

# ***GIR/tourism-hospitality-partnership-ch5 -***

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# Tourism and hospitality industry partnership – issues register

This issues register, originally published on our main website, provides guidance on issues identified during past consultation with industry participants.

Issues in this register that are a public ruling can now be found in the *Public Rulings* section of this Legal Database.

Issues in this register that have not been labelled as public rulings, constitute written guidance. We are committed to providing you with accurate, consistent and clear information to help you understand your rights and entitlements and meet your obligations.

If you follow our information on these issues and it turns out to be incorrect, or it is misleading and you make a mistake as a result, we must still apply the law correctly. If that means you owe us money, we must ask you to pay it but we will not charge you a penalty. Also, if you acted reasonably and in good faith we will not charge you interest. If correcting the mistake means we owe you money, we will pay it to you. We will also pay you any interest you are entitled to.

If you feel that the guidance in this issues register does not fully cover your circumstances, or you are unsure how it applies to you, you can seek further assistance from us.

## Background

This document summarises the ATO's considered position on tourism and hospitality industry specific goods and services tax (GST) issues.

The information in this publication is current at May 2013.

In the Taxpayers' Charter we commit to giving you information and advice you can rely on.

If you feel this publication does not fully cover your circumstances, please seek help from the ATO or a professional adviser. Since we regularly revise our publications to take account of any changes to the law, you should make sure this edition is the latest. The easiest way to do this is by checking for a more recent version on our website at [ato.gov.au](http://ato.gov.au)

## Summary of changes

This version of the tourism and hospitality issues register incorporates the original issues registers and the 'common GST technical questions and answers' documents.

To view the current version of the issues register refer to:

[Detailed contents – issues and decisions](#)

To view the old version of the issues register refer to:

- Archived – Tourism and Hospitality Industry Partnership – issues register – finalised issues (old version)
- Archived – Tourism and Hospitality Industry Partnership – principal and agent – issues register (old version)
- Tourism and Hospitality – common GST technical questions and answers

The archived *Tourism and Hospitality Industry Partnership – issues register* – old version, archived – *Tourism and Hospitality Industry Partnership – principal and agent – issues register* –

old version and archived – *Tourism and Hospitality* – common GST technical questions and answers are for reference purposes only and cannot be relied on as the current ATO view. Please refer to the current [Detailed contents – issues and decisions](#) for the ATO view.

Several issues from the original documents have not been transferred to this new register. These include transitional and implementation issues and some general issues which are addressed in other ATO publications.

Most of the original issues have been reviewed and updated.

**For further information on the following topics, use the links to go to the relevant documents.**

### Principal and agent issues

See [GSTR 2000/37](#) – *Goods and services tax: agency relationships and the application of the law*

### Hospitality – including restaurants, cafes, registered clubs, hotels, non-profit organisations

See the link to [Food](#) and [Non-Profit Organisations](#).

### Boat hire

For information about long-term accommodation at marinas see [GSTR 2012/6](#) – *Goods and services tax: commercial residential premises*.

## Detailed contents – issues and decisions

Unless otherwise stated, all legislative references are to the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act).

### Travel agents

Issue	Origin <sup>1</sup>
<a href="#">Issue 1 – Travel agents' commissions for arranging overseas supplies</a>	IR 43
<a href="#">Issue 2 – Travel agent fee for visa applications</a>	IR 50, Q&A 4.17
<a href="#">Issue 3 – Travel agents' commissions</a>	Q&A 4.1
<a href="#">Issue 4 – Apportioning travel insurance to GST-free and/or input taxed components</a>	IR 39
<a href="#">Issue 5 – Land product supplied to non-residents (as principal)</a>	IR 44
<a href="#">Issue 6 – Supply arrangements involving three parties</a>	New
<a href="#">Issue 7 (withdrawn) – Forfeited deposits and cancellation fees in respect of outbound tour packages</a>	Q&A 4.8, 4.9
<a href="#">Issue 8 – Tax invoices for credit card sales</a>	Q&A 2.3
<a href="#">Issue 9 – GST treatment of the environmental management charge</a>	IR 4
<a href="#">Issue 10 – GST-free sales to travellers</a>	IR 9, Q&A 5.1

<sup>1</sup> Issues which previously appeared in the archived original Tourism and Hospitality issues register (IR), and the common GST technical questions and answers (Q&A).

## Air travel

Issue	Origin <sup>1</sup>
<a href="#">Issue 11 – Land fall requirement</a>	IR 51
<a href="#">Issue 12 – Air transport within Australia</a>	IR 5, Q&A 4.11
<a href="#">Issue 13 – Treatment of the domestic leg of an international flight</a>	IR 47
<a href="#">Issue 14 – Domestic air travel purchased overseas by a non-resident</a>	IR 5, Q&A 4.7
<a href="#">Issue 15 – Excess baggage</a>	Q&A 4.4
<a href="#">Issue 16 – Aircraft fees and levies</a>	IR 54, Q&A 4.16
<a href="#">Issue 17 – Foreign exchange dealings and travellers cheques</a>	IR 12, Q&A 5.3
<a href="#">Issue 18 – Itineraries and ticketing</a>	IR 32
<a href="#">Issue 19 – Frequent flyer points/loyalty programs</a>	IR 6, Q&A 4.14

<sup>1</sup> Issues which previously appeared in the archived original Tourism and Hospitality issues register (IR), and the common GST technical questions and answers (Q&A).

## Tourist accommodation

Issue	Origin <sup>1</sup>
<a href="#">Issue 20 – Commercial accommodation</a>	Q&A 6.1, 6.2, 6.3, 7.4, 7.5, 7.6, 7.7, 7.8 IR 18
<a href="#">Issue 21 – Caravan parks and camping grounds</a>	Q&A 6.4, 7.1
Issue 22 – Commercial residential premises – cruise ships, house boats, home stays, marinas, retirement villages/nursing homes and holiday units	Q&A 6.3, 6.6, 7.9, 7.2
<a href="#">Issue 23 – Home owner and organiser responsibilities – home stays</a>	IR 17, Q&A 6.7
<a href="#">Issue 24 – Farm stays</a>	Q&A 6.8
<a href="#">Issue 25 – School excursions accommodation</a>	Q&A 6.9

<sup>1</sup> Issues which previously appeared in the archived original Tourism and Hospitality issues register (IR), and the common GST technical questions and answers (Q&A).

## Hospitality

Issue	Origin <sup>1</sup>
<a href="#">Issue 26 – Restaurant tips</a>	new
<a href="#">Issue 27 – Food premises registration</a>	Q&A 3.6
<a href="#">Issue 28 – Employer-provided accommodation</a>	Q&A 8.1
<a href="#">Issue 29 – Meals supplied to staff</a>	Q&A 8.2
<a href="#">Issue 30 – Food given to staff</a>	Q&A 8.3
<a href="#">Issue 31 – Childcare facilities provided at resorts and hotels</a>	IR 34

<sup>1</sup> Issues which previously appeared in the archived original Tourism and Hospitality issues register (IR), and the common GST technical questions and answers (Q&A).

# Tourism and hospitality related references

The following are selected GST Bulletins, Determinations, Rulings, Legislative Determinations and fact sheets that have relevance for the Tourism and Hospitality industries. To access all GST publications visit our website at [ato.gov.au](http://ato.gov.au).

## GST Bulletins

### 2001

[GSTB 2001/3](#) – *Simplified calculation of input tax for caravan park operators.*

[GSTB 2001/2](#) – *Accommodation in caravan parks and camping grounds.*

## Determinations

[GSTD 2002/3](#) – *Goods and Services Tax: how do I account for GST when I supply taxable goods, non-taxable goods and delivery services together?*

[GSTD 2001/1](#) – *Goods and services tax: what is the GST treatment of the administration levy paid by parents and carers to a family day care scheme and child care benefits (CCB) paid to carers by a family day care scheme on behalf of parents?*

## GST rulings

### 2013

[GSTR 2013/1](#) – *Goods and services tax: tax invoices*

### 2012

[GSTR 2012/7](#) – *Goods and services tax: long-term accommodation in commercial residential premises*

[GSTR 2012/6](#) – *Goods and services tax: commercial residential premises*

[GSTR 2012/5](#) – *Goods and services tax: residential premises*

[GSTR 2012/1](#) – *Goods and services tax: loyalty programs*

### 2005

[GSTR 2005/6](#) – *Goods and services tax: the scope of subsection 38-190(3) and its application to supplies of things (other than goods or real property) made to non-residents that are GST-free under item 2 of the table in subsection 38-190(1) of the A New Tax System (Goods and Services Tax) Act 1999*

[GSTR 2005/2](#) – *Goods and services tax: supplies of goods and services in the repair, renovation, modification or treatment of goods from outside Australia whose destination is outside Australia*

### 2004

[GSTR 2004/7](#) – *Goods and services tax: in the application of items 2, 3 and paragraph (b) of item 4 in the table in subsection 38-190(1) of the A New Tax System (Goods and Services Tax) Act 1999.*

### 2003

[GSTR 2003/15](#) – *Goods and services tax: importation of goods into Australia*

[GSTR 2003/12](#) – *Goods and services tax: when consideration is provided and received for various payment instruments and other methods of payment*

[GSTR 2003/8](#) – Goods and services tax: supply of rights for use outside Australia – subsection 38-190(1), item 4, paragraph (a) and subsection 38-190(2)

[GSTR 2003/7](#) – Goods and Services Tax: what do the expressions 'directly connected with goods or real property' and 'a supply of work physically performed on goods' mean for the purposes of subsection 38-190(1) of the A New Tax System (Goods and Services Tax) Act 1999?

