

15 June 2023

Tax Technical – Public Consultation
Inland Revenue Department

By email: public.consultation@ird.govt.nz

Re: PUB00389 Goods and Services Tax – Unit title body corporates – IS and fact sheets

1. The New Zealand Law Society Te Kāhui Ture o Aotearoa welcomes the opportunity to comment on the above draft Interpretation Statement (IS) and fact sheets.
2. This brief submission has been prepared with the assistance of the Law Society’s Tax Law Committee.

Content of the draft Interpretation Statement

3. The analysis of the GST treatment of insurance payments received by a unit title body corporate (UTBC) in paragraphs 131 to 133 of the draft IS does not address key issues arising in respect of the application of section 5(13) of the Goods and Services Tax Act 1985 and would benefit from a more fulsome consideration. For example:
 - a. Section 5(13) applies only to the extent that the insurance payment “... *relates to a loss incurred in the course or furtherance of the registered person’s taxable activity*” (emphasis added). Under the Unit Titles Act 2010, the UTBC is required to insure the complex and, to that end, the Unit Titles Act deems the UTBC to have an insurable interest in the owners’ units. Where, however, an insurance payment is received in respect of damage to the owners’ units, it relates to a loss incurred by those owners (who have suffered a diminution in the value of their units), rather than a loss incurred by the UTBC. Arguably, section 5(13) does not apply to deem a supply to have been made to the UTBC in these circumstances. The draft IS should address this point.
 - b. Section 5(13) does not apply where the insurance payment is made by an overseas insurer who did not charge GST on insurance premiums invoiced to the UTBC, or elected to zero-rate those insurance premiums for GST purposes. The draft IS should note this.

Minor drafting points

4. The discussion in the draft IS and the accompanying fact sheet “GST registered Unit Title Body Corporates” on supplies of manager’s accommodation repeatedly refers to a member supplying an apartment to the UTBC (which in turn supplies the apartment to the manager). However, it is clear from the analysis and the examples included in that draft IS that it is the right to occupy the apartment that is being supplied, not the apartment itself. The draft IS and the fact sheet should be amended to correctly identify what is in fact being supplied by the member to the UTBC, and by the UTBC to the manager.
5. There is a typo in paragraph 13 of the draft IS. The sentence “*In some unit title developments, are accessory units that “belong with” a principal unit*” should read “*In some unit title developments, there are accessory units that “belong with” a principal unit.*”

6. I trust these comments are of assistance. Should you have any questions or wish to discuss this feedback, please contact Aimee Bryant (aimee.bryant@lawsociety.org.nz).

Nāku noa, nā



Caroline Silk
Vice President