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GST & Property – Vendor & Purchaser

This article discusses some of the key issues facing practitioners dealing with vendors and purchasers in respect of GST.

This paper discusses some of the key issues facing practitioners dealing with vendors and purchasers in respect of GST. These include:

- determining what will constitute a taxable supply of a freehold interest;
- use of the "going concern" and farmland exemptions;
- use of the margin scheme;
- the GST treatment of forfeited deposits and options; and
- the calculation of GST liability on settlement adjustments.

This paper aims only to highlight these issues. It is critical for practitioners to also take into consideration the income tax consequences and their interaction with the GST.

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WHAT IS A TAXABLE SUPPLY OF A FREEHOLD INTEREST IN REAL PROPERTY?

Under s 9-5 an entity makes a taxable supply if it makes a supply for consideration and:

- the supply is made in the course or furtherance of an enterprise that the entity is carrying on;
- the supply is connected with Australia; and
- the entity is registered or required to be registered; and
- the supply is neither GST-free nor input taxed.

Each of the terms emphasised in the above list are "threshold issues" that define a taxable supply. It is essential that these threshold elements be considered before delving into a complex analysis of the GST law, because if the threshold tests are not met, the more complex GST issues will become irrelevant.

Where a transaction meets the threshold tests, a supply by way of either lease or sale of:

- new residential premises, vacant land and commercial premises will be a taxable supply.
- commercial residential premises will be a taxable supply but in some instances the supply will be taxed at concessional rates (see Div 87).
- residential premises will be input-taxed.
- farmland and commercial premises sold as a going concern will be GST-free.

> **Practice note**
> Always check that the vendor is required to be registered and the supply is in the course or furtherance of an enterprise.

Entity

Section 184-1 gives the following exhaustive list of the business structures that are considered by the GST Act to be entities:

(a) an individual;

(b) a body corporate;

(c) a corporation sole;

(d) a body politic;

(e) a partnership;

(f) any other unincorporated association or body of persons;

(g) a trust; and

(h) a superannuation fund.

Registered or required to be registered

Before a vendor will be required to pay GST on the sale of property, they must either be registered for GST or required to be registered for GST. A taxpayer is only required to register for GST if they meet two criteria:

- the taxpayer is carrying on an enterprise; and
- the taxpayer's annual turnover exceeds the registration turnover threshold.

The operation of the turnover threshold is outlined in s 188-10, which states that the taxpayer will be required to register for GST when either:

- the current annual turnover is $50,000 or more and the Commissioner is not satisfied the taxpayer's projected annual turnover is below $50,000 ($100,000 for non-profit organisations); or
- the taxpayer's projected annual turnover is $50,000 or more.

Current annual turnover is defined in s 188-15 as the sum of the values of all supplies the taxpayer has made, or is likely to make (excluding GST), during the current month and the preceding 11 months. This amount does not include:

- supplies that are input taxed;
- supplies that are not for consideration (and are not taxable supplies under s 72-5 (refers to supplies to associates));
- supplies that are not made in connection with an enterprise that the taxpayer carries on;
- a one-off supply of a capital asset; or
- supplies made solely as a consequence of ceasing to carry on an enterprise or substantially and permanently reducing the size or scale of an enterprise.

“For the going concern exemption to apply the actual business process, rather than the capital structure, must be supplied”

(Refer to GSTR 2001/7 for a detailed discussion of these last two exceptions.)

Projected annual turnover is defined in s 188-20 as the sum of the values of all supplies the taxpayer has made, or is likely to make (excluding GST), during the current month and the forthcoming 11 months. This amount also excludes the five supplies set out above.

The current annual turnover and projected annual turnover threshold tests are to be determined on an objective basis, with an objective assessment considered to be one that a reasonable person could be expected to arrive at having regard to the facts and circumstances which apply to the enterprise at the relevant time. According to GSTR 2001/7, these taxpayers' assessments will be accepted unless the Commissioner has reason to believe that the assessment was not reasonable.

Capital asset

The term "capital asset" is not defined in the legislation and so acquires its ordinary usage, meaning an asset associated with the underlying business structure (such as land and buildings), as opposed to assets used in the course of the enterprise's business (such as inventory) (refer to GSTR 2001/7 para 31-36). These structural assets can include a factory, shop, office, fixtures and fittings, machinery and motor vehicles retained to produce income. It also extends to intangible assets such as goodwill.

