

JERSEY'S GOODS AND SERVICES TAX (GST) LAND & PROPERTY

This leaflet is one of a series produced by the States of Jersey Income Tax Office to explain various aspects of Jersey's new Goods and Services Tax (GST).

It is intended principally for the guidance of property developers and owners.

Whilst care has been taken in its preparation, readers are advised to consult the Goods and Services (Jersey) Law 2007 and the GST Regulations for authoritative text. In cases of conflicting interpretation the legislation takes precedence.

What is this leaflet about?

This notice explains how transactions involving Land and Property are treated for GST.

Part 1 deals with those transactions that are zero rated for GST, and the treatment of 'share transfers'.

Part 2 deals with all other supplies that are standard rated for GST, and contains details of some specific types of transactions.

Who should read this leaflet?

You should read this leaflet if you make, or intend to make, supplies of any interest in land, property, buildings or civil engineering works.

Part 1: Zero rating and 'share transfers'

1. Zero rating

1.1 The scope of zero rating

The GST law concerning the Zero rating of supplies of construction and the sale of dwellings is contained in Schedule 6, Goods and Services (Jersey) Law 2007. Paragraphs 1 and 2 explain in full when a supply of land and property can be zero rated for GST and are reproduced at **Annex A**.

All references in this leaflet are to the Goods and Services (Jersey) Law 2007 (as amended) as it applies at 1st January 2014.

The following supplies of land and property are zero rated for GST:

- **Supply of a dwelling**, by sale or lease (but note the exceptions in Schedule 6, paragraph 1(3)). GST is not therefore chargeable on sale or let of a dwelling, except where the let is for less than 3 months or there is a restrictive covenant on occupation by the lessee. (See below for further information).
- **The grant of a major interest (freehold, or leasehold exceeding 9 years) in land, if at the time of the grant -**
 - (a) the land (or relevant part) is subject to planning permission under the Planning and Building Jersey) Law 2002 for the construction of a dwelling(s), or of a building intended solely for use for a relevant residential purpose; OR
 - (b) there is on the land (or relevant part) a completed building that is a dwelling(s), or solely for use as a relevant residential or relevant charitable building

The extent of the land that is zero-rated when so supplied is that on which the building stands and its curtilage. So, for example, a garden surrounding a house is within the curtilage, but a paddock next to the garden is not. In cases of doubt, contact the GST Helpdesk.

This zero rating does not apply to the grant of a major interest in a part of land to the extent that that part consists of goods, other than building materials, that were incorporated in that part for the purpose of making that grant, Schedule 6 (2) (1B).

- **Services, and building materials supplied with building services, supplied in the course of constructing a dwelling or building for a relevant residential or charitable purpose** (but note the exceptions in Schedule 6, paragraphs 2 (1A) (1B) (2) and (6)).
- **Goods incorporated into dwellings restriction on the reclaim of input tax-**

Under Article 39A the input tax on the supply or importation of goods are excluded from the normal credit of input tax under Article 34 if-

The goods are not building materials and they have been incorporated into any part of that building or its site and the person constructs the building or effects the works for the purpose of making a supply that falls into the following categories:

the sale, transfer or lease of an interest or right over (of a major interest) in a dwelling or building for a relevant residential or charitable purpose or;

the supply by share transfer of a dwelling and any associated parking.

Unless a supply of land and property falls within the criteria for zero rating it is subject to GST at the standard rate. However for share transfer of properties, see Section 2 below.

A "dwelling" has the same meaning as that given under the Planning and Building (Jersey) Law 2002, chapter 22.550.

1.2 “Relevant residential or charitable” buildings

A “relevant residential purpose” means use as –

- (a) a children’s home or other institution providing residential accommodation for children;
- (b) a home or other institution providing residential accommodation with personal care for persons in need of personal care by reason of old age, disability, past or present dependence on alcohol or drugs, or past or present mental disorder;
- (c) a hospice;
- (d) residential accommodation for students or school pupils;
- (e) residential accommodation for members of any of the armed forces;
- (f) a monastery, nunnery or similar establishment; or
- (g) an institution that is the sole or main residence of at least 90% of its residents,

except use as a hospital, prison or similar institution or as an hotel, inn or similar establishment.

A “a relevant charitable purpose” means use by a charity –

- (a) otherwise than in the course or furtherance of a business; or
- (b) as a village hall or similarly in providing social or recreational facilities for a local community;

1.3 Garages

The sale or let of garages or parking spaces in conjunction with the sale or let of dwellings for permanent residential use is also zero rated use providing:

- the garage or parking space is reasonably near to the dwelling; **and**
- the tenant takes up both the lease of a dwelling and the lease of a garage from the same landlord.

In these circumstances the garage forms part of the domestic accommodation.

See section 5 below for further information about garages and parking.

1.4 Repairs, extensions and alterations to dwellings

All work of repair, extension, enlargement and alteration to an existing dwelling is outside zero rating and chargeable to GST at the standard rate.

An existing dwelling is one where any part of the building exists above ground level. The conversion of a non dwelling to a dwelling can still be zero rated.

