

GST – Supplies of properties used for transitional housing

Issued | Tukuna: 7 June 2024

BR Pub 24/01- 24/03

These Public Rulings consider the GST treatment of supplies of properties by landlords to organisations for use in the Ministry of Housing and Urban Development's (HUD's) Transitional Housing Programme. These rulings apply where the organisations have entered into a Transitional Housing Services Agreement with HUD from 1 July 2023.

BR Pub 24/01 applies to an exempt supply of a property that will be used for the principal purpose of accommodation in a dwelling.

BR Pub 24/02 and BR Pub 24/03 apply to supplies of a property that will not be exempt supplies.

The Rulings only apply to supplies of properties made by landlords to organisations for use in HUD's transitional housing programme, due to the particular agreements that are entered into by HUD and the organisations. These rulings do not apply to other landlords, but they may gain some assistance in determining their GST treatment from the commentary.

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

START DATE - END DATE | RĀ TĪMATA - RĀ MUTUNGA

7 June 2024 – 6 June 2027

Public Ruling BR Pub 24/01: GST – Exempt supplies of properties used for transitional housing

This is a public ruling made under s 91D of the Tax Administration Act 1994.

Taxation Laws | Ture Tāke

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

This Ruling applies in respect of ss 8(1) and 14(1)(cb).

The Arrangement to which this Ruling applies | Te Whakaritenga i pāngia e tēnei Whakataunga

The Arrangement is the lease (the head-lease) of a property by a property owner (the landlord) to an organisation, with the following features:

- The property is a self-contained house, unit or apartment with few or no communal facilities.
- The organisation will use the property for providing accommodation and wrap-around support services to a transitional housing Household (ie, a single tenant or family).
- The organisation provides transitional housing services in accordance with a Transitional Housing Service Agreement entered into with HUD from 1 July 2023.
- The organisation provides the Households with a Housing Agreement that contains a right to quiet enjoyment (as that term is used in s 38 of the Residential Tenancies Act 1986).
- The landlord receives market rent from the organisation for the supply of the head-lease.

How the Taxation Laws apply to the Arrangement | Ko te pānga o ngā Ture Tāke ki te Whakaritenga

The Taxation Laws apply to the Arrangement as follows:

- The supply of the head-lease is an exempt supply, being a supply of a property by way of lease, that is to be used for the principal purpose of accommodation in a dwelling by any person: s 14(1)(cb). Accordingly, the supply of the head-lease is not a taxable supply under s 8(1).

The period for which this Ruling applies | Ko te wā i pāngia e tēnei Whakataunga

This Ruling will apply for the period beginning 7 June 2024 and ending on 6 June 2027.

This Ruling is signed by me on 7 June 2024.

Susan Price

Group Leader, Public Advice and Guidance,
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Te Tari Tohutohu Tāke

Public Ruling BR Pub 24/02: GST – Taxable supplies of properties used for transitional housing (no quiet enjoyment)

This is a public ruling made under s 91D of the Tax Administration Act 1994.

Taxation laws | Ture tāke

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

This Ruling applies in respect of ss 8(1), 10(6) and 14(1)(cb).

The Arrangement to which this Ruling applies | Te Whakaritenga i pāngia e tēnei Whakataunga

The Arrangement is the lease (the head-lease) of a property by a property owner (the landlord) to an organisation, with the following features:

- The landlord is, or is required to be, a registered person (as that term is defined in s 2).
- The property is a self-contained house, unit or apartment with few or no communal facilities.
- The organisation will use the property for providing accommodation and wrap-around support services to a transitional housing Household (ie, a single tenant or family).
- The organisation provides transitional housing services in accordance with a Transitional Housing Service Agreement entered into with HUD from 1 July 2023.
- The organisation does not provide the Households with a right to quiet enjoyment (as that term is used in s 38 of the Residential Tenancies Act 1986) in their Housing Agreements.
- The landlord receives market rent from the organisation for the supply of the head-lease.

How the Taxation Laws apply to the Arrangement | Ko te pānga o ngā ture tāke ki te Whakaritenga

The Taxation Laws apply to the Arrangement as follows:

- The supply of the head-lease is a taxable supply under s 8(1).

- The value of the supply of the head-lease cannot be reduced under s 10(6).

The period for which this Ruling applies | Ko te wā i pāngia e tēnei Whakataunga

This Ruling will apply for the period beginning 7 June 2024 and ending on 6 June 2027.

This Ruling is signed by me on 7 June 2024.

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Public Ruling BR Pub 24/03: GST – Taxable supplies of properties used for transitional housing (commercial dwelling)

This is a public ruling made under s 91D of the Tax Administration Act 1994.

Taxation Laws | Ture Tāke

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

This Ruling applies in respect of ss 8(1), 10(6) and 14(1)(cb).