It should be noted that the character of an asset may change over the period during which it is held and that the character of an asset must be determined at the time of expected supply.

HOW SHOULD THE "GOING CONCERN" EXEMPTION BE USED?

If the vendor and the purchaser are registered for GST, the sale of commercial property will be GST-free if it satisfies the following requirements (s 38-325):

- the sale must be for consideration;
- the purchaser must be registered or required to be registered for GST;
- prior to the completion of the sale, the vendor and the purchaser must agree in writing that the sale is of a going concern;
- the vendor must carry on the enterprise until the completion of the sale; and
- the vendor must supply the purchaser with all of the things necessary for the continued operation of an enterprise.

The purchaser need not carry on an enterprise after completion. However, if the premises are used to generate input taxed supplies (eg a developer converting a bed and breakfast business for use as residential premises), Div 135 will impose an increasing adjustment on the purchaser.

For the going concern exemption to apply the actual business process, rather than the capital structure, must be supplied. Where the vendor is a property developer and all of the units are vacant, what is being sold is not a going concern because it is not the seller's enterprise or part of the enterprise that is being supplied. Where some or all of the units are leased and the balance is actively being marketed for lease, it is considered that an actual business activity or enterprise is being conducted.

Refer to the new GSTR 2002/5 for further information on the "going concern" exemption.

THE FARMLAND EXEMPTION

The sale of farmland may be GST-free under Subdiv 38-0 where it has been farmed for the last five years and:

- it is subdivided and sold for below market value to an associate, pursuant to s 38-475; or
- the purchaser intends to carry on a farming business on the land, pursuant to s 38-480.

The important factors to consider in determining whether a supply of farmland is GST-free are:

- Rather than who has owned the land, how has the land been used? The requirement in s 38-480(a) will be satisfied, regardless of whom has been conducting the farming business during the previous five years.
- Does the purchaser intend to carry out a farming business on the land?The purchaser, however, does not have to carry on a farming business him or herself.

Case study – Subdivision 38-O

Will is a farmer who is registered for GST. He has owned his farm for 25 years. He uses two acres for residential purposes. In early 2002 he decides to retire and sell his farm. He is unable to sell it as a going concern and holds a clearing sale in April to sell all the plant and equipment, stock, and so on. Will sells the farmland to a property developer for $960,000 in May 2002. The market value of the farmland on 1 July 2000 was $850,000.

As the farm is not sold as a going concern, the sale of the farmland will not be GST-free under s 38-325. Further, as the purchaser of the farmland does not intend to carry out a farming business on the land, the sale is not GST-free under s 38-480. Does this mean that the sale of the farmland will be a taxable supply?

Note: Assume for the moment that Will is not entitled to cancel his GST registration on the basis that his projected turnover will now be less than $50,000.

As the two-acre homestead block constitutes residential premises, arguably this part of the transaction should be input taxed under s 40-65. Section 9-80 requires the consideration for the mixed supply of the homestead block and the farmland to be apportioned between the input taxed supply of the residential premises and the taxable supply of the farmland. Section 9-80 sets out the formula to be used to calculate the GST payable on that part of the sale that is a taxable supply.

Will can elect to use the margin scheme to calculate the GST payable on that part of the land that is subject to GST. However, s 75-10(2) provides that:

"The margin for the supply is the amount by which the consideration for the supply exceeds the consideration for your acquisition of the interest, unit or lease in question."

The ATO's response to issue 6.1.1 of the Property and Construction Issues Register makes it clear that the margin scheme can be used in this situation; however, s 75-10 does not allow Will to calculate GST under the margin scheme on the farmland only (he must calculate GST payable as if the supply was a composite taxable supply ie GSt must be paid on that part of the supply that relates to the residential premises).This scheme may, however, still give a better GST result than using the normal rules, particularly where the purchaser is unable to claim input tax credits.

If Will elects to use the margin scheme the calculation would be the total sale price ($960,000) less the original acquisition price (or the $850,000 market value as at 1 July 2000) of the whole property. Therefore, the GST liability would be $10,000 (1/11 x $110,000).

USE OF THE MARGIN SCHEME

Under the normal GST rules, the amount of GST payable on a sale of land is 1/11th of the sale price. Under certain circumstances, a vendor can elect to adopt the margin scheme (see Div 75) and reduce the GST to 1/11th of the difference between the GST-inclusive selling price and the vendor's original GST-inclusive purchase price.

When can the margin scheme be applied?

