

LOCAL AUTHORITY RATES APPORTIONMENTS ON PROPERTY TRANSACTIONS - GOODS AND SERVICES TAX TREATMENT

PUBLIC RULING - BR Pub 99/8

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 section 2(1) - definition of "Input tax", and section 10(2).

The Arrangement to which this Ruling applies

The Arrangement is the sale and purchase of real estate, between a vendor and a purchaser, where the parties to the transaction make an apportionment between them of local authority rates. The rates apportionment is part of the determination of the consideration for the supply of the property.

How the Taxation Law applies to the Arrangement

The Taxation Law applies to the Arrangement as follows:

- A GST registered vendor must charge GST, if the supply of land is subject to GST, on the consideration including the portion of rates payable by the purchaser.
- A GST registered purchaser, who is entitled to an input tax deduction in respect of the supply of the land, can also claim an input tax deduction on the portion of rates payable to the vendor.

The period or income year for which this Ruling applies

This Ruling will apply for the period 18 November 1999 to 31 March 2003.

This Ruling is signed by me on the 18th day of November 1999.

Martin Smith
General Manager (Adjudication & Rulings)

COMMENTARY ON PUBLIC RULING BR Pub 99/8

This commentary is not a legally binding statement, but is intended to provide assistance in understanding and applying the conclusion reached in Public Ruling BR Pub 99/8, (“the Ruling”).

Background

Section 5(7) of the GST Act requires local authorities to charge GST on rates.

Local authorities generally charge occupiers of land rates in advance under the Rating Powers Act 1988. On sales and purchases of land, sellers can pass on to buyers rates that relate to the period of the buyer’s occupation of the land. Apportionment is normally provided for in sale and purchase contracts.

Some confusion exists as to whether the GST inclusive or GST exclusive amount of rates should be apportioned, and whether sellers should seek to recover a GST inclusive amount of rates from buyers.

Question 19 in PIB 148 (May 1986) analysed a rates apportionment as involving two transactions for GST purposes:

The supply of local authority services for rates was one supply, personal to the seller. The seller was the only party entitled to claim input tax deductions for GST imposed.

There was a supply of the land from seller to buyer. A GST registered seller, supplying in the course or furtherance of a taxable activity, must charge GST on the value of supply of the land (including the seller’s outgoings such as apportioned rates) and issue a tax invoice to the buyer. A registered buyer, acquiring the land for the principal purpose of making taxable supplies, can claim an input tax deduction for GST charged on the outgoings.

This Ruling follows, and expands on, the approach in question 19.

Legislation

The Goods and Services Tax Act 1985 and the Rating Powers Act 1988 make it clear that local body rates (including the GST element) are consideration for supplies personal to the seller, as the person on the relevant local authority roll at the time.

GST Act

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. (Emphasis added).

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.

“Consideration” is widely defined in section 2(1) to include:

... in relation to the supply of goods ... to any person, ... any payment made ..., whether or not voluntary, in respect of, in response to, or for the inducement of, the supply of any goods ..., whether by that person or by any other person ...

For example, the Court of Appeal in *Turakina Maori Girls College Board of Trustees v CIR* (1993) 15 NZTC 10,032 held consideration to include money paid in respect of a supply, even if paid by a person other than the recipient of the supply.

“Dwelling” is defined in section 2(1) as:

“Dwelling” means 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 belong thereto and enjoyed with it; but does not include a commercial dwelling.

Rating Powers Act

Section 121 of that Act states:

The occupier of any rateable property shall be primarily liable for all rates becoming due and payable while his or her name appears in the rate records as the occupier of the property

The “occupier” under section 2 is, generally, the owner or long-term lessee of the relevant land.

Section 122 states:

The local authority shall levy each rate by delivering to the occupier a rates assessment ... Every rate shall be deemed to have been levied upon delivery of such an assessment.

- (4) Delivery of the rates assessment shall be effected before the date on which the rate is due and payable.

Section 106 requires the owner (or occupier) and the buyer of the land to notify the relevant local authority of the change in land ownership. However, section 106(7) states:

... the giving of notice under this section shall not release the owner or occupier giving it from liability for any rates due at the time the notice is given.

Application of the Legislation

The Commissioner considers that apportionments of rates are a part of the consideration for the seller’s supply of land.

A sale of land is a supply of goods for GST purposes. As a matter of contract, the seller and buyer can agree to any price for the land (including apportionments). The

Commissioner considers that the payment of rates apportionments from the recipient (buyer) to the land supplier (seller) is consideration for that single supply. Rates apportionments are paid in respect of, in response to, or for the inducement of the supply of land.

Accordingly, the GST treatment of apportionments is the same as the other consideration for the land. The buyer should be able to claim an input tax deduction if he or she is entitled to an input tax deduction for the other consideration.