1.5 Registration

From 10 December 2009, if you are not already registered for GST, you will not become liable to register for GST simply because you sell a capital asset that is land or a building. The value of the sale is excluded from your taxable turnover for GST registration purposes (paragraph 1(4) of Schedule 1, GST Law 2007, refers).

2. Service charges on dwellings

2.1 The basic position

Service charges relating to the upkeep of common areas of an estate of dwellings, or the common areas of a multi-occupied dwelling, are zero rated for GST so long as they are required to be paid by the leaseholder or tenant to the landlord under the terms of the lease or tenancy agreement. This is because the service charge is treated as ancillary to the main supply of zero rate domestic accommodation.

2.2 What if the landlord supplies additional services to occupants?

If the landlord makes a separate charge for un-metered supplies of gas and electricity used by occupants, it should be treated as further payment for the main supply of zero rated domestic accommodation.

Optional services supplied personally to occupants, such as shopping, carpet cleaning or painting a private flat, are standard-rated.

2.3 What if a managing agent provides services to occupants on behalf of a landlord?

A managing agent acting on behalf of a landlord can treat the mandatory service charges to occupants as zero rate, providing the agent invoices and collects the service charges directly from the occupants. However, any management fee collected from the occupants is standard-rated because it relates to the managing agent's supply to the landlord.

2.4 What if a tenant-controlled management company provides the services?

Occupants of an estate may form a tenant-controlled management company. Sometimes that company will purchase the freehold of the estate and engage a service provider to maintain the common areas and provide any necessary warden or housekeepers. Providing the tenant-controlled management company is bound by the terms of the lease to maintain the common areas of the estate (or provide a warden), and the occupants are invoiced by and pay the service charges directly to the service provider the service charges may still be treated as zero rate. However, any management fee collected from the occupants is standard-rated because it relates to the service provider's supply to the tenant-controlled management company.

3. Share transfer of property

3.1 Basic liability

The sale of shares in a company is exempt from GST; it falls under Schedule 5, Group 1(f) of the GST Law 2007. Consequently any GST incurred on the costs of making a supply of shares is not deductible as input tax on your GST Return. The booklet, "GST: Partial Exemption" contains further information should you make both taxable and exempt supplies.

There is an exception to this rule:- where the share transfer confers the right to occupy a dwelling this is a zero rate supply, if made on or after 1st January 2013.

3.2 New Developments

A typical share transfer development in Jersey follows a similar pattern to this example:

- A developer forms a 'project company', with the intention of constructing, for example, a block of apartments for that company;
- The developer supplies construction services to the 'project company'.
- The developer sells its shares in the 'project company' to the 'purchasers' of each apartment, a zero rate supply for GST.

So that the social objective of relieving the sale or lease of dwellings from a charge to GST is achieved, the following points are noted:

- The developer's supply of construction services to the 'project company' is zero rated (where there is no restrictive covenant placed on the shareholders' occupation of the property).
- The developer may also sell the completed building to the 'project company', again a zero rated supply.

In each case the developer is making a taxable supply and the input GST incurred on construction costs is deductible.

3.3 Share transfer of existing property

Where an existing property is sold by share transfer, this is an exempt supply for GST as what is being sold is shares in a company carrying the right to a property or part of one. While no GST is therefore chargeable, any input GST incurred on the costs of share transfer is exempt input tax and may not be deductible.

If the existing property is a dwelling then the zero rate will apply if made on or after 1st January 2013..

3.4 Land Transaction Tax

Share transfers of property are likely to be subject to Land Transaction Tax. Further information can be found on the Income Tax section of the States website, www.gov.je/TaxMoney.

Part 2: Transactions at the standard rate

4. The liability of a supply of land

4.1 What constitutes land?

For the purposes of GST, the term 'land' includes any buildings, civil engineering works, walls, trees, plants and any other structure or natural object in, under or over it as long as they remain attached to it.

4.2 How do I establish the GST liability of a supply of land?

The grant, assignment or surrender of an interest in, right over or licence to occupy land is normally subject to GST at the standard rate, **except** where a supply falls within zero rating under Schedule 6, paragraphs 1 & 2, GST Law 2007; see section 1.1 above. **Hereafter, the term "non-qualifying" is used for all transactions that fall outside the zero rate.**

A **grant** is the sale of a freehold or other interest, or a lease or a letting of land.

An **assignment** is the transfer of a lease by the existing tenant to a new tenant.

A **surrender** is giving up an interest in land to the person who granted it to you. More information on surrenders can be found in paragraphs 10.3 and 10.4.

4.3 How do I make a supply of land?

You make a supply of land by making a grant of an interest in, right over or licence to occupy land in return for a payment or consideration. If you make free supplies of land you should read paragraph 7.6. A grant includes an **assignment** or **surrender**.

4.4 What is an interest in land?

An interest in land can be **legal** or **beneficial**:

- a legal interest is formal ownership of an interest in or right over land, such as a freehold or leasehold interest;
- a beneficial interest is the right to receive the benefit of any supplies made of the land, such as sale proceeds or rental income. A beneficial interest can be held and transferred separately from the legal interest in the land.

4.5 What are rights over land?

Rights over land include:

- A right of entry – this allows an authorised person or authority to enter land. For example you might allow someone to come on to your land to perform a specific task.
- An easement grants the owner of neighbouring land a right to make their property better or more convenient, such as a right of way or right of light.

