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GST LAND TRANSACTIONS RULES

CONTENTS: (page 1 of 2)

Page No.

SECTION I: Zero-rating of supplies that include land

(1) What is "land"	3
(2) Supplies of land that must be zero-rated	4
(3) Principal place of residence	4
(4) How the zero-rating rule applies to an 'interest in land'	5
(5) Zero-rating rules to apply to a payment to procure a lease	6
(6) Procedural requirements to zero-rate the supply	7
(7) Sale by a mortgagee	8
(8) Timing of decision to zero-rate a supply that includes land	8
(9) A supply of land incorrectly <i>not</i> zero-rated	8

SECTION II: Recipient's obligations

(1) A supply of land that has been incorrectly zero-rated	9
(2) Incorrectly zero-rated supply of land to a GST-registered person	9
(3) Recipient's obligations at acquisition	10
(4) Recipient's input tax claim at acquisition	10
(5) Recipient's post-acquisition obligations	11
(6) Final adjustment upon disposal for a s. 11(1)(mb) acquisition	12
(7) Mixed-use assets	13

GST LAND TRANSACTIONS RULES

CONTENTS (page 2 of 2)

Page No.

SECTION III: Concurrent supplies of land

- | | |
|--|----|
| (1) Rules for concurrent taxable and non-taxable use of land | 14 |
|--|----|

SECTION IV: Exempt supply of a dwelling

- | | |
|--|----|
| (1) What is a “dwelling” | 15 |
| (2) A “dwelling” includes a residential unit in a retirement village | 15 |
| (3) Why the definition of “dwelling” is important | 16 |
| (4) What is a “commercial dwelling” | 17 |
| (5) Previously exempt supplies that are now taxable supplies | 18 |
| (6) Limiting input tax deductions for previously exempt supplies | 19 |
| (7) When a supply of land must be a separate supply | 20 |
| (8) Subsequent supply of a dwelling | 21 |

SECTION V: Supply of land to a nominated person

- | | |
|--|----|
| (1) Land supplied to a nominated person | 22 |
| (2) Records to be kept by a nominated person | 23 |

SECTION VI: Other rules affecting land transactions

- | | |
|--|----|
| (1) When a supply of land cannot be zero-rated | 24 |
| (2) Arrangement with associated persons | 24 |
| (3) A binding agreement entered into before 1 April 2011 | 24 |

GST LAND TRANSACTIONS RULES

SECTION I: ZERO-RATING OF SUPPLIES THAT INCLUDE LAND

'OLD' RULES	CURRENT LAND TRANSACTIONS RULES
<p>(1) What is "land"</p> <p>There was previously no definition of "land" in the GST Act.</p>	<p>(1) What is "land"</p> <p>1. Land only for the purposes of the zero-rating of land rules:</p> <p>(a) <u>Includes</u>:</p> <p>(i) An estate or interest in land.</p> <p>(ii) A right that gives rise to an interest in land.</p> <p>(iii) An option to acquire land or an estate or interest in land.</p> <p>(iv) A share in the share capital of a flat-owning or office-owning company, as defined in section 121A of the Land Transfer Act 1952.</p> <p>(b) <u>Does not include</u>:</p> <p>(i) A mortgage.</p> <p>(ii) A lease of a dwelling.</p> <p>2. Zero-rating of land rules means sections 5(24), 11(1)(mb), 60B(6), 75(3B), and 78F:</p> <p>(a) The rule that deems services supplied with zero-rated land to be goods s. 5(24).</p> <p>(b) The main zero-rating rule for land transactions: s. 11(1)(mb).</p> <p>(c) The rule that treats a supply that wholly or partly consists of land as made by the supplier (person A) to a nominated person (person C) who is not party to the contract: s. 60B(6).</p> <p>(d) The requirement for a supplier of zero-rated land to maintain records: s. 75(3B).</p> <p>(e) The requirement for a recipient of zero-rated land to provide the supplier with a statement in writing: s. 78F.</p> <p>3. Note: This extended definition of land in s.2 was inserted by the <i>Taxation (Tax Administration and Remedial Matters) Act 2011</i> and amended by s. 207(2) of the <i>Taxation (Annual Rates, Returns Filing, and Remedial Matters) Act 2012</i> and:</p> <p>(a) Only applies for the purposes of the zero-rating of land rules; but</p> <p>(b) Also applies for the purposes of the concurrent uses of land apportionment rule in s. 21E if a tax position has been taken already for an adjustment period that ends before 29 August 2011, the date of assent of the <i>Taxation (Tax Administration and Remedial Matters) Act 2011</i>; and</p> <p>(c) Does not apply for the purposes of the unlimited number of adjustments for land rule in ss. 21G(5) and 21H(3).</p>

GST LAND TRANSACTIONS RULES

SECTION I: ZERO-RATING OF SUPPLIES THAT INCLUDE LAND (CONTINUED)

'OLD' RULES	CURRENT LAND TRANSACTIONS RULES
<p><u>(2) Supplies of land that must be zero-rated</u></p> <p>A supply of land did not need to be zero-rated.</p> <p><u>A supply of land could be zero-rated:</u> only if it was a supply of a going concern, which was zero-rated under section 11(1)(m).</p> <p><u>Services supplied together with land:</u> could either be treated as the same supply, or as a separate supply, depending on the facts and the propositions of law that applied.</p>	<p><u>(2) Supplies of land that must be zero-rated</u></p> <p>A supply must be zero-rated under s. 11(1)(mb) if:</p> <p>(a) It is a supply that wholly or partly consists of land; and</p> <p>(b) It is a supply made by a registered person (the supplier), to another registered person (the recipient) who acquires the goods with the intention of using them for making taxable supplies; and</p> <p>(c) It is <u>not</u> a supply of land intended to be used as a <u>principal place of residence</u> of the recipient of the supply or a person associated under s. 2A(1)(c) with the recipient (i.e. anyone connected to the recipient by a blood relationship, marriage, civil union, de facto relationship or by adoption).</p> <p>(d) Under s. 5(24) If a supply that consists wholly or partly of land includes the provision of services, the supply of such services is treated as a supply of goods for the purposes of section 11(1)(mb).</p> <p>[s. 11(1)(mb) & s. 5(24)]</p>
<p><u>(3) Principal place of residence</u></p> <p>There was previously no definition of a “principal place of residence” in the GST Act.</p>	<p><u>(3) Principal place of residence</u></p> <p>Principal place of residence is:</p> <p>(a) <u>Not defined for the purposes of the zero-rating of land rules</u></p> <p>Unless a tax position had been taken already (based on the definition) for an adjustment period that ends before 29 August 2011 [the date of assent of the <i>Taxation (Tax Administration and Remedial Matters) Act 2011</i>], in relation to:</p> <p>(i) Treating a residence as a separate supply [under s. 5(15)]; or</p> <p>(ii) Zero-rating a supply that included land [under s. 11(1)(mb)]; or</p> <p>(iii) Information so as to zero-rate a supply that included land [required under s. 78F(2)].</p> <p>(b) <u>Defined in s. 2</u> as meaning in the definition of dwelling a place that a person occupies as their main residence for the period to which the agreement for the supply of accommodation relates.</p> <p>[S. 2 definition of principal place of residence]</p>

