

There have been some important developments in GST in the week leading up to Easter. If you are in the property industry or advise property industry clients, please read the following and contact a member of our tax team for more information.

Margin scheme and general law partnerships

GST Ruling GSTR 2009/1 was issued last week and explains the Commissioner's views on the application of the margin scheme to general law partnerships and their partners. The Commissioner maintains the overarching principle that a partnership may enter into transactions with a partner in its own capacity through the acts of a partner in the capacity of partner. Some of the main features of the ruling that should be considered are as follows:

- A supply of real property made to a general law partnership as a capital contribution in exchange for an interest in the partnership can be subject to the margin scheme where such property becomes partnership property, even where the contributing partner has a beneficial interest in the relevant property and/or does not receive monetary consideration.
- A reconstitution of a partnership does not give rise to a supply or acquisition of real property and therefore there is no relevant supply to which the margin scheme can apply.
- A distribution of real property by a general law partnership to a partner as a result of general dissolution can be subject to the margin scheme if the relevant property becomes the property of the partner and is no longer partnership property.

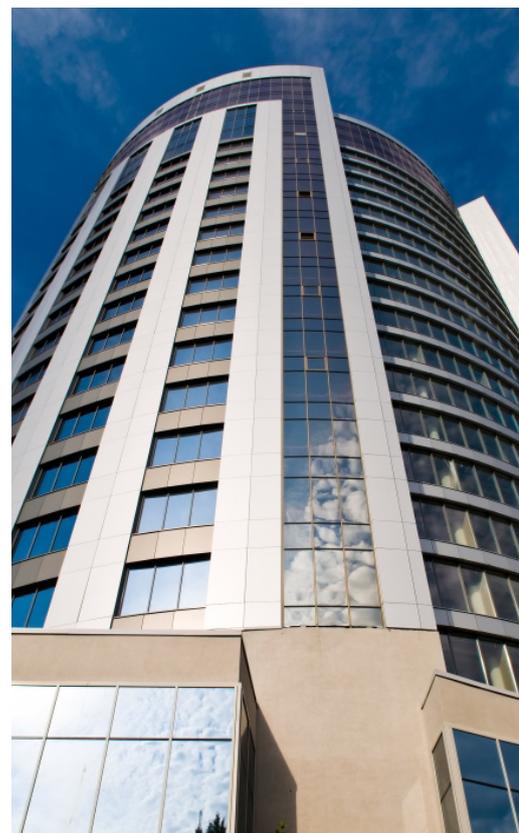
An in specie distribution of real property by a partnership to a partner is a supply for consideration. Accordingly, the Commissioner has issued an addendum to *GST Ruling GSTR 2003/13*, which deals with general law partnerships. The addendum amends *GSTR 2003/13* as it relates to the treatment of in specie distributions by a general law partnerships to its partners. The addendum also amends *GSTR 2003/13* to reflect an amendment to the definition of partnership in s 995-1 of the *Income Tax Assessment Act 1997*.

Partitioning of land

GST Ruling GSTR 2009/2 was issued last week and considers the GST consequences of the partitioning of real property among joint tenants and tenants in common (co-owners). Some of the main features of the ruling that should be considered are as follows:

- Partition refers to either the division of land and the transfer of the divided parts between the co-owners, or if the land is already divided and held by the co-owners, the transfer of the divided parts between the co-owners.
- Under a partition by agreement, the transfer or conveyance by each co-owner of their respective interest in the land to be taken by the co-owners in severally is a supply.
- A court ordered partition may result in each co-owner making a supply of each interest transferred.

- The subdivision of land by co-owners does not constitute a supply for the purposes of GST because there is no change in the ownership of the subdivided land - all that results is the subdivided land is held under different titles by the same owners.
- If land is applied (or intended to be applied) in an enterprise carried on by a co-owner, a supply of that co-owner's interest in the land under a partition is a supply in the course or furtherance of that enterprise.



- In the absence of monetary consideration for a partition, the consideration is that each co-owner gives up their interests in part of the land in return for the same from other co-owners.
- The margin scheme may apply to the supplies mentioned above.
- The Commissioner's views in this ruling represents a change in his view in relation to the characterisation of a supply of a part interest in real property comprising residential premises. Accordingly, an addendum to *GST Ruling GSTR 2003/3* has been issued, which considers when a sale of real property is a sale of new residential premises. The addendum amends *GSTR 2003/3* as it relates to the treatment of sales of a part interest in real property that comprises residential premises.

In specie distribution by trust to beneficiary

GST Determination GSTD 2009/1 has just been issued in which the Commissioner considers that a supply by way of in specie distribution of an asset that is applied in an enterprise carried on by a discretionary trust to a beneficiary of the trust is made "in the course or furtherance" of the trust's enterprise and therefore potentially subject to GST.

Sale of vacant land

Three ATO Interpretative Decisions (**ATO IDs**) were released last week concerning GST on the supply of vacant land. The main points made in each of the ATO IDs are as follows:

- *ATO ID 2009/18* - a residential property owner makes an input taxed supply when it sells its property as vacant land after demolishing a fire-damaged house on the land where, prior to the fire, the property had been used solely to make input taxed supplies by way of lease.
- *ATO ID 2009/19* - a residential property owner is not making an input taxed supply when, as part of its property development activities, it sells its property as vacant land after demolishing a house on the land that it had used together with the land solely to make input taxed supplies by way of lease.
- *ATO ID 2009/20* - a residential property owner is making an input taxed supply when it sells vacant land and a demountable dwelling separately, which together have been used by the entity solely to make input taxed supplies by way of lease.

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