

TECHNICAL INFORMATION PAPER

Goods and Services Tax (GST) in Property

Technical Information Papers

The principal objective of a Technical Information Paper (TIP) is to reduce diversity of practice by identifying commonly accepted processes and procedures and discussing their use. A TIP is designed to be of assistance to property professionals and informed users alike.

Effective: 1 July 2016

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A TIP will do one or more of the following:

- provide information on the characteristics of different types of asset that are relevant to the advice,
- provide information on appropriate practices and their application, provide information that is helpful to property professionals in exercising the judgements they are required to make in specific situations.

A TIP does not:

- provide training or instruction,
- direct that a particular approach or method should or should not be used in any specific situation.

The contents of a TIP are not intended to be mandatory. Responsibility for choosing the most appropriate approach is the responsibility of the property professional based on the facts of each task.

Whilst TIPs are not mandatory, it is likely they will serve as a comparative measure of the level of performance of a Member. They are an integral part of “Professional Practice”.

The reader should understand that legislation may change and whilst this TIP is accurate and relevant at the time it was completed, relevant referred reading and legislation should be investigated at the time of relying on this TIP.

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1.0 Introduction

1.1 Objective

The objective of the Technical Information Paper (TIP) is to provide guidance on the treatment of GST when undertaking current market valuations, and how to report GST within valuation reports.

1.2 Scope of this TIP

This TIP applies to Members involved in the provision of property advice. It should be used in conjunction with other TIP's and/or practice standards and legislation which are either overarching or directly applicable to the issues involved.

1.3 Background

From 1 April 2011 the Inland Revenue Department introduced new rules for supplies of land between GST-registered persons known as Compulsory Zero Rating (CZR) of land transactions.

The CZR measure is designed to prevent abusive GST arrangements, particularly 'Phoenix' fraud where the vendor (often in financial stress) does not pay output tax to Inland Revenue but the purchaser claims a GST refund.

Although these changes appeared straight forward, the impact of GST has taken on prominence, particularly for contractual drafting and how parties deal with GST pricing/valuation and changes of circumstances from signing the agreement to settlement.

2.0 Definitions

The following are terms that have particular relevance to and appear in this TIP.

Goods	For GST, "goods" has a broad meaning. It includes all types of personal and real property, except money
Service	Means anything which is not goods or money.
Zero Rating (CZR)	Certain goods and services are liable for GST at 0%.
Registered Person	Anyone who is registered or is liable to be registered for GST under the Goods and Services Tax Act 1985. Registered persons must charge and collect GST, file returns, and account for GST to Inland Revenue.

- Person
- For the purposes of GST, a person is:
- an individual (natural person)
 - a company
 - an incorporated club or society
 - an unincorporated club, society, or body of people
 - a joint venture
 - a trustee of a trust
 - a trustee of an estate
 - a public or local authority
 - a partnership.

- Land
- Includes:
- an estate in land or interest in land
 - a right that allows an interest in land
 - an option to acquire land.
- Does not include:
- a mortgage
 - a lease of a dwelling when:
 - the supply is made periodically and
 - 25% or less of the total amount is payable in advance or all at once.

3.0 Treatment of GST - CZR Criteria

Compulsory Zero Rating (CZR) applies if:

- The transaction includes land, even if land is not the main element of the transaction and it does not matter how much land is involved in the transaction,
- A transaction is made by a GST registered person to another GST registered person,
- The purchaser intends to use the land for making taxable supplies,
- The land is not intended to be used as a principal place of residence.

These rules are tested at settlement. To be a zero-rated supply, all the above conditions for zero-rating must be satisfied at the time of settlement of the transaction. If any of these conditions are not satisfied at the time of settlement, the supply must be taxed at 15%.

CZR does not apply if:

- The transaction is a private transaction i.e. between parties where neither party is registered for GST – Consumer to Consumer transactions (C2C).
- The vendor is not registered for GST and the property is sold to a purchaser who is registered purchaser – Consumer to Business transactions (C2B).
- A business (registered for GST) sells to an individual (not registered for GST) – Business to Consumer (B2C).

