HOODSWEENEY

Tax and property sales

Key takeaways from AICSA continuing professional development seminar

GST – what's taxable and what's not

While the principle of a broad-based 10 per cent tax on the consumption of goods and services is straightforward in theory, its application to property sales is complex due to a range of exemptions.

All businesses with a turnover of more than $75,000 per annum (or $150,000 for not-for profits) are required to register for GST with the Australian Taxation Office (ATO), and include the tax on their tax invoices and claim credit on their business purchases. This is done monthly, quarterly or annually via the lodgement of a Business Activity Statement (BAS).

Businesses can claim tax credits on their business purchases via a cash accounting method (on receipt of the sale; usually for businesses with a turnover of less than $2m) or via the accrual method for larger businesses (paying GST when the invoice is raised).

It's up to the individual/business claiming a tax credit to ensure that the supplier from whom they buy the goods or services is registered for GST and has a current Australian Business Number, otherwise you might be required to repay any tax credits on goods and services you've claimed.

GST is always payable on imports but not exports if they are exported within 60 days of production.

Some goods and services are input taxed or GST free. For example the sale of farmland is GST free if the land has been used for a farming business for five years immediately before the sale, and they buyer intends to use the land for farming business.

Subdivided land used as farming land for at least five years is also GST-free if it is permissible to use the land for residential purposes and the sale is made to an associate of the supplier without consideration or for consideration that is less than the market value of that parcel of land.

Businesses sold as a going concern are also GST-free provided certain conditions are met, such as the business assets are sold with the business, that the buyer is continuing to operate the business and this is agreed in writing. In this case, the land sold with the business is GST-free. A fully tenanted building sold with the business will also be GST-free and in some cases a partially tenanted building can be sold as a going concern. Both seller and buyer must be registered or required to be registered for GST.

Residential premises and financial supplies such as loans and shares are not subject to GST because they are input-taxed sales, although you do pay GST on brokerage fees, Louisa says.

Those buying or selling an existing residential property do not pay GST but newly constructed residential properties are usually subject to GST.

Those renting out a residential property should not charge GST and neither can they claim GST credit on any costs associated with renting out the property, such as management fees. This is another example of an input-taxed supply.

GST does apply to sales and leases of commercial properties where both parties are registered for GST, the forum heard although a commercial property leased and then sold may be treated as a going concern and therefore exempt from GST.

The Margin Scheme – what is it and when does it apply?

The margin scheme allows a seller to pay GST only on the margin or difference between the sale price and the original purchase price, enabling the seller to receive more profit on their sale.

This scheme only applies if the:

- property was bought before 1 July 2000
- property was not a commercial property
- there is an agreement in writing.

Properties purchased after 1 July 2000 may still be eligible to apply the margin scheme providing certain conditions are met.

Methods of calculating

The consideration method uses the difference between the selling price and the purchase price, not including any developments or other costs such as legal fees or stamp duty.

Under the consideration method, a vendor registered for GST who builds a house and sells it at a profit to someone not registered for GST could claim a GST refund on the development inputs but would only pay GST on the marginal difference between the purchase and selling price.

The valuation method can be used if the property was bought before GST was introduced in July 2000 and only if you hold an approved valuation. The margin here is the difference between the selling price and the valuation, usually at 1 July 2000.

It can be useful to explore both options and select the best method with the most effective tax outcome if the property was purchased prior to 1 July 2000.

The rules around using the margin scheme have slightly changed so clients selling property on or after 17 March 2005, can't use the margin scheme if the:

- person bought the property as fully taxable and the margin scheme was not used
- property was inherited from a person who could not use the margin scheme
- property was obtained from a member of the same GST group who could not use the margin scheme or if it was obtained as part of a GST joint venture.

The best way of looking at the margin scheme is that it is a continuous loop. You buy the property from someone who uses the margin scheme, you sell it and apply the margin scheme but if the property is sold without using the margin scheme, the next buyer cannot use it.

Clients selling the property after 29 June 2005 also need a written agreement to use the margin scheme.

Properties bought after 9 December 2008 are not eligible for the margin scheme if the vendor was not eligible, for example if it was a going concern or farming land.

However, the margin scheme can apply to part of the price of a building for example, if one part of a building is commercial and the other is residential, otherwise known as a mixed supply.

Capital Gains Tax – what is it and to whom does it apply?

The government taxes the difference between the purchase price and sale price of a property (the capital gain), including businesses, investment properties, holiday homes and hobby farms, shares in companies and units in unit trusts. Capital losses can be used to offset capital gains. Operating business losses can be used to offset capital gains however capital losses cannot be applied to operating business profits.

CGT applies to residents, regardless of where their assets are located in the world, and non-residents of Australia if these assets are connected to Australia.

Unlike GST, CGT must be paid at the contract date, not the settlement date.

Exemptions

The CGT is characterised by a range of exemptions, based on strict conditions. These include exemptions for:

- the principal place of residence (but you may be required to pay the CGT on part of the capital gain if you have rented the property out during part of the time you have owned, unless you move back in every six years even for six months)
- properties that have been held by small business or individuals for over 12 months (a 50 per cent discount)
- small businesses (for example if they have owned an active business asset for more than 15 years and are 55 years old
- retiring small business owners with a lifetime limit of $500,000
- inherited property. (The amount of CGT a beneficiary must pay, depends on whether the deceased bought the property before 20 September 1985 when CGT was introduced; when they died, whether it was used as a main residence or income-earning asset. The beneficiary must sell the property within two years of receiving it and cannot earn income from it).

Small business owners can defer paying CGT on a property sale if they are planning on buying a new business within two years.

Profit from selling subdivided land might be taxed as a capital gain or it might be treated as ordinary income if you are a property developer.

Property development

A personal property investor who renovates a property and makes a capital gain (if the intention on buying the property was to rent it out) may receive a 50 per cent discount on the capital gain.

Clients who intend to make a profit on property renovations pay income tax on the profit, not CGT.

Sales of commercial property are also subject to CGT exemptions and there are discounts for unit trusts but working farms (but not the main residence) are subject to CGT.

Withholding CGT for foreign residents – new rules

While some foreign residents might be eligible for some discount on CGT, depending on when they bought the property, proposed laws to come into effect in July 2016 will require a vendor buying a capital gains property from a foreign resident (with a market value of greater than $2 million) to withhold 10 per cent of the purchase price to the ATO.

Stamp duty – new rules

Recent changes in stamp duty rules have provided a breath of fresh air for those transferring businesses or shares after 18 June 2015. Commercial clients with multiple entities receive a discount of a third of stamp duty for commercial property from 7 December 2015 if the transfer occurs after that date. A two thirds reduction in stamp duty will apply to properties transferred after 1 July 2017 and stamp duty will be abolished on property sales from 1 July 2018.

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- taxation compliance and reporting
- budgeting, cash-flow forecasting and financial modelling
- merger, acquisition and divestment support
- succession planning
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- business coaching and performance improvement
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It's not just about making sure the numbers add up. We add so much more than that.

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