- A way-leave is a right of way, for example a right of access to land across another's land, or to lay pipes or cables over or under another's land.
- Profits a prendre are rights to take produce from another's land, such as to extract minerals.

4.6 What is a licence to occupy land?

A licence is an authority to do something that would otherwise be a trespass. A licence to occupy land is created when the following criteria are met:

- the licence is granted in return for a consideration paid for by the licensee;
- the licence to occupy must be for a specified piece of land, even if the licence allows the licensor to change the exact area occupied, such as to move the licensee from the third to fourth floor;
- the licence is for the occupation of the land by the licensee;
- another person's right to enter the specified land does not impinge upon the occupational rights of the licensee; **and either**;
- the licence allows the licensee to physically enjoy the land for the purposes of the grant, such as to hold a party in a hall; **or**
- the licence allows the licensee to economically exploit the land for the purpose of its business, such as to run a nightclub.

For examples of supplies that are licences to occupy land see paragraph 4.7. For examples of supplies that are not licences to occupy see paragraph 4.8.

4.7 Examples of supplies that are licences to occupy land

The following are examples of licences to occupy land. This list is not exhaustive:

- The provision of office accommodation, such as a specified bay, room or floor, together with the right to use shared areas such as reception, lifts, restaurant, rest rooms, leisure facilities and so on;
- The provision of a specified area of office space to which the licensor or other people have right of access. For example, people occupying an adjacent area of space may be able to walk through the area or share storage space;
- The provision of a serviced office that includes use of telephones, computer system, fax machine, photocopiers and so on;
- Granting a concession to operate a shop within a shop, where the concessionaire is granted an area from which to sell their goods or services;
- Granting space to erect advertising hoardings or display stands on specific sites, such as display cabinets in hotel foyers;
- Granting space to place a fixed kiosk on a specified site, such as a newspaper kiosk or flower stand in a shopping arcade;
- Hiring out a hall or other accommodation for meetings or parties and so on. The use of a kitchen area, lighting and furniture can be included;
- granting a catering concession, where the caterer is granted a licence to occupy a specific kitchen and restaurant area, even if the grant includes use of kitchen or catering equipment;
- Granting traders a pitch in a market or at a car boot sale; or
- granting somebody the right to place a vending machine on your premises.

4.8 Examples of supplies that are not licences to occupy land

The following are examples of supplies that are not licences to occupy land:

- sharing business premises where more than one business has use of the same parts of the premises without having their own specified areas;
- providing another person with access to office premises to make use of facilities, such as remote sales staff away from home having access to photocopiers and the like at another office;
- allowing the public to tip rubbish on your land;
- storing someone's goods in a warehouse without allocating any specific area for them;
- granting of an ambulatory concession, such as an ice cream van on the sea front or a hamburger van in a park;
- allowing the public admission to premises or events, such as theatres, historic houses, swimming pools and spectator sports events. This includes admission to a series of events, such as a season ticket; or

- any grant of land clearly incidental to the use of the facilities on it, such as hiring out safes to store valuables or the right to use facilities in a hairdressing salon.

4.9 Freehold sales of new or part completed “non-qualifying” buildings

If you sell the freehold of a new, or partly completed, non-qualifying building your supply is standard-rated. Non-qualifying buildings are commercial buildings and include offices, warehouses, retail premises and factories. The date of completion is the date the notice required by bye-law 13(6) of the Building Bye-laws (Jersey) 2007 is given, or the date the building is fully occupied - whichever happens first.

4.10 Freehold sales of new or part completed civil engineering works

If you sell the freehold of a new or, partly completed, civil engineering work your supply is standard-rated. The date of completion is the date the certificate of completion is issued by an engineer, or the date it is first fully used - whichever happens first. If you sell the freehold of some bare land, but that land is ancillary to new or part completed civil engineering works, such as an incinerator or reservoir, you are making a single standard-rated supply.

4.11 Viewing accommodation

If you grant viewing accommodation, such as boxes at a sports ground, a parade, theatre, concert hall or other place of entertainment, your supply is standard-rated. This includes any accommodation that is intended for use by individuals or groups for viewing a sporting event, show or other form of entertainment, regardless of whether the entertainment is actually in progress when the accommodation is used. If you let an entire theatre, concert hall or other place of entertainment this supply is also standard rated for GST.

5. Parking

5.1 The basic GST position

If you provide facilities for parking vehicles your supply will normally be standard rated. There are exceptions to this general rule. This section will help you decide the liability of your supplies.

5.2 When do I make a standard-rated supply of parking facilities?

If you make a specific grant and the facilities are designed for, or provided specifically for parking vehicles your supply is standard-rated. The following are examples of standard-rated supplies of parking facilities:

- a letting or licence of a garage or designated parking bay or space. The letting of a garage is standard-rated even if it is not used for storing a vehicle;
- a right to park vehicles (including trailers) in, for example, a car park or commercial garage;
- a letting or licence of land specifically for the construction of a garage, or for use solely for parking a vehicle;
- a letting or licence of a purpose built car park. For example, a car park let to a car park operator;
- a letting of a taxi rank;
- the provision of storage for bicycles;
- the provision of storage for touring caravans; or
- a freehold sale of a new or partly completed garage, car park or car parking facility other than in conjunction with the sales of new dwellings.

