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SESSION 1:

Session 4: Current GST issues

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Overview

- GST risk
- Tax invoices
- Applying the margin scheme
- GST-free supply and going concern
- Drafting GST clauses in contracts to address risk
- Other current GST issues



GST risk

- GST – supplies
- Any number of supplies under any one arrangement:
 - intangible – rights
 - tangible – goods, services
 - supplies in both directions – barter supplies etc
- GST operates independent of any contract or legal document
- GST treatment – dependent on:
 - status of supplier
 - type of supply made



GST risk

- Inherent tension – GST borne by supplier, but often passed on to the recipient
- Risk to both parties – identifying:
 - correct suppliers, recipients & their GST status – registered or required to be registered
 - all possible supplies (by supplier and recipient)
 - the appropriate GST treatment for each supply/type of supply
- Recipient's risk - whether supplier:
 - continues to be registered for GST
 - will remit money to ATO to enable ITCs to be claimed
 - will issue valid tax invoice to claim ITC



GST basics

- Required to be registered:
 - carrying on an enterprise (an activity, or series of activities; MT 2006/1)
- Registered – ABN register
- GST turnover meets the registration turnover threshold
 - \$75,000 turnover – most entities
 - \$150,000 turnover – not for profits
 - current and projected turnover



GST basics – 3 types of supplies

Supply	Example	GST Payable	Input tax credit
Taxable supply (default position)	<ul style="list-style-type: none">• New residential premises• Commercial leasing• Sale of commercial premises	Yes	Yes
Input taxed supply	<ul style="list-style-type: none">• Existing residential premises• Residential leasing• Financial supplies• Shares	No	No
GST-free supply	<ul style="list-style-type: none">• Going concerns or farmland• Food• Medical	No	Yes



GST basics – mixed supplies

- Mixed supplies – more than one type of supply under an arrangement
 - development stock for sale v stock for rent
 - commercial premises v caretaker's residence
- Composite supplies – dominant supply and ancillary supplies
- Apportionment (GSTR 2001/8)
 - arms' length basis
 - can use any fair and reasonable methodology
 - commonly used methodologies for property transactions:
 - area basis
 - rental income



Tax invoices and input tax credits

- GST – intended to be borne by end consumer
- Mechanism – input tax credits can be claimed on creditable acquisitions
 - tax period in which any consideration is provided for the acquisition or
 - if before consideration is paid, the period in which a tax invoice is issued



Tax invoices and input tax credits

- Tax invoices (section 29-70, GSTR 2013/1):
 - name, address and ABN of supplier
 - name, address and ABN of recipient (if supply value > \$1,000)
 - labelled 'tax invoice'
 - sufficient details to identify supplies, including taxable supplies, and value of each
 - date on which document was issued
 - must be provided within 28 days of request by the recipient
- Some flexibility to overlook oversights – sections 29-70(1A) and (1B)
- Make sure supplier's accounting systems include any manual tax invoices prepared by other departments, lawyers etc



GST – margin scheme

- Benefits of margin scheme and when to use
 - timing difference only that aids cashflow and reduces duty
 - ideally residential land only (ie where recipient not intending to claim input tax credit)
- Eligible land
 - look back through previous acquisitions
 - General rule – only applicable if previous supplies not subject to GST or if subject to GST then margin scheme applied



GST – margin scheme

- Agreements to apply margin scheme – examples:
 - default position, but ‘unless otherwise agreed in writing’
 - ‘if land is eligible for margin scheme to apply then parties agree...’
- Extension of time to agree (PS LA 2005/15)
- Documenting decisions
 - Form 24s – does GST apply to transaction and if so, whether margin scheme applies



GST – going concerns

- Identifying actual enterprises being carried on
 - business enterprise v ancillary leasing or licensing enterprises
 - suppliers of each
 - all things necessary for supply of each enterprise (eg supply business enterprise, then leasing enterprise)
- Implementing all things necessary prior to time of supply, eg lease
- Ensuring same enterprise continues and does not cease
- Div 135 clawback – Recipient becomes directly liable for GST if GST-free acquisition used to make input taxed supply – caravan parks, property developments, retirement villages



GST – drafting appropriate clauses

- Key way to address risk - documenting appropriate GST clauses
- **GST inclusive** clauses – unregistered recipients/private acquisitions
- **GST exclusive** clauses – registered recipients
- Warranties – usually inserted to ensure respective parties meet specific requirements of any GST exemptions or concessions
- Example: Going Concern warranties:
 - recipient warrants it is registered or required to be registered
 - supplier warrants it will:
 - supply all things necessary for continued operation of enterprise; and
 - carry on enterprise until day of supply



GST – drafting appropriate clauses

- Cascading clauses
 - **not registered for GST**
 - **if required to be registered**, then parties acknowledge and agree **GST going concern** (to extent things supplied are used and continued to be used in an enterprise)
 - notwithstanding going concern, parties acknowledge GST-free supplies – **farmland, water** etc
 - if for any reason a supply is a taxable supply then parties agree **margin scheme** will apply to supplies of eligible land



GST – drafting appropriate clauses

- To the extent any part of the land is used for residential accommodation then supply will be **input taxed**
- If **taxable supply** then:
 - Recipient to pay an amount equal to the GST amount in the same manner as the consideration
 - **Timing** of payment of GST amount – only when Supplier issues a **valid tax invoice**
- **General warranty** – if supplier issues a tax invoice for a taxable supply, then the Supplier warrants it will remit the GST amount to the ATO



GST – other current issues

- Div 129 adjustments – actual creditable purpose v intended purpose
 - stock developed for sale, but then used to generate rent
 - fair and reasonable apportionment required, eg:
$$\text{Sales income} / (\text{Sales income} + \text{rent income})$$
- Improving ATO's ability to collect GST revenue
 - GST withholding – new premises/potential residential land
 - extending estimates regime to cover GST
 - extending director penalty regime to cover GST



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Current GST issues

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