

## **LOCAL AUTHORITY RATES APPORTIONMENTS ON PROPERTY TRANSACTIONS WHERE THE RATES HAVE BEEN PAID BEYOND SETTLEMENT – GOODS AND SERVICES TAX IMPLICATIONS FOR VENDOR**

### **PUBLIC RULING - BR Pub 10/10**

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

#### **Taxation Law**

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

This Ruling applies in respect of sections 8 and 10 and the definition of "consideration" in section 2(1).

#### **The Arrangement to which this Ruling applies**

The Arrangement is the sale and purchase of real estate between a GST-registered vendor and a GST-registered or unregistered purchaser. The vendor has prepaid local authority rates beyond the date of settlement of the transaction. The vendor is supplying the property in the course or furtherance of its taxable activity.

Because the rates have been prepaid, the settlement statement apportions the rates between the vendor and the purchaser. On the settlement date the purchaser is required to pay its share of the rates paid by the vendor, in addition to the purchase price for the real estate.

Section 14(1)(d) does not apply to the supply of the property.

#### **How the Taxation Laws apply to the Arrangement**

The Taxation Laws apply to the Arrangement as follows:

- The payment by the purchaser for its apportioned share of the prepaid rates (covering the period from the time of settlement) will be part of the "consideration" (as defined in section 2(1)) for the supply of the property by the vendor.
- Under section 8, GST is chargeable on the supply of the property by a registered vendor by reference to the value of the supply. The value of that supply under section 10(2) will include the purchase price and the amount of the prepaid rates apportionment paid by the purchaser to the vendor.

#### **The period or income year for which this Ruling applies**

This Ruling will apply for the period beginning on 23 September 2010 and ending on 23 September 2015.

This Ruling is signed by me on the 23rd day of September 2010.

**Susan Price**

Director, Public Rulings

**LOCAL AUTHORITY RATES APPORTIONMENTS ON PROPERTY TRANSACTIONS WHERE THE RATES HAVE BEEN PAID BEYOND SETTLEMENT – GOODS AND SERVICES TAX IMPLICATIONS FOR PURCHASER**

**PUBLIC RULING - BR Pub 10/11**

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

**Taxation Law**

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

This Ruling applies in respect of sections 8 and 10 and the definition of "consideration" in section 2(1).

**The Arrangement to which this Ruling applies**

The Arrangement is the sale and purchase of real estate between a GST-registered or unregistered vendor and a GST-registered purchaser. The vendor has prepaid local authority rates beyond the date of settlement of the transaction. The purchaser is acquiring the property for the principal purpose of making taxable supplies.

Because the rates have been prepaid, the settlement statement apportions the rates between the vendor and the purchaser. On the settlement date the purchaser is required to pay its share of the rates paid by the vendor, in addition to the purchase price for the real estate.

**How the Taxation Laws apply to the Arrangement**

The Taxation Laws apply to the Arrangement as follows:

- The payment by the purchaser for its apportioned share of the prepaid rates (covering the period from the time of settlement) will be part of the "consideration" (as defined in section 2(1)) for the supply of the property by the vendor.
- If the purchaser is entitled to an input tax deduction for the supply of the property then the purchaser can claim an input tax deduction on the total amount of consideration for the supply.

**The period or income year for which this Ruling applies**

This Ruling will apply for the period beginning on 23 September 2010 and ending on 23 September 2015.

This Ruling is signed by me on the 23rd day of September 2010.

**Susan Price**

Director, Public Rulings

## **LOCAL AUTHORITY RATES APPORTIONMENTS ON PROPERTY TRANSACTIONS WHERE THE RATES ARE IN ARREARS – GOODS AND SERVICES TAX IMPLICATIONS FOR VENDOR**

### **PUBLIC RULING - BR Pub 10/12**

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

#### **Taxation Law**

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

This Ruling applies in respect of sections 8 and 10 and the definition of "consideration" in section 2(1).

#### **The Arrangement to which this Ruling applies**

The Arrangement is the sale and purchase of real estate between a GST-registered vendor and a GST-registered or unregistered purchaser. The local authority rates for the property are in arrears on the settlement date and the parties have agreed that the purchaser will pay the outstanding amount. The vendor is supplying the property in the course or furtherance of its taxable activity.

Because the rates are in arrears and the parties have agreed that the purchaser will pay the outstanding amount to the local authority, the settlement statement provides a credit to the purchaser for the vendor's share of the outstanding amount.

Section 14(1)(d) does not apply to the supply of the property.

#### **How the Taxation Laws apply to the Arrangement**

The Taxation Laws apply to the Arrangement as follows:

- Where the vendor allows a credit against the purchase price for unpaid rates, the consideration (as defined in section 2(1)) for the vendor's supply of the property to the purchaser is the amount received by the vendor from the purchaser (being the purchase price less the credit against the purchase price), together with the amount of the outstanding local authority rates that the purchaser has agreed to discharge.
- Under section 8, GST is chargeable on the supply of the property by a registered vendor by reference to the value of the supply. The value of the supply under section 10(2) will include the amount received by the vendor from the purchaser as well as the amount of the outstanding local authority rates that the purchaser has agreed to discharge.

**The period or income year for which this Ruling applies**

This Ruling will apply for the period beginning on 23 September 2010 and ending on 23 September 2015.

This Ruling is signed by me on the 23rd day of September 2010.

**Susan Price**

Director, Public Rulings

## **LOCAL AUTHORITY RATES APPORTIONMENTS ON PROPERTY TRANSACTIONS WHERE THE RATES ARE IN ARREARS – GOODS AND SERVICES TAX IMPLICATIONS FOR PURCHASER**

### **PUBLIC RULING - BR Pub 10/13**

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

#### **Taxation Law**

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

This Ruling applies in respect of sections 8 and 10 and the definition of "consideration" in section 2(1).