The Arrangement to which this Ruling applies | Te Whakaritenga i pāngia e tēnei Whakataunga

The Arrangement is the lease (the head-lease) of a property by a property owner (the landlord) to an organisation, with the following features:

- The landlord is, or is required to be, a registered person (as that term is defined in s 2).
- The property is a:
 - complex that contains units or separate rooms with a private bathroom, kitchenette or both, but otherwise has communal kitchen, lounge, and common area facilities; or
 - complex that contains rooms with communal bathroom, kitchen, lounge and common area facilities; or
 - unit within an ordinary, commercially operated motel.
- The organisation will use the property for providing accommodation and wrap-around support services to a transitional housing household (ie, a single tenant or family).
- The organisation provides transitional housing services in accordance with a Transitional Housing Service Agreement entered into with HUD from 1 July 2023.
- The landlord receives market rent from the organisation for the supply of the head-lease.

How the Taxation Laws apply to the Arrangement | Ko te pānga o ngā Ture Tāke ki te Whakaritenga

The Taxation Laws apply to the Arrangement as follows:

- The property is a “commercial dwelling” as defined in s 2.
- The supply of the head-lease is a taxable supply under s 8(1).
- The value of the supply of the head-lease cannot be reduced under s 10(6).

The period for which this Ruling applies | Ko te wā i pāngia e tēnei Whakataunga

This Ruling will apply for the period beginning 7 June 2024 and ending on 6 June 2027.

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Susan Price

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Te Tari Tohutohu Tāke

Commentary on Public Ruling | Takinga kōrero o ngā Whakatau Tūmatanui BR Pub 24/01 – 24/03

This commentary is not a legally binding statement. The commentary is intended to help readers understand and apply the conclusions reached in Public Rulings BR Pub 24/01, 24/02, and 24/03 (“the Rulings”).

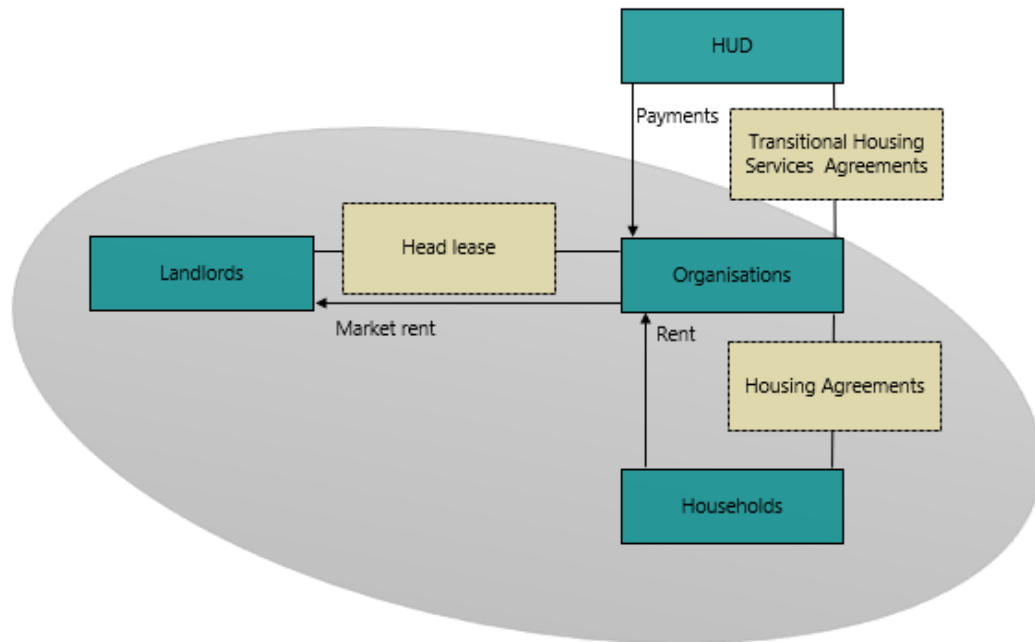
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Summary | Whakarāpopoto

1. Organisations that provide transitional housing services on behalf of the Ministry of Housing and Urban Development (HUD) generally lease the properties used to provide the services from various landlords under a head-lease. The organisations then enter

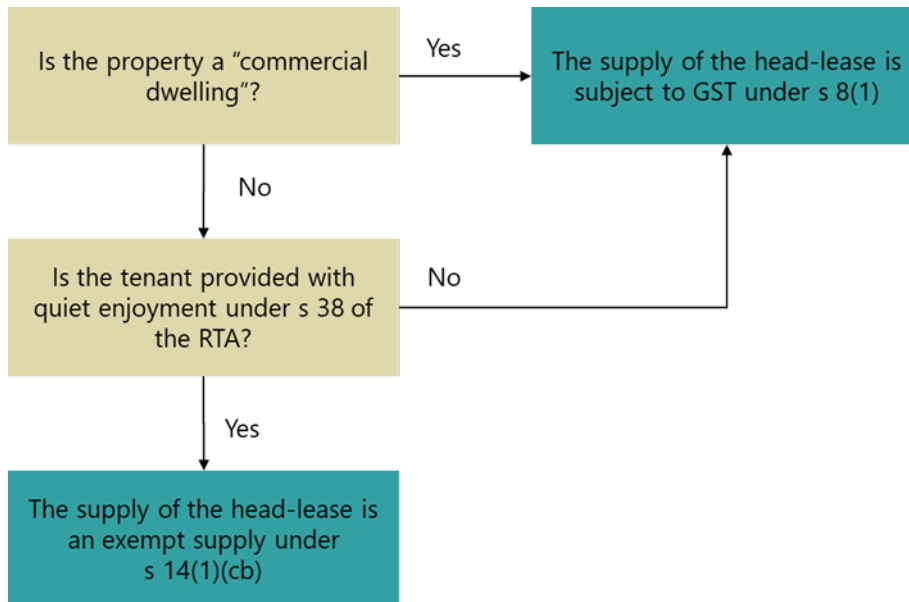
into Housing Agreements with the transitional housing tenants (Households). These arrangements are shown in the following diagram:



2. These Rulings consider when the head-lease between the landlord and the organisation is subject to GST. This generally depends on the terms of the Housing Agreements that are entered into between organisations and Households.
3. GST is usually charged on the supply of goods and services at 15%. However, the supply by way of lease of a property (a head-lease) that is to be used for the principal purpose of accommodation in a dwelling by any person (such as the Households under the Housing Agreements) is an exempt supply for GST purposes under s 14(1)(cb).
4. In determining whether the supply of the head-lease is an exempt or taxable supply, a landlord needs to determine whether the organisation will use the property to provide accommodation in a dwelling to Households under the Housing Agreements.
5. Properties leased to organisations that provide transitional housing services will be used to provide “accommodation”. The more complicated question is whether each particular property satisfies the definition of a “dwelling” in the GSTA. This requires the landlord to consider:
 - whether the property is a “commercial dwelling”; and
 - if not, whether the Household’s use of the property will satisfy the other requirements of the definition of a dwelling.
6. The Commissioner considers that the following types of properties used by organisations to provide transitional housing services in accordance with HUD’s Transitional Housing Services Agreements will be “commercial dwellings” under s 2:

- complexes that contain units or separate rooms with private bathrooms, kitchenettes or both (each provided to a single Household), but otherwise have communal kitchen, lounge and common area facilities;
 - complexes that contain separate rooms (each provided to a single Household), with communal bathroom, kitchen, lounge and common area facilities; and
 - units (leased to a single Household) within an ordinary, commercially operated motel.
7. The above types of properties are ones where, in accordance with the Transitional Housing Services Agreements, there is a high level of management and control over the properties.
 8. Self-contained houses, units and apartments that are provided to a single Household are not commercial dwellings because they do not contain the required features.
 9. If the property is a commercial dwelling, the supply of the head-lease by the landlord to the organisation will not be an exempt supply under s 14(1)(cb). Instead, the supply of the head-lease will be subject to GST under s 8(1).
 10. If the property is not a commercial dwelling it is necessary to consider whether the use of the property under the Housing Agreements entered into by the organisation and Households satisfies the other features of a dwelling. These other features are that:
 - the properties are “premises”, as defined in s 2 of the Residential Tenancies Act 1986 (RTA);
 - a person occupies, or it can reasonably be foreseen that a person will occupy, the premises as their principal place of residence; and
 - the person has quiet enjoyment, as that term is used in s 38 of the RTA.
 11. The Commissioner considers that properties used to provide transitional housing services will be premises that are used as the Household’s principal place of residence during the period of the Housing Agreement.
 12. Whether the Household is provided with quiet enjoyment, as that term is used in s 38 of the RTA, depends on the terms of the Housing Agreement that the organisations enter into with the Households. Organisations may decide to provide this right in their Housing Agreements by expressly referring to s 38 of the RTA or including wording that has the same effect as s 38 of the RTA. If there is no specific reference or wording, the Housing Agreements will not be subject to the relevant quiet enjoyment right.
 13. To determine whether the relevant quiet enjoyment right is being provided to the Households, landlords will need to ask the organisation whether their Housing Agreements for that property will refer to s 38 of the RTA or otherwise provide the right to quiet enjoyment as that term is used in s 38 of the RTA.

14. If that quiet enjoyment right is provided, the supply of the head-lease will be an exempt supply under s 14(1)(cb) (where the property is not a commercial dwelling).
15. Use the following flowchart to determine whether the supply is subject to GST or is exempt:



16. Supplies to an individual of domestic goods and services in a commercial dwelling can be accounted for at a reduced value once stays in the commercial dwelling exceed four weeks (s 10(6)). However, this provision applies only if the supplies are made to a natural person, and where there is a commercial dwelling. As the landlord does not supply the head-lease to a natural person, this provision cannot be applied to the supply of the head-lease.

