A supply that is treated as distinct from other land supplied in the same transaction under s 5(15) because part of the land falls inside and part outside the GST base.
Supply of land	Includes an actual disposal (sale) of land or a deemed supply when GST registration ceases.
Taxable activity	Means an activity carried on continuously or regularly that involves supplying goods or services for consideration.
Wash-up adjustment	An adjustment under which GST previously claimed is recalculated when intended taxable use permanently changes under s 21FB.

Summary | Whakarāpopoto

- This interpretation statement applies where residences or other types of real property are included as part of a wider supply of land. In these situations, s 5(15) deems the residence or other real property to be a separate supply from the rest of the land. The separate supplies need to be considered independently for GST purposes.
- The separate supply rule in s 5(15) ensures that a residence or other real property is not treated as a part of a broader supply of taxable land solely because it is located on the same title. Instead, the residence or other real property is treated as a separate supply so that its GST treatment can be determined according to its actual use rather than that of the surrounding land. This ensures that a property that is private or exempt in nature is excluded from the tax base when appropriate and that GST benefits previously received are clawed back when required.

4. Section 5(15) historically applied only to residences and other exempt property such as residential rental properties. It has now been expanded to include properties that the taxpayer has elected out of the taxable activity.
5. Section 5(15) applies when a supply includes:
 - a principal place of residence;
 - an exempt supply referred to in s 14(1)(d);
 - a supply that a person elects to apply s 6(3)(e) removing it from the tax base; or
 - a supply described in s 91(4).
6. "Principal place of residence" means premises occupied as the person's main residence. However, it does not have to be the supplier's own residence. It is the supplier's use of the property that is determinative, not the recipient's intended use.
7. Section 14(1)(d) treats the sale of certain dwellings as an exempt supply, where the dwelling has been used exclusively for residential rental purposes for the previous 5 years. Because in most instances where a property has been used for residential rental purposes for 5 years or more the supplies will not be in the course or furtherance of a taxable activity, s 14(1)(d) will seldom apply.
8. Section 6(3)(e) allows a person to elect to treat a supply of property as not being part of a taxable activity if they have not previously claimed input tax deductions on its capital value and did not acquire, or use, the property for the principal purpose of making taxable supplies.
9. Section 91(4) is a historical provision that allowed a person who has previously claimed input tax deductions in respect of goods they did not acquire or use for the principal purpose of making taxable supplies, to return the input tax previously claimed before 1 April 2025, and treat any future disposal of the goods as not being a taxable supply.
10. If a property such as a residence is included in a supply that includes other real property, s 5(15) deems there to be two (or more, if more than one residence is being supplied) separate supplies. A common example would be farm sales, where s 5(15) treats the farmhouse (provided it meets the definition of residence) and the rest of the farm as two separate supplies for GST purposes.
11. The separate supplies are treated individually for GST purposes. It is often assumed that the supply of the residence is exempt or non-taxable and the supply of the other real property is taxable and subject to GST. However, the GST treatment depends on the facts:
 - A supply of a principal place of residence where the residence is used by the supplier in a taxable activity will be a taxable supply made in the course or furtherance of the taxable activity and subject to GST under s 8(1). The supply

will be taxable at the standard rate or **may** be zero-rated if the compulsory zero-rating rules apply.

- A supply of a principal place of residence where the residence is exclusively private in nature and is not used by the supplier in a taxable activity is not a taxable supply.
- A supply of a principal place of residence which has been used solely by the supplier for making exempt supplies of residential rental accommodation is an exempt supply.
- A supply referred to in s 14(1)(d) is an exempt supply.
- A supply that has been removed from the tax base by electing to apply s 6(3)(e) or s 91(4) is not a taxable supply.
- A supply of the other real property used by the supplier in a taxable activity **may** be a zero-rated supply under the compulsory zero-rating rules or as a supply of a going concern.

12. Where s 5(15) applies so the supplies are considered individually for GST purposes, the consideration must be apportioned between the supplies. This enables the parties to identify the correct amount of GST payable on the transaction and to calculate any adjustments under ss 21 to 21H. The residence must be properly identified to be valued. For farmhouses, it may not be clear where the boundary of the farmhouse ends and where the farmland begins. When apportioning consideration between the two supplies, a farmhouse includes appurtenances (ie, things belonging to and used with the residence and included within its curtilage).
13. Any apportionment must reflect the respective values of the residence and the surrounding land. The onus of proof that an apportionment is fair and reasonable is on the person seeking to rely on the apportionment, whether that is the supplier or recipient. A valuation may be needed.
14. When the supplier and recipient are GST registered, the same apportionment as set out in the tax invoice for any taxable supplies will apply to both parties. Ideally, this should be negotiated between the parties and agreed at the time of supply.
15. Deeming rules in ss 5(16), (16B) and (16C) clarify when a disposal of goods or services, particularly land and dwellings, must be treated as a taxable supply even when the goods are not being used in a taxable activity at the time of disposal. These provisions also address situations where a pre-disposal wash-up calculation under s 21FB has been applied.

16. This statement updates and replaces **IS 20/05: GST – Supplies of residences and other real property**,¹ which dealt with the apportionment between, and the valuation of, supplies of dwellings and other real property for GST purposes. The principles applying to valuations in IS 20/05 remain largely unchanged.

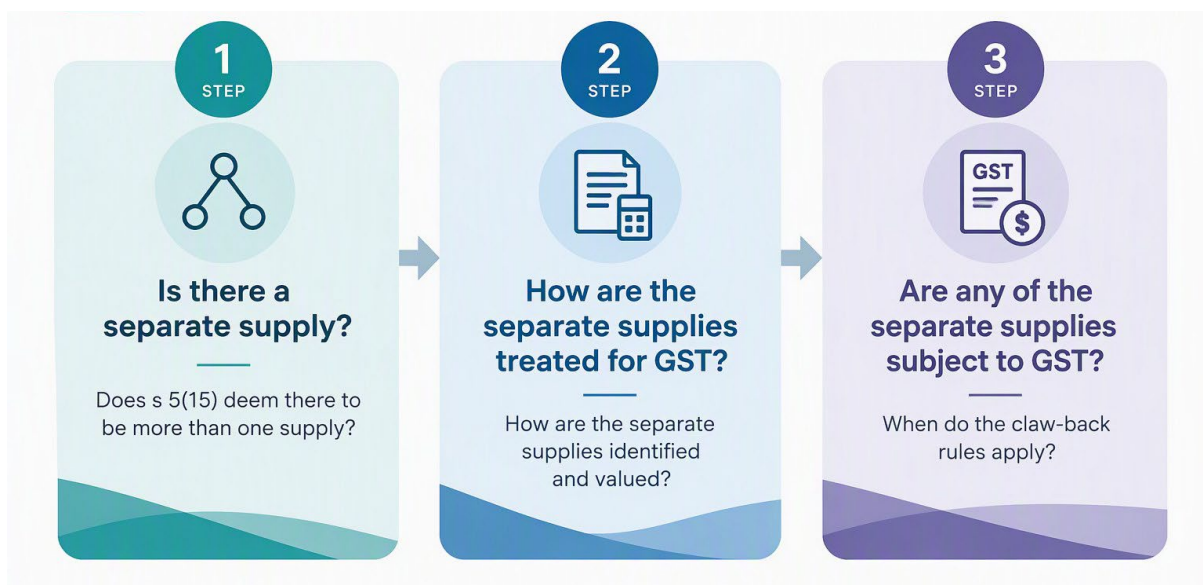
Introduction | Whakataki

17. IS 20/05 was published in August 2020. Since IS 20/05 was published there have been numerous changes to the Act, including amendments to s 5(15), the repeal of ss 5(17), (18) and (19), and the enactment of new ss 6(3)(e), 5(16), 5(16B), 5(16C) and 91(4) that impact the supply of residences and other real property. This statement discusses how the current s 5(15) and related provisions apply.
18. Section 5(15) applies where a supply of land includes a residential or other excluded component together with land used in a taxable activity. Typical situations include the sale of:
- a farmhouse with surrounding farming land
 - a private home used partly as a home office
 - a holiday home held with other taxable land or assets.
19. In these cases, different parts of the land may fall inside and outside the GST base.
20. Where s 5(15) applies, the residence-related or excluded component is deemed to be supplied separately from the supply of any other real property included in the transaction. This deeming rule ensures the residential component is treated correctly for GST purposes on disposal or deregistration (likely not subject to GST), while the balance of the land is considered under the usual GST rules.
21. Sections 5(16), (16B), and (16C) support s 5(15) by ensuring that land and buildings that have benefited from prior input tax deductions or zero-rating but are not being used in a taxable activity are subject to GST on disposal or deregistration. These provisions may be relevant where use has changed over time, including for farmhouses, private homes, holiday homes, or dwellings with mixed use.
22. Where they apply, these sections deem the disposal to be made in the course or furtherance of a taxable activity, including where GST registration ceases. Together, ss 5(15) to (16C) operate to identify the correct GST treatment of land disposals that include residential or non-taxable components.

¹ IS 20/05: GST – Supplies of residences and other real property *Tax Information Bulletin* Vol 32, No 7 (August 2020): 85.

23. This statement explains the three stages relevant to finding separate supplies involving residential or otherwise excluded property included in a larger supply of land. First, it explains when s 5(15) applies, identifying the four circumstances where residential or excluded property is deemed to be a separate supply. Secondly, it addresses how these separate supplies are apportioned and valued. Finally, the statement explains how ss 5(16) to (16C) can be triggered to make GST output tax payable on the separate supply when disposal or deregistration occurs if certain criteria are met. Figure | Hoahoa 1 illustrates the three stages considered in this Interpretation Statement.

Figure | Hoahoa 1 – Stages involved in the consideration of the GST treatment of supplies of residences and other land



Is there a separate supply?