5.3 Grants of parking facilities with dwellings

The sale or long lease (that is, exceeding 9 years) of a new dwelling together with a garage or parking space by the person constructing that dwelling is zero-rated. If a garage or car parking space is sold or let independently of a dwelling, it is

standard rated. If the new dwelling is holiday accommodation the supply of a garage or car parking space is also standard-rated.

The letting of garages or parking spaces in conjunction with the letting of dwellings also zero rated for permanent residential use providing:

- the garage or parking space is reasonably near to the dwelling; **and**
- the tenant takes up both the lease of a dwelling and the lease of a garage from the same landlord.

In these circumstances the garage forms part of the domestic accommodation.

Where a garage is let separately from the letting of a dwelling it cannot be zero rated for GST and is standard-rated. This is because there is no letting of domestic accommodation with which to associate the garage. This scenario may occur when a States or Parish tenant renting a dwelling and garage then decides to purchase the dwelling. The States or Parish retains the garage and continues to lease it to their former tenant. As the only supply is of a garage, and not domestic accommodation, it is standard-rated.

5.4 Grants of parking facilities with commercial premises

The supply of commercial premises together with parking facilities is treated as a single supply of the commercial premises, providing:

- the facilities are within or on the premises, or reasonably near to it; **or**
- the facilities are within a complex (for example, an industrial park made up of separate units with a 'communal' car park for the use of the tenants of the units and their visitors); **and**
- both lettings are to the same tenant by the same landlord.

As the supply of commercial accommodation is standard rated for GST, so is the supply of parking facilities.

6. Sports facilities and physical recreation

6.1 The basic GST position

If you let facilities for playing any sport or for taking part in any physical recreation your supply is standard-rated.

6.2 What is a sports facility?

Premises are sports facilities if they are designed or adapted for playing any sport or taking part in any physical recreation, such as swimming pools, football pitches, dance studios and tennis courts. Each court or pitch (or lane in the case of bowling alley or swimming pool) is a separate sports facility.

7. Other land transactions

7.1 Joint owners of land or buildings

Where more than one person owns land or buildings, or receives the benefit of the consideration for the grant of an interest in land or buildings, we treat them as a single person making a single supply for GST purposes.

If the joint owners are making taxable supplies above the registration threshold they will have to register for GST as a partnership, subject to the normal rules, even if no legal partnership exists. The joint owners may also request voluntary registration where the value of taxable supplies is below the registration threshold.

7.2 Compulsory purchases

If you are obliged to dispose of land or buildings under a compulsory purchase order you are making a supply for GST purposes. Unless your supply falls within the criteria for zero rating it is subject to GST at the standard rate.

If at the time of supply you do not know how much you will receive, there will be a tax point each time you receive any payment for the purchase.

7.3 Options to purchase or sell an interest in land or a building

If you grant someone the right to purchase an interest in your land or building within a specified time for a stated price you are making a supply of an interest in land. The person acquiring such a right is said to have a 'call option' as he can call on you to sell your interest in the land or building as originally agreed. The liability of your supply will be whatever the liability of the land or building would be if supplied at that time.

If you are granted the right to require someone to purchase your interest in the land or building within a specified time for a stated price you will have a 'put option'. It is the prospective purchaser that is making the supply, which will generally be standard-rated.

7.4 Recovery of rent from a third party

There are two common ways in which a landlord can recover rent from a third party. If you do receive payment from a third party you should still address any related GST invoice to the tenant to whom you have leased or let the premises. Your supply is still to the tenant, not the third party.

7.4.1 Rent recovery by the landlord

If a tenant sub-lets land or buildings to a third party and the tenant defaults on payment of rent to the landlord, the landlord may collect rent arrears from the third party. In turn the third party can reduce his rent payable to the tenant by the

amount he has paid to the landlord. If this happens the supply chain remains the same; there is a supply of the land or building from the landlord to the tenant and a supply of the land or building from the tenant to the third party.

7.4.2 Sureties and Guarantors

A surety or guarantor is normally party to any agreement between the landlord and the tenant. In the event that the tenant is unable to meet his liability to make the agreed periodic rental payments to the landlord then the surety or guarantor will make the payment on the tenant's behalf. However, there is no supply by the landlord to the surety or guarantor. The surety or guarantor will not be able to recover any tax paid.

7.5 What if I make free supplies of land and buildings?

If you transfer or dispose of land or buildings that form part of the assets of your business free of charge you may still be making a supply. You may also make a supply if you use the land or building, or make it available for anyone else to use, free of charge or for a private or non-business purpose. You **must** account for output tax on such supplies unless the land or building is zero rated within the meaning of Schedule 6, paragraphs 1 or 2, GST Law 2007.

If you transfer or dispose of such land or buildings, the value of the supply is the market value at the time of its disposal. If you retain the land or building but make it available free of charge, the value of the supply is the cost to you of making it available.

