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ZERO RATING OF GST NOW COMPULSORY ON CERTAIN LAND TRANSACTIONS

As of 1 April 2011 there have been a number of amendments to the Goods and Services Tax Act 1985 ("the Act") which effects the zero rating of land transactions. The essential features are:

- In respect of an Agreement for Sale and Purchase of land where:
 - (a) Both Vendor and Purchaser are registered for GST on **settlement day**;
 - (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 Purchasers 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 activity and confirming that the Purchaser will not be using the property for residential purposes. (S78F of 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.
- Should the Purchaser change its use of the land following settlement (i.e. uses it for the Purchasers place of residence) then the responsibility is on the Purchaser to account for GST on the transaction to the Inland Revenue Department. Again the risk on settlement is removed from the Vendor provided the Vendor has received the statement from the Purchaser which complies with S78F of the Act.

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. It is our recommendation that Vendors follow this simple process:

- Always ensure that the Agreement for Sale and Purchase is expressed "PLUS GST".
- The Vendor can always reserve its right that should the Purchaser supply a statement pursuant to S78F which complies with the abovementioned criteria then the Vendor can issue a "zero rated" invoice.
- Should the Purchaser change its status after the issue of the statement but before settlement if the contract is expressed "PLUS GST" then the Vendor can simply issue an invoice for the GST pursuant to the contract.
- Should the Vendor have no knowledge of the Purchaser's change in circumstances but is in receipt of a statement pursuant to S78F of the Act then the Act now says the Vendor can rely on that statement and therefore the Vendor is protected from any risk of an audit.

In our view the new amendments now simplify the process and protect Vendors from any risk. Should you have any doubts at any stage then please feel free to contact us as we are only too happy to assist.

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 the Agreement became unconditional. That 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 (i.e. Nominated Purchaser) and the Vendors 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.