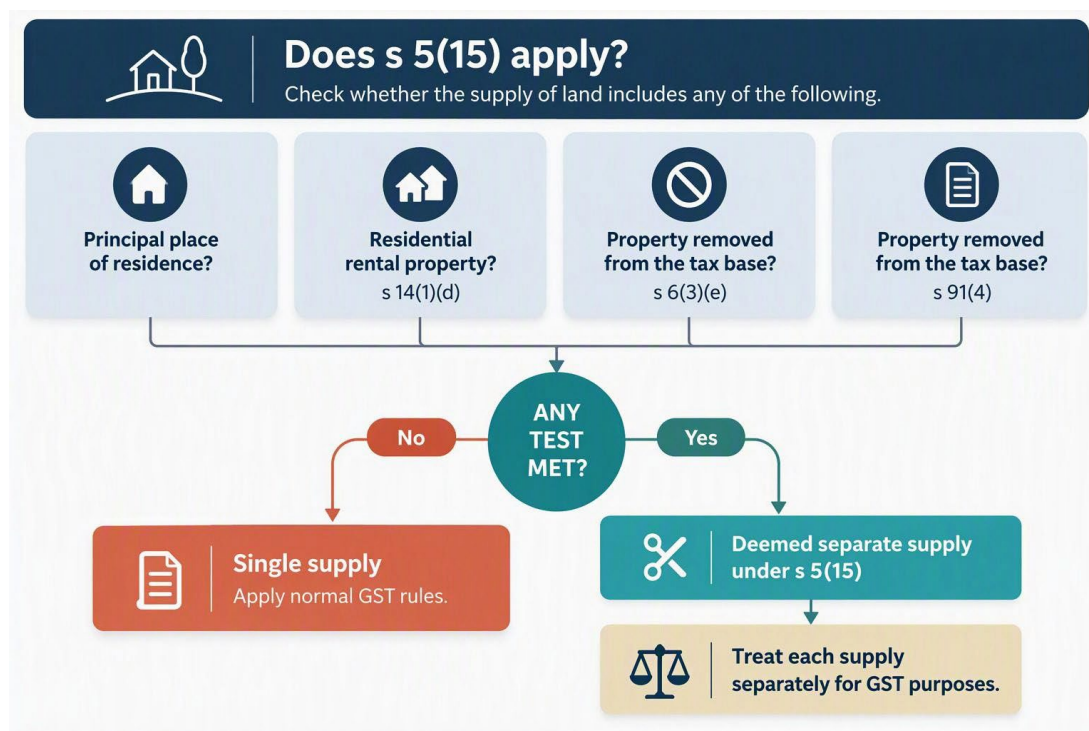
24. Section 5(15) deems there to be separate supplies where a supply of land includes both residential or other excluded property and land used in a taxable activity. This section recognises that a single legal supply of land may comprise components that fall partly inside and partly outside the GST base. Where it applies, s 5(15) deems the relevant residential or excluded component to be a separate supply from the balance of the land, allowing each component to be tested independently against the GST charging, zero-rating, and adjustment provisions. The section is typically relevant to disposals involving farmhouses, private homes with mixed use (such as home offices), and holiday homes held with other taxable land.
25. Section 5(15) states:

5 Meaning of the term supply

- (15) When any of the following supplies are included in a supply, they are deemed to be a separate supply from the supply of any other real property that is included in the supply:
- (a) a supply of a principal place of residence;
 - (b) a supply referred to in section 14(1)(d);
 - (c) a supply that a person elects to apply section 6(3)(e);
 - (d) the supply described in section 91(4).

26. A separate supply can arise under s 5(15) if the supply includes:
- a principal place of residence;
 - an exempt supply referred to in s 14(1)(d);
 - a supply that a person elects to apply s 6(3)(e) to remove it from the tax base; or
 - a supply described in s 91(4).
27. If s 5(15) deems there to be two or more separate supplies, then each supply is considered individually. The supply of property meeting any of the criteria set out above is most likely an exempt or non-taxable supply and the supply of the other real property is likely a taxable supply. However, this is not always the case. For example, the supply of the residence may be subject to GST under s 8(1) because it is a supply in the course or furtherance of a taxable activity, and the supply of the other real property may be zero-rated. In some cases, the separate supplies may be subject to the same GST treatment (eg, both supplies are taxable under s 8(1)).
28. Figure | Hoahoa 2 sets out when s 5(15) can apply to deem a separate supply.

Figure | Hoahoa 2 – Separate supplies of land



29. Farm sales are a common example of s 5(15) applying where the farmhouse (provided it is a residence) is treated as a separate supply from the rest of the farm. It will also apply in other situations, such as where there are residential flats above a commercial property or where a farm storage building is used for private purposes. Section 5(15) can also apply where there are two houses on a single property, and one house is used as a principal place of residence and one is not. For example, a registered person lives in the main house but has a separate cottage on their property that they use solely for their taxable activity of making taxable supplies of short-stay accommodation via a peer-to-peer website. Where s 5(15) applies, the supplier needs to treat the two supplies as separate.
30. We consider each type of supply that can be deemed a separate supply under s 5(15) in the following sections.

Principal place of residence – s 5(15)(a)

31. “Principal place of residence” is a term that can have different meanings depending on the context. In the definition of “dwelling” the phrase “principal place of residence” is intended to mean premises supplied as accommodation to a person who occupies them as their main residence for the duration of an agreement. In the context of the zero-rating provisions, the “principal place of residence” is intended to indicate land used by its owner or their relatives as their main place of residence.

32. The term “principal place of residence” is defined only for the purposes of “dwelling” as follows:²

principal place of residence, in the definition of **dwelling** means a place that a person occupies as their main residence for the period to which the agreement for the supply of accommodation relates

33. The phrase “principal place of residence” in s 5(15)(a) refers to a place occupied as a person’s main residence. The plain meaning of the phrase indicates a person may have more than one residence, but at any point in time they can have only one main residence.
34. Because the provision refers to a person’s main residence, s 5(15)(a) is not restricted to a place occupied as the person’s own main residence. It is possible for a person to supply a principal place of residence that is not their own residence (eg, a house that was lived in by a farm manager).
35. Section 5(15)(a) is concerned with the supply of a principal place of residence. Therefore, for the purposes of s 5(15), the current use of the property is determinative rather than the person’s intended use of the property. The inquiry in s 5(15)(a) is objective, based on the available information.
36. The supply of a principal place of residence is discussed in [IS 17/08: GST – Compulsory zero-rating of land rules \(general application\)](#).³
37. Where a person occupies a residential property as their home it will usually be both a “dwelling” and a “principal place of residence”. There are some differences in the definitions; notably a “dwelling” will usually require “quiet enjoyment”,⁴ and does not include a property that is a “commercial dwelling”⁵.
38. These differences mean there will be some exceptions where a property is a principal place of residence but not a dwelling. However, the phrase “principal place of residence” in s 5(15)(a) applies to these properties including properties such as homestays⁶ provided the property is a person’s principal place of residence. This means that there is no requirement for the property to be a dwelling or to have quiet enjoyment for s 5(15)(a) to apply. It is sufficient that it is the person’s principal place of residence.

² Goods and Services Tax Act 1985 s 2.

³ IS 17/08: GST – Compulsory zero-rating of land rules (general application) (*Tax Information Bulletin*, Vol 29, No 10, (November 2017: 17)). IS 17/08 is being updated by PUB00529: GST – Compulsory zero-rating of land rules currently out for public consultation.

⁴ Definition of “quiet enjoyment” in s 38 Residential Tenancies Act 1986.

⁵ Definition of “commercial dwelling” in s 2 Goods and Services Tax Act 1986.

⁶ Above n 5.

39. Whether a property is a “principal place of residence” will be a matter of fact. For example, a farmhouse supplied to sharemilkers will likely be a principal place of residence (and it could also be a supply of a dwelling under s 14(1)(d)). Conversely, where farm lodgings are supplied to fencing contractors for the duration of their job, this is not the supply of a principal place of residence. The contractors only stay in the property for a relatively short period because it is not convenient to travel back to their homes in town. Similarly, a property exclusively rented out as farm-stay accommodation on a peer-to-peer website will be used as short-stay holiday accommodation and guests will not use the property as their principal place of residence.
40. Consequently, s 5(15)(a) will not apply to deem a separate supply of such a property. Whether a property is a principal place of residence is determined objectively having regard to the nature of the occupancy arrangement and the information reasonably available to the supplier.
41. The supply of a principal place of residence will usually be a non-taxable supply and not subject to GST because it is a supply of a private home. It will not generally form part of a registered person’s taxable activity. However, where a principal place of residence is used in a registered person’s taxable activity, then the supply is chargeable with GST under s 8(1), at either the standard rate or zero rate.
42. Section 8(1) imposes GST output tax when the supply is in the course or furtherance of a taxable activity. As noted, a residence is usually used as a private home and so any separate supply of that residence will not usually be in the course or furtherance of a taxable activity. However, s 8 may apply where the residence being supplied is used as part of a taxable activity. Accordingly, it is necessary to consider whether a supply of a residence in such circumstances will be in the course or furtherance of a taxable activity.
43. Case law supports the view that “in the course or furtherance of a taxable activity” can include the one-off sale of capital items that a registered person uses in their taxable activity.⁷ Further, the property supplied does not need to be the “usual” good supplied by the taxpayer for it to come within the scope of the taxpayer’s taxable activity.⁸ Whether property comes within the scope of a taxable activity is a matter of fact and will depend on the “use” or “involvement” of the property in the taxable activity and there being a “discernible nexus” between the activity and the supply.⁹

⁷ *Case K55* (1988) 10 NZTC 453, *Hibell v CIR* (1991) 13 NZTC 8,195 (HC) and *CIR v Dormer* (1997) 18 NZTC 13,446 (HC).

⁸ *Case K55*, *Case N43* (1991) 13 NZTC 3,361 and *Case V16* (2002) 20 NZTC 10,182.

⁹ Above n 8.

44. **IS 25/21 GST – Taxable activity**¹⁰ provides comprehensive guidance on the elements of a taxable activity including when a disposal will be “in the course or furtherance” of a taxable activity, including whether there is a nexus between the taxable activity and the property in question.
45. **IS 20/04 – GST treatment of short-stay accommodation** discusses whether a disposal will be “in the course or furtherance” of a person’s taxable activity of supplying short-stay accommodation.¹¹
46. A supply of a residence can be made in the course or furtherance of a taxable activity even though it is a one-off sale and not the usual type of good supplied by the person if there is a sufficient nexus with a taxable activity. If a property is used to make taxable supplies, the subsequent disposal of the property will be in the course or furtherance of the taxable activity and subject to GST output tax under s 8(1) (and potentially subject to an adjustment under s 21F if there has been both taxable and non-taxable use). A residence may be a capital asset for income tax purposes, but that does not, of itself, determine whether its disposal is made in the course or furtherance of a taxable activity for GST purposes.
47. Whether a supply is within the scope of s 8(1) will ultimately be a question of fact based on the use of the residence. For example, if a farmhouse is not used in a taxable activity, s 8(1) will not apply.
48. For income tax purposes, farmers are allowed to deduct farmhouse expenses that are business related but not those incurred for private purposes.¹² IS 17/02 notes that for larger farms, where the value of the farmhouse is 20% or less than the total value of the farm, a deduction of 20% of the expenses incurred relating to the farmhouse can be claimed for income tax (except interest and rates where 100% can be claimed and telephone line rental where 50% can be claimed). For smaller farms, where the value of the farmhouse is 20% or more than the total value of the farm, income tax deductions are allowed to the extent of the actual business use with rates and insurance being apportioned on a reasonable basis.
49. If a GST-registered farmer is claiming income tax deductions for farmhouse expenses, there is an expectation that a portion of the property is being used in the taxable activity. Consequently, any sale of the farmhouse would be a supply in the course or furtherance of the taxable activity and subject to GST under s 8(1) (with an adjustment available under s 21F).

