



Goods and Services Tax (GST)

Question 1

A client who is a not-for-profit organisation, registered as a Company for GST sold a block of land, zoned residential and not business, has to pay the GST portion of the funds from the sale. Is there any possibility that they are exempt from paying the GST?

Answer

Generally, if you are registered or required to be registered for GST, the disposal of a capital asset in Australia, in the course of carrying on your business, is a taxable sale and you are required to account for GST on that sale. This applies even if the asset was purchased before 1 July 2000 or the asset is sold to an individual who is not in business (a private sale). If you receive any payment (or other form of consideration) when you dispose of a capital asset, you must report an amount at G1 (total sales) on your activity statement for the relevant tax period.

Generally, you do not have to account for GST when you dispose of a capital asset if the asset is any of the following:

- Not a business asset – for example, your family car that has not been used in your business.
- Part of a business sold as a GST-free going concern.
- Residential premises – for example, a block of residential apartments (this does not apply to new residential premises or commercial premises).
- Farmland – the land must be land on which a farming business has been carried on for at least the five years before the disposal, and the purchaser must intend that the land will continue to be used for a farming business.

If you are an endorsed charitable institution, an endorsed trustee of a charitable fund, a gift-deductible entity or a government school (or a non-profit sub-entity of one of these organisations) and you dispose of a capital asset, the disposal will be GST-free if the payment or consideration you receive is:

- Less than 50% of the GST-inclusive market value of the asset, or
- Less than 75% of the amount you paid (or were liable to pay) to purchase the asset being sold. This is generally the original cost of the asset.

Question 2

We, as textile manufacturers and wholesalers, occasionally send goods offshore on behalf of our customers. The goods are fabric that we have made, which we then send on to Fiji etc. to be made up into garments. The garments are then shipped directly to the customer.

My question is, do we deduct GST on the goods sent to Fiji on behalf of our Australian customers?

Answer

Generally, items exported from the country do not have GST charged on them, however when they are shipped in, customs will usually assign a value and GST will be charged.

Question 3

We run a small business with turnover around \$70,000; we are not registered to charge GST yet. However, can we register anyway even if turnover is under the threshold simply to claim back the GST we pay on our supplies? If so, how do we do this, will this require lodgement of BAS, are we able to be reimbursed for GST but not be liable for any at the same time?

Secondly is profit made from day trading treated as income or capital gains?

Answer

Yes, you can register with turnover of \$70,000. Unfortunately, you cannot have it both ways, once you register you will be able to claim back credits on your purchases, but you will have to charge GST on your sales.

Registration can be done over the phone, or via paper forms. Once registered, you will be required to complete BAS's.

A genuine day trader will have their profits assessed as income, the ATO often reviews clients claiming to be day traders when they endeavour to offset losses from trading against other income.

Question 4

I would be pleased to receive your advice regarding GST on the following situation: -

- **Company A is invoiced for services inclusive of GST,**
- **Company B makes payment of the invoice and allocates expenses between Company A & B,**
- **Is company B able to claim GST or must the invoice be made out in the name of Company B in order for them to be able to claim?**
- **Company A & B are members of a Group that has not registered as a Group for GST purposes.**

Answer

In the event of an audit, the ATO usually wants to see that the GST credit is claimed in the name of the entity that appears on the Tax Invoice. This creates a lot of "in and out" GST transactions between entities and if possible should be avoided by grouping the entities for GST purposes.

Question 5

I have been advised by my finance broker that it will irrelevant soon that when you are on a cash basis for GST purposes and you finance a vehicle via a Hire Purchase or Chattel Mortgage, you can still claim the GST upfront. Is this correct?

Answer

Broadly this is correct, and the key date was 1.07.2012. Below we deal with hire purchase contracts entered into after 1.07.2012.

All components of the supply made under a hire purchase agreement entered into on or after 1 July 2012 are taxable regardless of whether the credit component is separately disclosed. Any associated fees and charges, such as late payment fees incurred under the terms of the hire purchase arrangement, will also be subject to GST.

A change to an existing hire purchase agreement entered into before 1 July 2012 that does not result in a new agreement is not affected by the new rules. That is, the supply of a separately disclosed credit component will continue to be an input taxed financial supply.

