GOODS AND SERVICES TAX (GST) IN PROPERTY

Reference:	NZVGP 501 Goods and Services Tax (GST) in Property
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Owner:	Manager Professional Standards

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Guidance Papers

Objectives

The principal objective of a Guidance Paper (GP) and Resource Pack (if applicable) is to clarify professional and industry processes, best practices, and procedures and to discuss their use and implementation.

A GP is designed to be of assistance to Members and those who use Members' services. They serve as a guide and measure of acceptable professional practice and conduct of a Member.

The intention of a GP is to:

a) provide information on the characteristics of different types of assets that are relevant to the advice.

b) provide information on appropriate practices and their application.

c) provide information that assists Members in exercising the judgements they are required to make in specific situations'; and

d) convey elements of what is considered "competent professional practice" for Australian Property Institute (API) Members and "best practice" for Property Institute of New Zealand (PINZ) Members.

A GP is not intended to provide comprehensive training, instruction or prescriptive practices and procedures, or direct that a process, professional approach, or method should or should not be used in any specific instruction or situation.

Member Obligations

The Member is responsible for choosing the most appropriate approach in a matter based upon the task and instruction. It is a matter for each Member to decide the appropriate practice in any situation, and if they are unclear, seek professional advice from others, or contact the Institute(s). Members have the responsibility of deciding when it is appropriate to depart from the guidance and practices contained in a GP.

The Institute(s) do not warrant that anything contained in this, or any GP is the definitive or final statement on any issue. Members must perform their own work pursuant to their own professional expertise and experience and if required, seek additional advice which might include legal advice.

Court or Tribunal Reliance

A court or tribunal may consider the contents of any relevant GP or other document relating to a recommended professional practice published by Institute(s) in deciding whether the member acted to a standard required by law.

Currency of Publication

Case law and relevant legislation may change over time and whilst the Institutes(s) consider this GP current at the time of publication, Members and those who use Members' services should have regard to legislative changes and new rulings and if necessary, seek further advice prior to having regard to this GP.

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Departure or Non-Compliance

Where a Member considers that a circumstance exists that warrants the departure from or non-compliance with any of this GP, the Member's report (or other advice) must include a statement that outlines:

a) the reasons for the departure or non-compliance with this GP; and

b) any impact the Members departure or non-compliance may have on the content of the report.

Members are advised to seek legal and/or other advice before departing from practice recommended in a GP.

Enquiries

If any Member considers any information or advice in this GP to not be accurate or up to date, or wish to raise any issue for consideration arising from the contents of this GP, please refer this to

PINZ/NZIV contact: standards@property.org.nz

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1.0 Introduction

1.1 Scope of this Guidance Paper

This Guidance Paper (GP) is to provide guidance on the treatment of GST when undertaking current market valuations, and how to report GST within valuation reports.

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

1.2 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 relevance to and appear in this GP.

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:

a) 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,

b) A transaction is made by a GST registered person to another GST registered person,

c) The purchaser intends to use the land for making taxable supplies,

d) 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:

a) The transaction is a private transaction i.e. between parties where neither party is registered for GST – Consumer to Consumer transactions (C2C).

b) The vendor is not registered for GST and the property is sold to a purchaser who is registered purchaser – Consumer to Business transactions (C2B).

c) 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 GST is payable or claimable by the purchaser. When assessing the market value of land, the GST status of the purchaser and the vendor must 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

a) 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.

b) Valuers should value the land as its' Highest and Best Use' as supported by market evidence.

c) 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.

d) 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.

e) 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.

f) 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 GP

a) GST – Practical Update on Property and Business Transactions published by Eugen Trombitas (PwC) on 6 August 2014

b) GST – The Valuers View – Property Institute of New Zealand Webinar Presentation

7.0 Effective Date

This GP is applicable from 1 July 2021. Earlier adoption is permitted and encouraged.

This GP replaces *NZVTIP 1* which was in effect from 1 July 2016 and was withdrawn on 30 June 2021.