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AUSTRALIAN TAX ADVISER

2204: OCTOBER 2021

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SECTION 1 – PROFESSIONAL DEVELOPMENTS

GST AND RESIDENTIAL PROPERTY

Judging from the sheer number of questions that have reached my desk concerning GST on property transactions, the property market appears to be heating up again. Often, when embarking upon real estate transactions, the parties overlook the GST implications until the transaction gets queried by the Tax Office. Usually by then, it's too late to fix things. So, the message is to think about all the tax aspects (including GST) before putting pen to paper.

The problem with residential property transactions is that a supply could be either taxable, GST-free, input taxed or out-of-scope, so in that sense, the transactions can sometimes be difficult to categorise. Add to that the regimes (such as the margin scheme) that are unique to real estate and are often overlooked or misunderstood, and we have a recipe for some very costly errors.

The purpose of this article is to take a brief, 'whistle-stop' tour through the different scenarios that apply to residential property transactions, and to give readers a heads-up on the way GST applies to them.

¶4.1 The basic case – buying or selling a house

Given the level of home ownership (and the sheer number of investment properties) in Australia, it's fair to say that the majority of Australians have bought or sold real estate at some point in their lives. Housing is a good example of real property transactions falling into the taxable, input taxed, GST-free or out-of-scope category.

Taxable supplies of houses

The starting point here is to note that GST can only apply to new houses (or technically, *new residential premises*). Under s 40-65, a sale of residential premises is input taxed, but not if the property is 'new residential premises'.¹

The term 'new residential premises' is defined in s 40-75 as residential premises that:

- have not previously been sold as residential premises
- have not previously been the subject of a long-term lease
- have been created through substantial renovations of a building
- have been built, or contain a building that has been built, to replace demolished premises on the same land.

The first category of housing is the most common, so in the interests of brevity, I'll confine my comments to those. The first point to note is that the condition refers to the premises being 'sold' as residential premises.

¹ Paragraph 40-65(2)(b) of the GST Act