The margin scheme is available to any vendor who makes a taxable supply of a long-term lease, a freehold interest in land, or a stratum unit (s 75-5(1)) if that vendor originally acquired the property:

- pre-GST; or
- post-GST from someone who calculated their GST liability using the margin scheme; or
- post-GST but the original vendor did not have a GST liability (for example the vendor was not registered for GST or it was a private sale by the vendor).

It does not matter if the taxpayer acquired the property before, or after, the introduction of GST.

> **Practice note**
>
> It is important that when practitioners act for a purchaser who is registered for GST a special condition is included in any contract for a taxable supply of real property that deals with whether or not the vendor will be electing to use the margin scheme.
>
> This condition should be negotiated before the parties agree on the purchase price because if the vendor chooses to use the margin scheme (and the vendor is free to make the election right up until they lodge their relevant BAS, pursuant to s 75-20), the purchaser will not be entitled to claim an input tax credit in relation to the acquisition.

How is the margin calculated?

In broad terms, where a vendor is selling land acquired before 30 June 2000, the margin is the consideration received for the supply by the vendor less the greater of:

- the GST inclusive consideration paid when the vendor originally acquired the property; or
- the value of the land on the date set out in the table below.

For land acquired after 30 June 2000, the margin is the difference between the:

- consideration received for the supply; and
- consideration paid when the property was acquired.

How do you determine the valuation?

The valuation must be determined according to one of the following methods (see below for a summary of the requirements in respect of completed premises pursuant to Determination No. 1):

- the value as determined by the State Government or Territory Government

department as the unimproved value, the site value or the capital value of the land (eg as shown on a land tax notice);

- a valuation in writing by a professional valuer; or
- the price stated in a contract of sale exchanged or executed in an arm's length transaction prior to 1 July 2000 (see GSTR 2000/21 para 21).

For premises that were under construction as at 1 July 2000, the methods of valuation that may be used include (see below for a summary of the requirements in respect of partly completed premises pursuant to Determination No. 2):

- The value determined according to the costs of completion method. This involves the calculation of the costs incurred prior to 1 July 2000 as a percentage of the total costs of completion.
- A valuation in writing by a professional valuer (see GSTR 2000/21 para 29).

Are there valuation requirements?

Where a written valuation prepared by a professional valuer is required, the valuation must comply with any requirements determined in writing by the Commissioner (s 75-10(3)(b)).

The Commissioner has made two determinations on this issue, in respect of completed and partly completed premises. These determinations are annexed as schedules to GSTR 2000/21, and have been summarised with worked examples below.

Failure to comply with these written determinations will mean that the valuation received will not be an acceptable basis for calculating the margin. Consequently, an ATO auditor will be entitled to recalculate the GST liability by one of the other two methodologies. As this would usually increase the taxpayer's GST liability it is important that when a practitioner briefs a valuer to prepare a margin scheme valuation, the valuer is explicitly instructed to ensure their work complies with the Commissioner's determinations. This said, the ATO will usually allow a taxpayer an opportunity to.

> **Practice note**
> The ATO is auditing margin scheme valuations and has found significant non-compliance with the valuation methodologies set out in the two written determinations.

It is extremely important that where the vendor has chosen to apply the margin scheme, the margin scheme calculation and valuation be reviewed to ensure that the supporting documentation is sufficient and that the calculation is correct. Practitioners should refer to the latest ATO Fact Sheet on the margin scheme, which provides instruction on the appropriate corrective action if it is found that an invalid valuation was relied upon.

When must the valuation be obtained?

GSTR 2000/21 sets out the particular circumstances and the dates on which a valuation is required. In para 20 of GSTR 2000/21 the Commissioner states:

> "It is sufficient that the valuation is undertaken no later than the end of the tax period in which the GST payable on the supply is attributable."

This statement may amount to a requirement determined in writing by the Commissioner in accordance with s 75-10. If so, the vendor must obtain a valuation no later than the end of the tax period in which settlement occurs or risk the Commissioner setting aside the valuation and assessing GST on the difference between the selling price and original purchase price.

However, the better view is that the statement in para 21 does not amount to requirement determined in writing for the purposes of s 75-10, as it is less formal and inconsistent in style and approach to the two formal determinations that the Commissioner has promulgated in regard to valuation requirements. If this view is correct, then a taxpayer only need obtain a valuation prior to the date they lodge their BAS, and, if a valuation is not available by the lodgment date, the vendor could possibly self-assess using the original purchase price and lodge an amended BAS once the valuation is received.

