



ATO Interpretative Decision

ATO ID 2010/18

Goods and Services Tax

GST and financial supplies made by a time-sharing scheme developer

FOI status: may be released

! This ATO ID contains references to provisions of the *A New Tax System (Goods and Services Tax) Regulations 1999*, which have been replaced by the *A New Tax System (Goods and Services Tax) Regulations 2019*. This ATO ID continues to apply in relation to the remade Regulations.

A comparison table which provides the replacement provisions in the *A New Tax System (Goods and Services Tax) Regulations 2019* for regulations which are referenced in this ATO ID is available.

With effect from 1 July 2015, the term 'Australia' is replaced in nearly all instances within the GST, Luxury Car Tax and Wine Equalisation Tax legislation with the term 'indirect tax zone' by the *Treasury Legislation Amendment (Repeal Day) Act 2015*. The scope of the new term, however, remains the same as the repealed definition of 'Australia' used in those Acts. For readability and other reasons, where the term 'Australia' is used in this document, it is referring to the 'indirect tax zone' as defined in subsection 195-1 of the GST Act.

⚠ CAUTION: This is an edited and summarised record of a Tax Office decision. This record is not published as a form of advice. It is being made available for your inspection to meet FOI requirements, because it may be used by an officer in making another decision.

This ATOID provides you with the following level of protection:

If you reasonably apply this decision in good faith to your own circumstances (which are not materially different from those described in the decision), and the decision is later found to be incorrect you will

not be liable to pay any penalty or interest. However, you will be required to pay any underpaid tax (or repay any over-claimed credit, grant or benefit), provided the time limits under the law allow it. If you do intend to apply this decision to your own circumstances, you will need to ensure that the relevant provisions referred to in the decision have not been amended or repealed. You may wish to obtain further advice from the Tax Office or from a professional adviser.

Issue

Is the entity, a developer of a time-sharing scheme making an input taxed financial supply under subsection 40-5(1) of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act), when its interest in the time-sharing scheme decreases to enable the time-sharing scheme to issue timeshare points to members of the public?

Decision

Yes, the developer is making a financial supply of an interest in a time-sharing scheme when its interest in the time-sharing scheme decreases to enable new issues of timeshare points to members of the public.

Facts

The developer carries on an enterprise that includes the development and promotion of a time-sharing scheme (the scheme). The developer is registered for GST.

The scheme meets the definition of a time-sharing scheme under the *Corporations Act 2001* (Corporations Act) and is a registered managed investment scheme under the Corporations Act.

The timeshare scheme is a trust which is an entity for GST purposes. As the trust is not a legal entity, a company in its capacity as responsible entity and trustee of the scheme is registered for GST and is taken to be the scheme entity. This entity will be referred to as 'the scheme'.

The scheme issues interests in the scheme to approved applicants who become new participants of the scheme. Only the scheme can issue these interests to participants. An interest in the scheme provides the participant with a right to benefits provided by the scheme, including the right to use scheme accommodation on a recurring basis. Interests are issued to participants in the form of 'timeshare points'.

The developer holds a special class of interest in the scheme (developer interest). The developer provides funding (developer contributions) so the scheme can acquire additional real property for accommodation purposes. As additional property is introduced to the scheme, new timeshare points are allocated by the scheme. Until the scheme uses these points to issue new interests in the scheme to participants, and in return for making the developer

contributions, the developer acquires an entitlement to the rights under the newly allocated but unissued points. Under the terms of the scheme's constitution, the developer interest in the scheme is the equivalent to the rights and obligations that attach to the unissued timeshare points.

Whenever the scheme issues new interests to participants, the developer's entitlement to rights under the allocated but unissued points decreases, and this is reflected in a decrease in the value of the developer interest to the same extent. The developer receives consideration equal to the sale proceeds that the scheme receives for the issue of timeshare interests by the scheme.

When the developer makes a developer contribution, instead of having its interests in the scheme reflected under its developer interest, the developer can at any time request that the scheme issue participant timeshare interests to it in the same form as those that are issued to members of the public.

Both the developer and the scheme's activities relating to interests in the timeshare scheme are connected with Australia, and are done in the course or furtherance of their respective enterprises.

Reasons for Decision

Section 40-5 of the GST Act provides that financial supplies are input taxed and that these supplies have the meaning given by the A New Tax System (Goods and Services Tax) Regulations 1999 (GST Regulations).

Under subregulation 40-5.09(1) of the GST Regulations, the provision, acquisition or disposal of an interest mentioned in subregulation (3) or (4) is a financial supply if the provision, acquisition or disposal is:

- for consideration,
- in the course or furtherance of an enterprise and
- connected with Australia; and

the supplier is:

- registered or required to be registered for GST and
- a financial supply provider in relation to supply of the interest.

Item 10 in the table in subregulation 40-5.09(3) of the GST Regulations includes an interest in or under securities (Item 10). Securities are defined to take the meaning provided in subsection 92(1) of the Corporations Act. Paragraph 92(1)(c) of the Corporations Act provides that 'interests in a managed investment scheme' are securities for the purposes of that Act. An MIS includes a time-sharing scheme which is defined in section 9 of the Corporations Act.

