

CHARGING GST WHEN YOU HAVE A LEASEBACK

This month I am encouraging all building managers who operate a letting business to do a quick health check on how they handle GST on room tariffs and rent charged to guests and tenants.

In the ordinary course of a standard letting business, individual owners (who aren't in the business of supplying commercial residences) appoint the building manager as their letting agent to let out their lot on their behalf. This is an agency relationship and although the building manager operates a business, the supply of the lot is actually being provided by the owners (not the building manager) and that supply is the supply of a residential premises and not subject to GST. The key factor here is that the building manager doesn't control the use of the lot. The building manager is merely acting as an agent and helping the owner of the lot (who has control of the lot) to supply the use of the lot to guests and tenants.

Sometimes, instead of being appointed as the letting agent for an owner, the building manager might enter a lease with the owner so that the building manager has full control of the use of the owner's lot. This is commonly referred to as a leaseback arrangement. In this scenario, instead of paying the owner the profit earned from letting out the lot on behalf of the owner, the building manager will pay the owner rent to use the lot. The amount of rent paid will depend on the terms of the lease the building manager enters with the owner. Sometimes the rent might be linked to the amount the room is used and the profit it generates, but just as easily it can also be a fixed amount agreed with the owner and have no relevance to how much income the lot generates for the building manager.

When a building manager lets out a lot that they have leased or control, the supply of the lot is unlikely to be the supply of a residential premises that is not subject to GST. When a building manager lets out a lot they control (either because they have leased the lot or because they own the lot) it is likely that the rent or room tariff they charge to guests should include GST. This is because the supply of the lot likely now has the characteristics of a supply by a person in the business of supplying commercial residences.

Things to watch out for:

- Do you let out a lot you own?
- Do you let out a lot you lease?
- If you answered "yes" to either of the above, do you charge GST when you let that lot out?

If the last question applied to you and you answered "no", there is a reasonable chance that you should be charging GST and I strongly recommend you seek advice from your accountant and your lawyer. If you have failed to collect and pay GST for a lot, the amount of GST you could be required to pay will backdate all the way back to the first time you failed to collect and pay the GST that is owed. In simple terms, 10% of every dollar of income you have generated when letting out a lot you control could be a tax bill waiting to be paid. This is not something you want sneaking up on you out of the blue.

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