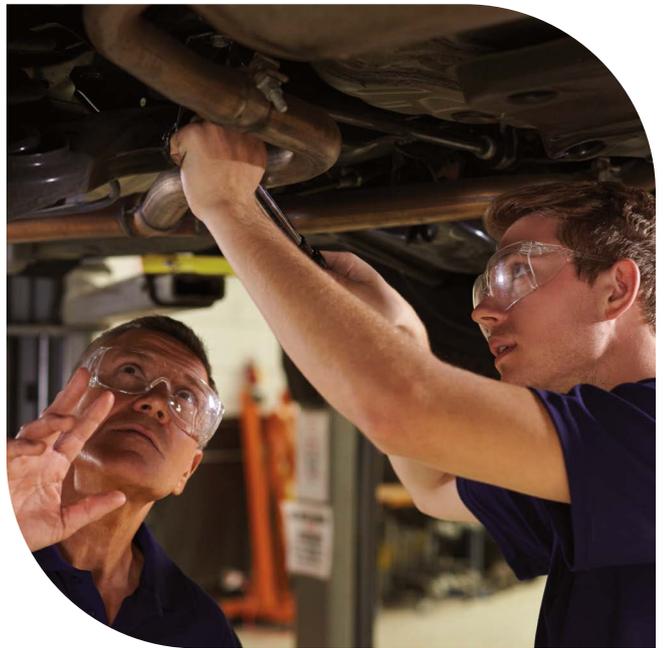


GST STRATEGIES FOR BUSINESS



2020-2021

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Consider Reporting Monthly

In tough economic times, cashflow is a key problem for many businesses.

On the GST front, have you considered switching to monthly reporting? Most businesses report GST quarterly. While this means that you are spared 'GST paperwork' and only need to complete a BAS four times per year, this reporting cycle may not be best practice for all businesses in terms of maximising cashflow. A business that makes significant GST-free supplies (such as exporters or pharmacists, for example) may benefit from reporting GST monthly. Such businesses, while not being liable for GST (i.e. not collecting it from customers) will be entitled to claim GST credits. They will therefore usually be due a GST refund for the period. Rather than wait until the end of the quarter to claim their GST refund, to maximise cashflow the business should consider reporting monthly and claiming their credit 12 times per year.

Such a decision should be made in consultation with your accountant and made in full knowledge of the extra paper work (BAS preparation and lodgement) that this will require.

EXAMPLE

Mikes Medicines, as a supplier of health services, makes predominantly GST-free supplies. Assume that it incurred GST-inclusive operating costs of \$77,000 per month resulting in monthly GST incurred of \$7,000, and had no GST liability as all of its supplies were GST-free.

If Mike reported quarterly, he would not be able to claim his \$21,000 of quarterly credits until 14 days after lodging his quarterly BAS. If however he chose to adopt monthly reporting, he would receive his \$7,000 credit entitlement monthly thus resulting in improved cashflow.

Even where a business does not make large volumes of GST-free supplies, but rather just regularly ends up in a GST refund position for the reporting period, it pays from a cashflow perspective to consider reporting monthly rather than quarterly.

Sell Your Business GST-Free

When it comes time to sell your business, consider selling it GST-free under the Going Concern exemption. The advantages of selling your business GST-free are:

- Buyers who are registered for GST will be spared the cash-flow impact of having to pay the GST upfront, and then not being able to claim it back for up to three months afterwards.
- All buyers may save on Stamp Duty (which is payable on the GST-inclusive cost of some business sales).

EXAMPLE

Thomas is selling his Brisbane-based pizza delivery business for \$540,000 including GST. By using the Going Concern exemption from GST, he can save the following amounts for the buyer:

- GST of \$49,090 (calculated as 1/11th of \$540,000)
- Stamp duty \$17,325***

To achieve this and meet the requirements of the Going Concern exemption, the following conditions must be met:

- The buyer must be registered or required to be registered for GST
- Thomas and the buyer must agree in writing that the sale is a Going Concern – this will typically be included in the contract but can be contained in a separate document
- Thomas must carry on the business up until the day of sale *
- Thomas, as part of the sale, must provide the buyer with all things necessary to continue to operate the business, such as ovens, premises, delivery vehicles etc. **

* *The ATO accepts that this requirement may be satisfied even where the seller temporarily ceases some of the enterprise for a short period in order to facilitate the sale (see **GST Ruling GSTR 2002/5**).*

** *This includes licenses to operate the business (note however that some licenses may only be able to be issued by the government), the assignment of leases where premises are leased etc. However, it may not necessarily need to involve everything in the business. For example, Thomas might wish to retain ownership of one of the delivery vehicles. This will still enable the business to be carried on, but perhaps not on the same scale or with the same efficiency.*

****Stamp duty rules vary across Australia. Readers should check with the State Revenue Office in their State or Territory to confirm how (and indeed if) Stamp Duty is applied to business sales.*

TAX TIP

The Going Concern provisions are complex and are sometimes as a result misapplied. Consequently, in audits the ATO sometimes determines that GST is in fact applicable. For this reason, we recommend that sellers include a clause in the sale contract requiring the buyer to indemnify the seller for any GST that is payable in the event that the ATO later finds that the sale does not satisfy the Going Concern provisions.

Selling a Tenanted Property as a Going Concern

As per the above example, the Going Concern exemption is most often used in business sales – whereby all or most assets of the business are sold to the buyer so as to enable them to carry on the business seamlessly. However, the Going Concern exemption can also apply to the sale of a tenanted commercial building (as distinct from the more common Going Concern scenario of the sale of the commercial building where the business is being carried on along with all the other assets of the business).

