

**WHY INCLUDE GST on
COMMERCIAL RESIDENTIAL PREMISES?**

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ABSTRACT

Commercial Residential Premises, such as caravan parks, camping grounds, and boarding houses have traditionally provided affordable accommodation for city and regional holidaymakers, retirees and also low income residents. This paper examines the GST application for commercial residential premises, and will focus on the consequential treatment of the accommodation as either an input tax supply or a taxable supply. The research explores the effectiveness of the present taxation system and compares this to the Governments interpretation of commercial residential premises classification within the GST regime. It is argued that property investors have exploited the commercial residential premises classification for their benefit, with little regard to the occupier of these premises. The paper concludes with a recommendation for the government to introduce the concept of a mixed use category, within the classification of commercial residential premises.

KEYWORDS: Commercial Residential Premises, GST, long term accommodation, short term accommodation

INTRODUCTION

In the last decade, there have been a number of reviews across Australia's taxation system which has had flow-on consequences for the real property sector. The Ralph Report (A Review of Business Taxation, A Tax System Redesigned, 1999 chaired by John Ralph AO) contained about 280 recommendations, which were aimed, at improving the competitiveness and efficiency of the Australian Business, reducing compliance costs and enhancing the stability of taxation arrangements. Following this, GST was introduced on the 1st July 2000. More recently the Henry Review (Australia's Future Tax System, 2009 chaired by Ken Henry) prioritised the economic and environmental challenges with a view to enhancing community wellbeing. For example, recommendations included the abolition of various inefficient state taxes such as conveyancing duties and insurance levies. In return, it was proposed that the state governments would receive all the revenue from the GST. Unfortunately, the Government was forced to undergo a number of GST exemptions, e.g. GST on food, and this decreased the expected revenue and added to the intricacy of the GST system.

GST is recognised as one of the relatively efficient taxes in Australia. Furthermore, Australia's GST rate is amongst the lowest in all OECD countries, making it a potential candidate for reform. Thus, whilst there are challenges in redesigning the current GST framework, it is nevertheless important to include it in any discussion about tax reform. Therefore, a fundamental reform of Australia's taxation system occurred when Goods and Services Tax (GST) was introduced in July 2000. The purpose of the GST was to apply a broadly based tax of 10% to various goods and services supplied and expended. This application also included GST for real property transactions such as commercial and residential property.

Overview of GST Regime for Real Property

The complexity of GST for real property is highlighted with the varying treatment of commercial and residential sales and rental, which in some situations is dependent on the GST status of the owner of the property. There are three categories of supplies, taxable supplies, input taxed supplies and GST Free supplies. These supplies are briefly discussed in this section:

- Taxable Supply – the supply comprises of a GST component, and there is a 100% GST refund for acquisitions relating to this supply, if the owner of the supply is registered for GST.
- Input Taxed Supply – the supply never contains a GST component, and there is no GST refund for acquisitions relating to this supply.
- GST Free Supply – the supply never contains a GST component, however there is a 100% GST refund for acquisitions relating to this supply, if the owner of the supply is registered for GST.

For example, the sale of a commercial property is classified as either a taxable supply (if sold with vacant possession), or a GST free supply if sold as a "going concern"; whilst the commercial rent is considered a taxable supply only. However, residential property sales and residential rent is generally considered an input taxed supply unless the property is sold as new residential where the application would be a taxable supply.

Vacant land can fall into all three classifications of a taxable supply, input taxed supply, and GST-free supply. Farmland can generally be considered a GST-free supply, however, there are some exemptions which might require the treatment to be a taxable supply. To add further to this intricacy, there is also the classification of commercial residential premises (CRP) which are a taxable supply but, if certain criteria are met, then the accommodation is considered as residential premises, which is an input tax supply. For example, caravan parks, camping grounds, boarding houses, hotels and motels and selected student accommodation are generally commercial residential premises, even though occupants may elect to use these premises as their permanent place of residence.

Commercial Residential Premises

Commercial Residential Premises, such as caravan parks, camping grounds, and boarding houses are generally subject to GST, both on the sale/purchase price and also if leased. Traditionally these types of accommodation have provided affordable living for the city and regional holidaymakers, retirees and also low income residents. However, little attention has been afforded to the last two taxation reviews with regards to taxation issues and community needs impacting on long term and short term accommodation. Indeed, research undertaken by Reed and Greenhalgh (2004) highlighted the necessity for caravan parks to exist as possible, affordable housing options, for long-term accommodation for residents.

