

PRODUCT RULING - BR Prd 14/08

This is a product ruling made under s 91F of the Tax Administration Act 1994.

Name of the Person who applied for the Ruling

This Ruling has been applied for by Body Corporate 358851.

Taxation Laws

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

This Ruling applies in respect of ss 5(13), 8 and 76.

The Arrangement to which this Ruling applies

The Arrangement is:

- The receipt by Body Corporate 358851 (Body Corporate) of money (Insurance Payment) from its insurer in settlement of a claim for damage to the building or buildings (Building) at 187 Cashel Street, Christchurch, being a unit title development of 129 units (Property) and loss of rents caused by the Canterbury earthquakes of 2010 and 2011 (Earthquakes).
- The Body Corporate resolving on 26 July 2013 (Resolution):
 - not to reinstate the Building; and
 - to distribute the material damage portion of the Insurance Payment (net of certain costs) to owners of units in the unit title development (Owners) in accordance with their ownership interests in the Property.
- The distribution of an amount equivalent to the material damage portion of the Insurance Payment (net of costs) to Owners in accordance with the Resolution (Distribution).

Further details of the Arrangement are set out in the paragraphs below.

Background to the Arrangement

1. The Property is a unit title development under the Unit Titles Act 2010. The Body Corporate is the body corporate for the Property. The Body Corporate is not registered under the Goods and Services Tax Act 1985. The Body Corporate insured the Building with an insurer, Zurich Australian Insurance Ltd trading as Zurich New Zealand (Insurer), for periods on the terms, conditions, and limitations in policy number 99 2783578 ISR (Insurance Policies). The Insurer is resident in New Zealand for GST purposes and the supply of the Insurance Policies to the Body Corporate was charged with tax under s 8(1) of the Goods and Services Tax Act 1985. The Body Corporate (not each Owner) is named in the Insurance Policies as the insured party.

2. The Earthquakes caused material damage to the Building and other improvements at the Property and resulted in loss of rents for the owners of the units.
3. The Body Corporate made a claim under one of the Insurance Policies in respect of the material damage to the Building and other improvements at the Property and loss of rents (Claim). The Body Corporate negotiated a settlement of the Claim with the Insurer on 12 September 2013 (Settlement Agreement). Under the Settlement Agreement the Insurer agreed to pay the Body Corporate an amount (including GST, if any) in full and final settlement of the Claim and any other existing or future liability of the Insurer under the Insurance Policies or otherwise in relation to loss, damage, or liability arising from the Earthquakes.
4. The Body Corporate was required to apply money received under the Insurance Policies in or towards the reinstatement of the Building unless it decided otherwise by special resolution at a general meeting (s 136(4) of the Unit Titles Act 2010). On 26 July 2013, the Body Corporate resolved:
 - not to reinstate the Building; and
 - to distribute the material damage portion of the Insurance Payment (net of costs) to Owners in accordance with their ownership interests in the Property.
5. The majority of the Owners are registered under the Goods and Services Tax Act 1985.
6. The Minister for Canterbury Earthquake Recovery had previously given notice of intention to compulsorily acquire the Property under s 54 of the Canterbury Earthquake Recovery Act 2011 (see the *New Zealand Gazette*, No 26, 7 March 2013 at 714). The Canterbury Earthquake Recovery Authority (CERA) established by the State Sector (Canterbury Earthquake Recovery Authority) Order 2011 reached agreement with the majority of the Owners to acquire their units. Settlement of the purchase by CERA of 113 of these units has now been completed.
7. CERA and the Owners agreed that the purchase price to be paid by the CERA to each Owner would broadly be calculated based on the current **market value of the Owner's unit or units on an as-repaired basis** less the amount distributed to each Owner under the Resolution.

Diagram of the Arrangement

8. The following diagram summarises how the Arrangement operates:



How the Taxation Laws apply to the Arrangement

The Taxation Laws apply to the Arrangement as follows:

- a) The Insurance Payment made by the Insurer to the Body Corporate under the Settlement Agreement is not a payment that has been received by a GST registered Owner for the purposes of s 5(13).
- b) A Distribution by the Body Corporate to a GST registered Owner is not a payment received by a GST registered Owner under a contract of insurance for the purposes of s 5(13).
- c) A Distribution by the Body Corporate to a GST registered Owner is not consideration for a taxable supply made by the Owner to the Body Corporate for the purposes of s 8.
- d) A Distribution by the Body Corporate to a GST registered Owner is not consideration for a taxable supply made by the Owner to the CERA for the purposes of s 8.
- e) Section 76 does not apply.

The period or income year for which this Ruling applies

This Ruling will apply for the period beginning on 30 May 2014 and ending on 30 May 2017.

This Ruling is signed by me on the 28th day of July 2014.

Howard Davis

Director (Taxpayer Rulings)