¹⁰ IS 25/21: GST – Taxable activity (*Tax Information Bulletin* Vol 37, No 10, (November 2025): 10).

¹¹ IS 20/04: Goods and services tax: GST treatment of short-stay accommodation (*Tax Information Bulletin*, Vol 29, No 10, (July 2020): 69).

¹² See IS 17/02: “Income tax – deductibility of certain expenses attributable to a farm dwelling” (*Tax information Bulletin* Vol 29, No 4 (May 2017): 82).

Example | Tauira 1 – Principal place of residence

Riverbend Farms Ltd is GST-registered and carries on a dairy farming taxable activity in the Waikato region. The farm includes a farmhouse located on the farming land. The farmhouse is occupied by Melissa (who is the sole shareholder and director of Riverbend Farms Ltd and is the farm manager), and her family as their main residence. Riverbend Farms Ltd claims income tax deductions and GST input tax deductions for 20% of the farmhouse expenditure on the basis that the farmhouse is used to that extent in the business / taxable activity.

If Riverbend Farms Ltd sells the farm, including the farmhouse, to another GST-registered farmer, the farmhouse will be treated as a separate supply under s 5(15)(a) as a principal place of residence. Because the farmhouse has been partly used in the taxable activity, the separate supply would be taxable at the standard rate under s 8(1), with an adjustment potentially required under s 21F.

Residential rental accommodation – s 5(15)(b)

50. The second category under s 5(15) is a supply referred to in s 14(1)(d). Section 14(1)(d) concerns exempt supplies of residential rental accommodation. This provision treats the sale of a dwelling that has been **used exclusively** for making exempt supplies of residential rental accommodation for the preceding 5 years, as an exempt supply. The dwelling can have been supplied as residential rental accommodation by way of hire, a service occupancy agreement or a licence to occupy. However, it still must be a supply of a “dwelling”, which means, amongst other things, it must be a person’s “principal place of residence”.¹³
51. Section 14(1)(d):¹⁴
- applies where the property is used for residential purposes and for no other purpose for the required period;
 - can apply even if the property is vacant for periods during the preceding 5 years (eg, while attempts are made to find a tenant); and
 - only applies where the supplier uses the property for residential purposes for 5 years. It does not apply where different owners have rented the property out over a 5-year period.

¹³ As defined in s 2.

¹⁴ IS 07/01: GST treatment of sale of long-term residential rental properties (*Tax information Bulletin* Vol 19, No 5 (June 2007): 16).

52. This means that it is not common for s 14(1)(d) to apply. Section 6(3)(d) excludes any activity that involves making exempt supplies from the definition of taxable activity. Therefore, if a farm included a stand-alone property used solely for residential rental, this would be excluded from the scope of any farming taxable activity. So, usually, the disposal of such a property would not be in the course or furtherance of a taxable activity (as required by s 14(1)(d)).

Example | Tauria 2 – Residential rental accommodation

Continuing from Example | Tauria 1, Riverbend Farms Ltd has a block of four units on the property.

For more than 5 years, the units have been rented under residential tenancy agreements to people who have no connection with the farming business. The tenants use the units as their principal places of residence.

The rental of the units is not undertaken as part of the farming activity. Under s 6(3)(d), the activity of making these exempt supplies of residential rental accommodation is excluded from Riverbend Farms Ltd's taxable activity.

Riverbend Farms Ltd sells the farm including the units to a purchaser under a single agreement.

The sale of the units is not made in the course or furtherance of Riverbend Farms Ltd's farming taxable activity because the residential rental activity has been excluded from the taxable activity under s 6(3)(d). Accordingly, the sale of the units is not subject to GST.

Election to remove from tax base – ss 5(15)(c) and 6(3)(e)

53. A separate supply can arise under s 5(15)(c) where a registered person has elected to treat the supply of certain goods as a non-taxable supply because the goods were not acquired for the principal purpose of making taxable supplies.¹⁵ These types of supply can be removed from the tax base by applying s 6(3)(e).
54. If the person does not have a taxable activity and is not GST-registered, there is no need to make this election. However, they can make an election if they are GST-registered, whether that is for the taxable activity of farming or for another taxable activity. For example, a GST-registered plumber who also owns a farm in their own name where the level of farming activity means it is also a taxable activity may elect to remove the farmhouse from the taxable activity.

¹⁵ Section 6(3)(e).

55. Section 6(3)(e) states:

6 Meaning of term taxable activity

(3) Notwithstanding anything in subsections (1) and (2), for the purposes of this Act the term **taxable activity** shall not include, in relation to any person,—

...

(e) an activity involving the supply of goods, including a deemed supply under section 5(3), that a registered person has elected is not a taxable activity, provided—

- (i) the person has not previously claimed a deduction under section 20(3) for the goods before the goods are sold, excluding non-integral deductions; and
- (ii) the goods were not acquired for the principal purpose of making taxable supplies; and
- (iii) the goods were not used for the principal purpose of making taxable supplies; and
- (iv) the goods were not acquired as zero-rated supplies under s11(1)(m), (mb), (mc), or (md), unless the person has chosen to return the nominal GST component as output tax under section 20(3J)(a)(iv)

56. Section 6(3)(e) applies to taxable supplies made on or after 1 April 2011. The person makes an election by treating the sale of the property as not being part of the taxable activity in their GST return. To make an election there are four limbs to be met. The person must **not** have:

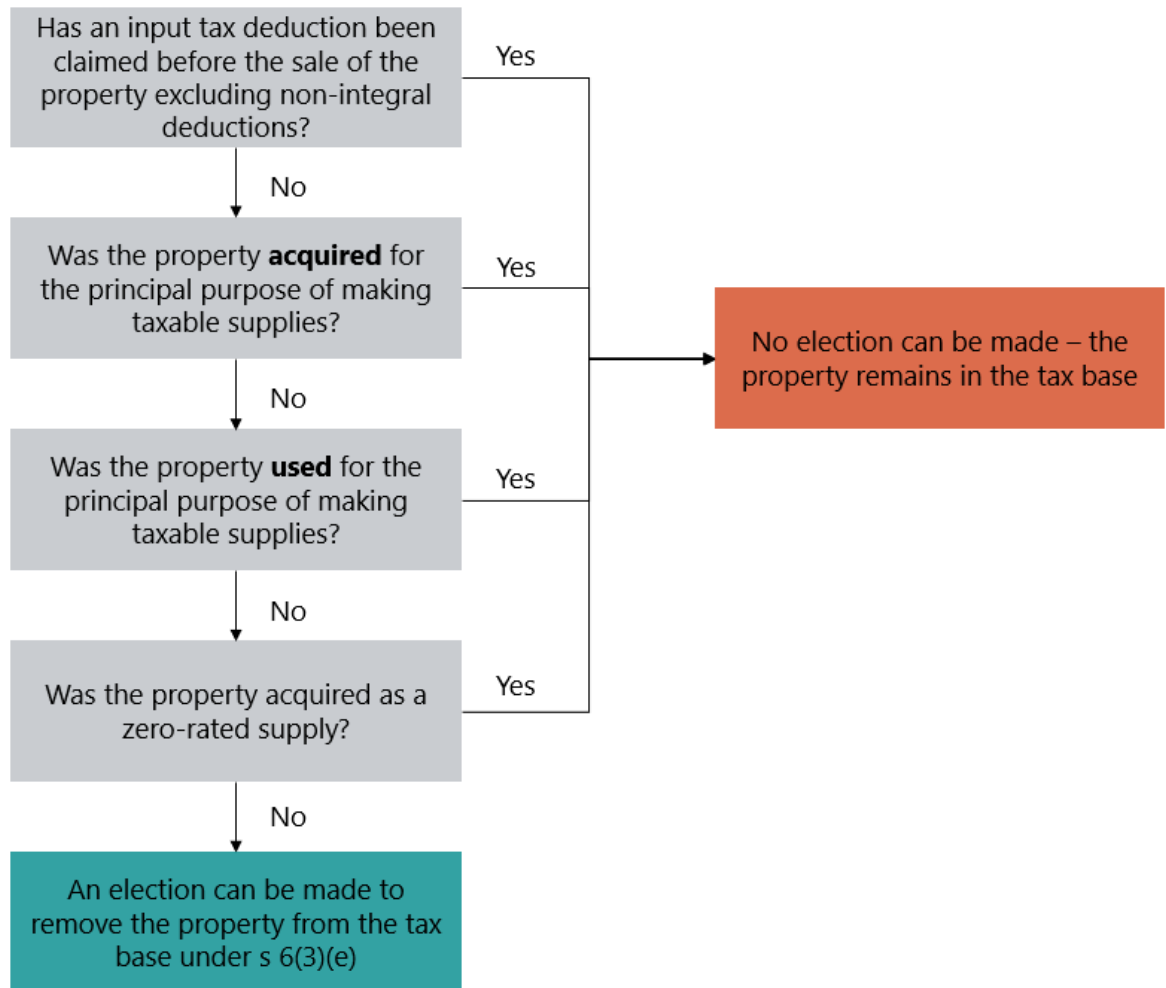
- previously claimed an input tax deduction before the sale of the property, excluding non-integral deductions;¹⁶
- acquired the property for the principal purpose of making taxable supplies;
- used the property for the principal purpose of making taxable supplies; and
- acquired the property as a zero-rated supply (unless the person made an output tax adjustment for the GST component).¹⁷

57. Figure | Hoahoa 3 sets out the four limbs applicable to making an election to remove a supply from the tax base by making an election under s 6(3)(e).

¹⁶ Under s 20(3).

¹⁷ See ss 11(1)(m) and (mb) and 20(3J)(a)(iv).

Figure | Hoahoa 3 – Can an election be made under s 6(3)(e)?



58. Each of the four limbs of s 6(3)(e) are considered in turn below.

No prior input tax deductions claimed

59. The first requirement under s 6(3)(e)(i) is that the person must not have claimed input tax deductions for the property otherwise the sale will usually be a taxable supply. This includes claiming input tax:

- on acquisition;¹⁸
- as a result of applying the adjustment rules;¹⁹ or
- for other improvements made to the goods being sold.²⁰

¹⁸ Under ss 20(3)(a) or (b).

¹⁹ Under ss 20(3)(e), 21 and 21A).

²⁰ Under s 20(3).

60. It should be clear whether the taxpayer claimed input tax when they acquired the goods. In the context of a farm purchase, the original purchase agreement should show whether GST was charged and whether the farmhouse and any other dwellings were separated out. Equally, it should be clear to the taxpayer whether they have made any GST adjustments under ss 21 and 21A.
61. Another essential question to consider is whether any input tax has been claimed on improvements to the property. The improvements may be renovations to a dwelling such as an extension or a bathroom renovation. Despite the requirement that input tax cannot have been claimed on substantial improvements, there is an exception for “non-integral deductions”. That concept is discussed in the next section.