GST Ruling GSTR 2002/5 expressly acknowledges that

the activity of leasing is an enterprise in its own right and can be the subject of the supply of a Going Concern. The Ruling uses the example of a small retail complex that has been fully tenanted for many years. Where the owner sells the complex and the benefits of the covenants in the leases (all existing tenancies), the Going Concern exemption may apply. By contrast, the exemption will not apply where the property is simply sold (in isolation from leases).

ATO EXAMPLE

As part of a portfolio of real estate assets, SellCo owns a large combined retail shopping centre and office tower known as Black Tower. SellCo is selling Black Tower to AcquireCo subject to all existing tenancies.

SellCo outsources the management of all of its properties to ProManagement under a portfolio-wide management agreement. SellCo has also entered into other services contracts with third parties specific to Black Tower only. Among other things, those contracts cover services such as electricity, gas, telephone, internet, lift and escalator maintenance, air-conditioning maintenance, cleaning, security, advertising and centre promotions.

The management agreement with ProManagement cannot be transferred to AcquireCo in respect of Black Tower as it applies to all of SellCo's properties on a portfolio-wide basis. Some of the services contracts in relation to Black Tower are due to expire and will not be renewed before settlement. Other services contracts will be assigned or novated to AcquireCo on settlement. However, AcquireCo has its own preferred service contractors for some services so requires SellCo to terminate those particular services contracts on settlement.

Even though the management agreement and some of the services contracts are not being supplied by SellCo to AcquireCo, SellCo is supplying AcquireCo with all of the things that are necessary for the continued operation of the enterprise of leasing Black Tower (and therefore meeting this requirement of the Going Concern exemption from GST). This is because the supply of Black Tower subject to the existing leases to the tenants is all that is required for this particular enterprise.

While none of the management or services contracts are necessary for the continued operation of the leasing enterprise, any services contracts that are assigned or novated to AcquireCo are transferred as part of the leasing enterprise, and can also be included as part of the 'supply of a Going Concern' by SellCo.

Thus, if you are a lessor and are contemplating now or in the future disposing of a tenanted commercial property, you may be eligible to apply the Going Concern exemption to the sale which provides the buyer with the benefits outlined earlier.

GST Ruling GSTR 2002/5 further states that where the building is not fully tenanted, the Going Concern exemption may still nonetheless apply provided that new tenants are being actively sought for the vacant areas or those areas are untenanted for a specific reason (e.g. refurbishments). This 'carve-out' indeed applies even where the building is wholly untenanted. This is consistent with the income tax treatment of landlord expenses which focuses not on whether the premises are actually being

leased but rather whether they are available for lease. However, the GST Ruling then goes on to state that the Going Concern exemption will not apply where the building has not ever been previously leased to a tenant, even though it may at the time of sale be being actively marketed to attract tenants.

Consider Voluntarily Registering for GST

Although you or your business may not legally be required to do so, have you considered the benefits of registering for GST voluntarily?

To recap, you are required to register for GST where your GST turnover is \$75,000 or more (or \$150,000 for non-profit organisations) in either:

- The previous 12 months (measured over the 12-month period at the end of the current month)
- The next 12 months (starting at the beginning of the current month i.e. your projected turnover).

'Turnover' includes all the supplies you have made over the previous 12 months or are likely to make over the next 12 months. Excluded from the turnover calculation is the GST component of the supplies, supplies that are input tax (including financial supplies and supplies of residential accommodation), supplies that are not connected with your business, and supplies that are not connected with Australia. Also excluded when working out projected turnover are transfers of capital assets and supplies you make as a consequence of closing down your business. If after having calculated your turnover, it falls below the registration threshold, there may nevertheless be benefits in registering for GST as follows:

1. By registering for GST you are entitled to claim GST credits for the GST included in the price paid for things you acquire for use in your business for the purpose of making taxable or GST-free supplies. If you are not registered you cannot claim GST credits. Registering therefore provides a particular benefit for businesses that end up in GST refund position at the end of a reporting period such as businesses that make taxable sales and also GST-free sales such as chemists etc.
2. Without the ability to claim GST credits your business costs might be higher than those of your competitors.
3. You can save the time and hassle of constantly monitoring whether your current or projected annual turnover exceeds \$75 000. Once either your current or projected turnover exceeds this threshold, you have no choice but to register for GST.
4. Some businesses prefer only to deal with GST-registered businesses.

On the downside, voluntarily registering for GST may impose an administrative burden and accounting costs on your business (such as price changes, changes to invoices, completion of Activity Statements etc.). Ultimately, if your turnover is below the registration threshold, the decision whether or not to voluntarily register should be made in consultation with your accountant.

Pre-Establishment Costs

Whether you are starting out in business or restructuring, setting up a company can be expensive. Indeed, after registering a name, lodging the required forms with ASIC, paying the ASIC registration fee, drafting a Constitution, and paying professional advisors ... the cost of establishing a company can run into the thousands of dollars.

Normally, if you are not registered for GST you cannot claim GST credits. However, an exception to this rule is contained in *Section 60-5 of the GST Act*. This section allows GST credits to be claimed by a company after it has been established but not yet GST-registered, provided the following conditions have been met:

- The purchase must be for the purpose of bringing the company into existence or carrying on a business after it comes into existence
- The company must come into existence and be registered for GST no more than six months after the purchase
- The individual buyer must become a member, officer or employee of the company
- The company must have fully reimbursed the buyer for the cost of the purchase
- The purchase must not be used to make input taxed sales or for private purposes
- The company must not be entitled to a GST credit for the purchase if it subsequently acquires the thing from the buyer and
- The buyer must not claim a GST credit for the purchase.

