



This is a reissue of BR Pub 10/10. For more information about earlier publications of this Public Ruling see the Commentary to this Ruling.

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

PUBLIC RULING - BR Pub 16/01

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

Taxation Laws

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

This Ruling applies in respect of ss 8 and 10 and the definition of “consideration” in s 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 their 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 their 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 their apportioned share of the prepaid rates (covering the period from the time of settlement) is part of the “consideration” (as defined in s 2(1)) for the supply of the property by the vendor.
- Under s 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 s 10(2) includes the purchase price and the amount of the prepaid rates apportionment paid by the purchaser to the vendor.

The period or tax year for which this Ruling applies

This Ruling will apply for an indefinite period beginning on 24 September 2015.

This Ruling is signed by me on 18 February 2016.

Susan Price

Director, Public Rulings

i This is a reissue of BR Pub 10/11. For more information about earlier publications of this Public Ruling see the Commentary to this Ruling.

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

PUBLIC RULING - BR Pub 16/02

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

Taxation Laws

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

This Ruling applies in respect of ss 8, 10 and 20(3C) and the definition of "consideration" in s 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 acquires the property to use, or to be available to use, in 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 their 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 their apportioned share of the prepaid rates (covering the period from the time of settlement) is part of the "consideration" (as defined in s 2(1)) for the supply of the property by the vendor.
- If the purchaser is entitled to an input tax deduction on the supply of the property, then the purchaser can claim an input tax deduction (to the extent to which the property is used for, or is available for use in, making taxable supplies) on the total amount of consideration for the supply.

The period or tax year for which this Ruling applies

This Ruling will apply for an indefinite period beginning on 24 September 2015.

This Ruling is signed by me on 18 February 2016.

Susan Price

Director, Public Rulings

 This is a reissue of BR Pub 10/12. For more information about earlier publications of this Public Ruling see the Commentary to this Ruling.

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

PUBLIC RULING - BR Pub 16/03

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

Taxation Laws

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

This Ruling applies in respect of ss 8 and 10 and the definition of “consideration” in s 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 their 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 s 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 s 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 s 10(2) includes 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 tax year for which this Ruling applies

This Ruling will apply for an indefinite period beginning on 24 September 2015.

This Ruling is signed by me on 18 February 2016.

Susan Price

Director, Public Rulings

 This is a reissue of BR Pub 10/13. For more information about earlier publications of this Public Ruling see the Commentary to this Ruling.

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

PUBLIC RULING - BR Pub 16/04

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

Taxation Laws

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

This Ruling applies in respect of ss 8, 10 and 20(3C) and the definition of “consideration” in s 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 acquires the property to use, or to be available to use, in 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 s **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 on the supply of the property, then the purchaser can claim an input tax deduction (to the extent to which the property is used for, or is available for use in, making taxable supplies) on the total amount of consideration for the supply.

The period or income year for which this Ruling applies

This Ruling will apply for an indefinite period beginning on 24 September 2015.

This Ruling is signed by me on 18 February 2016.

Susan Price

Director, Public Rulings

COMMENTARY ON PUBLIC RULINGS BR Pub 16/01 to BR Pub 16/04

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 16/01, BR Pub 16/02, BR Pub 16/03 and BR Pub 16/04 (“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 16/01 and BR Pub 16/02 apply to situations where the rates have been prepaid by the vendor beyond the settlement date. BR Pub 16/03 and BR Pub 16/04 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**. BR Pub 16/01 and BR Pub 16/03 consider the GST implications for the vendor. BR Pub 16/02 and BR Pub 16/04 consider the GST implications for the purchaser.
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.
4. The relevant legislation is set out in the appendix to the Rulings.

