Inland Revenue
Te Tari Taake

INTERPRETATION STATEMENT: IS 20/04

GOODS AND SERVICES TAX: GST TREATMENT OF SHORT-STAY ACCOMMODATION

All legislative references are to the Goods and Services Tax Act 1985 unless otherwise stated.

Contents

Scope of this statement 2
Summary 2
Introduction 4
Identifying supplies of short-stay accommodation 5
Determining whether the supply of short-stay accommodation is an exempt supply 6
- Legislation 6
- Conclusion 9

Registering and calculating the GST threshold – entry into the GST regime 10
- Taxable activity 11
- Registration threshold – calculating the value of the supplies 15

Understanding the consequences of registration 20
- Output tax – overview 21
- Output tax on disposal of the property 21

Determining input tax 21
- Limitation on input tax deductions where property acquired from an associated person 22
- Calculation of input tax 23

Apportioning input tax on acquisition of goods and services 24
- Goods and services used for both taxable and non-taxable supplies 24
- Application to short-stay accommodation – where a host rents out a room (or rooms) in their home 25
- Summary of principles 26

Applying special rules for mixed-use assets (s 20G) 28
Making annual change of use adjustments 32
- Section 21B – adjustments for goods purchased before registration 34
- Section 21FB – total change of use and wash-up calculation 37
- Section 21E - concurrent uses of land 39
- Sections 21H and 21HB – transitional rules 40

Disposal of property 41
- GST output tax liability on property used to make taxable supplies 41
- Sale of property 43
- Compulsory zero-rating of land rules 45
- Deemed disposal on cancellation of registration 47

Scope of this statement

1. This statement discusses the GST treatment of short-stay accommodation provided on peer-to-peer websites such as Airbnb, Bookabach and Holiday Houses. In this statement, "short-stay accommodation" means accommodation provided for less than four weeks. The focus of this statement is where a host offers accommodation to the guest in either the host's home (and they might list a room, a sleepout or the entire property) or holiday home. The statement also covers short-stay accommodation provided in a property exclusively used for that purpose. Short-stay accommodation might be for the purposes of a holiday, to visit family or friends, to attend a special event or when travelling away on business. Short-stay accommodation is not intended to cover accommodation provided to residential tenants, boarders, students or care home residents.

Summary

2. The statement approaches GST from the perspective of someone considering providing short-stay accommodation for the first time. The statement first confirms the supply of short-stay accommodation by a registered person is not an exempt supply (meaning it is potentially subject to GST). It then discusses:
   - the requirements for registration;
   - the main consequences of registration; and
   - what happens when the property is sold or the short-stay accommodation activity ceases.

3. The supply of accommodation in a dwelling is one of the few exceptions to the broad base coverage of GST. For a property to be a "dwelling", the guest must use the property as their principal place of residence and they will usually have rights of quiet enjoyment. However, the types of short-stay accommodation addressed in this statement will not be a guest's principal place of residence nor will they have a right of quiet enjoyment. Consequently, if the host is a registered person, the supply of short-stay accommodation will be subject to GST.

4. To register for GST, it is necessary to first have a taxable activity. Determining whether a taxable activity is being carried on is a question of fact. For most hosts, the crucial question is whether the short-stay accommodation activity is carried on continuously or regularly. Occupancy is a key (but not determining) factor, and regular paying guests will suggest a taxable activity. Providing occasional or intermittent short-stay accommodation, for instance renting a room for a one-off sporting event, will not be sufficient to establish a taxable activity.

5. A person making taxable supplies in the course of a taxable activity becomes liable to register for GST under s 51. The Act provides for compulsory registration for those making taxable supplies exceeding $60,000 in any 12-month period. Hosts making supplies under the $60,000 threshold may voluntarily register for GST.

6. When a person is registered for GST, they must file a GST return for each return period. The GST charged on a registered person's taxable supplies is referred to as output tax. GST that is charged on goods and services acquired by a registered person is called input tax. If a host registers for GST, they will have to account for GST output tax on the supply of short-stay accommodation. The amount of tax payable is calculated by deducting input tax from the amount of output tax.

7. Generally, a registered person may claim input tax deductions to the extent to which the goods or services are used for, or are available for use in, making taxable supplies. A full input tax deduction is allowed for goods or services that are used

(or intended to be used) solely for making taxable supplies (for example, advertising services or goods such as toiletries purchased solely for use by guests). On the other hand, no input tax deduction is allowed for a good or service that is intended to be used solely for making non-taxable supplies (for example, any goods or services purchased for private use by the host).

8. Where the relevant goods or services are to be used for making both taxable and exempt supplies (for example, the power bill for electricity used by both guests and the host), then the input tax able to be deducted must be apportioned based on use (or intended use).

9. If a property is a "mixed-use asset" (this is likely to include holiday homes used both privately and to earn income), s 20G contains a formula for apportionment and adjustments. This provision is based on the mixed-use asset rules in subpart DG of the Income Tax Act 2007. Put simply, the formula ignores periods where the property is empty when apportioning between taxable and non-taxable use.

10. Various adjustments may need to be made over the period of the taxable activity. The most likely adjustments for short-stay accommodation are as follows:

- An adjustment under ss 21 to 21I if the extent to which a good or service is used for making taxable supplies changes. Section 21 requires a registered person to ascertain at the end of an "adjustment period" whether an adjustment is required for any difference between the intended use and actual use.
- Section 21B allows a GST input tax deduction where goods acquired before registration are subsequently used in a taxable activity.
- Section 21FB provides for a wash-up calculation where there is a sustained change of use from mixed-use to total taxable or total non-taxable (but the registered person's taxable activity is ongoing). Rather than continue to make adjustments every year, the taxpayer can effectively get the full input tax deduction from acquisition (if 100% taxable use) or repay the GST input tax from acquisition (if 100% non-taxable use).
- Section 21H and 21HB are transitional provisions that may apply to properties purchased before 1 April 2011.

11. A disposal of a property used to make taxable supplies of short-stay accommodation has GST consequences. A sale of such a property will be in the course or furtherance of a taxable activity and subject to GST under s 8(1). GST output tax will be charged on the sale price. To the extent that a person has not claimed the full input tax deduction they can claim an adjustment under s 21F. GST input tax is claimed on the purchase price and GST output tax is charged on the sale price. Consequently, a net GST liability on property is likely because it usually appreciates in value (sometimes significantly).

12. There will also be a deemed disposal on cancellation of registration. This is most likely to occur where a host ceases their taxable activity of providing short-stay accommodation. The host must notify the Commissioner within 21 days of ceasing their taxable activity of providing short-stay accommodation. The Commissioner can also cancel a person's registration, if she is satisfied that they are not carrying on a taxable activity. A deemed supply of the property at open market value arises on deregistration. For a host this means paying GST output tax based on the value of their property when they cease their taxable activity. Where the property has been owned since before 1986 (when GST was introduced), the adjustment can be made at the lower of the cost of the property or its market value (s 10(8)).

13. This statement confirms "GST — Supply of Accommodation in Holiday Homes", *Public Information Bulletin* 160 (March 1987): 4 (PIB 160) no longer has any current application. The PIB item discussed the GST treatment of holiday homes but the analysis is no longer correct because of amendments to the definitions of the terms "dwelling" and "commercial dwelling" in the Act.

Introduction

14. This statement is part of a series of guidance addressing the tax implications of providing short-stay accommodation through peer-to-peer websites. The Commissioner published a Determination and five Questions We've Been Asked in *Tax Information Bulletin* vol 31, no 6 (July 2019):
    - "DET 19/02: Standard-cost household service for short-stay accommodation providers" (at 67);
    - "QB 19/05: What are my income tax obligations if I rent out my home or a separate dwelling on my property as short-stay accommodation?" (at 3);
    - "QB 19/06: What income tax rules apply if I have a dwelling that I sometimes rent out as short-stay accommodation and sometimes use myself?" (at 12);
    - "QB 19/07: How do the mixed-use asset income tax rules apply to a dwelling that I sometimes rent out as short-stay accommodation and sometimes use privately?" (at 16);
    - "QB 19/08: How do the standard income tax rules apply to a dwelling that I sometimes rent out as short-stay accommodation and sometimes use privately?" (at 22); and
    - "QB 19/09: Can I register for GST if I supply short-stay accommodation to guests in my home or holiday home?" (at 27).

15. This statement builds on the discussion in QB 19/09, which focuses on whether a host can register and some of the major consequences. This statement follows the lifecycle of a taxable activity of supplying short-stay accommodation. The statement addresses the issues sequentially:
    - identifying supplies of short-stay accommodation (from [17]);
    - determining whether the supply of short-stay accommodation is an exempt supply (from [23]);
    - registering and calculating the threshold for s 51 (from [45]), specifically:
        - the consequences of making other taxable supplies when calculating the threshold (for example, the self-employed plumber who also has a taxable activity as a short-stay accommodation host); and
        - supplies to associated persons (for example, where a host makes an "associated supply" to an "associated person" the Act deems this to be a supply at open market value);
    - understanding the consequences of registration (from [92]), specifically:
        - the need to file returns for a return period; and
        - output tax (including output tax on associated supplies);
    - determining input tax (from [96]):
        - limitation of input tax deductions where property acquired from an associated person; and
        - calculation of input tax on goods and services with "mixed" use;

- apportioning input tax on acquisition of goods and services when a property is used privately and for making taxable supplies, which, in most cases, will mean an apportionment based on a "time and space" calculation (from [114]);
- applying special rules for mixed-use assets such as holiday homes and baches (s 20G) (from [133]);
- making annual change of use adjustments required for property and specific adjustments under (from [141]):
  - s 21B – adjustments for goods acquired before registration;
  - s 21FB – a wash-up calculation for a change of use to total taxable or total non-taxable;
  - s 21E – adjustments for the concurrent use of land; and
  - ss 21H and 21HB – transitional provisions that may apply to the property used to make supplies of short-stay accommodation;
- disposal of property (from [182]):
  - disposal by way of sale, which includes the final adjustment on disposal where a person has not previously had a full input tax deduction (under s 21F) and when the compulsory zero-rating of land rules may apply; and
  - deemed disposal on cancellation of registration under s 52, which is most likely to occur where a host ceases their taxable activity.

16. Seventeen examples are included throughout this statement to illustrate the issues listed above. Examples 1, 2 and 4 are copied or adapted from QB 09/19, as they illustrate the points discussed in this statement. Example 8 is adapted from QB 19/05.

Identifying supplies of short-stay accommodation

17. A wide variety of different types of accommodation are listed on peer-to-peer websites (such as Bookabach and Airbnb). This statement covers accommodation that is:
    - provided for a period of less than four weeks; and
    - not the guest's main residence during the period in question.

18. As a result, this statement is not intended to apply to accommodation provided as residential letting, boarding services, student accommodation, respite care and care homes, as they are likely to fail one or both of the requirements.

19. Instead, the focus is on the types of short-stay accommodation used when on holiday, travelling for business, visiting friends or relatives, or spending time in another part of the country. Consistent with this, the statement uses the terms "host" and "guest" (rather than owner, landlord, tenant, renter and so on) as these labels seem most appropriate in the short-stay accommodation context.

20. The most common types of premises used to provide short-stay accommodation appear to be:
    - the host's home, which may occur in different ways:
      - one or more rooms in the host's home;
      - a self-contained unit on the host's property (for example, a sleep-out, cottage or converted garage);

  - the host's entire home for periods when the host is not occupying it;
- holiday homes or baches;
- serviced apartments;
- properties providing dedicated short-stay accommodation;
- farmstays; and
- bed and breakfasts.

21. Both the frequency of rental and the cost to the guest vary significantly from case to case. A correlation does not necessarily exist between frequency of rental and income derived (for example, a well-located apartment in a major city listed for a one-off event may make more in a week than an apartment in the suburbs of such a city makes in a whole year).

22. It will often be the owner of the property that is making the supplies of short-stay accommodation but that will not always be the case. By way of example, if a property is owned by trustees then depending on the particular arrangements it may be the trustees or beneficiaries who make the supplies of short-stay accommodation. For instance, if a property is held in trust but made available to the beneficiaries as their family home and the beneficiaries rent a room out on a peer-to-peer website then it may be the beneficiaries who are making the supplies. In this scenario where a room is being rented out in the family home it would be unusual to consider registering for GST. However, if the beneficiaries were carrying on a taxable activity and did register for GST, the property itself would not be part of the beneficiaries' taxable activity as it is owned by the trustees.

Determining whether the supply of short-stay accommodation is an exempt supply

23. When GST was introduced, one of the few exceptions to the broad-base coverage was the supply of residential accommodation. However, it was intended that short-term accommodation would be subject to GST. Broadly, this was achieved in the legislation by making the supply of accommodation by a GST-registered person in a "dwelling" an exempt supply and the supply of accommodation in a "commercial dwelling" a taxable supply.

24. Historically, there has been some uncertainty in applying the distinction, particularly to premises such as homestays and holiday homes. The Taxation (GST and Remedial Matters) Act 2010 addressed this and narrowed the definition of "dwelling" by moving away from the functional nature of the premises to focus on the nature of the occupation by the recipient of the supply. At the same time, the definition of "commercial dwelling" was widened by specifically including homestays, farmstays, and bed and breakfast establishments. Inland Revenue considers that the amendments to the legislation mean that short-stay accommodation will not be an exempt supply of accommodation in a dwelling.

Legislation

25. Supplies of accommodation in a "dwelling" are exempt from GST under s 14(1)(c). "Dwelling" is defined in s 2 as follows:

> **dwelling, for a person,—**
>
> (a) means premises, as defined in section 2 of the Residential Tenancies Act 1986,—
>
> (i) that the person occupies, or that it can reasonably be foreseen that the person will occupy, as their principal place of residence; and

(ii) in relation to which the person has quiet enjoyment, as that term is used in section 38 of the Residential Tenancies Act 1986; and

(b) includes—

(i) accommodation provided to a person who is occupying the same premises, or part of the same premises, as the supplier of the accommodation and who meets the requirements of paragraph (a)(i):

(ii) any appurtenances belonging to or used with the premises:

(iii) despite paragraph (a)(ii), a residential unit in a retirement village or rest home when the consideration paid or payable for the supply of accommodation in the unit is for the right to occupy the unit; and

(c) excludes a commercial dwelling

26. In brief, a "dwelling" is premises that a person occupies as their principal place of residence and for which they have quiet enjoyment, but does not include a commercial dwelling.

27. As noted above, the definition of "dwelling" was restricted with effect from 1 April 2011 by amendments in the Taxation (GST and Remedial Matters) Act 2010. The definition of "principal place of residence" was also introduced at this time. The intention was to restrict the definition of "dwelling" by referring to the **nature of the supply rather the nature of the premises**. Dwelling is defined "for a person" as meaning accommodation that the person occupies as their principal place of residence, and the recipient will usually have quiet enjoyment (there is an exception where the person lives with their landlord).

28. For there to be an exempt supply of accommodation in a dwelling to a person, the:

- accommodation or dwelling must be premises (as defined in the Residential Tenancies Act 1986);
- accommodation must be occupied as the person's principal place of residence;
- person must have quiet enjoyment of the accommodation or dwelling; and
- accommodation or dwelling must not be a commercial dwelling.

Whether the accommodation are "premises" as defined in the Residential Tenancies Act 1986

29. The word "premises" is widely defined in s 2 of the Residential Tenancies Act 1986. All the types of accommodation listed at [20] are "premises".

Principal place of residence

30. The definition of "dwelling" requires that the person occupies, or that it can reasonably be foreseen that the person will occupy, the premises as their principal place of residence. "Principal place of residence" in turn is defined as a place that a person occupies as their main residence for the period to which the agreement for the supply of accommodation relates.

31. "Principal place of residence" is defined in s 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

32. The term "short-stay accommodation" as used in this statement means accommodation provided for less than four weeks and that is not the person's principal place of residence. This is consistent with most accommodation listed on websites such as Airbnb or Bookabach. Accordingly, by its very nature, short-stay accommodation will not be the guest's principal place of residence. On this basis

alone, the supply of short-stay accommodation will not be of accommodation in a "dwelling".

Quiet enjoyment

33. If the premises are not the person's principal place of residence, there will not be an exempt supply of accommodation in a dwelling. Therefore, it is unnecessary to consider whether the guests also have quiet enjoyment. However, it is highly unlikely that a guest would have quiet enjoyment as that term is used in s 38 of the Residential Tenancies Act 1986.