#### **The Arrangement to which this Ruling applies**

The Arrangement is the sale and purchase of real estate between a GST-registered or unregistered vendor and a GST-registered purchaser. The local authority rates for the property are in arrears on the settlement date and the parties have agreed that the purchaser will pay the outstanding amount. The purchaser is acquiring the property for the principal purpose of making taxable supplies.

Because the rates are in arrears and the parties have agreed that the purchaser will pay the outstanding amount to the local authority, the settlement statement provides a credit to the purchaser for the vendor's share of the outstanding amount.

#### **How the Taxation Laws apply to the Arrangement**

The Taxation Laws apply to the Arrangement as follows:

- Where the vendor allows a credit against the purchase price for unpaid rates, the consideration (as defined in section 2(1)) for the vendor's supply of the property to the purchaser is the amount received by the vendor from the purchaser (being the purchase price less the credit against the purchase price), together with the amount of the outstanding local authority rates that the purchaser has agreed to discharge.
- If the purchaser is entitled to an input tax deduction in respect of the supply of the property then the purchaser can claim an input tax deduction on the total amount of consideration for the supply.

#### **The period or income year for which this Ruling applies**

This Ruling will apply for the period beginning on 23 September 2010 and ending on 23 September 2015.

This Ruling is signed by me on the 23rd day of September 2010.

**Susan Price**

Director, Public Rulings

## COMMENTARY ON PUBLIC RULINGS BR Pub 10/10 to BR Pub 10/13

This commentary is not a legally binding statement, but is intended to provide assistance in understanding and applying the conclusions reached in Public Rulings BR Pub 10/10, BR Pub 10/11, BR Pub 10/12 and BR Pub 10/13 (“the Rulings”).

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

### Summary

1. The Rulings address the question of how apportionments of local authority rates made in property transactions should be treated for GST. BR Pub 10/10 and BR Pub 10/11 apply to situations where the rates have been prepaid by the vendor beyond the settlement date. BR Pub 10/12 and BR Pub 10/13 apply to situations where the local authority rates for the property are in arrears on the settlement date and the parties have agreed that the purchaser will pay the outstanding rates, in exchange for a credit against the settlement amount for the vendor’s share of the outstanding rates.
2. This commentary explains the conclusions reached in the Rulings. After providing a brief introduction and setting out the relevant legislation, this commentary discusses:
  - **Consideration for a supply:** this part of the commentary discusses key principles regarding “consideration” – namely that “consideration” has a wide meaning and that a statutory obligation to a third party does not amount to “consideration”.
  - **GST treatment of transactions where the rates are prepaid:** this part of the commentary explains the GST treatment where the rates have been prepaid beyond settlement. It explains that the payment of the rates apportionment to the vendor by the purchaser forms part of the total consideration for the supply of the property.
  - **GST treatment of transactions where the rates are in arrears:** this part of the commentary explains the GST treatment where the rates are in arrears at settlement and the vendor allows a credit against the purchase price for unpaid rates. It explains that the consideration for the vendor’s supply of the property to the purchaser is the amount received by the vendor from the purchaser (being the purchase price less the credit against the purchase price), together with the amount of the outstanding local authority rates that the purchaser has agreed to discharge.
3. After the legal analysis, the commentary provides examples of a range of different property sale situations. The examples include discussion of how the Rulings apply to each situation as well as model settlement statements and tax invoices.

### Introduction

4. Section 5(7) requires local authorities to charge GST on rates.

5. Local authorities (that is, city and district councils and some regional councils) charge ratepayers rates in advance under the Local Government (Rating) Act 2002. On the sale and purchase of land, a vendor may pass on to a purchaser rates that relate to the period of the purchaser's occupation of the land. Apportionment is usually provided for in the sale and purchase contract.
6. Confusion exists about whether the GST-inclusive or GST-exclusive rates amount should be apportioned and whether vendors should seek to recover a GST-inclusive rates amount from purchasers. The Rulings, and this commentary, seek to remove this confusion by explaining the effect of the rates apportionment on the amount of consideration the vendor receives.
7. Public Ruling BR Pub 99/8, "Local authority rates apportionments on property transactions – goods and services tax treatment", *Tax Information Bulletin* Vol 11, No 11 (December 1999), expired on 31 March 2003. BR Pub 99/8 applied to a sale and purchase of land where the parties to the transaction apportioned local authority rates between themselves. It did not differentiate in the ruling itself between situations where rates had been prepaid and situations where rates were in arrears, as occurs in these Rulings.

## Legislation

### ***Goods and Services Tax Act 1985***

8. "Consideration" is defined in section 2(1) to mean:

in relation to the supply of goods and services to any person, includes any payment made or any act or forbearance, whether or not voluntary, in respect of, in response to, or for the inducement of, the supply of any goods and services, whether by that person or by any other person; but does not include any payment made by any person as an unconditional gift to any non-profit body.
9. "Dwelling" is defined in section 2(1) to mean:

any building, premises, structure, or other place, or any part thereof, used predominantly as a place of residence or abode of any individual, together with any appurtenances belonging thereto and enjoyed with it; but does not include a commercial dwelling.
10. Section 5(7)(a) states:

For the purposes of this Act—

Every local authority is deemed to supply goods and services to any person where any amount of rates is payable by that person to that local authority.
11. Section 5(15) states:

Where a dwelling is included in a supply, the supply of that dwelling is deemed to be a separate supply from the supply of any other real property included in the supply.
12. Section 8(1) states:

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<sup>1</sup> 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.

