GST

GST is not simple but there are some easy steps you can take to help protect you and your clients. References to divisions and sections can be found in A New Tax System (Goods and Services Tax) Act 1999 (Cwlth).

GST alert – for settlements from 1 July 2018, purchaser to collect and pay GST to the ATO for some properties. See ‘Purchaser withholding’ on page 4 below.

Input taxed supplies

☐ Is the supply wholly input taxed?

No GST payable where the supply is input taxed. The recipient of an input taxed supply is not entitled to an input tax credit.

Existing residential premises are input taxed.

Supplies which are not input taxed include:

- new residential premises – see ATO information
- vacant land - see s.9-5 and ATO information
- commercial real estate
- commercial residential premises - see Division 87 and GSTR 2012/6 and ATO information.

See s.40-5 to s.40-130 and GSTR 2012/5.

Registration

☐ Is a party registered for GST?

You can check a parties’ GST status by searching on the Australian Business Register (ABN lookup) for the entities current details. You can search by name, ACN and/or ABN. Go to http://abr.business.gov.au/

If a party is a trustee you need to determine the GST status of the trust not the trustee.

☐ Is a party required to be registered?

Must register where turnover is $75,000 or more.

Turnover consists of current GST turnover and projected GST turnover and includes turnover from all activities and sources.

Sometimes the sale of an asset, such as land, may be considered the sale of trading stock where for example, the property was purchased for development and resale. The proceeds will be considered turnover and not capital. See GSTR 2001/7 about the meaning of turnover.
Land transactions

Do any of the following special rules apply?

☐ Going concern

The supply of all things necessary for the continued operation of an enterprise carried on until the day of supply. The supplier and recipient must be registered for GST purposes and agree in writing that the supply is of a going concern.

Where there is a nomination, the nominee and the supplier need to agree in writing that the supply is of a going concern.

If before settlement a tenant vacates the ATO considers that an entity’s letting enterprise continues when premises that have been let become vacant and the landlord immediately commences and maintains a marketing campaign to re-let the property on reasonable commercial terms.

For the sale of tenanted commercial premises pursuant to the standard contract of sale of real estate in Victoria:

- refer to general condition 13 relating to GST
- the contract must contain the words ‘going concern’ and ‘subject to lease’ in the relevant boxes in the particulars of sale
- see s. 38-325, s.135-5, s.135-10 and GSTR 2002/5.

☐ Margin scheme

On the margin scheme GST is calculated on the difference between the value of the land when acquired and the sale price on a subsequent sale.

For example, a home owner sells their existing home to a developer for $500,000. The developer then builds five townhouses on the land. The developer can use the margin scheme in the contracts of sale for the five townhouses. Assume each sold for $600,000 with a land value of $100,000 each. GST is calculated on $500,000 ($600,000 minus $100,000) and the GST is $50,000.

The margin scheme cannot be applied in certain circumstances. The most common is where the property was acquired through a taxable supply to which the margin scheme was not applied. See s.75-5(3).

Special rules relating to calculating the cost of acquisition apply in certain circumstances. See s.75-11.

An input tax credit cannot be claimed where the margin scheme applies and the supplier is not obliged by law to provide a tax invoice. See s.75-20 and s.75-30.

See also ATO information, rulings GSTR 2006/7, GSTR 2006/8 and Determination MSV 2009/1.

For the sale on the margin scheme pursuant to the standard contract of sale of real estate in Victoria:

- refer to general condition 13 relating to GST
- seek instructions as to whether the price is ‘plus GST’ or ‘GST inclusive’
- where instructed that the price is ‘plus GST’ the contract must contain the words ‘plus GST’ in the relevant box in the particulars of sale
o the contract must contain the words ‘margin scheme’ in the relevant box in the particulars of sale.

☐ Farmland

The sale of farmland is GST-free where a farming business has been carried on for at least five years preceding the supply and the recipient of the supply intends that a farming business be carried on, on the land.

See s.38-475 and 38-480 and ATO information.