Commercial dwellings

34. The supply of short-stay accommodation will not be the supply of accommodation in a dwelling because the premises will not be the guest's main place of residence, and it seems unlikely that the guest will have quiet enjoyment. Consequently, the supply of short-stay accommodation is subject to GST and is not exempt. Whether it is a supply of accommodation in a "commercial dwelling" does not need to be determined to answer this question.

35. However, the statement briefly addresses this issue because the 2011 amendments to the definitions of "dwelling" and "commercial dwelling" (discussed at [27]) have an impact on old *Public Information Bulletin* items.

36. As discussed above, "dwelling" is defined by reference to the supply rather than the function of the premises. The drafting suggests that the perspective of the recipient of the supply is also relevant when it comes to commercial dwellings:

> **dwelling**, for a person,—
>
> ...
>
> (c) excludes a commercial dwelling

37. This appears to initially put the emphasis on what a "commercial dwelling" is from the perspective of the person receiving the supply. However, the definition of "commercial dwelling" in s 2 focuses on the function of the premises:

> **commercial dwelling**—
>
> (a) means—
>
> (i) a hotel, motel, homestay, farmstay, bed and breakfast establishment, inn, hostel, or boardinghouse:
>
> (ii) a serviced apartment managed or operated by a third party for which services in addition to the supply of accommodation are provided and in relation to which a resident does not have quiet enjoyment, as that term is used in section 38 of the Residential Tenancies Act 1986:
>
> (iii) a convalescent home, nursing home, rest home, or hospice:
>
> (iv) a camping ground:
>
> (v) premises of a similar kind to those referred to in subparagraphs (i) to (iv); and
>
> (b) excludes—
>
> (i) a hospital except to the extent to which the hospital is a residential establishment:
>
> (ii) a dwelling referred to in paragraph (b)(iii) of the definition of dwelling

38. None of the types of accommodation in para (a)(i) or para (a)(ii) are defined so all have their ordinary meaning. "Homestay", "farmstay" and "bed and breakfast establishment" were all added to para (a)(i) by the Taxation (GST and Remedial Matters) Act 2010 to broaden the definition of "commercial dwelling". These types

of premises usually involve the use of the host's home in the provision of short-stay accommodation, so are potentially relevant to the types of accommodation dealt with in this statement.

Old Public Information Bulletin items

39. "GST — Supply of Accommodation in Holiday Homes", *Public Information Bulletin* 160 (March 1987): 4 (PIB 160) discussed the GST treatment of holiday homes and caravan sites. This item was categorised as being under review following the review of the old PIB items. The analysis of whether holiday homes are "dwellings" or "commercial dwellings" is no longer correct because of the 2011 amendments to the definitions. Consequently, the item has no current application and will not be re-published.

40. The reference in the PIB item to "caravan sites" refers to the underlying site or berth and not the caravan itself (caravans were addressed in Question 116 in *Public Information Bulletin* Vol 158 (November 1986). PIB 160 stated:

> The rental or lease of caravan sites is taxable in full, for the first four weeks accommodation and at the rate of 60 percent of the charge thereafter. A site is a "commercial dwelling" and the special valuation provisions of section 10(6) will apply.

41. To the extent that the caravan site is on a camping ground (or a similar establishment), it is included in the definition of commercial dwelling and the special valuation provisions in s 10(6) will apply.

Conclusion

42. The supply of accommodation in a dwelling involves an assessment of the supply to the recipient rather than an enquiry into the function of the property. The definition of "dwelling" requires the person to occupy the premises as their principal place of residence and to have quiet enjoyment (as that term is used in the Residential Tenancies Act 1986). Where a person has a residential tenancy, these aspects will usually be present. However, short-stay accommodation will not be a person's principal place of residence. It is also unlikely that the host will grant rights that correspond to quiet enjoyment.

43. On this basis, the supply of short-stay accommodation will not be the supply of accommodation in a dwelling. This means short-stay accommodation will be subject to GST. Therefore, whether the premises are a "commercial dwelling" is relevant only to scenarios where there are long-term stays (stays in excess of four weeks), as the supplies of accommodation may be subject to a lower rate of GST.

44. Example 1 illustrates the circumstances in which a property can be a "dwelling". It is based on Example 4 from QB 19/09.

Example 1 – circumstances in which a property can be a "dwelling"

Baz has the opportunity to buy a house in Turangi. The house costs $400,000 but Baz reckons the local housing market is so strong that it will be worth $480,000 in a few years. He wants to either:

- Rent the property to residential tenants; or
- List the property as a holiday home on a website. He will use the property exclusively for providing short-stay accommodation. He believes the property will be popular year-round because of the proximity to the ski fields, the Tongariro Crossing and good fly-fishing spots.

Baz wants to know whether he can register for GST.

Residential tenants

If he rents the property to residential tenants, he cannot register for GST. The supply of accommodation in a dwelling is not a taxable supply. If rented to residential tenants, it is likely to be a supply of accommodation in a dwelling because it is the tenants' principal place of residence and they have quiet enjoyment under their residential tenancy.

Short-stay accommodation

The provision of short-stay accommodation (as that term is used in this statement) is a taxable supply. It will not be an exempt supply of accommodation in a dwelling because the house will not be the guest's principal place of residence and they will not have rights akin to quiet enjoyment.

Baz can register for GST provided he has a taxable activity of providing short-stay accommodation. Based on his research, Baz believes he can rent the property year-round. He estimates 120 nights of bookings per year at an average of $200 per night ($24,000 pa). If he proceeds with his plan Baz will have a taxable activity.

The value of supplies in any 12-month period will be well below the $60,000 threshold and so registration would be voluntary.

Registering and calculating the GST threshold – entry into the GST regime

45. The Act provides for both compulsory and voluntary registration. Section 51(1)(a)–(c) provides:

> **51 Persons making supplies in course of taxable activity to be registered**
>
> (1) Subject to this Act, every person who, on or after the 1st day of October 1986, carries on any **taxable activity** and is not registered, becomes liable to be registered—
>
> (a) At the end of any month where the total value of supplies made in New Zealand in that month and the 11 months immediately preceding that month in the course of carrying on all taxable activities has **exceeded $60,000** (or such larger amount as the Governor-General may, from time to time, by Order in Council declare):
>
> provided that a person does not become liable to be registered by virtue of this paragraph where the Commissioner is satisfied that the value of those supplies in the period of 12 months beginning on the day after the last day of the period referred to in the said paragraph will not exceed that amount:
>
> (b) At the commencement of any month where there are reasonable grounds for believing that the total value of the supplies to be made in New Zealand in that month and the 11 months immediately following that month will exceed the amount specified in paragraph (a) of this section:
>
> provided that any such person shall not become liable where the Commissioner is satisfied that that value will exceed that amount in that period solely as a consequence of—
>
> (c) any ending of, including a premature ending of, or any substantial and permanent reduction in the size or scale of, any taxable activity carried on by that person; … [Emphasis added]

46. Registration is compulsory for persons carrying on a taxable activity whose taxable supplies exceed the $60,000 threshold. Taxpayers who do not exceed the s 51(1) threshold for registration may choose to voluntarily register under s 51(3), if they satisfy the Commissioner that they are carrying on any taxable activity or intend to carry on a taxable activity from a specified date. Whether registration is voluntary or compulsory, there must be a taxable activity.

Taxable activity

47. GST is imposed by s 8(1):

> **8 Imposition of goods and services tax on supply**
>
> (1) Subject to this Act, a tax, to be known as goods and services tax, shall be charged in accordance with the provisions of this Act at the rate of 15 percent on the supply (but not including an exempt supply) in New Zealand of goods and services, on or after the 1st day of October 1986, by a registered person in the course or furtherance of a taxable activity carried on by that person, by reference to the value of that supply.

48. Taxable supplies are made by a registered person in the course or furtherance of a taxable activity carried on by the registered person. Given that a taxable activity is crucial to whether a person should be registered and entitled to claim input tax deductions, the term "taxable activity" is considered further.

49. Section 6(1)(a) defines "taxable activity":

> **6 Meaning of term taxable activity**
>
> (1) For the purposes of this Act, the term **taxable activity** means—
>
> (a) Any activity which is carried on continuously or regularly by any person, whether or not for a pecuniary profit, and involves or is intended to involve, in whole or in part, the supply of goods and services to any other person for a consideration; and includes any such activity carried on in the form of a business, trade, manufacture, profession, vocation, association, or club:

50. For a taxable activity under s 6(1)(a):

- there must be an activity;
- which is carried on continuously or regularly by a person; and
- that involves, or is intended to involve, supplies made to another person for a consideration.

51. Further the activity must not be an exempt supply, however this will not be a factor where a person is providing short-stay accommodation (see from [23]). In most cases, the issue will be whether they are carrying on their activity continuously or regularly.

Carried on continuously or regularly

52. To be a "taxable activity", the activity must be carried on continuously or regularly. In *Newman v CIR* (1995) 17 NZTC 12,097 (CA), Richardson J in the Court of Appeal considered the meaning of the words "carrying on" at [20]:

> "Carrying on" has been described as "the habitual pursuit of a course of conduct" *(Premier Automatic Ticket Issues Ltd v Federal Commissioner of Taxation* (1933) 50 CLR 268 at p 298); and as implying "a repetition of acts, and excluding the case of an association formed for doing one particular act which is never to be repeated" (*Smith v Anderson* (1880) 15 Ch D 247 at 277, 278).

53. Therefore, a taxpayer must be habitually pursuing a course of conduct or engaging in a repetition of acts to be carrying on that activity. Further guidance in determining the extent to which activities are or are not carried on continuously or regularly can be taken from the following case law.

54. In *Wakelin v CIR* (1997) 18 NZTC 13,182 (HC), Paterson J stated at [13]:

> The term "carried on continuously or regularly" as used in s 6(1) is to be given its ordinary meaning. An activity is therefore carried on continuously if it is carried on over a period or in a sequence uninterrupted in time or if it is connected. It is carried on regularly if it is carried on in accordance with a definite course or a uniform

> principle of action or conduct or if there is a proper correspondence between the elements of the activity (see the *New Shorter Oxford English Dictionary*).

55. In *Case N27* (1991) 13 NZTC 3,229 Judge Bathgate commented on the term "continuously" at [26]:

> "Continuously" does not obviously mean that the physical activity must be continuing all the time; again the analogy of a business is useful … Continuously, in this context means more that the activity **has not ceased in a permanent sense**, or has not been **interrupted in a significant way**, so that one could say with some certainty that it was not continuous. [Emphasis added]

56. Judge Bathgate also considered the word "regularly", stating at [27]:

> Whether an activity is carried on "regularly", involves similar considerations, in which the character and nature of the activity would be of importance in determining whether the activity carried on day by day, week by week, or month by month, may be said to be carried on regularly. Regular, in this context, I think means a steadiness or uniformity of action, or occurrence of action, so that it recurs or is repeated at fairly fixed times, or at generally uniform intervals, to be of a habitual nature and character.

57. The High Court also considered the meaning of "continuously or regularly" in *Allen Yachts Charters Ltd* v *CIR* (1994) 16 NZTC 11,270. The court found that the yacht-chartering activity in question was a taxable activity. Although it had not been carried on continuously, as there had been only 12 charters over a two-year period, it had been carried on regularly. This was the result given the number of occasions when there was a charter, and also the activities relating to the charter operation. For example, weekly marketing, availability of the boat, signs advertising its availability, and the continuation of these activities until the sale of the boat.

58. In an earlier Taxation Review Authority decision, *Case P73* (1992) 14 NZTC 4,489, which also dealt with a yacht-chartering business, Judge Barber found that no taxable activity had been carried on. The principal use of the yacht in question was racing and not chartering. Judge Barber found that the yacht company had intended to commence a chartering operation. However, that operation either never commenced, or did not commence to the necessary degree to be carried on "continuously or regularly". The following parts of the decision are relevant here (at 4,493–4,495):

> I am in no doubt that, at material times, … the objector was not carrying on a taxable activity. The objector intended to take all steps necessary to establish business as a charterer, but did not achieve that enterprise. Its activities were preparatory of that. … In fact, the objector did not get beyond development work for a business. As it dealt with survey aspects and promoted the availability of chartering, it became apparent that there was no market for the objector's enterprise.
>
> …
>
> I appreciate that sec 6(2) deems the inclusion of commencement (and termination) activity into the course of that activity. However, here there was never the establishment of any taxable activity. Commencement work can only be added to such an activity. By itself, it cannot amount to a taxable activity.
>
> …
>
> There were budgets and feasibility studies. … The objector incurred expenses in altering the vessel for passenger carrying purposes. … I also accept that chartering is a seasonal activity and that a boat can be taken out of the water for quite long periods for good reasons. I accept the intentions of the objector to commence chartering from the very outset of GST registration. … The chartering activity was never much more than a proposal and, certainly, was never continuous or regular as required by sec 6(1)(a).

59. In summary, for an activity to be carried on "regularly", it must be carried on at reasonably short intervals with a steadiness or uniformity of action. The activity

must recur or be repeated at fairly fixed times or generally uniform intervals to be of a habitual nature and character. An activity that is intermittent or occasional does not qualify (*Newman, Case N27, Allen Yacht Charters Ltd*). For an activity to be carried on "continuously", the activity must not have ceased in a permanent sense or have been interrupted in a significant way.

Involves or is intended to involve supplies

60. A "taxable activity" must also be an activity that "involves or is intended to involve" the supply of goods and services to another person for consideration. This is particularly relevant where a person has yet to make any supplies, for instance they are renovating a sleep-out that they intend to list on Airbnb. If the activity is intended to involve the supply of goods and services to another person for consideration, a taxpayer may have a taxable activity before any supplies have even been made. As Judge Bathgate stated in *Case N27* at [28]:

> The actual supply of goods and services is not necessary, so long as there is an intention to be involved in that supply.

61. In *Case N27*, Judge Bathgate noted that the phrase "involves or is intended to involve" introduces a subjective element into an otherwise objective provision but that generally actions speak louder than words, stating at [24]:

> In the statutory context of sec 6(1)(a) of the Act, with its reference to intention to involve, in whole or in part, the supply of goods and services to another person for a consideration, as part of an activity, to amount to a "taxable activity", would seem to include, in part at least, a consideration in some instances of the subjective element. **Generally, actions will speak louder than words, in determining the nature and character of an activity. Any stated intention can be tested against the objective realities of the case. Nevertheless the subjective element of intention may be a relevant circumstance**. I do not think it is wholly an objective test, as to whether or not there is in any particular circumstance a "taxable activity". It is a matter of fact and degree to be ascertained from all the evidence in any particular case. In *Calkin v C of IR* (1984) 6 NZTC 61,781 at p 61,785; [1984] 1 NZLR 440 at p 445, Cooke J said that, whether there was at relevant times an "undertaking", "... must ultimately be a question of fact, to be determined by 'the character and circumstances of that particular venture' ". [Emphasis added]

Taxable activity of supplying short-stay accommodation

62. Determining whether a taxable activity is being carried on, including whether the activity is being carried on continuously or regularly, will always be a question of fact and degree. It will involve an examination of all the circumstances of the particular case.

63. Much of the short-stay accommodation offered on peer-to-peer websites is based in the host's home or a holiday home. A person's home is inherently private in nature, and it can be difficult to distinguish what is private and what is related to the taxable activity. An examination of all the circumstances, including the domestic use of the premises, is required. The factor that will usually be the strongest indicator of a taxable activity is occupancy. If, for example, a person lets out their country cottage for 30 weekends over the course of a year, they will have a taxable activity. On the other hand, if the host lets the cottage only once a year for the annual A&P show then this would not be sufficient. The Commissioner cannot prescribe a minimum level of occupancy for there to be a taxable activity because this will depend on the circumstances.

64. Factors that **may be** relevant in the short-stay accommodation context (particularly where the premises are the host's home) are:

- the level of occupancy;

- the steps the host has taken to commence operating as a provider of short-stay accommodation; for example, undertaking feasibility studies, preparing business plans, advertising (nature, and extent), and approaching local authorities for necessary consent;
- whether the property is listed on various websites and at an appropriate price;
- the type, size, design and layout of the home or premises;
- the location of the home or premises;
- the extent and nature of any modifications to the property to enable the host to provide short-stay accommodation;
- the time dedicated or able to be dedicated by the host to the activity;
- the availability of accommodation over a sustained period;
- the steps the host has taken which demonstrate a continuing commitment to supply short-stay accommodation; for example, advertising and ongoing marketing activities; and
- future bookings.

65. The following Examples demonstrate aspects of what is required to have a taxable activity. Examples 2 and 4 are from QB 19/09.