Section 5(15) of the GST Act

If the property being transferred is to be used by the purchaser in a taxable activity and the property also includes a dwelling (e.g. a farm or horticultural property), section 5(15) deems the dwelling (as defined: predominantly a place of residence) to be a separate supply from the supply of the real estate. This means that the rates apportionment, since it forms part of the consideration for the land, will be apportioned along with the other consideration for the land, between the dwelling and the land excluding the dwelling.

However, where all the property being transferred will form part of, or is used in, the purchaser's taxable activity, no such rates apportionment is required, e.g. a property developer who acquires land and buildings for the purposes of a development activity.

Examples

The GST position is illustrated in the land sale examples that follow. Assume in each situation that the local authority charges the seller rates in advance. The apportioned amount of rates is \$11.25 (inclusive of \$1.25 of GST). This is payable by the buyer to the seller under the agreement for sale and purchase of the land.

Example 1 - sale by an unregistered seller to an unregistered buyer

This is the situation for most residential property transactions. The seller is unregistered and is not entitled to an input deduction of \$1.25 for the rates.

In the absence of provision in the Property Law Act 1952 or elsewhere, the amount of the apportionment is a matter for negotiation between the seller and buyer (as to whether the seller recovers the GST component of \$1.25. Although the seller could pass on the GST exclusive amount of \$10, usually the seller would wish to recover the full \$11.25).

As the buyer is unregistered, the GST Act does not allow an input tax deduction for any GST element of the rates apportionment.

Example 2 - sale by a registered seller to an unregistered buyer

For example, a GST registered property developer sells a residential property to an ordinary house buyer.

The seller may be able to claim an input tax deduction for the GST component of rates if he or she can satisfy the requirements of section 20(3).

Even if those requirements cannot be satisfied, the supply of the land is likely to be in the course or furtherance of the supplier's taxable activity, and will be a taxable supply on which the seller must charge and return GST output tax. The apportionment will be part of the consideration for that supply. This part of the consideration will presumably be \$11.25, including \$1.25 of output tax, which the seller must return to Inland Revenue.

The GST Act will not allow an unregistered buyer to claim an input tax deduction for the GST element of the apportionment.

Example 3 - sale by an unregistered seller to a registered buyer (secondhand goods)

For example, a GST registered property developer buys a residential property to renovate and resell.

Again the amount of the apportionment is a matter for agreement between the parties. It is likely that the seller would wish to recover the GST on the rates from the buyer, and in these circumstances would charge \$11.25.

The seller is unable to issue a GST tax invoice to the buyer because the seller is unregistered. The buyer could only claim an input tax deduction of \$1.25 under section 20(3) if he or she was entitled to a secondhand goods deduction on the overall property purchase.

Example 4 - sale by a registered seller to a registered buyer (at the standard rate)

This is the situation for commercial property transactions that are not sales of going concerns under section 11(1)(c). The seller is able to claim an input tax deduction for the GST on rates paid if it has a tax invoice and the local authority goods and services are acquired for the principal purpose of making taxable supplies.

The seller would return GST output tax on the value of the supply of land (including the apportionments), and would issue a tax invoice to the buyer inclusive of the apportionments. This allows the buyer to claim an input tax deduction for the GST element of the purchase price, provided the property is acquired for the principal purpose of making taxable supplies.

Example 5 - sale by a registered seller to a registered buyer (zero-rated)

This situation arises when the supply was of land that was a taxable activity, or part of a taxable activity, as a going concern within section 11(1)(c). The seller could claim an input tax deduction for the GST on rates paid if he or she could satisfy the normal tests.

In this situation the apportionments on sale should be GST exclusive (\$10) rather than inclusive (\$11.25), that is consistent with zero-rating the supply of the going concern.

Examples of GST tax invoices

Following are two examples of GST tax invoices and a settlement statement prepared by the New Zealand Law Society in consultation with Inland Revenue. They are consistent with the Commissioner's policy in this Ruling.

Example 1- registered seller: rates paid in advance

Address of vendor and GST number

To:	Sale of x parcel of land	x
To:	Unused rates apportionment (calculated on a GST exclusive basis)	y
	GST 12.5% on x plus y	
	TOTAL	---

Example 2 - registered seller: rates paid in arrears

Address of vendor and GST number

To:	Sale of x parcel of land	x
To:	Amount of rates in arrears (calculated on a GST exclusive basis)	y
	GST 12.5% on x minus y	
	TOTAL	---

Example 3 - unregistered seller: rates paid in advance

Note: In this situation a GST tax invoice is not required. The seller's settlement statement could be:

Address of vendor

To:	Sale of x parcel of land	x
To:	Unused rates apportionment (calculated on a GST inclusive basis)	y
	TOTAL	---