Background

5. Section 5(7) requires local authorities to charge GST on rates.
6. 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 the amount of 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.
7. 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.
8. The Rulings are reissues of BR Pub 10/10–10/13, which expired on 23 September 2015 (the expired rulings). The Rulings and commentary are essentially the same as the expired rulings. However, certain legislative amendments enacted after the expired rulings were issued affect the Rulings or commentary or both. The two main legislative changes to note are:
 - **The definition of "input tax" in s 3A** has been amended to remove the **"principal purpose" test**. It has been replaced **with a new "use, or available for use" test** under s 20(3C). That section, introduced from 1 April 2011, provides that input tax may be deducted to the extent to which the goods or services are used for, or are available for use in, making taxable supplies. BR Pub 16/02 and BR Pub 16/04, and the relevant examples, accordingly refer **to the new "use, or available for use" test in the Act**, rather than the previous **"principal purpose" test**.
 - Section 11(1)(mb) applies to supplies made on or after 1 April 2011. It zero-rates supplies consisting wholly or partly of land if:
 - both the vendor and the purchaser are GST registered; and
 - the purchaser intends to use the goods for making taxable supplies; and
 - the purchaser does not intend to use the land as a principal place of residence for themselves or any relative (as determined under s 2A(1)(c)).

In determining the tax treatment of the supply of land, the vendor may rely on the written statement that the purchaser is required to give them under s 78F. The statement must address the three points **set out above and must also provide the purchaser's registration number**.

The commentary and the relevant examples in the Rulings reflect the application of s 11(1)(mb).

Application of the Legislation

9. This part of the commentary explains the reasoning behind the Rulings. It **begins by outlining some general principles regarding "consideration"**. Following this, it discusses the two different situations to which the Rulings apply – where rates are prepaid and where rates are in arrears. Finally, the

commentary considers the effect of ss 11(1)(mb), 11(1)(m) and 5(15) on the application of the Rulings.

Consideration for a supply

Wide definition of "consideration"

10. "Consideration" is very widely defined in the Act. The definition of "consideration" in s 2(1) includes any payment made, whether by the recipient of the supply or by any other person. Therefore, consideration is not limited to payments made by the recipient of the supply.
11. Case law has also established that:
 - It is 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.
 - Consideration may be voluntary or involuntary.
 - The statutory meaning of "consideration" is wider than the contract law meaning.
 - For a payment to be "consideration" there must, however, be a sufficient relationship between the making of the payment and the supply of goods and services.

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

12. Although "consideration" is a wide concept, case law has established that 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. Conversely, where the recipient has no such statutory obligation, then any discharge of the obligation by the recipient is part of the consideration for the supply: *The Trustee, Executors and Agency Co NZ Ltd v CIR* (1997) 18 NZTC 13,076 (HC); *Iona Farm Ltd v CIR* (1999) 19 NZTC 15,261 (HC).
13. In *Trustee, Executors and Agency Co*, the High Court found that the payment of rates by a lessee was 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 was a payment on behalf of the trust and was part of the consideration for the supply.
14. In the later decision of the High Court in *Iona Farm Ltd*, Young J 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 already 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.

Where the rates are prepaid

15. The Commissioner considers that apportionments of prepaid rates are a part **of the consideration for the vendor's supply of land.**
16. 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 (9th edition, 2012), approved by the Real Estate Institute of New Zealand and Auckland District Law Society, is widely used in property transactions. It records the purchase price that the parties have agreed on for the property. The Agreement provides at cl 3.5 that the vendor shall **prepare a "settlement statement"**. This is defined in cl 1.1(21) 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.
17. 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. It forms part of the consideration the purchaser provides to obtain the property from the vendor.
18. Clause 3.8 of the Agreement requires that the purchaser shall pay the **balance of the purchase price, interest and "other moneys"**, if any, on the settlement date. The Commissioner considers that any rates apportionments recorded on the **settlement statement are "other moneys"**.
19. Another widely used agreement is the Real Estate Institute of New Zealand Inc Agreement for Buying and Selling Real Estate (REINZ Agreement). Clause 23.1 of the REINZ Book of Standard Clauses accompanying the REINZ Agreement similarly states that:

A settlement statement must include, among other things:

 - the price
 - the amount of the price already paid (including the deposit)
 - adjustments for any outgoings like rates (but not insurance premiums)
 - adjustments for any incomings like rent
 - the GST that must be paid (if any)
 - the amount due on settlement.
20. 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.