Example 2 – one-off or occasional rentals

Luke and Betty own a three-bedroom house in a suburb of Lower Hutt. They were not that interested in renting out their home to strangers and they thought the income would be only modest as demand is limited for short-stay rentals in their suburban neighbourhood. That changed when they heard the area was set to host the Golden Oldies Commonwealth Games and that they could rent out their house for $1,000 a night. They listed their home on a website, and it was booked for 10 nights. They spent the time visiting their grandchildren in Australia.

Luke and Betty thought it worked so well that they plan to do something similar in two years' time during a rugby tournament. Apart from that, they have no intention of listing their property again.

One-off or occasional rentals (even though they can be lucrative) will not be a taxable activity as the activity does not satisfy the requirement of being continuous or regular. The rugby tournament is too far away for the activity to be continuous (and Luke and Betty's plans are too uncertain). Therefore, Luke and Betty do not have a taxable activity as this was essentially a one-off.

Example 3 – a new homestay

Peggy and Paddy are looking at buying a new home and have been told by the estate agent that they can claim some GST back from the purchase if they set up as a homestay. Peggy is intrigued as she has seen various news items about Airbnb homestays. She has heard that it is a growth industry and a way of meeting interesting people. Paddy, who is in full-time employment, agrees.

The couple investigate the possibility of selling their existing home and buying a bigger property. Despite the advice of their accountant to the contrary, they register for GST stating their taxable activity to be "homestay operators". They sell their present home and buy a three-bedroom home on the outskirts of a small town. They claim an input tax deduction on part of the purchase price of the house.

As soon as they move in, they advertise the homestay on a peer-to-peer website.

Peggy did not undertake any detailed research into the local market and did not take any significant steps to ascertain the viability of the activity. She initially compared prices on the internet and decided on a rental fee higher than for the other few local properties advertised as she considered her new house to be nicer. In the six months after registration they only had two paying guests who each stayed for a weekend.

Peggy feels that the guests she has had have been quite a lot of trouble, and so she leaves the rental price at its current level even though it appears too high. This is on the basis that the guests will need to make it worth her while when they stay. Around Christmas time she has a couple of enquiries so decides to block that period out as she does not want guests ruining her summer break. For good measure she also blocks out Easter. In the remainder of the year she only has one more guest who stays overnight.

With the benefit of hindsight they should not have registered for GST. While they were initially well intentioned, they undermined their stated intention by not making the property available. Considering the totality of the activity there does not appear to be a taxable activity that was carried on continuously or regularly. The Commissioner has the ability to cancel the registration if there is no taxable activity and can backdate this to the registration date if she is satisfied that they did not have a taxable activity. This effectively means repaying the original input tax claimed plus interest.

Example 4 – periods without supplies being made

Mai owns a small one-bedroom apartment in central Auckland. To help pay the mortgage she lets her entire apartment on Airbnb and goes and stays with her family in the Waikato. To make it worth her while she lists her apartment for $350 a night for a minimum of two nights. Charging a premium means she generally has guests only for weekends when there are big events on. She researches and targets big events like concerts, sports games and cultural events.

Over the Christmas and summer holidays her apartment is rented for 4 weekends. Mai also has guests for 2 weekends for big concerts during February and a further weekend in March when the Black Caps play Australia. Over the next 9 months there are periods when there are no big events and Mai has far fewer bookings. She has guests for only 6 weekends during those remaining 9 months.

Mai has a taxable activity. Although there are periods when she does not make supplies she has not stopped the activity in a permanent sense. The activity is also carried on regularly at (mostly) short intervals. There are "seasonal fluctuations" depending on what events are scheduled but the rental activity recurs and is habitual in nature and character. Further Mai dedicates a lot of time researching events coming up in Auckland and ensuring her pricing is profitable but competitive.

Registration threshold – calculating the value of the supplies

66. Section 51(1) provides for compulsory registration where supplies exceed $60,000 in a 12-month period. It also deals with the situation where there are reasonable grounds for believing supplies will exceed $60,000. This is the total amount the host receives (or will receive) for supplies before taking expenses into account. The total is for supplies by the host, so where a website charges the guest a fee for arranging the booking this is not included in the host's total supplies.

67. A person is not liable to register where they only exceed the threshold as a consequence of ending (or downsizing) their taxable activity or the replacement of a capital asset (s 51(1)(c) and (d)). In other words, it's the supplies of accommodation and not the one-off sale of a property that is used to calculate the

threshold. In calculating the value of supplies hosts should be aware that the calculation includes:

- supplies from all taxable activities – not just from the supply of short-stay accommodation; and
- deemed supplies that are valued at open market value – for example, where a trust owns a holiday home and allows the beneficiaries to stay there.

Supplies from all taxable activities

68. Section 51(1)(a) requires a person to register for GST if the value of supplies in a 12-month period, in the course of carrying on **all taxable activities**, exceeds $60,000. What this also means is that as long as the taxable activities in question collectively exceed $60,000 in annual supplies, the person must register for GST. It is not necessary that any particular taxable activity exceed $60,000 in annual supplies.

69. Alternatively, if a person is already GST registered for another taxable activity, the supply of short-stay accommodation (assuming it is part of a taxable activity) is subject to GST. *Case R38* (1994) 16 NZTC 6,212 involved a GST-registered solicitor who also had a deer farm. A block of land that was leased for grazing was sold, and the solicitor was assessed for GST on the sale of the block on the basis that the supply did not have to be in the course of the taxable activity for which he was registered.

70. Judge Barber agreed with that proposition:

> Under s.8 of the Act, GST is imposed on a supply made by a registered person in the course or furtherance of *"a"* taxable activity carried on by that person. As Judge Bathgate said in Case N43 at page 3,366:
>
> > "An act done for the purpose or object of furthering a taxable activity or achieving its goal can be to help achieve, or advance, and thus a 'furtherance' of a taxable activity, although it may not necessarily be always in the course of that taxable activity …
> >
> > "It should be noted that the indefinite article 'a' rather than the definite article 'the' precedes taxable activity in the Act, so that it is any taxable activity that may attract GST rather than only a particular kind of activity for which a person may be registered under the Act,"
>
> It is also useful to note that a taxable activity can be something less than a business but does not cover a hobby.

71. Judge Barber thought it was clear from s 51 that registration relates to the total value of supplies made in the course of carrying on all taxable activities. Arguments were made about whether a taxable activity was being carried on. Judge Barber considered the solicitor was carrying on the taxable activity of grazing or land investment or both, and he was carrying on a commercial activity and not merely a private recreational pursuit or hobby. That being the case, Judge Barber concluded:

> the objector was properly registered for GST as a solicitor at all material times and supplied the B block to Mr & Mrs B in the course of 'a' taxable activity. The supply did not need to be in the course of the taxable activity for which he was registered. That supply is therefore subject to GST under s.8.

72. An analogy can be made with any GST-registered person who, in addition to their main business, also rents out a room in their house through a peer-to-peer website. If the short-stay rental is sufficient to be a taxable activity, then the supply will be subject to GST. For instance, if the solicitor from *Case R38* had a taxable activity of providing short-stay accommodation from his solely owned home, then this (for the reasons discussed in the case) would be subject to GST.

73. However, this is the outcome only if the different taxable activities are being undertaken by **the same person**. If the solicitor jointly owns the home with his partner and they jointly supply short-stay accommodation, then his personal GST position has no relevance to that taxable activity. The reason for this is that the Act regards unincorporated bodies as separate registrable entities under s 57. Unincorporated bodies, including partnerships, joint ventures and trustees of a trust, are treated as separate entities for GST purposes, and supplies made and received by members of the unincorporated body are treated as made and received by the body.

74. In the absence of any formal arrangements, it may be unclear whether joint owners are acting as a partnership or in some other capacity, but ultimately it does not matter so long as the solicitor is not acting in his individual capacity when supplying short-stay accommodation. However, if the joint owners were to register for GST, they would need to consider whether they were undertaking the taxable activity as a partnership, as a joint venture or in some other capacity. There is an expectation that joint owners who have a turnover exceeding $60,000 or are otherwise registering for GST will have the appropriate formal arrangements in place.

75. In summary, taxpayers need to be aware that the threshold in s 51 applies to all taxable supplies made by that person. This has two impacts if a host makes taxable supplies of short-stay accommodation.

76. First, if an unregistered person has multiple taxable activities, the additional turnover from the short-stay accommodation may take them over the $60,000 threshold. For instance, if an unregistered person runs a small catering business and rents out their bach on a peer-to-peer website, they need to add together the supplies from both activities in calculating whether they exceed the $60,000 threshold.

77. Secondly, if a person is already GST registered in respect of their main business, then the supply of short-stay accommodation will be subject to GST. It is anticipated that this will be unusual in the context of short-stay accommodation. An example is where a farmer is GST registered for their farming business and also supplies farmstay accommodation. In this case the supply of farmstay accommodation (assuming it is sufficient to be a taxable activity) would be subject to GST.

78. Example 5 illustrates this further.

Example 5 – Supply of jointly owned short-stay accommodation

Leslie and Sarah jointly own a large apartment near Cuba Street in Wellington. Leslie works as a graphic designer and illustrator and is GST registered. Sarah is an employee at a local business and is not GST registered. They list a room in their apartment on a short-stay accommodation website. They have a basic partnership agreement and run the short-stay activity as a partnership.

Due to the excellent location, they have relatively high occupancy, although there is a limit on the amount they can charge for a room in a shared apartment. The partnership has a taxable activity and a turnover of $12,000 a year. They would prefer not to have to deal with GST but are unsure what impact Leslie's GST registration has.

Leslie's GST registration in her personal capacity is irrelevant to the taxable activity undertaken by the partnership. When calculating whether they exceed the $60,000 threshold, they count only taxable supplies made by the partnership and not supplies made by the partners in their individual capacity. They decide not to register for GST.

Subsequently Sarah decides to go travelling. They dissolve the partnership and the property is transferred to Leslie. Leslie continues to supply short-stay accommodation.

Leslie is now the person undertaking the taxable activity, so her GST registration is relevant. As Leslie is already GST registered, all supplies made by her in the course of a taxable activity attract GST. This means the supply of short-stay accommodation is now subject to GST and the apartment is now within the GST regime.

Deemed supplies – supplies to associated persons

79. When calculating the value of supplies for the threshold in s 51 it is necessary to include a supply that is an "associated supply" (defined as a supply to an "associated person") at the deemed open market value. In the short-stay accommodation context, this issue will arise where a holiday home is owned by one entity and used by an "associated person" who does not pay market rent; for example, when the trustees of a family trust own a holiday home and allow beneficiaries to stay free of charge. Associated supplies are valued at open market value and must be included in calculating the $60,000 threshold in s 51.

80. An associated supply is defined as a supply where the supplier and recipient are associated persons. Section 2A provides a definition of "associated persons". It is a wide definition, and hosts should consider whether there is an associated supply any time there is a supply below market value.

81. Section 10(3) values supplies to associated persons at open market value:

> (3) Subject to subsections (3A), (3AB), (3B), (3C), (3D) and (8), the consideration for a supply is treated as being the open market value of the supply if—
>
> (a) the supply is made by a person for no consideration or for a consideration that is less than the open market value of the supply; and
>
> (b) the supply is an associated supply; and
>
> (c) the supply is not a fringe benefit that the supplier has, or is deemed to have, provided or granted under the FBT rules of the Income Tax Act 2007 to the recipient, being a person employed under a contract of service by the supplier.

82. Where a supply is to associated persons for no consideration or less than open market value, then the supply is treated as being made for the open market value. This is subject to the exceptions in subss (3A), (3AB), (3B)–(3D) and (8), but these provisions will not commonly apply in the context of short-stay accommodation. Open market value is defined in s 4 with subs (2) most likely to be relevant to short-stay accommodation:

> (2) For the purposes of this Act, the open market value of any supply of goods and services at any date shall be the consideration in money which the supply of those goods and services would generally fetch if supplied in similar circumstances at that date in New Zealand, being a supply freely offered and made between persons who are not associated persons.

83. These provisions have arisen in several cases, most notably *CIR v Bayly* (1998) 18 NZTC 14,073 (CA). In this case, farming trusts had supplied farming land to associated entities for no rent (although they did pay some expenses, and the trustee landowners received a share of the profits). The trusts were not registered for GST (apart from one which engaged in an unrelated activity). Because the farming entities were making taxable supplies to associated entities, the value of the supplies was held to be the open market value. This meant the farming entities were liable to be registered for GST. On sale, the farming entities were deemed to be registered persons and the sales were subject to GST.

84. For short-stay accommodation, associated supplies will most commonly be an issue where a holiday home is provided for less than market value. Examples of this include where a:

- sole owner allows relatives (within the scope of s 2A(6)) to stay in the holiday home for no or reduced consideration;
- holiday home is owned by the trustees of a family trust and used for free by family members who are beneficiaries; and
- partnership owns a holiday home and the individual partners and their families use the property for free.

85. These uses of the short-stay accommodation property are potentially a supply for GST purposes. Because it is an associated supply, the Act deems it to occur at its open market value. Where deemed supplies result in turnover exceeding the s 51 threshold, the host is required to register for GST and to account for GST output tax on all taxable supplies, including on the supplies made to associated persons.

86. However, it should be rare for "associated supplies" to give rise to any issues in the context of the family bach or holiday home. For those hosts who are not GST registered, the deemed supplies are relevant only if they mean the threshold in s 51 is exceeded. It would be uncommon for such a property's turnover (even including associated supplies) to exceed $60,000 in a 12-month period. Further, it would be unusual for a host who is making regular associated supplies to then choose to voluntarily register because they would have to account for GST on all supplies including on those supplies.

87. Nonetheless, the Commissioner understands that unregistered owners of family holiday homes in popular tourist destinations are concerned that use by family members will mean they have to register for GST. Individual cases turn on their facts, but this would seem an unlikely outcome.

88. Where family holiday homes are only used by associated persons, there will not be a taxable activity because of the exclusion for private recreational pursuits or hobbies in s 6(3). This includes situations where the host uses the holiday home at the same time as friends or family. For instance, if a couple own the holiday home and their children and a grandparent accompany them on holiday then this use is also covered by the exclusion for private recreational pursuits or hobbies in s 6(3). In other cases, whether an activity is a private recreational pursuit is a question of fact decided on the totality of the evidence. However, an activity that might seem to be a business would not be one that was carried on essentially as a private recreational pursuit or hobby (*Case N27* (1991) 13 NZTC 3,229).

89. If there is a taxable activity (for instance the property is also continuously or regularly rented through a peer-to-peer website) then the associated supplies need to be identified. This will involve determining how the property is owned, whether by a company, trust, individual, partnership, joint venture or an unincorporated body of persons. Determining the relevant entity is necessary because the s 2A definition of "associated persons" applies differently for different entities.

90. Another factor to consider is whether the supply to the associated person is the same as the supply being made to third parties via peer-to-peer websites. If the supply is different (eg, the associated person has to bring their own linen and do their own cleaning or it's a longer term stay) then the open market value of that supply may be different to the open market value of a supply via the peer-to-peer website.

91. There a number of considerations, but associated supplies of a family holiday home appear unlikely to result in compulsory registration unless the property is regularly

used in a business-like way and has a significant level of turnover. Examples 6 and 7 illustrate these points.

Example 6 – supplies to associated persons

Kevin and Sally have owned a large holiday home at Foxton Beach for many years. Kevin and Sally use the property regularly, sometimes alone, and sometimes with Sally's elderly mother or with some of the grandchildren. Several times a year their daughters, Rosie and Sophie, use the property with their families. Sally's sister Gina also uses the property at least once a year. Kevin and Sally do not charge family to use the property, although Rosie and Sophie generally leave them a bottle of wine and Gina often gives them some money for power.

Over the years Kevin and Sally have occasionally rented the property to other people. In most cases their guests are repeat guests, acquaintances or "friends of friends". On average they rent the house out every year for 3 or 4 weekends and the occasional mid-week stay. They charge $150 a night but this is lower than similar properties that charge on average $200 a night.

One of Kevin's friends told him he should stop renting the property because IRD would make them register for GST. He says this is because IRD treats all the use by family as being at the open market rental value. Kevin and Sally are not registered for another taxable activity and are worried because they know very little about GST and do not want their family holiday home to be subject to GST.

Kevin and Sally should not be concerned. Kevin and Sally do not have a taxable activity because their use of the property is a private recreational pursuit. It is not used in a business-like way, they put no time or effort into seeking out paying guests and the financial returns from the few guests they do have are insignificant against the cost of the property. Considered in its totality, their activity is the private recreational use of a family holiday home and a private recreational pursuit under s 6(3) cannot be a continuous or regular taxable activity under s 6(1). For the avoidance of doubt, even if they had a taxable activity the value of supplies would be below the threshold for compulsory registration.

