



5 November 2009

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Dear Susan

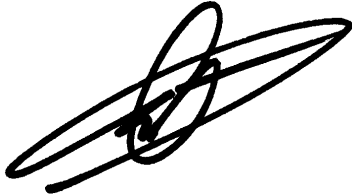
**PUB0153 GST – Apportionment of the cost of bare land for the purposes of a change-in-use adjustment**

The Society's Taxation Committee (the Committee) appreciates the opportunity to comment on the exposure draft PUB0153. It makes the following comments after reviewing the draft, and would be happy to elaborate further if required.

1. The Committee agrees in principle with the approach suggested by the Commissioner in apportioning the GST change of use adjustment by way of either a pro rata method (based on the proportion of the area of land subject to the deemed supply) or an alternative method based on valuation of the land. However, the way in which the Commissioner has arrived at this conclusion is unclear.
2. The Commissioner in his analysis referred to the apportionment methods referred to in section 21A of the Goods and Services Act 1985 (the Act), but concluded that this section does not provide any guidance on the operation of section 10(8) of the Act. However, sections 21A and 10(8) aim to address different issues when making a change of use adjustment. The Commissioner's assertion that sections 21A and 10(8) could not be applied together is therefore open to question.
3. Section 21A of the Act provides the formula for determining the extent to which goods and services are applied by a registered person for the purpose of making supplies other than taxable supplies. Section 21A provides guidance on determining the extent to which goods and services have been applied for making non-taxable supplies. Section 10(8), however, provides guidance on the value of the consideration attributable to that "portion" of the goods and services used for making non-taxable supplies (as determined under section 21A), which in turn determines the amount of the GST adjustment. The Committee therefore questions whether the Commissioner is correct in disregarding the application of section 21A of the Act.
4. A similar conclusion may be reached by applying sections 21A and 10(8) of the Act together. Section 21A provides that the apportionment could be made based on actual use or other alternative method approved by the Commissioner if the allocated amounts are fair and reasonable. Applying section 21A could lead to the use of the pro rata method or the alternative method based on valuation as discussed by the Commissioner provided that the allocated amounts are fair and reasonable.

The committee trusts these comments are helpful. If you require further assistance please do not hesitate to contact Diana Brown, the committee secretary, by phone (04) 463-2967 or email [diana.brown@lawsociety.org.nz](mailto:diana.brown@lawsociety.org.nz).

Yours sincerely

A handwritten signature in black ink, appearing to be 'Casey Plunket', written in a cursive style.

Casey Plunket,  
**Convener, Taxation Committee**