> **Practice note**
> Before obtaining a margin scheme valuation. a taxpayer should make general inquiries to determine if a valuation of the property, as at 1 July 2000, will be greater than the original acquisition price or the last valuation given for council rates purposes. If not, the taxpayer should not proceed with the valuation as the best GST result will be achieved by using the original purchase price or rates valuation.
>
> Division 75 does not give the Commissioner discretion to reject a valuation that complies with the requirements in s 75-10. The only way for the Commissioner to challenge a valuation is to challenge it on the basis that it does not comply with the requirements set out in his determinations. As two valuers acting independently are unlikely to agree on the valuation, taxpayers could "shop around" to find a valuer who will arrive at a higher valuation.

Margin scheme valuation – completed premises

Where the premises being valued are completed premises, they may be valued using one of three methods as directed in the Commissioner's Determination No. 1. The valuation methods allowed are:

- certified professional valuation;
- pre-1 July 2000 contract price; and
- government valuation.

Certified professional valuation

A professional valuer must value the premises. The Commissioner has defined a "professional valuer" to mean:

- a member of the Australian Property Institute and is accredited as a certified practising valuer;
- a person registered or licensed to carry out property valuations under a Commonwealth, State or Territory law; or
- a person who carries on business as a valuer in a State or Territory where that person is not required to be licensed or registered to carry on a business as a valuer.

> **Practice note**
> Taxpayers may use an in-house employee who is a professional valuer.

In addition, the following guidelines must be complied with.

Completed subdivided lots or land and buildings

The property must be valued having regard to comparable sales data unless, in the opinion of the professional valuer, the use of this data is inappropriate. In these circumstances, another acceptable method such as summation, discounted cash flow or capitalisation may be used.

The supplier is the Commonwealth, State or Territory

- Where the Commonwealth, State or Territory supplies the property, and
- the supplier has held the interest, lease or unit since before 1 July 2000,
- there were no improvements on the land in question as at 1 July 2000, and
- there are improvements upon the land in question on the day on which the taxable supply takes place,
- the vacant land must be valued as at 1 July 2000 on the basis that the improvements had not been made at the time of sale.

The Commissioner has directed that the valuer should provide a signed certificate that specifies (see GSTR 2000/21):

- the qualifications of the valuer;
- a full description of the premises being valued;
- the valuation date;
- the date the valuer provides the valuation to the supplier; and
- the market value of the property including the valuation approach and the valuation calculation.

Pre-1 July 2000 contract price

This method may only be used when the vendor and purchaser are dealing at arm's length and the contract of sale was exchanged or executed prior to 1 July 2000. In this situation, the value of the property as at 1 July 2000 will be its sale price.

Government valuation

The third valuation method utilises the capital value or most recent (pre-1 July 2000) unimproved site value as determined by a State or Territory Government department for taxing or rating purposes. This means using the value shown in a land tax notice, notice of valuation or other similar document.

As commented by the Commissioner's ruling, this method will probably be of most assistance to land developers who have large holdings of unimproved land on hand at 1 July 2000.

Margin scheme valuation – partly completed premises

Where the premises being valued are partly completed, they may be valued using one of two methods as directed in the Commissioner's Determination No. 2. The valuation methods allowed are:

- certified professional valuation; or
- costs of completion method.

Certified professional valuation

A professional valuer (see above) must provide the valuation, having regard to:

- the cost to complete the partly completed premises;
- the market value of the completed premises; and
- the profit margin and holding costs attributed to the period on or after the valuation date.

Costs of completion method

Under this valuation, the value of the premises is a percentage of their sale price. The percentage is calculated as the costs incurred prior to 1 July 2000 (or the relevant valuation date) as a proportion of the total costs of completion.

Case study – Regina

Regina is a property developer registered for GST. She purchases vacant land for $420,000 in March 2000 for the purpose of constructing a four-storey shopping arcade that she will sell upon completion. Construction commences in June 2000 and is completed in April 2001. Regina sells the shopping arcade for $2.4 million in January 2002, and chooses to apply the margin scheme.

As the premises were only partly competed on 1 July 2000, Regina chooses to use the costs of completion method as set out in Determination No. 2.

The costs incurred prior to 1 July 2000 were $630,000 and total costs came to $1.8 million (construction costs $1,380,000; land $420,000). Therefore the relevant percentage is 35 per cent ($630,000 / $1,800,000 x 100).