Example 7 – supplies to associated persons

The Smith and Jones Family Trust owns a large modern holiday home in the South Island. The holiday home is advertised on a website for $600 a night. The holiday home is rented out for most of January and is also popular in ski season. In total, it is rented out for 80 nights a year. The total income from taxable supplies is $48,000. Based on these supplies alone, the trustees would not have to register for GST.

However, during the year, some family members use the holiday home. On each occasion, the family members are beneficiaries or relatives of beneficiaries, so are "associated persons". They stay for a week at Christmas and a week in the school holidays. Family members also stay on occasional weekends when there are no other bookings. In total, family members stay 28 nights a year for which they do not pay rent to the trustees. The open market value of the supplies to associated persons is 28 x $600 = $16,800. The total value of taxable supplies is $64,800 and the trust must register for GST under s 51 and any supplies of accommodation will be subject to GST.

Understanding the consequences of registration

92. When a person is registered for GST, they must file a GST return for each return period. Section 20 prescribes the calculation of tax payable by every registered

person in a taxable period. Section 20(3) provides that the amount of tax payable is calculated by deducting input tax from the amount of output tax payable.

Output tax – overview

93. Section 8(1) imposes GST on the supply of goods and services by a registered person in the course or furtherance of a taxable activity carried on by that person. GST is charged on the value of that supply. In most cases the value of the supply will be the amount of money paid for the supply (s 10(2)).

94. The two relevant exceptions are supplies to associated persons and the deemed supply of the property on cancellation of registration. In most cases, those supplies will be valued at the open market value (ss 10(3) and 10(7A)). These deeming provisions mean there may be a liability for output tax even though no consideration was received. For instance, where a registered host makes supplies of short-stay accommodation to an associated person free of charge there is still a GST output tax liability calculated on the open market value of the supplies.

Output tax on disposal of the property

95. In addition to paying GST output tax on supplies of short-stay accommodation, hosts will face a potential GST output tax liability under s 8(1) on sale of the property or a deemed supply of the property following cessation of registration. Case law supports the view that "in the course or furtherance of a taxable activity" includes the one-off sale of capital items that a registered person has used in their taxable activity (*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)). This is discussed in more detail from [182].

Determining input tax

96. Input tax means tax charged on a supply of goods or services acquired by a person (s 3A(1)(a)). Input tax also arises on certain purchases of secondhand goods (s 3A(1)(c), (2) and (3)).

97. The general rule for determining how much input tax is deductible on acquisition of goods or services is set out in s 20(3C)(a):

> (3C) For the purposes of subsection (3), and if subsections (3D) or (3L) do not apply,—
>
> (a) input tax as defined in section 3A(1)(a) or (c) may be deducted to the extent to which the goods or services are used for, or are available for use in, making taxable supplies:

98. The inclusion of "available for use" in s 20(3C)(a) means input tax deductions can be claimed on the acquisition of a good or service when the good or service is able to be used for making taxable supplies or is not otherwise occupied in or held for making non-taxable supplies. This is consistent with the ordinary meaning of "available" (*Concise Oxford English Dictionary,* 12th ed, (Oxford University Press, New York, 2011*)*:

> **available adj.** 1 able to be used or obtained. 2 not otherwise occupied; free.

99. This means supplies purchased solely for use by guests give rise to an input tax deduction even though there may be an initial period of non-use. For instance, if shampoo is purchased in bulk for the guest shower, an input tax deduction is available on the bulk purchase notwithstanding much of the shampoo may remain initially unused.

Limitation on input tax deductions where property acquired from an associated person

100. This issue is relevant where the property used to make supplies of short-stay accommodation is acquired as a non-taxable supply from an "associated person". This might be the case where a home or holiday home is transferred between family members or where it has been transferred into an entity controlled or owned by the transferors. Where this occurs, the Act restricts the amount of GST input tax that can be claimed.

101. Section 3A(3)(a) (or s 3A(3C) for goods and services acquired pre-GST registration) effectively links the GST input tax claimable to the GST output tax on the original supply to the first associated person. Section 3A defines "input tax" where the supplier and recipient are associated persons. The key provision is s 3A(3)(a):

> (3) The amount of input tax is—
>
> (a) if the supplier and the recipient are associated persons, the lesser of—
>
> (i) the tax included in the original cost of the goods to the supplier; and
>
> (ii) the tax fraction of the purchase price; and
>
> (iii) the tax fraction of the open market value of the supply; …

102. The definition of associated persons under s 2A is very wide and covers many circumstances. Where property is transferred between people or entities that are connected, taxpayers need to consider whether there is an associated supply. Where s 3A(3)(a) applies, the effect is to restrict the GST input tax that can be claimed.

103. In most instances, GST input tax will be limited to that included in the original sale to the supplier. In many cases that will be nil. This is because, generally, the original sale to the associated supplier will be by a non-registered person of a residential property. Therefore, the sale will not be subject to GST.

Case law

104. In *Case 15/2014* (2014) 26 NZTC 22-025, the taxpayer company owned a substantial residential property that was used to supply short-stay accommodation. The property appears to have been a "high-end" holiday home, and every year from 2009 to 2012 the supplies of short-stay accommodation exceeded $60,000. The majority (99%) shareholder of the company originally purchased the property in his personal capacity in 2005 and spent a considerable amount of time and money renovating the property. He transferred the property to the company in 2007 for $1,100,000.

105. The company used the property to supply short-stay accommodation. These supplies were treated as exempt under a previous definition of "dwelling". Changes to the definition of "dwelling" from 1 April 2011 meant these supplies of short-stay accommodation were no longer exempt supplies of accommodation in a dwelling and effectively brought the property into the GST regime. Section 21HB (see from [175]) allows taxpayers affected by these changes to retrospectively claim the initial GST input tax that they were not able to claim at the time of acquisition. In 2012, the company registered for GST, with effect from 1 April 2011, and claimed a GST input tax deduction under s 21HB on the purchase of the property.

106. On a supply between associated persons, s 3A(3)(a) defines "input tax" as the lesser of the:

- tax included in the original cost of the goods to the supplier;
- tax fraction of the purchase price; or

- tax fraction of the open market value of the supply.

107. The majority shareholder and the company were "associated persons" under the Act. No GST was charged when the shareholder originally purchased the property. The Taxation Review Authority concluded the consequence of this is that the input tax deduction able to be claimed under s 21HB was limited to zero.

108. *Concepts 124 Ltd v CIR* [2014] NZHC 2,140 and *Staithes Drive Development Ltd v CIR* [2015] NZHC 2,593 are other examples of cases where the GST input tax was reduced as a result of a supply from an associated person.

Summary

109. Supplies of properties between associated persons are most likely to occur in the short-stay accommodation context where an unregistered person transfers their property into an entity they control so the entity can undertake the business of supplying short-stay accommodation (for example, similar to the facts in *Case 15/2014*). The other common scenario is where a family property is transferred between family members (or a family trust).

110. Where a property used to supply short-stay accommodation is transferred by way of non-taxable supply between associated persons, then the GST input tax will effectively be restricted to the GST paid when the seller originally purchased the property. In many cases, this will be zero because the property acquired to supply short-stay accommodation will often be a residential property acquired from an unregistered person.

Calculation of input tax

111. A full input tax deduction is allowed for goods or services that are intended to be used solely for making taxable supplies. Where a property is used exclusively to make taxable supplies (that is, it is never used privately), then full input tax deductions will be allowed for most expenditure and, potentially, on the purchase of the property. Goods and services that may be acquired solely for making taxable supplies of short-stay accommodation include:
    - advertising costs;
    - commissions or fees paid to an advertising platform or transaction facilitator (assuming GST is charged);
    - linen, toiletries and other supplies used solely by guests; and
    - any additional rates or insurance premiums payable because of the rental activity.

112. On the other hand, no input tax deduction is allowed for goods or services used or intended to be used solely for making non-taxable supplies (for example, any goods or services purchased solely for private use).

113. Where goods and services are wholly used for taxable or non-taxable purposes the treatment is relatively straightforward. However, where goods and services have both a taxable and non-taxable use, then the Act limits the input tax deduction to the extent to which that asset is used (or available for use) for taxable purposes. This is achieved in two steps:
    - First, apportion GST input tax on acquisition based on intended use (s 20(3C)-(3JB)).
    - Secondly, in subsequent years (subject to certain exemptions), adjust the deduction to the extent that actual use is different to intended use (ss 21, 21A–21C, 21D–21F, 21FB, 21G, 21H, 21HB–21HC, and 21I).

Apportioning input tax on acquisition of goods and services

114. Where there is both taxable and non-taxable use (for example, where a host rents out their home or a holiday home they also use privately), then the different elements need to be apportioned.

115. The method of apportionment is different depending on whether or not the property is a mixed-use asset.

- If you are unsure whether you have a mixed-use asset, read "QB 19/06: What income tax rules apply if I have a dwelling that I sometimes rent out as short-stay accommodation and sometimes use myself?", *Tax Information Bulletin* Vol 31, No 6 (July 2019): 12.
- If you have a mixed-use asset, see from [133].

Goods and services used for both taxable and non-taxable supplies

116. Where the relevant goods or services are to be used for making both taxable and exempt supplies (for example, a rates bill), then a person must estimate at the time of acquisition how they intend to use the goods or services, choosing a determination method that provides a fair and reasonable result.

117. The method used to calculate the amount that may be deducted as input tax under the general rule in s 20(3C) is set out in s 20(3G):

> (3G) In determining the extent to which goods or services are used for making taxable supplies, a person must estimate at the time of acquisition how they intend to use the goods or services, choosing a determination method that provides a fair and reasonable result. The determination is expressed as a percentage of the total use.

118. In s 20(3G), the intended use on acquisition is identified by:

- estimating at the time of acquisition how the person intends to use the goods or services; and
- choosing a determination method that provides a fair and reasonable result (with the determination expressed as a percentage of the total use).

119. The Commissioner's view of the meaning of "intended use" and "fair and reasonable" are discussed in "Interpretation Statement – IS 15/02: Goods and Services Tax – GST and Retirement Villages", *Tax Information Bulletin* Vol 27, No 11 (December 2015): 6.

120. In the context of short-stay accommodation, intended use when acquiring the property equates to the extent to which the property will be used to provide short-stay accommodation. This will generally be determined using the same time and space approach adopted for income tax (see "QB 19/05: What are my income tax obligations if I rent out my home or a separate dwelling on my property as short-stay accommodation?", *Tax Information Bulletin* Vol 31, No 6 (July 2019): 3).

121. Once a person has identified the intended use, they can calculate the amount of input tax under s 20(3H) and (3I) by multiplying the total inputs by the percentage of intended use. This does not apply in all cases; for example, mixed-use assets use the formula in s 20G.

122. The calculation method for input tax is set out in s 20(3H) and (3I):

> (3H) The extent to which a deduction for input tax is allowed is calculated using the formula—
>
> full input tax deduction × percentage intended use.
>
> (3I) In the formula in subsection (3H),—

(a) **full input tax deduction** is the total amount of input tax on the supply:

(b) **percentage intended use** has the meaning set out in section 21G(1)(b).

123. Section 21G(1)(b) provides:

> **21G Definitions and requirements for apportioned supplies and adjustment periods**
>
> (1) For the purposes of this section and sections 8(4B)(b), 9(2)(h), 20(3H), 20G, 21 to 21F, and 21H,—
>
> ...
>
> (b) **percentage intended use**, for a registered person, means the extent to which the goods or services are intended to be used by the person for making taxable supplies, estimated at the time of acquisition under section 20(3G) and expressed as a percentage of total use:

124. The above discussion can be summarised as follows:

- A purchaser can deduct input tax on the acquisition of goods or services to the extent to which the goods or services are used for, or are available for use in, making taxable supplies: s 20(3C).
- In determining the extent to which goods or services are used for making taxable supplies, a person must estimate, at the time of acquisition, how they intend to use the goods or services, choosing a determination method that provides a fair and reasonable result: s 20(3G).
- The estimated intended taxable use of the goods or services determines the proportion of the input tax that can be deducted: s 20(3H) and (3I).

Application to short-stay accommodation – where a host rents out a room (or rooms) in their home

125. Where a host rents out a room (or rooms) in their home, it is necessary to identify the extent to which the property is used (or available for use) in making taxable supplies. This will usually be done by identifying the time the property is used to make taxable supplies and the space used to make taxable supplies. The same method is used to calculate income tax deductions and QB 19/05 includes a discussion and examples of time and space calculations.

126. The "space" part of the calculation is generally based on the floor area of the house. It will generally comprise two aspects – the areas that the guest has exclusive use of and the common areas that the guest is permitted to use. Both areas are expressed as a proportion of the total floor area of the house. This part of the calculation is usually straightforward. Where a host rents out the entire property, it is unnecessary to work out the "space", as the guest will have 100% use of the property while they are there.

127. As with "space", different considerations apply for determining "time" depending on whether the area is exclusively available for guests or a common area. In the GST context it is necessary to consider the **extent** to which the property is **used, or available for use**, in making taxable supplies. Input tax deductions are available only "to the extent" that the property is used or available for use in making taxable supplies. If a bedroom is wholly put to non-taxable use (for example, it is the host's own bedroom), then, as a matter of practicality, there is no extent to which the bedroom can be used for, or available for use in, making taxable supplies.

128. Section 20(3C)(a) first addresses actual use, which is consistent with the principle of linking input tax deductions to use. "Availability" is usually relevant only where the property (or part of the property) is unused. If the property in question is a privately owned and occupied home, there is an expectation that it is being used

privately and expenditure will be private expenditure if the property (or part of it) is not rented out. QB 19/05 discusses when a privately owned and occupied home will be genuinely available for guests and unavailable to the host and their family. The host would need to demonstrate:

- The space is not used at all by the host, including for storage.
- It is essentially not used as part of the host's home.

129. For common areas in a host's home there is always an element of private use. This means the area is not 100% available for making taxable supplies. With common areas, it is often impossible or impractical to identify actual use. Where actual use of common areas cannot be identified, Inland Revenue's approach is to accept an apportionment of 50% between private and income-earning use for periods where there is dual use. A 50% figure will not be appropriate to every person's circumstances, but in many cases it will be a fair and reasonable starting point for calculating the use of common areas that have both taxable and non-taxable uses.

130. Where there is taxable use and non-taxable use it may be impossible calculate the "time and space" use of a property's curtilage. However, when a person claims a GST input tax deduction on a property, they will do so on the full value of the property, not just the buildings and improvements. In the absence of any better alternative, a fair and reasonable starting point will be to apply the percentage use of the dwelling to the whole property, including the curtilage. A separate calculation for curtilage should be considered where it has a noticeable impact on the use calculation (for example, if a significant part of the curtilage such as a swimming pool or tennis court is solely for guest use or private use).

Summary of principles

131. In summary, the principles for calculating the percentage intended use where a host rents their home or part of their property (for mixed-use assets, see from [133]) are as follows:

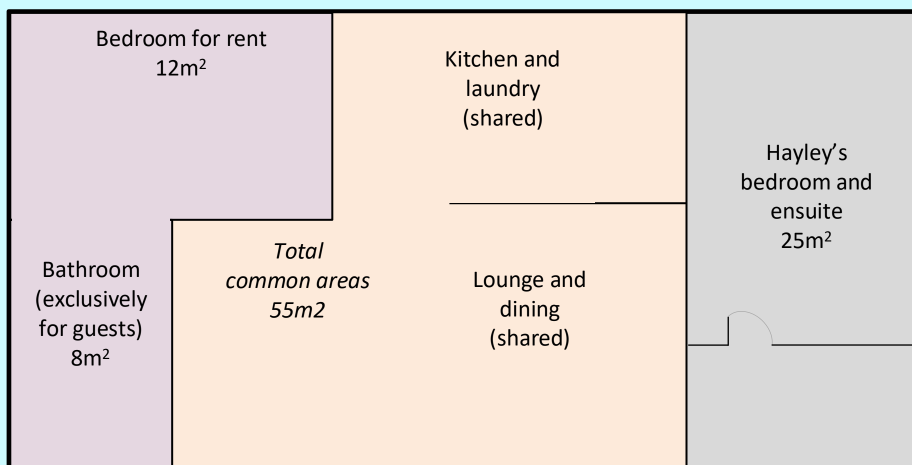
- Apportionment should be on a time and space basis or another basis that provides a fair and reasonable apportionment.
- "Space" is calculated by reference to the floor area that the guest has exclusive use of as a proportion of the total floor area of the house.
- Where a host rents out the entire property, it is unnecessary to work out the "space" as the guest will have 100% use of the property while they are there.
- "Time" should be calculated based on the extent to which the property is used, or is available to be used, in making taxable supplies.
    - "Time" should be based on use (for example, when is the room used privately by the host and when is it rented out to a guest and being used to make taxable supplies?).
    - If the property is a privately owned and occupied home, there is an expectation that it is being used privately if the property (or part of it) is not rented out.
    - When a property is unused but is available for use as short-stay accommodation, then this should be counted as taxable use when calculating the "time" element.
- For common areas, the starting point is a 50% apportionment for "space". "Time" should be calculated based on actual use. The objective is to determine an apportionment that is fair and reasonable.