[GSTR 2003/5](#) – Goods and Services Tax: Vouchers

[GSTR 2003/4](#) – Goods and services tax: stores and spare parts for international flights and voyages.

## **2002**

[GSTR 2002/6](#) – Goods and Services Tax: Exports of goods, items 1 to 4 of the table in subsection 38-185(1) of the A New Tax System (Goods and Services Tax) Act 1999

[GSTR 2002/5](#) – Goods and services tax: when is a 'supply of a going concern' GST-free?

[GSTR 2002/4](#) – Goods and services tax: recipient created tax invoices and foreign currency conversions

[GSTR 2002/3](#) – Goods and services tax: prizes

## **2001**

[GSTR 2001/8](#) – Goods and services tax: apportioning the consideration for a supply that includes taxable and non-taxable parts

[GSTR 2001/7](#) – Goods and services tax: meaning of annual turnover, including the effect of section 188-25 on projected annual turnover

[GSTR 2001/6](#) – Goods and services tax: non-monetary consideration

[GSTR 2001/3](#) – Goods and Services Tax: GST and how it applies to supplies of fringe benefits

[GSTR 2001/2](#) – Goods and Services Tax: foreign exchange conversions

## **2000**

[GSTR 2000/37](#) – Goods and services tax: agency relationships and the application of the law

[GSTR 2000/35](#) – Goods and services tax: Division 156 – supplies and acquisitions made on a progressive or periodic basis

[GSTR 2000/34](#) – Goods and services tax: what is an invoice for the purposes of the A New Tax System (Goods and Services Tax) Act 1999 ('GST Act')?

[GSTR 2000/33](#) – Goods and services tax: international travel insurance

[GSTR 2000/31](#) – Goods and services tax: supplies connected with Australia

[GSTR 2000/29](#) – Goods and services tax: attributing GST payable, input tax credits and adjustments and particular attribution rules made under section 29-25

[GSTR 2000/26](#) – Goods and services tax: corporate card statements – entitlement to an input tax credit without a tax invoice

[GSTR 2000/25](#) – Goods and services tax: GST-free supplies of water, sewerage and sewerage-like services, storm water draining services and emptying of a septic tank

[GSTR 2000/24](#) – Goods and services tax: Division 129 – making adjustments for changes in extent of creditable purpose

[GSTR 2000/22](#) – Goods and Services Tax: determining the extent of creditable purpose for providers of financial supplies

[GSTR 2000/19](#) – Goods and services tax: making adjustments under Division 19 for adjustment events

[GSTR 2000/15](#) – Goods and services tax: determining the extent of creditable purpose for claiming input tax credits and for making adjustments for changes in extent of creditable purpose

[GSTR 2000/13](#) – Goods and services tax: accounting on a cash basis

[GSTR 2000/10](#) – Goods and services tax: recipient created tax invoices

[GSTR 2000/6](#) – Goods and Services Tax: special credit for sales tax paid on alcoholic beverages

[GSTR 2000/3](#) – Goods and Services Tax: transitional documents – entitlement to an input tax credit without a tax invoice

[GSTR 2000/2](#) – Goods and Services Tax: adjustments for bad debts

[GSTR 2000/1](#) – Goods and Services Tax: adjustment notes

### **Miscellaneous rulings**

[MT 2006/1](#) – The New Tax System: the meaning of entity carrying on an enterprise for the purposes of entitlement to an Australian Business Number

[MT 2000/2](#) – The New Tax System: the requirement to get an ABN for PAYG purposes if you let out a residence

### **Taxation Rulings**

[TR 2006/11](#) – Private Rulings

[TR 2006/10](#) – Public Rulings

### **Legislative Determinations**

[RCTI 2000/26](#) – Tourism land product supplier

[RCTI 2000/15](#) – Caravan parks

[RCTI 2000/14](#) – Retail merchandisers

[RCTI 2000/13](#) – Retail selling agents

[RCTI 2000/12](#) – Loyalty and customer reward programs

[Waiver of tax invoice 2000/5](#) – InnClub and Flag Choice Hotels Limited

### **Particular attribution rules**

- [Application of Particular Attribution Rules Determinations](#) – PAR 2000/1
- [Banknote and coin-operated machines and similar devices](#) – PAR 2000/1
- [Cooling off periods](#) – PAR 2000/1
- [Lay-by sales](#) – PAR 2000/1
- [Retention payments](#) – PAR 2000/1

### **Fact sheets**

[Correcting GST errors](#)

This guide explains when businesses can use a later *activity statement* to correct errors made in an earlier activity statement.

#### [GST and food – schedules 1 and 2](#) (NAT 3393)

Businesses involved in producing, preparing and supplying food for human consumption will need to understand what food is GST-free and what food has GST included.

#### [GST food guide](#) (NAT 3338)

Rules to work out the goods and services tax (GST) status of the food items you sell.

#### [GST and gambling](#) (NAT 3018)

(Not available in print) From 1 July 2000 registered gambling operators will pay GST on their gambling supplies.

#### [GST and international transport of passengers](#) (NAT 3459)

(Not available in print) Providers and arrangers of international transport of passengers need to identify which of their supplies are GST-free.

#### [GST and the environmental management charge](#) (NAT 11230)

This fact sheet provides an explanation for tour operators on the goods and services tax (GST) treatment for the environmental management charge (EMC) paid to the Great Barrier Reef Marine Park Authority after 19 April 2004. It only deals with the EMC paid by certain visitors who participate in tours conducted by tour operators.

#### [GST and the treatment of supplies made through agents and other intermediaries](#) (NAT 11504)

This fact sheet explains the goods and services tax (GST) treatment of supplies of goods and services made through agents.

#### [GST – travel agents and commissions](#) (NAT 4518)

Fact sheet outlining the GST implications of commissions received by travel agents from suppliers of transport and land content.

#### [GST credits for business](#) (NAT 3019)

The New Tax System will allow you to claim an input tax credit for any GST included in the price you pay for goods and services you use in your business.

#### [Quarterly GST options](#) (NAT 4149)

This fact sheet explains the three options for reporting and paying goods and services tax (GST) available to businesses that report GST quarterly and outlines the lodgment and payment dates.

#### [Reporting and paying GST monthly](#) (NAT 4150)

Some businesses with an annual turnover of less than \$20 million have chosen to report and pay their GST monthly. This fact sheet explains how these voluntary monthly businesses report and pay their GST.

# Issue 1 – Travel agents' commissions for arranging overseas supplies

Travel agents supply services to domestic travel wholesalers. The services include arranging the supply of overseas land product to a traveller. For this service they receive commission from the domestic travel wholesaler who is the supplier of the land product to the traveller.

**Note:** The term 'travel agent' is not limited to registered travel agents but can cover other tourism enterprises, such as airlines, hotels and professional conference organisers, who arrange domestic and overseas travel on behalf of another person or persons.

'Land product' includes:

- accommodation
- transport other than air transport (such as travel by train, car or sea)
- car hire
- tickets for entrance to exhibitions, entertainment events
- other similar tourism services other than air transport.

## Issue

How is the commission received by a retail travel agent from a domestic wholesaler in respect of an overseas package treated for GST purposes?

## Decision

Where an overseas land product provider supplies overseas land products direct to a local tour operator, that supply is generally not a taxable supply, depending on the particular circumstances.