The value of the property as at 1 July 2000, utilising the costs of completion methods is therefore 35 per cent of $2.4 million, which equals $840,000. Thus the margin is $1,560,000 ($2,400,000 - $840,000).

The amount of GST payable by Regina on the sale the shopping arcade is $135,909.10 (1/11 x $1,560,000).

The valuation method may only be used where the supply of the property occurs before 1 July 2005. After 1 July 2005, if the premises were only partly completed on the valuation date (usually 1 July 2000), then the certified professional valuation method must be used. It should be noted that this is most likely to occur in the subdivision of a large multi-stage property.

Practice note

The cost to complete calculation can be done by the taxpayer or his/her accountant. A professional valuer is not required under this methodology.

Making the calculation

In order to determine the costs incurred prior to the valuation date (usually 1 July 2000),

absorption costing should be utilised. The determination requires the inclusion of the following costs in the calculation:

- land at cost;
- direct construction costs;
- internal infrastructure costs (ie costs associated with development of that part of the unsubdivided land that ultimately will form a part of the subdivided lots);
- external infrastructure costs directly related to the property (ie infrastructure works required to be undertaken by the developer outside the area of subdivision);
- in the case of stratum units, the costs of completion will include the costs of developing the common property.

Costs that should not be included in the calculation are:

- holding costs such as rates and taxes, or interest on borrowings to acquire or develop the property; and
- administrative costs that cannot be directly related to the subdivided land or finished premises.

The Commissioner has provided a number of detailed worked examples in GSTR 2000/21, which demonstrate how the costs of completion method should be applied to different types of property developments. One of these examples is extracted below.

Case study – Residential subdivision

A land developer, who, on 1 July 2000, is registered for GST, acquired the freehold interest in four hectares of undeveloped land on 13 September 1986 for development, subdivision and sale. The developer subdivides this land into a residential estate of 30 allotments. The development includes the provision of services and facilities.

At 30 June 2000, the costs incurred are:

	$
Land at cost	1,150,000
Legal fees	50,000
Design fees	60,000
Local government fees	20,000
Site administration expenses	20,000
Earthworks	200,000
Total	1,500,000

The total actual costs of completing the development and getting the allotments ready for sale is $2.5 million. The percentage of completion is 60 per cent (1,500,000/2,500,000).

The allotments are of a uniform area but are sold for varying sale prices, reflecting their positions on the estate. The GST-inclusive sale prices are:

	$
15 allotments, each	100,000
10 allotments, each	125,000
5 allotments, each	150,000
Total	3,500,000

The valuations of the allotments as at 1 July 2000 are:

	$
$100,000 allotments	60,000
$125,000 allotments	75,000
$150,000 allotments	90,000

The GST payable under the margin scheme on each of the 15 allotments sold for $100,000 is calculated as follows:

Margin = GST inclusive sale price – value at 1 July 2000

= $100,000 – $60,000

= $40,000

GST payable = 1/11 of $40,000.

The margin and the GST payable on the other allotments are worked out in the same way.

WHAT IS THE GST TREATMENT OF FORFEITED DEPOSITS AND OPTIONS OVER PROPERTY?

Forfeited deposits

It is the usual practice in property transactions that the person who is obliged to pay money lodges with the other party a deposit as security for the performance of the payer's obligations. The deposit can be made in a variety of ways:

- provision of a bank guarantee or insurance bond
- direct payment to a trustee; or
- direct payment to a vendor with no trustee arrangements.

Division 99 will apply to the deposit, meaning that attribution will not occur until settlement, when the deposit is applied as consideration. The ATO takes the view that Div 99 will still apply even if the deposit is paid to the property developer, and the developer can apply this money as he sees fit.

The ATO does not consider that a bank guarantee or bond can be said to be part of the consideration for the off-the-plan acquisition of real estate, as these arrangements merely ensure payment of the deposit in the event of the purchaser defaulting on the underlying contract.

What happens if purchaser does default?

The GST treatment of a forfeited deposit turns on whether the forfeited deposit is properly characterised as:

- consideration received by the vendor for releasing a purchaser from an obligation to complete the purchase (this being a supply in accordance with s 9-10(2)(e)); or
- liquidated damages payable by the purchaser for breaching their contractual obligations to purchase the land.

