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PROVIDED BY RANKIN NATHAN LAWYERS

Buying or Selling a Property in NSW?

In this article we take a brief look at recent changes to the First Home Owner Grant Scheme and what the changes mean for clients purchasing a new residential premises for the first time. We also consider the possible Goods & Services Tax implications arising from the sale/purchase of new residential premises.

First Home Owner Grant Scheme – Update.

Many will now be aware that there have been some recent changes to the First Home Owner Grant Scheme (“FHOGS”) with both the NSW and Federal Governments introducing additional funding for the scheme. First home buyers purchasing new homes or newly constructed homes may obtain additional benefits from the scheme.

To qualify for the FHOGS, purchasers must meet certain eligibility requirements; the main requirement being that the purchaser and/or their spouse/de facto have not owned a residential property in Australia before July 2000. For a detailed list of the eligibility requirements and other information regarding the FHOGS check the NSW Office of State Revenue website at www.osr.nsw.gov.au.

The ‘FHOGS - Summary of Benefits’ table on the following page summarizes the benefits available to eligible first home buyers in NSW.

To make the most of the recent changes, purchasers would need to enter into a contract for the sale of land on or before 30 June 2009.

GST implications when new residential or “substantially renovated” residential properties are sold.

Whether Goods & Services Tax (“GST”) is payable on the sale of real property will depend on many circumstances. Normally, the sale of residential premises, such as houses or units, will not be a taxable supply and therefore the sale will not usually be subject to GST. However, both vendors and purchasers of newly constructed or substantially renovated properties (“new residential premises”) should be aware that the transaction may be subject to GST.

The sale of new residential premises by a registered entity (for example a builder or developer) in the course or furtherance of an enterprise it carries on, is a taxable supply. Therefore, the first time the new residential premises



are sold by the builder or developer, GST will be payable by the Vendor. The Vendor is likely to want to recover the amount of GST from the Purchaser by either increasing the purchase price and making the purchase price inclusive of GST or, if the purchase price is exclusive of GST, by requiring the GST to be paid in addition when the contract for sale is completed.

The usual conditions which will cause a transaction to attract GST, are:

- a. the supply is made for consideration (the price paid for the property),
- b. the supply is made in the course or furtherance of an enterprise (e.g. some sort of business activity) that the supplier (the Vendor) carries on,
- c. the residential premises are in Australia, and
- d. the supplier (the Vendor) is registered for GST purposes.



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FHOGS – SUMMARY OF BENEFITS TABLE - NSW

TRANSACTION TYPE: Buying an Established Home

| BENEFIT | AMOUNT | ELIGIBLE TRANSACTION DATE |
|--|---|---|
| First Home Owner Grant | \$7,000 | On or after 1 July 2000 |
| First Home Owner Boost – Established Home | \$7,000 | Contracts made Between 14 October 2008 and 30 June 2009 |
| First Home Plus Scheme – Stamp Duty Exemption or concession | Varies in accordance with value of property | |
| Total Benefits for Established Home (for Contracts 14/10/2008 to 30/06/2009) | \$14,000 plus Stamp Duty Exemption | |

TRANSACTION TYPE: Buying a New Home or Newly Constructed Home

| BENEFIT | AMOUNT | ELIGIBLE TRANSACTION DATE |
|---|---|---|
| First Home Owner Grant | \$7,000 | On or after 1 July 2000 |
| First Home Owner Boost – New Home | \$14,000 | Contracts made Between 14 October 2008 and 30 June 2009 *note for “off-the-plan” purchases, the Contract must specify, or must be completed by 31 December 2010 |
| New Home Buyers Supplement | \$3,000 | Between 11 November 2008 and 10 November 2009 |
| First Home Plus Scheme – Stamp Duty Exemption or concession | Varies in accordance with value of property | |
| Total Benefits for New Homes | \$24,000 plus Stamp Duty Exemption | |

In addition, the sale of residential premises will be a taxable supply if:

- a. the residential premises are new residential premises, and
- b. the new residential premises were not used for residential accommodation before 2 December 1998.