13. Section 10(2) defines “value of supply” as follows:

Subject to this section, the value of a supply of goods and services shall be such amount as, with the addition of the tax charged, is equal to the aggregate of,—

- (a) To the extent that the consideration for the supply is consideration in money, the amount of the money;
- (b) To the extent that the consideration for the supply is not consideration in money, the open market value of that consideration.

### **How the legislation applies**

14. This part of the commentary explains the reasoning behind the Rulings. It begins by outlining some general principles regarding “consideration”. Following this, it discusses in turn the two different situations to which the Rulings apply – where rates are prepaid and where rates are in arrears. Finally, this part of the commentary considers the effect of section 5(15) on the application of the Rulings.

### ***Consideration for a supply***

#### *General principles*

15. The legislation and case law have established some key principles regarding “consideration”. Three principles are that:
- the statutory meaning of “consideration” is wider than the contract law meaning;
  - any consideration need not be voluntary; and
  - the supply need not be made by the person who receives the payment.
16. However, for a payment to be “consideration” there must be a sufficient relationship between the making of the payment and the supply of goods and services.

#### *Wide definition of “consideration”*

17. “Consideration” is very widely defined in the Act. In section 2(1), the definition of “consideration”, in relation to the supply of goods and services to any person, includes any payment made whether by that person (the recipient of the supply) or by any other person. Therefore, consideration is not limited to payments made by the recipient of the supply.

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<sup>1</sup> This will change to 15 percent on 1 October 2010 with application to supplies made on or after 1 October 2010.



18. It is also not crucial that the payment be made to the supplier; it is sufficient that the payment (or any act of forbearance if that were relevant) be made in respect of, in response to, or for the inducement of the supply. Accordingly, if A makes a supply of goods and services to B, and in response at the request of A, B pays an amount of money to C, then there is still an amount of consideration for the supply of goods and services.
19. Consideration may also be voluntary or involuntary.

*Statutory obligation to a third party does not amount to "consideration"*

20. Where the recipient of a supply is required by law to undertake an obligation to a third party, then any discharge of that obligation by the recipient is not the provision of consideration for the supply: *The Trustee, Executors and Agency Co NZ Ltd v CIR* (1997) 18 NZTC 13,076; *Iona Farm Ltd v CIR* (1999) 19 NZTC, 15,261.
21. In *Trustee, Executors and Agency Co* the High Court found that the payment of rates by a lessee constituted part of the consideration for the supply of land by way of lease. An important part of that conclusion was Chisholm J's finding that the lessor trust was the occupier of the farm property. Therefore, the lessor trust was primarily liable for rates levied against the farm. The lessee had no statutory obligation to pay the rates. Therefore, the lessee's payment of the rates to the local authority constituted a payment on behalf of the trust and was part of the consideration for the supply.
22. In the later decision *Iona Farm Ltd* Young J in the High Court found that the open market rental (the relevant concept for determining the consideration for the supply in that case) for a farm exceeded the GST-registration threshold. The threshold was exceeded without taking into account any rates that the lessee was paying. Even so, his Honour noted that the Commissioner had sought to suggest that the rates that the lease required the lessees to pay should be treated as part of the consideration for the lease, relying on the decision in *Trustee, Executors and Agency Co*. His Honour noted that the lease in *Iona Farm* was for a period longer than 12 months, so the primary rating liability lay on the lessee (and not the lessor). In that respect, the case was distinguishable from the *Trustee, Executors and Agency Co* case. Accordingly, because the lessee had a legal obligation under statute to pay the rates, agreeing to pay them in an agreement with the lessor could not be consideration for the supply, as the obligation already existed.

***Where the rates are prepaid***

23. The Commissioner considers that apportionments of prepaid rates are a part of the consideration for the vendor's supply of land.
24. A sale of land is a supply of goods for GST purposes. As a matter of contract, the vendor and purchaser can agree to any price for the land (including any apportionments). The Agreement for Sale and Purchase of Real Estate (8th edition, 2006) approved by the Real Estate Institute of New Zealand and Auckland District Law Society records the purchase price that the parties have agreed on for the property. The Agreement provides at clause 3.6 that the vendor shall prepare a "settlement statement" which is defined as follows:

a statement showing the purchase price plus any GST payable by the purchaser in addition to the purchase price, less any deposit or other payments or allowances to be credited to the purchaser, together with apportionments of all incomings and outgoings apportioned at the possession date.

25. The settlement statement usually records the apportionment of rates that the parties have agreed on. Such an apportionment is an amount to be paid *in addition to* the purchase price recorded in the Agreement and forms part of the consideration the purchaser provides to obtain the property from the vendor.
26. Clause 3.7 of the Agreement requires that the purchaser shall pay the balance of the purchase price, interest and "other moneys" on the settlement date. The Commissioner considers that any rates apportionments recorded on the settlement statement are "other moneys".
27. The Commissioner considers that the payment of rates apportionments by the purchaser to the vendor forms part of the consideration for a single supply. Rates apportionments are paid in respect of, in response to, or for the inducement of the supply of land. An agreement to apportion rates does not create a supply to the purchaser from the vendor separate from the supply of the real property. This is because no good or service, separate from the real property, is furnished or provided to the purchaser by the vendor for that payment.
28. Although the purchaser may experience a benefit due to the vendor paying the rates for a period in which the purchaser will own the property, that benefit is not a supply. For there to be a supply, there must be a supply of something. Here the purchaser has no liability to pay rates until they are personally sent a rates assessment and/or invoice for the property. The vendor has not supplied to the purchaser a forbearance from having to pay rates, since the purchaser never had an obligation to pay those rates. Therefore, the vendor cannot make such a supply to them. Furthermore, if the purchaser receives a benefit (of not having to pay rates) that benefit is gained only because the vendor complied with their statutory obligation and not because the purchaser paid a rates apportionment. The purchaser would have received the benefit even if the purchaser did not pay the rates apportionment.
29. As the payment from the purchaser to the vendor reflecting the apportionment of prepaid rates is a payment in respect of, in response to, or for the inducement of the single supply of land, the payment increases the "consideration" and value of the supply for GST purposes. Accordingly, GST should be charged on the amount of that apportionment received by a GST-registered vendor.
30. The purchaser can claim an input tax deduction if they are entitled to an input tax deduction for the other consideration paid.