Hire purchase agreement not treated as a progressive or periodic supply

Do not treat a hire purchase agreement as a sale or purchase you make on a progressive or periodic basis. Treat a hire purchase agreement as a stand-alone sale or purchase in a tax period – so, the same rules apply as they would for any sale and purchase of goods under an ordinary sale agreement.

If you account for GST on a non-cash (accruals) basis

You can claim the full GST credit on your hire purchase agreement in the tax periods when either:

- you make your first payment
- if before making your first payment, a tax invoice is issued to you.

If you account for GST on a cash basis

For hire purchase agreements entered into on or after 1 July 2012, you may claim input tax credits upfront instead of waiting until each instalment is paid, in the same way as you would if you accounted for GST on a non-cash basis. As mentioned above, all components of the supply made under a hire purchase agreement entered into on or after 1 July 2012 will be subject to GST. You may claim one-eleventh of all components, including the credit component and any associated fees and charges which have been subject to GST under the agreement.

Example – hire purchase agreement entered into AFTER 1 July 2012

Albert Abattoir (Albert):

- Is registered for GST
- Uses quarterly tax periods for GST reporting.

Albert decides to buy a second freezer on hire purchase from Friendly, on the same terms as above, on 20 July 2012. Because the agreement was entered into after 1 July 2012, both the principal and interest component of the supply made are subject to GST.

The freezer is delivered on 7 August 2012 and Friendly notifies Albert that the principal component of the first instalment is \$550. This means that the credit component of the first instalment was \$120.

Albert claims a GST credit for the GST included in the price of the freezer and a GST credit for the GST included in the interest charged, because this is no longer a financial supply, even though the interest is separately disclosed.

Regardless of whether Albert accounts for GST on a cash or non-cash basis he can claim a GST credit of \$3,654.54 (one-eleventh of \$40,200) for the tax period ending 30 September 2012, as this is the period in which he pays the first instalment.

Under the new rules for claiming GST credits on hire purchase agreements entered into on or after 1 July 2012, entities accounting for GST on a cash basis may claim GST credit on a hire purchase transaction in the same way as if they accounted for GST on a non-cash basis.

Question 6

We have purchased computers in Australia for our business in New Zealand. The New Zealand business will pay this cost. How is the GST handled in this case?

Answer

Two Scenarios:

- An Australian resident company has purchased the computers and paid GST. This will be claimed back as a GST credit.
- If the invoices could be made out to the New Zealand Company, then no GST would be charged on the basis we are dealing with exported goods.

Question 7

A client has a Discretionary Trading Trust which is registered for GST. They also have a SMSF, which is not registered for GST. During the year, the trust paid the accounting fees of the SMSF, which had GST included. It is intended that this be brought to account in the SMSF as an in-specie contribution. Can the Trust claim an input tax credit on the accounting fee? If it can, would the contribution then be for the accounting fee net of GST?

Answer

The trust cannot claim an input tax credit because it did not incur the expense. For this reason and as a matter of practice, some Accountants keep the SMSFs fees low because of this and invoice a larger percentage of fees to the entity that is registered for GST.

Question 8

Our landlord passes on to us invoices for Council Rates and Water Rates. The council and SA Water invoices are addressed to the landlord. There is no GST on these invoices. She then creates her own invoices, addresses it to us and charges GST. Is this correct?

Example:

Council Rates = \$759.45 (no GST)

GST charged by Landlord = \$75.95

we are asked to pay \$835.40

Additionally, she passes on to us Business Insurance policies.

Again, the policy is addressed to her. This premium attracts GST.

Again, she creates her own invoice, addresses it to us and charges the following:

Policy = \$3715.00 (including GST)

GST charged by landlord = \$371.50

we're asked to pay \$4086.50

Answer

The GST you pay the landlord is claimed back as input tax credit when your accountant does the Business Activity Statement. But we appreciate your concern, particularly on the insurance policy and you should check the terms and conditions of your lease.

You may wish to inform your landlord that *you* will pay the insurance premium for \$3715. That way you can claim back \$338 as an input tax credit. The net cost is the same, but it may ease your firm's cashflow.