21. Although the purchaser may experience a benefit from 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.
22. 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.
23. The purchaser can claim an input tax deduction (to the extent to which the property is used for, or is available for use in, making taxable supplies) 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

24. 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.**
25. The Local Government (Rating) Act **2002 ("LGRA") states that a local authority can charge rates** (ss 13–20 of the LGRA) and, where rates are charged, those rates are to be paid by the ratepayer (s 12 of the LGRA). The ratepayer is the person listed in the rating information database and the district valuation roll (s 10 of the LGRA). This is usually the owner or the lessee (s 11 of the LGRA).
26. When the rates are assessed, the ratepayer is given notice of their rates liability by a rates assessment: s 44 of the LGRA. If rates are due for a particular period, then the ratepayer is sent a rates invoice: s 46 of the LGRA. The rates invoice also includes a due date (s 46 of the LGRA). Both the rates assessment and the rates invoice name the ratepayer who is liable for the rates (ss 45 and 46 of the LGRA).
27. Therefore, if the vendor is the ratepayer, 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 (s 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 that are due before the notice is given.

28. 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 (s 59 of the LGRA) and the charge survives a sale of the property concerned.

Analysis

29. 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.
30. Case **law establishes that a taxpayer's fulfilment of** their statutory obligation 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. It is 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.
31. 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.**
32. 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.**
33. 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.

34. This is consistent with the definition of "consideration" in s 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.

Sections 11(1)(mb) and 11(1)(m) of the GST Act

35. Section 11(1)(mb) zero-rates a sale of land where the supply is between registered persons and wholly or partly consists of land that the purchaser intends to use for making taxable supplies (s 11(1)(mb)).
36. If for some reason the supply of land is not covered by s 11(1)(mb), s 11(1)(m) might apply to zero-rate the supply of the land if it is a taxable activity, or part of a taxable activity, that is a going concern.
37. The effect of the zero-rating provisions of ss (11)(1)(mb) and 11(1)(m) is that the rates apportionment, since it forms part of the consideration for the supply of a zero-rated property, will also be zero-rated.

Section 5(15) of the GST Act

38. If the property being transferred is to be used by the purchaser in a taxable activity and the property also includes a house (for example, farm land that includes a house), s 5(15) deems the house (not being a commercial dwelling) to be a separate supply from the supply of the land in certain circumstances.
39. The effect of s 5(15) is that GST is charged (at either the standard rate or, if ss 11(1)(mb) or 11(1)(m) apply, at zero percent) 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 [89] to [98].

Examples

40. 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 16/01 and BR Pub 16/02. Examples 4–6 are situations where the rates are in arrears, so they explain the application of BR Pub 16/03 and BR Pub 16/04. Example 7 is a situation where s 5(15) applies.
41. 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.

Situations where rates are prepaid

Assumptions underpinning Examples 1–3

42. 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 2015.
- The vendor has paid the local authority rates in advance to 30 June 2015.
- The annual rating liability to the local authority is \$2,518.50 (inclusive of \$328.50 of GST).
- **The amount of rates relating to the period of the purchaser's** occupation of the land is \$448.50 (inclusive of \$58.50 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

43. An unregistered vendor is not entitled to an input tax deduction for the rates they have paid in advance to the local authority. The supply of the property will not be a taxable supply for GST purposes.
44. 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 \$448.50.
45. The total consideration paid by the purchaser and received by the vendor would be \$400,448.50.
46. If the purchaser is unregistered, the Act does not allow an input tax deduction.
47. 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 s 20(3). However, the purchaser is only able to claim a secondhand goods deduction on the property purchase and the rates apportionment to the extent to which the property is used for, or is available for use in, making taxable supplies under s 20(3C).

48. The vendor's settlement statement would be:

Purchaser:		
Vendor:		
Settlement Date:	26 April 2015	
ADDRESS OF PROPERTY		
TO:	Purchase price in accordance with contract	400,000.00
BY:	Deposit paid	40,000.00
TO:	Purchaser's proportion of rates from 27/4/15 to 30/6/15 (65 days at \$2,518.50 p/a)	448.50
BY:	Balance required to settle	360,448.50
		\$400,448.50
		\$400,448.50
	Amount required to settle on 26 April 2015	\$360,448.50

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

Example 2: Sale by a registered vendor – standard rate

50. In this example assume the following (in addition to the assumptions set out at [42]):

- The vendor is selling the property to a purchaser who is:
 - unregistered; or
 - registered, but does not intend using the property for making taxable supplies; or
 - registered, but intends using the property as a principal place of residence for themselves or any of their relatives.

