



AUSTRALIAN TAX ADVISER

2207: MARCH 2022

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IN THIS ISSUE

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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).