

What are we going to cover today?

GST Treatment of 25 Selected Types of Real Property

What are we going to cover?

There are a vast number of types and variations of what constitutes 'real property' in legal, common law and commercial frameworks, and the GST law was necessarily designed to be able to respond to that

Real property can take many forms, like 'freehold', 'strata titles', 'common property', 'leases', 'licences', 'contractual issues', 'easements'

That's why 'real property' for GST purposes refers to 'rights' and 'interests' that 'relate' to land, and must be able to deal with matters such as 'contractual rights/obligations/restrictions', 'things attached to the land', 'subterranean and air rights', 'improvements', 'right of way' etc.

What are we going to cover?

Even further, there are:

- Many ways to calculate GST other than the straight 10%, including 'margin scheme', 'approved valuations', 'market values', '50% of price' etc
- Factors like jurisdiction and place
- Exceptions like being 'out of scope', 'farmland', 'government land' etc
- Input taxed elections like 'long term accommodation'
- GST-free elections like 'going concerns'

We will **only** be covering 25 variations of GST and real property issues today

Legislative references in this presentation

All references to sections in this presentation are to the

A New Tax System (Goods and Services Tax) Act (often referred to as the “GST Act”)

Most of the sections referenced are for guidance only and are not complete, and you must look further to the rest of the sections and sub-sections, associated provisions, regulations and definitions where appropriate

You will see some words in the sections that are in **blue** or have an ***** which indicate that the word is defined in the GST Act

Where do we start?

The most obvious categories of real property are

Commercial property

Residential property

No. 1 Where do we find “commercial ‘property’” in the GST Law? We don’t!

Section 9.5

You make a taxable supply if:

- (a) you make the supply for * consideration; and
- (b) the supply is made in the course or furtherance of an * enterprise that you carry on;
- (c) the supply is * connected with the indirect tax zone; and
- (d) you are * registered, or * required to be registered.

However, the supply is not a * taxable supply to the extent that it is * GST-free or * input taxed.

Definition of “supply” includes real property

Section 9.10

- (1) A **supply** is any form of supply whatsoever
- (2) Without limiting subsection (1), **supply** includes any of these:
 - ...
 - (d) a grant, assignment or surrender of * real property;
 - ...

Definition of “real property” is very broad

Section 195.1

"real property" includes:

- (a) any interest in or right over land; or
- (b) a personal right to call for or be granted any interest in or right over land; or
- (c) a licence to occupy land or any other contractual right exercisable over or in relation to land.

In the beginning ...

Real property

- Supplied in Australia
- For consideration
- In the course of carrying on an enterprise
- By an entity registered or required to be registered
- That is not input taxed or GST-free

can be referred to as commercial property, and is taxable at 10%, but you won't find it listed anywhere in the GST Act

There really could be hundred of sub-types of 'commercial real property'

This category is not necessarily “commercial” in character. There isn't really such a category. That is, it is more a 'catch-all category' normally used where the real property is “not GST-free” and is “not residential”. It could be any shed or building, vacant land, lease, right of access, covenant, laneway, air rights ...

There is virtually no limit to the number, range and types of real properties that could be subject to 10% GST, and they are not listed anywhere. They are simply supplies of any kind of real property whatsoever. They are all included here as No. 1 supplies of commercial real property.

We will now proceed to 24 that are actually specifically categorised and mentioned in the GST law, but note that there are even more that we won't have time to cover today

Residential Premises

Section 195.1

"residential premises" means land or a building that:

- (a) is occupied as a residence or for residential accommodation; or
- (b) is intended to be occupied, and is capable of being occupied, as a residence or for residential accommodation

But there are different kinds of residential premises

No. 2 Start with Input Taxed Residential Premises

Section 40.65

(1) A sale of * real property is **input taxed** , but only to the extent that the property is * residential premises to be used predominantly for residential accommodation (regardless of the term of occupation).