Background | Horopaki

17. Under HUD’s Transitional Housing Programme, short-term accommodation (generally for a period of 12 weeks) is supplied to individuals or families (Households) who have no other housing available to them, along with the supply of wrap-around support services. The organisations that provide transitional housing services on behalf of HUD generally lease the properties used to provide the services (under either a residential or commercial lease) from developers, investors, private landlords, motels or hostels (referred to as landlords for ease of reference in this commentary). The organisations then enter into Housing Agreements with the Households.
18. Landlords provide different types of properties for transitional housing purposes. Generally, the types of properties supplied can be categorised as:
 - stand-alone, self-contained houses (leased to a single Household);

- self-contained units or apartments within a larger complex (each leased to a single Household);
 - complexes that contain units or separate rooms with private bathrooms, kitchenettes or both (each leased to a single Household), but otherwise have communal kitchen, lounge and common area facilities;
 - complexes that contain separate rooms (each leased to a single Household), with communal bathroom, kitchen, lounge and common area facilities; and
 - units (leased to a single Household) within an ordinary, commercially operated motel.
19. These Rulings consider when the head-lease between the landlord and the organisation is subject to GST. This broadly depends on the:
- nature of the property; and
 - way that the Household uses the property.
20. Inland Revenue is aware some landlords supplying properties for use in transitional housing are finding GST hard to understand. These Rulings aim to clarify the GST consequences for landlords.

Exempt supplies of accommodation in a dwelling

21. GST applies to the supply of goods or services by a registered person in the course or furtherance of a taxable activity carried on by them (s 8(1)). However, GST does not apply to exempt supplies.
22. If a person is making exempt supplies, they do not have to account for any GST. They are also not able to claim input tax deductions on costs they incur in making those exempt supplies.
23. Exempt supplies include certain supplies of accommodation (ss 14(1)(c) to (cb)), including the supply of:
- accommodation in a dwelling (s 14(1)(c)); and
 - a property by way of lease (a head-lease) that is to be used for the principal purpose of accommodation in a dwelling by any person (s 14(1)(cb)).
24. Therefore, in determining whether a head-lease is an exempt supply, the landlord needs to find out whether the organisation will use the property to provide accommodation in a dwelling to transitional housing Households.
25. "Accommodation" is not defined in the GSTA. It is relevantly defined in the *Concise Oxford English Dictionary* (12th ed, Oxford University Press, New York (2011)) as "a room, building, or space in which someone may live or stay". Organisations that

provide transitional housing must provide a temporary space for tenants to live in until they can find more sustainable housing. Therefore, the properties are used to provide accommodation.

26. The more complicated question is whether the property satisfies the definition of a dwelling in the GSTA. Dwelling is relevantly defined (in s 2) as:
 - premises, as defined in s 2 of the RTA;
 - that a person occupies or it can reasonably be foreseen that a person will occupy as their principal place of residence; and
 - in relation to which the person has quiet enjoyment, as that term is used in s 38 of the RTA; but
 - excludes a commercial dwelling.
27. If the property is a commercial dwelling, then it does not matter whether the remaining requirements are satisfied. In that case, the supply of the head-lease will not be an exempt supply under s 14(1)(cb), and will instead be subject to GST under s 8(1).
28. This commentary first considers when a property is a commercial dwelling, then goes on to consider the other features of a dwelling.

Whether there is a commercial dwelling

29. The following types of premises are commercial dwellings (s 2):
 - a hotel, motel, homestay, farmstay, bed and breakfast establishment, inn, hostel, or boardinghouse;
 - 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 s 38 of the RTA;
 - a convalescent home, nursing home, rest home, or hospice;
 - a camping ground; and
 - premises of a similar kind to those referred to above.
30. In *Case L75* (1989) 11 NZTC 1,435 the Taxation Review Authority (Judge Keane) stated (at 1,437) that whether premises fall within the definition of “commercial dwelling” must be approached in a broad and common-sense way. Generally, a dwelling is distinguished from a commercial dwelling by the scale of accommodation provided, whether there are communal facilities and the level of control the owner exercises.
31. To determine whether premises are commercial dwellings, it is necessary to consider the nature of each type of establishment listed in the definition of commercial

dwelling, and then consider whether the properties leased for the purposes of transitional housing are or are similar to any of those establishments.

32. Having regard to the types of properties used for transitional housing (as set out at [18]), this commentary discusses only motels, boardinghouses, hostels and serviced apartments. The properties do not appear to fall into any of the other categories of establishments that are commercial dwellings.

Motel

33. The term “motel” is not defined in the GSTA. The *Concise Oxford English Dictionary* relevantly defines the term as follows:

motel ▶ **n.** a roadside hotel designed primarily for motorists, typically having the rooms arranged in low blocks with parking directly outside.

34. Case law indicates that a motel will generally have:¹
- a place where guests can obtain meals;
 - furnished rooms with an en suite, linen and towels;
 - rooms that are cleaned and serviced as part of the price of letting;
 - a reception desk, and often offer concierge services.

Boardinghouse

35. The term “boardinghouse” is not defined in the GSTA.² The *Concise Oxford English Dictionary* relevantly defines the term as follows:

boarding house n. private house providing food and lodging for paying guests.