Non-integral deductions

62. The rule under the first limb of the test in s 6(3)(e) is that no input tax can previously have been claimed excludes any input tax claimed on non-integral deductions.²¹ “Non-integral deductions” are defined in s 2 as follows:

2 Interpretation

non-integral deductions means, for goods (the **main goods**), deductions for other goods and services that—

- (a) did not make a substantial improvement to the main goods; and
- (b) did not become an integral part of the main goods without which the main goods would be incomplete or unable to function

63. In summary non-integral deductions are deductions for goods or services that:²²
- did not make a substantial improvement to the main goods; **and**
 - did not become an integral part of the main goods, those being goods or services without which the main goods would be incomplete or unable to function.
64. This exception for non-integral deductions allows some GST input tax deductions to have been claimed on the property. This can include GST input tax deductions claimed on revenue expenses like rates and insurance. Importantly, it cannot include GST input tax deductions claimed on goods and services that made a substantial improvement to the property and became an integral part of the property.

²¹ Section 6(3)(e)(i).

²² Definition “non-integral deductions” s 2.

65. From the wording used in the definition and the commentary at the time the legislation was introduced²³, it seems clear that Parliament intended to import the capital / revenue distinction for income tax purposes to the extent it relates to repairs and maintenance into GST law. This means that in addition to GST input tax deductions claimed on revenue expenses, GST input tax deductions can be claimed on repairs and maintenance and not jeopardise a s 6(3)(e) election. Therefore, provided that GST input tax deductions have not been claimed on “capital” matters, an election under s 6(3)(e) may be available.
66. Guidance is available in [IS 26/01 Income tax – Deductibility of repairs and maintenance expenditure – general principles](#). That interpretation statement sets out how to identify the relevant asset (which can be translated to the main goods in a GST context) and, the nature and extent of the work done. It also provides the general principles for distinguishing between revenue and capital expenditure. Those income tax principles can be applied to determine what the main goods are and whether any input tax deductions claimed are integral or non-integral.
67. The guidance in IS 26/01 on “identifying the relevant asset” can be used to determine the “main goods” in a GST context. The factors to consider can be as follows:
- Factors that might suggest the item under consideration is the “main goods” are where the item:
 - is physically distinct from a wider asset of which the item might be a part;
 - is functionally complete (to some degree); or
 - varies the function of another item.
 - Factors that might suggest the item under consideration is not the “main goods” is where the item:
 - has a physical connection with other items;
 - is part of an integrated system; or
 - is a necessary part to complete something else.

²³ On the enactment of s 6(3)(e), commentary in New legislation: Taxation (Annual Rates for 2022–23, Platform Economy, and Remedial Matters) Act 2023 (*Tax Information Bulletin* Vol 35, No 6 (July 2023): 3) provided guidance directing the reader to income tax concepts in IS 10/01: Residential rental properties – Depreciation of items of depreciable property (*Tax Information Bulletin* Vol 22, No 4 (May 2010): 16). We note IS 12/03: Income tax – Deductibility of repairs and maintenance expenditure – general principles (*Tax Information Bulletin* Vol 24, No 7 (August 2012): 68) has been replaced by IS 26/01: Income tax – Deductibility of repairs and maintenance expenditure – general principles (*Tax Information Bulletin* Vol 8, No 3 (April 2026): 20).

68. Identifying the main goods will be a question of fact, degree and impression. In the context of residences like farmhouses or farm workers cottages, this enquiry should be relatively straightforward.
69. Once the main goods are identified, income tax principles then turn to the nature and extent of the work done. That involves considering whether the work results in reconstruction, replacement or renewal and whether it changes the character of the main goods.
70. As set out in IS 26/01, the following are key factors that can establish the nature and extent of the work done:²⁴
- If the work done results in the reconstruction, replacement or renewal of the whole or substantially the whole of the asset (or main goods), the cost of the work is capital expenditure.
 - If the work done goes beyond repairs and changes the character of the main goods, the cost of the work will be capital expenditure.
 - When deciding if the cost of the work done is capital in nature, consider the nature, scale and extent of the work done to the main goods.
 - The scale of the work includes considering the significance of the work done.
 - When different materials are used in the work, consider if they improve the usefulness, performance or function of the main goods. If so, this may show a change in character and the cost of the work done is capital expenditure.
 - Changes to the value, earning capacity, useful life, function or operating capacity of the main goods, whether intended or not, cannot alone decide the nature of the work done. Instead, courts sometimes use these factors to support an overall assessment of whether the character has changed.
71. To decide whether work results in reconstruction, replacement or renewal it is necessary to consider whether the work is so extensive that the whole, or substantially the whole, of the main goods is reconstructed, replaced or renewed. Consider whether the work merely keeps the main goods in a serviceable condition or whether it goes further.
72. As noted at [62], a non-integral deduction relates to an input tax deduction on goods and services that did not make a substantial improvement to the main goods **and** did not become an integral part of the main goods so that the main goods are incomplete or cannot function without them.

²⁴ See *Lurcott v Wakely and Wheeler* [1911] 1 KB 905; *Auckland Trotting Club v CIR* [1968] NZLR 193 (SC) at 200 and 205; *Auckland Trotting Club (Inc) v CIR* [1968] NZLR 967; *Case J92* (1987) 9 NZTC 1,518 (NZTRA).

73. For example, a roof replacement on a farmhouse might be considered repairs and on revenue account for income tax purposes if it uses the same materials and restores the roof to its original condition. If GST input tax was claimed on this repair, it is likely to be a non-integral deduction because it did not make a substantial improvement to the farmhouse (being the main goods). While the roof did become an integral part of the farmhouse and the farmhouse could not really function as such without a roof, it is not a substantial improvement when like has been replaced with like. The requirements of the definition are cumulative, meaning that both need to be satisfied. If the goods and services did not make a substantial improvement to the main goods, then any input tax claimed on them qualifies as a non-integral deduction.

Not acquired for the principal purpose of making taxable supplies

74. Having considered whether s 6(3)(e)(i) is established we now move onto the second limb, namely s 6(3)(e)(ii). The second limb requires that principal purpose of **acquiring** the goods must not be for making taxable supplies.²⁵
75. Determining principal purpose requires analysis of both subjective and objective factors.²⁶ That means that applying the principal purpose test involves looking at what the GST-registered person wanted to achieve when the goods were purchased and then how the goods were actually used. If the goods were acquired for private use and later used occasionally to make taxable supplies, the principal purpose would not be to make taxable supplies. Principal purpose is not necessarily equivalent to more than 50 percent use in a certain manner.
76. In the context of a farm that includes a principal place of residence, the dwelling may have some taxable use (eg for a home office), but it would not be purchased for the principal purpose of making taxable supplies. However, the GST-registered person may purchase a substantial asset, like a standalone cabin, that they intend to use, and then actually use, for the principal purpose of supplying farm-stay accommodation. Because the farm-stay accommodation is a taxable activity, it would fail the principal purpose. In that scenario, GST would be payable on disposal and the standalone cabin would not be a separate supply under s 5(15).

Not used for the principal purpose of making taxable supplies

77. The third limb of the test in s 6(3)(e)(iii) provides that during the time that a GST-registered person owns the goods, they cannot have **used** those goods for the

²⁵ The term "principal purpose" has the same meaning as use in the definition of input tax under the GSTA in force prior to 2011.

²⁶ *Wairakei Court Limited v CIR* (1999) 19 NZTC 15,202 (HC).

principal purpose of making taxable supplies.²⁷ This means the primary use of the goods, from the time the person acquired them until their disposal, must be a non-taxable use (private or exempt use). Once again, if the goods have been used for the principal purpose of making taxable supplies, the goods will form part of the taxable activity and be subject to GST output tax on disposal.

78. In the context of a farmhouse on a farm that is a principal place of residence with a small amount of taxable use (eg for a home office), the main use is private and not for making taxable supplies.

Not acquired as a zero-rated supply, unless the person has made an output adjustment for the nominal GST component

79. The final limb under s 6(3)(e)(iv) requires that the goods were not acquired as a zero-rated supply, unless the person has made an output adjustment for the nominal GST component. Essentially, the zero-rating rules allow supplies of goods (including land) to be zero-rated where the goods are intended to be used in a taxable activity. If goods were zero-rated on acquisition on the basis they were going to be used in a taxable activity, then deeming there to be a separate supply under s 5(15) seems unnecessary as the goods are presumably used in the taxable activity and will be subject to GST output tax on disposal or deregistration. However, if the goods have been removed from the taxable activity, then s 5(15) can ensure the goods are treated as a separate supply and for their GST treatment to be determined independently of the main goods in the taxable activity.
80. A person may have acquired certain properties as a zero-rated supply. These properties satisfy the election requirements only if the person has made an output tax adjustment equal to the nominal GST component and:²⁸
- the adjustment was made after 1 April 2023; and
 - the adjustment was made before the goods were sold or disposed of.
81. Zero-rating on acquisition can apply when there is a supply in the following circumstances:
- going concern;²⁹
 - supply of land;³⁰

²⁷ Section 6(3)(e)(iii).

²⁸ Section 6(3)(e)(iv).

²⁹ Section 11(1)(m).

³⁰ Section 11(1)(mb).

- deemed supply of assets by an unincorporated body;³¹
 - supply of an interest in joint venture property.³²
82. A zero-rated going concern arises when the GST-registered person who acquires the goods acquires a taxable activity, or part of a taxable activity, that is a going concern at the time of supply and capable of continuing as a going concern.
83. Compulsory zero-rating (CZR) of land applies to supplies that:³³
- wholly or partly consist of land;
 - where both supplier and recipient are GST-registered;
 - the recipient intends to use the land to make taxable supplies; and
 - the land is not intended as a principal place of residence for the recipient or an associated person.
84. An example of when the CZR rules might apply, is where a registered person sells their property comprising their home and a cottage used solely to supply short-stay accommodation on a peer-to-peer website. In that situation, s 5(15) deems there to be a supply of the registered person's home, and a separate supply of the cottage. If the sale is to a GST-registered recipient who will continue supplying short-stay accommodation in the cottage, that supply may be zero-rated under s 11(1)(mb). For further detail on the application of the CZR rules refer to [IS 17/08: GST – Compulsory zero-rating of land rules \(general application\)](#).³⁴
85. Zero-rating of supplies by unincorporated bodies applies to goods and services forming part of the assets of a taxable activity when the body's registration is cancelled. Those goods and services are treated as supplied by the body to its members, and the supply can be zero-rated where the members are registered and intend to use the assets to make taxable supplies. An unincorporated body can include arrangements such as partnerships, ordinary joint ventures and trustees of a trust. For further information on GST and unincorporated bodies refer to PUB00530 – Types of unincorporated bodies.³⁵
86. Although the unincorporated-body zero-rating provision applies to goods and services (including land), land transactions are already subject to CZR and that specific rule is

³¹ Section 11(1)(mc).