A New Tax System (Goods and Services Tax) Act 1999 defines residential premises as “new residential premises” if they:

- a. have **not previously been sold** as 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.

Examples - The Australian Taxation Office (“ATO”) offers some examples to assist in the understanding of the application of GST to the sale of new residential premises:

Example 1 - new residential premises - not previously sold

Jo, a property developer, is registered for GST. She purchases residential premises on a large block of land in February 2001 and subdivides the land into two blocks. The land at the time of purchase was on a single title. One block of land contains the existing residential premises and Jo erects a house on the vacant block of land. Both residential premises are sold in February 2002.

The first block of land, which has reduced in size (i.e. the block containing the original house), is not new residential premises as that house and land together

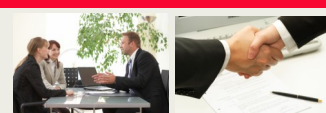
have previously been sold. The second block of land containing the newly built house is new residential premises as the block of land and new house have not previously been sold. The supply of the block with the newly built house is a taxable supply when sold in the course of Jo's enterprise. Jo is entitled to claim input tax credits on acquisitions relating to new residential premises, but not those relating to the previously existing premises.

Example 2 - non substantial renovations - renovations largely cosmetic

Bob, a property speculator, is registered for GST. He acquires Tangalooma, a historic federation style residence, in July 2000. Bob does not live in the house and immediately patches some of the walls in a few of



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the bedrooms with gyprock cement, repaints the whole house, inside and out, and replaces the kitchen.

Although Bob has made changes to all the rooms the work done is largely cosmetic in nature. The ATO says it does not consider that Bob has substantially renovated Tangalooma. The sale of the property will be an input taxed supply. Whether or not a person resides in the premises does not alter the analysis.

Example 3 - substantial renovations

Mary-Anne, a builder, acquires a dilapidated bungalow that has 3 bedrooms and one bathroom. Mary-Anne intends to renovate and sell the bungalow as part of her enterprise. She lives in the bungalow while she carries out the following renovations.

Mary-Anne adds an upstairs extension which creates a new bedroom and a bathroom. As part of the extension, the roof of the bungalow and all ceilings on the lower level are replaced. The renovations to the lower level include rewiring, repairing cracked walls by removing and replacing all of the gyprock and cement rendering the exposed bricks in the combined family room and kitchen. The installation of stairs necessitated the removal of two walls and replacement of the floor in two of the ground floor rooms. Mary-Anne also does some cosmetic work by repainting, polishing floorboards, and replacing all the fittings in the kitchen and bathroom.

The work undertaken by Mary-Anne constitutes substantial renovations. All of the rooms in the house are affected by the work and several of the rooms have undergone structural renovation work. A substantial part of the bungalow is removed and replaced in undertaking the renovation work. The cosmetic work has not been taken into account when deciding whether substantial renovations have occurred.

When Mary-Anne sells the renovated house she will be making a taxable supply of new residential premises, which includes all the work done (whether structural, non-structural or cosmetic) to the house. Whether or not a person resides in the premises does not alter the analysis.



Example 4 - residential premises - not previously sold as residential premises

Alec, a builder who is registered for GST, acquires a 1940's style commercial warehouse in August 2000. Alec substantially renovates the building and converts the building into a residence that he sells in February 2001.

The land and building are new residential premises as they have not previously been sold as residential premises and have not previously been the subject of a long-term lease. In addition, the residential premises which have been created by substantial renovations of the building are new residential premises.

The new residential premises have not been used only for making input taxed supplies (i.e. residential rental) for at least 5 years since the premises first became residential premises. The supply of the residential premises is a taxable supply when the premises are sold by Alec in the course of his enterprise.

This article is not intended to be an exhaustive treatment of the issues surrounding the FHOGS, nor the application of GST to conveyancing transactions. If you are thinking of buying a property or have any questions regarding your property purchase, please contact one of our property lawyers on 1300 727 813.



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