51. If the vendor can satisfy the requirements of s 20(3), the vendor will be able to claim an input tax deduction for the GST on the amount of annual rates they have prepaid to the local authority.

52. 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 consideration for the land itself will therefore be \$400,000 plus \$60,000 of output tax. The apportionment of the rates paid will also be part of the consideration for that supply. This part of the consideration will be \$390 plus \$58.50 of output tax, which the vendor must return to Inland Revenue. The total consideration for the supply will be \$460,448.50.

53. If the purchaser is unregistered, the Act does not allow an input tax deduction.

54. If the purchaser is registered they will not be able to claim an input tax deduction, because the property will not be used for, or be available for use in, making taxable supplies.

55. 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.

56. The vendor's settlement statement would be:

Purchaser:		
Vendor:		
Settlement Date:	26 April 2015	
ADDRESS OF PROPERTY		
TO:	Purchase price in accordance with contract	400,000.00
TO:	GST as per tax invoice	60,058.50
BY:	Deposit paid	40,000.00
TO:	Purchaser's proportion of rates from 27/4/15 to 30/6/15 (65 days at \$2,190 p/a GST exclusive)	390.00
BY:	Balance required to settle	420,448.50
		\$460,448.50
		\$460,448.50
	Amount required to settle on 26 April 2015	\$420,448.50

57. The vendor's tax invoice would be:

TAX INVOICE		
23 April 2015		
From:	Vendor's name Vendor's address	GST number: XXX-XXX-XXX
To:	Purchaser's name Purchaser's address	
ADDRESS OF PROPERTY		
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	\$60,058.50
		\$460,448.50
Total GST: \$60,058.50		
Settlement date – 26 April 2015		

Example 3: Sale by a registered vendor – zero-rated

58. As discussed at [35]–[37] above, a zero-rated sale of land arises under ss 11(1)(mb) or 11(1)(m).
59. If the vendor can satisfy the requirements of s 20(3), the vendor will be able to claim an input tax deduction for the GST on the amount of annual rates they have prepaid to the local authority.

60. In this situation, the apportionments on sale should be GST exclusive (\$390) rather than inclusive (\$448.50), which is consistent with zero-rating the supply of land.
61. The total consideration paid by the purchaser and received by the vendor would be \$400,390.
62. 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.
63. The **vendor's settlement statement** would be:

Purchaser:		
Vendor:		
Settlement Date:	26 April 2015	
ADDRESS OF PROPERTY		
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 27/4/15 to 30/6/15 (65 days at \$2,190 p/a GST exclusive)	390.00
BY:	Balance required to settle	360,390.00
		\$400,390.00
		\$400,390.00
	Amount required to settle on 26 April 2015	\$360,390.00

64. The **vendor's tax invoice** would be:

TAX INVOICE		
23 April 2015		
From:	Vendor's name Vendor's address	GST number: XXX-XXX-XXX
To:	Purchaser's name Purchaser's address	
ADDRESS OF PROPERTY		
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
		\$400,390.00
Settlement date – 26 April 2015		

Situations where the rates are in arrears

Assumptions underpinning Examples 4–6

65. 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 2015.
 - The vendor has not paid the local authority rates from 1 April 2015 (that is, the rates are in arrears for the current rating quarter).
 - The annual rating liability to the local authority is \$2,518.50 (inclusive of \$328.50 of GST).
 - The amount outstanding for the current quarter is \$627.90 (inclusive of \$81.90 of GST). Of this figure, the amount of rates relating to the **period of the vendor's occupation of the land is \$179.40** (inclusive of \$23.40 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

66. In a sale by an unregistered vendor, the supply of the property will not be a taxable supply for GST purposes.
67. 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: \$179.40. 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.
68. As discussed at [31] 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: \$179.40; and
 - the total amount **of vendor's liability to the local authority that the** purchaser has agreed to discharge: \$627.90.
69. Therefore, the total consideration for the supply will be \$400,448.50.
70. If the purchaser is unregistered, the Act does not allow an input tax deduction for any element of the transaction.