Question 9

My first question is about GST. When a business is required to register for GST, does GST need to be applied to health care products such as continence items? I know that it is required for nappies and baby products, but not sure about continence products?

Answer

Continence products are GST Exempt.

Question 10

My question is regarding asset disposal and acquisitions. If we were to consider replacing an asset for which finance is required, what are the taxation implications?

Answer

Assuming you are registered for GST: the sale of the old asset would require GST to be charged on its sale price. The GST on the new asset could be claimed, and its nett cost would then be depreciated.

Be careful with the type of finance used, a Chattel Mortgage allows the GST to be claimed upfront. Interest on the finance would also be tax deductible.

Question 11

This is my situation:

- **Our Strata Plan consists of a block of residential home units. The Strata Plan's current annual budget for running and maintaining the building is \$44,500 per annum.**
- **Due to major structural work required it will be necessary to raise a Special Levy of approximately \$37,000 which would increase our receipts to \$81,500 this year.**
- **As this levy will cause the funds received to exceed \$75,000 per annum is there an obligation for the Strata Plan to register for GST?**

Answer

It is likely you would be considered a “Non-Profit” for GST purposes, so you could get away from registering.

We have included an extract of a fact sheet on this matter:

A body corporate is a group of individual owners responsible for maintaining and administering property held in common, for example, a block of strata titled home units.

If you are a body corporate, for GST purposes, you are carrying on an enterprise. You must register for GST if:

- you are considered to be a non-profit body and your turnover is more than \$150,000 (turnover must include levies on unit owners)
- you are not considered to be a non-profit body and your turnover is more than \$75,000 (turnover must include levies on unit owners).

You may be considered to be a non-profit body if you do not have the intention to distribute interest income or profits from rental or other activities to your members.

Once registered for GST, the fees or levies you charge your members, for example, car parking or administration, will include GST.

You can also claim GST credits on purchases you make that relate to maintaining and administering the property held in common, for example:

- *electricity*
- *landscaping*
- *management*
- *cleaning*
- *repair and maintenance services.*

Question 12

What are the dates for PAYG withholding monthly to be paid to the ATO for this year? I have our accountant doing the BAS, what are the dates for lodgement when the accountant is preparing it?

Answer

There is no extension for the monthly PAYG, so 28 days within the end of the month for the quarterly BAS that includes GST and the last month's PAYG. There is a 14-day extension for Tax Agents on the 28-day time limit.

Note, an additional month is allowed for the December Quarter BAS due to seasonal factors.

Question 13

I would like to know if I would be better off by purchasing a Company vehicle (utility) by borrowing the money from the bank or financing it through the dealer. We can purchase the vehicle at a discounted price but it would have to be in my own personal name and not in the Company's name of which I am a Director. Would this have any impact on tax deductions?

Answer

The implications of purchasing the utility as Company Employer is that GST may be claimed as an Input Tax Credit on Purchase. In either case (Company v Individual) a complying logbook needs to be filled in for 12 consecutive weeks and you will have a fair idea on the intended business use. If it is overwhelmingly business, then FBT will not be an issue.

Note there are some circumstances where car benefits are exempt from FBT. For example, an employee's private use of a taxi, panel van or utility designed to carry less than one tonne, is exempt from FBT if their private use is limited to:

- Travel between home and work
- Travel incidental to travel in the course of performing employment-related travel
- Non-work-related use that is minor, infrequent, and irregular (for example, occasional use of the vehicle to remove domestic rubbish).

However, if there is little business use, you may wish to consider buying the vehicle in your own name.

Question 14

We are wondering whether the GST is claimable on the purchase of a vehicle to be used for the purpose of running a bookkeeping service which will involve travelling to different locations. The bookkeeper has an ABN, and we are wondering if this vehicle should be registered in her name or can it be jointly owned with logbook entries to verify business use?

Answer

The GST would be claimable on the vehicle to the percentage extent of the extent of the business use. This would be verified by a complying logbook to be kept for a continuous period of at least 12 weeks.

If the bookkeeper has a current ABN it should be purchased in her name – ensure the bookkeeper is also registered for GST.