7.6 What if I transfer my business as a going concern?

If you are transferring land or buildings that are let to tenants or are in the process of being let, you should read Article 17, GST Law 2007, Transfer of a business as a going concern. Such a supply is outside the scope of the charge to GST, provided that where the vendor is GST-registered the buyer immediately becomes liable to be GST-registered (if they are not already). Please see the Information Sheet "Selling a business as a going concern".

7.7 What if I have land and buildings on hand when I cancel my registration?

If you cancel your GST registration because you are closing down your business or trading below the registration limits, some or all of the assets on hand (including land and buildings) may be treated as supplied by you when you deregister. You will have to account for GST on these assets if you previously claimed the input tax, unless the value is under £250. Schedule 2, paragraph 10, GST Law 2007, explains in detail how this may affect you.

7.8 What if the land or building includes fixtures?

If the fixtures are included with a building or land they are not treated as separate supplies for GST purposes. This means that their liability is the same as that of the land or building with which they are being supplied.

7.9 Stamp duty

The Judicial Greffe administers stamp duty. Any enquiry you have on liability to pay stamp duty, or on calculation of the amount payable, should be made to the Judicial Greffe.

8. Developers Agreements

8.1 Dedicating or vesting new roads or sewers

Agreements drawn up between developers, the States or Parish and water sewerage undertakers make provision for a wide variety of land, buildings and works to be provided, at the developer's expense, in connection with the granting of planning permission for the development.

If you, as a developer, dedicate or vest, for no monetary consideration:

- a new road; or

- a new sewer or ancillary works,

..... it is not a supply by you. No GST is chargeable to the States, Parish or sewerage undertaker.

The input tax you incur on the construction of such works is attributable to your supplies of the development that is served by the road or sewer. As your supplies of the land or buildings are taxable supplies then the input tax you incur on constructing the roads and sewers is recoverable according to the normal rules.

8.2 Transfers of common areas of estates to management companies

As a developer of a private housing or industrial estate you may transfer, for a nominal monetary consideration, the basic amenities of estate roads, footpaths, communal parking and open space to a management company that will maintain them. This is not a supply, but the input tax you incurred on the building costs is attributable to the supplies of the land and buildings of the development itself.

9. Mortgages

9.1 The basic position

If you mortgage your property, as security for borrowing money, you are not making a supply of that property.

9.2 What if my land or buildings are repossessed and then sold?

Sales of repossessed property take place in two ways:

9.2.1 Under a power of sale

If a financial institution, or any other person, sells land or buildings belonging to you in satisfaction of a debt owed by you, a supply by you takes place. If tax is due on that supply, the person selling the land or buildings is responsible for accounting for that GST (please see paragraph 9.4 for more information).

9.2.2 Foreclosures

If a person obtains a Court Order and forecloses on land or buildings belonging to you, there is a supply by you to that person of the land or building. However, it is possible that the land or building could be treated as an asset of a business that is transferred as a going concern. Please see the Information Sheet "Selling a business - transfer of a going concern" for details. If the land or building is subsequently sold the person foreclosing makes the supply.

9.3 What if my land or buildings are repossessed and then rented out?

A lender may repossess land or buildings, or appoint a receiver without foreclosing, where the land and buildings are rented out to tenants. If the rental income received by the lender is used to reduce the debt you owe, or to make interest payments due in respect of that debt, a supply by you to the tenant takes place.

10. Supplies between landlords and tenants

10.1 What if I pay an inducement to a prospective tenant?

If you pay an inducement to a prospective tenant for them to enter into a lease of non-qualifying land or property, the prospective tenant is making a standard-rated supply of services to you. The GST you incur on the payment to the tenant is attributable to the leasing of the land or building is your input tax. An inducement paid by a tenant to a third party to accept the assignment of a lease, or the grant of a sub-lease, is not consideration for the assignment or grant but is a standard-rated supply of services by the third party.

10.2 Rent-free periods

Rent is the periodic payment made by a tenant to a landlord and is normally the subject of a written agreement. Rent payments can be non-monetary, and can include costs incurred by the landlord under the agreement which are recharged to the tenant. This will include items such as service charges and rates where the landlord is the rateable person.

If you grant a rent-free period or a rental reduction to a tenant who agrees to do something in return, then you have both made and received a supply. Both supplies will be of equal value, but will not necessarily have the same GST liability. If nothing is done or received in return for the rent-free period then, so far as that period is concerned, no supply has been made.

10.3 What if I pay my tenant to surrender a lease?

If you pay a tenant or licensee to surrender any interest in, right over or licence to occupy land that is a supply to you by the tenant. It is taxable at the standard rate unless the property is on a dwelling or other building that is zero rated for GST.

10.4 What if I accept the surrender of a lease from my tenant?

If you accept the surrender of a lease in return for payment from the tenant (sometimes referred to as a 'reverse surrender'), your supply is standard rated unless the lease is on a dwelling or other building that is zero rated for GST.

10.5 Variations to leases

Some variations to leases simply alter one or more of the terms, such as permitting the building to be used for a purpose that was originally prohibited. Other variations to a lease are more fundamental, such as an extension to the length of the tenancy or an alteration to the demised area. The effect of this type of variation is that the old lease is treated as surrendered and a new lease granted in its place. Any consideration you receive for either type of variation is standard rated unless the lease is on a dwelling or other building that is zero rated for GST. However, where there is no consideration, no supply is seen as taking place.