Where all of these conditions are met, the GST credit is claimable by the company (not by the individual) in the tax period in which the individual is fully reimbursed for the purchase. When the company lodges its Activity Statement for that period, it must hold a copy of the tax invoice (which of course will be in the name of the individual and not the company).

In light of these requirements, we offer the following advice:

- Purchases should be made as close to the date of the company coming into existence as possible – and certainly within the six-month timeframe
- Purchases should only be made by those who will be part of the company itself – not by spouses, business partners or other associates
- The reimbursement by the company must be GST-inclusive.

Margin Scheme

The Margin Scheme is a great way to reduce the GST payable on taxable sales of real property. It is typically applicable to new residential property developments, but may also be considered when selling subdivided vacant land you have developed as part of your business.

Whereas normally GST is charged on 1/11th of the sale price, under the Margin Scheme GST is calculated as 1/11th of the margin. Broadly speaking, the margin is calculated as follows:

- For property acquired before 1 July 2000, the margin is the increase in value from that date (the Valuation Method).
- For property acquired on or after 1 July 2000, the margin is the difference between the price you paid for the property, and the price you are selling it for (the Consideration Method).

MARGIN SCHEME	
Advantages	Disadvantages
– less GST charged on sale	– buyer can't claim GST credits (this is only a problem if you are selling to a GST-registered buyer)
– flow on effects of less finance required, less interest payable over the life of the loan, less Stamp Duty payable	– can be complex to calculate
	– valuation costs where the property is acquired before 1 July 2000

SELLING TO REGISTERED BUYERS

The inability of the buyer to claim GST credits makes it unlikely that you would use the Margin Scheme when selling to buyers who are registered for GST. By using the Margin Scheme in this circumstance, the reduced GST component would transform into an out-of-pocket expense for the registered buyer – rather than an expense they can claim back on their next Activity Statement. However, consideration should be given to using the Margin Scheme when selling to GST-registered buyers where:

- The purchase is not part of the enterprise that they are carrying on (e.g. private purchase of new residential premises) or
- Where the registered buyer is having difficulty obtaining finance (in which case the Margin Scheme can reduce the amount of the borrowing required).

SELLING TO UNREGISTERED BUYERS

On the other hand, for unregistered buyers, the GST charged on a taxable property represents an out-of-pocket expense which they cannot claim back from the ATO. Therefore, strong consideration should be given to using the Margin Scheme when selling to this type of buyer as it effectively reduces the overall, out-of-pocket cost and thus increases the likelihood of a sale.

AVAILABILITY

The following table looks at the availability of the Margin Scheme in a range of common situations.

AVAILABILITY OF MARGIN SCHEME		
TRANSACTION	Available?	
	YES	NO
Previous sale was taxable, but margin scheme was not used		✓
Input taxed supply of property		✓
Previous seller unregistered, current seller making a taxable sale	✓	
Previous sale was as a Going Concern by a GST-registered seller		✓
Only one party wishes to use the Margin Scheme		✓
Current sale is taxable and Margin Scheme applied to the previous sale	✓	
Sale of new residential premises to unregistered buyer	✓	
You inherited the property, and the deceased acquired it through a supply that was not eligible for the Margin Scheme		✓
You acquired the property from the operator of a joint venture that you were part of, and the operator acquired it through a supply that was not eligible for the Margin Scheme		✓
You acquired it from another GST group member, and the last supply of the property from a non-group member was not eligible for the Margin Scheme		✓

EXAMPLE

Rick is a GST-registered property developer who purchased a parcel of land for \$400,000 from a local authority in 2005 under the Margin Scheme. Rick then subdivided the block into two separate lots of equal size. He then constructed residential housing on each of the blocks, selling each house and land package for \$500,000 to a registered buyer and to an unregistered buyer. In making these two separate sales, Mick decides to only use the Margin Scheme for the sales to the unregistered buyer. In pursuing this strategy, the following outcomes have been achieved:

Unregistered Buyer

By using the Margin Scheme on the sale, Rick dramatically reduces the out-of-pocket GST expense for his buyer and therefore improves the chances of a sale. The GST payable under the Margin Scheme is \$27 273, worked out as follows:

- (\$400,000 divided by 2 blocks = \$200,000)
- (\$500,000 sale price - \$200,000 = \$300,000)
- (\$300,000 x 1/11th = \$27,272).

Had the Margin Scheme not been used, the GST payable by the unregistered purchaser would have been \$45,454 (1/11th of the selling price of \$500 000). By using the Margin Scheme, the buyer therefore has saved \$18,182 plus made flow-on Stamp Duty savings.

Registered Buyer

By not using the Margin Scheme in the same property development, the buyer is able to claim back the \$45,454 GST. By contrast, if the GST was worked out under the Margin Scheme as \$27,272, this GST component would have transformed into an out-of-pocket expense that was unable to be claimed back by the registered buyer.

By having a strategic eye to who is buying his property, Rick has been able to achieve the best GST outcomes for his customers and therefore increase the chances of a sale in both cases.

Benchmark Your Business

In 2019, the ATO's Small Business Benchmarks were updated. Have you benchmarked your business lately?