Question 15

A freight/courier company includes on their invoice a charge for fuel levy. The total amount including the fuel levy then has 10% GST calculated. Is it correct to calculate GST on the fuel or is that a tax on a tax?

Answer

Most transport companies' price with a range of add-ons with nearly all charging a fuel levy.

This should be charged as a percentage of the pre-tax price of the total invoice. If companies quote a fuel levy after GST this is illegal, and you should query it.

Question 16

One of my Pty Ltd (non-GST registered) clients bought a block of land and built eight residential houses. These have been rented out for around 2 ½ - 3 ½ years. (under the 5 year or more continuous period).

I had on several occasions (email and verbal) advised my client that if any of these houses were sold that GST was applicable as per GSTR 2003/3. In addition, the GST Act provides that where residential premises are sold after five or more years of being rented continuously, they are not new residential premises and the sale, therefore, is an input taxed supply. An entity that is intending to rent out the residential premises is not entitled to claim input tax credits in respect of construction and acquisition costs of those premises.

Unknown to me my client sold all eight houses between January 2013 – June 2013 for around \$3.4 million. It was only after I queried a realtor rental income statement that said rental refund that I put the question to my client and was advised of the sale.

After many emails and phone calls over a three-month period was, I given Settlement Statements to account for the sales? It has been a little like being part of a police/ spy movie whereby I was given information not on a need-to-know basis but on a you ask and I will answer (maybe/eventually) basis. I was also told by my clients that no GST or CGT applied as none of the monies were paid. However, my insistence on documents and reasons as to why not paid

revealed that all the monies were received before 30 June 2013 with most going into other related entities bank account and two of the payments being deposited into a new account that had been created for this entity.

Bottom line: 2 x blocks bought for around \$1 million again (as per sales) I only have Settlement Statements no Offer and Acceptance or Contracts to Buy.

Have had many disputes with my client as he claims to have a contact at the ATO, a relative at one of the big four accounting firms and of course friends that they all seem to say (according to my client) that I am wrong. It reminds me of a newspaper daily comic I saw where Andy Capp was seen talking to around four separate people as he walked down the street, always with a frown. After speaking to the vicar he started to walk home with a smile on his face. The vicar made a comment to the effect "If you ask enough people the same question eventually someone will tell you what it is you want to hear."

Bottom line, my opinion is GST is payable on sale of \$3.4 million. I know what the GST on building development costs as I had recorded all the purchases. In many cases I had seen the actual invoices in others the client told me what the payments were for and if they included GST.

In the absence of any other information, I believe that:

1. That the Margin scheme will not apply as it seems that neither block was purchased under the margin scheme.
2. The taxpayer's claim that no GST is applicable as his company is not at the moment registered for GST has no basis.
3. The whole sale is subject to GST less a claim made for any input tax credits.

Can you please advise if you can see any other scenario? My client does not want me to apply for a ruling.

Answer

Your three contentions are correct.

The question has been published in full because it is at once entertaining (I remember Andy Capp!) and contains so many issues.

Question 17

Does GST get applied to on-charge invoices from one entity to another entity regardless of if original invoice item was GST free? Input taxed or GST included, assuming no agency relationship e.g. Company A receives an invoice from supplier for purchase of water of \$100 which is GST free. Company A then on-charges to Company B the cost of the water of \$100. Does Company A on-charge this at \$100 GST free or \$100 plus GST?

Answer

If it is classified as a GST free supply, it should retain its character through various entities.

Question 18

My mother in-law has had advice from an accountant that she will need to pay GST on land she owns in Yeppoon QLD that has a house on it, even though it is a private sale. I do not think this is correct, and unless it is because the sale may be for over 1 million dollars. I cannot see how GST would be applied, or CGT for that matter as was purchased pre 1985. It is not her PPR, and it has been a rental for a number of years.

Answer

Here is the key issue, is your mother registered or required to be registered for GST purposes? If your mother has registered for GST, then GST may need to be charged on the sale which the purchaser can claim back if they are conducting an enterprise.

Question 19

If a person operates a plumbing business as a sole trader, providing both services and trading of supplies, what tax accounting should they use cash or accrual? The income from the services is relatively the same to income from sales.

