



PROPERTY & BUSINESS LAWYERS

GST on Real Estate

Property Law Series

This Information is for the assistance of real estate agents.

Please call us if you have any questions on this topic or any other real estate issues.

On the 1st. of July 2000 the A New Tax System (Goods and Services Tax) Act 1999 (“the Act”) together with 24 other acts of the Commonwealth Parliament commenced which saw the launch of the GST system in Australia.

For the purpose of this short paper we will deal with GST and the new contract for sale of land.

Firstly, one should assume that all transactions attract GST. It is for this reason that it is imperative before contracts are exchanged a proper assessment is made of the person liable to pay the GST as to whether the particular transaction is a taxable supply. GST is a tax which is payable by the supplier (vendor) and if the contract does not specify that the price is a GST exclusive price and the supply is a taxable supply, then the vendor must remit 1/11th of the price to the Australian Taxation Office.

Secondly, one must consider what is a taxable supply.

A taxable supply is made if:

- (a) the supply is made for consideration;
- (b) the supply is made in the course or furtherance of an enterprise that is carried on by the supplier;
- (c) the supply is connected with Australia;
- (d) the supplier is registered, or required to be registered for GST.

It should be noted however that a supply is not a taxable supply to the extent that it is GST-free or input taxed.

GST-free supplies are set out in Div. 38 of the Act and include supplies of certain food, health, education etc. If a supply is GST-free, then:

- no GST is payable on the supply;
- an entitlement to an input tax credit for anything acquired or imported to make the supply is not affected.

Input taxed supplies are set out in Div 40 and include sales of residential premises, residential rents, financial supplies, etc.

If a supply is GST-free, then:



- no GST is payable on the supply;
- there is no entitlement to an input tax credit for anything acquired or imported to make the supply.

Supply is defined in the Act to include amongst other things “*a grant, assignment or surrender of real property*”.

An enterprise is defined in the Act as an activity, or series of activities, done:

- (a) in the form of a business;
- (b) in the form of an adventure or concern in the nature of trade;
- (c) on a regular or continuous basis. In the form of a lease, licence or other grant of an interest in property;
- (d) by a trustee of a fund that is covered by, Subsection 30-B of the Income Tax Assessment Act 1997;
- (e) a charitable institution or a trustee thereof;
- (f) by a religious institution; or
- (g) by the Commonwealth, State or a Territory, or by a body corporate, or corporation, established for a purpose by or under a law of the Commonwealth, a State or a Territory.

The philosophy of the new system is that prices should be inclusive of GST. This is desirable from a purchaser’s perspective. If however the price is quoted as GST exclusive then the contract will need to state that. If this is the case an analysis needs to be made as to whether or not the vendor is making a taxable supply before contacts are exchanged.

The contract should indicate whether any special GST rules apply which might make the transaction unusual. Special rules in real estate sales include:

- commercial residential premises (hotel, motel, caravan park etc);
- new residential premises (premises not previously sold as residential or have been created through substantial renovation etc);
- the margin scheme applies (the desired effect of this scheme is to ensure that GST is only payable on the value added after the commencement of the GST system, this is achieved by calculating GST not on the full sale price but on the difference between the tax inclusive sale price less the original purchase price or the valuation of any holding as at the 1st. July 2000).

The new contract for sale of land has a new section on page two which has choices to be made. Like the choices which existed in the previous contract if no choice is ticked or marked then the answer is “no”. In a majority of sales that you deal with the GST information will not need to be ticked or marked “yes”. If you propose to exchange the contract do not take it upon yourself to mark any of the choices, if they are not marked assume that the vendor’s solicitor/conveyancer has prepared the contract in accordance with instructions.



It may be appropriate to state in a letter to the vendor's solicitor/conveyancer when you call for a contract that you will assume that any contract supplied will have taken into account GST issues. Remember, GST is a tax on the supplier and on the sale of real estate the vendor is the supplier and he/she is your client.

Clause 13 of the contract now deals with GST issues. You may recall this clause related to building certificates in the previous version of the contract.

This paper only provides a brief overview of the core matters dealt with by the Act relating to GST and property.

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