10.6 Restrictive covenants

Restrictive covenants are placed on land to control its use. A typical restrictive covenant is one that forbids any development of the land. If you agree to give up a restrictive covenant in return for payment your supply will be standard rated unless the lease is on a dwelling or other building that is zero rated for GST.

10.7 Indemnity payments

Generally any payment that you, as a prospective tenant, have to make in order to obtain the grant of a lease or licence is part consideration for that grant. This is the case even if the payment is described as a reimbursement or indemnification of the landlord's costs. This payment attracts GST unless the building is a dwelling or other building that is zero rated for GST.

Many leases provide that an existing tenant shall make good any legal or other advisory costs incurred by the landlord as a result of the tenant exercising rights already granted under the lease. For example the tenant may be entitled to assign the lease, to sublet or to make alterations to the building provided that the tenant first obtains the landlord's consent. As a result the landlord may incur legal or surveyors fees. In these circumstances the reimbursement payments by the tenant to the landlord are consideration for the principal supply of the lease. If you have to make a payment to your landlord to obtain some additional right, it is consideration for the variation of the lease and is standard rated unless the lease is on a dwelling or other building that is zero rated for GST.

10.8 Dilapidation payments

The terms of a lease may provide for the landlord to recover from tenants, at or near the termination of the lease, an amount to cover the cost of restoring the property to its original condition. The amount is often agreed between the parties and may be based on a surveyor or contractor's estimate. A dilapidation payment represents a claim for damages by the landlord against the tenant's 'want of repair'. The payment involved is not the consideration for a supply for GST purposes and is outside the scope of GST.

11. Service charges on commercial buildings

11.1 What are service charges?

It is common for leases between landlords and tenants to lay down that the landlord shall provide, and the tenants shall pay for, the upkeep of the building as a whole. The lease may provide for an inclusive rental, or it may require the tenants to contribute by means of a charge additional to the basic rent. These charges are generally referred to as service charges, maintenance charges or additional rent.

11.2 What is the liability of leasehold service charges?

If, as a landlord or licensor, you provide services of a general nature to your tenants the service charges normally follow the same GST liability as the premium or rents payable under the lease or licence. For the service to be considered of a general nature it must be:

- (a) connected with the external fabric or the common parts of the building or estate, as opposed to the demised areas of the property of the individual occupants;
- and**
- (b) paid for by all the occupants through a common service charge.

11.3 What if I supply services to freehold occupants?

If you provide services to someone who owns the freehold of a building your charge is always standard-rated. This is because there is no continuing supply of accommodation that the service charge can be linked to.

11.4 What if I supply services to the occupants of holiday accommodation?

If you provide services to the occupants of holiday accommodation your supply is standard-rated.

11.5 Services provided by someone other than the landlord or licensor

If you are responsible for providing services to the occupants of a building in which you have no interest, your services will always be standard-rated as they are not part of the supply of the accommodation itself.

If your contract is to arrange for the services and to collect the service charge on the landlord's behalf as a managing agent, then your supply is to the landlord and not to the occupants. Your supply is still standard-rated.

11.6 Payments collected by a tenant for the landlord

If you collect payments from the other occupants for their share of the rent, rates and other costs, and you pass the full amount of these to the landlord, you should treat the sums collected from the other occupants as disbursements. Please see the GST Information Sheet on disbursements.

11.7 Other charges made by landlords to tenants

As a landlord you may make charges to your tenants for items other than general services. These charges tend to fall into three categories:

- further payment for the main supply of accommodation, and follow the liability of that supply;
- for supplies other than accommodation (standard rated); or
- disbursements (outside the scope of GST). Further information on disbursements can be found in the Information Sheet on them.

The rest of this paragraph outlines the GST treatment of some of the most common charges.

11.7.1 Insurance and rates

If you (the landlord) are the policyholder or rateable person, any payment for insurance or rates made by the tenants is further payment for the main supply of accommodation. If the tenant is the policyholder or rateable person, and you make payments on the tenant's behalf, you should treat those payments as disbursements.

11.7.2 Telephones

If the telephone account is in your name, any charge you make to tenants is payment for a standard-rated supply by you. This includes the cost of calls, installation and rental. If the account is in the name of the tenant, but you pay the bill, the recovery of this from the tenant is a disbursement.

11.7.3 Reception and switchboard

If you make a charge under the terms of the lease to tenants for the use of facilities that form a common part of the premises, such as reception and switchboard services, any payment you receive will be further consideration for the main supply of accommodation.

11.7.4 Office services

If you make a separate charge for office services, such as typing and photocopying, this is a separate standard-rated supply. However, if under the terms of the lease, there is one inclusive charge for office services and accommodation together, and the tenants are expected to pay for the services regardless of whether they actually use them, the liability of the services will follow that of the main supply of office accommodation.

11.7.5 Fixtures and fittings

Fixtures and fittings are regarded as part of the overall supply of the accommodation and any charges for them are normally included in the rent. However if you provide fixtures and fittings under a separate agreement your supply will normally standard rated.