Answer

Normally for simplicity the cash method is used which would usually conform with their “cash method” registration for GST.

Question 20

If we pay an invoice addressed to an employee and not our Company is there any implications for GST or tax deductions purposes? The expenses are always 100% business expenses (hotel accommodation etc.) and we prefer to pay directly instead of the employee paying and then reimbursing them.

Answer

By relieving the employee of the liability to pay the invoice you are still effectively reimbursing them.

Question 21

Is there GST on donations?

Answer

A gift/donation is not subject to GST. No GST as there is no tax invoice.

Question 22

Our client runs a small day spa business. Gift cards are able to be purchased for a nominal value (i.e., \$50, \$100 etc.) which can be used against the cost of a treatment at a later point in time. Our question surrounds the issue of recognition of income/GST (i.e., at what point in time should the business declare the ‘sale’ for both income tax and GST purposes?):

1. When the gift card is originally purchased; or
2. When the card is actually utilised by the recipient at a later date?

We have reviewed two rulings being GSTR 2003/5 and GSTR 2003/12 but have been unable to obtain a ‘clear’ answer on the matter.

Answer

Income Tax - Until the services are performed it is “unearned income” under the Arthur Murray principle. Therefore, you do not recognise the income until the gift card is redeemed.

GST - Broadly speaking if you sell a voucher for its stated monetary value and the holder is entitled to redeem it for goods or services up to that value, you do not account for the voucher on your activity statement until it is redeemed.

Question 23

A physiotherapist providing GST free treatments does not charge GST for oils bandages etc. used during treatment. Is he allowed to claim GST on his BAS for said bandages, oils etc. or are they considered input taxed?

Answer

The GST input tax credits may be claimed.

Question 24

I have recently taken on a client who runs a sanctuary for injured kangaroos. He receives unfettered and unsolicited donations which he can spend on the development and upkeep of the sanctuary as he wishes. Is this treated as GST Free as it would for a ‘not for profit’ or is it taxable supply as he has his own Pty Ltd Company?

Answer

He could form an incorporated association with likeminded people under the relevant state act to clearly separate this venture from his business activities. NFP's can earn \$150,000 before GST becomes an issue.

Other issues could include having the charity registered under the relevant state act and ensuring the compliance requirements of Australian Charities and not for Profits Commissions (ACNC) are met, refer to www.acnc.gov.au.

Donors may expect a tax deduction for their kind donations, and it is recommended the organisation's eligibility for being a "deductible gift recipient" be explored with the ATO.

Question 25

An employee (also a director) of our consulting business (discretionary trust with corporate trustee), has purchased a new motor vehicle for himself to use in the course of his consulting activities. He signed a contract in his personal name and the Tax Invoice is also in his personal name. The finance (chattel mortgage) is in the Company Name ATF the Trust.

Can the trust claim the depreciation on the vehicle and claim the GST credit also, even though the name on the invoice is the employee/director? I understand that other expenditure items that are expensed (not capitalised) like airfares, hire car, tools, office supplies, that are purchased in an employee's name (employee's name on the tax invoice) can be claimed in the trust business accounts. Thanks for your assistance.

Answer

I think you will find that the car is registered in the name of the Company (as Trustee) and that is why the finance company has allowed the chattel mortgage.

This is the key: who is the legal owner of the car?

In all likelihood a car yard will be happy to issue an amended tax invoice to reflect the true commercial situation.

It is not a normal employee reimbursement because the act refers to expenses. By taking responsibility for the terms and conditions of the Chattel Mortgage, the Company (as Trustee) has in effect contemporaneously purchased the vehicle from the Director when the vehicle was supplied by the car yard.

You could seek a private ruling on this.

Question 26

GST claim problem (company or individual) I setup the private company (CGT registration) and I am only director. But I bought a business car (Ute) in my name for the business. Can I claim the GST through the Company BAS? (I have no GST registration for myself).

Answer

The answer is No. The tax invoice would have to be in the name of the GST registered entity in this case the company.

Question 27

Hi, I have a question about GST on-charged by a landlord on outgoings.

Our business rents a commercial property and the landlord charges GST on outgoings even when the outgoing is a GST free supply such as council rates.