The *Small Business Benchmarks* are financial ratios developed by the ATO from information provided by businesses on their tax returns and Activity Statements. The Benchmarks were originally introduced as a tool to assist business to compare their performance against industry averages and, where the business fell outside the averages, check that you have reported all your income and GST to the ATO and ensure that your reporting systems are adequate. However, in recent years the ATO has gone much further and used the Benchmarks as a tool for not only identifying audit targets but as the basis for issuing amended Activity Statements and Income Tax Return – that is, if a business cannot explain and substantiate why their sales/income and purchases/acquisitions fall outside the averages for their industry, then their Activity Statement and Income Tax Return may be amended to reflect the industry averages contained in the benchmarks. The Administrative Appeals Tribunal (AAT) accepts this use of the benchmarks by the ATO where a taxpayer's records are inadequate.

For this reason, business owners should familiarise themselves with the new updated benchmarks, and moreover ensure your GST and income tax record keeping is in good order (especially ensuring you have tax invoices for GST credits you have claimed). If you fall outside the Benchmarks, don't panic. There may be a plausible explanation such as:

- **Higher rent to turnover** – your business may be located in a high-rent major shopping centre and consequently pay more rent than others in the same industry.
- **Higher labour to turnover** – a hair salon for example may only offer basic men's hair cuts rather than style cuts and therefore have a higher labour-to-turnover ratio than other hair saloons.

Whatever the reason, if your business falls outside the Benchmarks for your industry, be sure to have an explanation on hand and provide it to the ATO if they conduct a review of your business. If your explanation is adequate, this may ward off further ATO enquiries including a possible audit.

The benchmarks cover over 100 industries, with the following updated categories now available to access on the ATO website:

- Accommodation and food
- Building and construction trade services
- Education, training, recreation and support services
- Healthcare and personal services
- Manufacturing
- Automotive electrical services
- Machinery and equipment repair and maintenance
- Architectural services
- Veterinary services

- Retail trade
- Transport, postal and warehousing

GST Action Plan

GST is not just another tax. Unlike other taxes, it must be collected and remitted to the ATO by GST registered businesses and individuals. Therefore, it can significantly impact your cash-flow and be administratively burdensome. The following Action Plan will help to assist businesses manage their GST obligations on an ongoing basis.

✓ APPOINT A GST COORDINATOR

You should appoint a knowledgeable person within your business to identify and ensure compliance with your GST obligations. This may involve them attending to a range of tasks such as:

- Tax Invoice procedures
- Activity Statement lodgement and preparation (if not using a registered accountant or registered bookkeeper)
- Adjustment procedures
- Checking the GST status of new suppliers (see later), and
- Ensuring the correct GST treatment of any new products or services that you offer, or any new suppliers or customers that you obtain (e.g. if you commence selling to an overseas purchaser, the GST treatment of overseas transactions can be complex).

Ideally, more than one person should be able to fill this role, in the event of staff leave or a resignation.

✓ TAX INVOICE PROCEDURES

From both a supplier and buyer standpoint, ensure you have tax invoice procedures in place.

As a buyer, you cannot by law claim a GST credit until you hold a valid tax invoice. In any ATO GST review or audit, tax invoices will typically be the first records the ATO will seek. Have procedures in place to ensure that for every purchase you make, a valid tax invoice is obtained, as well as any other document that records an adjustment to your GST entitlement. Ensure that the person in charge of this function is aware of the requirements of a valid tax invoice. If you are not in possession of a valid tax invoice, you should request that the supplier provide you with one. They then have 28 days to do so. Having obtained a tax invoice, it must be retained for five years after the relevant transaction or act has been completed.

As a supplier, ensure your tax invoices meet ATO requirements and importantly that your customers understand your invoices. You should also get into the habit of sending out tax invoices as soon as a purchase/order is made. Leaving the sending of tax invoices until the end of the month etc. delays payment which, in turn, can create cash-flow pressures for your business.

✓ CHECK SUPPLIERS ARE GST-REGISTERED

The charging of GST by unregistered suppliers is becoming more widespread, particularly in the building and construction industry.

To protect yourself from loss, we recommend that you verify the GST-registration details of any new suppliers that you transact with. Where you pay GST to a supplier who is not registered (but has charged 10% GST anyway) you may be denied GST credits by the ATO on all

purchases from that supplier where they are later found by the ATO in an audit or review to not have been registered for GST. This out-of-pocket amount could be significant.

Verifying supplier ABNs and GST registration is easy and takes no time at all. All you need to do is visit ABN Lookup <http://www.abr.business.gov.au/> and key in the supplier's ABN or ACN as quoted on their invoice.

✓ TIME BIG-TICKET TAXABLE PURCHASES

Where possible, the purchase of expensive items which attract GST should be delayed to the end of the tax period (e.g. quarter). By doing so, you can recoup any GST component that you have paid quickly on your next Activity Statement – rather than having to wait until the end of the tax period (which could be three months after the purchase). This will ultimately assist your cash-flow.

✓ REVIEW YOUR TAX PERIODS

Periodically review your tax periods and determine whether it's still appropriate to lodge monthly, quarterly or annually. While most taxpayers lodge quarterly, monthly periods must be used in certain situations and can be adopted by all taxpayers. If you are an importer or invariably end up in a GST-refund position, there can be significant cash-flow advantages in lodging monthly, rather than waiting longer for your refund. Discuss the options with your accountant.

✓ REVIEW YOUR ACCOUNTING METHOD

Small Business taxpayers (those in business with a turnover of less than \$10 million) should periodically review your accounting method and determine whether the Cash or Accruals method is best for your business. Although most businesses use the Accruals method, there are advantages in using the Cash method if eligible (under this method GST is attributed to the tax period in which you receive payment, and GST credits are attributed to the tax period in which you make payment – regardless of when the tax invoice is sent, or when the goods or services are supplied).