- A separate calculation for curtilage should be considered where it has a noticeable impact on the use calculation; otherwise the percentage use of the dwelling may be applied to the whole property, including the curtilage.

132. Examples 8–10 illustrate apportionment calculations.

Example 8 –apportionment calculation

Hayley is buying a two-bedroom property in Queenstown for $600,000. She intends to rent out the second bedroom for short-stay accommodation through a peer-to-peer platform. She expects a high level of occupancy and will mostly use the second bedroom as a short-stay rental. This means the room will be listed online and she will not use it privately except for a month when a friend is visiting from overseas. The guests will also be able to use some common areas – the lounge room, dining room, kitchen, laundry and main bathroom. Based on her research, Hayley believes she can rent out the room for 180 nights during the year. The floor areas of the different parts of Hayley's property are shown in the diagram below.



Hayley is considering registering for GST. She wants to know what percentage of GST input tax she can claim on the purchase of the property. In claiming Hayley should apportion her use on the following basis:

$20m^2$	Area exclusively used by guests – 100% for the days used or available to use
$55m^2$	Common areas – 50% for days someone is renting the bedroom
$25m^2$	Private area – 0%

The areas **exclusively used or available to use** by guests are $20m^2$ out of the total $100m^2$ floor area of the property, and are 100% deductible for the 335 days out of 365 days in the year that the room will be used, or available for use, by guests:

$$\frac{20}{100} \times \frac{335}{365} \times 100 = 18.36\%$$

The **common areas**, used by Hayley and guests, are $55m^2$ out of the total $100m^2$ floor area, and are 50% deductible for the 180 out of 365 days in the year that the room is rented out:

$$\frac{55}{100} \times \frac{180}{365} \times 50 = 13.56\%$$

Adding these figures (18.36% and 13.56%) together, Hayley calculates her percentage intended use as 31.92%. The full GST input tax deduction is:

3/23 x $600,000 = $78,260.87

The GST input tax claimable on the purchase is:

$78,260.87 x 31.92% = $24,980.87

Example 9 – apportionment calculation

Len is a short-stay accommodation entrepreneur. He owns a number of properties in the Coromandel and an apartment in Auckland that he rents on peer-to-peer websites. Len is GST registered.

Len wants to buy a large five-bedroom home in the Coromandel for $800,000. Len is considering using the property in his short-stay business as it is the sort of property that could make a lot of money during the peak Christmas and January summer period. Len wants to know what GST input tax he could claim if he was to use his new home to make taxable supplies of short-stay accommodation.

Len estimates that he will rent his house out for 40 days. During this time, he will stay in one of his other properties or visit family. Len wants to know what percentage of GST input tax he can claim.

Len estimates that over a year he will have 40 days of rental and 325 days of private use. This equates to 10.96% of taxable use. The full GST input tax deduction is:

3/23 x $800,000 = $104,347.83

The GST input tax claimable on the purchase is:

$104,347.83 x 10.96% = $11,436.52

If Len chooses to use the property in his taxable activity, he must charge GST on the supplies of accommodation and file returns. For the property, he will need to undertake an annual calculation to work out whether he needs to make an adjustment. If the actual use is different to intended use, then Len will have to make an adjustment (assuming it amounts to more than $1,000). If Len stops using the property to provide short-stay accommodation or if he sells the property, then he must account for GST output tax on the property.

Example 10 – apportionment calculation

Mai (see Example 4) wants to know what percentage of GST she could claim if she registers for GST. She can claim the full GST on any goods or services used exclusively for her taxable activity of supplying short-stay accommodation. For example, toiletries solely for use by guests. The GST input tax deduction for goods and services used both privately and for making taxable supplies (for example, the rates bill) must be apportioned. Mai could also claim a proportion of GST from the cost of her apartment. As Mai is renting out the entire apartment, the calculation is based solely on time.

The apartment is rented out for 36 nights per year = 9.9%.

Mai can claim 9.9% of GST on goods and services with mixed use.

Mai decides not to register as the administrative and compliance burden outweighs the modest amount of GST input tax she could claim back.

Applying special rules for mixed-use assets (s 20G)

133. There are special rules for apportioning input tax deductions for mixed-use assets (MUAs). These rules apply on both the initial acquisition and subsequent adjustments (ss 20(3)(hb) and (3JB) and 20G).

134. MUAs have their own regime in the Act for calculating the GST input tax able to be deducted. Section 20G refers to the definition of a MUA in s DG 3 of the Income Tax Act 2007. For a property to be a MUA it must have an income-earning use and a private use (which is not minor) and not be used for at least 62 days a year.

135. Holiday homes and baches listed on peer-to-peer websites will commonly be MUAs. Where there are two properties on a single property title, one of the properties can be an "asset" for the purposes of the MUA rules. For instance, if a host rents out a separate cottage on the same title as their main home (used 100% privately) the cottage can still be a MUA (on disposal, s 5(15) would also deem two separate supplies in this scenario). Where a person's own home is used to supply short-stay accommodation it is less likely to satisfy the criterion of being not in use for 62 days a year.

136. To identify whether they have a MUA and for an overview of how the MUA rules apply for income tax, hosts should read QB 19/06 and QB 19/07 "How do the mixed-use asset income tax rules apply to a dwelling that I sometimes rent out as short-stay accommodation and sometimes use privately?", *Tax Information Bulletin* Vol 31, No 6 (July 2019): 16.

137. Where a host has a MUA, s 20G provides the formula for calculating GST input tax deductions for mixed use assets:

> (1) A registered person who uses an asset described in section DG 3 of the Income Tax Act 2007 for making taxable supplies has a deduction under section 20(3)(hb) of an amount calculated using the formula—
>
> input tax for asset × total income-earning days ÷ (total income-earning days + total private days).
>
> (2) In the formula,—
>
> (a) **input tax for asset** is the input tax on expenditure that the person incurs in relation to the use of the asset, other than expenditure that is—
>
> (i) related solely to the taxable use of the asset ; or
>
> (ii) related solely to the non-taxable use of the asset:
>
> (b) **total income-earning days** is the total number of days in the period on which the person supplies the asset for use and derives consideration for the supply, whether at, above, or below market value as that term is defined in section DG 3(5) of that Act, including any days on which—
>
> (i) the use made of the asset is described in section DG 4(3) to (5) of that Act:
>
> (ii) the asset has become unavailable for use because another person who had earlier reserved the asset for their own use, subsequently did not take advantage of that reservation:
>
> (iii) a fringe benefit tax liability arises:
>
> (c) **total private days** is the total number of days in the period on which the asset is in active use as described in section DG 3(7) of that Act and the day is not an income-earning day as described in paragraph (b).
>
> (3) A unit of measurement of time other than days, whether relating to hours, or nights, or anything else is to be used in the formula and in subsection (2)(b) and (c), if the use of the unit provides a fair and reasonable result. For this purpose, the same unit must be used in relation to both total income-earning days and total private days.
>
> (4) The person must ascertain at the end of an adjustment period whether an adjustment is required to be made for any percentage difference in a supply of the asset for the period in relation to the actual use of the asset for making taxable supplies.
>
> (5) If an adjustment is required, the person must, at the end of the adjustment period,—
>
> (a) identify the percentage actual use of the asset in accordance with the formula in subsection (1) for making taxable supplies; and
>
> (b) compare the percentage actual use with percentage intended use as described in section 20(3JB) or previous actual use, as applicable; and

> (c) if a percentage difference arises, make an adjustment for any percentage difference for the adjustment period, applying section 21D(3) to the resulting amount.
>
> (6) For the purposes of subsection (5), all expenditure incurred in relation to the use of the asset is aggregated and included in the relevant adjustment unless section 21(2)(c) or (d) applies to the aggregated amount.
>
> (7) Sections 8 and 21F apply to the disposal of the asset, treating the disposal as in the course or furtherance of a taxable activity.
>
> (8) For the purposes of this section, a registered person does not include a widely-held company, as that term is defined in section YA 1 of the Income Tax Act 2007.

138. Put simply, the MUA rules ignore the days when the property is unused. The definition of "total income-earning days" is the total number of days in the period in which the person supplies the asset for use and derives consideration for the supply, **whether at, above, or below market value**. In addition, the definition of "total private days" does not include any income-earning days. Consequently, the GST treatment is different from the income tax treatment because:

- supplies at "mate's rates" (below 80%) are treated as part of the total income earning days; and
- for "associated supplies" the host will be deemed to supply the property for a consideration equal to the open market value (s 10(3)), so the use will be part of the "total income earning days" rather than part of the "total private days".

139. This treatment differs from the income tax treatment discussed in QB 19/07 because rental nights at mates rates and rental to an associate would be treated as private use in that calculation. However, "associated person" in the Income Tax Act context is narrower than "associated person" for GST purposes. When the legislation was introduced, the differences between the Income Tax Act 2007 and GST Act were discussed in "Taxation (Livestock Valuation, Assets Expenditure, and Remedial Matters) Act 2013", *Tax Information Bulletin* Vol 25, No 9 (October 2013): 3 (at 21):

> The main differences between the income tax and GST definitions relate to:
>
> - **the treatment of supplies for less than market value**; and
> - what constitutes "expenditure".
>
> These differences reflect the different nature of the two taxes. In particular:
>
> - GST has always recognised the right of registered persons to make supplies for lower than market value to non-associates.
> - "Expenditure" is not a word generally used in a GST context, so the GST formula replaces "expenditure" with "input tax".
>
> ***Below market value supplies***
>
> The definition of "income-earning days" in the GST formula includes any day on which the person supplies the asset for use and derives consideration, irrespective of whether this supply is above, at or below market value. **This allows asset owners to make supplies at below market value if they chose to do so, with these days still being "income earning".** This is consistent with general GST principles.
>
> **It is important to note that, if the owner supplies the asset to an associated person, section 10(3) will generally require them to treat the supply as being made at market value. This will require output tax to be paid on the supply, but it will also be treated as "income-earning" for the purposes of calculating entitlement to input deductions.** Similarly, if the supply is a fringe-benefit, section 21I will apply to deem consideration to have been received — this will also be an income-earning day. [Emphasis added]

140. Example 11 illustrates the application of the special rules for mixed-use assets.

Example 11 – application of the special rules for mixed-use assets

Jayden and Ruby live in Christchurch. They are buying a holiday home in Queenstown for $900,000. They intend to list it permanently on Airbnb. Based on their research, they expect to achieve 120 nights of occupancy per year. Because of the location they can charge $700 a night, so gross rental over a 12-month period is $84,000 and they must register for GST. Jayden and Ruby will use the holiday home at various times throughout the year, staying an estimated 80 nights a year at the holiday home. The sale settles on 22 March 2019, and Jayden and Ruby register for GST from that date. They have a standard balance date. The house is a mixed-use asset (MUA).

In calculating their initial input tax deduction, they use the formula in s 20G:

- Total input tax: $117,391.30.
- Apportionment using s 20G: 120 income-earning days ÷ (200 total income-earning days + total private days) = 60%.
- Calculation of GST input tax apportionment: $117,391.30 x 60% = $70,434.78.

Jayden and Ruby should use the same percentage (60%) during their first adjustment period to claim for other input tax deductions related to both their taxable activity and private use.

Jayden and Ruby will need to revisit this calculation at the end of each adjustment period. They choose that their first adjustment period will end on 31 March 2020 under s 21G(2)(a)(ii). This means that at the end of this first adjustment period, they will have to use actual figures instead of estimated figures for the expected use of the property to make an adjustment under ss 21, 21A and 21C.

Under-estimation

For instance, say the property proves more popular than Jayden and Ruby expected and ends up being rented for 150 nights during the year. Despite their best intentions, Jayden and Ruby find that life proves busier than they expect and they only manage to stay at the property for 60 nights. On this basis, the actual figures would be as follows:

- Total input tax: $117,391.30.
- Apportionment using s 20G: 150 income-earning days ÷ (210 total income-earning days + total private days) = 71.43%.
- Under s 20G(5)(c), the percentage difference is actual use less intended use: 71.43% – 60% = 11.43%.

As the percentage difference is positive, a further input tax deduction can be claimed under s 21D of $117,391.30 x 11.43%. This means a further $13,417.83 can be claimed.

Over-estimation

On the other hand, if Jayden and Ruby over-estimated taxable use, then they may have to repay GST as GST output tax. For instance, say the property is less popular than expected, and they achieve only 80 nights rental and 80 nights private use. The actual figures would be:

- Total input tax: $117,391.30.
- Apportionment using s 20G: 80 income-earning days ÷ (160 total income-earning days + total private days) = 50%.
- Under s 20G(5)(c), the percentage difference is actual use less intended use = 50% – 60% = -10%.

As the percentage difference is negative, output tax needs to be returned: 10% of $117,391.30 = $11,739.13. This means a GST output tax of $11,739.13 needs to be returned.

Making annual change of use adjustments

141. Apportionments and adjustments work in tandem under the Act. Adjustments in effect ensure that the initially apportioned input claim (based on intended use) corresponds with the actual use.

142. The change of use adjustment provisions are in ss 21, 21A–21C, 21D–21F, 21FB, 21G, 21H, 21HB–21HC and 21I. Which provisions apply in any given situation depends on the circumstances. Where a property was acquired before 1 April 2011 the old apportionment rules may apply see [175].

143. Under the current rules the starting point is s 21, which requires a person to ascertain at the end of an "adjustment period" whether an adjustment is required for any difference between the intended use and actual use:

> (1) A registered person must ascertain at the end of an adjustment period whether an adjustment is required to be made for any percentage difference in a supply of goods or services for the period in relation to the actual use of those goods or services for making taxable supplies.
>
> (2) Despite subsection (1), the person is not permitted to make an adjustment if—
>
> (a) section 20(3D) applies to them:
>
> (ab) the person is a non-resident who has incurred input tax as defined in section 3A(1)(b) for goods and who—
>
> (i) exports the goods in or before the adjustment period; and
>
> (ii) disposes of the goods overseas in the adjustment period or holds the goods overseas at the end of the adjustment period:
>
> (b) the value of the goods or services, excluding GST, is $5,000 or less:
>
> (c) the difference between the percentage intended use on acquisition and the percentage actual use for the relevant adjustment period is less than 10 percentage points, but this paragraph does not apply if the adjustment amounts to more than $1,000:
>
> (d) the difference between the previous actual use calculated for the most recent adjustment period in which an adjustment was made and the percentage actual use for the relevant adjustment period is less than 10 percentage points, but this paragraph does not apply if the adjustment amounts to more than $1,000.

144. The exceptions in s 21(2)(b) to (d) mean adjustments will not be permitted for most day-to-day expenditure that has taxable and non-taxable elements (for example, a rates bill). However, where a GST input tax claim has been made on a property, the exceptions are less likely to apply.

145. The adjustment period (described in s 21G(2)) is a period at the end of which a person is required to estimate whether an adjustment for a subsequent change in use is required. The registered person may choose whether the first adjustment is the first or second balance date following acquisition. The calculation is then repeated annually on the subsequent balance dates.

146. Section 21G limits the number of adjustment periods, except where there is a supply of land (s 21G(5)). The practical effect of this is where a host claims initial GST input tax on a property, they **must perform an adjustment every year until they cease using the property in their taxable activity or sell the property**.

147. A person is not permitted to make an adjustment if they are below one of the thresholds in s 21(2)(b) to (d). Section 21A sets out when an adjustment is required:

> **21A When adjustments required**
>
> A registered person must, at the end of an adjustment period,—
>
> (a) identify the percentage actual use of the goods or services in making taxable supplies in the period; and
>
> (b) compare the percentage actual use with percentage intended use or previous actual use, as applicable; and
>
> (c) if a percentage difference arises and section 21(2)(c) or (d) does not apply, make an adjustment for any percentage difference for the adjustment period.