³² Section 11(1)(md).

³³ IS 17/08: GST – Compulsory zero-rating of land rules (general application) (*Tax Information Bulletin*, Vol 29, No 10, (November 2017: 17)).

³⁴ PUB00525 GST – Compulsory zero-rating of land proposes updating IS 17/08 and is currently out for public consultation. Links will be updated accordingly in the published version of this item.

³⁵ This item is expected to be finalised and published and a link to the published version of GST and Unincorporated bodies will be provided in the published version of this item.

expected to govern those supplies. In practice, this means the general unincorporated-body zero-rating rule is unlikely to extend zero-rating for land beyond what the CZR provision already allows.

87. Zero-rating for interests in joint-venture property expressly excludes supplies that wholly or partly consist of land. Therefore, this provision will not apply to farmhouses, residential rental properties or other land-based supplies considered in this guidance.
88. As noted above, in most cases, when a GST-registered person acquires land or assets that qualify for zero-rating they will be acquiring these goods for the principal purpose of making taxable supplies.³⁶ In other cases, the taxable use of the goods while sufficient for the supply to qualify for zero-rating, may be secondary or minor in nature to the exempt or private (non-taxable) use of the goods. In the latter circumstances, the GST-registered person can return an amount of output tax equal to the full nominal GST amount.³⁷
89. Where a GST-registered person acquires a working farm, the supply could be zero rated as a going concern, or as a zero-rated supply of land acquired for intended taxable use.³⁸ In most farm purchases, the recipient acquires the land and buildings for the principal purpose of making taxable supplies through the farming activity. The farmhouse is typically used privately (a non-taxable supply) and other houses may be used for farmworker accommodation (an exempt supply), but these properties may not have been split out from the zero-rated purchase of the remainder of the farm (despite the deeming effect in s 5(15)).³⁹
90. In these circumstances even though the supply generally qualifies for zero-rating, the GST-registered person can return output tax to recognise that they will not use some part of the farm, namely the farmhouse, to make taxable supplies. When the output tax adjustment has been made, the exclusion in s 6(3)(e)(iv) for goods acquired as a zero-rated supply no longer applies. Although the farm was acquired as a zero-rated supply, making the output tax adjustment puts the purchaser in the same position as a person who acquired standard-rated or secondhand goods and did not claim an input tax deduction on acquisition. In the farm context, this means the purchaser is put in the same position as if they had acquired the farmhouse without claiming GST, despite the overall supply being zero-rated.

³⁶ Under s 11(1)(m), (mb), (mc) or (md).

³⁷ Sections 20(3J)(a)(i) and (iv).

³⁸ Sections 11(1)(m) and (mb).

³⁹ In these circumstances it may be possible for the vendor and supplier to provide the Commissioner with supply correction information to describe how the components of the supply should have been split. Note there are time limits on when a supply correction can be made.

91. As a result, if the farmhouse (or the farm including the farmhouse) is later sold, disposed of, or its use changes, normal change-in-use or disposal rules can apply.

Example | Tauira 3 – Riverbend Farms Ltd acquires land from Valley View Farm Ltd

Continuing from Example | Tauira 2, to expand its farming activities, Riverbend Farms Ltd acquires a neighbouring property from Valley View Farm Ltd, a GST-registered farming company. The Valley View property includes productive farmland, farm buildings and a farmhouse. The parties treat the property as a single zero-rated supply under the compulsory zero-rating of land rules in s 11(1)(mb). Riverbend Farms Ltd intends to use the farmland and farm buildings in its taxable farming activity. However, the company's director, Melissa, intends for her sister, Davina, to occupy the farmhouse as her private residence.

Although the farmhouse is included in the zero-rated acquisition, Riverbend Farms Ltd recognises that it will be used for private purposes and not for the principal purpose of making taxable supplies. To account for this, after acquiring the Valley View property, Riverbend Farms Ltd returns output tax equal to the nominal GST component attributable to the farmhouse under s 20(3J)(a)(iv).

Provided the other requirements of s 6(3)(e) are satisfied, Riverbend Farms Ltd may elect to treat the farmhouse as not being part of the farming taxable activity in any subsequent sale. Riverbend Farms Ltd did not claim an input tax deduction for the farmhouse and did not acquire or use the farmhouse for the principal purpose of making taxable supplies. The output tax adjustment under s 20(3J)(a)(iv) means that the exception in s 6(3)(e)(iv) applies, despite the farmhouse having been acquired as part of a zero-rated supply.

Riverbend Farms Ltd is placed in a similar position to a person who acquired the farmhouse without claiming GST on acquisition. If Riverbend Farms Ltd later sells the Valley View property, s 5(15)(c) applies to treat the farmhouse as a separate supply from the remainder of the farm because Riverbend Farms Ltd has elected to apply s 6(3)(e). The GST treatment of the farmhouse is then determined separately from the treatment of the taxable farmland and farm buildings.

Summary

92. A supply of goods made under s 5(15)(c) can be a separate supply if the supplier has made an election under s 6(3)(e) to remove the goods from the tax base by satisfying the four limbs discussed above.
93. This provision could apply to principal places of residence under s 5(15)(a) and residential rental accommodation under s 5(15)(b). However, ss 5(15)(a) and (b) are

about the classification of the goods (ie, a principal place of residence or rental property), while s 5(15)(c) is about what has happened to the goods for GST purposes. For instance, a farmhouse will be treated as a separate supply under s 5(15)(a) if it is used as a principal place of residence. But it would also be treated as a separate supply under s 5(15)(c) if it has been removed from the taxable activity under s 6(3)(e). Which section applies will depend on the facts, and the GST treatment of the separate supplies may also differ depending on the facts. Example | Tauira 4 illustrates this different treatment.

94. Section 5(15)(c) does not only apply to supplies of a principal place of residence or rental property. Instead, the purpose of s 5(15)(c) is to ensure that once goods have been removed from the tax base (by applying s 6(3)(e)) that the goods remain outside the tax base on disposal and are not reintroduced because they are sold along with taxable land.
95. This election is appropriate in a farming context because where the farmhouse is deemed to be a separate supply because it is a principal place of residence, consideration still needs to be given to whether the supply of the farmhouse is made in the course or furtherance of a taxable activity. If the farmhouse has been removed from the tax base by applying s 6(3)(e), s 5(15)(c) applies to make the farmhouse a separate supply from the farmland. Also, s 5(15)(c) can apply to other types of land or buildings that are a principal place of residence or rental property if they have been removed from the tax base by applying s 6(3)(e). This is because s 5(15)(c) does not require the building to be residential or depend on the definition of dwelling or whether accommodation is supplied. This means that any land or buildings removed from the tax base under s 6(3)(e) will be a separate supply under s 5(15)(c).
96. Example | Tauira 4 through Example | Tauira 8 show how these provisions might apply.

Example | Tauira 4 – Difference between supplies under s 5(15)(a) and s 5(15)(c)

Riverbend Farms Ltd has another house on the property. Melissa's parents live in this house and are still actively involved in helping Melissa on the farm. While this house is Melissa's parents' principal place of residence, some GST input tax is still claimed on expenses because of the farm work undertaken from there.

If Riverbend Farms Ltd sells the farm, including Melissa's parents' house, the house will be a separate supply under s 5(15)(a). However, it may still be subject to GST output tax on sale as it is used in the taxable activity.

Variation

As Melissa's parents get older, they decide to retire from farming activities and no longer help on the farm. At this point, if the requirements of s 6(3)(e) are satisfied,

Melissa may decide to elect to remove her parents' house from Riverbend Farms Ltd's taxable activity. If Riverbend Farms Ltd sells the farm including Melissa's parents' house, the house will be a separate supply under s 5(15)(c). Then, it is unlikely to be subject to GST output tax on sale as it is outside the taxable activity.

Example | Tauira 5 – Farmhouse office and disused shed

Continuing from Example | Tauira 4, Melissa has a room in the farmhouse that she uses as an office for running Riverbend Farms Limited. Riverbend Farms Limited claims the business use portion of the power, broadband, rates and insurance for the farmhouse for GST.

Right next door to the farmhouse is an old shed. The shed is appurtenant to the farmhouse and was not acquired for use in Riverbend Farms Ltd's farming taxable activity.

Instead, as Melissa and her family are keen cyclists and horse riders, they use the shed to store their bicycles, saddles, tack, jumps and other equestrian equipment. Melissa claims no GST in relation to these private recreational activities. However, the rates and insurance relating to the farm property, including the shed, are general farm overheads and Riverbend Farms Ltd claims GST on those costs.

Neither the farmhouse nor the shed is used principally for making taxable supplies. The office occupies only a small part of the farmhouse and the principal purpose of the farmhouse is as Melissa's residence. The GST claimed on the power, broadband, rates and insurance are all non-integral deductions. Accordingly, Riverbend Farms Ltd may elect under s 6(3)(e) to treat both the farmhouse and the shed as not forming part of its taxable activity.

If the election is made under s 6(3)(e) on the sale of the farm, the shed and farmhouse may each be treated as a **separate supply** under s 5(15)(c) and likely not subject to GST output tax.

Example | Tauira 6 – Impact of roof repair on s 6(3)(e) election

Continuing from Example | Tauira 5, the roof of the shed develops a leak. To protect the horse equipment and bicycles, Melissa has the roof repaired. The roof is repaired using corrugated iron that Riverbend Farms Ltd had purchased for other repairs on the farm and a GST input tax deduction had already been claimed on it.

Although the replacement iron becomes part of the shed, the work merely restores the shed to its former condition and does not amount to a substantial improvement. The

GST claimed on the repair is therefore a non-integral deduction and does not prevent Riverbend Farms Ltd from electing the shed out of the taxable activity under s 6(3)(e). If the election is made under s 6(3)(e) on the sale of the farm, the shed will be treated as a **separate supply** under s 5(15)(c) and likely not subject to GST output tax.

Example | Tauira 7 – Repairs to home office

Melissa has an office in one room of the farmhouse. It is a little gloomy so she decides to freshen it up with a coat of paint. The window in the room is also rotting away so she has that replaced. Riverbend Farms Ltd claims GST on the cost of these repairs.

The work merely restores the room to its former condition and does not amount to a substantial improvement to the farmhouse. The GST claimed is therefore for non-integral deductions.

The GST claimed on the non-integral deductions does not prevent Riverbend Farms Ltd from electing both the farmhouse and the shed out of the taxable activity under s 6(3)(e). On the sale of the farm, the farmhouse could be treated as a **separate supply** under s 5(15)(c) and likely not subject to GST output tax. Where the farmhouse is the principal place of residence, the exclusion in s 5(15)(a) may apply instead.

