

GST ON LAND TRANSACTIONS



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Next Issue: First Home Buyers —
Kiwisaver Contributions

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This is a follow up Newsletter to the one I wrote on 10 May 2011. From 1 April 2011 there were a number of amendments to the Goods and Services Tax Act 1985 ("the Act") involving land transactions. In our view GST on land transactions is very simple to understand as a result of these amendments.

Residential Property

I think there is a misconception by some people that GST does not apply to residential land transactions. This is not correct. Like any supplier of goods a developer or builder who deals in residential land must be registered for GST on the sale.

What dictates the value of the land of course is the market and not the vendor's GST registration status. Payment of GST is always the obligation of the supplier of goods (ie the vendor). What is exempt is where residential land is sold other than in the furtherance of the vendor's taxable activities. So where a developer or builder who deals in residential land sells their home that they use for their own residential purposes then of course this would be an "exempt activity". However if the developer or builder constructs a residential dwelling for on sale then clearly GST is payable in that situation because the residential property is sold in the furtherance of the developer's taxable activity.

Zero Rating

From 1 April 2011 in respect of an Agreement for Sale and Purchase of land where:

- (a) Both vendor and purchaser are registered for GST on "settlement day"; and
- (b) The purchaser is to use the land for the furtherance of its taxable activity; and
- (c) Will not be using the land for the purchaser's principal place of residence

then it is compulsory that GST on the transaction be "zero rated".

The time to assess the abovementioned criteria is at the time of settlement (s8B of the Act).

It is compulsory for the purchaser to furnish to the vendor a statement as to whether the purchaser is registered for GST, whether or not the land is being acquired for the furtherance of its taxable

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activity and confirming that the purchaser will not be using the property for residential purposes (s78F for the Act). You will now note on the latest form of the Auckland District Law Society standard sale agreement there is now a page which allows the parties to complete the GST information required by the Act.

This is excellent news for vendors because it removes the risk of when a vendor provides a zero rated GST invoice but retains the responsibility to account for GST and penalties as a result of the purchaser not meeting the criteria.

The vendor is entitled to rely on the statement furnished to it by the purchaser pursuant to s78F of the Act. The onus and risk then moves to the purchaser.

In our view this now simplifies matters for vendors and removes any risk that a vendor had pre 1 April 2011 for issuing a "zero rated" GST invoice on the sale of land.

Nominee Purchasers

There is also good news for vendors in respect of nominee purchasers. It is common for purchasers to nominate another purchaser to complete settlement. Pre 1 April 2011 the purchaser needed to be registered for GST at the time of supply which was the date that agreement became unconditional. The position could become problematic for purchasers who have not planned for GST prior to confirming the contract unconditional.

The rules provide that when addressing GST you are to look at the position of the payer of the goods (ie nominated purchaser) and the vendor's status as at settlement date. This means that a purchaser can nominate a third party to complete settlement and delay registration up until settlement. Again this is good news for all parties because it simplifies the process for nominated purchasers and minimises any risk to vendors.