(2) However, the sale is *not* input taxed to the extent that the * residential premises are:

(a) * commercial residential premises; or

(b) * new residential premises other than those used for residential accommodation (regardless of the term of occupation) before 2 December 1998

Input Taxed Residential Premises

but only to the extent that the property is
to be used **predominantly** for residential
accommodation **regardless of the term of occupation**

- Milk bar and upstairs flat? 51%/49%? Reverse usage?
- Accountant or doctor in suburban house? Use/sale?
- Home office, work from home, house share, AirBnB?

No. 3 Then consider Taxable New Residential Premises

Section 40.75

- (1) Residential premises are ***new residential premises*** if they:
- (a) have not previously been sold as residential premises (other than * commercial residential premises) and have not previously been the subject of a * long - term lease; or
 - (b) have been created through * substantial renovations of a building; or
 - (c) have been built, or contain a building that has been built, to replace demolished premises on the same land.

Residential is no longer New if after 50 year longer term lease

Section 40.60

"long" - term lease means a [supply](#) by way of lease, hire or licence (including a renewal or extension of a lease, hire or licence) for at least 50 years if:

- (a) at the time of the lease, hire or licence, or the renewal or extension of the lease, hire or licence, it was reasonable to expect that it would continue for at least 50 years; and
- (b) unless the [supplier](#) is an * [Australian government agency](#)--the terms of the lease, hire or licence, or the renewal or extension of the lease, hire or licence, as they [apply](#) to the * [recipient](#) are substantially the same as those under which the [supplier](#) held the [premises](#).

No. 4 What I call the 'Flip Flop Category' or the 'The 5 Year Rule' when 'New' flips to 'Not New'

Section 40.75

(2) However, the * residential premises are not new residential premises if, for the period of at least 5 years since:

(a) if paragraph (1)(a) applies (and neither paragraph (1)(b) nor paragraph (1)(c) applies)--the premises first became residential premises; or

(b) if paragraph (1)(b) applies--the premises were last * substantially renovated;

or

(c) if paragraph (1)(c) applies--the premises were last built;

the premises have only been used for making supplies that are * input taxed because of paragraph 40 - 35(1)(a).

No. 5 Commercial Residential Premises

Section 195.5

commercial residential premises" means:

(a) a hotel, motel, inn, hostel or boarding house; or

Commercial **Residential** Premises

Hyatt Hilton?

No Kitchen?

Commercial Residential Premises

- (b) [premises](#) used to provide accommodation in connection with a * [school](#); or
- (c) a * [ship](#) that is mainly let out on hire in the ordinary course of a * [business](#) of letting [ships](#) out on hire; or
- (d) a [ship](#) that is mainly used for * [entertainment](#) or transport in the ordinary course of a * [business](#) of providing [ships](#) for [entertainment](#) or transport; or
- (da) a marina at which one or more of the berths are occupied, or are to be occupied, by * [ships](#) used as residences; or
- (e) a caravan park or a camping ground; or

- (f) anything similar to * [residential premises](#) described in [paragraphs](#) (a) to (e).

However, it does not include [premises](#) to the extent that they are used to provide accommodation to students in connection with an * [education institution](#) that is not a * [school](#).

Commercial Residential Premises

Common characteristics of operating hotels, motels, inns, hostels and boarding houses that are relevant, though not necessarily determinative, to characterising premises as commercial residential premises are:

- Commercial intention The premises are operated on a commercial basis or in a business-like manner even if they are operated by a non-profit body.
- Multiple occupancy The premises have the capacity to provide accommodation to multiple, unrelated guests or residents at once in separate rooms, or in a dormitory.
- Holding out to the public The premises offer accommodation to the public or a segment of the public.
- Accommodation is the main purpose Providing accommodation is the main purpose of the premises

Commercial Residential Premises

- Central management The premises have central management to accept reservations, allocate rooms, receive payments and perform or arrange services. This can be provided through facilities on-site or off-site.
- Management offers accommodation in its own right. The entity operating the premises supplies accommodation in its own right rather than as an agent.
- Provision of, or arrangement for, services Management provides guests and residents with some services and facilities, or arranges for third parties to provide them.
- Occupants have status as guests Predominantly, the occupants are travellers who have their principal place of residence elsewhere. The occupants do not usually enjoy an exclusive right to occupy any particular part of the premises in the same way as a tenant.

