GST treatment of short-stay accommodation

Exposure Draft PUB 00347

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AUSTRALIA + NEW ZEALAND

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Dear Megan

PUB00347 – GST treatment of short-stay accommodation?

Chartered Accountants Australia and New Zealand (CA ANZ) appreciates the opportunity to provide feedback on the draft Interpretation Statement discussing the GST treatment of short-stay accommodation.

CA ANZ supports the publication of this very comprehensive Statement. It will be a useful resource for practitioners.

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This Statement is also intended for hosts who, in most cases, will have limited GST technical knowledge. It is appropriate that an interpretation statement should include detailed legal analysis. However, we are concerned that the Statement might be overly complex for many hosts of short stay accommodation to understand. We recommend the Statement be published in conjunction with a series of fact sheets on the key issues that are written in plain English and are clear and easy to understand.

We commend Inland Revenue on the practical examples included within the Statement. We suggest these practical examples be incorporated in the fact sheets.

Our comments on the Statement which we hope you find helpful are set out below:

Deemed disposal on cancellation of registration

We recommend paragraph 12 be amended to include a statement that if the property was acquired before 1 October 1986 GST output tax is based on the lesser of cost or market value.[1] Alternatively, a cross reference to paragraph 216 of the Statement could be added.

Limitation on input tax deductions where property acquired from an associated person

To ensure that there is no ambiguity paragraphs 97 and 107 should clarify the limitation on input tax applies where property is acquired from an **unregistered** associated person. In other words,

[1] Goods and Services Tax Act s 10(8)

a second-hand goods input tax credit is limited where property is acquired from an associated person.

Making annual change of use adjustments - Sections 21H and 21HB – transitional rules

The statement would be improved if there was an upfront statement in paragraph 139 that there are two sets of apportionment rules and if the property/asset was acquired before 1 April 2011, that the reader refer to paragraphs 172-177. Paragraph 173 should also explain that a person must apply the new apportionment rules if no input tax has been claimed and the goods and services were acquired before 1 April 2011.[2]

The final sentence of paragraph 177 is potentially misleading. We recommend that it be amended to recognise that it will only apply if the turnover from the supply of accommodation is less than the registration threshold of $60,000.[3]

Sale of property

It is reasonably clear from paragraphs 186-189 that the sale of a property will be subject to GST even when there has been minor taxable use. However, it does raise the question whether there is a point at which the taxable use will be so small that the disposal of the asset is not "in the

[2] Goods and Services Tax Act s 21H(2B)(b)
[3] Goods and Services Tax Act s 21HB(5)

course or furtherance of a taxable activity". We think it would be helpful if the statement clarified this point.

Whilst we acknowledge that in most cases the GST output tax liability will be greater than the initial GST input tax deduction, this will not always be the case. The final sentence in paragraph 190 should be amended to say, "*the GST output tax liability **is likely to** be greater than the initial GST input tax deduction".*

It would also be helpful if the statement considered whether output tax applies to a sale where:

- the property was acquired before 1 April 2011;
- input tax was not claimed at the time of purchase because the property was acquired principally for a non-taxable purpose;
- the property was also used to make taxable supplies of accommodation (minor use); and
- the person has been applying the old GST adjustment rules.

In our view, in this case the sale does not occur in the course or furtherance of the taxable activity. Accordingly, there is no GST output tax liability on disposal of the property.

Example 3

We are concerned that the target audience (in particular, accommodation hosts) may not fully comprehend paragraphs 64-65 and Example 3, regarding how to establish whether they are carrying on a taxable activity.

You may wish to consider reworking example 3. In our opinion the nature of the local tourist industry is not a relevant factor as to whether a taxable activity is being carried on continuously or regularly. The test relates to the whole activity not just the supply of goods and services. Continual advertising and marketing by the short stay accommodation provider could indicate that a taxable activity is being carried on even if they have only had 2 paying guests in the first six months of operation. For example, a taxable activity was found to be carried on by an owner-operator charter operation which involved weekly marketing but only produced 12 charters over two-year period.[4] Furthermore, example 3 suggests that for a taxpayer to establish a taxable activity, they are required to undertake research. We do not consider this to be correct.

Only two criteria must be met for an activity to be within the definition of "taxable activity". First, it must be carried on continuously or regularly. Second, it must involve the supply of goods and services for a consideration.

[4] Allen Yacht Charters Ltd v C of IR (1994) 16 NZTC 11,270

Editorial

Paragraph 175, line 4 – insert "be" after "*to"* and before "*considered"*

We would be happy to discuss our submission with you.

Yours sincerely

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