GST LAND TRANSACTIONS RULES

SECTION I: ZERO-RATING OF SUPPLIES THAT INCLUDE LAND (CONTINUED)

'OLD' RULES	CURRENT LAND TRANSACTIONS RULES
<p><u>(4) How the zero-rating rule applies to an interest in land</u></p> <p>N/A</p>	<p><u>(4) How the zero-rating rule applies to an interest in land</u></p> <p>A supply that is an assignment or surrender of an interest in land is a supply under s. 11(1)(mb) if it meets the requirements set out in s. 11(1)(mb).</p> <p>This rule is intended to ensure that an assignment of a commercial lease is a supply of “land” for the purposes of the zero-rating of land rules, providing the other requirements for zero-rating – see (2) on page 4 - have been met.</p> <p>However:</p> <p>The supply of an interest in land is not a supply under s. 11(1)(mb) despite meeting the requirements set out in s. 11(1)(mb) if:</p> <ul style="list-style-type: none"> (a) The supply is made periodically; and (b) For an amount paid or payable under the agreement for the supply in advance of, or contemporaneously with, the supply being made, the payment: <ul style="list-style-type: none"> (i) Totals 25% or less of the consideration specified in the agreement; and (ii) Relates to the longer of 1 year and the shortest possible fixed term of the agreement; and (iii) Is not itself a regular payment under the agreement. <p>This exclusion applies to commercial leases that do not involve a large proportion (more than 25%) of consideration being paid at any one time.</p> <p>The wording of the exclusion was amended to ensure that a standard commercial lease is not zero-rated if the payments made under the lease agreement meet the required criteria – i.e. payments of 25% or less of the consideration, or where no contemporaneous or advance payment has been made.</p> <p>[s. 11(8D) inserted by s. 212 of the <i>Taxation (Annual Rates, Returns Filing, and Remedial Matters) Act 2012</i> and amended by s. 188 of the <i>Taxation (Annual Rates, Employee Allowances, and Remedial Matters) Act 2014</i>]</p>

GST LAND TRANSACTIONS RULES

SECTION I: ZERO-RATING OF SUPPLIES THAT INCLUDE LAND (CONTINUED)

'OLD' RULES	CURRENT LAND TRANSACTIONS RULES
<p><u>(5) Zero-rating rules to apply to a payment to procure a lease</u></p> <p>N/A</p>	<p><u>(5) Zero-rating rules to apply to a payment to procure a lease</u></p> <ol style="list-style-type: none"> 1. In some transactions where a vendor/lessee is selling its business, the lease will not be assigned. Instead the vendor will procure that the lessor enters into the new lease with the purchaser. 2. A supply of an interest in land by way of a procurement by a third party of an existing lease is a supply under s. 11(1)(mb) if it meets the requirements set out in s. 11(1)(mb). 3. This rule applies from the 30 June 2014, the date of enactment of the <i>Taxation (Annual Rates, Employee Allowances, and Remedial Matters) Act 2014</i>. <p>[Section 11(8D)(c) inserted by s. 188(3) of the <i>Taxation (Annual Rates, Employee Allowances, and Remedial Matters) Act 2014</i>]</p>

GST LAND TRANSACTIONS RULES

SECTION I: ZERO-RATING OF SUPPLIES THAT INCLUDE LAND (CONTINUED)

'OLD' RULES	CURRENT LAND TRANSACTIONS RULES
<p>(6) Procedural requirements to zero-rate the supply</p> <p>N/A</p>	<p>(6) Procedural requirements to zero-rate the supply</p> <ol style="list-style-type: none"> 1. The supplier can zero-rate the supply by relying on a written statement from: <ol style="list-style-type: none"> (a) The recipient (under the contract for the supply or the nominated recipient); or (b) The other party to the contract, if a person who is not a party to the contract is nominated as the recipient; or (c) An agent of an undisclosed principal. 2. At or before settlement, the recipient (or for a nominated recipient the other party to the contract, or an agent) is required to provide a written statement to the supplier as to whether, at the date of settlement: <ol style="list-style-type: none"> (a) The recipient is, or expects to be, or is expected by the other party to the contract or by the agent to be, a registered person; the registration number of the recipient or agent (or, if the agent is not registered, the tax file number of the agent) must be given to the supplier at or before the date of settlement; and (b) The recipient is, or is expected by the other party to the contract or by the agent to be, acquiring the goods with the intention of using them to make taxable supplies; and (c) The recipient does not intend, or is not expected by the other party to the contract or by the agent to intend, to use the land as a principal place of residence for themselves or a person associated with them under section 2A(1)(c). <p>[s. 78F as amended by s. 226 of the <i>Annual Rates Tax Act</i>]</p> 3. A s. 78F statement provided to, or received by, a group company is given to or received by the nominated company. [s. 55(7)(dd) & (de) under s. 223(2) of the <i>Annual Rates Act</i>] 4. The supplier must maintain records of: <ol style="list-style-type: none"> (a) The name and address of the recipient or agent if an agent is acting on behalf of an undisclosed principal. (b) The registration number of the recipient or agent (or tax file number of the agent) if an agent is acting on behalf of an undisclosed principal. (c) A description of the land. (d) The consideration for the supply. <p>[s. 75(3B)–(3D) amended by s. 225 of the <i>Annual Rates Tax Act</i>]</p> 5. The agent of an undisclosed principal must maintain sufficient records to enable the name, address and, if the principal is registered or expects to be registered the registration number of the principal, to be ascertained. [s. 75(3E) amended by s. 225 of the <i>Annual Rates Tax Act</i>]

