# GST at Settlement

Contents

[GST at Settlement 1](#_Toc529635801)

[RuleBase Logic - Purchaser 3](#_Toc529635802)

[*Index Logic* 3](#_Toc529635803)

[*Branch Logic – Recipient of taxable supply* 3](#_Toc529635805)

[*Branch Logic – Supply by way of sale or long-term lease* 4](#_Toc529635807)

[*Branch Logic – New Residential Premises* 4](#_Toc529635809)

[*Branch Logic – New Residential Premises – ‘new residential premises’* 4](#_Toc529635811)

[*Branch Logic – Potential Residential Land* 4](#_Toc529635813)

[*Branch Logic – Exception – Transitional Rules* 5](#_Toc529635815)

[*Explanation Interview Control – Recipient of Taxable Supply* 5](#_Toc529635817)

[*Explanation Interview Control – Sale of Long-Term Lease* 5](#_Toc529635825)

[*Explanation Interview Control – New Residential Premise* 6](#_Toc529635829)

[*Explanation Interview Control – Potential Residential Land* 6](#_Toc529635835)

[*Explanation Interview Control – Transition Rules* 6](#_Toc529635840)

[Appendix 7](#_Toc529635842)

## RuleBase Logic - Purchaser

### *Index Logic*

[Taxation Administration Act 1953 (Cth) 14-250] The purchaser will be liable to pay an amount to the Commissioner if

Either

[(1)(a)] The user knows that the purchaser is a ‘recipient’ of a ‘taxable supply’ = “Yes”

[(1)(a)] The purchaser is a ‘recipient’ of a ‘taxable supply’.

AND

Either

[(2)] The user knows that the supply is by way of sale of long-term lease = “Yes”

[(2)] The supply is by way of sale or long-term lease.

AND

Either

[(2)(a)] The user knows that the supply is of new residential premises or of potential residential land = “Yes”

[(2)(a)] The supply is of new residential premises or

[(2)(b)] The supply is of potential residential land.

AND

Either

[Law Companion Ruling LCR 2018/04 para 11(a)] The user knows that the Transitional Rules apply = “No”

The Transitional Rules do not apply.

Comment – The two cases in each rules have the following logic:

* First Case -> When the user is confident/knows that the base conditions is met;
* Second case -> Triggered when the user is unsure/more info, which directs the user to a branch containing more definitions & legal tests

### *Branch Logic – Recipient of taxable supply*

[A New Tax System (Goods and Services Tax) Act 1999] The purchaser is a ‘recipient' of a ‘taxable supply’ if

The user knows that the purchaser is a ‘recipient’ of a ‘taxable supply’ = “More Info”

[s 184-1(1)] The purchaser is an entity and

[s 9-5,195-1] The supply is made for consideration and

[s 9-20, 195-1] The supply is made in the course or furtherance of an enterprise that the entity carries on and

[s 9-25(4), 195-1; Taxation Ruling GSTD 2004/3 para 2] The supply is connected with Australia and

[s 57-20, 195-1, 144-5] The entity is registered, or required to be registered, for GST and

Both

[Subdivision 40; Law Companion Ruling LCR 2018/4 para 15, 18] The sale of the residential premises is not input taxes and

[Subdivision 38] The sale is not a GST-free supply.

### *Branch Logic – Supply by way of sale or long-term lease*

[A New Tax System (Goods and Services Tax) Act 1999] The supply is by way of sale or long-term lease if

The user knows that the supply is by way of sale of long-term lease = “More Info”

[9-10] The transaction is defined as a supply and

Either

[Goods and Services Tax Ruling GSTR 2003/03 para 18] The supply is by way of sale or

[s 195-1 definitions ‘long-term lease’] The supply is by way of long-term lease.

### *Branch Logic – New Residential Premises*

[A New Tax System (Goods and Services Tax) Act] The supply is of new residential premises if

The user knows that the supply is of new residential premises or of potential residential land = “More Info”

[s 40-75] The supply is defined as a ‘new residential premises’ and

Both

[s 40-65(2)] The supply of new residential premises has not been created through substantial renovations and

[s 40-65(2)] The supply is not of commercial residential premises.