Example | Tauira 8 – Moving the office to the shed

Continuing from Example | Tauira 7, Melissa decides to move her office out to the shed. She thinks the shed will be a much sunnier spot with a window overlooking the farmland. To make the shed suitable as an office, Riverbend Farms Limited relocates an internal wall, installs a new entrance door, rewires the entire shed, installs insulation and linings, and connects fibre broadband to the building. Riverbend Farms Ltd claims GST on the renovations.

This work goes beyond restoring the shed to its former condition. The relocation of the wall, installation of a new entrance, complete rewiring, installation of insulation and linings, and connection of fibre broadband substantially improve the functionality of the shed and become an integral part of it.

Riverbend Farms Ltd will no longer be able to elect the shed out of the taxable activity using s 6(3)(e). This is for two reasons. First, claiming GST on the renovations means that GST input tax has been claimed on the shed and the non-integral exclusion does not apply. Secondly, as the farm office now occupies the shed, the shed is now used for the principal purpose of making taxable supplies. On the sale of the farm, the shed

will **not** be treated as **a separate supply** under s 5(15)(c) and will likely be subject to GST output tax.

Transitional elections – ss 5(15)(d) and 91(4)

97. Section 5(15)(d) allows for goods to be treated as a separate supply if s 91(4) has been applied. Section 91 is a transitional provision that allowed a GST-registered person to remove goods from the tax base where they could not apply s 6(3)(e). This transitional provision applied from 1 April 2023 to 1 April 2025. To apply the provision the following conditions must have been met:
- Input tax was claimed under s 20(3) or the goods were acquired as a zero-rated supply;
 - The goods were acquired before 1 April 2023;
 - The goods were not acquired for the principal purpose of making taxable supplies; and
 - The goods were not used for the principal purpose of making taxable supplies.
98. If s 91 applied, the goods could later be sold or the taxable activity could cease without the requirement to pay output tax on the goods.
99. In a simple farming situation, s 91 could apply if before 1 April 2023 the farmer had claimed input tax or acquired zero-rated land as a single supply even though part of the supply such as the farmhouse was not used to make taxable supplies. The farmer could return GST output tax equal to the nominal GST component,⁴⁰ less any adjustments already made to remove the farmhouse from the tax base by notifying the Commissioner before 1 April 2025. If an election has been made under s 91 the effect of that election is the same as s 6(3)(e) discussed above.

Summary

100. Section 5(15) applies where a supply of land includes a residential or other excluded component together with land used in a taxable activity.
101. When s 5(15) applies, the residence-related or excluded component is deemed to be a separate supply from the supply of any other real property included in the transaction. While s 5(15) ensures that there are two (or more) separate supplies to allow for the correct GST treatment on disposal or deregistration, the GST treatment itself is considered under the usual GST rules.

⁴⁰ Section s 20(3J)(a)(i).

102. Because s 5(15) deems separate supplies, the separate supplies need to be apportioned and valued to determine the amount of consideration for each and to allow the correct GST treatment to be applied. These requirements are considered in the next section.

How are the separate supplies treated for GST?

Apportionment and valuation issues

103. When s 5(15) applies, the supplier will be making two or more supplies. Depending on the circumstances, those supplies may be taxable, non-taxable or exempt. To determine the correct GST treatment, it is necessary to identify the different supplies. Figure | Hoahoa 4 describes the process related to apportionment and valuation of a separate supply.

Figure | Hoahoa 4 – Apportionment and valuation



Identifying the supply

104. To value the residence and apportion any consideration between the supplies, the extent of the principal place of residence must be identified. For farmhouses this can be difficult because the land and buildings belonging to the farmhouse are not always clearly delineated from the rest of the farm. For other types of property (eg flats above business premises) the supply might include rights to use common areas.

105. For a principal place of residence, the Commissioner considers that the supply includes any appurtenances belonging to or used with it for the purposes of s 5(15). While the Act does not define the phrase “principal place of residence”, for the purposes of s 5(15), “appurtenances” are included with a residence in the definition of “dwelling”.⁴¹
106. The courts have considered the meaning of “appurtenances” in the context of the Act.⁴² For detailed guidance see [IS 15/02: Goods and services tax – GST and retirement villages](#).⁴³
107. The term “curtilage” is often also used in relation to dwellings. It refers to the land surrounding the dwelling that is used with the dwelling. Curtilage could be fenced or open.
108. Whether land or buildings are appurtenant to a house and contained within its curtilage is based both on physical aspects (ie, proximity to the house and separation from the house) and on the way the land or buildings are used. Something will be an appurtenance where its use and enjoyment forms part of the use and enjoyment of the residence and where it belongs to the residence so that it is not physically separated from the dwelling (eg, by distance or by a fence or a hedge). To determine the extent of a principal place of residence, it is necessary to examine the facts of each case to work out the physical area and any other rights reasonably belonging to and used with the residence.
109. For example, a landscaped garden surrounding a residence that includes a swimming pool and tennis court will be appurtenant to the residence and within its curtilage. While the pool and tennis court may be fenced for safety reasons, they are still within the residence’s curtilage, belonging to and used as part of the use of the residence. However, a fenced horse paddock, is not appurtenant to a residence as it is physically separated from the residence, so it does not “belong” to the residence and it is not used as part of using the residence. It is not within the residence’s curtilage and is easily able to be used in the farming taxable activity.

Valuation

110. Where the consideration needs to be apportioned between the separate supplies the onus of proof rests with the party seeking to rely on the apportionment to establish

⁴¹ Section 2(1) “dwelling”, para (b)(ii) of the definition that provides that a dwelling includes “any appurtenances belonging to or used with the premises”.

⁴² See *Norfolk Apartments Ltd v CIR* (1995) 17 NZTC 12,212 (CA) and briefly in *Wairakei Court Ltd v CIR* (1999) 19 NZTC 15,202 (HC) (both cases concerned retirement villages).

⁴³ [IS 15/02: Goods and services tax – GST and retirement villages](#) (*Tax Information Bulletin* Vol 27, No 11 (December 2015): 6).

that the apportionment and the method adopted to reach that apportionment are fair and reasonable in the circumstances.

111. Section 10(18) states that if a taxable supply is not the only matter to which the consideration relates, the supply is deemed to be for the part of the consideration that is properly attributable to it.
112. The method of valuation depends on the circumstances of the case. The method adopted should best reflect the market value of the property in the circumstances. For example, an apportionment based solely on land area is unlikely to be an acceptable method if it is reasonable for the value of the residential land to be proportionately higher than the rest of the land. This can be the case with farms – see IS 17/02 (at [47]). For some farms, a potential source of valuation evidence may be to value the residence by comparing sales of residential properties in nearby rural townships. However, this will depend on the facts and circumstances of the particular property. Ultimately, the onus is on the taxpayer to demonstrate they have used a fair and reasonable basis for their apportionment in the circumstances.
113. A supply forming part of a larger transaction should not be over or under-valued at the expense of another supply in the same transaction. Valuations should be applied to the total consideration on a pro-rata basis. This approach might be relevant where separate valuations are obtained for separate supplies or if a valuation does not align with the actual purchase price. For more information on applying valuations on a pro-rata basis see [QB 09/06: GST – Apportionment of the cost of bare land for the purposes of a change-in-use adjustment](#).⁴⁴

Taxable supply information

114. Where there are separate supplies under s 5(15), the taxable supply information needs to clearly show the different supplies. Taxable supply information for supplies made by a GST-registered person should include sufficient details to identify the supply and support the GST treatment of it. In broad terms, it should identify the supplier, show that the supply was taxable, describe what was supplied, state the date of supply, the consideration payable, and the amount of GST charged or a clear statement that the consideration includes GST. The exact content required depends on the value and nature of the supply, but the information must adequately substantiate the supplier's output tax and the recipient's entitlement to any input tax deduction.⁴⁵

⁴⁴ QB 09/06: GST – Apportionment of the cost of bare land for the purposes of a change-in-use adjustment (*Tax Information Bulletin*, Vol 22, No 6, (July 2010: 21)).

⁴⁵ Section 19K.

115. If the parties have not agreed to separate consideration for the taxable supplies, the total consideration for the whole transaction will need to be apportioned between the taxable supplies and the other non-taxable or exempt supplies.

Are any of the separate supplies subject to GST?

Deemed taxable supply s 5(16) to (16C)

116. This statement has discussed how s 5(15) operates to deem a single supply to be two or more supplies when part of the supply is either residential property or otherwise excluded from the taxable activity. A separate supply under s 5(15) allows for the correct GST treatment to be applied on disposal of the land or cessation of the taxable activity.
117. In most circumstances these separate supplies under s 5(15) will not have been part of the taxable activity and will not be subject to output tax. However, in some circumstances, even though s 5(15) has deemed there to be separate supplies, those supplies will be subject to GST output tax. For example, if a property has been used for a taxable activity like supplying short-stay accommodation but is a separate supply under s 5(15)(a) because it is a residence, output tax will be returned on disposal or cessation of the taxable activity. In these cases, ss 5(16) to (16C) can apply.
118. In essence, s 5(16) is a triggering provision that identifies assets for which a person has claimed previous taxable use (or equivalent benefit through zero-rating), and where that benefit has not yet been fully repaid when the person exits the GST base or disposes of the asset.
119. Section 5(16B) applies where the Commissioner considers that, before disposal, the person increased their non-taxable use of the goods or services and then applied the wash-up rule in s 21FB in contemplation of disposal or cessation of their taxable activity. Section 5(16C) then deems the disposal to be made in the course or furtherance of a taxable activity and, if the person ceases to be registered, deems a supply to occur immediately before deregistration.