GST LAND TRANSACTIONS RULES

SECTION I: ZERO-RATING OF SUPPLIES THAT INCLUDE LAND (CONTINUED)

'OLD' RULES	CURRENT LAND TRANSACTIONS RULES
<p><u>(7) Sale by a mortgagee</u></p> <p>Land that is sold by a mortgagee, where a registered person was the mortgagor, is deemed to be supplied in the course or furtherance of a taxable activity carried on by the mortgagor.</p> <p>[s. 5(2)]</p>	<p><u>(7) Sale by a mortgagee</u></p> <ol style="list-style-type: none"> 1. If a supply by a mortgagee would have been zero-rated under s. 11(1)(mb) had it been supplied by the mortgagor, the mortgagee must zero-rate the supply in the same way. 2. The mortgagee is the supplier who must rely on a written statement. <p>[s. 5(2), 5(22) & 78F(4)]</p>
<p><u>(8) Timing of decision to zero-rate a supply of land</u></p> <p>N/A</p>	<p><u>(8) Timing of decision to zero-rate a supply of land</u></p> <p>Whether a supply of goods including land is zero-rated under s. 11(1)(mb) is determined <u>at the settlement of the transaction</u> relating to the supply.</p> <p>[s. 11(8B)]</p>
<p><u>(9) A supply of land incorrectly not zero-rated</u></p> <p>There was no requirement to zero-rate land under the old rules. If it transpired that too much GST had been charged, the supplier issued a credit note to reflect any subsequent reduction in the GST charged for the supply.</p> <p>[s. 25]</p>	<p><u>(9) A supply of land incorrectly not zero-rated</u></p> <p><u>The supplier must provide a credit note: if s. 11(1)(mb) was not applied when it should have been, so that the supply was not zero-rated when it should have been, and either:</u></p> <ol style="list-style-type: none"> (a) The tax shown on the tax invoice is incorrect, as a result; or (b) The supplier has furnished a return incorrectly accounting for the output tax. <p>[s. 25(1)(ab)]</p> <p>A credit note may not be issued after 7 years from the date of the transaction relating to the supply.</p> <p>[s. 25(3)(f)]</p>

GST LAND TRANSACTIONS RULES

SECTION II: RECIPIENT'S OBLIGATIONS

'OLD' RULES	CURRENT LAND TRANSACTIONS RULES
<p><u>(1) A supply of land that has been incorrectly zero-rated</u></p> <p>Under the old rules there was no requirement to zero-rate supplies of land.</p> <p>If the GST charged was lower than it should have been, the supplier issued a debit note to reflect any subsequent increase in the GST charged for the supply.</p> <p>[s. 25]</p>	<p><u>(1) A supply of land that has been incorrectly zero-rated</u></p> <p>If a supply is incorrectly zero-rated because s. 11(1)(mb) is treated as applying, and after settlement it is found that the provision does not apply:</p> <p>(a) The recipient is treated as if they were a supplier making a taxable supply on the settlement date. [s. 5(23)]</p> <p>(b) The value of the supply by the recipient is the consideration for the supply first made to the recipient. [s. 10(7B)]</p> <p>(c) The recipient is treated as registered from the date of the supply and must apply for registration. [s. 51B(4)]</p> <p>(d) A debit note can, presumably, be issued by the recipient, under s. 25.</p> <p>(e) The recipient can request to have their registration cancelled, after accounting for the output tax on the supply. [s. 51B(5)]</p> <p>(f) If the recipient requests cancellation of their registration by the end of the taxable period in which they have accounted for the output tax on the supply, the goods comprising that supply are not deemed to be supplied in the course of a taxable activity under s. 5(3). [s. 51B(6)]</p>
<p><u>(2) A supply of land to a registered person purchaser that has been incorrectly zero-rated</u></p> <p>Under the old rules there was no requirement to zero-rate supplies of land.</p>	<p><u>(2) A supply of land to a registered person purchaser that has been incorrectly zero-rated</u></p> <p>1. When a zero-rated supply of land to a GST-registered purchaser is later found to in fact consist of 2 supplies, one of which was incorrectly zero-rated:</p> <p>(a) Section 5(23) requires the registered purchaser to treat the incorrectly zero-rated supply as a supply to itself; and</p> <p>(b) Output tax must be paid (the “domestic reverse charge”) by the GST-registered purchaser; and</p> <p>(c) Section 20(4B) will deny the GST-registered purchaser an input tax credit because an input tax credit;</p> <p>(d) However, s. 20(4B) will not deny the GST-registered purchaser an input tax deduction if the purchaser is already registered or later becomes a registered person, and uses the relevant goods for making taxable supplies.</p> <p>[Section 20(4B) as amended by s. 190(3) of the <i>Taxation (Annual Rates, Employee Allowances, and Remedial Matters) Act 2014</i>]</p>

GST LAND TRANSACTIONS RULES

SECTION II: RECIPIENT'S OBLIGATIONS (CONTINUED)

'OLD' RULES	CURRENT LAND TRANSACTIONS RULES
<p><u>(3) Recipient's obligations at acquisition</u></p> <p>There was no zero-rated supply. The recipient was entitled to a full input tax deduction on acquisition if the goods and services were acquired for the principal purpose of making taxable supplies.</p> <p>[s. 20(3)(a)]</p>	<p><u>(3) Recipient's obligations at acquisition</u></p> <p>At acquisition of a supply to which section 11(1)(mb) applies (including a supply of a mixed-use asset), the recipient must:</p> <ol style="list-style-type: none"> 1. Identify the GST (the "nominal GST component") which would be chargeable on the full supply, (including the land and <u>any services provided – see note below</u>), if it had not been zero-rated, calculated as: <p style="text-align: center;">[15% x consideration]</p> <p>The consideration is treated as the value of the supply for this purpose.</p> <p>[s. 20(3)(a)(i) & s. 20(3)B(a) inserted by s. 130(4) of the <i>Assets Expenditure Tax Act 2013</i>]</p> 2. Estimate the extent to which, the goods <u>and services</u> comprising the supply, are intended to be used for making taxable supplies, using a determination method that provides a fair and reasonable result. <p style="text-align: center;">[ss. 20(3)(a)(ii) & 20(3G)]</p> 3. Account for output tax under s. 20(4) for the proportion of the nominal GST component for any non-taxable use: $\left[\begin{array}{l} \text{Nominal GST} \\ \text{component} \end{array} \right] \times \left[\begin{array}{l} \% \text{ intended} \\ \text{non-taxable use} \end{array} \right]$ <p>[s. 20(3)(a)(iii)]</p> <p>Note: s. 214(3) of the <i>Taxation (Annual Rates, Returns Filing, and Remedial Matters) Act 2012</i> has amended s. 20(3)(a)(iii) to clarify the fact that this rule applies to goods <u>and services</u> supplied together with zero-rated land. The amendment applies from 1/4/11.</p>
<p><u>(4) Recipient's input tax claim at acquisition</u></p> <p>N/A</p>	<p><u>(4) Recipient's input tax claim at acquisition</u></p> <p>The recipient is denied an input tax deduction under section 20(3) in relation to the supply:</p> <p>However, if the recipient is already GST-registered or later becomes a registered person under s. 51, and uses the relevant goods for making taxable supplies, input tax deduction adjustments can be made under the apportionment rules.</p> <p>[s. 20(4B)]</p>