No. 6 AirBnB. Holiday Apartments. Boarding

Commercial Residential Premises or Input Taxed Residential?

- Boarding Houses?
- B & Bs?
- Investment Apartments
- Concierge Desks
- Queensland Apartments?
- Site offices next door?
- Breakfast packs?

No.7 Input Taxed Residential Rent

Section 40-35

Residential rent

(1) A supply of premises that is by way of lease, hire or licence (including a renewal or extension of a lease, hire or licence) is **input taxed** if:

(a) the supply is of * residential premises (other than a supply of * commercial residential premises or a supply of accommodation in commercial residential premises provided to an individual by the entity that owns or controls the commercial residential premises)

No. 8 Long Term Accommodation 5.5%

Section 87.5

Commercial residential premises that are predominantly for long-term accommodation

(1) The *value* of a * [taxable supply](#) of * [commercial accommodation](#) that:

(a) is provided in * [commercial residential premises](#) that are * [predominantly for long-term accommodation](#); and

(b) is provided to an [individual](#) as * [long-term accommodation](#);

is 50%, or such other percentage as is specified in the regulations, of what would be the * [price](#) of the [supply](#) if this Division did not [apply](#).

(2) This section has effect despite section 9- [75](#) (which is about the value of taxable supplies).

Long Term Accommodation 5.5%

Section 87.15

Meaning of "*Commercial accommodation*" means the right to occupy the whole or any part of * [commercial residential premises](#), including, if it is provided as part of the right so to occupy, the [supply](#) of:

- (a) cleaning and maintenance; or
- (b) electricity, gas, air - conditioning or heating; or
- (c) telephone, television, radio or any other similar [thing](#).

Long Term Accommodation 5.5%

Section 87.20

- (1) **Long - term accommodation** is provided to an individual if * commercial accommodation is provided, for a continuous period of 28 days or more, in the same premises:
 - (a) to that individual alone; or
 - (b) to that individual, together with one or more other individuals who:
 - (i) are also provided with that commercial accommodation; and
 - (ii) are not provided with it at their own expense (whether incurred directly or indirectly).
- (2) For the purpose of working out the number of days in the period for which an individual is provided with * commercial accommodation:
 - (a) count the day on which he or she is first provided with the commercial accommodation; and
 - (b) disregard the day on which he or she ceases to be provided with commercial accommodation.
- (3) * Commercial residential premises are **predominantly for long - term accommodation** if at least 70% of the individuals who are provided with * commercial accommodation in the premises are provided with commercial accommodation as * long - term accommodation.

Long Term Accommodation Input Taxed

Section 87.25

Suppliers may choose not to apply this Division

- (1) This Division does not [apply](#) to a [supply](#) of * [commercial accommodation](#) if the [supplier](#) chooses not to [apply](#) this Division to any supplies of [commercial accommodation](#) that the [supplier](#) makes.
- (2) The choice applies to all supplies of * [commercial accommodation](#) that the [supplier](#) makes after the choice is made and before the choice is revoked.
- (3) However, the [supplier](#):
 - (a) cannot revoke the choice within 12 months after the day on which the [supplier](#) made the choice; and
 - (b) cannot make a further choice within 12 months after the day on which the [supplier](#) revoked a previous choice.

Note: If you choose not to [apply](#) this Division, your supplies (other than GST - free supplies) of [long](#) - term accommodation in [commercial residential premises](#) are [input taxed](#) under section 40 - [35](#).

No. 9 Boarding Schools

Section 38.105

Accommodation at boarding schools etc.

(1) A supply is ***GST-free*** if:

(a) it is a supply of * student accommodation to students undertaking a * primary course, a * secondary course or a * special education course; and

(b) the supplier of the accommodation also supplies the course

(2) A supply is ***GST-free*** if:

(a) it is a supply of * student accommodation to students who are undertaking a * primary course, a * secondary course or a * special education course; and

(b) the accommodation is provided in a hostel whose primary purpose is to provide accommodation for students from rural or remote locations who are undertaking such courses.