Where the domestic wholesaler uses the services of a travel agent to arrange the sale of the overseas land product there is a supply from the travel agent to the domestic wholesaler. This supply is GST-free under section 38-360 because the travel agent makes the supply in the course of its enterprise and the effective use or enjoyment of the overseas land product takes place outside Australia. Section 38-360 is extracted for your reference.

### **38-360 Travel agents arranging overseas supplies**

A supply is **GST-free** if:

- a. the supplier makes it in the course of \*carrying on an enterprise as a travel agent
- b. it consists of arranging for the making of a supply, the effective use or enjoyment of which is to take place outside Australia.

\*denotes a defined term in the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act).

## References

- Section 38-360 of the GST Act
- See also [Travel agents and commissions](#) (NAT 4518)

## Issue 2 – Travel agent fee for visa applications

The content for this issue is a public ruling for the purposes of the *Taxation Administration Act 1953* and can be found [here](#).

### References

- Section 38-360 of the GST Act (see [Issue 1 – Travel agents' commissions for arranging overseas supplies](#))
- See also fact sheet [GST – Travel agents and commissions](#) (NAT 4518).

## Issue 3 – Travel agents' commissions

Travel agents arrange travel itineraries for customers through their network of transport providers, land product suppliers and other wholesalers. Things that form part of the travel itinerary include international and domestic transport (by air and sea), travel insurance, and hotel accommodation. For this arranging service, travel agents receive commissions from principals; or margins if they are selling as principals. Providers and arrangers of international transport of passengers need to identify which of their supplies are GST-free.

### Issue

What is the GST treatment of travel agents' commissions?

Non-interpretative – straight application of the law.

### Decision

Travel agents' commissions are consideration for the supply of arranging services in relation to a range of tourism services.

Generally, the supply of arranging domestic tours or accommodation will be a taxable supply. However, under section 38-355, GST is not payable on the supply of the service of arranging:

- the transport of passengers to, from or outside Australia
- the transport of passengers on domestic legs of international flights
- the domestic air transport of a non-resident passenger where the supply was purchased while the passenger was outside Australia, or
- the domestic transport of a passenger by sea where the transport is part of a journey by sea
  - from Australia to a destination outside Australia, or
  - from a destination outside Australia to Australia, and
  - the transport is provided by the supplier who transports the passenger to or from Australia.

Also as mentioned in [Issue 1 – Travel agents' commissions for arranging overseas supplies](#) and [Issue 2 – Travel agent fee for visa applications](#), arranging for the supply of other 'international' tourism services, the effective use or enjoyment of which takes place outside Australia, (for example, overseas hotel accommodation and visa) is GST-free under section 38-360.

Where a travel agent arranges for the supply of a mix of 'domestic' and 'international' tourism services in the one travel itinerary, the commission must be apportioned on a reasonable basis with GST payable on the arranging services in relation to the 'domestic' proportion.

### References

- Section 38-355 of the GST Act.
- See also fact sheet – [GST and international transport of passengers](#) (NAT 3459).
- [GSTR 2001/8](#) – Goods and services tax: apportioning the consideration for a supply that includes taxable and non-taxable parts.

# Issue 4 – Apportioning travel insurance to GST-free and/or input taxed components

## Issue

What is the GST treatment for commission received in relation to arranging travel insurance? What if part of the travel insurance for international transport also covers the traveller while in Australia?

For source of ATO view, refer to paragraphs 29 to 33 of [GSTR 2000/33](#) – Goods and services tax: international travel insurance.

## Decision

A GST public ruling has issued on this topic – [GSTR 2000/33](#) – **Goods and services tax: international travel insurance.**

GSTR 2000/33 at paragraphs 18 -20 and 34 states:

'18. Insuring transport under item 6 of section 38-355 applies to the transport of passengers from and to their place of departure, and during the period that the insured is travelling overseas. Generally, there is only one insurance policy that covers the insured for both the domestic transport and while overseas.

19. The travel from and to the place of departure is usually a very small part of international transport. A recent sample of over 500 claims by value of claim under standard policies of industry associations shows that only 0.17% of claims arose from incidents occurring between the traveller's place of departure and the airport, and from the airport to the traveller's place of departure.

20. This examination of claims history indicates that the value to be attributed to this domestic component of the international travel policy is less than 0.5% of the total value of the transport. Provided the claims history for a particular product demonstrates that this domestic component is less than about 0.5%, there will be no need to apportion between the taxable domestic component and the GST-free international component. That portion of the cover can be included under item 6 of section 38-355 and can be treated as being GST-free.

34. A supply of services for which a commission may be charged by travel agents, brokers and other administrators for arranging insurance for overseas travel is GST-free. The commission is payable for a GST-free supply of arranging insurance that is covered by item 6 of section 38-355. Therefore, the commission is covered by item 7(c) of section 38-355. However, in respect of executive or corporate travel policies, there is a mixed supply. That is, the supply to which the commission relates is taxable to the same extent that the insurance policy is taxable.'

## References

- See [GSTR 2000/33](#) – Goods and services tax: international travel insurance.

## Issue 5 – Land product supplied to non-residents (as principal)

The content for this issue is a public ruling for the purposes of the *Taxation Administration Act 1953* and can be found [here](#).

[Inbound tour operators: date of implementation](#)

[Inbound tour operators: Guidance for BAS \(Nov. 2003 to Jan. 2004\)](#)

[Foreign tour operators: Guidance for BAS \(Nov. 2003 onwards\)](#)

### References

- [GSTD 2004/3](#) – Goods and services tax: is a supply of rights to accommodation a supply of real property for the purposes of the *A New Tax System (Goods and Services Tax) Act 1999*?
- [GSTR 2003/8](#) – Goods and services tax: supply of rights for use outside Australia – subsection 38-190(1), item 4, paragraph (a) and subsection 38-190(2).
- [GSTR 2003/7](#) – Goods and Services Tax: what do the expressions 'directly connected with goods or real property' and 'a supply of work physically performed on goods' mean for the purposes of subsection 38-190(1) of the *A New Tax System (Goods and Services Tax) Act 1999*?
- [GSTR 2001/8](#) – Goods and services tax: apportioning the consideration for a supply that includes taxable and non-taxable parts.
- [GSTR 2018/2](#) *Goods and services tax: supplies of goods connected with the indirect tax zone (Australia)*

# Issue 6 – Supply arrangements involving three parties

## Nature of arrangement

A resident travel agent (the supplier) agrees with a non-resident (the recipient) to provide services to other resident entities that are associated with the non-resident (for example, a subsidiary). Although the non-resident company is the contracted recipient of the supply, it is not the entity that makes use of the services. These services are consumed by the subsidiary in Australia.

## Issue

What is the GST treatment of commission received by a local travel agent from a non-resident entity in respect of arranging services provided by the local travel agent to a local entity?

For source of ATO view, refer to the general application of the principles in [GSTR 2005/6](#) – Goods and services tax: the scope of subsection 38-190(3) and its application to supplies of things (other than goods or real property) made to non-residents that are GST-free under item 2 in the table in subsection 38-190(1) of the *A New Tax System (Goods and Services Tax) Act 1999*.

## Decision

The GST-free treatment of the supply is denied by subsection 38-190(3) which states:

Without limiting subsection (2), a supply covered by item 2 in that table is **not** GST-free if:

- (a) it is a supply under an agreement entered into, whether directly or indirectly, with a \*non-resident
- (b) the supply is provided, or the agreement requires it to be provided, to another entity in Australia.

\*denotes a defined term in the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act)

Where a local travel agent provides arranging services to a resident entity, even though the agreement to provide the services is made with a non-resident entity, GST would apply to the supply of the services.

## References

- [GSTR 2005/6](#) – Goods and services tax: the scope of subsection 38-190(3) and its application to supplies of things (other than goods or real property) made to non-residents that are GST-free under item 2 of the table in subsection 38-190(1) of the *A New Tax System (Goods and Services Tax) Act 1999*.
- Subsection 38-190(3)

## **Issue 7 – Forfeited deposits and cancellation fees in respect of outbound tour packages**

Issue 7 has been withdrawn as it does not represent the current ATO view of the operation of the law in relation to forfeited deposits and cancellation fees.

The ATO view of the operation of the GST law in relation to security deposits is explained in [GSTR 2006/2](#) and the decision impact statement of the High Court ruling in [Commissioner of Taxation v Reliance Carpet Co Pty Ltd 2008](#).

The ATO has also released [GSTR 2009/3](#) – Goods and services tax: cancellation fees that explains how GST applies to cancellation fees.

# Issue 8 – Tax invoices for credit card sales

## Nature of arrangement

When an airline ticket is purchased using a credit card, the travel agent sends the credit card number to the airline. It is the airline that processes the credit card transaction. The travel agent does not receive the credit payment and does not pass the money on to the airlines.