The Commissioner relies on s 99-5 to say that the first construction is correct, as this construction amounts to a supply and will trigger a GST liability in the tax period in which the deposit is forfeited (GSTR 2000/28 para 98).

However, a standard land contract would ordinarily provide that (in addition to the forfeited deposit) the vendor can look to the defaulting purchaser for any further loss that crystallises when the property is resold. It is also true that if the vendor is able to resell the property without sustaining any loss due to the first purchaser's default (after taking into account the time value of money, additional advertising and selling agent's fees, etc), the original purchaser can bring an action in equity to have the deposit refunded. (Refer generally to the law regarding relief against forfeiture.)

To the extent that GSTR 2000/28 and 2001/4 are in conflict, taxpayers should be entitled to rely on the later ruling.

Practice note

Not all forfeited deposits will be subject to GST; the basic conditions of s 9-5 must still be met. If the taxpayer is not registered for GST, or the receipt of the forfeited deposit is not in the course or furtherance of an enterprise carried on by the taxpayer, the forfeited deposit is not subject to GST.

One example is if a GST-registered plumber receives a forfeited deposit as a result of the

purchaser being unable to complete the purchase of the plumber's house, the forfeited deposit will not be subject to GST. This is because it is not received in the course or furtherance of an enterprise.

However, if the purchaser cannot complete the contract and the deposit is forfeited, the deposit would be subject to GST if the Commissioner's view of the law is correct, because surrendering contractual rights will not be an input taxed supply.

Options

GST will apply to an option fee where a GST-registered developer grants a call option to a potential purchaser and receives that fee.

The supply of a property by the owner to the purchaser is a separate supply to the original supply of the option. For GST purposes each must be considered and treated separately (GSTR 2000/11 para 26).

An implication of each supply being treated as a separate supply is that an option fee received by a vendor would normally be subject to GST, even if the supply of the property itself is not subject to GST. That said, s 9-30 provides that where a supply is GST-free or input taxed, then the supply of a right to receive that supply will be GST-free or input taxed, respectively.

In regard to taxable supplies, where the grantee exercises an option to acquire property from a vendor, the consideration for the supply of the property will not include the option premium, as the premium was consideration for the separate supply of a right to receive the supply of the property.

CALCULATING THE GST LIABILITY ON SETTLEMENT ADJUSTMENTS

In the Commissioner's opinion, some settlement adjustments have the effect of altering the consideration payable for the supply, as the amount owing "attaches" to the land and becomes a debt payable by the purchaser or allowed by the vendor. In this event, the GST liability will be fixed by reference to the amount that the purchaser pays for the land after the adjustments have been made. (Refer to Property & Construction Industry Partnership – Issues Register – Section 15.4.1 Sale of Real Property.) This is best explained by the following examples. Assume that settlement will occur on 15 April 2002 in each example.

Example 1 – Payment by vendor prior to the date of settlement

Council rates are due and payable in advance for the period to 30 September 2002, and have been paid by the vendor prior to the date of settlement.

In this event, the contract will usually require the purchaser to reimburse the vendor in respect of the period between the date of settlement and the end of the Council's rating period. This has the effect of increasing the consideration for the sale of the land. The amount payable by the purchaser is not in consideration for a second supply (release of an obligation to pay the rates), therefore GST will be payable on the amount of the adjustment.

Example 2 – No payment by vendor prior to the date of settlement

Water rates and usage charges are payable in arrears and were due on 28 February 2002. However, the vendor has not paid these rates prior to the date of settlement.

These charges relate to the period before 28 February and to a separate supply made to the vendor, by the relevant authority, during the vendor's occupation of the premises. The purchaser will usually withhold the amount due from the purchase price and pay the money to the water authority. In these circumstances, there is no adjustment to the consideration payable for the land, because the purchaser is merely applying part of the agreed purchase price to meet the vendor's pre-existing liability for water rates. Therefore, this situation has no GST consequences.

Example 3 – Debt due but not payable until after date of settlement

Sewerage charges are payable in arrears, are due on 30 June 2002 and will become the obligation of the purchaser when the charge is levied.

These rates partially relate to usage by the vendor in the period before settlement and partially relate to the purchaser's usage. However, on these facts the debt payable in regard to the vendor's usage has not yet crystallised. The Commissioner appears to argue that the supply made by the relevant authority to the vendor is not a separate supply, and therefore the adjustment merely has the effect of varying the consideration payable for the land and will consequently reduce the GST payable on the transaction. ◆

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