### *Branch Logic – New Residential Premises – ‘new residential premises’*

[A New Tax System (Goods and Services Tax) Act] The supply is defined as a ‘new residential premises' if

[s 40-75(1)(a)] The premises has not previously been sold as a residential premises (other than commercial residential premises) or

[s 40-75(1(c)] The premises has been built, or contain a building that has been built, to replace demolished premises on the same land.

Comment – s 40-75(1)(b), states a further definition for ‘new residential premises,’ where “they have been created through substantial renovation of a building.” It is our interpretation that this has been displaced by *Taxation Administration Act 1953* (Cth) ss 14-250(2)(a)(i) which states that ‘This subsection applies to… new residential premises that not been created through substantial renovation of a building.’

### *Branch Logic – Potential Residential Land*

[A New Tax System (Goods and Services Tax) Act] The supply is of potential residential land if

The user knows that the supply is of new residential premises or of potential residential land = “More Info”

[s 195-1] The property is of 'potential residential land' and

[s 14-450(2)(b)(i) s 195-1] The property is included in a 'property subdivision plan’ and

[s 14-450(2)(b)(iI)] The property does not contain any building that is in use for a commercial purpose and

either

[Law Companion Ruling LCR 2018/04 para 19] The purchaser is not registered for GST or

[Law Companion Ruling LCR 2018/04 para 19] The purchaser is registered but does not purchase the property for a creditable purpose.

### *Branch Logic – Exception – Transitional Rules*

[Law Companion Ruling LCR 2018/04] The Transitional Rules apply if

The user knows that the Transitional Rules apply = “Yes”

OR

ALL

The user knows that the Transitional Rules apply = “More Info”

[para 11(a)] The contracts were exchanged between the parties before 1 July 2018

[para 11(b)] Consideration for the supply, other than a deposit, is first provided before 1 July 2020.

## RuleBase Logic – Interview Control

### *Explanation Interview Control – Recipient of Taxable Supply*

The entity explanation is required if

the purchaser is an entity is uncertain

The consideration explanation is required if

the supply is made for consideration is uncertain

The enterprise explanation is required if

the supply is made in the course or furtherance of an enterprise that the entity carries on is uncertain

The supply connected with Australia explanation is required if

the supply is connected with Australia is uncertain

The registration threshold explanation is required if

the entity is registered, or required to be registered, for GST is uncertain

The GST-free supply explanation is required if

the sale is a GST-free supply is uncertain

the sale of the residential premises imput taxed explanation is required if

the sale of the residential premises is input taxes is uncertain

### *Explanation Interview Control – Sale of Long-Term Lease*

The supply explanation is required if

the transaction is defined as a supply is uncertain

The sale explanation is required if

the supply is by way of sale is uncertain

The long-term lease explanation is required if

the supply is by way of long-term lease is uncertain

### *Explanation Interview Control – New Residential Premise*

The potential residential land screen will be shown if

the supply is not of new residential premises and

The user knows that the supply is of new residential premises or of potential residential land = "More Info"

The new residential premise explanation is required if

the premises has not previously been sold as a residential premises (other than commercial residential premises) is uncertain

The demolished explanation is required if

the premises has been built, or contain a building that has been built, to replace demolished premises on the same land is uncertain

The substantial renovation explanation is required if

the supply of new residential premises has been created through substantial renovations is uncertain

The commercial residential premises explanation is required if

the supply is of commercial residential premises is uncertain

### *Explanation Interview Control – Potential Residential Land*

The potential residential land explanation is required if

the property is of 'potential residential land' is uncertain

The property subdivision plan explanation is required if

the property is included in a 'property subdivision plan' is uncertain

The use and commercial purpose explanation is required if

the property contains any building that is in use for a commercial purpose is uncertain

The GST registration explanation is required if

the purchaser is registered for GST is uncertain

### *Explanation Interview Control – Transition Rules*

The time a contract is entered into explanation is required if

the contracts were exchanged between the parties before 1 July 2018 is uncertain

## Appendix

#### Appendix I – Recipient of Taxable Supply – Extended Legal Definition/Application

##### “Entity”

An entity means any of the following:

1. an individual;
2. a body corporate;
3. a body politic;
4. a partnership;
5. any other unincorporated association or body of persons;
6. a trust; or
7. a superannuation fund.