The Cash method is of advantage to your business where the amount customers owe you is greater than the amount you owe your suppliers (this is almost always the case for small businesses as they do not have extended trading terms with their suppliers).

✓ PRICING

Ensure that your pricing, including on tax invoices, complies with the GST law. Advertised or displayed prices should be GST-inclusive or at least state the amount of the GST along with the price of the product. Invoices should state the amount of the GST separately where it applies.

When selling new product or when commencing to sell to overseas customers, ensure that you apply the correct GST treatment to the transaction (e.g. taxable or GST-free). If you are uncertain, you should consult your registered accountant or bookkeeper.

✓ KEEP ABREAST OF CHANGES

Changes are often made to the law which impact your GST obligations and entitlements. For instance, in recent years changes have been made to the requirements of a valid tax invoice. Such changes can have a material, day-to-day impact on business. Keep abreast of changes by continuing to subscribe to our magazine.

✓ CHANGES TO USAGE

Have procedures in place to track changes to the use

of items purchased for business purposes, so that GST adjustments can be made. That is, if you start using a private item in your business or start using a business item for private purposes, your GST claim may need to be adjusted in respect of that item.

✓ SOFTWARE

Automate your systems, where resources allow, to reduce manual entry. Discuss with your registered accountant or bookkeeper which software package is best for your business (this may change as your business grows and evolves) and have them determine the GST default codes tailored to your business. Remember that the software file that many businesses prepare in-house and then provide to the bookkeeper or accountant is the basis for completing your Activity Statements. It's important therefore to assign the correct tax code to each transaction. This in theory should now be a somewhat simpler task for small business given the introduction of **Simpler BAS**.

Imports

With the world becoming increasingly borderless (particularly now with the ability to purchase online from overseas) many Australian businesses and individuals are importing goods and services into the country. Particularly where the goods imported are expensive, GST can be a significant cost. This section examines the application of GST to imports, and the concessions that you may be able to apply.

WHEN?

As a general rule, GST will be levied on goods that are imported into Australia provided the goods are cleared by Customs for home consumption and not classified non-taxable importations. As GST is a tax on consumption in Australia, generally GST will only be applied on goods that will be consumed in Australia. For example, goods that have been imported into Australia and are waiting subsequent export to a final destination will not attract any GST as the goods will not be consumed in Australia.

The GST legislation also specifically provides for certain goods imported into Australia to be classified as non-taxable importations and hence not attract any GST. Such goods include:

- Goods that would have been GST-free or input taxed if supplied in Australia such as basic food, certain medical aids and appliances, certain cars for use by people with disabilities etc.
- Goods imported by overseas travelers that do not exceed the duty-free allowance
- Goods entering Australia that have been bequeathed
- Medals, trophies and the like
- Goods that have been imported into Australia after repair or replacement under warranty
- Goods that have been imported into Australia for repair or alteration and are then exported, and
- Goods that have been returned to Australia in an unaltered condition.

Regarding services, GST will apply if the service is performed in Australia by the supplier, or the supplier makes the sale of the service through a business they carry on in Australia.

WHO?

The GST is payable by the importer irrespective of whether they are registered for GST. Where they are registered, they may be able to claim a GST credit. Consider the following examples:

EXAMPLE (Goods Imported by Resident Supplier)

Mike goes to a car dealer in Brisbane and after driving a demonstration model, agrees to buy an Italian manufactured sports car. The car dealer does not have that model car in stock so they order and purchase the car from the Italian manufacturer. The car is then imported into Australia. When the car dealer receives the imported car, Mike is advised the car is ready for delivery.

The car dealer, being the importer of the car, is liable to pay GST on the taxable importation of the vehicle. The car dealer is entitled to claim a GST credit for the GST payable on the importation provided they are registered.

The car dealer then charges Mike GST on the sale of the sports car as with any other taxable supply.

EXAMPLE (Goods Imported by Resident Recipient)

Mike decides to fit his new sports car with specialised seat covers. The seat covers can only be obtained from a manufacturer in Italy. Mike contacts the Italian company and has the seat covers imported into Australia. There is no GST charged on this transaction by the Italian manufacturer of the seat covers as it is not a supply connected with Australia. Mike however will be charged GST by Customs upon importation as the goods are considered to be a taxable importation, and the importation is made by Mike.

TAX TIP - DEFER GST

Under the GST system, importers are at a significant disadvantage as against domestic businesses as GST is payable upfront. That is, GST is usually payable to Customs by the importer at the time the imported goods are released from Customs for use in Australia (as opposed to domestic supplies where GST is only payable to the ATO when the product is sold). To address this disadvantage, as an importer you may wish to consider registering for the GST Importation Deferral Scheme. Under this scheme, participants can defer the payment of GST until they submit their next Activity Statement after the imported goods have entered Australia for home consumption. Provided the goods are intended to be used for a creditable purpose (i.e. used in your business) a corresponding GST credit can be claimed at the same time on that same Activity Statement. Therefore, not only are you not required to pay GST upfront to Customs, in most cases the GST liability is cancelled out on the same Activity Statement.

To participate in the Deferral Scheme, an importer must:

- Have an ABN and be registered for GST
- Commence, or already be, lodging its BAS monthly and electronically
- Pay its GST liability electronically
- Deal with Customs electronically
- Have a satisfactory ATO compliance history, and
- Have ATO approval.

EXAMPLE (Deferral Scheme in Action)

Cameron (who reports GST monthly) is an importer of artwork which he then sells in Australia. On 5 January he imports an expensive sketching for resale in his business. He does not however sell the sketching until 2 April.