36. Case law indicates that a boardinghouse will generally have:³
- shared accommodation for a number of separate occupants;
 - a high level of management control exercised over the property, including cleaning and maintenance;
 - facilities that include separate rooms, with shared communal areas such as a kitchen, bathroom and lounge; and
 - occupants who usually remain in the property for short periods.

¹ *ECC Southbank Pty Ltd as Trustee for Nest Southbank Unit Trust v FCT* 2012 ATC 20-336 (FCA).

² “Boarding house” is defined in the RTA, and “boarding establishment” is defined in the Income Tax Act 2007, but neither definition applies for these purposes.

³ *Case L75* and *Case Q46* (1993) 15 NZTC 5,227.

Hostel

37. The term “hostel” is not defined in the GSTA. The *Concise Oxford English Dictionary* relevantly defines the term as follows:

hostel n. 1 an establishment which provides cheap food and lodging for students, workers, etc. 2 archaic an inn providing accommodation.

38. Case law indicates that a hostel will generally:⁴

- provide accommodation at relatively low cost to a number of occupants;
- have communal facilities, such as kitchens, living areas and bathrooms rather than being self-contained; and
- have on-site management and supervision.

Serviced apartments

39. The definition of commercial dwelling refers to serviced apartments that a third party manages and operates and for which services (in addition to the supply of accommodation) are provided and in relation to which a resident does not have quiet enjoyment.

40. The legislation does not indicate the type of services contemplated. However, the Commissioner considers the services contemplated are similar to those provided in a hotel or motel, such as cleaning, the provision of linen, the provision of meals, and reception and concierge services.

Conclusion on commercial dwelling

41. As discussed above, if the properties are commercial dwellings, then the landlords will not be supplying a property that is to be used for the principal purpose of accommodation in a dwelling by any person, and their supplies of transitional housing accommodation will not be exempt supplies. The supplies will be taxable supplies.

42. The features of each type of establishment are discussed above. If the property the landlord leases to the organisation for use in providing transitional housing services falls into any of those categories, the property will be a commercial dwelling.

⁴ *Adams v Massey University* (DC Palmerston North TT 43/94, 10 October 1994), *Wigram Accommodation Ltd v Kelly* (DC Christchurch MA153/99, 1 February 2000), *McKenzie v Unilodge Management* (Tenancy Tribunal Auckland TT No. 1239/02, 18 July 2002), *Weidtmann v 139 Property Management Ltd* (Tenancy Tribunal Auckland TT No. 2421/02, 19 December 2002) and *ECC Southbank*.

43. However, a property will also be a commercial dwelling if it is premises of a similar kind to those referred to. Therefore, it is useful to consider the features that the establishments listed above have in common. Essentially, those features are:
- the property offers shared accommodation for a number of separate occupants;
 - the rooms are furnished and may contain an en suite and kitchenette, with shared communal areas such as kitchen, bathroom and living areas; and
 - a high level of management and control is exercised over the property, including a reception, security or on-site management.
44. Based on this, the Commissioner considers the following types of properties used to provide transitional housing services in accordance with Transitional Housing Services Agreements that the organisations enter with HUD, will be commercial dwellings:
- complexes that contain units or separate rooms with private bathrooms, kitchenettes or both (each leased to a single Household), but otherwise have communal kitchen, lounge, and common area facilities;
 - complexes that contain separate rooms (each leased to a single Household), with communal bathroom, kitchen, lounge and common area facilities; and
 - units (leased to a single Household) within an ordinary, commercially operated motel.
45. The above types of properties are ones where there is a high level of management and control over the property.
46. Self-contained houses, units and apartments that are provided to a single Household are not commercial dwellings because these types of properties do not contain the required features.
47. The Commissioner considers that self-contained apartments used to provide transitional housing services are not “serviced apartments” as that term is used in the definition of commercial dwelling. While the organisations involved in transitional housing provide wrap-around support services, those are not the types of services envisaged by the description “serviced apartment”.

Other features of a dwelling

48. If a property is not a commercial dwelling, it is necessary to consider whether the use of the property under the Housing Agreements satisfies the other features of a dwelling. As noted above, these other features are that:
- there are premises, as defined in s 2 of the RTA;

- a person occupies or it can reasonably be foreseen that a person will occupy the premises as their principal place of residence; and
- the person has quiet enjoyment, as that term is used in s 38 of the RTA.

Premises

49. The definition of dwelling refers to “premises” as defined in s 2 of the RTA.
50. Section 2 of the RTA defines premises widely as including any means of shelter placed or erected on any land and intended for occupation on that land, including appurtenances (other than facilities).
51. This definition will be satisfied by all properties used for transitional housing.

