



11 August 2009

Virginia Flaus  
Office of the Chief Tax Counsel  
Inland Revenue Department  
PO Box 2198  
WELLINGTON 1640

Dear Ms Flaus

**XPB00012 Commentary on Public Rulings BR Pub061xa–xe**

The Society's Taxation Committee (the Committee) appreciates the opportunity to comment on the revised Public Rulings BR Pub 09/xa and BR Pub 09/xb and commentary (the Draft Rulings) on the GST treatment of local authority rates apportionments on property transactions.

Legal Analysis

The Committee agrees with the legal analysis contained in the commentary to the rulings but notes that, in practice, the way apportionments are treated will depend on what is agreed between the parties. The legal analysis of each apportionment, as addressed in the commentary, may be overridden by agreement.

Form & Content

*Examples*

- For each example involving a GST registered vendor, both the settlement statement and tax invoice should be included. It is the flow-through of figures from the settlement statement to the tax invoice where some practitioners are making errors or are failing to include the GST effect of apportionments in the tax invoice, only charging GST in respect of the purchase price of the property.
- The use of "To:" and "By:" in the tax invoice examples is unclear. [The Committee suggests comment from the Property Law Section is sought here.] In particular, whether the "minus" adjustments in examples 7 and 9 should be "By:" rather than "To:" and whether the use of these terms in a tax invoice equates with current practice.
- The terminology "rates paid in arrears" is unclear. Rates may be paid by a vendor in advance. If a vendor is behind in rates payments, then the rates are said to be "in arrears" (rather than "paid" in arrears). The headings in the commentary should be amended to describe each situation more directly.

*Including Apportionment of Rents*

The Committee supports the decision to reduce the number of rulings and considers that the reduced length of the commentary is more appropriate for likely users of these rulings. While rulings on the apportionments of insurance are probably unnecessary, the apportionment of rents is a regular occurrence and causes more confusion for practitioners than rates apportionments.

In particular, apportioning rents can be more difficult because the question of whether the apportionment should be included in the tax invoice (as consideration for the supply of the property) depends on whether the parties have agreed to apportion the rents (i.e. there is a contractual obligation to apportion rents) or whether the purchaser is simply required to pass over rents received under the Property Law Act 1952.

However, including the GST treatment of rents apportionments in the first draft of these rulings led to commentary that was too long and less practical for users. The Department might consider publishing a further two public binding rulings with commentary on the GST treatment of rents apportionments in future, including clear explanations and examples of the possible practical situations and flow through of apportionments from settlement statement to tax invoice.

If you have any queries regarding this submission please contact Diana Brown, Committee Secretary, tel 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 'S Tomlinson', written in a cursive style.

Stephen Tomlinson  
**Co-convenor Taxation Committee**