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**Edited version of private advice**

Provider of SDA must be SDA Reg NDISIA

**Authorisation Number: 1052083209172**

**Date of advice: 2 February 2023**

**Ruling**

**Subject: GST - NDIS specialist disability accommodation**

**Question 1**

Is the supply of SDA by the Trust to NDIS residents GST-free under section 38-38 of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act)?

**Answer**

No, the supply of SDA by the Trust to NDIS residents does not meet the requirements of section 38-38 of the GST Act and therefore is not GST-free.

The supply of the accommodation will be an input taxed supply of residential premises.

**Question 2**

Is the supply of accommodation by the Trust to non-NDIS residents input taxed?

**Answer**

Yes, the supply of the accommodation by the Trust to non-NDIS residents will be an input taxed supply of residential premises.

**Question 3**

Is the ECP formula set out in our submissions a fair and reasonable method for the Trust to determine its Extent of Creditable Purpose in relation to its property acquisitions (including the development, construction and operation of the property)?

## Answer

**Apportionment is not relevant as the supply of the accommodation by the Trust to both NDIS and non-NDIS residents is input taxed.**

**This ruling applies for the following periods:**

1 July 20XX to 30 June 20XX

**The scheme commences on:**

2 February 20XX

## Relevant facts and circumstances

Trust (you) is registered for GST effective from 1 February 20XX.

You purchased a property as an input taxed residential property in February 20XX.

You are building nine NDIS Specialist Disability Accommodation (SDA) dwellings on the property for the provision of SDA to residents. The dwellings have been specifically designed to provide accommodation and care for disabled persons. The property satisfies the *National Disability Insurance Scheme (Specialist Disability Accommodation) Rules 2020* and is an enrolled SDA dwelling under the NDIS.

You have provided Architectural drawings for the property with your private ruling application. Construction of the dwellings have commenced. Once completed, the dwellings will receive certification from an accredited SDA certifier to confirm compliance with SDA design rules.

You are not a registered SDA provider with NDIA.



Entity B is registered with NDIA as a SDA provider.



You will lease the dwellings to a number of residents as SDA. You will then delegate the performance of many of the functions of leasing the dwellings to Entity B in the same way that a residential landlord might delegate many of its functions under the lease to a managing real estate agent.

You will enter into residential tenancy agreements (RTA) with residents. These comprise a standard RTA with special conditions.

You have provided a copy of blank RTA and the precedent special conditions with your private ruling application.

On completion of construction of the dwellings, you will enter into a property management agreement (PMA) with Entity B. A copy of the draft PMA is provided with your private ruling application.

The Trust pays fees to Entity B for its services.

There are two types of residents: NDIS residents and non-NDIS residents.

NDIS residents make up the bulk of residents. These are residents that have a NDIS plan that specifies full time SDA as a necessary support. A sample plan is provided with your private ruling application.

On occasion, a spouse or carer of a NDIS resident lives with the NDIS resident. These are generally abled residents and do not have a NDIS plan. These are referred to as non-NDIS residents. Non-NDIS residents can pay rent to the Trust, as agreed between the Trust and the non-NDIS resident.

Based on its physical characteristics, the group home would not be suitable for independent living or residential accommodation for abled residents (although non-NDIS residents may live in the home, as discussed above).

### Relevant legislative provisions

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

*A New Tax System (Goods and Services Tax) Act 1999* Paragraph 40-35(1)(a) ✖

*National Disability Insurance Scheme (Specialist Disability Accommodation) Rules 2020* Sections 5 and 24 ✖

### 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 *A New Tax System (Goods and Services Tax) (GST free Supply-National Disability Insurance Scheme Supports) Determination 2021* (NDIS Determination).


Section 6 of the NDIS Determination lists the kind of supplies covered by the NDIS Determination. Item 1 of subsection 6(1) lists "*Specialist disability accommodation (within the meaning of the National Disability Insurance Scheme rules) and accommodation/tenancy assistance*" as a supply for the purposes of paragraph 38-38(d) of the GST Act.

The *National Disability Insurance Scheme (Specialist Disability Accommodation) Rules 2020* (NDIS rules) sets out the requirements that must be met to supply specialist disability accommodation (SDA). Section 24 of the NDIS rules state:

### **24 Requirements relating to the funding of specialist disability accommodation**

(1) For specialist disability accommodation support specified in an eligible participant's plan to be funded under the National Disability Insurance Scheme, the following requirements must be satisfied:

- (a) the specialist disability accommodation must be provided by an SDA provider;



(b) ...

Section 5 of the NDIS rules defines an SDA provider as follows:

**SDA provider** means:

- (a) a registered NDIS provider that is registered to provide specialist disability accommodation; or
- (b) a registered provider of supports that can provide specialist disability accommodation under its registration.

**specialist disability accommodation:**

- (a) means accommodation for a person who requires specialist housing solutions, including to assist with the delivery of supports that cater for the person's extreme functional impairment or very high support needs; but
- (b) does not include supports delivered to the person while the person is living in the accommodation.

You are the provider of the SDA directly to the tenants. However, you are not a SDA provider, that is, you are not a registered NDIS provider that is registered to provide specialist disability accommodation. The NDIS rules specify that the SDA must be provided by an SDA provider. As you are not an SDA provider within the meaning of the NDIS rules, you cannot make a supply of SDA that meets the requirements of paragraph 38-38(d) of the GST Act.

Consequently, your supply of the SDA will not be GST-free under section 38-38 of the GST Act.

For completeness, with regard to Entity B and section 38-38 of the GST Act, it is of no consequence that Entity B is an SDA provider as Entity B is not the entity that is providing the SDA to the tenants in this case.

Paragraph 40-35(1)(a) of the GST Act provides that a supply of premises that is by way of lease, hire or licence (including a renewal or extension of a lease, hire or licence) is input taxed if the supply is of residential premises.

Given that you will be providing residential accommodation by way of rent or lease, your supply will be an input taxed supply of residential premises.

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Section 5 of the 1996 Act provides that...

Section 5

A person who is a party to a contract...

for a contract which is subject to a condition...

Section 6

(a) A contract which is subject to a condition...

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for a contract which is subject to a condition...

The contract is subject to a condition...

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for a contract which is subject to a condition...

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for a contract which is subject to a condition...

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for a contract which is subject to a condition...

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for a contract which is subject to a condition...

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