Used as a principal place of residence

52. The next requirement is that the premises are occupied by the Households as their “principal place of residence”.
53. Principal place of residence 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 (s 2).
54. In determining whether s 14(1)(cb) applies, the person needing to occupy the place as their main residence for the period is the transitional housing tenant.
55. “Residence” is relevantly defined in the *Concise Oxford English Dictionary* as “a person’s home”. A “main residence” is the person’s home at the relevant time. The relevant time is the period of the Housing Agreement (in the context of transitional housing usually a 12-week period).
56. Transitional housing is a temporary form of accommodation. However, this is not relevant to determining whether the property is the tenant’s main residence at the time of the Housing Agreement. The question that needs to be considered is whether the Households will use the property as their “main residence” during that time.
57. Eligibility criteria for transitional housing suggests it will be extremely unlikely the Household will have another place that would be considered their home or main residence. If they did have another residence, it would need to be one that is not able to be occupied (for instance it is unsafe), in which case that place could not reasonably be considered to be their “main” residence at that time. On that basis, the Commissioner considers that the property will be the Household’s main residence for the period to which their Housing Agreement relates, so is their principal place of residence.

Quiet enjoyment as that term is used in s 38 of the RTA

58. The final requirement in the definition of dwelling is that the person must have quiet enjoyment in relation to the premises, as that term is used in s 38 of the RTA. As with the previous issue, the relevant person here is the transitional housing Household.
59. In summary, s 38 of the RTA provides that the tenant is entitled to quiet enjoyment of the premises without interruption and that the landlord must not cause or permit any interference with the tenant's reasonable peace, comfort or privacy.
60. The RTA does not automatically apply to premises used to provide transitional housing (s 5(1)(y) of the RTA). However, the parties to a Housing Agreement can agree in writing that any or all of the provisions of the RTA will apply (s 8 of the RTA).
61. Organisations may decide to provide the right to quiet enjoyment (as that term is used in s 38 of the RTA) in their Housing Agreements by expressly referring to s 38 of the RTA or including wording that has the same effect as s 38 of the RTA. If there is no specific reference or wording, the Housing Agreements will not be subject to the relevant quiet enjoyment right.
62. This means that, to ensure they have the correct GST treatment, landlords will need to ask organisations whether their Housing Agreements for that property will refer to s 38 of the RTA or otherwise provide the right to quiet enjoyment as that term is used in s 38 of the RTA. The terms of the head-lease with the organisations (including whether the head-lease is a commercial or residential lease) are not relevant. What is relevant are the rights ultimately provided by the organisation to the transitional housing Households under the Housing Agreements.
63. Whether the Housing Agreement provides quiet enjoyment is a matter of law and depends on what is written in the Housing Agreement. The GST classification of the leasing arrangement does not change if the landlord breaches the tenant's quiet enjoyment rights in a particular case.
64. In addition, the Commissioner does not consider the fact that wrap around support services might be provided on the premises means that there cannot have been a right to quiet enjoyment if that right was specifically provided. The RTA authorises the landlord (in the case of the Housing Agreement, the organisation) to enter the premises if that is agreed to by the tenant (s 48 of the RTA). This qualifies the tenant's right to quiet enjoyment under s 38 of the RTA.

Conclusion on “accommodation in a dwelling”

65. In determining whether the supply of a head-lease is an exempt supply, or is subject to GST, a landlord needs to determine whether the organisation will use the property to

provide accommodation in a dwelling to the transitional housing Households under Housing Agreements.

66. Properties leased by landlords to organisations that provide transitional housing services will be used to provide “accommodation”. The more complicated question is whether each particular property satisfies the definition of a dwelling in the GSTA. This requires the landlord to consider:
 - whether the property is a commercial dwelling; and
 - if not, whether the transitional housing Household’s use of the property satisfies the other requirements of the definition of a dwelling.
67. The Commissioner considers that the following types of properties used to provide transitional housing services are commercial dwellings:
 - complexes that contain units or separate rooms with private bathrooms, kitchenettes or both (each leased to a single Household), but otherwise have communal kitchen, lounge and common area facilities;
 - complexes that contain separate rooms (each leased to a single Household), with communal bathroom, kitchen, lounge and common area facilities; and
 - units (leased to a single Household) within an ordinary, commercially operated motel.
68. The above types of properties are ones where there is a high level of management and control over the property.
69. Self-contained houses, units and apartments provided to a single Household will not be commercial dwellings because these types of properties do not contain the required features.
70. If the property is a commercial dwelling, the supply of the head-lease will not be an exempt supply under s 14(1)(cb). Instead, the supply of the head-lease will be subject to GST under s 8(1).
71. If the property is not a commercial dwelling, it is necessary to consider whether the use of the property under the Housing Agreement will satisfy the other features of a dwelling. These other features are that:
 - the properties are premises, as defined in s 2 of the RTA;
 - the person occupies, or it can reasonably be foreseen that the person will occupy, the premises as their principal place of residence; and
 - the person has quiet enjoyment, as that term is used in s 38 of the RTA.

72. The Commissioner considers properties used to provide transitional housing services will be premises that are used as the transitional housing Household's principal place of residence during the period of the Housing Agreement.
73. Whether the Household is provided with quiet enjoyment, as that term is used in s 38 of the RTA depends on the terms of the Housing Agreement. To determine whether the relevant type of quiet enjoyment is being provided under the Housing Agreement, landlords will need to ask the organisation the property is leased to whether their Housing Agreements for that property will refer to s 38 of the RTA or otherwise provide the right to quiet enjoyment as that term is used in s 38 of the RTA.
74. If quiet enjoyment is provided, the supply of the head-lease will be an exempt supply under s 14(1)(cb).

