

# GST alert

Grant Thornton periodical  
reporting on Goods and Services  
Tax issues for clients in business.

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This edition of **GST Alert** continues our focus on GST and property matters. This month we are looking at 'Commercial Residential Premises', what this means and how to account for the GST correctly.

This is a surprisingly complex area of the legislation that relies on subjective interpretations, elections and three different ways of accounting for GST effectively three different GST rates.

Commercial residential premises are residential premises that are operated in a commercial manner. They include hotels, motels, inns, hostels, boarding houses, school residential accommodation (but not accommodation for students that is not provided for school students), ships, caravan parks, camping grounds and anything similar. Commercial residential does not include the letting of residential accommodation and the definition is further explained below.

Supplies of commercial residential property are subject to GST at 10% (with a number of exceptions). This includes the sale, lease or hire of the premises as well as the more usual daily or weekly lettings to holidaymakers and travellers. Sales may be subject to the margin scheme to reduce the amount of GST payable.

## Definition

Whilst a property that advertises itself as a hotel or camping site may clearly be seen to fall within the meaning of a commercial residential property, many other properties may not be so easily defined. For instance, an individual may own and use for their personal purposes a holiday property, but may also let out the property on an occasional basis. Are the rents received subject to GST and would any subsequent disposal of the property be regarded as being subject to GST?

The ATO has given a set of guidelines that outline what they believe characterise commercial residential premises. This includes:

- Commercial intention - the property should be operated on a commercial basis with the characteristics of a business (although this does not exclude non-profit bodies);
- Multiple occupancy - thus, premises let out for single

occupation, such as a small dwelling do not have the characteristics of a hotel or boarding house;

- Holding out to the public - it must hold itself out as premises that will receive paying travellers or guests;
- Accommodation - the provision of accommodation must be the primary or one of the main aims;
- Central management - where a managing agent is not used the supply will probably be residential, not commercial residential;
- Control - the management must have control of the premises even if they do not own it. They must let it in their own right rather than as an agent;
- Services - services such as cleaning, laundry services and telephones are to be provided. Where guests are required to provide their own towels or linen the premises are less likely to be seen as commercial residential; and
- Status of the guests - the guests are not tenants or friends and can expect a reasonable level of privacy, but not the same level as a tenant would.

The lack of central management will often mean that many privately owned holiday apartments would not be regarded as commercial residential premises. The income will, therefore, be input taxed rather than subject to GST. This has the advantage that the full value of the receipts will be retained by the person letting the property, but with the disadvantage that no input tax credits can be claimed on repairs, maintenance or on initial purchase (GST will be incurred if it is a new residential premises when acquired).

The ATO has said in public ruling GSTR 2000/20 that where lettings are arranged through a local real estate agent or where guests are family and friends, this is not commercial residential property. Letting of serviced apartments may or may not be commercial residential depending upon the circumstances. Key

elements to consider will be the services that are provided, central management and holding out of the property to the public as commercial residential.

Where the 'central management' is limited to the provision of a security guard or agent that will hand out and take keys from guests as they arrive and leave, cleaning apartments after each departure and the provision of self catering kitchens (but no room service or restaurant), the letting will not be commercial residential. Where more is provided, such as a restaurant, linen, a central agent to take bookings, central marketing etc, this would be regarded as commercial residential. This will undoubtedly lead to confusion as similar properties will no doubt find their tax treatment differs due to marginal differences in services provided and also differing units in apartment blocks could easily have differing tax treatments.

Where a block is used for commercial residential purposes, and one or several units are used for residential purposes (e.g. for the manager or other staff) there will be a need to apportion the costs as the manager's use is residential.

## Long-term residents

GST can be calculated on a lower value where the occupants of commercial residential properties are long-term residents and the accommodation is used predominantly for long-term accommodation. Predominant means that at least 70% of the occupants stay for a minimum of 28 days continually (including the first day of occupation, but excluding the day of departure). Any break will not satisfy the 28-day condition.

The value of the supply is the GST inclusive price reduced by 50%, though this does not mean that 5% GST is charged. If the normal weekly rate is \$550 (including GST), the value for GST for long-term accommodation is \$275. GST at 10% is charged on this value, that is \$27.50. This is an effective rate of 5.5%. This value applies from the 28th day onwards, the full rate of GST continues to apply for the first 27 days.

It should be noted that all input tax incurred can be reclaimed as a credit by the operator of the commercial residential premises as a taxable supply is being made, even though GST is only charged on 50% of the price of short-term accommodation.

## Input taxed supplies

In addition to the above, the operator of the commercial residential accommodation can opt to input tax the supply instead of using the reduced-value rules. The option is only available if commercial residential premises are operated and the occupants are predominantly long-stay residents. Where the operator chooses to input tax his supplies, all supplies of commercial accommodation are input taxed until the choice is revoked. Revocation of the choice is not available for at least 12 months. The choice applies to all supplies of commercial accommodation made, and is not on a letting-by-letting basis or even on a building-by-building basis.

## Marinas

The ATO has indicated that the rules for long-term commercial residential operations apply equally to marinas. To be capable of being used as a residence the ship needs a sheltered area with the facilities for activities of daily living.

## GST update

The Australian Taxation Office has released Draft GST Ruling GSTR 2005/D8 which addresses supplies and how to identify a supply or supplies in a multi-party transaction (commonly referred to as a tripartite arrangement).

The Ruling considers numerous aspects of the legislation and, in particular, it considers the definition of supply as it relates to all aspects of GST. Understandably, the Ruling does not narrow the definition of a supply, rather it reinforces the broad nature of the definition so as to capture everything within its net. Importantly, however, the Ruling expresses the view that an approach of legal form over substance should be adopted when identifying a supply, unless the underlying documents are otherwise a sham.

The area of tripartite arrangements is quite complex and at times it is quite difficult to determine all of the supplies within the arrangement. Accordingly, it is important that the arrangements are considered in light of this Ruling as well as case law established in foreign jurisdictions, as Australia has no present case law in this regard.

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