71. If the purchaser is registered and can satisfy the requirements of s 20(3), the purchaser is able to claim a secondhand goods deduction for the property purchase. The consideration will be \$400,448.50, so this is the figure the purchaser should use for calculating the amount of input tax. However, the purchaser is only able to claim a secondhand goods deduction on the property purchase and the rates apportionment to the extent to which the property is used for, or is available for use in, making taxable supplies under s 20(3C).
72. 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 2015	
ADDRESS OF PROPERTY		
TO:	Purchase price in accordance with contract	400,000.00
TO:	Rates to be paid by purchaser as agreed by parties	627.90
BY:	Deposit paid	40,000.00
BY:	Credit for vendor's proportion of unpaid rates from 1/4/15 to 26/4/15 (26 days at \$2,518.50 p/a)	179.40
BY:	Amount to be paid by purchaser to local authority to discharge vendor's liability for outstanding rates	627.90
BY:	Balance required to settle	359,820.60
		\$400,627.90 \$400,627.90
	Amount required to settle on 26 April 2015	\$359,820.60

Example 5: Sale by a registered vendor – standard rate

73. In this example assume the following (in addition to the assumptions set out at [65]):
- The vendor is selling the property to a purchaser who is:
 - unregistered; or
 - registered, but does not intend using the property for making taxable supplies; or
 - registered, but intends using the property as a principal place of residence for themselves or any of their relatives.
74. 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.
75. 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 credit the **GST-exclusive amount of the vendor's share of the rates (\$156)** against the **property's GST-exclusive purchase price**. (This gives the same result as a credit of the GST-inclusive amount of the **vendor's share of the rates (\$179.40)** against the **property's 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.

76. As discussed at [31] above, the consideration is made up of three elements. These elements are:
- the purchase price: \$400,000 plus GST, so \$460,000;
 - **the credit of the vendor's share of the** unpaid rates against the purchase price: \$179.40; and
 - the **total amount of vendor's liability to the local authority that the** purchaser has agreed to discharge: \$627.90.
77. Therefore, the total consideration for the supply will be \$460,448.50. As consideration is a GST-inclusive amount, the correct amount of GST on the supply is the tax fraction of the consideration - \$60,058.50. The vendor must charge and return this amount.
78. If the purchaser is unregistered, the Act does not allow an input tax deduction.
79. If the purchaser is registered, they will not be able to claim an input tax deduction because the property will not be used for, or be available for use in, making taxable supplies.
80. The **vendor's settlement statement would be:**

Purchaser:		
Vendor:		
Settlement Date:	26 April 2015	
ADDRESS OF PROPERTY		
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	60,058.50
BY:	Deposit paid	40,000.00
BY:	Credit for vendor's proportion of unpaid rates from 1/4/15 to 26/4/15 (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	627.90
BY:	Balance required to settle	419,820.60
		\$460,604.50
		\$460,604.50
Amount required to settle on 26 April 2015		\$419,820.60

81. The vendor's tax invoice would be:

TAX INVOICE		
25 April 2015		
From:	Vendor's name Vendor's address	GST number: XXX-XXX-XXX
To:	Purchaser's name Purchaser's address	
ADDRESS OF PROPERTY		
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	\$60,058.50
		<hr/>
		\$460,448.50
		<hr/>
Total GST: \$60,058.50		
Settlement date – 26 April 2015		

Example 6: Sale by a registered vendor – zero-rated

82. As discussed at [35]–[37] above, a zero-rated sale by a registered vendor arises under ss 11(1)(mb) or 11(1)(m).
83. 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 (\$179.40) **plus** the amount of GST input tax credit that the **vendor has claimed on the purchaser's share of the rates (\$58.50)**: \$237.90. 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.
84. As discussed at [31] 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: \$237.90; and
 - the **total amount of vendor's liability to the local authority that the purchaser has agreed to discharge**: \$627.90.
85. Therefore, the total consideration for the supply will be \$400,390.
86. 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.

