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Australian Taxation Office

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Edited version of private advice

Authorisation Number: 5010091328073

Date of advice: 22 February 2023

Ruling

Subject: GST and residential premises

SDA Reg Provider
cannot act as a
agent for ~~non~~ SDA
Reg Provider

Question 1

Will the supply by yourself of the Property to the specialist disability accommodation (SDA) Provider under the head lease be a taxable supply pursuant to section 9-5 of the A New Tax System (Goods and Service Tax) Act 1999 (GST Act) and subject to GST or GST free under 38-38 of the GST Act if the NDIS approved plan is signed either **prior** to construction commencement or **after** construction completion?

Answer 1

No. The property will be an input taxed supply of residential premises

Question 2

Will the acquisition of the goods and services by you for the building of the Property be a creditable acquisition for which you are entitled to claim an input tax credit?

Answer 2

No.

Relevant facts and circumstances

You are not registered for an ABN and not registered for GST.

?

You are currently not carrying on an enterprise.

?

You propose to construct a High Physical Support (HPS), X-bedroom and X onsite overnight assistance (OOA) House (the Property) to be used as specialist disability accommodation (SDA).

The name of the SDA Provider is a company called XXXX.

You will enter into a building contract for the Property with a building company to construct the Property.

The address of the Property is XXXX.

The Property will be used for the purposes of SDA for up to X tenants with HPS support needs (as defined under the National Disability Insurance Scheme Act 2013 (NDIS Act)) and will include:

- a bedroom for each tenant;
- a bedroom for one support person/carer to reside in the Property (OOA) and who will provide overnight on-site care assistance to the tenants.

Lease

Upon completion of the Property under the building contract, you will lease the Property to a registered SDA Provider under a head lease.

Sub Lease

The SDA Provider will sub-lease the rooms to a National Disability Insurance Scheme (NDIS) for up to X tenants who have specialist disability accommodation support approved under their NDIS plan and will licence the OOA to a supported independent living provider (SIL Provider) within the meaning of the NDIS Act.

Both the Participants and the SIL Provider will have access to shared common areas of the Property which contain a communal kitchen, laundry and living area.

Payment for XXXX ongoing services as SDA provider is due every month (in arrears) on or before the X day of each month. You will be entitled to receive income from SDA and RRC payments, minus XXXX administration fee and reimbursements. You allow XXXX to deduct this money from the SDA payments and the remaining funds are transferred to you.

Relevant legislative provisions

A New Tax System (Goods and Services Tax) Act 1999 section 9-5.

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

A New Tax System (Goods and Services Tax) Act 1999 section 40-35.

Reasons for decision

Section 9-5 of the GST Act provides that,

You make a **taxable supply** if:

- you make the supply for consideration; and
- the supply is made in the course or furtherance of an enterprise that you carry on; and
- the supply is connected with the indirect tax zone; and
- you are registered, or required to be registered.

However, the supply is not a taxable supply to the extent that it is GST-free or input taxed.

Under Section 38-38 of the GST Act, a supply to a NDIS participant is GST-free if all of the following requirements are met:

- the NDIS participant has a NDIS plan in effect
- the supply is of reasonable and necessary supports that are specified in the statement of supports in the participant's NDIS plan
- there is a written agreement between you and the NDIS participant (or another person)
- it is a supply covered by one of the tables in the A New Tax System (Goods and Services Tax) (GST free Supply-National Disability Insurance Scheme Supports) Determination 2021 (NDIS Determination)

The supply by you as the property owner to the SDA provider under the head-lease would not satisfy the GST-free requirements in section 38-38 of the GST Act. This is because one of the requirements in section 38-38 is that the supply is made to an NDIS participant. Your supply under the head-lease is not a supply to an NDIS participant - it is a supply to an SDA provider.

The SDA provider does not act as an agent in your situation. For the SDA provider to act as an agent, you must be registered as an SDA provider yourself in order for the supply to be considered GST-free under Section 38-38 of the GST Act.

You are entitled to an input tax credit for any creditable acquisition that you make.

Section 11-5 provides that you make a *creditable acquisition* if all of the following criteria are satisfied:

- (a) you acquire anything solely or partly for a creditable purpose (i.e. to the extent you acquire the thing in carrying on your enterprise except to the extent the acquisition relates to making input taxed supplies or is of a private or domestic nature)
- (b) the supply to you was a taxable supply
- (c) you provide, or are liable to provide, consideration for the supply
- (d) you are registered or required to be registered.

The relevant issue here is whether your acquisition of the Property is for a creditable purpose.

As outlined, you have constructed the Property for making input taxed supplies according to Section 40-35 of the GST Act. Therefore, you are not making a creditable acquisition. If you are not registered for GST, you would also be unable to claim GST credits under part (d).

Section 40-35 of the GST Act relates to residential rent:

- (1) 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:
 - (a) the supply is of residential premises (other than a supply of commercial residential premises or a supply of accommodation in commercial residential premises provided to an individual by the entity that owns or controls the commercial residential premises); or
 - (b) the supply is of commercial accommodation and Division 87 (which is about long-term accommodation in commercial premises) would apply to the supply but for a choice made by the supplier under section 87-25.
- (1A) A supply of a berth at a marina that is by way of lease, hire or licence (including a renewal or extension of a lease, hire or licence) is input taxed if:
 - (a) the berth is occupied, or is to be occupied, by a ship used as a residence; and
 - (b) the supply is of commercial accommodation and Division 87 (which is about long term accommodation in commercial premises) would apply to the supply but for a choice made by the supplier under section 87-25.
- (2) However:
 - (a) the supply is input taxed only to the extent that the premises are to be used predominantly for residential accommodation (regardless of the term of occupation); and

(b) the supply is not input taxed under this section if the lease, hire or licence, or the renewal or extension of a lease, hire or licence, is a long-term lease.

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THE STATE OF TEXAS, COUNTY OF DALLAS, ss. I, _____, a Notary Public in and for said State, do hereby certify that _____ is the true and correct copy of the original of _____ as the same appears from the records of said County.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of said County at the City of Dallas, Texas, this _____ day of _____, 19____.

Notary Public in and for the State of Texas