


Decision Impact Statement

Melbourne Apartment Project Pty Ltd (as trustee for Melbourne Apartment Project) v Commissioner of Taxation

Court citation(s):	[2019] FCA 2118
Venue:	Federal Court of Australia
Venue reference no:	VID 887 of 2019
Judge name:	Kerr J
Judgment date:	19 December 2019
Appeals on foot:	No
Decision outcome:	Unfavourable to the Commissioner

Impacted advice

 The ATO has reviewed the impact of this decision on related advice and guidance products.

Precis

This statement outlines the ATO's response to this case on whether the sale of an apartment by the taxpayer, a registered charity, to a person eligible to receive social housing was a 'supply of accommodation' for the purposes of subparagraph 38-250(1)(b)(i) of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act).¹

Brief summary of facts

The taxpayer is a private ancillary fund, endorsed charity and deductible gift recipient. It acquired apartments from a family trust and on-sold them at market value to persons identified as suitable purchasers by the Melbourne City Mission and who were then living in social housing provided by the Victorian State Government.

The taxpayer applied for a private ruling on whether the sale of one of the apartments was a 'supply of accommodation' under subparagraph 38-250(1)(b)(i). The Commissioner ruled 'no' to this question on the basis that the provision did not extend to include transfer of freehold title in property. The taxpayer objected to the private ruling, and the objection was disallowed. The taxpayer then appealed to the Federal Court.

¹ All legislative references in this Decision Impact Statement are to the GST Act.

Issues decided by the Court

Kerr J held that the supply of freehold title in an apartment was a 'supply of accommodation' under subparagraph 38-250(1)(b)(i). The ordinary and natural meaning of 'accommodation' includes an apartment or any premises that are used by a person as their place of residence, whether their right of residency is conferred by licence, lease or ownership. That the term 'accommodation' had a narrower temporal aspect was expressly rejected by the Court.

Kerr J also held that the phrase 'supply of accommodation' was not to be regarded as a composite expression for interpretational purposes. The words when read together convey no separate and distinct meaning as a compound phrase.² Other provisions in the GST Act that use the word 'accommodation' did not provide a sufficient basis to support the Commissioner's view on the meaning of 'supply of accommodation'. Further, Kerr J did not consider that 'accommodation' needed to be construed uniformly across the GST Act. This was because the word appears in different provisions dealing with different subject matters.³

Kerr J also said that an outcome of the Commissioner's view 'would have the seemingly perverse effect of privileging the tax treatment of the supply of insecure short term tenure to disadvantaged persons over the supply of more secure entitlements'.⁴ Finally, the judge agreed that section 38-250 is not a provision which is to be construed liberally on the basis that it is remedial or beneficial legislation.⁵

Impact

This decision is concerned only with the meaning of 'supply of accommodation' in subparagraph 38-250(1)(b)(i). Kerr J was not asked and did not consider other requirements for supply of the apartment to be GST-free under section 38-250, in particular whether the consideration was less than 75% of the GST-inclusive market value.

While Kerr J expressed no concluded view on the meaning of 'supply of accommodation' in section 38-260⁶, it is considered that the phrase has the same meaning in both provisions. Kerr J was unpersuaded that the meaning of 'accommodation' elsewhere in the GST Act (sections 38-90, 38-105, 40-35, 40-65, 87-15 and the definition of 'residential premises' in section 195-1) provided a contextual basis on which to support a narrower reading of the term 'accommodation' in section 38-250. The meaning of 'accommodation' in these other provisions will depend on the particular context and purpose involved.

Implications for impacted advice or guidance

We have updated two ATO Interpretative Decisions (ATO ID) which needed to be amended as a result of this decision:

- ATO ID 2009/103 *Goods and Services Tax: GST and services related to accommodation in a retirement village operated by an endorsed charitable institution or trustee of a charitable fund that are GST-free.*

² At [75].

³ At [80] and [82].

⁴ At [102].

⁵ At [111] to [116].

⁶ At [88].

- ATO ID 2009/104 *Goods and Services Tax: GST and services not related to accommodation in a retirement village operated by an endorsed charitable institution or trustee of a charitable fund.*

Comments

We invite you to advise us if you feel this decision has consequences we have not identified. Please forward your comments to the contact officer.

Date issued:	30 April 2020
Due date:	29 May 2020
Contact officer:	Contact officer details have been removed as the comments period has expired.

Legislative references

A New Tax System (Goods and Services Tax) Act 1999

38-90
38-105
38-250
38-250(1)(b)(i)
38-260
40-35
40-65
87-15
195-1

Other references

ATO ID 2009/103
ATO ID 2009/104

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