My understanding is that this is the correct treatment due to the transaction meeting all criteria for a taxable supply. Please confirm my understanding is correct.

Answer

This really depends on what the relevant clause of the lease agreement discloses.

In principle we do not agree with GST being charged on a GST free item such as council rates but as you are going to claim the input tax credit... it should not be a matter of great concern.

This just becomes a cash flow timing issue for you.

Although the liability should be passed on to the tenant if the lease specifies, this should only be to the extent that GST is payable.

What we do have an issue with is landlords charging GST on GST, an example of this may be insurance premiums which do attract GST.

The landlord should only charge GST on the net amount.

Question 28

I have a question concerning the house I built and am selling. I am a Builder. The house was nearly sold last year. The prospect owners paid a deposit and moved in under contract. They paid rent for about 5 months and finally could not get finance and vacated.

I have put the house back on the market and now have potential buyer with contracts about to be exchanged. The real-estate agent has said that now the house is no longer new because someone was living in it and paying rent that it should not have any GST owing. The solicitor has said its not eligible for first home buyer exemptions and is also needing to know whether any GST is owing and how much. I have had the block of land for 10 years.

Answer

The real estate agent is incorrect – if this house has not been sold (it has not) and in broad terms it is within 5 years of completion then it will attract GST. Section 40-75 of the GST Act states that the vendor does not need to pay GST on sale of residential premises if they have been used solely for rental purposes for the period of at least five years since they were built, substantially renovated, or replaced. Clearly, you do not pass the five-year rule.

Clearly this house was not built for investment purposes and it is highly probable that you have claimed input tax credits for supplies and contractors on the way through.

You need to confer with your accountant as to whether you applied the margin scheme on the purchase of the land and as mentioned the treatment of the income tax credits.

If you applied the margin scheme, then you will not have claimed the input tax credits on the construction...

Regarding the first home buyer schemes... the solicitor is in all likelihood correct but you may wish to apply for private rulings with the relevant state revenue body.

Question 29

We are an Australian consolidated group registered for GST with a subsidiary company in NZ.

An IT firm (Australian Entity) did some work for our NZ business, and have charged out Head Company for the work but with no GST. Is this correct or should they charge us GST?

Answer

It is suggested that the firm takes the view while it is highly likely that the provision of the service is “in connection with Australia” that the services were exported refer to section 38-190 of the GST Act and GST ruling 2000/31.

The supply of a service may be GST free where the requirements in item 1,2,3 or 5 in the table in subsection 38-190(1) are satisfied.

Billing the head company may be a simple oversight or merely a means of ensuring the firm gets paid for its services.

Question 30

Customer A issues a recipient created invoice to Supplier B. Does Supplier B include the gross sale amount and GST thereon in the relevant BAS and also include a credit for the GST paid by Customer A to ensure GST is not paid twice....

Answer

Yes, B as the supplier, must declare and remit the GST to the ATO. This is the end of his involvement.

The input tax credit is then claimed by customer A. Therefore, A issued the recipient generated tax invoice in the first place.

The nature of GST is that it is the end user that ultimately pays to GST.

Question 31

I have question in relation to whether to charge GST on top of the facility fees when on-charging facilities bills such as emergency levy, water use & water excess fees etc. onto our lessee who leases from council?

As all of those costs don't attract GST but, my understanding is when we are on charging our lessee for leasing council premises under an agency relationship, we have to charge GST on top of the emergency levy & water bills, irrespective of whether the lessee is registered for GST or not.

Could you please advise from your experience on this matter and advise whether we have to charge GST on ESL & water bill on the basis of agency relationship as per GST laws?

At this stage we have come across a few lease agreements having a clause about GST, and some do not! Does the GST law under agency relationship change if the lease agreement is silent on GST?

Answer

You are correct and you should charge GST on the entire amount of the supply which includes the outgoings.

This is because the Council may have to pay GST on these outgoings.

We refer you to GSTD 2000/10 paras 8 to 10.

Question 32

Vehicle purchased 29 October 2012 for \$71142. Only \$57466 (80.77%) able to be depreciated under luxury car limit.