Landlords cannot reduce the value of the supply under s 10(6)

75. Supplies to an individual of domestic goods and services in a commercial dwelling can be accounted for at a reduced value in some situations (s 10(6)).
76. "Domestic goods and services" are defined as the supply of the right to occupy a commercial dwelling including the supply of any cleaning, maintenance and utilities (s 2).
77. Section 10(6) applies only where the supply is provided to an individual, and where there is a commercial dwelling. The term "individual" is not defined in the GSTA but is referred to in other sections with reference to natural persons. Section 10(6) does not look through to what is supplied to the ultimate tenant in the same way as s 14(1)(cb).
78. The supplies the landlord makes under the head-lease are supplied to the organisation. The landlord is not supplying domestic goods and services to the transitional housing Households. Therefore, s 10(6) cannot be applied to the supply of the head-lease.

Examples

Example | Taurira 1 - Apartment complex with shared facilities developed for use in transitional housing

Megan is a housing developer and decides to develop a new apartment complex for the provision of transitional housing. Each apartment will contain one or two bedrooms, an en suite bathroom, a small lounge and kitchenette (with a hot plate,

microwave and sink). The wider complex will contain communal spaces including fully equipped kitchens, dining areas, television rooms, lounge rooms and games rooms, and will have 24/7 on-site reception and security staffed by the organisation providing transitional housing services.

Megan enters into a commercial lease with a transitional housing organisation for a four-year period.

The complex is a commercial dwelling as it is similar to a hostel, boardinghouse or motel. There are communal facilities and a high level of management over the property.

GST output tax is chargeable on the rental income received from the transitional housing organisation. Megan is not able to use the reduced rate in s 10(6) as she is supplying the complex to an organisation.

As the complex is being used to make taxable supplies, Megan can claim GST input tax deductions on development and running costs.

Example | Taurira 2 - Apartment complex without shared facilities used for transitional housing

Manu is an investor and owns a small apartment complex that she had been renting to a mix of students and families. Manu decides to rent the apartments to an organisation that provides transitional housing services.

The complex has 10 three-bedroom apartments. Each apartment will be provided to a single Household. The apartments each have a kitchen, bathroom and living area. There are no communal areas. A laundromat is down the street.

Manu checks with the organisation, which confirms that it does not provide the Household with a Housing Agreement that refers to, or adopts the words of, s 38 of the RTA.

Because there is no quiet enjoyment (as that term is used in s 38 of the RTA) provided by the organisation to the Households, Manu's supply of the properties is not the supply of accommodation in a dwelling. This means that the supply will be a taxable supply for GST purposes.

Example | Tauria 3 – Houses used for transitional housing

Maia is a property investor who owns 15 houses throughout the lower North Island. She was struggling to find long-term tenants for some of her larger properties so decided to lease 10 of the properties to a transitional housing organisation for four years for some income stability.

Eight of the properties are self-contained houses the organisation provides to single families. The Housing Agreements for these properties are subject to a right to quiet enjoyment under s 38 of the RTA. The supply of these properties by Maia to the organisation is a supply of property by way of lease that is to be used for the principal purpose of accommodation in a dwelling by a person and is exempt.

The other two properties are 10-bedroom boarding houses. The organisation rents the rooms to individual tenants who share bathrooms and other living areas. The organisation kept one room for a staff member to remain on-site. The two boarding houses are commercial dwellings. Therefore, Maia's supply of a head-lease in relation to these properties is not an exempt supply and is subject to GST.

References

Case References

Adams v Massey University (DC Palmerston North TT 43/94, 10 October 1994)

Case L75 (1989) 11 NZTC 1,435 (TRA)

Case Q46 (1993) 15 NZTC 5,227 (TRA)

ECC Southbank Pty Ltd as Trustee for Nest Southbank Unit Trust v FCT 2012 ATC 20-336 (FCA)

McKenzie v Unilodge Management (Tenancy Tribunal Auckland TT No. 1239/02, 18 July 2002)

Weidtmann v 139 Property Management Ltd (Tenancy Tribunal Auckland TT No. 2421/02, 19 December 2002)

Wigram Accommodation Ltd v Kelly (DC Christchurch MA153/99, 1 February 2000)

Legislative References

Goods and Services Tax Act 1985, ss 2 (definitions of "commercial dwelling", "domestic goods and services", "dwelling" and "principal place of residence"), 8(1), 10(6), 14(1)(c) and 14(1)(cb)

Residential Tenancies Act 1986, ss 2 (definition of “premises”), 5(1)(y), 8, 38 and 48.

