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# AUSTRALIAN TAX ADVISER

2207: MARCH 2022

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## IN THIS ISSUE

### SECTION 1 – PROFESSIONAL DEVELOPMENTS.....1

### GST AND PROPERTY.....1

¶7.1	GST registrations and carrying on an enterprise.....1
¶7.2	Existing business..... 2
¶7.3	The five-year rule and residential premises ..... 3
¶7.4	Leasing premises and GST adjustments..... 4
¶7.5	Substantial renovations ..... 5
¶7.6	Commercial residential premises..... 6
¶7.7	Commercial premises ..... 6
¶7.8	GST on acquisition of property..... 6
¶7.9	GST on developing property ..... 7
¶7.10	GST on selling property ..... 7
¶7.11	GST margin scheme ..... 7
¶7.12	Going concern exemption ..... 9
¶7.13	GST withholding ..... 9
¶7.14	GST and farmland ..... 10
¶7.15	Disposal of farmland for farming purposes..... 11
¶7.16	GST free – supply of subdivided farmland to an associate..... 11

### SECTION 2 – PROFESSIONAL CURRENCY .....12

### LEGISLATION.....12

¶7.17	COVID-19 (NSW): details of new business support package.....12
¶7.18	Work-related COVID-19 tests confirmed deductible.....13
¶7.19	Enhancing tax integrity and supporting business investment Bill ..... 14

### RULINGS AND GUIDELINES.....15

¶7.20	Determination issued for debts forgiven for reasons of natural love and affection .15
¶7.21	ATO and TPB guidance on client identity verification.....15
¶7.22	Impact statement on cash flow boost case..... 16

Continued



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## IN THIS ISSUE

<b>CASES</b>	<b>17</b>
¶7.23 Small business gardener denied JobKeeper .....	17
¶7.24 Individual denied JobKeeper: 'But that's not fair' is not a legal argument .....	18
¶7.25 Airbnb superhost ineligible for JobKeeper payment as not conducting a business..	19
¶7.26 Taxpayer assessable on unexplained bank deposits .....	21
¶7.27 Tax Agent application for registration knocked back .....	23
<b>STATE TAXES</b> .....	<b>23</b>
¶7.28 Payroll tax (Qld): ruling on determining whether a worker is an employee .....	23
<b>SECTION 3 – QUESTIONS AND ANSWERS</b> .....	<b>24</b>
¶7.29 SMSF transferring assets after death of member .....	24
¶7.30 Non-income distributions by a unit trust to its unit holders .....	24
¶7.31 Not for profits .....	25
¶7.32 Simplified depreciation .....	26
¶7.33 Trust loans .....	27
¶7.34 Recording the bare trustee as purchaser on the contract of sale under a LRBA .....	27
¶7.35 Capital works .....	28
¶7.36 New Zealand income for Australian visa holders .....	29
¶7.37 CGT event E4 .....	30

## SECTION 1 – PROFESSIONAL DEVELOPMENTS

### GST AND PROPERTY

Few areas generate more queries from advisers than issues with GST and property, particularly around registration and whether GST is actually payable by a given taxpayer in a given situation. As the purchase or sale (or both) of property is one of the most common economic transactions in the real world, in this month's *Australia Tax Adviser* we present a guide to the nuts and bolts of how GST can apply to those transactions.

#### ¶7.1 GST registrations and carrying on an enterprise

GST applies to the sale of all property, if a taxpayer is required to be registered and:

- the sale is for consideration and;
- the sale is made in the course or furtherance of an enterprise that the taxpayer carries on and;
- the sale is connected with Australia and;
- the sale of the property is not GST-free or input taxed

Section 23-5 GST Act sets the requirements for registration as follows:

- The entity is carrying on an enterprise. An enterprise includes an activity, or series of activities, done in the form of a business or in the form of an adventure or concern in the nature of trade and;
- The entity's annual turnover meets the registration threshold (which is currently \$75,000)

Example of an enterprise could include:

- A property developer selling property; or
- A business taxpayer selling their business premises; or
- A builder selling a property that was bought then renovated for sale.

Activities done as a private recreational hobby or pursuit, or which are done by individuals 'without a reasonable expectation of profit or gain' are not an enterprise.

Where subdivision and sale of land is a 'mere realization' of a capital asset for income tax purposes, that would not normally constitute the carrying on of an enterprise but note that an isolated transaction can constitute the carrying on of an enterprise, meaning that a 'one off' development can be caught.

The fact that the asset is sold at a profit or in an enterprising way so as to secure the best price does not, of itself, mean the transaction is commercial in nature. It could still constitute the mere realization. Refer to MT 2006/1 for a list of factors that the ATO takes into account when it is determining if an enterprise exists (e.g. whether the land is developed beyond what is required for subdivision approval).