No 10. Retirement Villages

Section 38.260

Supplies of retirement village accommodation etc.

A supply is GST-free if:

- (a) the supplier is an * endorsed charity that operates a * retirement village; and
- (b) the supply is made to a resident of the retirement village; and
- (c) the supply is:
 - (i) a supply of accommodation in the retirement village, or a supply of a service related to the supply of the accommodation; or
 - (ii) a supply of meals.

No.11 Residential Care in some RVs

Section 38.25

Residential care etc.

- (1) A supply of services is ***GST - free*** if:
- (a) it is a supply of services covered by Schedule 1 to the * Quality of Care Principles; and
 - (b) it is provided through a residential care service (within the meaning of the Aged Care Act 1997); and

...

Residential Care in some RVs

(3) A [supply](#) of services is **GST - free** if:

(a) the services are provided to one or more aged or disabled people in a residential setting;
and

(b) the * [Aged Care Minister](#) has determined in writing that the services are of a kind covered by Schedule 1 to the * [Quality of Care Principles](#); and

(c) the services include, and are only provided to people who require, the services (**care services**) set out in:

(i) item 2.1 (daily living activities assistance) of Part 2 of that Schedule; or

(ii) item 3.8 (nursing services) of Part 3 of that Schedule.

(3A) Services provided to a resident of a * [retirement village](#) are taken, for the purposes of [paragraph](#) (3)(a), to be provided in a residential setting if, and only if:

(a) he or she is a resident of a * [serviced apartment](#) in the [retirement village](#); and

(b) there is in force a written agreement under which the [operator](#) of the [retirement village](#) provides daily meals and heavy laundry services to all of the residents of the apartment.

Residential Care in some RVs

serviced apartment" : an apartment (however described) is a [serviced apartment](#) in relation to a * [retirement village](#) if:

(a) the apartment is designed to be occupied by aged residents who require either or both of the following:

(i) the services set out in item 2.1 (daily living activities assistance) of Part 2 of Schedule 1 to the * [Quality of Care Principles](#);

(ii) the services set out in item 3.8 (nursing services) of Part 3 of that Schedule; and

(b) at least one responsible [person](#) is continuously:

(i) on call to render emergency assistance to the residents of the apartment; and

(ii) in reasonable proximity to the apartment; and

(c) the apartment is part of a single complex of apartments to which [paragraphs](#) (a) and (b) [apply](#), and is accessible from a common corridor linking the apartment to the other apartments in the complex; and

(d) there is in the [retirement village](#) a communal dining facility that is available for use by the residents of apartments in the [retirement village](#) to which [paragraphs](#) (a), (b) and (c) [apply](#).

However, a detached house, row house, terrace house, town house or villa unit is not a [serviced apartment](#).

Residential Care in some RVs

retirement village" : premises are a retirement village if:

- (a) the premises are * residential premises; and
- (b) accommodation in the premises is intended to be for persons who are at least 55 years old, or who are a certain age that is more than 55 years; and
- (c) the premises include communal facilities for use by the residents of the premises;

but the following are not retirement villages:

- (d) premises used, or intended to be used, for the provision of residential care (within the meaning of the Aged Care Act 1997) by an approved provider (within the meaning of the Aged Care Quality and Safety Commission Act 2018);
- (e) * commercial residential premises.

No. 12 Specialist Disability Accommodation

Section 38-38

A supply is *GST - free* if the supply:

- (a) is a supply to a participant (within the meaning of the *National Disability Insurance Scheme Act 2013*) for whom a participant's plan is in effect under section 37 of that Act; and
- (b) is a supply of one or more of the reasonable and necessary supports specified in the statement included, under subsection 33(2) of that Act, in the participant's plan; and
- (c) is made under a written agreement, between the supplier and the participant or another person, that:
 - (i) identifies the participant; and
 - (ii) states that the supply is a supply of one or more of the reasonable and necessary supports specified in the statement included, under subsection 33(2) of that Act, in the participant's plan; and
- (d) is of a kind that the * Disability Services Minister has determined in writing

No. 13 Farmland

Section 38-480

The supply of a freehold interest in, or the lease by an * Australian government agency of or the * long term lease of, land is GST-free if:

(a) the land is land on which a * farming business has been * carried on for at least the period of 5 years preceding the supply; and

(b) the * recipient of the supply intends that a farming business be carried on, on the land.