Instead of paying GST upfront to Customs at the date of importation (5 January), Cameron can (by registering for the Deferral Scheme) defer the payment of GST until 21 February (his next Activity Statement after the imported goods have entered Australia for home consumption). Cameron will claim the GST credit in that Activity Statement.

That the goods were not sold until 2 April is irrelevant for the purposes of remitting GST to the ATO.

For importers, the only real downside to the Deferral Scheme is that participants must lodge their Activity Statement on a monthly basis, which could mean increased administration or, where you use an accountant or bookkeeper to prepare your Activity Statement, increased accounting costs. In practice, the decision of whether or not to register for the Deferral Scheme will mostly rest upon whether the importation of taxable goods is a central or incidental aspect of your business. Returning to the earlier example, it would make sense for Cameron to register for the Deferral Scheme as importing taxable goods is a central part of his business.

Additionally, where your business regularly ends up in a GST refund position, there is also an upside in lodging monthly as required under the Deferral Scheme. Why wait until the end of a quarter to receive your GST refund from the ATO, when you can receive it monthly instead?

Ridesharing

DRIVERS

Drivers must register for GST within 21 days of signing up with Uber. Under general GST law, you are only required to register for GST where you are carrying on an enterprise and your annual turnover is \$75,000 or more. However, where your enterprise involves providing 'taxi travel' you must register for GST irrespective of the level of turnover.

The GST legislation defines 'taxi travel' as travel involving transporting passengers by taxi or limousine for fares. The ATO adopts a broad interpretation of 'taxi' to include cars made available for public hire to transport passengers in return for a fare (but not including trucks and bike courier services). Thus, Uber drivers are caught by this interpretation. Although Uber appealed this ATO interpretation to the Federal Court, in February 2017 the Court unanimously ruled in the ATO's favour that making your car available for ride-sourcing constitutes taxi travel. Therefore, Drivers must register for GST within 21 days of signing up with Uber, irrespective of the level of turnover. From a Driver's perspective, they are financially better off registering for GST anyway, as many of the costs they incur while driving for Uber will attract GST. Without registration, there is no ability to claim back the GST component of these expenses. Having registered for GST, drivers:

- Must pay to the ATO GST on the full fare (including

the facilitator fee charged to them by Uber, and

- Can claim GST on business expenses taking into account any private use of the vehicle.

RIDER

To claim a GST credit on a fare, the trip must be business-related, and the Rider must be in possession of a valid Tax Invoice. For quite a number of fares however, a tax invoice will not be required as the total fare may be less than \$82.50 (including GST). Where this is the case, any of a tax invoice, a docket, an invoice, or a receipt will suffice and can form the basis for your GST claim. The question then arises, what actual documentation does Uber or the Driver provide you with at the conclusion of the ride? In the vast majority of cases, the Driver will not provide you with any documentation (e.g. invoice etc.). Rather, after the ride, if you log back into Uber's 'app' they will in due course, on behalf of the Driver, provide you with either a:

- Tax invoice (where the Driver has registered for an ABN and GST). Tax Invoices are provided by Uber even where the fare is below \$82.50. We can confirm that the standard Uber-provided Tax Invoices we have sighted are in full compliance with the ATO's requirements.
- Invoice (in the event that the Driver has failed to register for an ABN and GST, or simply failed to provide this information to Uber). Again, the standard Uber-provided invoices we have sighted provide sufficient information to claim a tax deduction but not make a GST claim in instances where the fare exceeds \$82.50.

Uber has now introduced about a new feature that has just been released on the app whereby if you create a Business profile and book an Uber using that Business Profile, it will only select from drivers that have shared their ABN & GST registration with Uber (thereby assuring the rider that the tax invoice subsequently emailed will be GST compliant).

Annual Apportionment of GST Credits

Under this concession, Small Business Entities can elect to account for the private portion of their business purchases annually, rather than each time they lodge a BAS. Therefore, where a business purchase has a private use component, an entity can claim a full GST credit (rather than claiming a partial credit by estimating the private use component) and then, in a later BAS, make an increasing adjustment in recognition of the private usage. Where you take up this option, you must make the annual increasing adjustment on the BAS that covers the period when your income tax return (for the income year covering the tax period in which you claimed your GST credit) is due or an earlier BAS.

This concession gives SBEs both an administrative and cash-flow advantage. Administratively, they are better off by being able to account for the private use component of purchases annually – all in one hit. While, in a cash-flow sense, they also benefit by being able to retain the full GST credit for a longer period (up to a year in some cases) rather than receiving a partial credit upfront by having to estimate the private use component.

To commence using this concession, you don't need to notify the ATO. However, you should keep a record showing the date you commenced using this concession and when it took effect.

Subdivided Property

Land Titles Office data indicates that an increasing number of people are subdividing their land, and then typically selling off the newly-created block. Where this occurs, the question arises as to whether GST should be charged upon sale, and also therefore whether unregistered parties (e.g. Mums and Dads) are required to register. As detailed in this section, the answer to this question depends on a range of factors.

Circumstances

Where you subdivide a block of land (including land on which you live) and then proceed to sell the newly-created block, any sale will generally not attract GST unless both of the following apply:

1. Your intention or purpose in entering into the subdivision was to make a profit or gain, **and**
2. You entered into the subdivision in the course of carrying on a business or in carrying out a business operation or commercial transaction.