GST LAND TRANSACTIONS RULES

SECTION II: RECIPIENT'S OBLIGATIONS (CONTINUED)

'OLD' RULES	CURRENT LAND TRANSACTIONS RULES
<p>(5) Recipient's post-acquisition obligations</p> <p>There were no zero-rated supplies.</p> <p>For a recipient's post-acquisition obligations in relation to standard-rated supplies, refer to the separate PDF <i>GST Apportionment Rules</i> for the details.</p> <p>(a) There were 3 choices for making adjustments:</p> <ul style="list-style-type: none"> • A one-off adjustment on acquisition, plus further adjustments in certain circumstances; • Period-by-period adjustments; and • Annual adjustments. <p>(b) No final adjustment to reduce output tax was required or allowed, but a concession applied whereby a disposal was ignored for GST purposes if a one-off adjustment had previously been made in anticipation of the sale.</p> <p>[Various replaced sections]</p>	<p>(5) Recipient's post-acquisition obligations</p> <p>After complying with the acquisition requirements under s. 20(3)(a) – see Section II (3) on page 10, a recipient of a zero-rated supply of land must, in later adjustment periods, make adjustments under the apportionment rules in s. 20G and s. 21 to 21H in relation to the taxable supply arising from any non-taxable use of the goods.</p> <p>[s. 20(3)(b) with s. 20G and s. 20(3)(b) inserted in relation to mixed-use assets – see Section II (7) on page 13 – by s. 130 of the <i>Assets Expenditure Tax Act 2013</i>]</p> <ol style="list-style-type: none"> 1. <u>At the end of the 1st adjustment period</u>, the <i>percentage actual use</i> must be compared to the <i>percentage intended use</i>, and if there is a <i>percentage difference</i>, an adjustment must be made. [s. 21C(a) & 21A] 2. <u>At the end of subsequent adjustment periods</u>, the <i>percentage actual use</i> must be compared to the <i>percentage intended use</i>, and if there is a <i>percentage difference</i>, an adjustment must be made. [s. 21C(b) & 21A] 3. <u>There is no limit on the number of adjustments for land</u> (but the extended definition of land does not apply – see Section I (1) on page 3. [s. 21G(5)] 4. <u>Two adjustments must be made in the adjustment period in which the land is disposed of:</u> <ol style="list-style-type: none"> (a) An adjustment for the final adjustment period, that begins on the day after the end of the adjustment period preceding the period in which the asset is disposed of, and ends on the date before the disposal; [New s. 21G(7B) inserted by s. 220 of the <i>Taxation (Annual Rates, Returns Filing and Remedial Matters) Act 2012</i> effective from 2 November 2012, the date of assent] (b) A final adjustment upon disposal of the goods and services, whereby the output tax otherwise payable is reduced because a full input tax deduction has not been claimed (see Section II (6) on page 12). <p>[Also refer to the separate PDF <i>GST Apportionment Rules</i> for the details regarding adjustment periods, and how the adjustments and the final adjustments are calculated and returned in the GST return.]</p>

GST LAND TRANSACTIONS RULES

SECTION II: RECIPIENT'S OBLIGATIONS (CONTINUED)

'OLD' RULES	CURRENT LAND TRANSACTIONS RULES
<p><u>(6) Final adjustment upon disposal for a s. 11(1)(mb) acquisition</u></p> <p>N/A</p>	<p><u>(6) Final adjustment upon disposal for a s. 11(1)(mb) acquisition</u></p> <p><u>When goods and services</u> that were acquired as part of a supply that included land and that was zero-rated under section 11(1)(mb), for which there has not been a full input tax deduction claimed, (including any adjustments made), <u>are disposed of</u> in the course or furtherance of a taxable activity:</p> <p><u>A final adjustment</u>, which results in a final input tax deduction must be made as follows:</p> <p style="text-align: center;">Output GST x [1 - previous use]</p> <p>1. Output GST is:</p> <p>(a) <u>If the supply that included the disposal was not zero-rated</u>: the tax fraction of the consideration received for the disposal;</p> <p>(b) <u>If the supply that included the disposal was zero-rated</u>: 15% of the consideration received for the disposal;</p> <p>2. Previous use is:</p> <p>(a) The percentage intended use or the previous actual use in the period before the period in which the disposal occurs.</p> <p>(b) The period before the period in which the disposal occurs ("the final adjustment period"), if the asset is disposed of before the limit on adjustments is reached, ends on the date before the asset is disposed of.</p> <p>[New s. 21G(7B) inserted by s. 220 of the <i>Taxation (Annual Rates, Returns Filing and Remedial Matters) Act 2012</i> effective from 2 November 2012, the date of assent]</p> <p>3. <u>There is a limit to this deduction</u>: when added to input tax deductions already claimed, the total cannot exceed the output tax paid on acquisition under section 20(3)(a)(iii) [see Section II (3) on page 10]. The final input tax deduction may be reduced to reflect this.</p> <p>[s. 21F(4) - 21F(7)]</p>

GST LAND TRANSACTIONS RULES

SECTION II: RECIPIENT'S OBLIGATIONS (CONTINUED)

