

Ceasing to pay GST on GST-free food, beverage and health products and services

Many businesses may be unnecessarily paying GST on GST-free food, beverage and health products and services. Some may not realise that a product or service falls under a GST-free classification, while others might be able to eliminate GST through a minor tweak to packaging or the way the supply is marketed. Changing from taxable to GST-free need not mean having to reduce the prices to the customers.

Potential benefits include increased profit margins, better retail price points and more price-competitive products and services. In some cases, you could be eligible for refunds for the past four years.

Preventing simple ATO GST Reviews from escalating to an Audit

Not only is the incidence of GST Reviews increasing, but there is also a growing trend of case officers 'threatening' to escalate Reviews to full Audits. This could be due to the case officer not understanding how the business works, or the business or tax representative not understanding what the ATO needs to make a favourable decision (e.g., releasing a GST refund). Spending a couple of hours with a GST expert at the beginning of a Review can clarify these misunderstandings and will almost always lead to a better and more prompt outcome.

Potential benefits include early identification of the GST issue (often there is not a problem at all), less ATO intervention and less time, costs, effort and worry. Tax Audit Insurance will often cover the costs of that expert assistance. A GST Audit costs significantly more than a Review, and stopping the Review at an early time has considerable financial and non-financial benefits.

Understanding what kind of 'agent' you are

Agents may be incorrectly paying GST or claiming GST credits due to a misunderstanding of what the word 'agent' means for GST purposes. 'Agent' could mean an authorised distributor of goods, services or intangibles, or it could mean someone who acts for and on behalf of a principal. The treatment of agents for GST follows general legal principles, but special rules apply in relation to cross-border dealings with non-residents, Representatives in insolvency scenarios and tax invoice requirements. There is no end to possible configurations of multi-party service arrangements, especially if some are contractors, and the GST consequences vary considerably.

Potential benefits include gaining clarity about pricing between parties, determining who exactly is liable to pay GST and who is entitled to claim credits, ensuring ATO compliance.

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Winning GST outcomes by Litigation Funders

There are many different forms of Litigation Funding, and the GST consequences vary considerably. For example, a single entity in a group of entities might take on the role of funding litigation on behalf of a number of subsidiaries. Often, consideration isn't given to whether GST credits can be claimed on costs, whether GST is payable on the successful claim and who is liable or entitled.

Potential benefits for the Funder, and the Litigant if the arrangement is set up optimally from the start, can be increased net outcomes. An extra 10% for GST is a lot.

Ensuring Lenders receive GST from sales by Receivers

Secured lenders to a defaulting borrower can sometimes effectively gain a priority over the ATO in respect of GST received from sales by a Receiver. This is currently very common in apartment sales, and depends on factors such as the timing and nature of the contracts/options being signed, the timing and terms of appointment of the Receiver and when/how the settlements takes place.

Potential benefits include GST collected going to secured lenders, or even unsecured creditors, instead of the ATO. Secured lenders' and creditors' entitlements may go back to up to four years.

Building to Rent

There are many possible GST implications for property plays involving constructing multi-dwelling residences to be rented. These arrangements can include a builder renting the new property, a developer selling the property to an entity to rent, or a consortium of mum and dad investors buying strata titled apartments for rental. They can involve property being rented directly to a tenant or to a Serviced Apartment operator. The GST outcomes can range from double GST being payable to no net GST being captured by the ATO.

Potential consequences can extend to the net viability of the project itself. The GST implications should be considered during every stage of the project, starting with the acquisition of the land.

Getting valid tax invoices to claim GST input tax credits

Invalid tax invoices continue to be a basis for the ATO denying GST credits. This often arises when the ATO conducts Refund Integrity Reviews after lodging BASs. There's a variety of options available when a supplier will not or cannot provide valid tax invoices.

Potential consequences include the ATO holding up or denying GST refunds. If the credits can be claimed, but in a later BAS, this might result in GIC and penalties.

Reaching a Commercial Settlement that never ends

Not complying with the exact requirements of GST clauses in Settlement Deeds can lead to unexpected net GST credits and liabilities. Often, the GST payable isn't charged and paid, and tax invoices are not issued, even if required. This is typically due to a lack of coordination between legal advisors, accountants and parties to the settlement.

Potential consequences include a failure to pass on GST payable to the other party in the settlement and being unable to claim a GST due to the lack of a tax invoice.

Reducing GST payable by property developers deciding to rent

Many developers are renting unsold stock of new residential premises to get cash in the door, find an investor who wants a tenanted property, hold off selling until the market improves or change to rental use permanently. All require making an 'increasing adjustment' (paying the ATO back some of the GST input tax credits previously claimed). This can be triggered simply by making the residence available for rent. The required calculations are complex, and could result in very little GST credits being paid back or most GST credits being paid back. These adjustments must be disclosed in the BAS ending 30 June.

Potential consequences include double GST being paid permanently and not stopping after five years (many developers incorrectly assume that residential premises always cease to be taxable five years after construction is complete).

Claiming GST back on overdue debts without writing off as bad debts

A supplier can claim back GST paid on a sale where full payment has not been received from the purchaser within 12 months without having to treat the sale as a bad debt.

Potential benefits include being able to pursue collection of the debt while claiming the GST.

Clarifying if you're in a Partnership or a Joint Venture

The GST treatment is very different for Partnerships and Joint Ventures, as are the commercial consequences. Now is a good time to sort out what to do, and the consequences, if your legal advisor created a 'Joint Venture Agreement' but your accountant lodges Partnership tax returns (BAS and income tax).

Potential consequences include ending up in unwanted partnerships and incurring joint and several liabilities to GST. There are also circumstances where the wrong entity has registered for GST purposes, which could result in all previous GST credit claims being disallowed while the correct entity remains liable to pay GST.

Getting the best out of GST for property developers

Many GST issues benefit residential property developers, if they know about them. For example, claiming GST credits on rental guarantee payouts and forfeited deposits, adopting margin scheme allocations for mixed use developments on bases other than area, making retrospective margin scheme elections, using Farmland GST free status when it wasn't elected and taking action to create a GST-free going concern.

Potential consequences simply include reducing risks and maximising returns. GST is supposed to be a practical business tax, and can be harnessed to achieve better commercial outcomes.

The above comments refer to specific entities in specific circumstances and should not be relied upon by others without getting professional advice specific to your relevant circumstances.