Therefore, this research paper examines a number of interrelated areas concerning GST legislation for real property, with a focus on the application of GST on CRP. The first part of the paper discusses the literature for taxation levied on real property, together with considerations affecting the consumer and occupier of the property. The research then

leads into a discussion on the application of GST for CRP and the government's interpretation of this classification. The discussion is complemented with relevant court cases and the subsequent GST rulings introduced by the government. It is argued that property investors have exploited this classification for their benefit with little regard to the occupier of these premises.

LITERATURE REVIEW

As discussed earlier in the paper, the introduction of GST as a broadly based tax in Australia was part of the government's tax reform strategy, whilst admittedly this also included a bonus with the obvious revenue collected by the Commonwealth. Researchers have argued that GST is a regressive tax because lower income earners are adversely affected since a higher proportion of their income is consumed with tax, in comparison to those who are earning a higher income. Dixon and Rimmer (2000) argued that the introduction of GST was "failure in policy formulation" and should not have been considered the "central component" of tax reform. Another approach considered by Creedy (2002) was the examination of a variety of structures in the pre-GST and post-GST regimes. He argued "separate taxes should not be examined in isolation" and concluded that indirect taxes generally generated a small increase in the measure of inequality with household expenditure, but Creedy did not include real property into the research. Nevertheless, a key application of Australia's tax reform is the incorporation of GST within the real property sector and the differing treatment for commercial and residential properties have added to the confusion and uncertainty of GST law application for property investors and occupiers.

Research presented in this paper, nationally and internationally investigates the link with property taxes and property prices. In Australia, GST is partly uniform for the residential market and different for the non residential market. For example, in Australia, second hand residential properties and residential rent is not subject to GST, whereas new residential properties are subject to GST implications. Furthermore, the treatment of CRP can be either a taxable supply or an input taxed supply. This complexity has created inequity for the occupant of investment properties, because a taxable supply will comprise a 10% GST component, and the occupant is unable to claim the GST credits. For instance a tenant will pay \$300 per week rent if the residential premises are classified as an input taxed supply. However, if the residential premises are classified as a taxable supply, and the owner is registered for GST, then the tenant will be required to pay \$300 plus \$30 GST (i.e. an extra 10%), being a total of \$330.00. The tenant would be unable to claim the \$30 as a refund and effectively, and is therefore disadvantage because of the *supply* classification for the property being occupied.

Surveys undertaken from 1985 to 1999 by the Morgan Gallup Polls MGPN considered taxpayers supporting the introduction of GST. Interestingly, Blount (2000), analysed these results and sought to discover patterns for public opinion on a range of taxation issues in Australia, including the introduction of GST, and concluded that taxpayers preferred "higher indirect taxes" with an "aversion to visible taxes". Later, Feld and Schneider (2003) argued that high levels of complexity within a country's taxation system, would increase the consumer's perceptions of their true tax burden; therefore, their tax resistance is lessened. A comparison of property taxes for residential development in Sydney and Taipei concluded that taxes affect the price of Sydney properties but not so for Tapei (Chan, Chen 2011). Their study included commonwealth and state taxes and was restricted to the Sydney residential market only. This research has a huge implication for the property investor, where property prices are linked to property yields, and thus rentals of residential and commercial properties will be influenced with the added layer of GST.

A policy perspective in Australia focuses on consumption tax spread evenly across the community and normally residential rent is exclusive of GST. However, if a property owner is able to classify the accommodation they provide to the consumer as commercial residential then there are enormous benefits to the property investor. For example, any expenditure associated with the income producing property, and which contains a GST component, will provide the property investor with the opportunity to claim 100% of the GST credits from the Australian Taxation Office (ATO). In comparison, the classification of residential rents does not provide the property investor with this opportunity.