### ***Where the rates are in arrears***

#### *The Local Government (Rating) Act 2002*

31. A purchaser's liability for rates that are in arrears is a contingent liability. That is, the vendor has primary responsibility for rates invoiced during the time the vendor owns the property. Only in the event of the vendor's

default would the purchaser be pursued for those rates. This is important because the existence or non-existence of a statutory obligation on the purchaser to pay an amount can affect whether payment of that amount gives rise to consideration for a supply. The continued existence of a primary liability on a vendor means the purchaser can give value to the vendor by agreeing to discharge the vendor's liability. If the liability is solely on the purchaser to meet an obligation, then no such consideration can be given to the vendor when the purchaser discharges that liability.

32. The Local Government (Rating) Act 2002 ("LGRA") states that a local authority can charge rates (sections 13–20 of the LGRA) and where rates are charged, those rates are to be paid by the ratepayer (section 12 of the LGRA). The ratepayer is the person listed in the ratings database (section 10 of the LGRA); usually the owner or the lessee (section 11 of the LGRA).
33. When the rates are assessed, the ratepayer is given notice of their rates liability by a rates assessment: section 44 of the LGRA. If rates are due for a particular period, then the ratepayer is sent a rates invoice: section 46 of the LGRA. The rates invoice also includes a due date: section 46 of the LGRA. Both the rates assessment and the rates invoice name the ratepayer who is liable for the rates: sections 45 and 46 of the LGRA.
34. Therefore, if the vendor is the ratepayer, then the vendor will be sent the rates assessment and rates invoice and be liable for the rates. Because the vendor is named as the ratepayer and receives the rates assessment and rates invoice, the vendor remains liable for those rates until they are paid. If the vendor sells their property, they must notify the local authority of the sale within one month (section 31 of the LGRA) and the vendor will remain liable for the rates that are due while the vendor is listed as the ratepayer. Section 34 of the LGRA states:

Notice given under sections 31 to 33 does not release any person from liability for any rates due before the notice is given.

35. However, while the vendor may be liable for rates that were charged before the sale of the property that remained unpaid when the property was sold, the new purchaser can also become responsible for the unpaid rates. A purchaser can become liable for the rates, because the rates are a charge on the land (section 59 of the LGRA) and the charge survives a sale of the property concerned.

### *Analysis*

36. There is only one supply by the vendor where rates are in arrears, the supply of the property. The question is whether the discharge of the rates by the purchaser can be consideration for the supply of the property by the vendor.
37. Case law establishes that a taxpayer's fulfilment of a statutory obligation on them cannot amount to consideration for a supply from a supplier. However, in the context of the rating legislation the primary responsibility for discharging unpaid rates remains with the vendor, regardless of the sale of the property to the purchaser. The purchaser has only a contingent liability to pay the rates; contingent because as the rates are a charge on the land the local authority may, if unable to collect the rates from the vendor, seek payment by enforcing that charge on the land. In this sense

the purchaser is able to give consideration for the supply of the property by the vendor by offering to discharge the unpaid rates as part of the bargain for the property. In such a case the purchaser is not simply fulfilling its statutory obligation, as that obligation is only contingent. Such a discharge of rates, by virtue of a contract between vendor and purchaser, can be consideration for the supply of the property.

38. Where the vendor allows a deduction from the settlement amount in return for a promise by the purchaser to discharge the unpaid local authority rates, the overall consideration received by the vendor from the purchaser is made up of three elements:
  - the purchase price;
  - the credit of the vendor's share of the unpaid rates against the purchase price; and
  - the total amount of the vendor's liability to the local authority that the purchaser has agreed to discharge.
39. That is, the consideration for the vendor's supply is made up of the actual monetary consideration received by the vendor from the purchaser and the discharge of the vendor's liability to the local authority.
40. The amount of the vendor's liability to the local authority that the purchaser has agreed to discharge, less the credit of the vendor's share of the unpaid rates against the purchase price will generally equal the purchaser's share of the unpaid rates. This means that the consideration remains the same as in a "prepaid rates" situation, being equal to the purchase price plus the purchaser's share of the rates. The difference between the "prepaid rates" and "rates in arrears" situations is that where rates are prepaid, the consideration is the total amount paid by the purchaser to the vendor; whereas where rates are in arrears, the consideration is the total amount paid by the purchaser to the vendor *and* to the local authority.
41. This is consistent with the definition of "consideration" in section 2(1). That definition includes any payment made "in respect of, in response to, or for the inducement of" the supply of any goods and services, but does not require the payment to be made to the supplier.

### ***Section 5(15) of the GST Act***

42. If the property being transferred is to be used by the purchaser in a taxable activity and the property also includes a dwelling (for example, farm land that includes a house), section 5(15) deems the dwelling (not being a commercial dwelling) to be a separate supply from the supply of the land. The effect of this is that GST is charged only on the commercial supply (that is, the farm land) and not on the residential supply (that is, the house). The rates apportionment, since it forms part of the consideration for the property, will be divided between the dwelling and the land. One possible method for dividing the rates apportionment between the dwelling and the land is given in Example 7 in paragraphs 95 to 106.

