

Tenants' fixtures -

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Primary Production Industry Partnership

Tenants' fixtures

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If you rely on this ruling, the Commissioner must apply the law to you in the way set out in the ruling (unless the Commissioner is satisfied that the ruling is incorrect and disadvantages you, in which case the law may be applied to you in a way that is more favourable for you – provided the Commissioner is not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any underpaid tax, penalty or interest in respect of the matters covered by this ruling if it turns out that it does not correctly state how the relevant provision applies to you.

Tenants' fixtures

Question

1. What are the GST consequences when a tenant attaches a fixture to farmland?

Answer

2. The GST treatment will depend upon whether or not the property in the fixture passes from the tenant to the landlord. This may occur on affixation or at the end of the lease.
 - a. Under a relevant State or Territory law, the property in the fixture may pass from the tenant to the landlord at the point of affixation. At this point, the tenant will make a taxable supply of the fixture provided that the requirements of section 9-5 of A New Tax System (Goods and Services Tax) Act 1999 (GST Act) are satisfied.
 - b. If the property in the fixture does not pass upon affixation, the property will only pass from the tenant to the land owning entity if the tenant does not remove the fixtures at the end of the lease. Whether the supply is a taxable supply will depend on whether or not the requirements of section 9-5 of the GST Act are satisfied.
3. The application of Division 72 of the GST Act will need to be considered in both instances; however, this Division has particular consequences where the property in the fixture passes on affixation.

Explanation

4. Fixtures are items that have been attached to land in such a way as to become in law part of the land. This means that chattels owned by tenants that become fixtures become part of the land, and therefore become property of the land owner at affixation.

5. The common law has from early times permitted tenants to remove fixtures they have brought onto land provided that the fixtures were installed for trade, domestic or ornamental purposes. However, this common law right of removal does not extend to fixtures brought onto land for agricultural purposes. This has led to statutory intervention to provide some protection to tenants in these circumstances. These statutes generally govern when property in fixtures passes to the land owner and/or whether any compensation is payable by the landowner to the tenant in respect of a fixture.
6. Therefore, State or Territory legislation may need to be considered when determining whether or not the property in a fixture will remain with the tenant or pass to the landlord. Some of the relevant statutes include, the Agricultural Tenancies Act 1990 (NSW), the Property Law Act 1974 (Qld), the Agricultural Holding Act 1891 (SA), the Landlord and Tenant Act 1958 (Vic), and the Landlord and Tenant Act 1935 (Tas). A summary of when the supply occurs under the relevant statutes is included in Appendix A. This summary is a guide only. Independent advice should be obtained to ensure the proper application of the relevant legislation.
7. If there is no relevant statute then the general property law principles will apply. This means that chattels owned by tenants that become fixtures become part of the land and become property of the landowner at affixation. A tenant who attaches goods to land so that they become fixtures will make a supply of goods to the land owner provided property in the goods passes to the land owner.

Property passes to landowner at time of affixation

8. If property passes from tenant to landowner when the item is affixed to the land:
1. The tenant will make a supply of the item to the landowner at the time of affixation.
 2. If there is a statutory right to compensation, this compensation will be the consideration for the supply.
 3. Where entities are associates, the operation of Division 72 of the GST Act should be considered.
 4. Attribution for GST purposes will generally occur at the time of payment or the issue of an invoice. However, if Subdivision 72 - A of the GST Act applies, attribution will occur in the tax period in which the supply first becomes a supply connected with Australia.
9. If, at a later date, the tenant exercises a right to remove the fixtures there will be a supply by the landowner back to the tenant. Our understanding is that there is unlikely to be monetary consideration in connection with such a supply.
10. The issue of whether there is any non-monetary consideration in respect of the supply should be taken into account. This issue is discussed in Goods and Services Tax Ruling GSTR 2001/6, GST: non-monetary consideration.

Application of Division 72 of the GST Act where property passes to landowner at time of affixation.

11. If the landowner is an 'associate' of the tenant, as defined in section 318 of the Income Tax Assessment Act 1936, Division 72 of the GST Act may operate to make a supply of fixtures by the tenant to the landlord a taxable supply even if there is no consideration or inadequate consideration for the supply. The Division will only apply if the landlord is not registered or required to be registered for GST or the landlord acquired the fixture otherwise than solely for a creditable purpose. Section 72-5 of the GST Act is required to make a supply for no consideration taxable, despite section 9-5 of the GST Act. Where there is inadequate consideration, the supply either was or wasn't a taxable supply in accordance with the normal rules in section 9-5 of the GST Act.
12. Section 72-10 of the GST Act operates to make the value of a taxable supply made to an associate the GST exclusive market value of the supply.

13. The basic attribution rules are set out in Division 29 of the GST Act. This Division specifies when you account for GST payable on taxable supplies, input tax credits for creditable acquisitions and creditable importations and adjustments.