American studies over the years have attempted to link property taxes with property prices and income yields. For example, Bradbury, Mayer, Case (2000) examined property values assuming there was a property tax limit implemented together with a limit on the nominal annual growth of the property in Massachusetts, and surplus taxes could be invested into school funding. Their research concluded that purchasers were prepared to pay the increased taxes if the funds were syphoned towards school spending. This result saw a negative outlook for housing demand and home prices. This theory is further supported by Ladd and Bradbury (1998) who discuss the importance of local property taxes in the US cities. In the US, local public expenditure is financed from the revenue of local property taxes. Their research queried any valid links between local property taxes and the city's property tax base, and argued that income taxes could also affect property prices. Their theory was further supported with an empirical study undertaken

which concluded that property values were affected by taxes against property. However, it is questionable if GST can outright influence property prices in Australia, if both the vendor and purchaser of commercial or commercial residential property are registered for GST. If this is the scenario, the vendor will remit the GST to the ATO, and the purchaser will claim 100% of the GST from the ATO. Therefore, these two transactions have a NIL dollar impact for both the vendor and the purchaser. However, as discussed previously, the impact for the occupant in a commercial residential premise (CRP) would not work in their favour, if they used the property for residential living, as the occupant would have no opportunity to claim the 100% GST component.

The hypothesis that property prices are affected by property taxes was further reiterated by Madsen (2009) who also investigated the effects of taxes on house prices and concluded that, in America, taxes were considered to be “highly influential” in determining the housing price stock. The American research has focused on the residential sector, and little reference is provided for their commercial sector, which might indicate that, in economic terms, the residential sector dominates over the commercial sector. This theory is supported with research undertaken in Australia using input and output tables and concluded that the residential sector played a more important role in the Australian economy (Song, Liu 2005). Because rent paid by occupants of premises is linked to supply and demand and influenced by property prices, the varying GST application for some residential premises and CRP has a flow-on effect for the occupant of rented premises. This is of major concern where shelter such as caravan parks, camping grounds and boarding houses have been considered affordable accommodation and are now subject to GST for the occupier. So then, why has the government introduced GST on CRP? Why are occupants of CRP mandated to pay a GST inclusive amount for their rent, in comparison to their counterparts who enjoy the occupancy of living in houses, town houses, flats, villas, apartments etc, and are not required to pay a GST component with their rent!

As early as 1956, a model developed by Tiebout hypothesised that consumers would select and shop for properties according to the location and ease of the “production and consumption of local public goods” e.g. schools, shops etc with little regard to the price for these services. The Tiebout Hypothesis was eventually extended in 1974 by Hamilton who linked the behaviour of economic agents to the local governments. Hamilton’s argument was based on the premise of consumers shopping for local public services. If all the residents were satisfied with the public service demands available to be utilised, Hamilton argues local government elections would be unanimous. In contrast, Henry (1974) acknowledged that many research studies indicated that property tax was highly regressive, but he refuted this theory stating that many of the assumptions in the studies were not supported by “plausible theory”. He argued that property tax was “far less regressive than the most widely quoted evidence suggests” but conceded that lack of data would hinder the hypothesis that property tax is progressive. Generally regressive tax suggests that low income earners are more widely affected adversely, than the upper income earners. For example, an owner occupier who can afford to own their own home, does not have to pay GST for the privilege of occupying their home. However, why is there the expectation that low income earners are liable for GST, if their rented premises are considered a CRP. Was this the governments’ original intention when GST was introduced, or is this perhaps the result of property investors challenging the law and seeking results which enhance the betterment of their investment and rate of return.

Another approach for investigating the property tax and property price relationship was undertaken by Krmenc (1991), where he applied a simple accounting framework to determine patterns of property sales and property tax receipts. He separated the real growth (e.g. policy induced amount), from the apparent growth (e.g. induced by the consumer), and concluded that sales tax revenue would grow faster than property tax revenue because this was linked back to consumer spending, which attracted higher sales tax in regions where it was highly populated with residential properties. This approach can also be transposed to GST and linked to the property investor seeking an adequate return on their investment. The inducement of greater benefits associated with the CRP classification i.e. the ability to claim the 100% tax credits on expenditure related to the property provides the justification for the property investor to seek the classification of CRP. However, as previously explained, the occupant is adversely affected.