Conditions triggering the deeming rule – s 5(16)

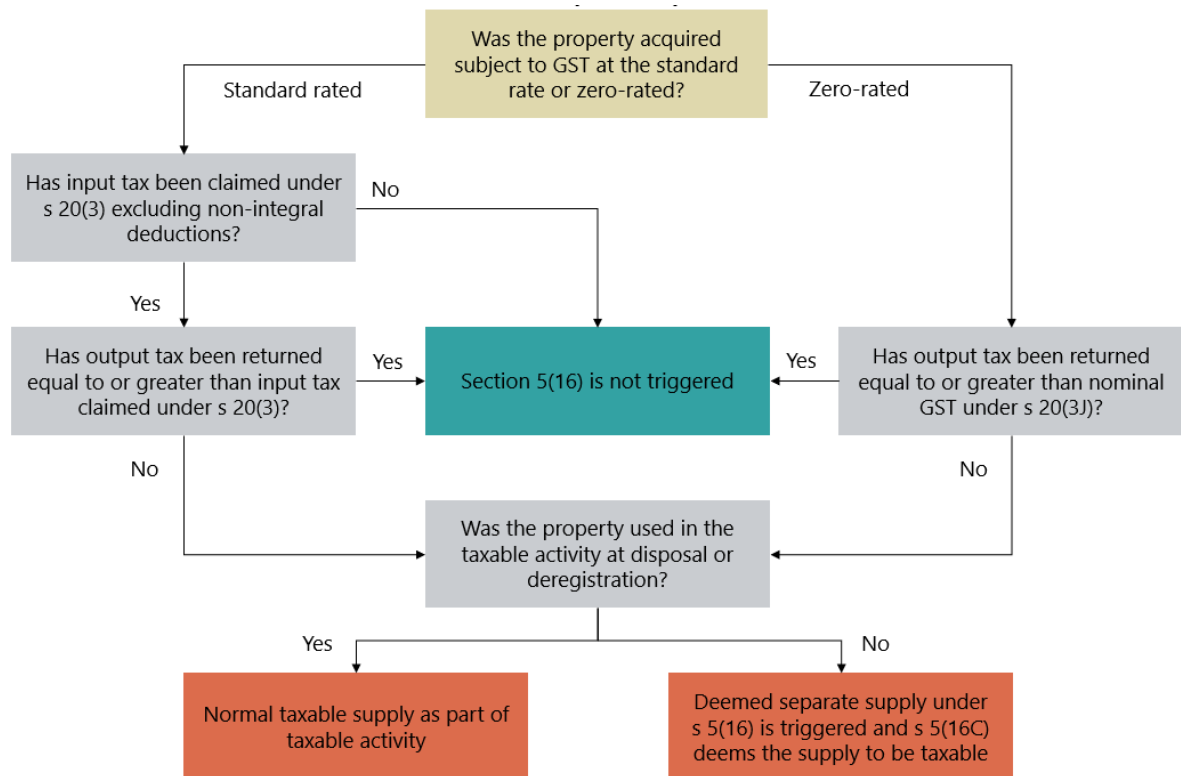
120. Section 5(16) sets out the conditions under which the deeming rule in s 5(16C) applies. It covers situations where a separate supply may already have arisen under s 5(15), to ensure that goods or services for which a GST benefit has been obtained are appropriately brought to account on disposal or deregistration. Section 5(16) states:

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- (16) Subsection (16C) applies where a person—
- (a) has either—
 - (i) claimed a deduction under section 20(3) for goods or services, excluding non-integral deductions ; or
 - (ii) acquired goods or services that were zero-rated under section 11(1)(m), (mb), (mc), or (md); and
 - (b) disposed of the goods or services or ceased to be a registered person; and
 - (c) is not using the goods or services in the course or furtherance of a taxable activity at the time the goods or services are disposed of or deemed to be supplied; and
 - (d) has not previously returned output tax for the goods or services that is equal to or greater than—
 - (i) the deduction under section 20(3), for goods or services where a deduction was claimed; or
 - (ii) the nominal GST component under section 20(3J), for goods that were acquired as zero-rated supplies.

121. As the provision above shows, the requirements of s 5(16) are in part similar to those discussed from [53] for s 6(3)(e). Figure | Hoahoa 5 summarises the concepts discussed in this section showing how s 5(16) may apply.

Figure | Hoahoa 4 – When s 5(16) applies to property on disposal or deregistration



Input tax deductions (previous taxable use)

122. Section 5(16)(a)(i) applies where a person has claimed input tax deductions for goods or services that improve the main goods or relate to its taxable use. If the deductions relate to non-integral items, such as rates or insurance, this limb is not satisfied. However, it may apply where any input tax deductions have been claimed for substantially improving the main goods. Non-integral deductions are discussed from [62].

Assets acquired as zero-rated supplies

123. Where the person acquired goods or services as a zero-rated supply under the specific zero-rating provisions, s 5(16)(a)(ii) will be met. These zero-rated supplies are:

- zero-rating for supplies of a taxable activity (or part of one) as a going concern between GST-registered persons;
- compulsory zero-rating of land;
- zero-rating of goods and services supplied by unincorporated bodies on deregistration; and
- zero-rating of interests in joint-venture property, which expressly excludes land.

124. These provisions have been addressed from [82] and are not covered again here.

Disposal or cessation of registration

125. When a person has either disposed of the goods or services or ceased to be a GST-registered person, s 5(16)(b) will apply. A physical sale constitutes a disposal, and ceasing of registration results in a deemed supply of any goods and services held on the date of deregistration. In a farming context, this condition will be met if the land is sold or if the farmer deregisters and the land is deemed to be disposed of.

Not used in the taxable activity at the time of disposal

126. Section 5(16)(c) is met when, at the time of disposal (or deemed supply), the goods or services are not being used in the course or furtherance of a taxable activity. At first glance this may appear counter-intuitive, but if the goods were being used in the taxable activity, their disposal would ordinarily be taxable anyway. Therefore, the provision targets goods that are not being used in the taxable activity at disposal, but for which input tax deductions (or equivalent zero-rated benefits) have been claimed.

127. In a farming scenario, this requirement may not apply to a farmhouse where it has been argued that the farmhouse forms part of the farming taxable activity and is subject to GST on disposal in any event. However, it may apply to a manager's residence or another house on the farm used as a residential rental property, as those are used to provide exempt residential accommodation and not used in making taxable supplies.

No prior output tax equal to the benefit

128. Section 5(16)(d) requires that the person has not previously returned output tax equal to or greater than the earlier input tax deduction or, in the case of zero-rated acquisitions, the nominal GST component. The intention is that the deeming rule does not apply where the GST benefit has already been fully repaid through adjustments, wash-ups, or earlier taxable disposals. If sufficient output tax has been returned under other rules, s 5(16C) does not apply.

Anti-avoidance deeming – s 5(16B)

129. Sections 5(16B) addresses arrangements where a person increases their non-taxable use of the goods and services and applies s 21FB shortly before disposal or cessation. Where the Commissioner considers that certain requirements are met, s 5(16B) deems the disposal to occur in the course or furtherance of a taxable activity.

130. Section 5(16B) provides:

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(16B) Subsection (16C) also applies where—

- (a) the registered person has disposed of the goods or services or the person ceased to be a registered person; and
- (b) the Commissioner considered that the person prior to disposal—
 - (i) increased their non-taxable use of the goods and services; and
 - (ii) applied section 21FB in contemplation of disposing of the goods or services, or ceasing their taxable activity.

131. While s 5(16) draws certain supplies back into being subject to s 5(16C), s 5(16B) adds to this by invoking s 5(16C) where a person has disposed of goods and services or deregistered from GST in circumstances where the Commissioner considers that the person increased their non-taxable use and made a wash-up adjustment under s 21FB in contemplation of selling those goods or ceasing their taxable activity.

Wash-up adjustments – s 21FB

132. A GST-registered person can make a wash-up adjustment when the percentage of taxable use of goods or services permanently changes under s 21FB:

21FB Treatment when percentage of taxable use permanently changes

- (1) This section applies where the person's use of goods or services in making taxable supplies, as a percentage of total use, permanently changes.
- (2) The person's adjustment for the adjustment period in which the change occurred is an amount calculated using the formula—

$$\text{full input tax deduction} \times \text{new intended use percentage} - \text{previous net deductions.}$$
- (3) In the formula,—
 - (a) full input tax deduction is the total amount of input tax on the supply, after taking into account any nominal GST component chargeable under section 20(3J)(a)(i);
 - (b) new intended use percentage means the extent to which the goods or services are used, determined by the use from the date the permanent change occurred up to the end of the adjustment period in which the change occurred, and intended to be used for the foreseeable future, by the person for making taxable supplies;
 - (c) previous net deductions means the input tax deduction claimed by the person on acquisition of the goods or services after taking into account any nominal GST component chargeable under section 20(3J)(a)(i) which has not previously been returned as output tax under section 20(3J)(a)(iv), plus or minus, as the case may be, any previous adjustments made:

- (4) For the purposes of subsection (2),—
 - (a) if the amount is positive, the person is entitled to an additional input tax deduction under section 20(3)(e); or
 - (b) if the amount is negative, the person must treat the amount as a positive amount of output tax and attribute it to a taxable period under section 20(4).

133. The wash-up adjustment sets out the formula to calculate an adjustment based on the full input-tax deduction, the new intended use percentage and previous net deductions. A positive amount gives rise to an additional input tax deduction, while a negative amount results in output tax being payable.
134. A wash-up adjustment will be appropriate where a farmhouse may have been used for a taxable activity (eg as short-stay accommodation) and then ceases to be used for that purpose because it reverted to being the farmer's residence. If that change in use is permanent, the wash-up rule can be used to adjust for the change. However, if the farmer later (in a short timeframe) disposes of the property or ceases registration, the property may be treated as a taxable supply and output tax may be payable where the wash-up adjustment was made in contemplation of the sale or deregistration.⁴⁶
135. This treatment prevents a person from using the wash-up adjustment to minimise GST payable on appreciating assets, such as land, by locking in an output tax liability based on original cost instead of market value immediately before disposal.

Consequences of ss 5(16) and (16B) applying – s 5(16C)

136. While s 5(15) deemed there to be separate supplies, if either ss 5(16) or 5(16B) apply, then s 5(16C) is invoked. Section 5(16C) states:

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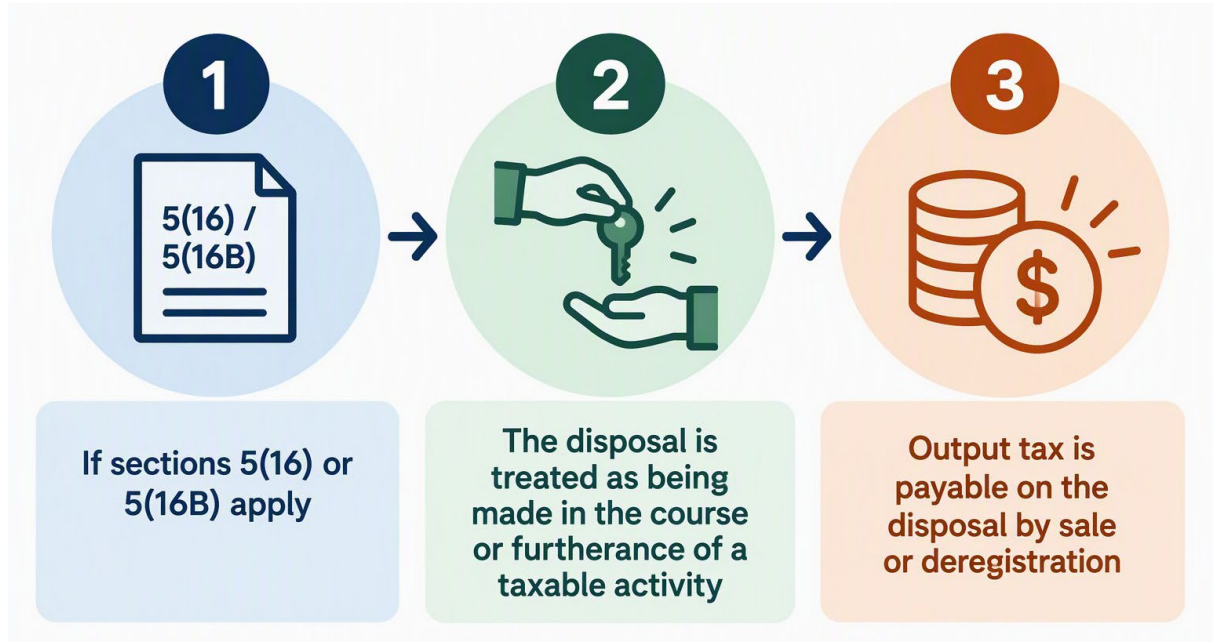
- (16C) A disposal of goods or services referred to in subsection (16) or (16B) by the person,—
- (a) is deemed to be made in the course or furtherance of a taxable activity carried on by the person; and
 - (b) where the person ceases to be a registered person, the goods or services are deemed to be supplied by the person immediately before the person ceases to be a registered person.