148. Section 21D calculates the adjustment by reference to the percentage difference (this is defined as the difference between intended use and actual use in s 21G):

> **21D Calculating amount of adjustment**
>
> (1) If a percentage difference arises for an adjustment period, a registered person must make a positive or negative adjustment for the period of an amount calculated using the formula—
>
> full input tax deduction × percentage difference.
>
> (2) In the formula,—
>
> (a) full input tax deduction is the total amount of input tax on the supply, including any nominal GST component chargeable under section 20(3J)(a)(i):
>
> (b) percentage difference has the meaning set out in section 21G(1)(c).
>
> (3) For the purposes of subsection (1) and section 20G,—
>
> (a) if the adjustment is positive and the percentage actual use is more than the person's percentage intended use or previous actual use, as applicable, the person is entitled to an additional deduction under section 20(3)(e) or (hb), as applicable:
>
> (b) if the adjustment is negative and the percentage actual taxable use is less than the person's percentage intended use or previous actual use, as applicable, the person must treat the amount as a positive amount of output tax and attribute it to a taxable period under section 20(4).

149. Subsection 21D(3)(b) provides that where the percentage actual use is less than the percentage intended use the amount must be treated as output tax and returned.

150. Example 12 illustrates a standard change of use adjustment.

Example 12 – standard change of use adjustments

Hayley (from Example 8) registered for GST but her first year was not quite as successful as she envisaged. She had intended to rent a room for 180 nights of the year. However, she only achieved 90 nights of rental. In addition, her friends from overseas stayed with her for two months, meaning that in total the room was available for only 305 nights during the year.

The actual use of areas dedicated to the rental activity is:

$$\frac{20}{100} \times \frac{305}{365} \times 100 = 16.71\%$$

And for the common areas:

$$\frac{55}{100} \times \frac{90}{365} \times 50 = 6.78\%$$

Hayley's actual use was 23.49%. Her intended use was 33.56%. Because the difference is more than 10 percentage points (and more than $1,000), Hayley must make an adjustment. The calculation based on actual use is:

$78,260.87 x 23.49% = $18,383.48

She had previously claimed $26,264.34 on the purchase price of the property based on the intended use. Therefore, Hayley needs to return an additional $7,880.86 as GST output tax.

151. This example demonstrates a standard change of use adjustment. However, there are a number of specific adjustment provisions in ss 21 – 21I that may apply depending on the circumstances. The next part of this statement discusses the following provisions:

- Section 21B – allows adjustments for goods purchased before the person became GST registered. Where a person, before registration, owns their property that they subsequently use to make taxable supplies of short-stay accommodation, then, subject to meeting the criteria in the section, they can claim a portion of GST input tax corresponding to their use.
- Section 21FB – is a wash-up calculation where a property is used privately and to make supplies of short-stay accommodation and there is a change to 100% taxable or 100% non-taxable use.
- Section 21E – allows taxpayers to make adjustments where there is a concurrent use of the property. This provision will rarely apply in the context of short-stay accommodation.
- Sections 21H and 21HB – are transitional rules that can apply to a property provided it was owned before 1 April 2011 and certain criteria are met.

Section 21B – adjustments for goods purchased before registration

152. It is possible to make an adjustment for goods purchased before a person became GST registered. Where a person, before registration, purchases goods and services that they subsequently use to make taxable supplies they can claim some of the original GST input tax when they become registered. Most relevantly, this applies to:

- goods where GST was charged but no input tax was claimed at the time of purchase; for example, a host purchased their home from a builder or developer and GST was included but no input tax deduction was claimed by the host at the time (either because they had not commenced a taxable activity or had not yet registered for GST); and
- "secondhand goods" where goods were supplied but it was not a taxable supply; for example, a sale of a domestic dwelling between two unregistered parties (which is the focus of the following analysis as most supplies of residential properties will not be taxable supplies).

153. In the context of short-stay accommodation, the second scenario above is more common because hosts often list their private home or their holiday home on peer-to-peer websites. In many instances, these properties will have been purchased from an unregistered vendor and owned for many years before GST registration. If the host decides to register for GST or is required to register because the level of taxable supplies exceeds the threshold, then, provided they meet the requirements in the Act, some input tax from the original purchase is deductible.

Legislation

154. Section 20(3) provides that a person, in calculating the amount of output tax payable, may deduct input tax paid in relation to the supply of secondhand goods to the extent that a payment for that supply has been made during the taxable period.

155. If a person was not GST-registered when they acquired the goods, it is still possible to claim a deduction under s 21B. Section 21B allows an adjustment in the following circumstances:

> **21B Adjustments when person or partnership becomes registered after acquiring goods and services**
>
> (1) This section applies when—
>
> (a) before becoming a registered person, a person that is not a unit title body corporate acquires—
>
> (i) goods or services on which tax has been charged under section 8(1):
>
> (ii) goods entered by them for home consumption under the Customs and Excise Act 1996 on which tax has been levied under section 12(1):
>
> (iii) secondhand goods—
>
> (A) that are supplied to the person by way of sale; and
>
> (B) that have always been situated in New Zealand or have had tax levied on them as described in subparagraph (ii); and
>
> (C) the supply of which is not a taxable supply; and
>
> (b) at the time of registration or at a later time, the person or, if the person is a member of a partnership, the partnership uses the goods or services for making taxable supplies.
>
> (2) The person or partnership, as applicable, may make an adjustment under sections 20G, 21, and 21A, as applicable, treating as the first adjustment period, the period that—
>
> (a) starts on the date of the acquisition of the goods or services; and
>
> (b) ends on the first balance date that falls after the events referred to in subsection (1)(b).
>
> (3) For the purposes of this section,—
>
> (a) the person or partnership, as applicable, must either—
>
> (i) provide a tax invoice in relation to the supply, as required by section 20(2); or
>
> (ii) have adequate records that enable the identification of the particulars of an invoice as required by section 24(3) or (7), as applicable:
>
> (b) in identifying the percentage actual use of the goods or services in the first adjustment period referred to in subsection (2), the person or partnership, as applicable, may use a method that provides a fair and reasonable result.
>
> (4) *[Repealed]*
>
> (5) In relation to a supply of secondhand goods, the tax fraction applying to the supply is the tax fraction that applied at the time the goods were purchased by the person

156. Section 21B allows adjustments when a person becomes registered after acquiring goods and services. There are several requirements for a deduction for secondhand goods:

- The goods must be "secondhand goods" supplied to the person by way of sale that is not a taxable supply.
- At the time of registration, the person uses the secondhand goods for making taxable supplies.

- On registration, the person is allowed to make an adjustment for input tax under ss 20G, 21 and 21A. A tax invoice or adequate records are required to obtain an input tax deduction and there are ongoing record keeping requirements.
- The amount of input tax that can be claimed is limited to the extent the goods are used, or available for use, in making taxable supplies. In identifying the percentage actual use of the goods for the first adjustment period, the person may use a method that provides a fair and reasonable result.
- In relation to a supply of secondhand goods, the tax fraction applying to the supply is the tax fraction that applied at the time the goods were purchased by the person (that is, the GST rate applicable at the time).

157. To claim a deduction, the registered person must make an adjustment for change in use under ss 21 and 21A. The ordinary rules for apportionment of input tax are modified to treat the first adjustment period as the period that starts on the date of the acquisition of the goods or services and ends on the first balance date that falls after the person becomes registered for GST and uses the goods or services for making taxable supplies.

158. Following the determination of the length of the first adjustment period, the person must identify the percentage actual use of the goods or services in that period, using a method that provides a fair and reasonable result. This percentage actual use would then be compared with the percentage intended use (which will be 0% as the person will not have claimed any deduction on the acquisition). The resulting "percentage difference" will be used to claim an adjusted amount of the deduction under s 21D. Once the asset is in the apportionment regime, it is subject to the same apportionment rules as any other asset purchased by the registered person.

159. The practical implication of s 21B(2) is that the first adjustment period is equivalent to the entire time the host has owned the property, from the date of acquisition to the first balance date after registration. Therefore, if a host has owned a property for several years, most of the use will be non-taxable and the proportion of GST input tax deductible on the first adjustment will be modest:

- If a host purchased a family bach 10 years ago for $225,000 and started using it to make supplies of short-stay accommodation last year (on the basis of 50:50 private and taxable use), then they would have 9 years of non-taxable use and 1 year of 50% taxable use.
- Over the adjustment period that equates to 5% taxable use.
- On this basis, there would be an input tax deduction of $1,250 (5% of $25,000 – note the GST rate that applies is the one that applied at the time of purchase (s 21B(5)), so is 12.5% in this case).

160. This illustrates that where a property has been owned by the host for a long time, voluntary registration will often be commercially unappealing because the host will receive a relatively small GST input tax deduction.

161. In summary, where, before registration, GST has been incurred on goods or secondhand goods have been acquired, the host can retrospectively claim a GST input tax deduction on registering for GST (provided those goods are used, or available to be used, in their taxable activity). The first adjustment period covers the whole period of ownership, from the date of acquisition until the first balance date following registration. This means the adjustment is likely to be relatively modest in the case of a property that has been owned for a significant length of time. Obtaining the full input tax deduction to which the person would have been entitled had they purchased the property at the time of registering for GST could

take several years and is technically available only if there is an adjustment under s 21FB. This point is illustrated in Example 13.

Example 13 – adjustments for goods purchased before registration

David and Jenny purchased their Queenstown property on 1 April 2015 from an unregistered vendor for $1 million. For the first two and half years they used the property solely for their personal use. They started making taxable supplies on 1 October 2017 and register for GST from this date. They expect they will have bookings for 90 days a year and use the property privately for 80 days a year. The property is a mixed-use asset as it has both taxable and non-taxable uses and is not in use for over 62 days a year. Under s 20G, they estimate taxable use of 53% (that is, 90/170).

They want to know what change of use calculation for the property can be made in the March 2018 return.

Their change of use calculation at 31 March 2018 is:

- Total GST claim – house: $1,000,000 x 3/23 = $130,435.
- Apportionment – Total GST x apportionment percentage 53% = $69,131.
- Non-taxable period: The non-taxable period (that is, before they were registered and using the house for private purposes) is 30 out of 36 months.
- Taxable period: 6/36 months x $69,131 = $11,522.

For the March 2018 GST return, they can claim an adjustment for an input tax deduction of $11,522.

If David and Jenny remain registered, they can continue to make an adjustment every March GST period until the property is sold or the activity ceases. Assuming they maintained the anticipated level of bookings the change of use calculation for 31 March 2019 is:

- Non-taxable period: = 30 out of 48 months
- Taxable period = 18/48 months x 69,131 = $25,924
- Less prior year claim = $11,522
- Total adjustment claimable for March 2019 = $14,402.

Section 21FB – total change of use and wash-up calculation

162. Section 21FB provides a wash-up calculation where use of an asset changes from **both** taxable and non-taxable use to **total taxable use** or **total non-taxable use**. Section 21FB only applies if the total change of use is maintained for the remainder of the adjustment period and the whole of the subsequent adjustment period (ie, 1 to 2 years).

163. Section 21FB relevantly states:

> **21FB Treatment when use changes to total taxable or non-taxable use**
>
> (1) This section applies when—
>
> (a) a person makes an adjustment under section 21A or 21B; and
>
> (b) the person's use of the goods or services in making taxable supplies changes in an adjustment period to either total taxable use or total non-taxable use; and
>
> (c) the total taxable use or non-taxable use remains unchanged for an unbroken period that is—
>
> (i) the remainder of the adjustment period in which the use was changed; and

(ii) the adjustment period following the period in which the use was changed.

(2) If the use changes to total taxable use, the person's adjustment for the adjustment period referred to in subsection (1)(c)(ii) is an amount of input tax calculated using the formula—

full input tax deduction − actual deduction.

(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) **actual deduction** is the amount of deduction already claimed, taking into account adjustments made up to the end of the adjustment period referred to in subsection (1)(c)(ii).

(4) If the use changes to total non-taxable use, the person's adjustment for the adjustment period referred to in subsection (1)(c)(ii) is an amount of output tax that is equal to the amount of the person's actual deduction as described in subsection (3)(b).

164. Put simply, the person either:

- claims the balance of the input tax deduction (if use changes to total taxable); or
- repays the input tax deduction already claimed (if use changes to total non-taxable) for a property.

165. Because the full adjustment is made over time (rather than immediately), the person must continue the total taxable or non-taxable use for the rest of the current adjustment period and the whole of the next adjustment period (between 1 year and 2 years). Once the wash-up calculation has been performed, the person will no longer be required to make any ongoing adjustments unless the use of the property changes again.

Change to total taxable use

166. Where there is a change to total taxable use, the person receives the full input tax deduction available on the purchase of the property less the input tax they have already claimed. This might happen where a registered person no longer uses a mixed-use bach for family holidays and rents it out for short-stay accommodation full time. This provision means they can make an adjustment under s 21FB and no longer have to perform annual adjustments unless the use changes from 100% taxable.

Change to total non-taxable use

167. An important difference exists between removing an asset from a taxable activity and ceasing the taxable activity. In the first situation, the taxable activity continues absent the asset. In the second situation, the taxable activity ceases. This distinction is crucial as different provisions apply in each situation. This is because the key asset in a taxable activity for a person supplying short-stay accommodation will be the property in which the accommodation is provided. Removing that property from the taxable activity by way of a change in use is likely to mean that the taxable activity ceases. Therefore, it is important to distinguish between a change of use where the taxable activity:

- continues, in which case s 21FB applies; and
- ceases, in which case:

- o the host must notify the Commissioner and their GST registration will be cancelled (s 52(3) and (5)); and
- o if registration is cancelled, then ss 5(3) and 10(7A) deem the property to be disposed of at open market value and an adjustment will be made under s 21F in the usual way (see from [222]).

168. Where a registered host has only a taxable activity of providing short-stay accommodation from one property (for example, their home or holiday home), ceasing to supply short-stay accommodation in that property will mean they have ceased their taxable activity. Provided they have no other taxable activity, their GST registration should be cancelled, and there is a deemed supply of the property (s 5(3)) at open market value.

169. However, s 21FB will apply where the use of the property changes to total non-taxable use and the person remains registered in respect of that or another taxable activity. This might apply, for instance, if a GST-registered farmer uses a farm cottage sometimes as accommodation for visiting family and sometimes as farmstay accommodation for paying guests. If an elderly relative then comes to live in the farm cottage full time, the use changes to total non-taxable. If the farmer had claimed any GST input tax deductions on the cottage, the farmer would have to repay the actual deductions claimed as GST output tax and then is saved from the compliance burden of having to make ongoing adjustments (which would otherwise apply forever where the asset is land). Once a wash-up calculation is performed (and assuming there is no further change of use) then the subsequent sale of the cottage would not be subject to GST.

Conclusion on s 21FB

170. Section 21FB may be applicable where a registered host's use of their property changes from mixed-use to total taxable (and that use has been maintained for the remainder of the adjustment period and the whole of the subsequent adjustment period). This may happen where a registered person no longer uses their holiday home for their private holidays and instead uses it full time in their short-stay accommodation business. In this case, s 21FB allows the person to receive the full input tax deduction less the input tax they have already claimed.

171. Section 21FB can also apply where there is a change to total non-taxable use. However, it is important to differentiate between where a host:
   - removes a property from their taxable activity and continues to make taxable supplies (s 21FB applies); and
   - ceases their taxable activity and GST registration is cancelled (s 5(3) applies).

172. Many hosts will fall into the latter category and will cease their taxable activity when they stop making taxable supplies of accommodation. They should cancel their GST registration and there will be a deemed supply of the property under s 5(3). However, if a host remains registered (for example, because they continue their taxable activity from another property or have another taxable activity) and they can satisfy the period of non-taxable use in s 21FB, then they can use the wash-up calculation. The host is required to make a GST output tax payment equivalent to the input tax claimed.

Section 21E - concurrent uses of land

173. Section 21E is a specific provision dealing with concurrent uses of land. This is where an area of land is simultaneously used for making concurrent taxable and non-taxable supplies. An example is where a property developer lets out properties on residential tenancies while trying to sell them.

174. Section 21E is discussed in "IS 15/02: Goods and services tax – GST and retirement villages", *Tax Information Bulletin* Vol 27, No 11 (December 2015): 6. The Commissioner considers that use of both "simultaneously" and "concurrently" in s 21E suggests the provision requires the relevant land to be used to the full extent for both taxable and non-taxable supplies (at [205]).