Other studies in America capitalised tax with property, and provided little evidence to indicate whether rentals increased or decreased and if subsequently property values would decrease if rents were lowered. Oates (1969) concluded “local property values bear a significant relationship to the effective tax rates”. These empirical studies provided a basis for further research continued by Pollakowski (1969), who undertook an analysis on local public spending and the consequential impacts on the residential property values. His model quantified the demand and supply variable in the housing market and also paid specific attention to the fiscal variable, and concluded that there was a highly significant negative impact between property taxes and property values. In contrast, Edel and Sclar (1974) considered the supply adjustment with local public goods such as schooling in relation to house values, local taxes and service delivery in the Boston area. The authors acknowledged the difficulty with the viability of Oates model when using the capitalisation approach. To support this theory further, Krantz, Weaver, Alter (1982), researched the capitalisation model using the effective tax rates as a measure of the tax burden for property owners and concluded 60% of the tax changes were

incorporated into the value of the residential properties sampled. Historically, research has highlighted the role of taxes in the models developed for house prices confirming their major influence for user costs of capital. (Kearl 1979, Dougherty and Order 1982, and Poterba 1984). Therefore, there are various studies both nationally and internationally which recognise this link between property taxation and property prices which will ultimately influence the rent paid by the occupier of the premises.

Another different approach to investigate the relationship between property tax and property price and rentals, was undertaken by Berry (1997) who examined the differences between state tax capacity and tax effort. He defined the "tax capacity" as the "capability of a governmental entity to finance its public services" and "tax effort" as the "extent to which a government utilizes its tax capacity". He concluded there were a number of different ways to measure this requirement and not necessarily a function of error and researchers. This approach acknowledges the correctness of research relating to the Tiebout Hypotheses discussed earlier in this paper, and provides answers for the disparity within the conclusions from various researchers. It is argued that depending on the government's budget and public spending priorities, a link with property tax and property price is maintained. If this is indeed correct, the property investor is able to maintain the benefits associated with the CRP whilst the property occupier paying rent, is disadvantaged with the inclusion of GST in their rental amount.

It is usual to assume that real estate is illiquid, and buildings will decline in value with land increasing in value. In other words, buildings reduce in market value (Weber 2002). Depreciation is recognised for both capital equipment, and the building improvements as this is a function of the buildings economic life. Rental income will diminish over time; therefore, the values will decline as the building nears towards obsolescence; however, it can be argued that an "older building's structural components and configurations may meet the expectations and needs of tenants" (Weber 2002). The question arises whether this decline in value affects the occupier in a CRP. Generally rentals are determined by the age and condition and amenities of the building, plus the supply and demand equation. If the occupier is still liable for a GST component in the rent, as opposed to no GST in residential classification, then the disadvantage for occupiers in CRP still continues, regardless of the decline in value of the building.

Whilst the research discussed relates primarily to residential properties, Anderson (1993) investigated the property tax treatment for agricultural land owners by using the "use-value" method of assessment. This is where the property is valued on the presumed use for the purposes of taxation. The "use-value" method ignores considerations such as "other potential" use of the property and assumes continuation in its present use. The findings included impact and timing issues for land development and property prices. Continuing with non residential research the impact of e-commerce on commercial and retail sales and rentals was investigated. Baen (2000), considered the theory that if retail sales were more off-site and purchased via e-commerce, then eventually retail shopping centres would need to rethink through their rental approach within the shopping mall. For example, recommendations to counter act the possibility of long term value implications if anchor tenants had less people passing through their shops and eventually leading to a negative impact on the small retail outlets. The relationship between e-commerce and property taxation is to demonstrate the "uncertainty" of outside influences, which can impact on property prices. In this instance again a consideration of the equity between CRP and residential premises for the occupier of the premises is raised. The inequity occurs for the occupier in CRP; and the inequity occurs for the property investor in residential premises. This again questions the logic of including GST in CRP and the lack of clarification of the application of GST to these premises. Therefore, again the question is asked: *Why include GST on commercial residential premises?*

COMMERCIAL RESIDENTIAL PREMISES v. RESIDENTIAL PREMISES

This section of the paper discusses the differences between the various categories of supplies within the GST system for CRP and residential premises. It is beyond the scope of this paper to include other types of supplies or examples, such as non residential premises, GST-Free supplies and the margin scheme.