137. Section 5(16C) deems the disposal of the separate supply of goods and services to be made in the course or furtherance of a taxable activity, and output tax is payable on

⁴⁶ Sections 5(16) – (16C).

that disposal (whether it is an actual sale or a deemed supply on deregistration).
Figure | Hoahoa 6 illustrates the effect of s 5(16C).

Figure | Hoahoa 5 – Effect of s 5(16C) applying



138. In practice, ss 5(16), 5(16B) and 5(16C) apply in two main scenarios:

- assets sold after a non-taxable wash-up has been made using s 21FB; and
- assets where previous taxable use (including zero-rated acquisition) has been claimed but the person exits the GST base without returning sufficient output tax.

139. Example | Tauira 9 illustrates how these sections might apply.

Example | Tauira 9 – Wash-up adjustment under s 21FB and subsequent sale

Hone is a GST-registered farmer. He owns a dairy farm in the Waikato producing the finest quality milk that he supplies to the dairy cooperative.

The farmland includes a farmhouse and surrounding lifestyle land used as Hone's private residence.

Hone purchased the land on one title from a Māori Trust that was not GST-registered and converted it to a dairy farm. When he acquired the whole property, he claimed input tax deductions based on predominantly taxable use.

Hone wants to retire and decides to sell the farm. Before selling the property, Hone undertakes a farmhouse and lifestyle block split and applies the wash-up adjustment

under the permanent-change-of-use rule on the basis that the non-taxable use of the farmhouse and lifestyle land is now 100%. Depending on the circumstances, the Commissioner may consider that Hone has increased non-taxable use and applied the wash-up calculation in contemplation of sale. If so, s 5(16B) applies.

If s 5(16B) applies, s 5(16C) would deem the disposal of the farmhouse and lifestyle land to be made in the course or furtherance of Hone's taxable activity. The sale of that land would be treated as a taxable supply despite its private residential use at the time of disposal (with an adjustment allowed for the earlier s 21FB adjustment made). Even where the farmhouse and lifestyle land are treated as a separate supply under the residence-splitting rule, ss 5(16B) and 5(16C) may still apply.

Summary

140. This interpretation statement explains the three stages for determining the correct GST treatment of supplies involving residences and other land: deciding whether separate supplies arise, valuing and apportioning those supplies, and determining whether any deeming claw-back applies. **Error! Reference source not found.** summarises the stages.

Figure | Hoahoa 6 – Summary



Examples | Taurira

141. To supplement the examples included earlier in this statement, this section provides the following examples from IS 20/05. Examples | Taurira 5 to 7 remain relevant and help to explain how the law applies.

Example | Taurira 10 – Sale of farm with two farmhouses

The properties

A GST-registered farmer negotiates to sell a 225-hectare farm that includes two farmhouses.

The farmer and his family occupy the main farmhouse. A fenced garden area of 4,000 square metres surrounds the farmhouse that includes a chicken coop, the vegetable garden and various small sheds. There is an adjacent paddock of 5,000 square metres, known as the “home paddock”.

Farm employees and their families occupy the second farmhouse (and it has been rented to various employees and their families for more than 5 years). It is fenced on two sides, has a hedge on one side and a stream running along the fourth side. The area within these boundaries measures 4,750 square metres. The area includes a garage, a mower shed, a few trees and a washing line. There is no garden.

The application of s 5(15)

Section 5(15) applies to the supply of the farm property. It deems the supply of each of the residences and the balance of the farmland and buildings to be separate supplies. This is because the two farmhouses are the principal places of residence of the families that live in them. The second farmhouse is also a supply subject to s 14(1)(d).

For the main farmhouse, this is used by the farmer in the farming operations. Following IS 17/02: “Income tax – deductibility of certain expenses attributable to a farm dwelling”, the farmer has been claiming 20% of the expenses relating to the property for income tax purposes – as well as claiming GST input tax on these expenses. On this basis, the farmhouse is used in the farmer’s taxable activity and is subject to GST under s 8(1) on sale (with an adjustment under s 21F).

The second farmhouse has at various times been rented or made available under a service occupancy agreement to farm employees. This means that the second farmhouse has been used for making exempt supplies and so no GST input tax was claimable on it. As it was used for making exempt supplies, it is excluded from forming part of the farmer’s taxable activity under s 6(3)(d). In any event, it would be an

exempt supply under s 14(1)(d). Therefore, the second farmhouse is not subject to GST on sale.

Identifying the extent of the properties

The physical area of the residence in each case is as follows:

- Main farmhouse — 4,000 square metres. The home paddock is not part of the curtilage of the farmhouse. The area is physically divided off from the farmhouse. It is reasonable to treat the fenced area immediately surrounding the farmhouse as its curtilage.
- Second farmhouse — 4,750 square metres. Although fairly large, it is reasonable to treat this area as appurtenant to the farmhouse. This area is physically divided off from the surrounding farmland by both artificial and natural features.

Valuation and apportionment of purchase price

Anticipating selling the property, the farmer has recently had the farm independently valued by a registered valuer. The valuation (exclusive of GST) shows:

- Farmland and farm improvements – \$1.4 million
- Main farmhouse – \$250,000
- Second farmhouse – \$200,000
- Total value = \$1.95 million

The farmer negotiates to sell the farm for \$2 million plus GST, to a GST-registered recipient who is acquiring the farm to carry on a taxable activity of farming. The parties are not treating this as the sale of a going concern, however the CZR rules will apply to the supply of the farm (but not the farmhouses).

In finalising the terms of the sale and purchase agreement, the parties agree that the purchase price shall be apportioned between the farm as to \$1.5 million and the two farmhouses as to \$500,000. The split between the two farmhouses is agreed as being \$300,000 for the main farmhouse and \$200,000 for the second farmhouse. (The recipient is prepared to accept this price and the apportionment, having received their own valuation.) The sale and purchase agreement includes the following details:

- Apportionment of consideration:
 - Farm – \$1.5 million (plus GST of \$0 as zero-rated)
 - Main farmhouse – \$300,000 (plus GST of \$45,000 as standard rated)
 - Second farmhouse – \$200,000 (plus no GST as exempt)

- Total price including GST – \$2,045,000

GST output tax of \$45,000 is payable on the transaction, with an adjustment made under s 21F for GST input tax not claimed on the main farmhouse. GST input tax may be claimable by the recipient on the main farmhouse to the extent that it is used in their taxable activity, and the CZR rules require them to identify the nominal amount of GST on the farm – in this case \$225,000 (\$1.5 million x 15%).

Example | Tauria 11 – Sale of section with home and holiday cottage

Petunia and Vernon own a section next to Lake Wakatipu. On the section is a three-bedroom house and a separate holiday cottage. The house is used solely as their private residence. The holiday cottage is accessed via a private driveway. It has a white picket fence on three sides and drops away to the lake on the other side. The cottage is used as a dedicated short-stay rental property. It is well maintained, in a prime location and is advertised on various websites. It is used year-round by skiers, trampers and overseas holiday makers. The holiday cottage's turnover is \$70,000 a year and so Petunia and Vernon are registered for GST.

Petunia and Vernon told an estate agent friend that they were thinking of retiring and their friend told them they could get \$2 million for the property in the current market. They mentioned this to Luna who has previously shown an interest in the property. The parties are interested but want to know the GST implications before they go any further.

The Act treats the supply of a principal place of residence and other property as separate supplies. The three-bedroom house is used by Petunia and Vernon as their principal place of residence and so is treated separately from the holiday cottage for GST purposes.

The three-bedroom house is not used in the taxable activity and will not be subject to GST output tax when sold. There may be GST implications in the future if Luna decided to also use the house to make supplies of accommodation. However, on sale there is no GST output tax liability for Petunia and Vernon.

The holiday cottage is used in the taxable activity to make taxable supplies and will be subject to GST output tax. If Luna remains unregistered (because she intends to make fewer supplies and stay below the \$60,000 threshold) then GST would be payable at the standard rate. However, it is more likely that Luna will be GST registered in which case the compulsory zero-rating rules may apply. GST will apply at 0% if the holiday cottage will be used to make taxable supplies and it will not be lived in as a principal place of residence by Luna or her relatives.

In many cases prudent parties (or their lenders) will require a valuation from a registered valuer. In this case they decide they will want a valuation. This is a good idea because even though they do not return any GST there are still record keeping requirements on Petunia and Vernon. Luna is also required to identify the nominal amount of GST chargeable on the supply of the holiday cottage (ie, the GST if the transaction was not zero-rated). Moreover, the valuations could be important for Luna if her use of either property changes and she is required to calculate change in use adjustments.

Example | Tauria 12 – Sale of shop and flat

Rita is selling a giftshop she has owned and operated for the last ten years. Above the giftshop is a two-bedroom flat with a separate accessway. When she first purchased the property, she lived in the flat but for the last 8 years she has rented it out to tenants.

Rita is GST registered and is selling the business and property to a GST registered recipient who will continue to operate the giftshop.

Section 5(15) will apply to split the supplies – the giftshop and the two-bedroom flat. The GST treatment of these supplies is as follows:

- The supply of the giftshop will be subject to GST but at 0% because the compulsory zero-rating rules will apply. This is because the parties are both GST-registered and the recipient is intending to continue to make taxable supplies.
- The supply of the flat is not subject to GST as it does not form part of Rita's taxable activity because it is an exempt activity of supplying residential accommodation.

Draft items produced by the Tax Counsel Office represent the preliminary, though considered, views of the Commissioner of Inland Revenue.

In draft form these items may not be relied on by taxation officers, taxpayers, or practitioners. Only finalised items represent authoritative statements by Inland Revenue of its stance on the particular issues covered.

Send feedback to | Tukuna mai ngā whakahokinga kōrero ki
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