'OLD' RULES	CURRENT LAND TRANSACTIONS RULES
<p>(7) Mixed-use assets</p> <p>N/A</p>	<p>(7) Mixed-use assets</p> <p>For a supply to which s. 11(1)(mb) applies, the recipient must, on acquisition identify the “nominal GST component” – see page 9 – and for later adjustment periods, make adjustments under the apportionment rules set out in s. 20G and 21 to 21H in relation to the taxable supply.</p> <p>[s. 20(3)(b) as amended and s. 20(3JB) as inserted by s. 130 of the <i>Assets Expenditure Tax Act 2013</i>]</p> <p>For other mixed-use supplies to which s. 20G applies, the recipient must, at acquisition apply the normal apportionment rules, and post-acquisition, make adjustments under s. 20G(4) and (5) in relation to the taxable supply of the mixed-use asset.</p> <p>[s. 20(3JB)(b) inserted by s. 130(4) of the <i>Assets Expenditure Tax Act</i> applying to supplies of land made from 17 July 2013]</p> <ol style="list-style-type: none"> 1. Post-acquisition adjustments are contemplated only in relation to expenditure that is not solely income earning or solely private (based on income tax definitions). 2. The general rules relating to the first and subsequent adjustment periods in s. 21G(2) and the number of adjustment periods in s. 21G(4) apply to s. 20G. 3. Under s. 20G(4), the person must ascertain at the end of an adjustment period whether an adjustment is required to be made for any percentage difference in a supply of the asset for the period in relation to the actual use of the asset for making taxable supplies. [s. 21G as amended by s. 134 and s. 20G(4) in s. 131 of the <i>Assets Expenditure Tax Act 2013</i>.] 4. If an adjustment is required, the person must, at the end of the adjustment period: <ol style="list-style-type: none"> (i) Identify the percentage actual use of the asset in accordance with the formula in s. 20G(1) for making taxable supplies; and (ii) Compare the percentage actual use with percentage intended use as described in s. 20(3JB) or previous actual use, as applicable; and (iii) If a percentage difference arises, make an adjustment for any percentage difference for the adjustment period, applying s. 21D(3) to the resulting amount. (iv) Under s. 21D(3), there will be either an additional input tax deduction, or an output tax liability. <p>[s. 20G(5) in s. 131 and s. 21D amended by s. 133 applying to supplies of mixed-use assets that are land and improvements to land made on or after 17 July 2013.]</p>

GST LAND TRANSACTIONS RULES

SECTION III: CONCURRENT SUPPLIES OF LAND

'OLD' RULES	CURRENT LAND TRANSACTIONS RULES
<p><u>(1) Rules for land used concurrently for taxable and non-taxable supplies</u></p> <p>There were no special rules.</p> <p>(a) The general adjustment rules apply.</p> <p>(b) The valuation rule in the old s. 10(8) applied to value land put to a non-taxable use (see the separate PDF on the “New GST Apportionment Rules”)</p> <p>(c) The application of these rules has been the subject of several tax cases.</p> <p>(d) Difficult issues arose in relation to the value of the supply when land was temporarily put to a non-taxable use.</p>	<p><u>(1) Rules for land used concurrently for taxable and non-taxable supplies</u></p> <p>Unless the Commissioner agrees that some other calculation method may be used, the rules in section 21E apply when a registered person:</p> <p><u>Simultaneously</u> uses all or part of the <u>same area of land</u> during an adjustment period for making <u>concurrent taxable and non-taxable supplies</u>.</p> <p>Main rule: The percentage actual use of the land to make taxable supplies at the end of an adjustment period, is calculated as:</p> $\frac{\text{Consideration for taxable supply}}{\text{Total consideration for supply}} \times 100$ <p>Consideration for taxable supply is:</p> <p>(a) The amount the land was sold for, if the land was disposed of to a non-associated person during the adjustment period; otherwise</p> <p>(b) The market value of the land at the time of the adjustment.</p> <p>Total consideration for supply is the “consideration for taxable supply” (above) plus:</p> <p>(a) The (arm’s length) rental income since acquisition; or</p> <p>(b) If there was no rental income, the market value of the rental income that would have been received.</p> <p>Secondary rule: The calculated percentage taxable use is reduced for whole months of non-taxable use as follows:</p> $\frac{\text{Months of taxable use}}{\text{Total months since acquisition}} \times [\% \text{ of actual taxable use}]$ <p>Note: <i>The expanded the definition of “land” does not apply. Therefore, this section does not apply to shares in a flat-owning or office-owning company (unless a tax position has been taken already for an adjustment period that ends before 29 August 2011, the date of assent of the Taxation (Tax Administration and Remedial Matters) Act 2011.</i></p> <p>[s. 21E as amended by s. 219 of the <i>Taxation (Annual Rates, Returns Filing and Remedial Matters) Act 2012</i> effective from 2 November 2012, the date of assent]</p>

GST LAND TRANSACTIONS RULES

SECTION IV: EXEMPT SUPPLY OF A DWELLING

'OLD' RULES	CURRENT LAND TRANSACTIONS RULES
<p>(1) What is a "dwelling"</p> <p>"Dwelling" meant "any building, premises, structure, or other place, or any part thereof, used predominantly as a place of residence or abode of any individual, together with any appurtenances belonging thereto and enjoyed with it; but does not include a commercial dwelling".</p> <p>[Old definition in s.2]</p>	<p>(1) What is a "dwelling"</p> <p>"Dwelling, from 1 April 2011, for a person,</p> <p>(a) Means premises, as defined in s. 2 of the Residential Tenancies Act 1986 (RTA):</p> <p>(i) That the person occupies, or that it can be reasonably foreseen that the person will occupy, as their principal place of residence; and</p> <p>(ii) In relation to which the person has quiet enjoyment, as that term is used in s.38 of the RTA; and</p> <p>(b) Includes:</p> <p>(i) Accommodation provided to a person who is occupying the same premises, or part of the same premises, as the supplier of the accommodation and meets the requirements of paragraph (a)(i);</p> <p>(ii) Any appurtenances belonging to or used with the premises;</p> <p>(c) Excludes -</p> <p>(i) A commercial dwelling:"</p> <p>[S. 2 definition of "dwelling"]</p>
<p>(2) A "dwelling" will include a residential unit in a retirement village or rest home</p> <p>N/A</p>	<p>(2) A "dwelling" will include a residential unit in a retirement village or rest home</p> <p>1. A new paragraph (b)(iii) has been inserted into the "dwelling" definition by s. 185(2) of the <i>Taxation (Annual Rates, Employee Allowances, and Remedial Matters) Act 2014</i>, which provides that:</p> <p>"Despite paragraph (a)(ii) (i.e. despite the requirement for quiet enjoyment), a residential unit in a retirement village or rest home when the consideration paid or payable for the supply of accommodation in the unit is for the right to occupy the unit;"</p> <p>2. This amendment was to alleviate concerns regarding whether accommodation in a retirement village or a residential rest home would continue to be regarded as a "dwelling" for GST purposes, due to the "quiet enjoyment" requirement. The corresponding exclusion from the definition of "commercial dwelling" – see (4) on page 16 – has also been replaced.</p> <p>3. The amendment applies to the 2011-12 and later income years, unless a contrary tax position has been taken between 1 April 2011 and 31 March 2015.</p>