### **Examples**

43. This part of the commentary discusses seven different land sale examples and sets out the GST consequences of each scenario. Examples 1–3 are

situations where the rates are prepaid, so they explain the application of BR Pub 10/10 and BR Pub 10/11. Examples 4-6 are situations where the rates are in arrears, so they explain the application of BR Pub 10/12 and BR Pub 10/13. Example 7 is a situation where section 5(15) applies.

44. Each example discusses the GST consequences of the transaction, shows a sample settlement statement, and, if applicable, shows a sample tax invoice. The sample settlement statements and tax invoices are not prescriptive; they are examples of how these documents might be drafted.
45. The situations in the examples involve property transactions where settlement takes place in April 2010. Because of this the GST rate used in the calculations is 12.5 percent. For transactions where the time of supply is on or after 1 October 2010 the applicable GST rate will be 15 percent. The same approach can be taken towards these transactions as is taken in the examples, with the only difference being the different GST rate.

### ***Situations where rates are prepaid***

#### *Assumptions underpinning Examples 1–3*

46. The GST position for rates paid in advance is illustrated in the property sale examples that follow. In Examples 1–3 assume the following:
  - The vendor is selling property to the purchaser.
  - The purchase price the parties have agreed is \$400,000 (plus GST, if any). The purchaser has paid a deposit of \$40,000.
  - The settlement date is 26 April 2010.
  - The vendor has paid the local authority rates in advance to 30 June 2010.
  - The annual rating liability to the local authority is \$2,463.75 (inclusive of \$273.75 of GST).
  - The amount of rates relating to the period of the purchaser's occupation of the land is \$438.75 (inclusive of \$48.75 of GST). This amount is payable by the purchaser to the vendor under the agreement for sale and purchase of the land.

#### ***Example 1: sale by an unregistered vendor***

47. An unregistered vendor is not entitled to an input tax deduction for the rates it has paid in advance to the local authority. The supply of the property will not be a taxable supply for GST purposes.
48. In the absence of a provision in the Property Law Act 2007 or elsewhere, the amount of the apportionment is a matter for negotiation between the vendor and purchaser. Usually, however, the vendor would wish to recover the full GST inclusive amount of \$438.75.
49. The total consideration paid by the purchaser and received by the vendor would be \$400,438.75.

50. If the purchaser is unregistered, the Act does not allow an input tax deduction.
51. If the purchaser is registered and entitled to a secondhand goods deduction on the overall property purchase, then the purchaser is able to claim an input tax deduction for the rates apportionment under section 20(3).
52. The vendor's settlement statement would be:

Purchaser:		
Vendor:		
Settlement Date:	26 April 2010	
<b>ADDRESS OF PROPERTY</b>		
TO:	Purchase price in accordance with contract	400,000.00
BY:	Deposit paid	40,000.00
TO:	Purchaser's proportion of rates from 27/4/10 to 30/6/10 (65 days at \$2,463.75 p/a)	438.75
BY:	Balance required to settle	360,438.75
		<u><b>\$400,438.75</b></u> <u><b>\$400,438.75</b></u>
	Amount required to settle on 26 April 2010	<b>\$360,438.75</b>

53. The vendor is unregistered, so a GST tax invoice is not required.

**Example 2: sale by a registered vendor – standard rate**

54. If the vendor can satisfy the requirements of section 20(3) the vendor will be able to claim an input tax deduction for the GST on the amount of annual rates it has prepaid to the local authority.
55. In this example, the supply of the land is in the course or furtherance of the vendor's taxable activity, so it is a taxable supply on which the vendor must charge and return GST output tax. The apportionment of the rates paid will be part of the consideration for that supply. This part of the consideration will be \$390, plus \$48.75 of output tax, which the vendor must return to Inland Revenue. The total consideration for the supply will be \$450,438.75.
56. If the purchaser is unregistered, the Act does not allow an input tax deduction.
57. If the purchaser is registered and can satisfy the requirements of section 20(3), the purchaser can claim an input tax deduction for the GST element of the purchase price and the rates apportionment.
58. The vendor would return GST output tax on the value of the supply of land (including the apportionments) and would issue a tax invoice to the purchaser inclusive of the apportionments.

59. The vendor's settlement statement would be:

Purchaser:		
Vendor:		
Settlement Date:	26 April 2010	
<b>ADDRESS OF PROPERTY</b>		
TO:	Purchase price in accordance with contract	400,000.00
TO:	GST as per tax invoice	50,048.75
BY:	Deposit paid	40,000.00
TO:	Purchaser's proportion of rates from 27/4/10 to 30/6/10 (65 days at \$2,190 p/a GST exclusive)	390.00
BY:	Balance required to settle	410,438.75
		<u><b>\$450,438.75</b></u> <u><b>\$450,438.75</b></u>
	Amount required to settle on 26 April 2010	<b>\$410,438.75</b>

60. The vendor's tax invoice would be:

<b>TAX INVOICE</b>		
23 April 2010		
From: Vendor's name	GST number: XXX-XXX-XXX	
Vendor's address		
To: Purchaser's name		
Purchaser's address		
<b>ADDRESS OF PROPERTY</b>		
TO:	Purchase price as per agreement	\$400,000.00
TO:	Purchaser's share of rates apportioned as at settlement date	\$390.00
TO:	GST on total value of supply	\$50,048.75
		<u>\$450,438.75</u>
Total GST: <b>\$50,048.75</b>		
Settlement date – 26 April 2010		

61. The Taxation (GST and Remedial Matters) Bill 2010 was tabled in Parliament on 5 August 2010. If enacted in its current form, this Bill would require supplies made on or after 1 April 2011 that are between registered persons and that wholly or partly consist of land to be zero-rated.