No. 14 Unimproved Government Land

Section 38.445

(1) A [supply](#) by the Commonwealth, a State or a Territory of land on which there are no improvements is [GST-free](#) if:

(a) the [supply](#) is of a freehold interest in the land; or

(b) the [supply](#) is by way of * [long-term lease](#).

(1A) A [supply](#) by the Commonwealth, a State or a Territory of land is [GST-free](#) if: (a) the [supply](#) is of a freehold interest in the land, or is by way of * [long-term lease](#); an

(b) the Commonwealth, State or Territory had previously supplied the land, by way of lease, to the * [recipient](#) of the [supply](#); and

(c) at the time of that previous [supply](#), there were no improvements on the land; and (d) because conditions to which that lease was subject had been satisfied, the [recipient](#) was entitled to the [supply](#) of the freehold interest or the [supply](#) by way of [long-term lease](#).

No. 15 Government leased land

Section 38.475

(1) The supply of a freehold interest in, or the lease by an * Australian government agency of or the * long term lease of, * potential residential land is ***GST-free*** if

(a) the land is subdivided from land on which a * farming business has been * carried on for at least 5 years; and

(b) the supply is made to an * associate of the supplier of the land without * consideration or for consideration that is less than the * GST inclusive market value of the supply.

(2) An entity * carries on a ***farming business*** if it carries on a * business of:

(a) cultivating or propagating plants, fungi or their products or parts (including seeds, spores, bulbs and similar things), in any physical environment; or

(b) maintaining animals for the purpose of selling them or their bodily produce (including natural increase); or

(c) manufacturing dairy produce from raw material that the entity produced; or

(d) planting or tending trees in a plantation or forest that are intended to be felled.

Government leased land

"potential residential land" means land that it is permissible to use for residential purposes, but that does not contain any buildings that are * [residential premises](#).

No. 16 Going Concern

Section 38-325

Supply of a going concern

(1) The * supply of a going concern is GST-free if:

(a) the supply is for * consideration; and

(b) the * recipient is * registered or * required to be registered; and

(c) the supplier and the recipient have agreed in writing that the supply is of a going concern.

(2) A supply of a going concern is a supply under an arrangement under which:

(a) the supplier supplies to the * recipient all of the things that are necessary for the continued operation of an * enterprise; and

(b) the supplier carries on, or will carry on, the enterprise until the day of the supply (whether or not as a part of a larger enterprise carried on by the supplier).

No. 17 Amalgamations

Section 75.22

Increasing adjustment relating to input tax credit entitlement

(1) You have an [*increasing adjustment*](#) if:

- (a) you make a * [taxable supply](#) of * [real property](#) under the * [margin scheme](#); and
- * (b) an [acquisition](#) that you made of part of the interest, unit or lease in question was made through a [supply](#) that was * [ineligible for the margin scheme](#); and
- (c) you were, or are, entitled to an [input tax credit](#) for the [acquisition](#).

The [amount](#) of the [increasing adjustment](#) is an [amount](#) equal to the * [previously attributed input tax credit amount](#) for the [acquisition](#).

(2) You have an [*increasing adjustment*](#) if:

- (a) you make a * [taxable supply](#) of * [real property](#) under the * [margin scheme](#); and
- (b) you acquired all or part of the interest, unit or lease in question by [inheriting](#) it; and
- (c) the [entity](#) from whom you [inherited](#) (the **deceased**) had acquired part of the interest, unit or lease that you [inherited](#) through a [supply](#) that was * [ineligible for the margin scheme](#); and
- (d) the deceased was entitled to an [input tax credit](#) for that [acquisition](#).