Generally it will cover all types of legal persons.   
*s 184-1(1)*

##### “Consideration”

Consideration includes any payment, or any act or forbearance, in connection with a supply of anything or in response to or for the inducement of a supply of anything.   
  
**However, a purchaser does not have a GST withholding obligation at the time they pay a genuine deposit.** *s 14-250(4)*   
  
For further information on:   
  
**Sinking Funds & Body Corporate** See *Body Corporate, Villa Edgewater Cts 23092 v FCT (2004)* (2004) 55 ATR 1162.   
**Voluntary** - Generally, it does not matter whether the consideration was voluntary or not. *s 9 -15(2)*   
**Court Ordered** - Includes compliance with an order of, or a settlement relating to proceedings before a court, tribunal or other body that has the power to make orders. *s 9-15(2A)*   
**Charity** A gift provided voluntarily, to a non-profit body will generally not be considered the provision of consideration so long as the provider does not receive an advantage of material character. *Taxation Ruling GSTR 2000/11 paras 57-65* ; *Federal Commissioner of Taxation v McPhail* (1968) 117 CLR 111.

##### “Enterprise”

An enterprise is an activity, or a series of activities, done:

1. On a regular or continuous basis, in the form of a lease, license or other grant of an interest in property;
2. In the form a business - this includes any profession, trade employment, vocation or calling but does not include occupation as an employee;*s 195-1*
3. In the form of an adventure or concern in the nature of trade *Taxation Ruling MT 2000/1 para 25*

##### “Carrying on an Enterprise”

'Carrying on an enterprise' includes doing anything in the course of the commencement or termination of the enterprise. *s 195-1*

##### “Supply (real property) connected with Australia”

A supply of real property is connected with Australia if the real property or the land to which the real property relates is in Australia. *s9-25(4)*& *Taxation Ruling GSTD 2004/3 para 2*   
  
Real property includes:

1. any interest in or right over land;
2. a person right to call for or be granted any interest in or right over land; or
3. a license to occupy land or any other contractual right exercisable over or in relation to land

*s 195-1*

##### “Requirement to be registered for GST”

Generally, where an entity is carrying on an enterprise, it is required to be registered for GST if its annual turnover is greater than or equal to $75,000 (AUD). *s 23-5; 23-25*   
  
There are some instances when an entity will be required to be registered for GST even if its annual turnover is below $75,000. See *s 57-20, 195-1, 144-5*

##### “GST-free supply”

GST-free supplies are important because:

1. The making of these supplies are not liable for GST; and

*s 11 9-5, 13-5, 13-10(b)*

1. Acquisitions by the entity to make GST-free supplies attract input tax credits event thought its supplies are not liable for GST.

*ss 11-5, 11-15*

There are 16 exceptions provided in total provided for in Subdivision 38. The exceptions we think will be most relevant are:

1. GST-free supply of going concern. For this exception to be triggered the supplier and recipient must have agreed in writing that the supply is of going concern (therefore look to the contract). For further information see *Subdivision 38-J; Goods and Services Tax Ruling 2002/5; (Administrative Appeal Tribunal) Debonne Holdings Pty Ltd v Commissioner of Taxation*
2. GST-free Farmland. For this exception to be triggered, the land must be on which a farming business has been carried on for at least five year and will usually involve subdivision. For further information see *Subdivision 38-0*

#### Appendix II – Sale or Long Term Lease – Extended Legal Definition/Application

##### “Supply”

Supply generally encompasses the value added in any transactions in each stage of the commercial chain of dealings of goods, services and other things. It specifically includes a grant, assignment of surrender of real property (*s 9-10(2)(d)*) but is a very broad and encompassing definition and will rarely if ever be in question.   
  
For further information see: *Good and Services Tax Ruling GSTR 2006/9; s 9-10*

##### “…by way of sale”

'Sale' and 'sold' are not defined in the GST Act. The ordinary meaning of 'sale' in this context, is the transfer, or agreement to transfer, property to a buyer for a price/consideration. The Australian Taxation Office further considers that 'sale' and 'sold' refer to the disposal of the land held in its **entirety** for consideration (deposit is not likely not sufficient and will be caught by 'recipient of taxable supply'). *Goods and Services Tax GSTR 2003/03*

##### “…by way of sale”

***long-term lease*** means a supply by way of lease, hire or license (including a renewal or extension of a lease, hire or license) for at least 50 year if:

1. At the time of the lease, hire or license, or the renewal or extension of the lease, hire or license, it was reasonable to expect that it would continue for 50 years; and
2. Unless the supplier is an Australian government agency the terms of the lease, hire or license, or the renewal or extension of the lease, hire or license, as they apply to the recipient are substantially the same as those under which the supplier held the premises.