**Example 3: sale by a registered vendor – zero rated**

62. A zero-rated sale by a registered vendor arises when the supply is of land that was a taxable activity, or part of a taxable activity, as a going concern within section 11(1)(m).
63. The Taxation (GST and Remedial Matters) Bill 2010 was tabled in Parliament on 5 August 2010. If enacted in its current form, this Bill would require supplies made on or after 1 April 2011 that are between registered persons and that wholly or partly consist of land to be zero-rated.
64. If the vendor can satisfy the requirements of section 20(3) the vendor will be able to claim an input tax deduction for the GST on the amount of annual rates it has prepaid to the local authority.
65. In this situation the apportionments on sale should be GST exclusive (\$390) rather than inclusive (\$438.75), which is consistent with zero-rating the supply of the going concern.
66. The total consideration paid by the purchaser and received by the vendor would be \$400,390.
67. As the sale is zero-rated, the purchaser cannot claim an input tax deduction for any element of the consideration for the property, including the rates apportionment.
68. The vendor's settlement statement would be:

Purchaser:		
Vendor:		
Settlement Date:	26 April 2010	
<b>ADDRESS OF PROPERTY</b>		
TO:	Purchase price in accordance with contract	400,000.00
TO:	GST as per tax invoice	nil
BY:	Deposit paid	40,000.00
TO:	Purchaser's proportion of rates from 27/4/10 to 30/6/10 (65 days at \$2,190 p/a GST exclusive)	390.00
BY:	Balance required to settle	360,390.00
		<b>\$400,390.00</b>
		<b>\$400,390.00</b>
Amount required to settle on 26 April 2010		<b>\$360,390.00</b>



69. The vendor's tax invoice would be:

<b>TAX INVOICE</b>	
23 April 2010	
From: Vendor's name Vendor's address	GST number: XXX-XXX-XXX
To: Purchaser's name Purchaser's address	
<b>ADDRESS OF PROPERTY</b>	
TO: Purchase price as per agreement	\$400,000.00
TO: Purchaser's share of rates apportioned as at settlement date	\$390.00
TO: GST – zero rated	nil
	<hr/>
	\$400,390.00
	<hr/>
Settlement date – 26 April 2010	
Both the vendor and the purchaser agree that this is a sale of a going concern under the Goods and Services Tax Act 1985 and is therefore zero-rated	

***Situations where the rates are in arrears***

*Assumptions underpinning Examples 4–6*

70. The GST position for rates in arrears is illustrated in the land sale examples that follow. In Examples 4–6 assume the following:
- The vendor is selling property to the purchaser.
  - The purchase price the parties agreed is \$400,000 (plus GST, if any). The purchaser has paid a deposit of \$40,000.
  - The settlement date is 26 April 2010.
  - The vendor has not paid the local authority rates from 1 April 2010 (that is, the rates are in arrears for the current rating quarter).
  - The annual rating liability to the local authority is \$2,463.75 (inclusive of \$273.75 of GST).
  - The amount outstanding for the current quarter is \$614.25 (inclusive of \$68.25 of GST). Of this figure, the amount of rates relating to the period of the vendor's occupation of the land is \$175.50 (inclusive of \$19.50 of GST).
  - The parties have agreed that the purchaser will discharge the unpaid rates, in exchange for a deduction from the settlement amount for the amount of rates relating to the period of the vendor's occupation of the land.

**Example 4: sale by an unregistered vendor**

71. In a sale by an unregistered vendor, the supply of the property will not be a taxable supply for GST purposes.
72. The amount of the credit against the purchase price is a matter for negotiation between the vendor and purchaser. In this example the parties have agreed to a credit of the GST inclusive amount of the vendor's share of the rates: \$175.50. This is a figure that is likely to be agreed to by two parties to an arm's length transaction because using this figure puts both parties in the same position they would have been in if the vendor had paid the rates up until settlement and the purchaser had paid the rates from settlement onwards.
73. As discussed at paragraph 38 above, the consideration is made up of three elements. These elements are:
  - the purchase price: \$400,000;
  - the credit of the vendor's share of the unpaid rates against the purchase price: \$175.50; and
  - the total amount of vendor's liability to the local authority that the purchaser has agreed to discharge: \$614.25.
74. Therefore, the total consideration for the supply will be \$400,438.75.
75. If the purchaser is unregistered, the Act does not allow an input tax deduction for any element of the transaction.
76. If the purchaser is registered and can satisfy the requirements of section 20(3), the purchaser is able to claim a secondhand goods deduction for the property purchase. The consideration will be \$400,438.75, so this is the figure the purchaser should use for calculating the amount of input tax.

77. The vendor is unregistered, so a GST tax invoice is not required. The vendor's settlement statement would be:

Purchaser:		
Vendor:		
Settlement Date:	26 April 2010	
<b>ADDRESS OF PROPERTY</b>		
TO:	Purchase price in accordance with contract	400,000.00
TO:	Rates to be paid by purchaser as agreed by parties	614.25
BY:	Deposit paid	40,000.00
BY:	Credit for vendor's proportion of unpaid rates from 1/4/10 to 26/4/10 (26 days at \$2,463.75 p/a)	175.50
BY:	Amount to be paid by purchaser to local authority to discharge vendor's liability for outstanding rates	614.25
BY:	Balance required to settle	359,824.50
		<b>\$400,614.25</b>
		<b>\$400,614.25</b>
Amount required to settle on 26 April 2010		<b>\$359,824.50</b>

**Example 5: sale by a registered vendor – standard rate**

78. In this example, the supply of the land is in the course or furtherance of the vendor's taxable activity and is therefore a taxable supply on which the vendor must charge and return GST output tax.

