

GST on the Purchase and Sale of Real Property

Although it is often an area that is overlooked, registrants should have a working knowledge of the GST applicable in the purchase and/or sale of real property. It is a disservice to clients to operate with an offer or agreement which simply states, “if applicable” with respect to the GST, or any clause for that matter. Registrants should be aware of any GST implications before entering into a listing agreement or presenting an offer. Further, registrants should know what GST is applicable to and by whom it is payable in order to avoid surprises at closing. Failing to deal with the GST in advance can easily lead to transactions collapsing and costly litigation. Whether a seller or buyer, no one wants to be told by their lawyer at closing, or their accountant at tax time, that they owe thousands in GST.

As all real estate transactions are different, the only rule to follow for GST is this: When in doubt – check it out. The advice of your accountant or lawyer should be sought if the GST applicable in a transaction is not clear. As a starting point, registrants should be aware that GST is generally payable on the purchase of real property, unless a specific exemption applies.

The most common exemption is for most residential properties when they are resold, as GST is payable on new residential property once and resale is usually exempt. Residential and non-residential properties are treated different with respect to GST. For example, those transactions involving a farm and a farmhouse or a store with a suite above, may have GST applicable to part, but not all, of the purchase price.

Special consideration should also be given to transactions involving builders. New residential properties are not exempt from GST so it should be noted in the contract if GST is or is not included in the purchase price, and further, who is entitled to claim any available rebate.

GST is generally payable on commercial property and the entity obtaining the real property may account for GST and recover the same through their business as an input tax credit.

Vacant land is generally exempt from GST when sold by an individual; however, there are several exclusions to the exemption that require investigation. For example, if the land is held in the course of a business the exemption does not apply. Vacant land is not the same as farm land. If farm land is being sold to operate a farm, GST will usually be applied.

Non-resident sellers also require particular attention; as a non-resident seller does not collect GST of the sale of real property. This will be important if the sale of the property is not GST exempt, as the buyer will usually be required to self-assess. Although not GST related, it is important to note that a buyer will be required to withhold, and possibly remit, 25% of the purchase price if the non-resident seller has not provided a certificate from CRA which indicates that any tax on a capital gain has been paid. Otherwise, the buyer may be found liable for this amount if it is not ultimately remitted.

Many of the terms outlined above, such as “real property”, “residential”, “builder”, and “non-resident” are specifically defined in legislation and have a meaning particular to the application of GST. This is all the more reason to seek professional advice on issues involving GST, as they may be much more complex than they appear. To do so will better serve the public interest and avoid trouble and cost for all those involved.