11.7.6 Electricity, lighting and heating

If you make a separate charge for **un-metered** supplies of gas and electricity used by tenants, it should be treated as further payment for the main supply of accommodation. However, where you operate a secondary credit meter, the charges to the tenants for the gas and electricity they use are consideration for separate supplies of fuel and power. These supplies will be standard-rated.

11.7.7 Management charges

The charge raised by you to the occupants for managing the development as a whole, and administering the collection of service charges and so on, is further payment for the main supply of accommodation.

11.7.8 Recreational facilities

If the charges for the use of recreational facilities are compulsory, irrespective of whether the tenant uses the facilities, then the liability will follow the main supply of accommodation.

Annex A

GST Law 2007, SCHEDULE 6

ZERO-RATED supplies

1 Supply of dwelling

- (1) The following shall be zero-rated –
 - (a) the supply (whether by sale, transfer or lease (of any term)) of an interest in or right over –
 - (i) a dwelling, or
 - (ii) a building intended solely for use for a relevant residential purpose or solely for use for a relevant charitable purpose;
 - (b) the supply of a licence to occupy a dwelling or such a building

- (c) the supply by issue, transfer or receipt of, or any dealing with any share, ownership of which by virtue of the articles of association of the company in which the share is held, confers a right to occupy a dwelling;
 - (d) the supply, by issue, transfer or receipt of, or any dealing with, any share, ownership of which by virtue of the articles of association of the company in which the share is held, confers a right to use a parking facility associated with a dwelling (but not the right to occupy the dwelling) provided that-
 - (i) the issue, transfer or receipt of, or dealing with, the share conferring the right to use a parking facility occurs at the same time as the issue, transfer or receipt of, or dealing with, a share that confers a right to occupy the associated dwelling, and
 - (ii) upon the issue, transfer or receipt of, or dealing with the shares described in clause (i), the recipient of the right to use the parking facility is also the recipient of the right to occupy the associated dwelling.
- (2) However, the supply of food or linen, or any cleaning service, as part of or together with the supply of an interest in, right over, or licence to occupy, a dwelling or such a building, shall not be treated as included in a supply referred to in sub-paragraph (1).
- (3) Sub-paragraph (1) shall not apply to the supply of an interest in, right over, or licence to occupy, a dwelling, if –
- (a) the relevant sale, transfer or lease prevents the recipient from occupying the dwelling continuously during the term of the interest or right;
 - (b) the relevant interest, right or licence does not extend to the recipient's occupying the dwelling continuously during the term of the interest, right or licence;
 - (c) the term of the interest, right or licence is less than 3 months; or
 - (d) a restrictive agreement or covenant, or permission under the Planning and Building (Jersey) Law 2002, prevents the use of the dwelling as the recipient's principal private residence.
- (4) Sub-paragraph (1) shall not apply to the supply of an interest in, right over, or licence to occupy, a building intended solely for use for a relevant residential purpose or solely for use for a relevant charitable purpose, if –
- (a) the relevant sale, transfer or lease prevents the use of the building solely for the relevant residential purpose, or solely for the relevant charitable purpose, continuously during the term of the interest or right;
 - (b) the relevant interest, right or licence does not extend to the use of the building for the relevant residential purpose, or the relevant charitable purpose, continuously during the term of the interest, right or licence;
 - (c) the term of the interest, right or licence is less than 3 months; or
 - (d) a restrictive agreement or covenant, or permission under the Planning and Building (Jersey) Law 2002, prevents the use of the building solely for the relevant residential purpose, or the relevant charitable purpose.”.

2 Zero-rated supplies of land, services or material

- (1) A grant of a major interest in, or in any part of, land shall be zero-rated if at the time of the grant –
- (a) the land or the part is subject to permission under the Planning and Building (Jersey) Law 2002 for the construction of a dwelling or a number of dwellings, or of a building intended solely for use for a relevant residential purpose; or
 - (b) there is on the land or the part a completed building –
 - (i) designed solely as a dwelling or a number of dwellings, or
 - (ii) intended solely for use for a relevant residential purpose or solely for use for a relevant charitable purpose,
 and the land or the part are within, or coterminous with, the curtilage of the building.
- (1A) In sub-paragraph (1)(b), the reference to “completed” in relation to a building is a reference to one or both of the following facts in relation to the building –
- (a) that every dwelling in the building is occupied by one or more persons living in the dwelling;
 - (b) that the notice required by bye-law 13(6) of the Building Bye-laws (Jersey) 2007 has been given in relation to the building work by which the building was constructed.”;