175. Section 21E will rarely (if ever) apply to a short-stay property because the **full extent** of the property will not be being used simultaneously and concurrently for making both taxable supplies and non-taxable supplies. Instead, the property will be **partly** used for taxable supplies and **partly** used for non-taxable supplies. Because the property is divisible the appropriate approach is to apportion based on use. Adjustments are undertaken using the normal adjustment rules in ss 21A, 21C, 21D and 21F. This outcome is more consistent with the scheme and the purpose of the Act.

Sections 21H and 21HB – transitional rules

176. The transitional rules in ss 21H and 21HB will be relevant to only a very small group of taxpayers.

Section 21H – relevant to supplies

177. Section 21H is relevant to supplies that wholly or partly consist of land (s 21H(3)). Broadly, the provision allows taxpayers who have been applying the old apportionment rules since before 1 April 2011 to continue to do so.

178. Given the passage of time the Commissioner expects relatively few registered persons will be still applying the old apportionment rules. It is unlikely that hosts supplying short-stay accommodation on peer-to-peer websites will be in this position.

Section 21HB(1)–(3) – changes to definition of "dwelling"

179. If a person was offering short-stay accommodation in a residential property before 1 April 2011, it would likely have met the definition of a "dwelling" and have been an exempt supply. The change to the definition from 1 April 2011 means the supply is now likely to be considered taxable, so the property will be in the GST regime (without the host having had an initial GST input tax claim on acquisition). These provisions allow a GST input tax deduction as though the person acquired their property on 1 April 2011 at its original cost. With the passage of time it is expected that very few hosts will now be able to apply subss 21HB(1)-(3).

Section 21HB(4) and (5) – choice to treat the supply as non-taxable

180. Subsections (4) and (5) of s 21HB recognise that the changes to the definitions could change supplies of accommodation from exempt to taxable. If a person is already registered for GST, they have no choice but to charge and account for GST. Under s 21HB(4), the host has the choice of whether to treat the supply as taxable.

181. Section 21HB(4) will be helpful to persons who are GST registered in respect of their main business or occupation and who also make taxable supplies of short-stay accommodation in a residential property (for example, a self-employed plumber who also lists a room in their home on a peer-to-peer website). The supply of short-stay accommodation (assuming it is sufficient to be a taxable activity) may "inadvertently" be brought into the GST regime. However, **provided the property was acquired before 1 April 2011** (and the supplies of accommodation are below the s 51(1)(a) threshold), they may choose to treat the supply of accommodation as non-taxable.

Disposal of property

182. For goods and services used in making taxable supplies there are GST implications on acquisition, where there is a change of use and, finally, on disposal. For registered hosts, there will be a "disposal" in two situations:

- First, when they sell the property they use to supply short-stay accommodation.
- Secondly, when their GST registration is cancelled, which is most likely to happen when a registered host ceases their taxable activity of supplying short-stay accommodation. They must notify the Commissioner within 21 days of ceasing the activity and the Commissioner will cancel their GST registration. If no notification is received, the Commissioner has the power to cancel registration if satisfied that the registered person is not carrying on a taxable activity.

GST output tax liability on property used to make taxable supplies

183. GST will be imposed on the disposal of a property used to make supplies of short-stay accommodation. Section 2(1) defines "output tax" as:

> tax charged pursuant to section 8(1) of this Act in respect of the supply of goods and services …

184. Section 8(1) states:

> (1) Subject to this Act, a tax, to be known as goods and services tax, shall be charged in accordance with the provisions of this Act at the rate of 12.5 percent on the **supply** (but not including an exempt supply) in New Zealand of goods and services, on or after the 1st day of October 1986, **by a registered person in the course or furtherance of a taxable activity carried on by that person**, by reference to the value of that supply. [Emphasis added]

185. From the definition of "output tax" in s 2(1) and the words of s 8(1), output tax is the tax charged on the supply of goods and services by a registered person in the course or furtherance of that person's taxable activity. In addition to GST output tax on supplies of accommodation, hosts will face a likely GST output tax liability on sale (or a deemed supply following cessation of registration) under s 8(1).

186. It may be questioned whether the disposal of a property will be **in the course or furtherance of a taxable activity** given the host's registered activity will be providing short-stay accommodation. 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 (*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)).

187. 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 (*Case K55*, *Case N43* (1991) 13 NZTC 3,361 and *Case V16* (2002) 20 NZTC 10,182). 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 (*Case V16, Case K55*). In *Case K55,* this was characterised as there being a "discernible nexus" between the activity and the supply. If a host is using a property to continuously and regularly make supplies of short-stay accommodation, then the property is being used in the taxable activity and a clear relationship exists between the property and the supply. On this basis, the one-off sale of a property used to make supplies of short-stay taxable accommodation will be in the course or furtherance of a taxable activity and be subject to GST under s 8(1).

188. However, these cases were all decided under the pre–1 April 2011 "principal purpose approach". The consequence of this is that some of the cases consider what the asset was principally used for. The implication is that if an asset is principally used for private rather than business purposes the subsequent sale would not be in the course or furtherance of a taxable activity. For instance, in *Case K55* Judge Bathgate indicates that in establishing whether a nexus exists between the supply of the assets and the taxable activity, it is necessary to determine for what purposes that asset was principally used. If that asset was used more in the business than for private purposes, its supply is likely to be in the course or furtherance of that taxable activity. *Case K55* concerned the sale of a car that the taxpayer had used 56% of the time in his taxable activity (as a sheep farmer) and 44% of the time for private purposes. Judge Bathgate stated (at 457):

> The sale of the car may not be so obviously an act carried on in the course of the objector's sheep farming, although I think it was such an act, but the sale was I think more obviously in furtherance of that activity. **It was more in the furtherance of that activity than not.** The car was used more for the objector's sheep farming business than anything else, including family or private purposes. [Emphasis added]

189. The approach was similar in *Holdgate v CIR* (1995) 17 NZTC 12,036 (HC). In deciding whether a land transaction was in the course or furtherance of a taxable activity, the court considered whether the taxpayer owned land as a business asset or a private asset. The court decided it was a business asset, so the land was used in connection with the taxpayer's business activities and its supply was subject to GST. This reasoning is a consequence of the previous legislation. For the goods to be supplied in the course or furtherance of the taxable activity they would have to be acquired or applied for the principal purpose of making taxable supplies.

190. After 1 April 2011, the Act provides for GST input tax deductions based on the extent of intended use, subsequent adjustments, and then a GST output tax liability under s 8(1) when the property is taken out of the GST regime. The "principal purpose test" no longer applies when considering whether a property is being supplied in the course or furtherance of a taxable activity. If goods are used privately and in a taxable activity, then an output tax liability arises on disposal, with an adjustment under s 21F (discussed from [195]).

191. This is reflected in s 20G(7), which addresses MUAs (that is, most holiday homes and baches with taxable and non-taxable use):

> (7) Sections 8 and 21F apply to the disposal of the asset, treating the disposal as in the course or furtherance of a taxable activity.

192. This provision supports the view that the scheme of the adjustment rules after the 1 April 2011 changes is for output tax to be payable with an appropriate adjustment made under s 21F. A disposal of a MUA with more non-taxable than taxable use will still be in the course or furtherance of a taxable activity.

193. In summary, the disposal of a property that is a MUA under s 20G will be subject to GST under s 8(1). Other properties used to make taxable supplies of short-stay accommodation will also be subject to s 8(1) on disposal. Having concluded that a disposal can be subject to GST output tax, it is necessary to consider what happens:

- on the sale of a property, in particular the application of:
  - s 21F, which effectively credits the host with any GST input tax not claimed; and
  - the zero-rating of land rules;
- when the host stops supplying accommodation, including:
  - when GST registration will be cancelled;

- when a deemed disposal of the property is triggered; and
- the value of the deemed supply.

Sale of property

194. As discussed above, GST output tax will be charged on the sale of a property used to make supplies of short-stay accommodation. GST output tax will usually be greater than the initial GST input tax deduction because GST is paid as a proportion of the purchase and sale price. This means the GST output tax liability is likely to be greater than the initial GST input tax deduction because properties generally appreciate in value.

195. GST output tax is not apportioned under s 8, so a registered person must pay output tax on the value of the supply. This is the case even where the registered person did not receive a full input tax deduction on acquisition because GST input tax was apportioned based on taxable to non-taxable use (or intended use). Where there has not been a full input tax claim, s 21F allows for an additional adjustment for the unclaimed portion of the GST input tax.

Adjustments allowed under s 21F

196. Under s 21F, where a person has acquired goods or services and not had a full input tax deduction (being the total of amounts claimed on acquisition and in subsequent adjustments), the person is required to make a final adjustment when those goods or services are sold. Section 21F provides:

> **21F Treatment on disposal**
>
> (1) This section applies when a registered person—
>
> (a) acquires goods or services in relation to which they do not have a full deduction, taking into account any adjustments made to input tax in adjustment periods after acquisition; and
>
> (b) subsequently disposes, or is treated as disposing, of the goods or services in the course or furtherance of a taxable activity.
>
> (2) The person must make a final adjustment of an amount calculated using the formula—
>
> tax fraction × consideration × (1 − (actual deduction ÷ full input tax deduction)).
>
> (3) For the purposes of the formula in subsection (2),—
>
> (a) **tax fraction** has the meaning given in section 2(1), unless subsection (7) applies to the disposal:
>
> (b) **consideration** is the amount of consideration received, or treated as received, for the supply:
>
> (c) **actual deduction** is the amount of deduction already claimed, taking into account adjustments made up to the date of disposal:
>
> (d) the amount, when added to any deduction already claimed, must not be more than the amount of the **full input tax deduction** on acquisition referred to in section 21D(2).
>
> (4) Despite subsection (2), if the acquisition referred to in subsection (1)(a) relates to a supply that is charged at the rate of 0% under section 11(1)(mb), on a disposal referred to in subsection (1)(b), the person must make a final adjustment of an amount calculated using the formula—
>
> tax fraction × consideration × (1 − previous use).
>
> (5) For the purposes of the formula in subsection (4),—
>
> (a) **tax fraction** has the meaning given in section 2(1), unless subsection (7) applies to the disposal:

(b) **consideration** is the amount of consideration received, or treated as received, for the supply:

(c) **previous use** is the percentage intended use or the previous actual use in the period before the period in which the disposal occurs.

(6) The amount given by the formula in subsection (4) must not be more than the amount of output tax that is accounted for by the person under section 20(3J)(a)(iii), taking into account any later adjustments made under the apportionment rules in sections 21 to 21H.

(7) In the formulas in subsections (2) and (4), on the disposal of the goods or services, if the supply is charged at the rate of 0%, the item **tax fraction** is treated as 15%.

197. The calculation in s 21F(2) (or s 21F(4) if the compulsory zero-rating provisions in s 11(1)(mb) apply) allows an adjustment based on the apportionment of GST input tax on the original supply. In broad terms, this recognises the person will not have had a full input tax deduction on the original acquisition.

198. Section 21F operates slightly differently depending on whether the asset has increased or decreased in value. Section 21F(3)(d) caps the amount of any GST input tax deduction at the amount of the full input tax deduction on the acquisition of the asset. For assets that appreciate in value, this effectively means the adjustment is equivalent to the unclaimed portion of the original GST input tax. The person pays GST output tax on the appreciated value of the asset and receives an adjustment capped at the original amount of GST input tax. As properties generally appreciate over time this means a registered host's output tax liability on sale will be more than the input tax claim on acquisition.

199. Example 14 illustrates an adjustment on disposal of an asset.

Example 14 – adjustment on disposal under s 21F

A semi-retired couple live in a wine region and purchased their current home for $600,000 in 2015. It is a popular destination for weekend stays. To make some extra money they occasionally rent the whole property out as a homestay on peer-to-peer websites.

They rent out their home for 70 nights a year and during this time they stay with family or organise their own holidays. They decided to register for GST in 2015, so they could claim GST input tax back on the purchase of the house as follows:

- Total GST input tax claim – house: $600,000 x 3/23 = $78,261.
- Apportionment: Total GST x apportionment percentage 19% (that is, 70/365) = $15,009.

Use remains as predicted in the subsequent adjustment periods and no further adjustments are required. In 2019, they decide to move to Auckland to be near family. Since 2015, property prices have risen significantly in the region and they sell for $800,000. They must perform an adjustment on disposal using s 21F:

- GST output tax on sale: $800,000 x 3/23 = $104,348.
- Input tax adjustment under s 21F: $104,348 x (1 – ($15,009 ÷ $78,261)) = $84,336.

Any deduction, when added to the deduction already claimed, must not be more than the amount of the full input tax deduction on acquisition. Therefore:

- $78,261 - $15,009 = $63,252 total s 21F adjustment.
- Total GST output tax payable: $104,348 - $63,252 = $41,096 GST output tax.

Because of the rise in the property's value, there is a net GST liability of $26,087. This is because GST input tax on purchase was $78,261 and GST output tax on sale is $104,348.

Compulsory zero-rating of land rules

200. Where a registered person is selling to another registered person, they should consider whether the compulsory zero-rated provisions apply.

201. The compulsory zero-rating of land (CZR) rules treat certain supplies involving land between registered persons as zero-rated supplies. For more detail on the CZR rules, see "IS 17/08: Goods and services tax – compulsory zero-rating of land rules", *Tax Information Bulletin* Vol 29, No 10 (November 2017): 17.

202. The core provision of the CZR rules is s 11(1)(mb), which provides:

> (1) A supply of goods that is chargeable with tax under section 8 must be charged at the rate of 0% in the following situations:
>
> …
>
> (mb) the supply wholly or partly consists of land, being a supply—
>
> (i) made by a registered person to another registered person who acquires the goods with the intention of using them for making taxable supplies; and
>
> (ii) that is not a supply of land intended to be used as a principal place of residence of the recipient of the supply or a person associated with them under section 2A(1)(c);

203. Under ss 8 and 11(1)(mb), a supply must be zero-rated if:

- the supply wholly or partly consists of land;
- the vendor is GST registered (or will be GST registered or will be treated as GST registered) at the time of settlement;
- the supply is being made by the vendor in the course or furtherance of their taxable activity;
- the purchaser is a GST-registered purchaser (or will be GST registered or treated as GST registered) at the time of settlement;
- the purchaser acquires the goods (including the land) with the intention of using them (in whole or part) for making taxable supplies; and
- none of the land included in the supply is intended to be used as the purchaser's principal place of residence or the principal place of residence of a relative of the purchaser.

204. Section 11(1)(mb) will not commonly apply where the property being sold is an ordinary domestic property. It seems unlikely the buyer and seller of such properties will commonly both be GST registered and that the purchaser will not be using the property as a principal place of residence. The CZR rules are likely to be most relevant to the sales of dedicated short-stay rental properties in popular tourist destinations. In such cases, it is more likely that both parties will be GST registered and that the purchaser is buying an asset that they intend to use to make taxable supplies (and do not intend to use as a principal place of residence).

205. Purchasers who acquire a property that has been compulsorily zero-rated may need to make output tax adjustments to account for any non-taxable use:

- when the property is acquired (s 20(3J)(a)); and

- in later adjustment periods under the adjustment provisions in ss 21 to 21H (s 20(3J)(b)).

206. At the time the compulsorily zero-rated property is acquired, the purchaser must identify the "nominal GST component" that would have been chargeable if the supply of the property had been standard-rated. This is done by adding GST at the standard rate to the agreed consideration for the supply. The purchaser then determines the extent to which they intend to use the property for making taxable supplies and calculates the proportion of the nominal GST component for any non-taxable use. The non-taxable use proportion of the nominal GST component is an amount of output tax and must be accounted for by the purchaser in their GST return for the period the supply is attributed to (see s 20(4)).

207. Further adjustments may be required in subsequent adjustment periods under ss 21 to 21H. This is done by comparing the intended use of the property at the time of acquisition against the actual use of the property at the end of an adjustment period. This might occur if a purchaser buys a dedicated short-stay rental property and the transaction is zero-rated, but the purchaser subsequently uses the property for a couple of weeks for their own personal (non-taxable) use.