For the sale of farmland pursuant to the standard contract of sale of real estate in Victoria:

o refer general condition 13 relating to GST
o the contract must contain the words ‘farming business’ in the relevant box in the particulars of sale.

☐ Substantially renovated residential premises

The sale of substantially renovated residential premises is usually a taxable supply. In summary substantial renovations means all or substantially all, of a building is removed or replaced.

See s.195-1 and GSTR 2003/3.

For the sale of a taxable supply pursuant to the standard contract of sale of real estate in Victoria:

o refer general condition 13 relating to GST
o seek instructions as to whether the price is ‘plus GST’ or ‘GST inclusive’

Where instructed that the price is ‘plus GST’ the contract must contain the words ‘plus GST’ in the relevant box in the particulars of sale.

☐ Mixed supply

Some supplies are mixed supplies for GST purposes, for example the supply of a dwelling and shop in the same building. This means GST is payable on the supply of the shop but not the supply of the dwelling.

The purchase price must be apportioned between the two components of the sale. The basis of the apportionment should be set out in the contract in a special condition. Apportionment can be on any reasonable commercial basis that does not skew the apportionment towards one component or the other. It can be on the basis of rents or council values or a written appraisal and/or sworn valuation from an estate agent or valuer.

See GSTR 2001/8

For the sale of a mixed supply pursuant to the standard contract of sale of real estate in Victoria:

o refer general condition 13 relating to GST
o seek instructions as to whether the price is ‘plus GST’ or ‘GST inclusive’ in relation to any taxable supply
o where part of the supply is a going concern the contract must contain the words ‘going concern’ in the relevant box in the particulars of sale
o where part of the supply is farmland the contract must contain the words ‘farming business’ in the relevant box in the particulars of sale
o your special condition should explain which part of the supply is taxable, input taxed, going concern, farming business as applicable.
Purchaser withholding

- **Is the property:**
  - new residential premises (not substantially renovated or commercial residential) or
  - potential residential premises, in a subdivision not previously sold as potential residential premises and does not contain any building that is used for a commercial purpose?

Before the vendor makes a supply of the property described above, the vendor must give the purchaser a notice stating that payment of GST must be made by the purchaser to the ATO. Penalties apply if the notice is not given.

The purchaser must withhold the GST payable and pay it to the Australian Taxation Office or give the vendor a bank cheque at settlement made payable to the Australian Taxation Office. See sections 14-250, 14-255 and 16-30(3) and schedule 1 of Taxation Administration Act 1953 (Cwlth).

- **Is there a special condition in the contract about the purchaser withholding the GST?**

Other considerations

- **Are the parties 'associates'?**
  
The supply to an associate is deemed to be at market value except where the recipient is registered for GST and would be entitled to a full input tax credit.

  See Division 72.

- **Is a party a bare trustee?**
  
  Special rules apply where an entity causes the trustee of real property (held on a bare trust for the entity) to transfer the property to a third party. For example, no GST is payable on a transfer by a retiring bare trustee to a new bare trustee.

  See GSTR 2008/3

The contract

- **Is GST properly dealt with in the contract?**
  
  When completing the particulars of sale in the LIV standard contract of sale:
  
  - consider whether ‘plus GST’ needs to be inserted
  - make sure the right boxes are ticked about GST.

Settlement

- **Has GST been accounted for on the adjustments?**
  
  See ATO ruling about adjustments: GSTR 2004/9 and GSTD 2006/3

- **Is a tax invoice required?**
  
  A tax invoice is required for all taxable supplies. In preparation for settlement make a written request for a tax invoice at least 28 days prior to settlement.

  See s.29.70 which gives a supplier 28 days to provide a tax invoice on request.

- **Does the tax invoice contain all relevant information?**
  
  For example, ABN of supplier and price for the supply.
More information

- A lot of information is available about GST on the LPLC website [www.lplc.com.au](http://www.lplc.com.au)

- ATO information:
  - [Common GST problems and property](#)

- Find the answer in the [LPLC GST FAQs](#). If the answer is not there please email Derry Davine from the [LPLC GST hotline - dc.davine@bigpond.com](mailto:dc.davine@bigpond.com)