The timeshare points that the scheme issues to participants provide a recurrent right to use scheme property, and satisfy the definition of an interest in a time-sharing scheme. As such, the scheme makes financial supplies to members of the public when it issues timeshare points.

When the scheme allocates time-share points in respect of property introduced by the developer, and the rights under these allocated but unissued points attach to the developer's interest, these rights also constitute interests in the scheme and are financial supplies made by the scheme to the developer.

When the scheme issues timeshare points to participants, the developer's interest in the scheme decreases as the developer's unissued timeshare points have decreased. The issue is, therefore, does this decrease in the developer interest in the scheme constitute a financial supply made by the developer?

Subsection 9-10(1) of the GST Act states that a supply is any form of supply whatsoever. Paragraph 9-10(2)(f) of the GST Act expands this with the inclusion of 'a financial supply', thus allowing for an acquisition to be characterised as a supply. The other financial supply forms, 'provision' and 'disposal', may both be considered supplies under the general scope of the subsection 9-10(1) of the GST Act. This is supported by paragraph 22 of Goods and Services Tax Ruling GSTR 2002/2 'GST treatment of financial supplies and related supplies and acquisitions' which states '...the provision and/or disposal of an interest may be a supply within the ordinary meaning of supply'. GSTR 2006/9 'Goods and services tax :supplies', at paragraph 71, also acknowledges the ordinary meaning is 'to furnish or provide'.

However, proposition 5 in GSTR 2006/9 also explains that to 'make a supply' an entity must 'do something' (paragraphs 71 to 91). In the context of both provision and disposal of an interest it is relevant to determine what if anything the developer does to cause the decrease in its interest in the time share scheme held under its developer interest.

In the context of proposition 5 (to 'make a supply an entity must do something'), the required action does not have to be the supply itself. If an entity takes some action that causes a supply to occur, that can be sufficient (paragraph 74 of GSTR 2006/9). This is supported by the Administrative Appeals Tribunal decision in *Hornsby Shire Council v. Commissioner of Taxation* [2008] AATA 1060; 2008 ATC 10-061; 71 ATR 442. While there will often be a close temporal relationship between the supplier doing something and the passing of something from one entity to another, this is not always the case. Therefore, the fact that the developer agrees to have its interests dealt with in this way at the commencement of the scheme and not each time the scheme issues timeshare points to participants does not necessarily mean that the developer has not made a supply.

When the developer agrees to be bound by the terms of the scheme constitution by subscribing for a developer interest, one of the things it has agreed to is that the scheme will reduce the developer's interest in the scheme whenever timeshare points are issued to new participants, but the developer will receive the relevant sale proceeds.

By agreeing to the terms of the constitution and subsequently making developer contributions, the developer is doing something as it is agreeing to the scheme dealing with its interests in a specific way.

Furthermore, it is noted that the scheme is not unilaterally exercising some general power that would allow it to cancel any participant's interest in the scheme. Rather, the reduction of the developer's rights only occurs under specified circumstances.

In our view it follows that when the scheme accepts an application for an issue of timeshare points to a participant, the developer makes a supply of its unissued timeshare interests to the scheme to enable it to issue the timeshare points to a participant.

The developer is making a provision or disposal of an interest in a time-sharing scheme for consideration being the entitlement to be paid the sale proceeds by the scheme. As all the other requirements in subregulation 40-5.09(1) of the GST Regulations are satisfied, the developer is making a financial supply of an interest in a time-sharing scheme when its interest in the timeshare scheme decreases to enable the time-sharing scheme to issue timeshare points to members of the public.

Note

This ATO Interpretative Decision does not contemplate the extent to which a supply of an interest in a time-sharing scheme may be GST-free under section 38-190 of the GST Act.

This ATO Interpretative Decision applies to interests in time-sharing schemes that were supplied on or after 20 December 2000.

Date of decision: 7 January 2010

Legislative References:

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

subsection 9-10(1).

paragraph 9-10(2)(f).

section 38-190

section 40-5

subsection 40-5(1).

A New Tax System (Goods and Services Tax) Regulations act 8888

subregulation 40-5.09(1).

subregulation 40-5.09(3).

subregulation 40-5.09(4).

Corporations Act 2001

section 9

paragraph 92(1)(c).

Case References:

Hornsby Shire Council v Commissioner of Taxation

[2008] AATA 1060

2008 ATC 10-061

71 ATR 442

Related Public Rulings (including Determinations)

Goods and Services Tax Ruling GSTR 2002/2

Goods and Services Tax Ruling GSTR 2006/9

Keywords

Goods and services tax

GST financial supplies

Input taxed supplies

Securities

Siebel/TDMS Reference Number: 6016619

Business Line: Indirect Tax

Date of publication: 22 January 2010

ISSN: 1445 - 2782

Copyright notice

© Australian Taxation Office for the Commonwealth of Australia

You are free to copy, adapt, modify, transmit and distribute material on this website as you wish (but not in any way that suggests the ATO or the Commonwealth endorses you or any of your services or products).