In relation to the criteria 2, property developers will invariably be caught and GST will apply on sale. However, you need not be in business for GST to apply. The following subdivisions can also be caught:

- Subdivisions by non-business taxpayers (e.g. 'Mums and Dads' subdividing the block on which they live) or
- Subdivisions by business taxpayers subdividing outside the ordinary course of their business can be caught by GST.

In basic terms, in the case of isolated transactions (e.g. Mums and Dads subdividing) GST will apply where the subdivision and subsequent sale constitutes an enterprise as opposed to a mere realisation of the land. The Tax Office considers that if several of the following factors are present, this indicates that an enterprise may be carried on in which case GST will apply to the sale:

- Buildings have subsequently been erected on the land e.g. new house
- There is a level of development of the land that goes beyond that necessary to secure council approval for the subdivision
- Borrowed funds financed the acquisition or subdivision
- There is a coherent plan for the subdivision of the land
- There is a change of purpose for which the land is held
- Additional land is acquired to be added to the original parcel of land
- There is a business organisation, for example a manager, office and letter head. behind the venture.

EXAMPLE

Rhonda and Brad purchased large a two-hectare property in 2015 to accommodate their stable of children. One hectare is taken up by their main residence, with the remainder of the property largely unused. The couple is not registered for GST.

In 2019, they receive advice from their local real estate agent that a subdivision into two blocks and then a sale of

the unused portion will be extremely profitable. However, in order to be sold, the blocks must first meet Council regulations which require the provision of water to the blocks.

Rhonda and Brad arrange for water, as well as storm water drainage and telephone services to the blocks. They also engage a builder to erect a storage shed on the unused block. Now looking to sell the block, the happy couple wonder whether GST will apply to the sale?

Although a one-off transaction, the subdivision and subsequent sale constitutes the carrying on of an enterprise for the following reasons:

- **There is a change of purpose for which the land is held** – the land was originally purchased to accommodate Rhonda and Brad's large family. This all changed upon receiving advice from their real estate agent on the buoyant local market. Rhonda and Barbie now hold the land for profit.
- **Development of the land** – By providing for storm water drainage and telephone services, Brad and Rhonda have gone beyond merely meeting Council requirements for subdivision sales, and have actually developed the land.
- **Erecting Buildings** – Brad and Rhonda have attempted to add to the attractiveness of the land by erecting a storage shed.

As they are carrying on an enterprise, where the sale of the land exceeds the GST turnover threshold of \$75 000, Rhonda and Brad will be required to register for GST and charge GST on the sale.

Entertainment

Whether it be Christmas parties, after-work drinks on a Friday, or a Melbourne Cup function, at some stage during the year employers are likely to provide entertainment to their employees. Particularly for expensive functions, the GST component can be significant. By following a few basic rules, you can ensure that you get the GST treatment correct. Generally speaking, an employer can only claim an income tax deduction and GST credits for any GST paid for their entertainment expenditure to the extent that it is subject to FBT. By contrast, an employer can generally claim an income tax deduction and GST credits for any GST paid for all non-entertainment expenditure irrespective of whether it is subject to FBT.

Taxation Ruling 97/17

This Taxation Ruling sets out the income tax and FBT treatment of entertainment by way of food or drink that employers may provide to employees, their associates (e.g. spouses), and 3rd parties such as clients throughout the course of the year. The Ruling is very comprehensive with the income tax and FBT treatment of virtually every meal entertainment scenario covered in the table at Paragraph 25 including:

- After-work drinks on a Friday
- Business lunches
- Christmas and Melbourne Cup functions.

The table also covers both of the main two FBT meal entertainment calculation methods which are:

- **The Actual Method** – This is the default method for valuing meal entertainment, and no formal ATO election is required to use this method. Under the Actual Method, an employer pays FBT (in the absence of an exemption, such as the Minor Benefit Exemption or the Property Exemption) on all taxable meal entertainment provided to employees and their associates such as spouses. Entertainment provided to other parties such as clients, contractors, or suppliers is exempt from FBT. The downside of being eligible for an FBT exemption (e.g. Minor Benefit or Property) is that the meal entertainment is not tax deductible, and nor can you claim a GST credit.
- **50/50 Method** – Under this method, you pay FBT on only 50% of all taxable meal entertainment provided to employees, spouses AND clients, contractors, customers etc. irrespective of the cost. Likewise, you can only claim a 50% income tax deduction and 50% GST credits on such meal entertainment.

TAX TIP

With the FBT rate at 47%, the GST credits and tax deduction available under the 50/50 method, or available where you do not meet an exemption under the Actual Method, is unlikely to provide a better after-tax result than if you meet an FBT exemption under the Actual Method. Therefore, you may wish to design your functions so that they are FBT exempt (e.g. by keeping them under \$300 per head).

Although **TR 97/17** focuses on the income tax and FBT treatment, in all of the many scenarios outlined the GST treatment is identical to the income tax treatment. Every, single time! That is, if the expenditure is deductible in the table at Paragraph 25 in the Ruling, then GST is claimable. If the expenditure is not deductible in that table in the Ruling then GST credits cannot be claimed. This Ruling therefore provides a fool-proof template for claiming GST credits on food and drink entertainment on your BAS. To access the Ruling,

GST Withholding for Property Buyers – Common Errors

From 1 July 2018, certain purchasers of new residential premises or potential residential land are required to withhold an amount from the price of the supply (the equivalent of the GST payable) and remit that amount direct to the ATO rather than paying it to the seller.

Since the commencement of the new regime, the ATO is already noticing some common errors in Activity Statements. The new regime does not impact a seller's obligation to lodge their Activity Statement, and report their GST liability on taxable sales. Accordingly, sellers must report property sales in the Activity Statement period where settlement occurred (Label *G1* and Label *1A*).