The [amount](#) of the [increasing adjustment](#) is an [amount](#) equal to the * [previously attributed input tax credit amount](#) for the [acquisition](#).

No. 18 Progressive and Periodic

Section 156.5

Attributing the GST on progressive or periodic supplies

(1) The GST payable by you on a * [taxable supply](#) that is made:

(a) for a period or on a progressive basis; and

(b) for * [consideration](#) that is to be provided on a progressive or periodic basis;

is attributable, in accordance with section 29-5, as if each progressive or periodic component of the [supply](#) were a separate [supply](#).

(2) If the progressive or periodic components of such a [supply](#) are not readily identifiable, the components correspond to the proportion of the total

* [consideration](#) for the [supply](#) that the separate

[amounts](#) of [consideration](#) represent

No. 19 Charities and DGRs

Section 38-250

Nominal consideration etc.

(1) A supply is ***GST-free*** if:

(a) the supplier is an * endorsed charity, a * gift-deductible entity or a * government school; and

(b) the supply is for * consideration that:

(i) if the supply is a supply of accommodation--is less than 75% of the * GST inclusive market value of the supply; or

(ii) if the supply is not a supply of accommodation--is less than 50% of the GST inclusive market value of the supply.

(2) A supply is ***GST-free*** if:

(a) the supplier is an * endorsed charity, a * gift-deductible entity or a * government school; and

(b) the supply is for * consideration that:

(i) if the supply is a supply of accommodation--is less than 75% of the cost to the supplier of providing the accommodation; or

(ii) if the supply is not a supply of accommodation--is less than 75% of the consideration the supplier provided, or was liable to provide, for acquiring the thing supplied.

Margin Scheme: Conceptually

There are a vast range of variations to margin scheme outcomes in various situations

The general intent is to capture, transaction by transaction, GST on each margin added from 1 July 2000 until the final sale of new residential premises (but see the earlier 'Flip Flop' example) and various changes to the GST Act in 2005 and 2008. Some of these changes result in the margin scheme not being eligible to be used and some alter the calculation

Refer the entirety of Division 75 as we can't cover it all in this presentation

No. 20 Margin Scheme: Eligibility and Denial

Section 75.5

Applying the margin scheme

(1) The * [margin scheme](#) applies in working out the [amount](#) of GST on a * [taxable supply](#) of * [real property](#) that you make by:

- (a) selling a freehold interest in land; or
- (b) selling a * [stratum unit](#); or
- (c) granting or selling a * long - term lease;

if you and the * [recipient](#) of the [supply](#) have agreed in writing that the [margin scheme](#) is to [apply](#).

(1A) The agreement must be made:

- (a) on or before the making of the [supply](#); or
- (b) within such further period as the [Commissioner](#) allows.

Margin Scheme: Eligibility and Denial

(2) However, the * [margin scheme](#) does not [apply](#) if you acquired the entire freehold interest, * [stratum unit](#) or * long - term lease through a [supply](#) that was * [ineligible for the margin scheme](#).

(3) A [supply](#) is [ineligible for the margin scheme](#) if:

- (a) it is a * [taxable supply](#) on which the GST was worked out without [applying](#) the * [margin scheme](#); or
- (b) it is a [supply of a thing](#) you acquired by * [inheriting](#) it from a deceased [person](#), and the deceased [person](#) had acquired all of it through a [supply](#) that was [ineligible for the margin scheme](#); or
- (c) it is a [supply](#) in relation to which all of the following [apply](#):
 - (i) you were a * [member](#) of a * [GST group](#) at the time you acquired the interest, unit or lease in question;
 - (ii) the [entity](#) from whom you acquired it was a [member](#) of the [GST group](#) at that time;
 - (iii) the last [supply](#) of the interest, unit or lease by an [entity](#) who was not (at the time of that [supply](#)) a [member](#) of the [GST group](#) to an [entity](#) who was (at that time) such a [member](#) was a [supply](#) that was [ineligible for the margin scheme](#); or

Margin Scheme: Eligibility and Denial

(d) it is a [supply](#) in relation to which both of the following [apply](#):