## Issue

Can the travel agent issue a tax invoice or does the invoice need to issue from the airline?

For source of ATO view, refer to paragraphs 95 to 97 of [GSTR 2013/1](#) Goods and services tax: tax invoices.

## Decision

Under subdivision 153-A, a tax invoice for a taxable supply made through an agent can be issued by the principal or the agent. However, the principal and the agent must not both issue separate tax invoices relating to the same supply.

In this arrangement, the travel agent acts as the agent of the airline and may issue tax invoices provided the airline does not issue a tax invoice.

## References

- Goods and Services Tax Ruling [GSTR 2013/1](#) Goods and services tax: tax invoices deals with this issue.

## Issue 9 – GST treatment of the environmental management charge

The environmental management charge (EMC) levied by the Great Barrier Reef Marine Park Authority does not include GST because it is a 'GST-exempt' government charge.

Some tour operators pay the EMC to the Great Barrier Reef Marine Park Authority. They pass this cost on by incorporating it into the ticket price charged to customers.

### Issue

Does a tour operator have to charge GST for the EMC included in the ticket price?

Non-interpretative – straight application of the law.

### Decision

From 20 April 2004, tour operators do not have to charge GST for the EMC which may be included in ticket prices.

Please see references below for further background information.

### References

- For supplies **from 20 April 2004** see the fact sheet: [GST and the environmental management charge](#) (NAT 11230).
- For supplies **before 20 April 2004** see media release 03/65 *Tour operators welcome ATO decision*.

# Issue 10 – GST-free sales to travellers

## Issue.

Can a traveller make GST-free purchases of goods that are to be exported or taken out of Australia?

Non-interpretative – straight application of the law.

## Decision

There are four schemes where, under certain circumstances, travellers can purchase goods GST-free where the goods are to be exported or receive a refund of the goods and services tax (GST) paid in respect of such goods purchased prior to their departure from Australia.

The type of goods and the circumstances of the purchase will determine which scheme is available. All four schemes can be utilised prior to departure and travellers can utilise schemes three and four even when overseas.

## Note:

- there are no provisions whereby a refund can be claimed from the Australian Taxation Office (ATO) once the traveller and goods have left Australia
- there are no special provisions for the refund of any GST included in the cost of supplies (such as accommodation, meals, domestic flights or car hire) used by a traveller whilst in Australia.

## 1. Tourist refund scheme

The tourist refund scheme (TRS) allows Australians and overseas visitors to claim back the goods and services tax (GST) and the wine equalisation tax (WET) paid on goods bought in Australia. Consumables such as wine, perfume and chocolates must be unopened to receive a refund. Travellers must wear the goods or carry them onto the aircraft or ship when leaving Australia. Customs officers at the TRS verification centre will need to see the goods and the tax invoice before approving a refund. Refunds cannot be paid on goods packed in hold luggage.

The major advantage of the TRS is that travellers can use non-consumable goods such as clothing, cameras and jewellery in Australia before departure. Travellers can purchase goods from any Australian retailer that is registered for GST and has an Australian business number (ABN). There is no requirement for retailers to register for the TRS.

To be eligible for a refund, travellers must purchase goods totalling A\$300 (GST-inclusive) or more, from the one store, no earlier than 60 days before leaving Australia.

The retailer must give the traveller a tax invoice. A traveller may make more than one purchase from a single GST registered retailer but the tax invoices must total A\$300 (GST-inclusive) or more. Note that a tax invoice is different to some cash register receipts. It is in the best interest of the traveller to request a tax invoice and retailers must provide a tax invoice on request. Goods may be purchased from several stores provided purchases from each individual store totals A\$300 (GST-inclusive) or more. On the day of departure, travellers must present passport, tax invoice, international boarding pass and the goods to Customs officers at the airport TRS booths to claim a refund. Refunds will be available until 30 minutes before the aircraft is due to depart.

TRS booths are located after Customs and Immigration processing at major international airports. Similar arrangements are in place at major cruise liner terminals for travellers leaving Australia by ship.

The following items are not eligible for a refund:

- services such as accommodation and car rental
- hire of taxis, motor fuel, repair of cars, use of phones, data processing, telecommunications or training
- beer, spirits and tobacco products – these goods can be purchased from duty-free stores
- GST-free goods – no refund can be claimed if no GST was paid
- consumable goods which have been opened and wholly or partially used in Australia such as wine, perfume or chocolates
- goods which fail to meet aircraft or ship cabin-size restrictions
- goods such as knives, gas cylinders, fireworks and aerosol sprays which are prohibited in aircraft or ship cabins for safety reasons even if they meet aircraft or ship cabin-size restrictions (airlines and cruise liners can provide further details)
- unaccompanied goods
- goods packed in hold luggage.

## **2. Sealed bag system**

Travellers departing Australia can buy goods free of GST from stores which participate in the sealed bag export verification system. Goods bought GST-free from these stores must be sold to travellers in a tamper-proof sealed bag. Travellers can purchase GST-free no earlier than 60 days before departing Australia.

The major advantages of this scheme to travellers are that there is no minimum purchase price limit (but see below) and larger items can be checked in as hold luggage.

Individual retailers may set minimum purchase price limits within their stores. Travellers should check if a retailer has any limits before purchase.

Travellers must sign a declaration indicating their intention to take the goods overseas. The retailer attaches a copy of a special invoice to the outside of the sealed bag. Travellers must carry the sealed bag in full view of authorised collection officers when leaving Australia. These officers will check the sealed bag on the day of departure at the airport to ensure the goods are being taken overseas and collect the invoice after the traveller has passed through Customs and Immigration processing.

Travellers with larger goods will have this invoice removed by airline check-in staff, provided the goods are not inside a suitcase. These goods can then be checked in as hold luggage. Travellers leaving Australia by ship will have the invoice removed from the sealed bag in a similar way.

## **3. Supplies for export**

Subsection 38-185 (1) provides that exports are GST-free if the supplier exports them before or within sixty days (or such further period as the Commissioner allows) from the earlier of either the day the supplier issues the invoice for the goods or the day the supplier receives any consideration for the goods. For information on the sales of new recreational boats see GST-free sales of new recreational boats – suppliers.

Hence, travellers can purchase goods GST-free from any retailer who can arrange the export of the goods to an overseas address. Larger items can be purchased under this scheme and sent directly to the traveller's address overseas. Goods must be purchased no earlier than 60 days before the goods are exported.

Note that if the locked mailbag system at the international mail centre (IMC) Redfern, NSW or any other similar mail system is used where the goods are sent to a holding area in Australia before being exported overseas, the supplier should be advised to address the goods to the overseas address, c/o the IMC mailbox or holding area address. The Customs declaration which the supplier completes must show the same overseas address. This is for the protection of the supplier who may be required to prove to the satisfaction of the ATO that he exported the goods to an overseas destination. Note that the ATO advises suppliers to retain copies of all documentation, mail receipts, bills of lading, consignment notes, Customs declarations or other documentation as proof of export for audit purposes.

#### **4. Supplies for export to an entity who is not registered nor required to be registered for GST**

Subsection 38-185(3) provides that the supplier is deemed to have exported the goods if the supplier is satisfied that each of the following conditions is met:

- The supplier supplies the goods to an entity that is not registered for GST or required to be registered.
- That entity exports the goods from Australia;
  - If documentary evidence indicates that the goods have been exported, but (in fact) the goods have not been exported, the supplier will be liable to remit GST to the ATO.
- The goods have been entered for export within the meaning of section 113 of the *Customs Act 1901*.
- After the exporter enters goods for export (export entry), Customs acknowledges with an export entry advice that includes an export entry advice number (commonly referred to as an export clearance number or ECN), and,
  - the goods are not altered or used in any way, except to the extent necessary to prepare them for export.
- Part of the evidence could include a statement from the entity who exports the goods, and
  - the supplier has sufficient documentary evidence to show that the goods were exported.
- This could include several documents such as invoice, bill of lading, evidence from Customs.

Note that the 60 day rule of subsection 38-185(1) also applies. If an extension is required, the supplier needs to apply, stating the period of extension required and providing full reasons.

The supplier is required to retain the proofs of export because, if the ATO audits the supplier, the ATO will need to be satisfied by the documentation that all requirements for a GST-free supply have been met.

Note also that a signed statutory declaration of intention to export is not sufficient evidence of actual export.