87. The vendor's settlement statement would be:

Purchaser:		
Vendor:		
Settlement Date:	26 April 2015	
ADDRESS OF PROPERTY		
TO:	Purchase price in accordance with contract	400,000.00
TO:	Rates to be paid by purchaser as agreed by parties	627.90
TO:	GST as per tax invoice	nil
BY:	Deposit paid	40,000.00
BY:	Credit for vendor's proportion of unpaid rates from 1/4/15 to 26/4/15 (26 days at \$2,518.50 p/a GST inclusive)	179.40
BY:	Credit for GST claimed by vendor on purchaser's share of rates	58.50
BY:	Amount to be paid by purchaser to local authority to discharge vendor's liability for outstanding rates	627.90
BY:	Balance required to settle	359,762.10
		\$400,627.90
		\$400,627.90
	Amount required to settle on 26 April 2015	\$359,762.10

88. The vendor's tax invoice would be:

TAX INVOICE		
25 April 2015		
From:	Vendor's name Vendor's address	GST number: XXX-XXX-XXX
To:	Purchaser's name Purchaser's address	
ADDRESS OF PROPERTY		
TO:	Purchase price as per agreement, less discount for unpaid rates	\$399,762.10
TO:	Rates to be paid by purchaser to local authority	\$627.90
TO:	GST on total value of supply	nil
		\$400,390.00
Settlement date – 26 April 2015		

Situations where s 5(15) applies

Example 7: Sale by a registered vendor to a registered purchaser – sale of commercial land with a principal place of residence

89. In this example assume the following:
- The vendor is selling property to the purchaser.
 - The land in question is farm land that includes a farm house.
 - The purchaser is registered and intends using the farm land for making taxable supplies.
 - 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 2015.
 - The vendor has paid the local authority rates in advance to 30 June 2015.
 - The annual rating liability to the local authority is \$7,300 (exclusive of \$1,095 of GST). The amount of rates relating to the period of the **purchaser's occupation of the land is \$1,300** (exclusive of \$195 of GST). This amount is payable by the purchaser to the vendor under the agreement for sale and purchase of the land.
90. If the vendor can satisfy the requirements of s 20(3), the vendor can claim an input tax deduction for the GST component of the rates they have prepaid to the local authority. This input tax deduction will be subject to an adjustment for private use.
91. In this example, the supply of the land is in the course or furtherance of the **vendor's taxable activity**. It is therefore a taxable supply but it is zero-rated under s 11(1)(mb). The farm house and curtilage is a non-taxable supply.
92. 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 rates apportionment will be \$1,300 plus the portion of the GST of \$195 on the \$1,300 that the vendor is unable to claim an input tax deduction for because it relates to the farm house and curtilage. This amount will depend on the amount of the rates apportionment that is allocated to the land and the amount that is allocated to the farm house and curtilage. It may be able to be calculated by reference to the local authority rates demand.
93. In this example the local authority rates demand shows that:
- 24% of the rates amount is directly attributable to the taxable supply (that is, relates to services provided in relation to the farm land) – 24% of \$1,300 is \$312. GST is charged at 0% on \$312.
 - 16% is directly attributable to the non-taxable supply (that is, relates to services provided in relation to the farm house and curtilage) – 16% of \$1,300 is \$208. GST, at the standard rate, of \$31.20 is added to \$208. This is part of the portion of the GST of \$195 on the \$1,300

that the vendor is unable to claim an input tax deduction for because it relates to the farm house and curtilage.

- The remaining 60% is attributable to both the taxable and the non-taxable supply – 60% of \$1,300 is \$780. GST is charged at 0% on 80% of \$780 (ie, on \$624). This is because the taxable supply (the farm land) makes up 80% of the total supply. GST, at the standard rate, of \$23.40 is added to the remaining 20% of \$780 (ie, to \$156). This is the other part of the portion of the GST of \$195 on the \$1,300 that the vendor is unable to claim an input tax deduction for. It is added to the \$31.20, giving a total of \$54.60.
94. The rates apportionment on sale will therefore be \$1,354.60 (ie, \$1,300 plus \$54.60).
95. The total consideration for the supply will be \$2,501,354.60.
96. As the supply of the land is zero-rated and the supply of the farm house and curtilage is non-taxable, the purchaser cannot claim an input tax deduction for any element of the consideration for the property, including the rates apportionment.
97. **The vendor's settlement statement would be:**