GST LAND TRANSACTIONS RULES

SECTION IV: EXEMPT SUPPLY OF A DWELLING (CONTINUED)

'OLD' RULES	CURRENT LAND TRANSACTIONS RULES
<p><u>(3) Why the definition of "dwelling" is important</u></p> <p>1. The definition of "dwelling" is important for distinguishing exempt supplies under s. 14. [S. 14 is unchanged – see the column on the right] [s. 14]</p> <p>2. A further special rule applied to treat as a non-taxable supply, the supply of a "dwelling" acquired for the principal purpose of making taxable supplies, and applied later to make non-taxable supplies, unless an input tax deduction is then allowed. [Old s. 5(17) & 21]</p>	<p><u>(3) Why the definition of "dwelling" is important</u></p> <p>The definition of "dwelling" is important for distinguishing exempt supplies under s. 14 of:</p> <p>(a) Accommodation in a dwelling; (b) Leasehold land on which a dwelling has been erected; (c) Leases of accommodation in a dwelling; and (d) The sale, by a registered person, of a dwelling, that has been used by that person, for 5 years or more before the date of the sale, exclusively to make the exempt supplies already referred to.</p> <p>[s. 14 is unchanged]</p> <p>Note 1: Section 5(17) has been repealed.</p> <p>Note 2: A dwelling excludes a "commercial dwelling" – see Section IV (4) on page 17.</p>

GST LAND TRANSACTIONS RULES

SECTION IV: EXEMPT SUPPLY OF A DWELLING (CONTINUED)

‘OLD’ RULES	CURRENT LAND TRANSACTIONS RULES
<p>(4) What is a “commercial dwelling”</p> <p>The old definition of a “commercial dwelling”, (which is not a “dwelling”) was:</p> <p>“Commercial dwelling means –</p> <p>(a) Any hotel, motel, inn, hostel or boardinghouse; or</p> <p>(b) Any camping ground: or</p> <p>(c) Any convalescent home, nursing home, rest home, or hospice; or</p> <p>(d) Any establishment similar to any of the kinds referred to in subparagraphs (a) to (c) of this definition; -</p> <p><u>But does not include –</u></p> <p>(e) A hospital except to the extent to which the hospital is a residential establishment:</p> <p>(f) A dwelling situated in a retirement village or within a rest home where the consideration paid or payable for the supply of accommodation in that dwelling is for the right to occupy that dwelling:”</p> <p>[Old definition in section 2]</p>	<p>(4) What is a “commercial dwelling” from 1 April 2011</p> <p>“Commercial dwelling” from 1 April 2011</p> <p>(a) Means –</p> <p>(i) A hotel, motel, <i>homestay, farmstay, bed and breakfast establishment</i>, inn, hostel or boardinghouse;</p> <p>(ii) <i>A serviced apartment managed or operated by a third party for which services in addition to the supply of accommodation are provided and in relation to which a resident does not have quiet enjoyment, as that term is used in s. 38 of the Residential Tenancies Act 1986;</i></p> <p>(iii) A convalescent home, nursing home, rest home, or hospice;</p> <p>(iv) A camping ground;</p> <p>(v) <i>Premises of a similar kind to those referred to in subparagraphs (i) to (iv);</i></p> <p>(b) Excludes –</p> <p>(i) A hospital except to the extent to which the hospital is a residential establishment:</p> <p>(ii) A dwelling situated in a retirement village or rest home if the consideration paid or payable for the supply of accommodation in the dwelling is for the right to occupy the dwelling: A dwelling referred to in paragraph (b)(ii) of the definition of “dwelling” [as amended by s. 185(1) of the <i>Taxation (Annual Rates, Employee Allowances, and Remedial Matters) Act 2014</i>]</p> <p>[This amendment in s. 185(1) will apply to the 2011-12 and later income years, unless a contrary tax position has been taken between 1 April 2011 and 31 March 2015.]</p> <p>[The changes from the previous definition, in the column on the left, have been <i>italicized</i>.]</p> <p>Note: The supply of a commercial dwelling is <i>not</i> an exempt supply. The GST rate on the supply of accommodation in a commercial dwelling for periods in excess of 4 weeks is reduced by about 45%</p> <p>[s. 10(6)]</p>

GST LAND TRANSACTIONS RULES

SECTION IV: EXEMPT SUPPLY OF A DWELLING (CONTINUED)

'OLD' RULES	CURRENT LAND TRANSACTIONS RULES
<p><u>(5) Previously exempt supplies that are now taxable supplies</u></p> <p>N/A</p>	<p><u>(5) Previously exempt supplies that are now taxable supplies (transitional rule)</u></p> <p>1. <u>Circumstances in which this transitional rule applies:</u></p> <p>(a) Goods and services were acquired or produced before 1 April 2011; and</p> <p>(b) Were not acquired or produced for the principal purpose of making taxable supplies; and</p> <p>(c) Because of the changes to the definitions of “dwelling” and “commercial dwelling”, the goods or services are treated, from 1 April 2011, as being used for making taxable supplies; and</p> <p>(d) The person is a person who must be registered under s. 51(1) (i.e. not voluntarily registered).</p> <p>2. <u>Deemed acquisition on 1/4/11:</u> The goods or services are treated as having been acquired on 1 April 2011, at the original cost of the supply.</p> <p>3. <u>Input tax deduction allowed under the new rules:</u></p> <p>(a) Input tax can be deducted under section 20(3C) to the extent to which a deduction has not been made under the old apportionment rules.</p> <p>(b) The input tax deduction is subject to the new apportionment rules: input tax may be deducted only to the extent to which the goods or services are used for, or available for use in, making taxable supplies, unless the de-minimis exemption in s. 20(3D) applies.</p> <p>[s. 20(3C)].</p> <p>4. <u>Normal adjustment period rules apply:</u> There are no special rules concerning the 1st or subsequent adjustment periods. The usual rules apply.</p> <p>[S. 21HB]</p>