14. The basic attribution rules differ depending on whether you account for GST on a cash or non-cash basis.

15. However, there are specific attribution rules that need to be considered if Division 72 of the GST Act applies. Section 72-15 of the GST Act provides that the tax period in which GST is attributed, and therefore payable, is the tax period in which the supply first becomes a supply connected with Australia. Where property in the fixture passes at the time of affixation that is the tax period in which the goods are affixed to the land.

16. This means that, where Subdivision 72-A applies, attribution of the full amount of GST payable will occur at the time of affixation regardless of whether you account for GST on a cash or non-cash basis.

If property does not pass to land owner on affixation

17. If property does not pass to the landowner:

1. There will only be a supply if the tenant does not remove the fixtures. If this is the case there will be a supply of the fixtures by the tenant to the landowner.
2. Where the tenant is entitled to compensation or the landowner exercises a right of purchase the consideration for the supply will be the amount of compensation or consideration received by the tenant.
3. Where all the requirements of section 9-5 of the GST Act are satisfied, this supply will be a taxable supply.
4. It may also be important to determine whether there is any non-monetary consideration in connection with the supply. Guidance for this can be found in GSTR 2001/6.

Application of Division 72 of the GST Act where property does not pass to landowner at time of affixation

18. If there is a supply at the end of the lease and the entities are associates, the application of Division 72 of the GST Act may need to be considered. This Division ensures those supplies to, and acquisitions from, your associates without consideration are brought within the GST system. Similarly, it applies to ensure that supplies to your associates with inadequate consideration are properly valued for GST purposes.

19. Division 72 of the GST Act will only apply if the landlord is not registered or required to be registered for GST or the landlord acquired the fixture otherwise than solely for a creditable purpose.

Attribution rules where property does not pass to the landowner at time of affixation

20. The basic attribution rules are set out in Division 29 of the GST Act. This Division specifies when you account for GST payable on taxable supplies, input tax credits for creditable acquisitions and creditable importations and adjustments.

21. The basic attribution rules differ depending on whether you account for GST on a cash or non-cash basis.

22. However, there are specific attribution rules that need to be considered if Subdivision 72- A of the GST Act applies. Section 72-15 of the GST Act provides that the tax period in which GST is attributed, and therefore payable, is the tax period in which the supply first becomes a supply connected with Australia. Where property in the fixture passes at the end of the lease that is the tax period in which the supply first becomes a supply connected with Australia.

Appendix A - Summary of treatments under the relevant State legislation

23. The following summary indicates when a supply of tenant's fixtures occurs on a State by State basis. This summary is provided as a guide only. Independent advice should be sought to ensure the proper application of the relevant legislation.

Queensland: Property Law Act 1974 (Qld)

24. A supply of fixtures (any engine, machinery, fencing or other fixture and any building other than one in respect of which compensation is payable under the Act or otherwise) by a tenant to a landowner will only occur when:

- a. the landowner decides to buy the fixtures, or
- b. there is less than one month remaining in the tenancy and the tenant has failed to serve a notice on the landowner advising of an intention to remove a fixture.

25. If a tenant makes certain specified improvements and those improvements have been made with the approval of the landowner the tenant shall be entitled to receive compensation from the landlord in respect of the improvements provided the tenant does not remove them.

26. The compensation shall be the amount that fairly represents the value of the improvements to an incoming tenant. There shall be offset against this amount any benefit that the landlord has given the tenant in consideration of the tenant making the improvements.

New South Wales: Agricultural Tenancies Act 1990 (NSW)

27. A supply of fixtures (including a building) other than one in respect of which compensation is payable, under the Act or otherwise, by a tenant to a landowner will only occur when:

- a. the landowner decides to buy the fixtures, or
- b. the tenant fails to serve a notice on the landowner advising of an intention to remove a fixture and a 'reasonable time' has passed after the tenant has left the farm, or
- c. the tenant makes a claim for compensation in respect a fixture.

South Australia: Agricultural Holding Act 1891 (SA)

28. A supply of fixtures will occur upon affixation. In certain circumstances a tenant shall be entitled to compensation for improvements made upon the tenant quitting his holding.

Victoria: Landlord and Tenant Act 1958

29. The supply of fixtures will only occur on the cessation of tenancy or any further period of possession, or upon purchase by the landlord from the tenant.

Tasmania: Landlord and Tenant Act 1935

30. The supply of specified fixtures will occur upon the failure of the tenant to remove the fixtures at the end of his tenure, or when the landlord elects to purchase the fixtures.

Western Australia: Land Administration Act 1997

31. A supply of fixtures will occur upon affixation. If the tenant removes the fixtures there will be a supply by the landlord to the tenant at that time.

Australian Capital Territory

32. A supply of fixtures will occur upon affixation. If the tenant removes the fixtures there will be a supply by the landlord to the tenant at that time.

Northern Territory

33. A supply of fixtures will occur upon affixation. If the tenant removes the fixtures there will be a supply by the landlord to the tenant at that time.