Purchaser:		
Vendor:		
Settlement Date:	26 April 2015	
ADDRESS OF PROPERTY		
TO:	Purchase price in accordance with contract	2,500,000.00
TO:	GST as per tax invoice	nil
BY:	Deposit paid	250,000.00
TO:	Purchaser's proportion of rates from 27/4/15 to 30/6/15 (65 days at \$7,300 p/a GST exclusive PLUS Purchaser's proportion of GST on rates on house and curtilage)	1,354.60
BY:	Balance required to settle	2,251,354.60
		\$2,501,354.60
		\$2,501,354.60
	Amount required to settle on 26 April 2015	\$2,251,354.60

98. The **vendor's tax invoice** shows how the rates apportionment may be divided based on these figures:

TAX INVOICE		
23 April 2015		
From:	Vendor's name Vendor's address	GST number: XXX-XXX-XXX
To:	Purchaser's name Purchaser's address	
ADDRESS OF PROPERTY		
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 – zero-rated	nil
TO:	Purchaser's share of rates apportioned as at settlement date	\$1,354.60
	<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 – zero-rated	<u>\$312.00</u>
		\$936.00
TO:	GST on rates apportionment attributable to the taxable supply – zero-rated	nil
		<hr/>
		\$2,501,354.60
		<hr/>
Total GST: nil		
Settlement date – 26 April 2015		

References

Expired Ruling(s)

- 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): 4
- BR Pub 10/10 "Local authority rates apportionments on property transactions where the rates have been paid beyond settlement – goods and services tax implications for vendor"; BR Pub 10/11 "Local authority rates apportionments on

property transactions where the rates have been paid beyond settlement – goods and services tax implications for purchaser"; BR Pub 10/12 "Local authority rates apportionments on property transactions where the rates are in arrears – goods and services tax implications for vendor"; BR Pub 10/13 "Local authority rates apportionments on property transactions where the rates are in arrears – goods and services tax implications for purchaser" *Tax Information Bulletin* Vol 22, No 10 (November 2010): 3

Subject references

GST, local authority rates, rates
apportionments

Legislative references

Goods and Services Tax Act 1985 – ss 2(1),
3A(1), 5(7)(a), 5(15), 8(1), 10(2),
11(1)(m), 11(1)(mb), 20(3) and 20(3C)
Local Government (Rating) Act 2002 – ss 10,
11, 13–20, 31, 34, 44–46 and 59

Case references

Iona Farm Ltd v CIR (1999) 19 NZTC 15,261
(HC)

*The Trustee, Executors and Agency Co NZ Ltd
v CIR* (1997) 18 NZTC 13,076 (HC)

Appendix – Legislation

Goods and Services Tax Act 1985

1. “Consideration” is defined in s 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.

2. “Dwelling” is defined in s 2(1) to mean:

(a) ... 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

(iv) excludes a commercial dwelling:

3. “Input tax” is relevantly defined in s 3A(1) to mean:

(a) tax charged under section 8(1) on a supply of goods or services acquired by the person:

...

4. Section 5(7)(a) relevantly states:

For the purposes of this Act—

(a) 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:

5. Section 5(15) states:

When either of the following supplies are included in a supply, they are deemed to be a separate supply from the supply of any other real property that is included in the supply:

(a) a supply of a principal place of residence:

(b) a supply referred to in section 14(1)(d).

6. 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 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.

7. **Section 10(2) defines "value of supply"** relevantly 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,—
 - (i) the open market value of that consideration, ...

8. **Section 11(1) relevantly states:**

A supply of goods that is chargeable with tax under section 8 must be charged at the rate of 0% in the following situations:

...

- (m) the supply to a registered person of a taxable activity, or part of a taxable activity, that is a going concern at the time of the supply, if—
 - (i) the supply is agreed by the supplier and the recipient, in writing, to be the supply of a going concern; and
 - (ii) the supplier and the recipient intend that the supply is of a taxable activity, or part of a taxable activity, that is capable of being carried on as a going concern by the recipient; or
- (mb) the supply wholly or partly consists of land, being a supply—
 - (i) made by a registered person to another registered person who acquires the goods with the intention of using them for making taxable supplies; and
 - (ii) that is not a supply of land intended to be used as a principal place of residence of the recipient of the supply or a person associated with them under section 2A(1)(c); or

...

9. **Section 20(3C) relevantly states:**

For the purposes of subsection (3), ...

- (a) input tax as defined in section 3A(1)(a) or (c) may be deducted to the extent to which the goods or services are used for, or are available for use in, making taxable supplies:

...