Other

Concise Oxford English Dictionary (12th ed, Oxford University Press, New York (2011))

About this document | Mō tēnei tuhinga

Public rulings are issued by the Tax Counsel Office. Public rulings set out the Commissioner’s view on how tax laws apply to a specific set of facts – called an arrangement. Taxpayers whose circumstances match the arrangement described in a public ruling may apply the ruling but are not obliged to do so. Public rulings are binding on the Commissioner. This means that if you are entitled to apply a public ruling and you have calculated your tax liability in accordance with the ruling, the Commissioner must accept that assessment. A public ruling applies only to the taxation laws and arrangement set out in the ruling, and only for the period specified in the ruling. It is important to note that a general similarity between a taxpayer’s circumstances and the arrangement covered by a public ruling will not necessarily lead to the same tax result.

Appendix – legislation

79. The relevant provisions in the GSTA are as follows:

2 Interpretation

...

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**

...

domestic goods and services means the right to occupy the whole or part of any commercial dwelling, including, where it is provided as part of the right to so occupy, the supply of—

- (a) cleaning and maintenance:
- (b) electricity, gas, air-conditioning, or heating:
- (c) telephone, television, radio, or any other similar chattel

...

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

...

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

...

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% on the supply (but not including an exempt supply) in New Zealand of goods and services, on or after 1 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.

...

10 Value of supply of goods and services

...

- (6) Where and to the extent that any supply of goods and services consists of the supply, to any individual, of domestic goods and services in a commercial dwelling, the value attributable to that part of that supply of domestic goods and services that is for a period in excess of 4 weeks shall be deemed to be reduced to an amount equal to 60% of the amount that would, if that part of that supply were chargeable with tax at the rate of 9%, be the value of that part of that supply of domestic goods and services:

provided that to the extent that any supply is a supply of domestic goods and services, and where that commercial dwelling is a residential establishment, and where the supplier and the recipient have agreed that that supply shall be for a period of or in excess of 4 weeks, or for a number of periods which in the aggregate will exceed 4 weeks, the value attributable to that supply of domestic goods and services shall, from the commencement of that supply, be deemed to be reduced to an amount equal to 60% of the amount that would, if that supply were chargeable with tax at the rate of 9%, be the value of that supply of domestic goods and services.

...

14 Exempt supplies

- (1) The following supplies of goods and services shall be exempt from tax:

...

- (c) the supply of accommodation in any dwelling by way of—
 - (i) hire; or
 - (ii) a service occupancy agreement; or
 - (iii) a licence to occupy;

...

- (cb) the supply of property by way of lease that is to be used for the principal purpose of accommodation in a dwelling by any person, other than a registered person in the course or furtherance of a taxable activity:

...

80. The relevant provisions in the RTA are as follows:

2 Interpretation

...

premises includes (other than in relation to a boarding house tenancy, in which case the definition in section 66B applies)—

- (a) any part of any premises; and
- (b) any land and appurtenances, other than facilities; and
- (c) any mobile home, caravan, or other means of shelter placed or erected upon any land and intended for occupation on that land

...

5 Act excluded in certain cases

(1) This Act shall not apply in the following cases:

...

- (y) if the premises are used to provide emergency or transitional accommodation and—
 - (i) the provision of the accommodation is funded wholly or partly by—
 - (A) emergency housing assistance paid to or for the credit of a person under the Special Needs Grants Programme; or
 - (B) any other payment made by a government department for the provision of emergency or transitional accommodation to people in need of housing; or
 - (ii) the provider of the accommodation is a person, or class of person, prescribed by regulations for the purposes of this paragraph.

8 Parties to excluded tenancies may agree that Act shall apply

- (1) Nothing in any of sections 5 to 7 shall prevent the parties to a tenancy that would otherwise be excluded from this Act by virtue of any of the provisions of those sections, being a tenancy of any premises used or intended to be used for residential premises, from agreeing in writing that all or any of the provisions of this Act shall apply in respect of the tenancy, either without modification or with such modifications as they may so agree.
- (2) Without limiting subsection (1), any such agreement may confer upon the Tribunal, in respect of the tenancy, all or any of the jurisdiction conferred on the Tribunal by this Act in respect of tenancies to which this Act applies.

38 Quiet enjoyment

- (1) The tenant shall be entitled to have quiet enjoyment of the premises without interruption by the landlord or any person claiming by, through, or under the landlord or having superior title to that of the landlord.

- (2) The landlord shall not cause or permit any interference with the reasonable peace, comfort, or privacy of the tenant in the use of the premises by the tenant.
- (3) Contravention of subsection (2) in circumstances that amount to harassment of the tenant is hereby declared to be an unlawful act.
- (3A) Without limiting the generality of subsection (3), the landlord commits an unlawful act under that subsection if the landlord enters the premises purportedly under section 48(2B) without any reasonable cause to believe that the tenant has abandoned the premises.
- (4) In this section premises includes facilities.

48 Landlord's right of entry

...

- (2) The landlord may enter the premises—

...

- (da) for the purpose of providing services agreed to under the tenancy agreement, but only if the entry complies with any conditions specified in the tenancy agreement; ...