If all these conditions are met the supplier:

- might be prepared to sell GST-free in the expectation that sufficient documentation to substantiate each condition will be provided in due course, or
- might include an amount for GST in the price and, when sufficient documentation has been received, later refund the GST. (Note that, if the documentation is not received until after the supplier has remitted the GST to the ATO, the supplier can recover the GST by revising the previous activity statement for that transaction.)

Note that it is the supplier's commercial decision to choose this option and therefore it is advisable for both parties to agree on the process before the sale is finalised.

## References

- For more information or a copy of a pamphlet containing full details of the tourist refund scheme contact the Australian Customs Service:
  - at their various locations throughout Australia
  - by telephone on 1300 363 263 from within Australia
  - by telephone on 61 2 6275 6666 from outside Australia
  - at the Customs website at [www.customs.gov.au](http://www.customs.gov.au)
  - or by email at [information@customs.gov.au](mailto:information@customs.gov.au)
- See also the guide:
  - Making GST-free sales to travellers departing Australia (NAT 7378).

## Issue 11 – Land fall requirement

The content for this issue is a public ruling for the purposes of the *Taxation Administration Act 1953* and can be found [here](#).

### References

- Items 1-3 in the table in section 38-355.

## Issue 12 – Air transport within Australia

The content for this issue is a public ruling for the purposes of the *Taxation Administration Act 1953* and can be found [here](#).

### References

- Item 2 and item 3 in the table in section 38-355 (see [Issue 11 – Land fall requirement](#)).

## Issue 13 – Treatment of the domestic leg of an international flight

The content for this issue is a public ruling for the purposes of the *Taxation Administration Act 1953* and can be found [here](#).

### References

- *A New Tax System (Goods and Services Tax) Act 1999* (GST Act)
- Item 2 in the table in section 38-355 (see [Issue 11 – Land fall requirement](#)).

## Issue 14 – Domestic air travel purchased overseas by a non-resident

Sales of domestic air travel can be made in a number of ways, for example via the internet, by phone or through retail sales agents. Airlines need to establish whether the passenger meets the requirements of item 3 in the table in section 38-355 of the GST Act (item 3) before the travel can be treated as GST-free.

Under item 3 a supply of domestic air travel will be GST-free if:

- (a) the passenger is a non-resident
- (b) the supply was purchased while the passenger was outside Australia.

### Issue

How does a supplier establish the residency of a passenger who books and pays for domestic air travel remotely?

Non-interpretative – straight application of the law.

### Decision

The ATO has accepted the following procedures as satisfying the requirements of item 3.

#### *Internet sales procedure*

You will need to record the following to satisfy the requirements of item 3.

1. The passport number and the country of issue of the proposed passenger.
2. The nationality of the passenger.
3. Confirmation that the passenger is currently outside Australia.

Where the conditions above are not satisfied the sale is not GST-free.

#### *Telephone sales procedure*

The following questions need to be asked and responses recorded.

1. Is the passenger a resident of Australia?
2. Is the passenger currently in Australia?
3. What is the passport number and the country of issue of the proposed passenger?

Where the answer to either question 1 or question 2 is 'yes', the sale is not GST-free.

Where these questions are not answered, the sale should not be treated as a supply within the meaning of item 3.

#### *Retail sales procedure*

1. Where the sale is made in a country outside Australia, the sale can be treated as a supply within the meaning of item 3.
2. Where the sale is made by a travel agent and the IATA Agent identifier indicates that the travel agent is located outside Australia, the sale can be treated as a supply satisfying item 3.

A passenger cannot make a GST-free purchase under item 3 from the Australian premises of a travel agent.

## References

- Item 3 in the table in section 38-355 of the GST Act (see [Issue 11 – Land fall requirement](#)).

## Issue 15 – Excess baggage

The content for this issue is a public ruling for the purposes of the *Taxation Administration Act 1953* and can be found [here](#).

### References

- 'Excess baggage' charges on GST-free flights are covered by either items 1, 2, or 3 in the table in section 38-355.

## Issue 16 – Aircraft fees and levies

The content for this issue is a public ruling for the purposes of the *Taxation Administration Act 1953* and can be found [here](#).

### References

- Treasurer's Division 81 Determination – this can be accessed through the Treasury website [www.treasury.gov.au](http://www.treasury.gov.au)
- *A New Tax System (Goods and Services Tax) Act 1999* (GST Act).
- Item 1, item 2, item 3 and item 7 in the table in section 38-355 of the GST Act (see [Issue 11 – Land fall requirement](#)).

# Issue 17 – Foreign exchange dealings and travellers cheques

The content for this issue is a public ruling for the purposes of the *Taxation Administration Act 1953* and can be found [here](#).

## References

- Item 9 of sub section 40-5.09(3) of the GST Regulations.
- [Financial services – questions and answers](#)
- 5. Foreign currency, foreign exchange rates and travellers' cheques
- [GSTR 2002/4](#) – *Goods and services tax: recipient created tax invoices and foreign currency conversions*
- [GSTR 2002/2](#) – *Goods and services tax: GST treatment of financial supplies and related supplies and acquisitions*
- [GSTR 2001/2](#) – *Goods and services tax: foreign exchange conversions*

## Issue 18 – Itineraries and ticketing

In some situations, a tourism industry operator may issue a document (such as an itinerary) before it is certain that they will make a supply because the document is merely an offer.

In these situations, there is no supply until the recipient accepts the offer. At a later point in time, the customer accepts the offer by making payment.

### Issue

Are itineraries considered to be tax invoices?

### Decision

A tax invoice is a document that complies with the information requirements set out in subsection 29-70(1) of the GST Act.

A supplier may issue to a prospective recipient a document that offers to make a supply. This may, for example include subscriptions to trade magazines, membership of trade or professional associations, or offers to attend training courses, seminars or conferences. When they issue the document, the supplier will not know whether the recipient will accept the offer, and therefore whether a supply will proceed. Because of these uncertainties, the offer document cannot be a tax invoice when it is issued.

However, the Commissioner has made a determination under subsection 29-10(3) of the GST Act, to cover particular situations concerning offer documents and renewal notices. The determination has effect from 1 July 2010. (See [A New Tax System \(Goods and Services Tax\) Waiver of Tax Invoice Requirement \(Offer Documents and Renewal Notices\) Legislative Instrument 2013](#)).

The determination is intended to save suppliers from having to issue another document if the offer is accepted. Accordingly, where a recipient or their agent holds an offer document, the determination allows the input tax credit for a creditable acquisition to be attributed at the time the recipient gives their GST return for the tax period to the Commissioner in certain circumstances.

The determination does not apply to offers made by a supplier to a single recipient, such as a 'quote' given by a professional or tradesperson.

### References

- [GSTR 2013/1](#) – *Goods and services tax: tax invoices*
- [A New Tax System \(Goods and Services Tax\) Waiver of Tax Invoice Requirement \(Offer Documents and Renewal Notices\) Legislative Instrument 2013](#)

# Issue 19 – Frequent flyer points/loyalty programs

## Issue

What is the GST treatment of travel booked using frequent flyer points?

## Decision

Media release NAT 2000/14 issued 1 March 2000 states in part:

'The accrual and conversion or redemption of points by members into goods or services will not be subject to GST.'

GST does not apply to the award of frequent flyer points, or to the goods or services supplied on redemption of points, as there is no consideration. However, GST will apply to the supply to the extent that any additional amount is paid.

## References

- Media release NAT 2000/14 – No GST on loyalty
- [Goods and Services Tax Ruling GSTR 2012/1: Goods and services tax: loyalty programs](#)

## Issue 20 – Commercial accommodation

The supply of commercial residential premises ('commercial accommodation') is a taxable supply. However, Division 87 provides that long-term stays in commercial residential premises are given a lower value than would otherwise apply, reducing the amount of GST payable.

### Issue

What is the GST treatment of commercial accommodation?

For source of ATO view, refer to the general application of the principles in [GSTR 2000/20](#) – Goods and services tax: commercial residential premises.

### Decision

Under Division 87, the value of a taxable supply of 'commercial accommodation' that:

- is provided in 'commercial residential premises' that are 'predominantly for long-term accommodation'
- is provided to an individual as 'long-term accommodation',

is 50% of what would be the price of the supply.

The supplier may choose not to apply this special rule, instead treating the supply of commercial accommodation as input taxed under Division 40.

### **'Commercial accommodation'**

Commercial accommodation means the right to occupy the whole or any part of commercial residential premises, and includes (if provided as part of the right to occupy) the supply of cleaning and maintenance, electricity, gas, air-conditioning or heating, as well as telephone, television, radio or similar things.