(i) you acquired the interest, unit or lease from the * [joint venture operator](#) of a * [GST joint venture](#) at a time when you were a * [participant](#) in the joint venture;

(ii) the [joint venture operator](#) had acquired the interest, unit or lease through a [supply](#) that was [ineligible for the margin scheme](#); or

(e) it is a [supply](#) in relation to which all of the following [apply](#):

(i) you acquired the interest, unit or lease from an [entity](#) as, or as part of, a * [supply of a](#) going concern to you that was * GST - free under Subdivision 38 - J;

(ii) the [entity](#) was * [registered](#) or * [required to be registered](#), at the time of the [acquisition](#);

(iii) the [entity](#) had acquired the entire interest, unit or lease through a [taxable supply](#) on which the GST was worked out without [applying](#) the [margin scheme](#); or

Margin Scheme: Eligibility and Denial

(f) it is a [supply](#) in relation to which all of the following [apply](#):

- (i) you acquired the interest, unit or lease from an [entity](#) as, or as part of, a [supply](#) to you that was GST - free under Subdivision 38 - O;
- (ii) the [entity](#) was [registered](#) or [required to be registered](#), at the time of the [acquisition](#);
- (iii) the [entity](#) had acquired the entire interest, unit or lease through a [taxable supply](#) on which the GST was worked out without [applying](#) the [margin scheme](#); or

(g) it is a [supply](#) in relation to which all of the following [apply](#):

- (i) you acquired the interest, unit or lease from an [entity](#) who was your * [associate](#), and who was [registered](#) or [required to be registered](#), at the time of the [acquisition](#);
- (ii) the [acquisition](#) from your [associate](#) was without * [consideration](#);
- (iii) the [supply](#) by your [associate](#) was not a [taxable supply](#);
- (iv) your [associate](#) made the [supply](#) in the course or furtherance of an * [enterprise](#) that your [associate](#) * carried on;
- (v) your [associate](#) had acquired the entire interest, unit or lease through a [taxable supply](#) on which the GST was worked out without [applying](#) the [margin scheme](#).

No. 21 Margin Scheme: Normal

Section 75-10

The amount of GST on taxable supplies

(1) If a * taxable supply of * real property is under the * margin scheme, the amount of GST on the supply is $\frac{1}{11}$ of the * margin for the supply

(2) Subject to subsection (3) and section 75 - 11, the margin for the supply is the amount by which the * consideration for the supply exceeds the consideration for your acquisition of the interest, unit or lease in question.

No. 22 Margin Scheme: Special Calculations

Section 75.11

Margins for supplies of real property in particular circumstances

Margin for supply of real property acquired from fellow member of GST group

(1) If:

(a) you acquired the interest, unit or lease in question at a time when both you and the entity from whom you acquired it were * members of the same * GST group; and

(b) on or after 1 July 2000, there has been a supply (an ***earlier supply***) of the interest, unit or lease that occurred at a time when the supplier was not a member of the GST group; and

(ba) the * recipient was at that time, or subsequently became, a member of the GST group; the ***margin*** for the supply you make is the amount by which the * consideration for the supply exceeds:

(c) the consideration for the last such earlier supply, if the supplier and the recipient were not * associates at that time; or

(d) the * GST inclusive market value of the interest, unit or lease at that time, if the 2 entities were associates at that time.

Margin Scheme: Special Calculations

And so on right through many other provision covering a vast range of situations

In many cases, it requires the 'margin' of the previous vendor to be taken into account or the margin to be referenced back to the value at 1 July 2000

No. 23 Margin Scheme: Valuation or Cost

The 'margin' on which GST is calculated is normally based on"

- The full consideration for which the supply is made, including GST and settlement day adjustments, but not the stamp duty payable by the purchaser

Less

- An amount that can be deducted from that consideration

Leaving

- The "margin" of which $1/11^{\text{th}}$ is the GST payable (see No. 21)

Margin Scheme: Valuation or Cost

That “Valuation or Cost” is determined in various provisions in Division 75, and can be:

“GST inclusive market value”