79. The amount of the credit against the purchase price is a matter for negotiation between the vendor and purchaser. In this example the parties have agreed to a credit against the GST exclusive purchase price of the GST exclusive amount of the vendor's share of the rates: \$156. (This gives the same result as a credit of the GST inclusive amount of the vendor's share of the rates (\$175.50) against the GST inclusive purchase price.) This is a figure that is likely to be agreed to by two parties to an arm's length transaction because using this figure puts both parties in the same position they would have been in if the vendor had paid the rates up until settlement and the purchaser had paid the rates from settlement onwards.

80. As discussed at paragraph 38 above, the consideration is made up of three elements. These elements are:

- the purchase price: \$400,000 plus GST, so \$450,000;
- the credit of the vendor's share of the unpaid rates against the purchase price: \$175.50; and
- the total amount of vendor's liability to the local authority that the purchaser has agreed to discharge: \$614.25.

81. Therefore, the total consideration for the supply will be \$450,438.75. As consideration is a GST-inclusive amount, the correct amount of GST on the

supply is the tax fraction of the consideration - \$50,048.75. The vendor must charge and return this amount.

- 82. If the purchaser is unregistered, the Act does not allow an input tax deduction.
- 83. If the purchaser is registered and can satisfy the requirements of section 20(3), the purchaser is able to claim an input tax deduction for the purchase of the property.
- 84. The vendor's settlement statement would be:

Purchaser:		
Vendor:		
Settlement Date:	26 April 2010	
<b>ADDRESS OF PROPERTY</b>		
TO:	Purchase price in accordance with contract	400,000.00
TO:	Rates to be paid by purchaser as agreed by parties (GST exclusive)	546.00
TO:	GST as per tax invoice	50,048.75
BY:	Deposit paid	40,000.00
BY:	Credit for vendor's proportion of unpaid rates from 1/4/10 to 26/4/10 (26 days at \$2,190 p/a GST exclusive)	156.00
BY:	Amount to be paid by purchaser to local authority to discharge vendor's liability for outstanding rates	614.25
BY:	Balance required to settle	409,824.50
		<b><u>\$450,594.75</u>    <u>\$450,594.75</u></b>
	Amount required to settle on 26 April 2010	<b>\$409,824.50</b>

85. The vendor's tax invoice would be:

<b>TAX INVOICE</b>		
25 April 2010		
From:	Vendor's name Vendor's address	GST number: XXX-XXX-XXX
To:	Purchaser's name Purchaser's address	
<b>ADDRESS OF PROPERTY</b>		
TO:	Purchase price as per agreement, less discount for unpaid rates	\$399,844.00
TO:	Rates to be paid by purchaser to local authority	\$546.00
TO:	GST on total value of supply	\$50,048.75
		<hr/>
		\$450,438.75
		<hr/>
Total GST: <b>\$50,048.75</b>		
Settlement date – 26 April 2010		

86. The Taxation (GST and Remedial Matters) Bill 2010 was tabled in Parliament on 5 August 2010. If enacted in its current form, this Bill would require supplies made on or after 1 April 2011 that are between registered persons and that wholly or partly consist of land to be zero-rated.

**Example 6:** sale by a registered vendor – zero rated

87. A zero-rated sale by a registered vendor arises when the supply is of land that was a taxable activity, or part of a taxable activity, as a going concern within section 11(1)(m).
88. The Taxation (GST and Remedial Matters) Bill 2010 was tabled in Parliament on 5 August 2010. If enacted in its current form, this Bill would require supplies made on or after 1 April 2011 that are between registered persons and that wholly or partly consist of land to be zero-rated.
89. The amount of the credit against the purchase price is a matter for negotiation between the vendor and purchaser. In this example the parties have agreed to a credit of the GST inclusive amount of the vendor's share of the rates (\$175.50) **plus** the amount of GST input tax credit that the vendor has claimed on the purchaser's share of the rates (\$48.75): \$224.25. This is a figure that is likely to be agreed to by two parties to an arm's length transaction because using this figure puts both parties in the same position as they would have been in if the vendor had paid the rates up until settlement and the purchaser had paid the rates from settlement onwards.
90. As discussed at paragraph 38 above, the consideration is made up of three elements. These elements are:

- the purchase price: \$400,000;
- the credit of the vendor's share of the unpaid rates **and** the GST on the purchaser's share of the rates against the purchase price: \$224.25; and
- the total amount of vendor's liability to the local authority that the purchaser has agreed to discharge: \$614.25.

91. Therefore, the total consideration for the supply will be \$400,390.

92. As the sale is zero-rated, the purchaser cannot claim an input tax deduction for any element of the consideration for the property, including the rates apportionment.

93. The vendor's settlement statement would be:

Purchaser:		
Vendor:		
Settlement Date:	26 April 2010	
<b>ADDRESS OF PROPERTY</b>		
TO:	Purchase price in accordance with contract	400,000.00
TO:	Rates to be paid by purchaser as agreed by parties	614.25
TO:	GST as per tax invoice	nil
BY:	Deposit paid	40,000.00
BY:	Credit for vendor's proportion of unpaid rates from 1/4/10 to 26/4/10 (26 days at \$2,463.75 p/a GST inclusive)	175.50
BY:	Credit for GST claimed by vendor on purchaser's share of rates	48.75
BY:	Amount to be paid by purchaser to local authority to discharge vendor's liability for outstanding rates	614.25
BY:	Balance required to settle	359,775.75
		<b>\$400,614.25</b>
		<b>\$400,614.25</b>
Amount required to settle on 26 April 2010		<b>\$359,775.75</b>