GST LAND TRANSACTIONS RULES

SECTION IV: EXEMPT SUPPLY OF A DWELLING (CONTINUED)

'OLD' RULES	CURRENT LAND TRANSACTIONS RULES
<p><u>(6) Limiting input tax deductions for previously exempt supplies that are now taxable supplies (transitional rule)</u> N/A</p>	<p><u>(6) Limiting input tax deductions for previously exempt supplies that are now taxable supplies (transitional rule)</u></p> <p>Registered persons affected by the changed definitions of “dwelling” and “commercial dwelling” are able to claim input tax deductions under s. 21HB if they are required to be registered (i.e. not voluntarily registered) – refer to section IV (5) on page 18 above. Two changes have been made in connection with this rule in s. 192 of the <i>Taxation (Annual Rates, Employee Allowances, and Remedial Matters) Act 2014</i>:</p> <ol style="list-style-type: none"> 1. First, the goods or services affected by the changed definitions of “dwelling” and “commercial dwelling” need to have been acquired after the introduction of GST – i.e. on or after 1 October 1986 and before 1 April 2011; previously the ability to claim input deductions applied to all goods or services acquired before 1 April 2011, so they could potentially include goods or services acquired before the introduction of GST. The change applies to a tax position taken after the date of introduction of the Employee Allowances tax Bill (i.e. after 22 November 2013). 2. Second, persons who have some other (unrelated) activity with a turnover below the registration threshold, who are pushed over the registration threshold due to the changed definitions of “dwelling” and “commercial dwelling” will not be liable to be registered and, therefore, will not be entitled to claim input tax deductions if they do become (voluntarily) registered. For example, officials considered that a sole trader operating under the threshold, who owns property, should not become liable to be registered only because of additional taxable supplies resulting from the changes to the definitions of “dwelling” and “commercial dwelling” <ol style="list-style-type: none"> (a) A new subsection (4) has been inserted, by s. 192(3), into s. 21HB. (b) Subsection (4) states that a person who is required to treat a dwelling as a commercial dwelling because of the changed definitions may choose not to treat a supply of accommodation in a dwelling affected by the amendments as a taxable supply. (c) A new subsection (5) states that subsection (4) will not apply if the total value of the person’s supplies of accommodation in dwellings affected by the amendments exceed the registration threshold in s. 51(1)(a). (d) This change is to apply to supplies made on or after 1 April 2011.

GST LAND TRANSACTIONS RULES

SECTION IV: EXEMPT SUPPLY OF A DWELLING (CONTINUED)

'OLD' RULES	CURRENT LAND TRANSACTIONS RULES
<p>(7) When a supply of land must be a separate supply</p> <p>Where a “dwelling” (under the old definition which applied until 31 March 2011) was included in a supply:</p> <p>(a) The supply of the <i>dwelling</i> was deemed to be a <i>separate supply</i> from the supply of any other real property included in the supply.</p> <p>[Old s. 5(15)]</p> <p>(b) If part of the supply was an exempt supply, the part of the consideration attributed to the taxable portion of the supply had to be separated from the part of the consideration attributable to the exempt supply.</p> <p>[s. 10(18)]</p>	<p>(7) When a supply of land must be a separate supply</p> <p>When either of the following supplies are included in a supply, they are deemed to be a separate supply from the supply of any other real property that is included in the supply:</p> <ol style="list-style-type: none"> 1. The supply of a principal place of residence: (<i>note that the definition in s. 2 does not apply for the purposes of this section</i>) 2. An exempt supply under s. 14(1)(d) which is a supply, being a sale (by any registered person in the course or furtherance of any taxable activity) of: <ol style="list-style-type: none"> (a) Any dwelling; or (b) The reversionary interest in the fee simple estate of any leasehold land, that has been used by the registered person for a period of 5 years or more before the date of the supply exclusively for either: <ol style="list-style-type: none"> (i) The supply of accommodation in any dwelling by way of hire, service occupancy agreement, or a license to occupy; or (ii) The supply of leasehold land by way of rental (not being a grant or sale of the lease of that land) to the extent that that land is used for the principal purpose of accommodation in a dwelling erected on that land. <p>[s. 5(15)]</p> <p>3. Note: If part of the supply is an exempt supply, the part of the consideration attributed to the taxable portion of the supply must be separated from the part of the consideration attributable to the exempt supply.</p> <p>[s. 10(18)]</p>

GST LAND TRANSACTIONS RULES

SECTION IV: EXEMPT SUPPLY OF A DWELLING (CONTINUED)