- (under normal valuation standards and can be a various specified points in time)

“approved valuation”

- (per the Commissioner’s statutory Determination)

“consideration for an acquisition”

- (can be a ‘deemed’ acquisition)

No. 24 Adjustments Events

Section 129.5

Adjustment periods

(1) An adjustment period for an acquisition or importation is a tax period applying to you that:

(a) starts at least 12 months after the end of the tax period to which the acquisition or importation is attributable (or would be attributable if it were a * creditable acquisition or * creditable importation); and

(b) ends:

(i) on 30 June in any year; or

(ii) if none of the tax periods applying to you in a particular year ends on 30 June--closer to 30 June than any of the other tax periods applying to you in that year.

Adjustments Events

In addition, a tax period provided for under section 27-39 or 27-40 or subsection 151-55(1) or 162-85(1) is an **adjustment period** for the acquisition or importation.

Note: Section 27-39 deals with an incapacitated entity's tax periods. Section 27-40 and subsections 151-55(1) and 162-85(1) deal with an entity's concluding tax period.

(2) Despite subsection (1), for an acquisition or importation that * relates to business finance:

(a) if the * GST exclusive value of the acquisition or importation is \$50,000 or less--only the first such tax period is an **adjustment period** ; or

(b) if the GST exclusive value of the acquisition or importation is more than \$50,000 but less than \$500,000--only the first 5 such tax periods are **adjustment periods** ; o

(c) if the GST exclusive value of the acquisition or importation is \$500,000 or more--only the first 10 such tax periods are **adjustment periods** .

Adjustments Events

(3) Despite subsection (1), for an acquisition or importation that does not * relate to business finance:

(a) if the * GST exclusive value of the acquisition or importation is \$5,000 or less--only the first 2 such tax periods are **adjustment periods** ; or

(b) if the GST exclusive value of the acquisition or importation is more than \$5,000 but less than \$500,000--only the first 5 such tax periods are **adjustment periods** ; or

(c) if the GST exclusive value of the acquisition or importation is \$500,000 or more--only the first 10 such tax periods are **adjustment periods** .

No. 25 Exiting Registration

Section 138.5

Adjustments for cessation of registration

(1) You have an [increasing adjustment](#) if:

(a) your * registration is cancelled; and

(b) immediately before the cancellation takes effect, your assets include anything in respect of which you were, or are, entitled to an [input tax credit](#).

Note: [Increasing adjustments](#) increase your [net amounts](#)

Exiting Registration

(2) The amount of the adjustment, for each thing referred to in paragraph (1)(b), is as follows: where:

“applicable value” is:

- (a) the * GST inclusive market value of the thing immediately before the cancellation takes effect; or
- (b) if you were, or are, entitled to an input tax credit for acquiring the thing--the amount of the * consideration that you provided, or were liable to provide, for your acquisition of the thing, but only if the amount is less than that value; or
- (c) if you were, or are, entitled to an input tax credit for importing the thing--the cost to you of acquiring or producing the thing (plus the * assessed GST paid on its importation), but only if the amount is less than that value.

(3) However, an * adjustment does not arise under this section in respect of an asset if:

- (a) there were one or more * adjustment periods for your acquisition or importation of the asset; and
- (b) the last of those adjustment periods has ended before the cancellation of your * registration takes effect.

No. 26 +++ Yes there are more

There are many more circumstances under which 'real property' is subject to GST that were not covered in today's presentation. For example:

- Contributing (ie making a supply or 'deemed sale' of one 'lot') by a partner to property development partnership
- Developing half a private property into two new townhouses, one to keep using as a residence and one to sell
- Family sharing and succession arrangements, especially when complex estates, inheritance, Trust, JVs and Partnerships over period of time are involved

Summary

GST on Real Property

It's quite UNREAL



Hi, my name is Ken

I am a GST Specialist, Advisor and Mentor empowering Boards, Executives and Business Owners to convert complex GST issues into tangible business opportunities using a proven methodology and keeping them safe

DON'T TAKE CHANCES BY ROLLING THE DICE ON GST