Any service that is provided separately to that which is supplied as part of the tariff is unlikely to be within the meaning of commercial accommodation and therefore the GST concession will not apply. For example, separately metered electricity, mini bar items, personal laundry or dry cleaning charges, meals and phone calls are separate supplies. These items will attract the full GST rate.

### **'Residential premises' and 'commercial residential premises'**

'Commercial residential premises' means:

- (a) a hotel, motel, inn, hostel or boarding house
- (b) premises used to provide accommodation in connection with a school
- (c) a ship that is mainly let out on hire in the ordinary course of a business of letting ships out on hire
- (d) a ship that is mainly used for entertainment or transport in the ordinary course of a business of providing ships for entertainment or transport
- (e) a marina at which one or more of the berths are occupied, or are to be occupied, by ships used as residences
- (f) a caravan park or a camping ground, or
- (g) anything similar to residential premises described in paragraphs (a) to (e).

However, it does not include premises to the extent that they are used to provide accommodation to students in connection with an education institution that is not a school.

The main characteristics of commercial residential premises are:

- (i) Commercial intention: The establishment is operated on a commercial basis.
- (ii) Multiple occupancy: The establishment provides sleeping accommodation on a multiple occupancy basis.
- (iii) Holding out to the public: The establishment holds itself out as premises that will receive travellers who are willing and able to pay for accommodation.
- (iv) Accommodation is the main purpose: The provision of accommodation is the establishment's primary purpose, or one of its main purposes, after the service of food and/or drink.
- (v) Central management: The establishment has central management to accept reservations, allocate rooms, receive payments and arrange the services provided throughout the premises.
- (vi) Management offers accommodation in its own right: The management has control of the premises as a whole, whether or not they own the property or any part of it and lets them in its own right, rather than as an agent.
- (vii) Services offered to guests: periodic cleaning, provision of food, laundering services, telephone (allowing the guest to be billed for calls made), and minor services, like wake-up calls or taxi bookings.
- (viii) Status of guests: Those being provided with accommodation are guests, boarders or lodgers. Guests or lodgers can expect a reasonable amount of privacy from management, their staff and other guests, but not to the same level expected by a tenant.

'Residential premises' is defined in the GST Act as land or a building that is occupied as a residence, or is intended to be occupied, and is capable of being occupied, as a residence, and includes a floating home. Common physical characteristics of residential premises that provide accommodation are that the premises:

- (a) provide occupants with sleeping accommodation and at least some basic facilities for day to day living
- (b) may be in any form, including detached buildings, semidetached buildings, strata-title apartments, single rooms or suites of rooms within larger premises.

Further information about commercial residential premises and residential premises can be found in [GSTR 2000/20](#).

### ***'Predominantly for long-term accommodation'***

This phrase in relation to commercial residential premises means that at least 70% of the individuals who are provided with commercial accommodation in the premises are provided with commercial accommodation as 'long-term accommodation'.

GSTR 2000/20 provides methods that could be used to determine if your commercial residential premises is predominantly for long-term accommodation:

- your actual occupancy of your premises for the twelve months preceding the month for which the booking is made, or
- your projected occupancy for the twelve months following the month in which the booking is made.

If it is inappropriate to use either of these methods, you may adopt a reasonable alternative.

When looking at actual or projected occupancy, examine the number of supplies of accommodation, or the number of bookings that are for 28 days or more, rather than the number of people in each room. You may include bookings made by corporate entities for individuals, provided each individual stays for 28 days or more.

Where there are two or more individuals sharing a room, who are charged separately you may count each of them in calculating the 70% figure. This may occur where rooms are booked on an independent twin/share basis or, if you operate dormitory style commercial residential premises, such as a youth hostel.

### ***'Long-term accommodation'***

This phrase means that commercial accommodation is provided to an individual for a continuous period of 28 days or more in the same premises.

In working out the number of days in the period, you may count the day on which the individual is provided with commercial accommodation (more commonly known as the 'check-in' day) and disregard the day on which the individual ceases to be provided with commercial accommodation (more commonly known as the 'check-out' day).

In terms of continuity, a guest who is provided with long-term accommodation in a hotel, motel, inn, hostel, boarding house, caravan park, camping ground or similar premises does not need to physically occupy the premises for the entire duration of the stay for the stay to be continuous. For example, a guest who occasionally leaves the premises overnight to travel, will maintain continuity of the stay provided they are charged for the days they are absent, and their suite or room may not be let in their absence. If management moves a guest to another room (either when a guest is present or away) and charges for the new room, then this will be treated as one continuous stay.

By way of another example in relation to caravan parks, the right to occupy is granted when a site is hired for a caravan, even if the caravan is left unoccupied for most of the time. The continuity of the stay is not broken. Where the operator moves a caravan from one site to another, but effectively maintains the bookings, this is a continuous site rental. However, if the owner of a caravan and the park operator agree to 'store' the caravan in another area of the park for an agreed fee, the continuity of the site rental ceases when the caravan is moved. The storage breaks the continuity of the stay as the storage of the caravan is a separate supply, subject to the basic rules (section 9-5).

### ***Election for a supplier of long-term stays of commercial accommodation***

The following diagram is extracted from Goods and Services Tax Bulletin [GSTB 2001/2](#) – Accommodation in caravan parks and camping grounds. The various meanings discussed above are applicable to this diagram.



Where there is a supply of long-term accommodation and the commercial residential premises are predominantly for long-term accommodation (that is, 70% or more of stays are for 28 or more continuous days), the supplier can choose to use either the half GST method for the entire stay of each long-term accommodation or the input taxed method for the entire stay of each long-term accommodation.

Where there is a supply of long-term accommodation and the commercial residential premises are not predominantly for long-term accommodation (that is less than 70% of stays are for 28 or more continuous days), the supplier can choose to use either the half GST method from the 28th day onwards for each long-term accommodation (and the full GST for the first 27 days) or the input taxed method for the entire stay of each long-term accommodation.

When the supplier first makes a choice, that choice applies for a minimum of 12 months.

### **Calculating the GST for commercial accommodation**

The initial requirement to consider is whether the commercial accommodation provided is long-term (28 continuous days or more) or short-term (27 continuous days or less).

### **For long-term accommodation:**

Suppliers of long-term accommodation may choose to either:

- (a) include no GST in their long-term accommodation prices (that is, the supply will be input taxed). If the provider chooses this option, they will not have to pay any GST to the ATO. However, the supplier will not be able to claim input tax credits for GST included in the price of goods and services they acquire for use in providing that accommodation. This option is equivalent to the GST treatment of residential rents (paragraph 40-35(1)(b)); or
- (b) charge a concessional (reduced) amount of GST provided for under Division 87 of the GST Act. Concessional GST treatment is only available for stays of 28 days or more (long-term accommodation). The extent to which the concession applies will depend on whether the commercial residential premises are predominantly for long-term accommodation or not (see flowchart diagram above). The supplier will be able to claim input tax credits for GST included in the price of goods and services they acquire in carrying on their enterprise. The examples below provide further illustration.

#### **Example 1 – premises is predominantly for long-term accommodation**

*Irene is a long-term resident at Dalgety Creek Caravan Park. The caravan park provides predominantly long-term accommodation because more than 70% of the total guests stay for long-term. Dalgety Creek's GST-inclusive site fee for both short and long-term stays is \$66 per week (\$60 plus \$6 GST). Because Dalgety Creek provides predominantly long-term accommodation, the GST for Irene is worked out on half that amount. To work out the actual fee, \$66 is halved, leaving \$33. The GST is 10 percent of \$33; that is \$3.30. Irene pays \$63.30 (\$60 plus \$3.30 GST).*

#### **Example 2 – input taxed option**

*Danny decides to book a holiday cabin for a six week holiday. Because more than 70% of cabins are occupied by guests staying 28 days or more, the owner has chosen to input tax his supplies of long term accommodation. The usual fee for a cabin is \$100 per week plus \$10 GST. Based on these amounts, the price of a six week stay would be \$660 (\$600 plus \$60 GST). However, as Danny is staying long term, and the operator has chosen to use the input taxed option, no GST is added to the usual cabin fee. Therefore, the total price for Danny's stay \$600. (See the GST Bulletin [GSTB 2001/3](#) – Simplified calculation of input tax for caravan park operators).*

#### **Example 3 – premises is not predominantly for long-term accommodation**

*Ralph accepts a temporary work transfer to Adelaide and books into Marble Heights for two months. Marble Heights charges \$220 (\$200 plus \$20 GST) per night for a room. Less than 70% of their guests stay for 28 days or more. For the first 27 days, Ralph will be charged at the normal rate of \$220 per night. From day 28 onwards, GST will be calculated on half the GST inclusive price. Half \$220 is \$110. The concessional GST amount is 10% of \$110; that is \$11.*

*So Ralph will be charged:*

- \$220 per night for the first 27 days
- \$211 per night for the rest of his stay.

