

GST

New GST rules are in effect that apply to business transactions involving land.

The new rules require a transaction that partly consists of land to be compulsory zero-rated if:

1. vendor and purchaser are both GST registered; and
2. the purchaser intends to use the land for the purpose of making taxable supplies; and
3. the purchaser or a person associated with the purchaser **does not** intend to use the land as a principal place of residence.

The changes have arisen as a result of phoenix GST fraud; where a developer of land claimed GST when there was no corresponding GST payment made by the supplier of the transaction because they had been deliberately wound up to avoid paying the GST.

If a transaction is a basic sale of a residential house between two private parties (not GST registered) the sale is not subject to GST.

If a vendor is registered for purposes unrelated to the land being sold (i.e. the vendor might be a builder who is GST registered for his business) GST still does not apply to the transaction because the relevant tax supply is the land/building transfer, and the vendor will not be GST registered for those purposes.

Farm sales will generally fall within the compulsory zero-rating regime. However, if a private dwelling is situated on the farm land then the zero-rating aspect will usually only apply to the farm portion of the sale and not the residential dwelling.

If a home office exists in the sale of a residential home, much will depend on how the office has been accounted for in the past. If a tax deduction was made on acquisition of the residential property for those office purposes, the sale of the dwelling could be subject to GST and compulsory zero-rating could apply.

In a commercial property transaction, it is critical for the purchaser to get the GST treatment exact.

The purchaser is obliged to make a GST statement to the vendor, which the vendor is entitled to rely on.

If a false statement is discovered pre-settlement, the purchaser could be liable to pay GST on the transaction to the vendor – which on a \$2million purchase is \$300,000.00.

If a false statement is discovered post-settlement, the purchaser could be liable to pay this GST to IRD.

The time of supply rules have also been changed.

GST obligations are now tested at the date of settlement, rather than at the time the agreement becomes unconditional. This creates new risks as the GST positions could change after the agreement becomes unconditional.

The best position for all parties could be to obtain warranties from the purchaser that the GST/CZR position on signing of the agreement will not change prior to settlement.

Special rules have also been introduced that allow the supply to take place between the vendor and nominee.

They allow the nominee to claim a tax deduction if it is GST registered at the time of settlement.

If any doubt arises throughout the course of one of these transactions a tax advisor or lawyer should be consulted.