Balance of WDV written off in 2018 year under SBE immediate deduction with balance of this account then being NIL.

Vehicle sold July 2018 for \$22910 (excl. GST).

Amount assessable calculated as \$18,504 (ie.80.77% \$22910). Is this correct?

Answer

Assuming GST was initially claimed on the basis this is a work vehicle, there are GST implications on disposal.

GST on the sale is 1/11th of \$22,910 being \$2,083 – note this is calculated on the full amount with no adjustment for the MV depreciation cost limit.

This leaves net proceeds of \$20,827.

If there were no second element additions to the cost base of the car i.e., extras and/or improvements, then your 80.77% is correct.

Given the asset was completely written off, 80.77% of \$20,827 i.e., \$16,822 should be deducted from the balance of the small business asset pool.

If this leaves the pool is a negative amount, then it is this figure that is assessable income.

Question 33

GST implications on a Deed of Settlement - Are you able to assist me on whether the term of a Deed of Settlement which requires Council to spend the \$X million compensation payment in a particular manner, means that Council incurs a legal obligation and in doing so makes a supply under the GST Act? The legal obligation is that Council is not free to do anything with the money other than applying the funds to the relocation of a specific sporting club from the land being acquired.

I understand that where an authority initiates the process of acquisition and the land vests in the authority, and the owner of the land simply accepts an amount of compensation payable on the compulsory acquisition, the owner does not make a 'supply' because it takes no positive action to cause its legal interest in land to be transferred to the authority. GST is not payable on the receipt of compensation. Please correct me if I am wrong!

However, where the authority initiates the acquisition and the owner of the land actively participates/takes action in the process by entering into an obligation, then such action may give rise to a 'supply' and does it attract GST on this occasion?

Also, from my understanding GST may not apply as there are other requirements that need to be satisfied, including that the landowner is registered for GST and the supply to the acquiring authority must be in the course or furtherance of an enterprise. The authority must provide consideration for Council entering into the obligation. It may be difficult to determine the value of the obligation i.e. is it a nominal amount or is it the value of the compensation i.e. \$X million?

Answer

From the circumstances outlined we think you are correct but stress that is essential that this be confirmed with the Council's tax advisers.

The act of settling is not a taxable supply for GST purposes, but GST may be payable if a payment is made in respect of an earlier taxable supply or if the payment creates a new taxable supply.

In the vast majority of cases, the act of settling a dispute will not of itself be a taxable supply. The terms of settlement must be reviewed by a competent tax lawyer to ensure the GST issues are dealt with.

Question 34

If you have a small business that is registered for GST and sells most of their stock online [sites like eBay or amazon etc.] does the 10% GST only applies to local sales or does the rules now extend and apply to overseas clients as well? - e.g., sales to say UK or USA?

If it does, then is the GST applicable still 10% for the online overseas sale? Could your technical team please clarify?

Answer

Exports of goods and services from Australia are generally GST-free. If you are registered for GST, this means:

1. You do not include GST in the price of your exports.
2. You can still claim credits for the GST included in the price of purchases you use to make your exported goods and services.

It is advisable that you review Sec 38-185 of the GST Act 1999. It provides conditions for GST-free export of goods.

It is also worth considering whether you are liable for any taxes at the border of the country you are exporting to.

Question 35

Lately we have been paying a Facebook invoice for marketing and advertisements on the Facebook platform. Facebook do provide us with a receipt (not a Tax invoice) and that document does not stipulate GST separately nor clarifies the total cost is GST inclusive.

I am interested to know what Tax laws are applicable for invoices like Facebook and what GST treatment we need to follow?

Would the same rules apply if an overseas merchant provides an Australian entity with goods or services and the tax invoice or receipt does not stipulate the GST?

What would be GST treatment for an Australian entity?

Answer

Since August 2018, Facebook advertising purchases in Australia are subject to GST. In the event of an ATO audit, you may request that Facebook provides a complying tax invoice.

Question 36

Our SMSF has a corporate trustee and is registered for GST. It derives income from commercial properties leases.

Our new accountant gave us a tax invoice for the preparation of the 2019 tax return for our superfund. The invoice has GST added but he tells us that we cannot claim it. He says it is a special rule with superfunds.