### **For short-term accommodation:**

All supplies of commercial accommodation in which guests stay for less than 28 days are subject to GST at the normal rate of 10% regardless of whether the premises are predominantly for long-term accommodation or not.

#### **Example 4 – short-term accommodation**

*Sally decides to book a holiday cabin for a two week holiday at Dalgety Creek Caravan Park. The caravan park provides predominantly long-term accommodation because more than 70% of the total guests stay for long-term. Dalgety Creek's GST-inclusive site fee for both short and long-term stays is \$66 per week (\$60 plus \$6 GST). As Sally does not stay on a long-term basis (that is, she does not stay for 28 days or more), Sally's stay cannot be treated at the concessional rate. Therefore, Sally is charged the full GST-inclusive rate of \$66 per week, even though Dalgety Creek Caravan Park provides predominantly long-term accommodation.*

## References

- [GSTB 2001/3](#) – Simplified calculation of input tax for caravan park operators
- See also [GSTB 2001/2](#) – Accommodation in caravan parks and camping grounds
- See [GSTR 2000/20](#) – Goods and Services Tax: commercial residential premises
- [Property and Construction Industry Partnership – issues register – section 03 – commercial residential premises](#)

## Issue 21 – Caravan parks and camping grounds

Operators of caravan parks and camping grounds usually offer serviced and unserviced sites to accommodate their guests' caravans, campervans, manufactured homes, relocatable homes, mobile homes and tents. They may also rent on-site accommodation in caravans, cabins, manufactured homes, relocatable homes, mobile homes or demountables to guests who prefer to have their accommodation provided.

All of these types of supplies are supplies of commercial residential premises. They may be for either short-term or long-term stays.

### Issue

What is the GST treatment of caravan park and camping ground accommodation?

For source of ATO view, refer to:

- [GSTB 2001/2](#) – *Accommodation in caravan parks and camping grounds*
- [GSTB 2001/3](#) – *Simplified calculation of input tax for caravan park operators*
- [GSTR 2012/7](#) – *Goods and services tax: long-term accommodation in commercial residential premises.*

### Decision

Permanently leased caravan sites by customers whose vans are kept on site

As discussed in issue 20 above, the long-term accommodation rules in Division 87 apply to the provision of commercial accommodation, including accommodation provided in caravan parks, for long-term stays. Long-term stays for the purposes of the GST Act are those that are for 28 days or more.

To work out the number of days in the period for which an individual is provided with commercial accommodation:

1. count the day on which he or she is first provided with the commercial accommodation
  - a. disregard the day on which he or she ceases to be provided with commercial accommodation.

In the case of long-term stays, you have a choice on how to apply the GST. Under Division 87 of the GST Act, you have the option of using a concessional treatment to work out the GST on your supplies of long-term accommodation. Alternatively you can choose not to use the concessional treatment in Division 87, in which case your supplies of long-term accommodation will be input taxed under Division 40\*.

Predominantly long-term accommodation for the purposes of the GST Act applies where 70% or more of your bookings of long-term sites for individuals are made for a continuous period of 28 days or more.

If your park or camping ground is predominantly for long-term accommodation you can choose to:

- charge GST for your supply of long-term accommodation on a reduced value (that is, 50% of the GST-inclusive price of the accommodation) for the guests' entire stay, or
- treat all of these supplies as input taxed in the same way as residential rent\*.

If less than 70% of your bookings of long-term sites for individuals are made for a continuous period of 28 days or more, you do not provide predominantly long-term accommodation.

If your park or camping ground is not predominantly for long-term accommodation you can choose to:

- charge GST for your supply of long-term accommodation on:

the full value of the supply for the first 27 days of continuous accommodation of long-term guests, plus

a reduced value (that is, 50% of the GST-inclusive price of the accommodation) from the 28th day of the stay, or

- treat all of these supplies as input taxed in the same way as residential rent\*.

For information on how GST affects caravan parks and camping grounds, including how to calculate whether or not you provide long-term accommodation, see Goods and Services Tax Bulletin [GSTB 2001/2 – Accommodation in caravan parks and camping grounds](#).

### ***Accommodation included in the definition of 'a caravan park or a camping ground'***

Section 195-1 of the GST Act provides that 'commercial residential premises' means 'a caravan park or a camping ground or anything similar to residential premises described' as a caravan park or a camping ground. The rental of a caravan, demountable home, permanent cabin or villa on site and the rental of a site for a caravan or a demountable home is included in this definition even though most individuals who rent sites pay for all associated expenses (for example, electricity, gas) (GSTR 2012/6 paragraphs 109, 110, 212 to 214).

### ***Mixed supplies of long-term and short-term accommodation***

Caravan Park operators who supply both short-term and long-term accommodation in the same premises, and who choose to treat supplies of long-term accommodation as input taxed, can apply a simplified method to calculate input tax credits. This method is outlined in the GST Bulletin [GSTB 2001/3 – Simplified calculation of input tax for caravan park operators](#).

This simplified method involves the use of a factor to calculate input tax credits on operating expenses. The factor, which is set at 1.75%, has been determined by the ATO in consultation with the industry based on a broad analysis of the expenditure and income patterns in a number of caravan parks. The use of this factor enables you to easily work out the proportion of GST paid on your acquisitions that relate to making input taxed supplies of long-term accommodation. The factor will be regularly reviewed in consultation with industry representatives to keep abreast of industry costs.

\* Please note that if you choose to apply the input taxed treatment, you will need to apply the same treatment to all your supplies of long-term accommodation for at least 12 months after the date on which you first made the choice.

## **References**

- For information on how GST affects caravan parks and camping grounds, including how to calculate whether or not you provide long-term accommodation, see Goods and Services Tax Bulletin [GSTB 2001/2 – Accommodation in caravan parks and camping grounds](#).
- For a discussion of the meaning of commercial **residential premises** see [GSTR 2012/6](#)

- See also [Property and Construction Industry Partnership – issues register – section 03 – commercial residential premises.](#)

## Issue 23 – Home owner and organiser responsibilities – home stays

### Issue

If an Australian organising company arranges home stays, who pays the GST, the home owner or the organising company?

For source of ATO view, refer to the general application of the principles in [GSTR 2012/6 – Goods and services tax: commercial residential premises](#).

### Decision

Supplies of home stay in residential premises are usually input taxed as residential rent. No GST is charged on the rental and no input tax credits are available. Premises at which home stays are provided do not normally satisfy the characteristics of commercial residential premises (see [Issue 20 – Commercial accommodation](#)).

Generally, the Australian organising company would be making a taxable supply of its services when it arranges a home stay in Australia unless the supply is GST-free under section 38-190 of the GST Act.

### References

- See [Issue 22 – Commercial residential premises – cruise ships, house boats, home stays, marinas, retirement villages/nursing homes and holiday units](#)
- Appendix 1 to [GSTR 2012/6 – Goods and services tax: commercial residential premises](#).

## Issue 24 – Farm stays

### Issue

Do I need to aggregate the income from my farm business and my farm stay business when I calculate my turnover?

For source of ATO view, refer to [GSTR 2012/6](#) *Goods and services tax: commercial residential premises*.

### Decision

This depends on whether the farmer's accommodation business provides taxable accommodation in commercial residential premises or input taxed residential premises.

A farmer who operates a bed and breakfast or a farm stay in commercial residential premises works out GST turnover by aggregating the turnover from farming operations and the turnover from the accommodation business.

If the accommodation is not provided in commercial residential premises, then it is an input taxed supply of residential premises. Input taxed supplies are excluded when calculating turnover. See GSTR 2012/6 for indicators of commercial residential premises.

### References

- Paragraphs 49 to 55 of Goods and Services Tax Ruling [GSTR 2012/6](#) – *Goods and services tax: commercial residential premises* and paragraph 238 at Appendix 1 to this ruling.

# Issue 25 – School excursions accommodation

## Issue

Do I charge GST on the accommodation component of school group excursions?

For source of ATO view, refer to paragraphs 107 and 108 of [GSTR 2000/30](#) – Goods and services tax: supplies that are GST-free for pre-school, primary and secondary education courses

## Decision

If you are the accommodation provider and are registered or required to be registered, you will include GST in the total price for the accommodation, regardless of whether the charge is made to the school or separately to each guest.