4.0 Valuation Principles

4.1 There is only One Market Value for Land

The market value of land does not vary depending on whether or not GST is payable or claimable by the purchaser. When assessing the market value of land, the GST status of the purchaser and the vendor has to be disregarded by the valuer. GST is a tax applied after the value/price has been determined.

4.2 Highest and Best Use

The valuer interprets the market through the analysis of sales to arrive at a conclusion as to the Highest and Best Use of the property being valued.

The GST status of the parties who typically operate in a market for a property dictates how GST is treated in a transaction and ultimately how the market value is reported e.g. residential property is typically transacted between unregistered parties and therefore sale prices are recorded on a \$MV GST inclusive basis, if any. Therefore, the market value of a residential property will be recorded in a valuation report in a similar fashion.

Commercial property is typically transacted between GST registered parties with sale prices recorded as \$MV, plus GST, if any. This then is how the market value of a commercial property will be reported in a valuation report.

Properties in transition to a higher use, e.g. lifestyle to development block are properties which can cause the most difficulty for valuers and the reporting thereof.

The first transaction will most likely be from a vendor unregistered for GST and as such they will receive a GST inclusive price. Subsequent sales from a registered vendor e.g. a developer will be expressed on a plus GST basis.

A market in transition will most likely have recorded sales that are both GST inclusive and on a plus GST basis. Therefore, the valuer must clearly state in their valuation report the GST treatment of each of the comparable sales analysed and the highest and best use for the land as concluded by the valuer taking into consideration the comparable sales and their knowledge of the market for the property.

4.3 Compulsory Acquisitions under the Public Works Act

Where a valuer considers it appropriate to undertake 'before' and 'after' assessments to arrive at a value of a partial acquisition in a compulsory acquisition under the Public Works Act, the valuer must treat the GST in each scenario in the same manner. This will ensure that like can be compared with like. This is particularly relevant to hypothetical subdivisions. If the 'after' market value is GST incl. (if any) then the 'before' market value must be expressed in the same manner. The valuer must clearly state in their report the treatment of the GST in each scenario.

4.4 Mixed Use Properties

Where a mixed-use property includes a residential portion, primarily a principal place of residence, the valuer is confronted with the possibility of sales of comparable properties being quoted on either basis but generally on a \$MV, plus GST (if any), under the assumption that both parties to the transaction are GST registered. This is not always the case and therefore the valuer must undertake all necessary research to determine as accurately as possible the treatment of GST in the comparable sales analysed and report accordingly.

4.5 Correct GST Expressions

The expression \$MV excluding GST or \$MV exclusive of GST is considered ambiguous and therefore should not be used by valuers when reporting market values or comparable sales.

5.0 Summary

1. There is only one market value. When assessing the market value of land, the GST status of the vendor and the purchaser must be disregarded.
2. Valuers should value the land as its 'Highest and Best Use' as supported by market evidence.
3. The agreed highest and best use will dictate the expression of GST in relation to the reporting of the market value for the land e.g. \$MV plus GST, if any or \$MV inclusive of GST if any.
4. For every comparable sale referred to in the valuation report, the GST treatment of that transaction must be commented on by the valuer. If the valuer does not know the GST treatment of a comparable sale, then they must say so but the reliance on this sale as evidence cannot be as great as other comparable sales where the GST treatment is known.
5. When undertaking 'before' and 'after' assessments to establish the value of land for a compulsory acquisition under the Public Works Act 1981, the treatment of GST in the 'after' scenario must be the same as the treatment of GST in the 'before' scenario. This is particularly relevant where 'hypothetical subdivisions' have been used to establish value.
6. The best expressions of value are \$MV, GST inclusive, if any and \$MV, plus GST, if any.

6.0 Additional Resources

We refer you to the following additional resources to be used in conjunction with this TIP:

- GST – Practical Update on Property and Business Transactions published by Eugen Trombitas (PwC) on 6 August 2014
- GST – The Valuers View – Property Institute of New Zealand Webinar Presentation

7.0 Effective Date

This TIP is effective from **1 July 2016**