



PD Law

TREATMENT OF GST IN A COMMERCIAL PURCHASE

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We have created this to guide to ensure buyers interested in purchasing Commercial Property know when GST is relevant to their type of Commercial Purchase.

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Common Terminology

Acquisition

For GST, a purchase includes the acquisition of goods or services such as:

- ✓ trading stock
- ✓ a lease
- ✓ consumables
- ✓ imports

Goods & Services Tax (GST)

GST is a broad-based tax on most goods, services and other items sold or consumed in Australia.

Liability

A liability can be defined as anything, however in the context of this guide, it related to commercial estate debt which includes loans, mortgages, accrued expenses etc.

Settlement

The process in transferring property from the seller to the buyer.

Margin Scheme

The margin scheme enables the GST on certain sales of land to be calculated on a concessional basis. It typically applies to new residential property developments.

Going Concern

Going Concern – Business transactions generally fall into the category of a going concern. Under the contract, you and the seller are agreeing that the sale of the business is effectively the supply of a Going Concern with the enterprise itself being the activity of the business. For the going concern exemption to apply the following criteria must be met:

the sale of the business is in fact the supply of a Going Concern (the “enterprise”);

- ✓ the enterprise will continue through to settlement.
- ✓ the buyer warrants they are registered or required to be registered under the GST legislation.

On this basis, there is no GST payable by the seller and the buyer is not entitled to claim any input tax credit (1/11th of the purchase price) in your next BAS return.

1. consideration is paid for the purchase (e.g money or some other payment)
2. both the seller and buyer have agreed in writing that the sale is a going concern (ordinarily a special condition)
3. all things necessary for the ongoing operation of the business ois supplied by the seller upon settlement.

This may also occur where a commercial property is subject to a lease, or a partially tenant building or complex, where the vacant units or shops are being actively marketed or closed.

Buying Property Exclusive of GST

In addition to the Purchase Price, you are required to reimburse the Seller for any liability for GST on the supply of the property.

Therefore, you must pay an additional 10% at settlement on the balance purchase price, calculated on any adjustments (e.g rates, water, rental adjustments), as it is adjusted under this contract. We will include this calculation in the final settlement statement.

You should liaise with your taxation advisor to ensure that:

1. you are adequately registered to entitle you to claim input tax credits in relation to this acquisition and going forward; and
2. you can claim this 10% in your next BAS return.

As your lawyers, will ask for a tax invoice at settlement.

The Seller must give to you at settlement a tax invoice.

We will enquire of the Seller (through the Seller's solicitor) whether GST will be payable by the Seller under this transaction and in that event, we will seek a GST invoice from the Seller's solicitor at settlement.

Buying Property Inclusive of GST

Under the contract, the Purchase Price includes GST. This means that you are not required to pay anything further beyond the balance Purchase Price at settlement.

If this is a taxable Supply, then as a matter of law:

1. GST will be payable by the Seller under this transaction, and
2. you are eligible to claim input tax credits in relation to this acquisition.

Buying Property Under The Margin Scheme

Under the contract, the Seller is selling the Property to you using the Margin Scheme (discussed further below). As such, the balance Purchase Price includes the Seller's liability for GST on the sale, and you are not required to pay anything further beyond the balance Purchase Price at settlement.

The Seller is required under the contract to adopt the margin scheme, and warrants that it can be applied. If any reason the Seller breaches this condition:

1. and you find out before settlement – you are entitled to terminate the contract prior to settlement;
2. and you don't terminate before settlement – you will be required to pay any GST that the Seller is required to pay (as a result of the margin scheme not being applicable), in exchange for a Tax Invoice from the Seller which will then entitle you to the benefit of an input tax credit for your next business return so that you can recoup this GST. You also have some other compensatory rights which we can advise you further on if the need arises.

What is the margin scheme?

The margin scheme enables the GST on certain sales of land to be calculated on a concessional basis. It typically applies to new residential property developments.

Normally, GST on a supply is calculated as 1/11th of the GST inclusive price, and a buyer can claim an input tax credit for the GST component.

Under the *margin scheme* the GST on the sale is calculated as 1/11th of the **margin**, and generally no input tax credit is allowed to the buyer. You should however take specific taxation advice on this issue in relation to your transaction if the margin scheme is being adopted and if you believe you are entitled to an input tax credit.

Very generally, the **margin** is calculated as follows:

1. if the Seller acquired the property before 1.7.2000, the margin is the increase in value since that date; and
2. if the Seller acquired the property after 30.6.2000, the margin is the difference between the sale Price under this contract, and the price the Seller paid.

Buying the Property as a Going Concern

Under the contract, you and the Seller are agreeing that the sale of this Property is effectively the supply of a Going Concern with the enterprise itself being the activity of leasing the Property or part of it to a third-party lessee.

For the going concern exemption to apply the following criteria must be met:

1. the sale of the property is in fact the supply of a Going Concern (the “enterprise”);
2. the enterprise will continue through to settlement;
3. you warrant that you are registered or required to be registered under the GST legislation.

On this basis, there is no GST payable by the Seller and you are not entitled to claim any input tax credit (1/11th of the purchase price) in your next BAS return.

Subject to some exceptions, if this is not the supply of a going concern, you will need to pay an amount equal to the input tax credit you would otherwise receive for GST payable on this purchase in exchange for a Tax Invoice from the Seller which will then entitle you to the benefit of an input tax credit for your next BAS return so that you can recoup this GST. Depending on whether the Seller has breached any warranties, you may also have some other compensatory rights which we can advise you further on if the need arises.

Buying the Property as Farmland

Typically, the sale of farmland attracts GST in principle. However, there are 3 situations in which the Seller is not liable for GST, the most common of which is where the Seller has been carrying on a farming business on the land for at least 5 years preceding the sale, and the buyer intends to carry on the farming business, on the land subsequent to settlement.

Under the contract, you and the Seller are agreeing that the sale of this property meets the criteria. The contract goes on to provide that if for any reason the farmland exemption provision does not apply, and if the Seller is required to remit GST on the sale, then you must reimburse the Seller. In this situation you would of course be entitled to an input tax credit in your next BAS return provided you are registered for GST.

DISCLAIMER :

It's important to note that every transaction and persons tax and GST position is different, it's always best to consult your accountant and solicitor

LAST WORDS

Don't put it off any longer

Although a will is only part of what you should consider, it is definitely the cornerstone of your estate plan, and if you do nothing else, then this is a great place to start.

From here

Call us. This is what we do.

ABOUT PD LAW

PD LAW is a dynamic, progressive law firm offering a broad range of business and personal legal services.

We're dedicated to ensuring:

- ✓ Our service is prompt
- ✓ Our advice is clear, straight forward and represents excellent value; and
- ✓ You're a client of ours for life.

We look forward to working with you.

The Usual Legal Disclaimer

Although we are very proud of our publications, and we put a lot of effort into ensuring they are correct and current, this information is intended as a general guide only. You need to take specific advice before relying on it.



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