- (1B) Sub-paragraph (1) shall not apply to the grant of a major interest in a part of land to the extent that the part consists of goods, other than building materials, that were incorporated in that part for the purpose of making that grant. *"Introduced with effect from 1st January 2014"*
- (2) A supply of services (other than services of an architect, surveyor or any person acting as consultant or in a supervisory capacity) shall be zero-rated if the supply is in the course of the construction of a building –
- (a) designed solely as a dwelling or number of dwellings; or
 - (b) intended for use solely for a relevant residential purpose or a relevant charitable purpose.
- (3) A supply shall be zero-rated if the supply is to a person of –
- (a) materials; or
 - (b) articles, being builder's hardware, sanitary ware or other articles of a kind ordinarily installed by builders as fixtures,
- by a supplier who also makes to that person a supply of services described in sub-paragraph (2) that include the use of those materials or the installation of those articles.
- (4) The references in sub-paragraphs (1) and (2) to the construction of a building shall not include a reference to –
- (a) the alteration, conversion, enlargement, improvement, reconstruction or repair of an existing building; or
 - (b) the making of an extension of, or annex to, an existing building, being an extension, or annex –
 - (i) that provides for internal access to the existing building, or
 - (ii) of which the separate use, letting or disposal is prevented by a restrictive agreement or covenant, or by permission under the Planning and Building (Jersey) Law 2002.
- (4A) Despite sub-paragraph (4) –
- (a) the reference in sub-paragraph (1)(a) to the construction of a dwelling or number of dwellings includes a reference to the conversion of one or more existing buildings that are not dwellings into one or more dwellings; and
 - (b) the reference in sub-paragraph (2) to the construction of a building designed solely as a dwelling or number of dwellings, includes a reference to the conversion of an existing building that is not so solely designed into one that is so solely designed.
- (4B) For the purposes of sub-paragraph (4), but not for the purpose of sub-paragraph (4A)-
- (a) the references to an existing building include any part of a building that remains above ground level; and
 - (b) any works carried out on a site that includes such an existing building are to be treated as falling outside within sub-paragraph (4)(a) or (b) unless the existing building is demolished completely to the ground level. *"Introduced with effect from 1st January 2014"*
- (4C) For the purposes of sub-paragraph (2) sub-paragraph (4B) does not apply to sub-paragraph (4) if-
- (a) the construction of the building was started before the date on which sub-paragraph (4B) comes into force; and
 - (c) the supply of the services takes place within 2 years after that date. *"Introduced with effect from 1st January 2014"*
- (5) Sub-paragraph (1) shall not apply to –
- (a) the grant of a lease, being a grant that is not made for a consideration in the form of a premium in respect of the lease or of a first payment of rent due under the lease; or
 - (b) the grant of an interest in, or in any part of, a building designed as a dwelling or number of dwellings, or the grant of an interest in the site of such a building or of any part of such a building, if a restrictive agreement or covenant, or permission under the Planning and Building (Jersey) Law 2002, prevents the use of any of the dwellings as a principal private residence.”;
- (6) Sub-paragraph (3) shall not apply to the supply of –
- (a) finished or prefabricated furniture, other than furniture designed to be fitted in kitchens;
 - (b) materials for the construction of fitted furniture, other than of kitchen furniture;

- (c) domestic electrical or gas appliances, other than those designed to provide space heating or water heating or both; or
 - (d) carpets or carpeting material.
- (7) If all or part of a building is intended for use solely for a relevant residential purpose or a relevant charitable purpose –
- (a) a supply relating to the building (or any part of it) shall not be taken, for the purposes of sub-paragraph (2) or (3), to relate to a building intended for such use unless the supply is made to a person who intends to use the building (or part) for such a purpose; and
 - (b) a grant or other supply relating to the building (or any part of it) shall not be taken to relate to a building intended for such use unless, before it is made the person to whom it is made has given to the person making it a certificate in the approved form (or if no form has been approved, in any reasonable form), specifying that the grant or other supply (or a specified part of it) so relates.
- (8) If only part of a building is designed solely as a dwelling or number of dwellings or is intended for use solely for a relevant residential purpose or a relevant charitable purpose, a grant, or other supply, relating to the building or site of the building shall be treated as relating to a building so designed or intended in the proportion that the part bears to the whole.
- (9) Such a part or proportion shall be determined in accordance with any general direction that the Comptroller may make for the purposes of this paragraph, and, in the absence of such a direction, on the basis of what is reasonable and just according to the design or intention referred to in sub-paragraph (8).
- (10) For the purposes of this paragraph, a dwelling includes a garage constructed for occupation from the same time as, and by the same occupier as, the part of the dwelling for human habitation.

SCHEDULE 6 definitions

All definitions for Schedule 6 are contained in paragraph 1A. Those relevant to paragraphs 1 and 2 are:

‘grant’ includes assignment, transfer and surrender;

‘major interest’, in relation to land, means an interest that confers an exclusive right on the owner of the interest to enjoyment of the land (whether or not that right is conditional, deferred or present), but does not include a lease of land for a term of 9 years or less;

‘use for a relevant charitable purpose’ means use by a charity –

- (a) otherwise than in the course or furtherance of a business; or
- (b) as a village hall or similarly in providing social or recreational facilities for a local community;

‘use for a relevant residential purpose’ means use as –

- (a) a children’s home or other institution providing residential accommodation for children;
- (b) a home or other institution providing residential accommodation with personal care for persons in need of personal care by reason of old age, disability, past or present dependence on alcohol or drugs, or past or present mental disorder;
- (c) a hospice;
- (d) residential accommodation for students or school pupils;
- (e) residential accommodation for members of any of the armed forces;
- (f) a monastery, nunnery or similar establishment; or
- (g) an institution that is the sole or main residence of at least 90% of its residents,

except use as a hospital, prison or similar institution or as a hotel, inn or similar establishment;