'OLD' RULES	CURRENT LAND TRANSACTIONS RULES
<p>(8) Subsequent supply of a dwelling</p> <p>1. Where a registered person has claimed a deduction under s. 20(3) in respect of the supply of a dwelling, any subsequent supply by the registered person of the following will, subject to s. 5(17), (18) and (19), be deemed to be a taxable supply:</p> <p>(a) The dwelling; or (b) Any land or other part of the dwelling that has ceased or will by reason of the supply cease to be appurtenant to or enjoyed with the dwelling</p> <p>[s. 5(16)]</p> <p>2. Section 5(17) applied to treat as a non-taxable supply, the supply of a "dwelling" acquired for the principal purpose of making taxable supplies, and applied later to make non-taxable supplies, unless an input tax deduction is then allowed.</p> <p>[s. 5(17) - repealed]</p> <p>3. Where a registered person has claimed a deduction under s. 20(3) in respect of a proportion of a dwelling, the supply of that dwelling shall be deemed to be a taxable supply only to the extent that the proportion claimed bears to the whole dwelling.</p> <p>[s. 5(18)]</p> <p>4. Section 5(16) will not apply if an application was made before 1 August 1996 to treat the supply of the dwelling as a taxable supply in the taxable period in which the application was made.</p> <p>[s. 5(19)]</p>	<p>(8) Subsequent supply of a dwelling</p> <p>1. Where a registered person has claimed a deduction under s. 20(3) in respect of the supply of a dwelling, any subsequent supply by the registered person of the following will, subject to s. 5(17), (18) and (19), be deemed to be a taxable supply:</p> <p>(a) The dwelling; or (b) Any land or other part of the dwelling that has ceased or will by reason of the supply cease to be appurtenant to or enjoyed with the dwelling</p> <p>[s. 5(16) - unchanged]</p> <p>2. Where a registered person has claimed a deduction under s. 20(3) in respect of a proportion of a dwelling, the supply of that dwelling shall be deemed to be a taxable supply only to the extent that the proportion claimed bears to the whole dwelling.</p> <p>[s. 5(18)]</p> <p>3. Section 5(16) will not apply if an application was made before 1 August 1996 to treat the supply of the dwelling as a taxable supply in the taxable period in which the application was made.</p> <p>[s. 5(19)]</p> <p>4. An issue has been identified that when a person uses land for making taxable supplies and then fully devotes it to a non-taxable purpose before disposal, the person will arguably not be disposing of the land in the course or furtherance of their taxable activity, and, therefore, there is no output tax liability on the sale.</p> <p>5. The suggested solution, targeted to land, was to extend the scope of s. 5(16) so that it applied to all subsequent supplies of land when input tax has been claimed, instead of just dwellings.</p> <p>6. The proposal in clause 163 of the <i>Taxation (Annual Rates, Employee Allowances, and Remedial Matters) Bill</i> was that s. 5(16), as replaced, would apply to a supply of "<u>land or a dwelling</u>" for which a registered person has a deduction under s. 20(3). <u>A subsequent supply of all or part of the land or dwelling, or appurtenances belonging to or used with the dwelling, will be treated as a taxable supply.</u> The supplier would be required to charge output tax and also perform the existing final adjustment on disposal calculation in s. 21F.</p> <p>7. This rule was not enacted.</p>

GST LAND TRANSACTIONS RULES

SECTION V: SUPPLY OF LAND TO A NOMINATED PERSON

'OLD' RULES	CURRENT LAND TRANSACTIONS RULES
<p><u>(1) Land supplied to a nominated person</u></p> <p>There were no specified rules.</p>	<p><u>(1) Land supplied to a nominated person</u></p> <p><u>Contract to supply land to a nominated person:</u> If Person “A” enters into a contract to supply goods and services that include land to Person “B”, and Person “B” directs Person “A” to provide the goods and services to Person “C” (the “<i>nominated person</i>”) who is not a party to the contract:</p> <ol style="list-style-type: none"> 1. <u>Supply is to the nominated person:</u> The supply is treated as made by Person A to Person C (the nominated person). [s. 60B(6)] <i>Note: the extended definition of “land” in s. 2 applies for the purposes of this rule.</i> 2. <u>Nominated person is the recipient:</u> For the purposes of the application of s. 11(1)(mb), Person C, to whom the goods and services are provided, will be the recipient of the supply and the GST rules will apply accordingly. 3. <u>Written statement required:</u> At or before settlement, either: <ol style="list-style-type: none"> (a) Person B must provide the written statement required under s. 78F(2) (refer to Section I (5) on page 6), and the information provided must relate to Person B’s expectation of the nominated person’s (Person C’s) circumstances; or (b) Person C (the nominated person) can provide the required information. <p>[s. 78F(3) as amended by s. 226(1), and s. 78F(5) as replaced by s. 226(2) of the <i>Taxation (Annual Rates, Returns Filing, and Remedial Matters) Act 2012</i>]</p>

GST LAND TRANSACTIONS RULES

SECTION V: SUPPLY OF LAND TO A NOMINATED PERSON

'OLD' RULES	CURRENT LAND TRANSACTIONS RULES
<p><u>(2) Records to be kept by a nominated person</u></p> <p>N/A</p>	<p><u>(2) Records to be kept by a nominated person</u></p> <p>The nominated person, Person "C" (see Section V (1) on page 18), is denied an input tax deduction, unless:</p> <p>(a) The nominated person maintains sufficient records as required by s. 24(7B). [s. 20(2)(e)]</p> <p>(b) Note: s. 24(7B) applies to supplies of land made to a nominated person under s. 60B(6) following an amendment in s. 222 of the <i>Taxation (Annual Rates, Returns Filing, and Remedial Matters) Act 2012</i>.</p> <p>(c) The records required by s. 24(7B) must enable the following to be ascertained:</p> <ul style="list-style-type: none"> (i) The name and address of the supplier; (ii) The date on which the payment for the supply was made; (iii) A description of the goods supplied; (iv) The consideration for the supply. <p>[s. 24(7B)]</p>

GST LAND TRANSACTIONS RULES

SECTION VI: OTHER RULES AFFECTING LAND TRANSACTIONS

'OLD' RULES	CURRENT LAND TRANSACTIONS RULES
<p><u>(1) When a supply of land cannot be zero-rated</u></p> <p>N/A. The supply of land was standard-rated, unless it was an exempt supply.</p>	<p><u>(1) When a supply of land cannot be zero-rated</u></p> <p>If a supply which includes land cannot be zero-rated, because the recipient, either will not use it to make taxable supplies or, intends using it as a principal place of residence:</p> <p>(a) The zero-rating requirement in s. 11(1)(mb) will not apply.</p> <p>(b) The supply will be standard-rated (unless it is an exempt supply, or can be zero-rated as part of a going concern).</p> <p>(c) If the recipient intends using the land as a principal place of residence, or to make an exempt supply under s. 14(1)(d) there must be a separate supply of the land [see Section I (2) on page 4].</p> <p>(d) The apportionment rules will apply to the recipient in the usual way.</p>
<p><u>(2) Arrangement with associated persons</u></p> <p>No special rule.</p>	<p><u>(2) Arrangement with associated persons</u></p> <p>The input tax deduction claimed for a supply cannot exceed the amount accounted for as output tax for all supplies (taken together) that wholly or partly consist of land and are part of an arrangement involving:</p> <p>(a) More than 2 associated parties; and</p> <p>(b) More than 1 supply.</p> <p>[s. 3A(3B)]</p>
<p><u>(3) A binding agreement entered into before 1 April 2011</u></p> <p>The old rules continue to apply – see the column on the right.</p>	<p><u>(3) A binding agreement entered into before 1 April 2011</u></p> <p>A supplier may choose to continue to apply the old rules after 1 April 2011, if a binding agreement was entered into on or before 1 April 2011 for which the time of supply is after 1 April 2011.</p> <p>[s. 11(8C)]</p>