Generally premises occupied for residential living are classified as a taxable supply or an input taxed supply. This classification is very important for the property investor with regards to the GST treatment of income, expenditure, and the sale and purchase price of the property, and likewise the flow on consequences for the occupier of these premises. For example, if premises are classified as a taxable supply, and if the property investor is registered for GST, all rental income is calculated with a GST component. This has no impact for the property investor, who will forward the GST component to the ATO. However, the benefit for the property investor lies within the treatment of the expenditure associated with taxable supplies. Essentially, any expenditure, which contains a GST component, and is associated with the income producing property, will provide the property investor, with the opportunity to claim 100% of the GST

credits from the ATO. However, as mentioned previously, the occupant is adversely affected because their rental includes a 10% GST component and the occupant is unable to receive a refund of the GST amount.

In contrast, if residential premises are classified as an input taxed supply, the property investor is unable to claim the GST credits associated with the expenditure, however, on a positive point, the occupier does not have a GST component in their rental calculation. It is this differing treatment of GST which raises questions on issues such as equity associated with shelter, affordable living, regressive or progressive tax implementation or greedy property investors exploiting loopholes in the legal system. Therefore, there is a definite advantage for the property investor to seek the classification of a taxable supply for their investment, being the commercial residential premises.

Taxable Supply

A taxable supply is considered to have a GST component if the vendor is registered for GST, or required to be registered for GST. For example, a property developer sells new residential premises to the consumer. The premises will be considered new residential if the property has not been sold as residential premises previously; or the premises have been created through substantial renovations; or new buildings have replaced demolished buildings which were previously on the same parcel of land. The property developer can claim a refund for any GST credits relating to the acquisition of the development and likewise the sale price of the development to the consumer must include a GST component. There are also varying exceptions to the new residential rule if the developer has held the residential premises for more than five years. In this circumstance, the sale of the premises is considered an input taxed supply and GST is not applicable on the sale, and likewise GST credits are not available for acquisitions and expenditure relating to the sale of the input taxed supply. Therefore, this impacts adversely for the property investor, and positively for the consumer who would acquire a "near-new" home without a GST component.

There is also a GST concession available for long-term CRP, for example, hotels, motels, hostels, boarding houses, caravan parks and camping grounds, are also considered a taxable supply. Similarly, retirement villages and serviced apartments have separate rules and concessional requirements with regards to GST. The classification of CRP provides the property investor with the opportunity to classify residential accommodation within the category of taxable supplies. The obvious advantage to the property investor is the benefit of claiming 100% GST credits on expenditure relating to the premises, with little regard for the occupier who pays a GST inclusive amount for their rent, and is unable to claim any of this GST component.

Input Taxed Supply

In general, second hand residential properties are considered an input taxed supply. This includes an improvement, such as a house, apartment, unit and flat which can be occupied, are occupied or intended to be occupied as residence. The supply never has a GST component, and the GST credit from the acquisition can never be refunded in this category. For example, expenses (inclusive of GST), relating to an income producing residential property can be claimed as an allowable deduction on the rental schedule, however, the GST component on the acquisition cannot be refunded in its entirety.

In contrast vacant land is not considered an input taxed supply if sold by an entity carrying on an enterprise in connection with Australia. For example, if a developer sells vacant land it is a taxable supply as the developer is considered to be carrying on an enterprise in connection with Australia, and the developer must incorporate a GST component into the sale price. Whereas if a private individual sells their vacant land (original intention was to build their home), then this is not in connection with carrying on an enterprise, and then the sale price will not include a GST component.

In conclusion, the property investor is provided with an incentive to aim for residential premises to be classified as CRP. Therefore, are there rules or guidelines to determine the differences between CRP and residential premises? Since the introduction of GST, the Australian Taxation Office has over the years introduced GST rulings to facilitate the interpretation of the law. For example in 2000, Goods and Services Tax Ruling 2000/20 clarified the treatment of a holiday unit or a serviced apartment, "strata, or other separately titled premises used as holiday accommodation are not usually commercial residential premises". Continuing over the years, additional rulings were issued, such as Goods and Services Tax Ruling 2012/D1 and 2012/3, to clarify the interpretation of the GST Act, court cases were won and lost, and the saga continues. The next part of the paper highlights the characteristics of CRP and uses a selection of court cases to demonstrate the differing applications of the law and the consequential impact with the outcome of the court cases.