When his invoice relates to advices (not tax return preparation) we can only claim 75% of the GST and forfeit 25%. He will forward the GST to ATO, but we cannot claim it on our BAS.

Can this be correct?

Answer

Your new accountant is correct – these taxation fees are classified as input taxed supplies.

Question 37

Here is my case...

GST registered company buys Motorhome for \$127,000.

The company intends to rent it partial out or using it to visit clients as the restrictions due to COVID19.

- A. Will this stand up for GST/Income TAX purposes?**
- B. Is there a limit like for Luxury cars?**
- C. What are the requirements that need to be met e.g., logbook, issuing GST invoices when renting out, what is deductible when using for own company?**

Answer

Here you can expect the ATO to be sceptical in the event of an audit. You will be expected to have detailed records outlining the percentage of business use and the commerciality of that business use.

For example, if the motor home travels 900kms to have a short meeting with a prospective small client or existing low \$ client at a popular tourist destination, you can expect the claim to be denied.

Clearly an attempt is being made to justify business claims which relate largely to lifestyle decisions.

However, if the travel consistently related to a schedule of well-planned visits showing a full calendar of meetings, demonstrating sound commercial outcomes, there would be a better prospect of success.

Detailed records would need to be kept – ambit claims would be likely to be disallowed.

We note in passing that business has been less mobile during Covid 19 and that zoom meetings have proved highly effective and productive...

You could claim up to the \$150k instant asset write-off but it is suggested there would need to be a substantial adjustment for personal use.

Further, unless the enterprise is in the business of renting out motor homes, then rentals would be deemed to be passive income.

There would need to be a further reduction for the time the motor home was not used for business and was available for rent. The above comments also apply to the GST claimable on purchase as well as the future outgoings and expenses.

Question 38

I am seeking some advice regarding the GST implications concerning land that is subdivided and sold.

My clients are a husband and wife partnership and operate a primary production business growing fruit and a secondary enterprise renting commercial properties.

The partnership has an ABN and is registered for GST in relation to both enterprises.

They also hold several residential properties that are rented to tenants.

One of the residential properties has been owned since 1995 and they are considering demolishing the old house and subdividing the land.

They do not intend to sell each subdivided block at the same time and are likely to spread the sales over several years, mainly to spread any CGT issues.

They have substantial borrowings and intend to use the proceeds of sale of the blocks to reduce debt.

This property is not a business asset involved in either of their business activities.

They have not subdivided and sold blocks before. They would not be building any houses on these blocks and then selling them as a land & house package.

I understand that vacant land sold with the “potential” for a new house to be built may be subject to GST.

My question are as follows:

- 1. Is the sale of vacant land that has the potential for new houses to be built automatically deemed subject to GST?**
- 2. If not, what are the circumstances where GST would not be applicable?**
- 3. As they would be simply re-organising their investment portfolio, does this influence the issue?**
- 4. Does the fact that the land is not a business asset affect the issue?**
- 5. Currently, the commercial rentals received are less than \$75,000 pa. Would cancelling their GST registration have any effect?**
- 6. Do you have any suggestions?**

Answer

To answer your questions:

Q1 and 2: The ATO in Miscellaneous Tax Ruling MT 2006/1 considers when an isolated property transaction would result in carrying on an Enterprise. This hinges on whether the land was purchased with the intention of resale at a profit – this would constitute an enterprise. As in your case it would appear the land was purchased as a long-term holding, we now consider other factors.

Q3 and Q4: Both circumstances assist the argument of being the mere orderly realisation of an asset.

Q5: The fact that the Partnership of husband and wife is registered for GST is a complicating factor. While you have not considered the primary production turnover, it is accepted that this is GST free. Deregistration from GST may be helpful.

Q6: Carefully review MT 2006/1 which provides comprehensive guidance and contains examples - if still in doubt seek a private ruling from the ATO. You may wish to also review the ATO's Register of Private Rulings on the subject which shows views which are inconsistent and arbitrary – this really is a grey area... Note that private rulings only apply to the recipient. In supplying the information to the ATO for the Private Ruling consider case law and the guidelines laid down by the ATO.