94. The vendor's tax invoice would be:

<b>TAX INVOICE</b>		
25 April 2010		
From: Vendor's name Vendor's address	GST number: XXX-XXX-XXX	
To: Purchaser's name Purchaser's address		
<b>ADDRESS OF PROPERTY</b>		
TO: Purchase price as per agreement, less discount for unpaid rates		\$399,775.75
TO: Rates to be paid by purchaser to local authority		\$614.25
TO: GST on total value of supply		nil
		<hr/>
		\$400,390.00
		<hr/>
Settlement date – 26 April 2010		
Both the vendor and the purchaser agree that this is a sale of a going concern under the Goods and Services Tax Act 1985 and is therefore zero-rated		

***Situations where section 5(15) applies***

***Example 7: sale by a registered vendor – sale of commercial land with a dwelling***

95. For example 7, assume the following:

- The vendor is selling property to the purchaser.
- The land in question is farm land that includes a farm house.
- The purchase price agreed on by the parties is \$2,500,000 (plus GST). The purchaser has paid a deposit of \$250,000.
- The value of the farm house and curtilage is \$500,000.
- The settlement date is 26 April 2010.
- The vendor has paid the local authority rates in advance to 30 June 2010.
- The annual rating liability to the local authority is \$7,300 (exclusive of \$912.50 of GST). The amount of rates relating to the period of the purchaser's occupation of the land is \$1,300 (exclusive of \$162.50 of GST). This amount is payable by the purchaser to the vendor under the agreement for sale and purchase of the land.

96. If the vendor can satisfy the requirements of section 20(3), the vendor can claim an input tax deduction for the GST component of the rates it has

prepaid to the local authority. This input tax deduction will be subject to an adjustment for private use.

97. In this example, the supply of the land is in the course or furtherance of the vendor's taxable activity and is therefore a taxable supply on which the vendor must charge and return GST output tax. The vendor must charge and return GST on the value of the land (the taxable supply), but not on the value of the dwelling and curtilage (the non-taxable supply).
98. The rates apportionment will be part of the consideration for the supply. The amount of the apportionment is a matter for negotiation between the vendor and purchaser. In this example the parties have agreed that the apportionment will be \$1,300, plus output tax that the vendor must return to Inland Revenue. The amount of the output tax will depend on the amount of the rates apportionment that is allocated to the land and the amount that is allocated to the dwelling and curtilage. This amount may be able to be calculated by reference to the local authority rates demand.
99. In this example the local authority rates demand shows that 24 percent of the rates amount is directly attributable to the taxable supply (that is, relates to services provided in relation to the farm land), 16 percent is directly attributable to the non-taxable supply (that is, relates to services provided in relation to the farm house and curtilage), and the remaining 60 percent is attributable to both the taxable and the non-taxable supply.
100. The sample tax invoice below shows how the rates apportionment may be divided based on these figures. In this example GST is charged on the entire amount directly attributable to the taxable supply (\$312 equals 24 percent of \$1,300) and on 80 percent of the amount attributable to both the taxable and the non-taxable supply (\$780 equals 60 percent of \$1,300, 80 percent of this amount is \$624). The reason for charging GST on 80 percent of the rates attributable to both the taxable and non-taxable supply is that the taxable supply (the farm land) makes up 80 percent of the total supply.
101. The total consideration for the supply will be \$2,751,417.
102. If the purchaser is unregistered, the Act does not allow an input tax deduction.
103. If the purchaser is registered and can satisfy the requirements of section 20(3), the purchaser is able to claim an input tax deduction for the GST element of the purchase price and the rates apportionment.



104. The vendor's settlement statement would be:

Purchaser:		
Vendor:		
Settlement Date:	26 April 2010	
<b>ADDRESS OF PROPERTY</b>		
TO:	Purchase price in accordance with contract	2,500,000.00
TO:	GST as per tax invoice	250,117.00
BY:	Deposit paid	250,000.00
TO:	Purchaser's proportion of rates from 27/4/10 to 30/6/10 (65 days at \$7,300 p/a GST exclusive)	1,300.00
BY:	Balance required to settle	2,501,417.00
		<b><u>\$2,751,417.00</u>    <u>\$2,751,417.00</u></b>
	Amount required to settle on 26 April 2010	<b>\$2,501,417.00</b>

105. The vendor's tax invoice would be:

<b>TAX INVOICE</b>		
23 April 2010		
From:	Vendor's name Vendor's address	GST number: XXX-XXX-XXX
To:	Purchaser's name Purchaser's address	
<b>ADDRESS OF PROPERTY</b>		
TO:	Purchase price as per agreement	\$2,500,000.00
	<i>Supply subject to GST</i>	
	Purchase price as per agreement	\$2,500,000.00
	LESS non-taxable supplies	<u>\$500,000.00</u>
	Taxable supply	\$2,000,000.00
TO:	GST on taxable supply	\$250,000.00
TO:	Purchaser's share of rates apportioned as at settlement date	\$1,300.00
	<i>Rates attributable to the taxable supply:</i>	
	Rates attributable to both the taxable and non-taxable supplies	\$780.00
	Taxable supply as a percentage of the total supply (see "supply subject to GST" above)	80%
	80% of \$780.00	\$624.00
	PLUS Rates directly attributable to the taxable supply	<u>\$312.00</u>
		\$936.00
TO:	GST on rates apportionment attributable to the taxable supply	\$117.00
		<hr/>
		\$2,751,417.00
		<hr/>
Total GST: <b>\$250,117.00</b>		
Settlement date – 26 April 2010		

106. The Taxation (GST and Remedial Matters) Bill 2010 was tabled in Parliament on 5 August 2010. If enacted in its current form, this Bill would require supplies made on or after 1 April 2011 that are between registered persons and that wholly or partly consist of land to be zero-rated.