

GST ON LAND TRANSACTIONS

The rules on GST affecting “land transactions” between GST registered parties changed on 1st April 2011. In the ordinary course of events a purchaser would receive a GST credit which would equate with the vendor’s output tax. In a significant number of transactions this was not happening and the Inland Revenue Department was missing out on the vendor’s output tax in situations where a secured creditor held a higher priority to the GST moneys than the IRD. Needless to say the IRD was out of pocket for considerable sums as a result of these transactions.

The rule now is that a compulsory zero-rating of land transactions between GST registered parties applies. The definition of “land” is widely defined in the legislation to include transactions where land is only a part of the deal. The new rules apply if the following conditions are satisfied.

- (1) The sale is from one GST registered person to another GST registered person who acquires the “land” with the intention of using it for making taxable supplies; and
- (2) The land is not intended to be used as a principal place of residence by the recipient or an associated party.

In contracts for the sale of a farm which includes a dwellinghouse which will be a principal place of residence for the purchaser, the supply of the dwellinghouse will constitute a separate supply under the GST Act. The farmland portion of the supply will be zero-rated under the CZR regime.

The time of settlement is the time that the test for satisfying the above conditions applies, and not the time of supply.

If the above conditions are not satisfied then the general GST rules apply.

Where a GST registered vendor enters into a contract for the sale of “land” it is incumbent on him/her to enquire whether the purchaser is GST registered and whether it is the purchasers intention to use the land to make taxable supplies and whether the purchaser intends to reside on the land. Most real estate forms now provide for that

information to be included in the contract. It is strongly recommended that if a GST registered vendor is negotiating a sale the sale price is expressed as “plus GST” so that if the transaction is not zero-rated the vendor can claim the GST from the purchaser.

These new rules will take time to become established. They are, however, compulsory unlike the “zero-rating” classification which parties could opt into. It is to be hoped that the government has closed the loop hole by which unscrupulous vendors could avoid paying GST.

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