208. An adjustment may not necessarily be required if the change in use is within the scope of s 21(2). IS 17/08 addresses this issue:

> 50. Purchasers who acquire goods (including land) that have been compulsorily zero-rated under s 11(1)(mb) may need to make output tax adjustments to account for any non-taxable use of the acquired goods. Adjustments may need to be made:
>
> - when the goods (including land) are acquired (s 20(3J)(a)); and
> - in later adjustment periods under the apportionment rules in ss 21 to 21H (s 20(3J)(b)).
>
> 51. At the time the compulsorily zero-rated goods are acquired, under s 20(3J)(a) the purchaser must identify the "nominal GST component" that would have been chargeable if the supply of goods had been standard-rated. This is done by adding GST at the standard rate to the agreed consideration for the supply. The purchaser is then required to determine the extent to which they intend to use the goods acquired for making taxable supplies and calculate the proportion of the nominal GST component for any non-taxable use of the goods. The non-taxable use proportion of the nominal GST component is an amount of output tax and must be accounted for by the purchaser in their GST return for the period the supply is attributed to (see s 20(4)).
>
> 52. To determine the intended non-taxable use of the goods acquired (including land) the purchaser needs to estimate at the time of acquisition how they intend to use the goods, choosing a determination method that produces a fair and reasonable result (see s 20(3G)).
>
> 53. Further output or input tax adjustments may be needed under the apportionment rules in subsequent adjustment periods (see ss 21 to 21H). This is done by comparing the intended use of the goods (including land) as determined at the time of acquisition against the actual use of the goods at the end of an adjustment period. Adjustments may not be required where the amounts involved are small (see s 21(2)).

209. Under s 21(2), the paragraphs most likely to apply are (c) and (d):

> (2) Despite subsection (1), the person is not permitted to make an adjustment if—
>
> (a) section 20(3D) applies to them:
>
> ...
>
> (b) the value of the goods or services, excluding GST, is $5,000 or less:
>
> (c) the difference between the percentage intended use on acquisition and the percentage actual use for the relevant adjustment period is less than 10 percentage points, but this paragraph does not apply if the adjustment amounts to more than $1,000:

(d) the difference between the previous actual use calculated for the most recent adjustment period in which an adjustment was made and the percentage actual use for the relevant adjustment period is less than 10 percentage points, but this paragraph does not apply if the adjustment amounts to more than $1,000.

210. Paragraphs (c) and (d) mean that a person is not permitted to make an adjustment where the difference between the actual and intended uses is relatively minor (less than 10 percentage points) and amounts to less than $1,000.

211. In summary, the CZR rules are likely to be most relevant to dedicated short-stay rental properties in popular tourist destinations. For the rules to apply:

- both the seller and purchaser must be GST registered;
- there must be an intention to make taxable supplies; and
- the property must not be intended to be a person's principal place of residence.

212. If a transaction is subject to the CZR rules, taxpayers should refer to IS 17/08. Even if a transaction is zero-rated, it may still be necessary for a purchaser to subsequently perform ongoing adjustments to reflect any change in use.

213. Example 15 illustrates the application of the CZR rules.

Example 15 – application of the CZR rules

Len (from Example 9) is a GST-registered short-stay accommodation entrepreneur who owns properties in Coromandel and Auckland. He has heard the short-stay accommodation market in Rotorua is lucrative because of the town's year-round popularity with tourists. He is looking to expand his portfolio and buy a property in Rotorua. He has identified a suitable property being sold there. Further enquires reveal that the seller is GST registered and has been using the property as a dedicated short-stay rental. Len wants to know whether the transaction will be zero-rated.

The CZR rules apply. The buyer and seller are both GST registered and Len will be using the property to make taxable supplies.

The answer would be different if Len was going to live in the property as his principal residence and merely rent out rooms for short-stay accommodation on a peer-to-peer website. In that case, he would be using the property as a principal place of residence, so the CZR rules would not apply and GST would apply at the standard rate.

Deemed disposal on cancellation of registration

214. Where a registered host's GST registration is cancelled, they will be liable for GST output tax on the open market value of their property.

Cancellation of registration

215. Under s 52 the Commissioner may cancel a person's GST registration in three situations:

- Sections 52(1) and (2) allow a person to request the Commissioner to cancel their registration where the value of the person's taxable supplies is below the registration threshold.
- Section 52(3) imposes a requirement on registered persons who have ceased all taxable activities to notify the Commissioner within 21 days. In such circumstances, the Commissioner must cancel the person's GST registration. However, there is a proviso to s 52(3) if there are reasonable grounds for

believing that the person will carry on any taxable activity at any time within the next 12 months.

- Section 52(5) allows the Commissioner to cancel a registered person's GST registration, if the Commissioner is satisfied that the registered person is not carrying on a taxable activity.

216. For the supply of short-stay accommodation, there are two possible scenarios:

- Scenario 1: The registered person asks the Commissioner to cancel their registration because they are no longer making supplies in excess of the registration threshold.
- Scenario 2: The registered person ceases carrying on their taxable activity of providing short-stay accommodation. Whether a taxable activity is still being carried on in any particular situation will be a question of fact. However, if a registered host files nil returns and does not continuously or regularly make taxable supplies, then it points to them having ceased their taxable activity.

217. The Commissioner's view is that a s 21FB adjustment is not available where a person's taxable activity has ceased entirely (see [162]). In this case, the most appropriate course will be for the person to cancel their GST registration.

Deemed supply

218. When a person ceases to be registered for GST, s 5(3) deems the assets of a taxable activity to be supplied by the person. The time of that supply is immediately before the person ceases to be registered. Section 5(3) provides:

> (3) For the purposes of this Act, where a person ceases to be a registered person, any goods and services then forming part of the assets of a taxable activity carried on by that person shall be deemed to be supplied by that person in the course of that taxable activity at a time immediately before that person ceases to be a registered person, unless the taxable activity is carried on by another person who, pursuant to section 58, is deemed to be a registered person.

219. In s 5(3), a deemed supply occurs for goods and services forming part of the assets of the taxable activity carried on by the person. If a host has the taxable activity of supplying short-stay accommodation then the property in which the accommodation is supplied will be an asset of the taxable activity. The property will be the most significant asset that forms part of the assets of the taxable activity of supplying short-stay accommodation, although other assets may also be subject to s 5(3).

Value of supply

220. The value of the deemed supply under s 5(3) is determined under s 10(7A) and (8). Where the property has been owned since before 1986 (when GST was introduced), the adjustment can be made at the lower of the cost of the property or its market value (s 10(8)). But in most cases, the consideration will be treated as being the open market value of the supply (s 10(7A)). Section 5(3) does not contemplate apportionment for non-taxable use but this is offset by s 21F, which effectively allows a credit for unclaimed GST input tax where a person has not had a full GST input tax deduction.

221. Despite s 21F, the consequences of cancellation of registration will often be financially significant. The taxpayer will usually have a net liability for GST because the value of the property will have appreciated. In other words, the taxpayer will pay GST on the uplift in the property's value. Further, this is only a deemed disposal, meaning the taxpayer will not have sale proceeds from which they can pay their GST liability.

Conclusion

222. In summary, a registered person may request that the Commissioner cancel their registration where their supplies fall below the $60,000 threshold and this will trigger a deemed disposal. More commonly, a person's GST registration will be cancelled because they cease their taxable activity of making supplies of short-stay accommodation.

223. Where a person ceases their taxable activity entirely, then they should inform the Commissioner within 21 days (s 52(3)), and the Commissioner shall cancel their GST registration. Section 52(5) also allows the Commissioner to cancel a person's GST registration if the Commissioner is satisfied that the registered person is not carrying on a taxable activity.

224. On cancellation, s 5(3) deems a disposal of all assets that form part of the taxable activity. This will include the property used to make the supplies of short-stay accommodation. The deemed disposal will usually be at the open market value (s 10(7A)). This means the person will be liable for GST output tax on the open market value of the property. Where a person did not have a full GST input tax deduction, s 21F allows an adjustment that effectively credits the taxpayer with the unclaimed portion of the original GST input tax.

225. Example 16 illustrates the impact of a registration cancellation.

Example 16 – cessation of a taxable activity

David and Jenny (from Example 13) have decided to make a lifestyle change. They are selling up in Christchurch and will move permanently to their Queenstown holiday home. They will cease their taxable activity on 31 March 2020 and move into the Queenstown property on 1 April 2020. They want to know how this will impact on their GST obligations.

Cessation of a taxable activity will require their GST registration to be cancelled. There is a deemed supply of the assets forming part of the taxable activity (s 5(3)). This means a deemed supply of the property that will be subject to GST.

The value of housing in Queenstown has grown considerably in the intervening years and their property is now worth $1.5 million. Therefore, the tax fraction on the deemed supply is:

3/23 x $1,500,000 = $195,652.

An input tax deduction of $25,924 has already been claimed (the combined 2018 and 2019 adjustments – see Example 12), so the full deduction available on the original purchase is:

$130,435 less the deduction claimed of $25,924 = $104,511.

This is the limit of the adjustment. Therefore, on cessation:

- output – GST on deemed supply ($1,500,000 x 3/23) = $195,652
- input – adjustment = ($104,511)
- GST payable = $91,141.

226. Example 17 illustrates GST issues to consider when purchasing a property to use as short-stay accommodation.

Example 17 – GST considerations when purchasing a property

Neve and George are looking to buy a property in one of New Zealand's tourist hotspots. They intend to buy a large property which they will use to make supplies of short-stay accommodation. They intend to try and live off the short-stay accommodation income.

They are looking at two properties:

- A large section near Lake Wanaka. The section includes a main house and a separate holiday cottage. The house is used solely as the owners' private residence and the cottage is a dedicated short-stay rental property. The holiday cottage is a top-end property in a prime location that is advertised on various websites. It is used year-round by skiers, trampers and overseas holiday makers. The holiday cottage's current turnover is $80,000 a year. The property is advertised for sale at $1.8 million. The documentation provided by the seller includes a registered valuer's report valuing the main house at $1m and the holiday cottage at $800,000. The seller is GST registered and the properties are on one land title.
- A large apartment on the hill in Queenstown for sale for $1.1m. It is a 4-bedroom property split over three floors. It is currently used as a private holiday home. Neve and George would run it as a homestay and plan to rent out the rooms individually on a website at $100 a night. Their research indicates an occupancy rate of around 40% for such rooms which would equate to $44,000 a year.

They are GST novices and ask an accountant whether there are any GST implications for either property.

Lake Wanaka

If Neve and George are intending to continue renting out the holiday cottage (and living in the main home) they will need to register for GST because the turnover is likely to exceed the $60,000 threshold.

The Act treats the supply of a principal place of residence and other property as separate supplies. In other words, the sale of the main house and holiday cottage are treated separately for GST purposes.

As the holiday cottage is used in the current owner's taxable activity, the sale of the property will be subject to GST. However, the compulsory zero-rating rules will apply where both the seller and buyer are registered persons, the buyers intend to carry on using the holiday cottage to make taxable supplies and it is not intended to be a person's principal place of residence.

Neve and George will have to charge GST output tax on the supplies of short-stay accommodation, but they will be able to claim GST input tax on their expenses for the holiday cottage. Where expenses relate to the whole section rather than just the holiday cottage, the expenses should be apportioned on a fair and reasonable basis.

The main house is used solely as the owner's private residence and will not be subject to GST. There will be GST implications if Neve and George decide to use the main house to make supplies of accommodation in the future.

Queenstown

The sellers are not GST registered and the sale will not be subject to GST output tax. Because supplies of accommodation in their homestay would be below the $60,000 threshold, Neve and George do not have to register for GST. Neve and George's accountant suggests that there might be some benefit for them in remaining unregistered. They won't have to charge GST output tax on the supplies of short-stay accommodation, and they won't have to file returns and undertake adjustments. They also would not have to return GST output tax on the property when they come to sell it. Registering for GST would likely leave them worse off because property values in Queenstown are expected to rise and

consequently the GST output tax on sale will be more than the GST input tax on sale.

If they do decide to register for GST, they can claim GST input tax on expenses that relate solely to providing short-stay accommodation (eg, guest toiletries) and a portion of GST on expenses relating to both taxable and non-taxable supplies (eg, utility bills). They can also claim GST input tax on the purchase. To give an indication the accountant calculates that:

- The bottom floor has a bedroom (with ensuite) and inbuilt garage that will be used exclusively by Neve and George - 50m2 with 100% private use.
- The second level is exclusively for guests and contains three dedicated guest bedrooms and a guest bathroom - 50m2 with 100% taxable use.
- The top level contains the common areas - an open plan lounge and kitchen-dining room - 50m2 with 50% taxable use.

The second floor area used (or available for use) exclusively by guests is calculated as:

$$\frac{50}{150} \times \frac{365}{365} \times 100 = 33.33\%$$

The common areas on the top floor are 50% deductible but only for the days that one of the rooms is rented out. Neve and George estimate that at least one of the rooms will be rented out for 200 days a year:

$$\frac{50}{150} \times \frac{200}{365} \times 50 = 9.13\%$$

Adding these figures together (33.33% and 9.13%) they could expect to deduct 42.46% of GST input tax. The full amount of the GST input tax deduction would be 3/23 x $1.1m = $143,478.26. The proportion claimable would be $143,478.26 x 42.46% = $60,920.87. Neve and George would need to weigh up the other pros and cons of registration. If they did register they would need to charge GST on the supplies of accommodation they make and the property would also be subject to GST when they sell it or cease supplying short-stay accommodation.

References

Subject references

GST
short-stay accommodation

Legislative references

Goods and Services Tax Act 1985, ss 2 ("dwelling", "commercial dwelling", "place of residence", "principal place of residence", "output tax"), 2A ("associated persons"), 3A, 4, 5(3) and (15), 6(1)(a), 8(1), 10(2), (3), (6), (7A) and (8), 11(1)(mb), 14(1)(c), 20, 20G, 21, 21A–21C, 21CB, 21D–21F, 21FB, 21G, 21H, 21HB–21HC, 21I, 51, 52, 57
Income Tax Act 2007, ss DG 3, YA 1 ("associated person")
Residential Tenancies Act 1986, ss 2 ("premises"), 38
Taxation (GST and Remedial Matters) Act 2010

Case references

Allen Yachts Charters Ltd v CIR (1994) 16 NZTC 11,270 (HC)
CIR v Bayly (1998) 18 NZTC 14,073
Case 15/2014 (2014) 26 NZTC 22-025
Case K55 (1988) 10 NZTC 453
Case N27 (1991) 13 NZTC 3,229
Case N43 (1991) 13 NZTC 3,361
Case N27 (1991) 13 NZTC 3,229
Case P73 (1992) 14 NZTC 4,489
Case R38 (1994) 16 NZTC 6,212
Case V16 (2002) 20 NZTC 10,182
CIR v Bayly (1998) 18 NZTC 14,073 (CA)
CIR v Dormer (1997) 18 NZTC 13,446 (HC)
Concepts 124 Ltd v CIR [2014] NZHC 2,140
Hibell v CIR (1991) 13 NZTC 8,195 (HC)
Holdgate v CIR (1995) 17 NZTC 12,036 (HC)
Newman v CIR (1995) 17 NZTC 12,097 (CA)
Staithes Drive Development Ltd v CIR [2015] NZHC 2,593
Wakelin v CIR (1997) 18 NZTC 13,182 (HC)

Other references

Concise Oxford English Dictionary, 12th ed, (Oxford University Press, New York, 2011).
"DET 19/02: Standard-cost household service for short-stay accommodation providers", *Tax Information Bulletin* Vol 31, No 6 (July 2019): 67.
"GST — Supply of accommodation in holiday homes", *Public Information Bulletin* Vol 160 (March 1987): 4.
"IS 17/08: Goods and services tax – Compulsory zero-rating of land rules", *Tax Information Bulletin* Vol 29, No 10 (November 2017): 17.
"IS 15/02: Goods and services tax – GST and retirement villages", *Tax Information Bulletin* Vol 27, No 11 (December 2015): 6.
"Question 116", *Public Information Bulletin* Vol 158 (November 1986)..
"QB 19/05: What are my income tax obligations if I rent out my home or a separate dwelling on my property as short-stay accommodation?", *Tax Information Bulletin* Vol 31, No 6 (July 2019): 3.
"QB 19/06: What income tax rules apply if I have a dwelling that I sometimes rent out as short-stay accommodation and sometimes use myself?", *Tax Information Bulletin* Vol 31, No 6 (July 2019): 12.
"QB 19/07: How do the mixed-use asset income tax rules apply to a dwelling that I sometimes rent out as short-stay accommodation and sometimes use privately?", *Tax Information Bulletin* Vol 31, No 6 (July 2019): 16.
"QB 19/08: How do the standard income tax rules apply to a dwelling that I sometimes rent out as short-stay accommodation and sometimes use privately?", *Tax Information Bulletin* Vol 31, No 6 (July 2019): 22.
"QB 19/09: Can I register for GST if I supply short-stay accommodation to guests in my home or holiday home?", *Tax Information Bulletin* Vol 31, No 6 (July 2019): 27.
"Taxation (Livestock Valuation, Assets Expenditure, and Remedial Matters) Act 2013", *Tax Information Bulletin* Vol 25, No 9 (October 2013): 3