CHARACTERISTICS OF PREMISES USED FOR ACCOMMODATION

The term “residential premises” can generate a variety of interpretations, such as a building which has the appearance of a house, or a block of flats, or perhaps a studio apartment or maybe none of these! Therefore, it is important to clarify if the term relates to the physical appearance of the premises, or the “useage” of the premises, or a combination of both.

A New Tax System (Goods and Services Tax) Act 1999 (identified as the GST Act), in the Dictionary section, defines residential premises “as a land or a building that:

- a) Occupied as a residence or for residential accommodation, or
- b) Is intended to be occupied, and is capable of being occupied, as a residence or for residential accommodation”.

Generally if the premises provide sleeping accommodation and the essentials required for basic living in a home, then the premises are able to be used for long term residential accommodation. Basic living includes sleeping accommodation, kitchen and bathroom facilities including a toilet. Amongst many considerations there is also the requirement for the premises to be in an area zoned by the local authorities as suitable for “human habitation”. Examples of long-term residential will also include floating homes and ships – but these items must not be capable of self-propulsion. For instance houseboats which are readily adaptable for self propulsion will not fall into the classification of residential premises.

Another example includes demountable dwellings which are fixed to the land and are plumbed and wired in the normal mode of residential homes. In contrast if the new demountable house is not fixed to the land this is subject to the GST rules of a taxable supply. However, vehicles such as caravans and motor homes are not considered residential premises regardless if the vehicles are placed on a caravan park site. Furthermore, the GST Act does not classify vehicles on land or building, regardless of the length of time the vehicle is stationery, based on the premises that vehicles are not affixed to the land.

Commercial residential premises includes hotels, motels, inns, hostels, boarding houses, caravan parks, camping grounds and premises which provide residential living similar to the properties mentioned here. Boarding school facilities are classified as CRP, however there is an exception if the boarding school relates to student accommodation undertaking primary, secondary or special education courses. For example if the premises are used by teachers and staff then this is considered CRP. Cruise ships are considered to be long-term accommodation. The main characteristics for long term commercial residential will include: a commercial intention, multiple occupancy, accommodation as the primary function of the premises, central management and services offered.

COURT DECISIONS

The discussion in this section, considers 3 courts cases with different issues on hand. The first court case related to a motel converted to Strata Title with the outcome prompting the Commonwealth to introduce retrospective legislation after the decision on the court case was handed down. The second case relates to student accommodation provided on campus, however, the occupants were from other universities, and there were no students from the home campus occupying the complex, and the third case related to a hotel with management rights, converting their complex to Strata Title. Each case provides varying outcomes due to the subjective interpretations, and highlights the complexity of the GST application and the determination if premises can be classified as CRP. The winners would appear to be the initial property investor, whilst the occupants/or subsequent purchasers of the premises are disadvantaged. The Federal courts concluded the only elements to characterise a property as residential for the purpose of GST was the existence of shelter and basic living facilities. The length of occupation was not considered to be relevant.

Marana Holdings Pty Ltd

With the court case, *Marana Holdings Pty Ltd & Another v. Commissioner of Taxation* (2004), the taxpayer converted a motel into strata units for residential accommodation. These strata units were sold and the question arose whether the sales were for a new residential property, and CRP, i.e. a taxable supply; or a second hand residential property, i.e. an input taxed supply. The Court ruled the sales of the strata units were new residential, but not CRP. Therefore, the consequence was to include GST in the selling price since the units were a taxable supply with a characteristic of new residential premises; however, from the purchasers perspective they were acquiring an input taxed supply and therefore, unable to obtain GST credits. This decision instigated the Commonwealth to remove the requirement of the “period of occupation as a relevant determining factor for commercial residential property”, and introduced retrospective

legislation from 1st July 2000 clarifying that supplies involving properties such as serviced apartments and strata units leased to hotel operators remain input taxed.

ECC Southbank Pty Ltd

On the 31st July 2012, the Federal Court handed down the decision on ECC Southbank Pty Ltd as trustee for Nest Southbank Unit Trust v. Commissioner of Taxation. This matter related to the GST application of accommodation provided to students. The complex was a shared accommodation, comprising of apartments, studios, common area, and used by students who attended different institutes, with no students from the actual campus where the accommodation existed. The complex was serviced with a 24 hour on site reception desk; similar facilities to a hotel accommodation with a reception and concierge desk.