The school may be entitled to input tax credits for the GST charged to it by the accommodation provider. If the school excursion is GST-free, no GST is charged by the school to the student for the accommodation component.

## References

- Section 38-90 of the GST Act
- See the answer to [Issue 20 – Commercial accommodation](#) and paragraphs 107 to 108 of [GSTR 2000/30](#) – Goods and services tax: supplies that are GST-free for pre-school, primary and secondary education courses.

## Issue 26 – Restaurant tips

The content for this issue is a public ruling for the purposes of the *Taxation Administration Act 1953* and can be found [here](#).

### References

- Media release NAT 2000/18 – GST and restaurant tips: ATO clarifies treatment.

## Issue 27 – Food premises registration

Some local councils charge annual food premises registration fees and other charges.

### Issue

Does GST apply to the fees charged for food premises registration and other similar charges?

Non-interpretative – straight application of the law.

For the administrative treatment of fees and charges under Division 81, refer to [PS LA 2013/2 \(GA\)](#) GST treatment of Australian fees or charges under Division 81 of the *A New Tax System (Goods and Services Tax) Act 1999* which was issued on 13 June 2013.

This issue previously stated:

### Decision

The supply of food premises registration for which a fee is paid to local councils may be excluded from the GST by the Treasurer's Division 81 Determination.

Certain Australian taxes, fees or charges that are specified in a determination by the Treasurer under section 81-5 are not the provision of consideration. Consequently, the supplies relating to those specified taxes, fees or charges are not taxable supplies.

The following state and territory taxes, fees and charges are listed in the Treasurer's Determination and are so excluded from the GST:

- In New South Wales, Licence Fees for food vendors and Fees for Occupying Council Footways under the *NSW Local Government Act 1993* are included in the Determination as being GST-free.
- In Victoria, registration of food vehicles, and registration of food preparation premises under the *Victorian Food (Miscellaneous) (Fees) Regulations 1994* are included in the Determination as being GST-free.
- In Queensland, fees for licences and registrations to ensure the enforcement of the food hygiene regulations under the Food (Miscellaneous) (Fees) Regulations 1994, and pedestrian malls licences and permits under the Local laws and supplementary local laws made under the:
  - *City of Brisbane Act 1924* and the *Local Government Act 1993*
  - *Local Government (Queen Street Mall) Act 1981*
  - *Local Government (Chinatown and The Valley Malls) Act 1984*

The following are included in the Determination as being GST-free.

- In Western Australia, Rottnest Island eating house licences and registrations under the *Rottnest Island Authority Act 1987* and *Health (Rottnest Island) By-laws 1989* are included in the Determination as being GST-free.
- In South Australia, fees for any authorisation, licence, or permit granted by a council as per section 188 (1) (e) or (f) of the *Local Government Act 1999* are included in the Determination as being GST-free.
- In Tasmania, application fee to grant or transfer licence for business premises or a temporary food premises fee under the Tasmanian *Local Government Act 1993* are included in the Determination as being GST-free.

- In the Australian Capital Territory, an application fee for a food business licence, a licence renewal fee and an application fee for approval to alter a food premises under the *ACT Food Act 1992* are included in the Determination as being GST-free.
- In the Northern Territory, an annual registration fee for a boarding house/eating house under the *Public Health (Shops, Eating Houses, Boarding House, Hostels and Hotels) Regulations*, permits to be a mall/market stallholder or for shopkeeper trestles, permits for side-walk cafes, and permits for mobile food vans under the *NT Local Government Act* are included in the Determination as being GST-free.
- If your invoice is not clear and you are in doubt as to whether or not you have been charged GST for these services, contact your local authority and ask them.

## References

- If you would like more details of the government charges that have been included see the [A New Tax System \(Goods and Services Tax\) \(Exempt Taxes, Fees and Charges\) Determination 2011 \(No. 1\)](#) (Treasurer's Division 81 Determination) [www.treasury.gov.au](http://www.treasury.gov.au)

## Issue 28 – Employer-provided accommodation

A hotel may provide free or discounted accommodation to staff.

### Issue

If the employer provides accommodation or discounted accommodation on the premises, is GST applicable?

For source of ATO view, refer to:

[GSTR 2012/6](#) – *Goods and services tax: commercial residential premises*, the application of the general principles in [GSTR 2001/3](#) – *Goods and services tax: GST and how it applies to supplies of fringe benefits*.

### Decision

GST may be payable where an employee makes a contribution towards the cost of accommodation provided to the employee. In such cases, fringe benefits tax implications also need to be considered.

Where an employee makes a contribution towards an accommodation type benefit, there will be no GST liability arising where the accommodation is the employee's usual place of residence, such that the benefit is a 'housing fringe benefit'.

Where the accommodation is not the employee's usual place of residence (that is, the provision of the accommodation is not a 'housing fringe benefit'), a GST liability will arise if the provision of the accommodation is a taxable supply (for example, an employee contributing towards a taxable supply of hotel accommodation).

### References

- See Goods and Services Tax Ruling [GSTR 2001/3](#) – *Goods and services tax: GST and how it applies to supplies of fringe benefits* for information on the interaction between fringe benefits tax and GST.
- See the answer to [Issue 20 – Commercial accommodation](#) and paragraphs 118 to 122 and 124 of Goods and Services Tax Ruling [GSTR 2012/6](#) – *Goods and services tax: commercial residential premises* for further details on when employee accommodation is a taxable supply.

## Issue 29 – Meals supplied to staff

A restaurant may supply meals to its staff.

### Issue

What is the GST treatment of meals supplied to staff before, during or after a shift?

For source of ATO view, refer to the general application of the principles in [GSTR 2001/3](#) – Goods and services tax: GST and how it applies to supplies of fringe benefits

### Decision

The supply of meals to staff will be taxable where the normal requirements of a taxable supply are satisfied. Where staff pay for the meal, the payment is consideration for a taxable supply and GST is payable. Where the meal is supplied free of charge, there is no GST supply. There may be fringe benefits tax consequences to consider.

### References

- Goods and Services Tax Ruling, [GSTR 2001/3](#) – **Goods and Services Tax: GST and how it applies to supplies of fringe benefits** discusses the interaction between fringe benefits tax (FBT) and GST. See in particular paragraphs 15 to 42.

## Issue 30 – Food given to staff

Food outlets that sell prepared food may sell food that is left unsold at the end of the day to staff for a nominal amount.

### Issue

What is the GST treatment of supplying unsold food to staff?

Does this affect the input tax credits entitlement?

For source of ATO view, refer to the general application of the principles in [GSTR 2001/3](#) – Goods and services tax: GST and how it applies to supplies of fringe benefits.

### Decision

Food that is sold to staff, even for a nominal amount will be a taxable supply where the food is not a GST-free supply. If food is given to staff free of charge, there is no taxable supply as there is no consideration.

Entitlement to input tax credits is not affected when food that was intended for sale remaining unsold at the end of the day's trading is supplied to staff for a lower amount. The requirements for a creditable acquisition are provided in section 11-5 of the GST Act.

Conversely, food that is taken by the proprietor for private use will constitute an adjustment event – there is no longer an entitlement to the input tax credits.

### References

- See GST Ruling, [GSTR 2001/3](#) – Goods and Services Tax: GST and how it applies to supplies of fringe benefits.

# Issue 31 – Childcare facilities provided at resorts and hotels

Many resorts and hotels provide child minding services for a fee.

## Issue

Are childcare facilities provided at resorts and hotels GST-free?

For source of ATO view, refer to the general application of the principles in [GSTR 2001/3](#) – Goods and services tax: GST and how it applies to supplies of fringe benefits.

## Decision

To be GST-free, the supply of child care must be supplied by, or on behalf of:

- a registered carer (within the meaning of section 3 of the *A New Tax System (Family Assistance) (Administration) Act 1999*), or
- by an approved child care service (within the meaning of section 3 of the *A New Tax System (Family Assistance) (Administration) Act 1999*), or
- a supplier that is eligible for funding from the Commonwealth under guidelines made by Child Care Minister that relate to the funding of:
  - family day care
  - occasional care
  - outside school hours care
  - vacation care, or
  - any other type of care determined in writing by that Minister.

## References

- Sections 38-140, 38-145, 38-150 and 38-155 of the GST Act.
- [GSTD 2001/1](#) – Goods and services tax: what is the GST treatment of the administration levy paid by parents and carers to a family day care scheme and child care benefits (CCB) paid to carers by a Family Day Care Scheme on behalf of parents?

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