*s 195-1*

#### Appendix III – New Residential Premises – Extended Legal Definition/Application

##### “New Residential Premises”

Defined as premises that have not previously been sold as residential premises. *s 40-75(1)(a))*   
  
This is further defined in section 195-1 as referring to land or buildings that is occupied as a residence or is intended to be, and is capable of being, occupied as a residence. Because of the definition, for land to be residential premises, there must be a building on the land that has the physical characteristics of a residence. Vacant land, of itself, can never have sufficient physical attributes to characterise it as being able to be, or intended to be occupied as a residence. *Goods and Services Tax Ruling GSTR 2003/3 para 26-31*

##### “Demolished”

The word demolished is not defined in the GST Act, and therefore takes its ordinary meaning. The general meaning of the word is 'to throw of pull down’ (a building etc); to reduce to ruins; to put an end to; destroy; ruin utterly. In the context of this situation, it is likely to take on the meaning as pulling down or removal of a building. *Goods and Services Tax Ruling GSTR 2003/03 para 84-74*

##### “Substantial Renovation”

Defined as renovations in which all, or substantially all, of a building is removed or is replaced. However, the renovations need not involve removal or replacement of foundations, external walls, interior supporting walls, floors, roof or staircases. *s 195-1; Goods and Services Tax Ruling GSTR 2003/03*

##### “Commercial Residential Premises”

Commercial residential premises includes:

1. a hotel, motel, inn, hostel or boarding house;
2. premises used to provide accommodation in connection with a supply;
3. a ship that is mainly let out on hire in the ordinary course of a business of letting ships out on hire
4. a ship that is mainly used for entertainment or transport in the ordinary course of a business of providing ships for entertainment or transport;
5. a marina at which one or more of the berths are occupied or are to be occupied, by ships used as residences;
6. a caravan park or a camping ground; or
7. anything similar to residential premises described in paragraphs mentioned above.

*s195-1; Goods and Services Tax Ruling GSTR 2012/6*

#### Appendix VI – Potential Residential Land – Extended Legal Definition/Application

##### “Potential Residential Land”

'Potential residential land' is defined as "land that it is permissible to use for residential purposes, but that does not contain any building that are residential premises. *s 195-1*   
  
Land use and planning laws in each State and Territory typically categorises land by zones. These define the potential uses of the land and say what the land may be used for and are good places to begin searching when in doubt. *Law Companion Ruling LCR 2018/04 para 25-26*

##### “Property Subdivision Plan”

'Property subdivision plan' is defined as a plan

* for the division of real property and
* that is registered (however described under an Australian law

*s. 195-1 GST Act*   
  
States and Territory laws provide for registration of plans relating to subdivision of land

##### “…use of a commercial purpose”

"Use" means current, actual and ongoing 'use' established as a matter of fact.  
  
"Commercial purpose" demonstrated objectively taking into account all circumstances. *Law Companion Ruling LCR 2018/04 para 31*

##### “registered for a GST”

The [Australian Business Registry](https://abr.business.gov.au/) provides a portal to determine whether a company is registered for GST and from what date.  
  
Further, the Commissioner has made a declaration that states that this can be relied on up to 7 days before the day of supply. *Law Companion Ruling LCR 2018/04 para 61*

#### Appendix V – Transition Rules – Extended Legal Definition/Application

##### “…contract ‘entered into’”

The time a contract is 'entered into' is based on general contract law. For example, a contract was entered into before 1 July 2018 if

* the contracts were exchange between the parties before 1 July 2018, or
* where the contract was entered into by the purchaser and vendor executing two copies of the contract in turn, the acceptance of the offer was communicated to the other party before 1 July 2018

*Law Companion Ruling LCR 2018/4 para 12*