The issues related to the leasing of the entire complex from one taxpayer to another, plus the second leases to the students provided by the second client. The occupants were given “quite enjoyment” of their room and the right to “exclusive possession” of their portion of the premises. In other words on similar par with tenant rights. The Federal Court deemed that accommodation which is the “principal place of residence” for an individual, does not prohibit the supply to be classified as a CRP (i.e. a taxable supply). In conclusion, the Federal Court accepted the complex was a CRP. This decision impacts on long-standing complexes, where the property investor will charge a GST inclusive amount for the occupation of the premises. Also, property investors purchasing newly constructed complexes will receive the benefit of claiming the GST credits on the purchase price of the complex. In response, the Australian Taxation Office has replaced Goods and Services Tax Ruling (GST Act) 2000/20, with the draft ruling Goods and Services Tax Ruling (GST Act) 2012/D1; and Goods and Services Tax Ruling (GST Act) 2012/3 which relates to rulings for care facilities and retirement villages. To add to this intricacy, on-campus university residential colleges are always excluded from being CRP, however, the Southbank Court case differed because the owners did not house any students from their campus!

South Steyne Hotel Pty Ltd

The court case South Steyne Hotel Pty Ltd v Commissioner of Taxation (2009) highlights this issue where after the Marana court case, the new interpretation of residential premises was considered. South Steyne purchased a hotel complex with management rights arrangements with two separate legal entities. One entity owned the individual lease agreements and the second entity owned the reception area, offices, parking and provided services similar to hotel arrangements for guests, which included valet parking, cleaning, laundry, and room service.

In 2006, the premises were converted to strata title, with planning restrictions imposed. The Federal Courts decision highlighted that even though a property could be considered CRP as a whole, an individual apartment within the complex was not necessarily treated in the same manner. Therefore, the Federal Court concluded that an individual apartment (due to the Strata Title conversion), could not be considered CRP. So prior to the conversion of Strata, occupants in this building would have paid rent inclusive of GST (i.e. a taxable supply), and after the strata conversion their rent would be GST exclusive (i.e. input taxed supply). This unfair application of GST adversely impacts on the occupants, who are caught up in the GST interpretation of the CRP classification. However, property investors are keen to take advantage of the benefits associated with taxable supplies.

CONCLUSION

This research paper discussed the various applications of GST for CRP and residential premises, supplemented with a selection of court cases highlighting the different outcomes and issues for the property investor. The importance of the CRP classification is linked to the benefits for the property investor, with regards to claiming the GST credits on acquisitions. However, little consideration has been afforded to the occupant of these premises who is required to pay a GST inclusive amount of rent.

Nevertheless, the aim of the research was to question the rationale for including GST on CRP. Therefore, is the GST inclusion necessary for CRP? The answer is straightforward:

1. Property Investor – Yes, main benefit is to claim the GST credits
2. Occupant – No, cannot claim the GST credits which are included in the rental amount.

Hence, in comparison to an input taxed supply, the property investor has an advantage, and the occupant is disadvantaged. This inequity requires further consideration: *Why classify CRP as a taxable supply?* And this notion is the very essence to where a possible solution might exist. The recommendation is to introduce a subdivision within the CRP classification, namely the recognition of *Mixed Use*.

It is proposed that a CRP classification should have mixed use with both a taxable supply AND an input taxed supply applicable, depending on the status quo of the occupant. For example, if the occupant of a CRP nominated the complex as their main place of residence, this nomination would allow the occupant to pay rent as an input taxed supply and therefore there would be no GST included in the rent. The property investor would then be required to pro-rata the GST claimed on acquisitions relating to the complex, taking into consideration the mixed use of input taxed supplies and taxable supplies. This suggestion would allow the occupants of CRP to enjoy a similar cost of rent with occupiers of premises which are classified as input taxed supplies. Additionally, the introduction of the pro-rata calculation for the GST credits claimed by the property investor of CRP, would position all residential property investors in the same playing field with regards to the GST credits claimed on acquisitions.

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3. Goods and Services Tax Ruling, draft 2012/D1
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2. ECC Southbank Pty Ltd as trustee for Nest Southbank Unit Trust v. Commissioner of Taxation (2012) FCA 795
3. South Steyne Hotel Pty Ltd v Commissioner of Taxation (2009) FCAFC 155