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Edited version of private advice

Authorisation Number: 1051920969170

Date of advice: 11 November 2021

Ruling

Subject: GST and supplies to NDIS participants

Question

Is the supply of accommodation at Location X by Entity A to an NDIS participant (the Residents) a GST-free supply under section 38-38 of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act)?

Answer

Yes, provided the leased accommodation is considered Specialist Disability Accommodation (SDA) in accordance with the *National Disability Insurance Scheme Act 2013* (NDIS Act), it is then accepted that Entity A is making GST-free supply under section 38-38 of the GST Act.

This ruling applies for the following period:

1 November 20XX till quarter ending 30 June 20XX

The scheme commences on:

1 November 20XX

GST Free Supply
As the provider is
also a SDA Registered
with S NDISA

Relevant facts and circumstances

Entity A is registered for GST.

Entity A has been registered with the Australian Charities and Not-for-profits Commission (ACNC) as a Public Benevolent Institution for the purposes of advancing social or public welfare.

Entity A is a registered specialist disability accommodation (SDA) provider with the National Disability Insurance Agency (NDIA).

SDA is one of the supports that may be funded for participants who have an extreme functional impairment or very high support needs. SDA refers to accommodation for people who require specialist housing solutions, including to assist with the delivery of supports that cater for their extreme functional impairment or very high support needs.

As part of its business model, Entity A undertakes the design, development and operation of SDA properties across metro areas

Entity A only provides accommodation to participants who have a National Disability Insurance Scheme (NDIS) plan in effect.

Entity A enters into an Agreement (a Lodging Agreement) with the NDIS participants, which sets out the terms on which Entity A agrees to provide SDA to the NDIS participant.

Entity A has completed an SDA development located on Location X.

Entity A currently has two residents that are NDIS participants (referred to as the Residents) residing in Location X.

In respect of the arrangement with each Resident:

- each Resident has a NDIS plan in effect;
- the supply of SDA is specified in the statement of supports in each of the Resident's NDIS plan; and
- each Resident has entered into a Lodging Agreement with Entity A for the supply of the SDA.

Entity A will only supply accommodation to Residents who have SDA listed as a reasonable and necessary support in the Residents plan.

Entity A requires that the Resident provide a statement of the supports that have been approved by the CEO of the NDIS (the CEO), to be eligible for accommodation in Location X, and any other SDA accommodation.

Relevant legislative provisions

A New Tax System (Goods and Services Tax Act) 1999 38-38

Reasons for decision

Section 38-38 of the GST Act provides that certain supports provided to NDIS participants are GST-free. Relevantly, section 38-38 of the GST Act states:

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

- (a) is a supply to a participant (within the meaning of the *National Disability Insurance Scheme Act 2013*) for whom a participant's plan is in effect under section 37 of that Act; and
- (b) is a supply of one or more of the reasonable and necessary supports specified in the statement included, under subsection 33(2) of that Act, in the participant 's plan; and
- (c) is made under a written agreement, between the supplier and the participant or another person, that:
 - (i) identifies the participant; and
 - (ii) states that the supply is a supply of one or more of the reasonable and necessary supports specified in the statement included, under subsection 33(2) of that Act, in the participant ' s plan; and
- (d) is of a kind that the *Disability Services Minister has determined in writing.

NDIS plan is in effect

The participant's NDIS plan must be in effect under section 37 of the National Disability Insurance Scheme Act 2013 (NDIS Act), which means it must be approved by the National Disability Insurance Agency (NDIA). The plan ceases to be effective when it is replaced by another plan, or when the NDIS participant ceases to be a participant in the NDIS .

Reasonable and necessary supports

The supply must be of one or more reasonable and necessary supports, as defined in the participant's NDIS plan. Where the participant's NDIS plan specifies an amount (such as time or quantity) of reasonable and necessary supports, any supplies of supports in excess of these specifications will not be a GST-free NDIS supply.

Made under a written agreement

There must be made a written agreement between you, the supplier, and the NDIS participant (or another person). The written agreement must:

- identify the NDIS participant, and
- state that the supply is a supply of one or more of the reasonable and necessary supports specified in the statement included, under subsection 33(2) of the NDIS Act, in the participant's NDIS plan.

A supply covered by the Disability Services Minister's Determination

For the supply to be GST-free, as well as meeting the other three requirements outlined above, your supply to the NDIS participant must be of a kind covered by the NDIS Determination. The NDIS Determination applies to supplies made on or after 1 July 20XX but before 1 July 20XX.

The NDIS Determination has two tables:

- The table in subsection 6(1) - supplies of supports that are GST-free (Table 1)
- The table in subsection 6(2) - supplies of supports that are GST-free if they are listed in other determinations (Table 2).

If your supply is covered by an item listed in Table 1, the requirement to be covered by the NDIS Determination is satisfied.

One of the supplies covered by Table 1 of the NDIS Determination is specialist disability accommodation and accommodation or tenancy assistance (the National Disability Insurance Scheme (*Specialist Disability Accommodation*) Rules 2020 sets out the requirements that must be met to supply specialist disability accommodation).

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