For the purchaser's part, at Label *1B* they must report the total amount of GST credits that the seller is eligible to claim (as distinct from the amount that has been withheld and remitted to the ATO by the purchaser). We note that

in most cases, the purchaser will not be GST registered (for example, individuals buying a residence to live in, or buying vacant land on which residential premises will be built on) and therefore will not be completing an Activity Statement.

A credit for the amount that the purchaser withheld and paid to the ATO will be transferred to the seller's Activity Statement account by the ATO once the Activity Statement is processed. Where the system has been falling down somewhat is where the solicitor (or other representative) for the purchaser has filled in Form 1 or Form 2 incorrectly or has not lodged them, and the credit has failed to appear on the seller's GST property credits account. In view of this, for sellers we recommend:

1. Sight property settlement documentation to ascertain what GST credits you expect to have passed through to the ATO GST property credits account. Note that it is possible that some conveyancers may not have fully observed their requirements to withhold and to report using appropriate forms
2. Before lodging the relevant Activity Statement, ensure that the GST property credits account has the appropriate credit(s) on it for the amount(s) withheld. The GST property credits account can be viewed by your Accountant on ATO Online Services for Agents under the Business tab (this account is not available on the Tax or BAS Agent Portals)
3. Short-pay the GST owing on the Activity Statement by the amount of the credit on the GST property credits account
4. If an amount withheld is not correctly appearing on the GST property credits account, delay lodging the Activity Statement, and phone the ATO's general business line 13 72 86 to resolve the issue.

EXAMPLE

Build Co purchases a large block of vacant land that does not contain any buildings and is zoned to allow residential use which it intends to subdivide into three lots. The plan is carried out, and the vacant lots are sold with GST in the price. One of the sales was made to Jackson Pty Ltd. (for \$450,000 including GST). Jackson Pty Ltd. pays a 10% deposit with the balance due at settlement. The sale contract includes the required notice advising Jackson Pty Ltd. of the requirement to make a payment to the ATO and informs Jackson Pty Ltd. of the amount of that payment (\$40,909 being 1/11th of \$450,000), and to make it on or before the day of settlement. Assume Jackson Pty Ltd. mistakenly withheld \$45,000 (10% of \$450,000) and remitted that amount to the ATO.

Each party's Activity Statement obligations are as follows:

- Build Co. as the seller must include the sale at *G1*, and \$40,909 at *1A*
- Jackson Pty Ltd. as the purchaser must include \$40,909 at *1B* which represents the GST credit that Build Co. is eligible to claim, this is irrespective of the fact that Jackson Pty Ltd withheld and remitted to the ATO \$45,000.

Branches

If you operate through branches, special GST rules can help streamline your GST obligations.

Normally, with businesses that operate through branches, each branch will do its accounts separately. However, because each branch is not a separate entity for tax purposes, each branch's accounts will have to be amalgamated each GST reporting period, often coming at a great administration and accounting cost. However, by employing the branch rules, your branches will operate as distinct and separate entities for GST purposes – no amalgamation of the accounts will be necessary.

For a branch to be eligible for these special rules, it must have an independent system of accounting and it must be separately identifiable (either by location, or the nature of its activities). The entity must also carry on an enterprise through the branch, and must not be a member of a GST group.

WHAT IT MEANS

- You will not need to consolidate the branch accounts every tax period (if your tax periods are monthly or quarterly, this will save you significant time and cost)
- The branch will operate separately and independently and therefore will independently:
 - Account for GST on any supplies it makes (including to other branch members)
 - Claim GST credits on acquisitions it makes (including to other branch members), and
 - Issue its own tax invoices.
- The parent entity is responsible for lodging the separate BASs of the branch and for paying any GST liability.

The benefits of the branch concessions are clear. As a branch is most likely already doing its accounts separately anyway, rather than incurring the extra time and cost of amalgamating its accounts with the head entity, you can simply use the branch's accounts and account for GST as though the branch was a separate entity from the head entity.

Registering branches is particularly recommended for businesses which operate through separate franchises or where a business has separate and distinct arms, all of which keep separate accounts – e.g. marketing department, sales department, manufacturing department etc. Of course, if you don't keep separate accounts, then the sub-entity is not eligible to become a separate branch in the first place.

Claw Back Clause

GST claw back clauses should be strongly considered if you are selling property under the Margin Scheme exemption, or selling a business as a GST-free Going Concern.

MARGIN SCHEME

Working out the GST payable under the Margin Scheme can be complex. Mistakes are often made as a result of:

- **Applying the Margin Scheme when the parties are not eligible.** Ineligibility can arise for any number of reasons including where there is no written agreement to use the Margin Scheme, the original sale was taxable but the Margin Scheme was not used, or the property was originally acquired as a Going Concern.
- **Incorrect valuations.** Where the valuation method is used, there are quite specific rules that must be adhered to in the valuation process. These rules are set out in

Margin Scheme Valuation MSV 2009/1. Unless these rules are complied with, the ATO may use their own valuation, which can then result in the GST being recalculated.

- **Miscalculations** – even where valuations are satisfactory, and the parties are eligible to use the Margin Scheme, it can simply be calculated incorrectly. For instance, settlement adjustments are often overlooked (such as an additional amount to cover council rates) when calculating the margin. These amounts increase the consideration in the calculation.

GOING CONCERN

Taxpayers are also vulnerable to misapplying this exemption from GST, particularly the requirement to supply 'all things necessary' for the purchaser to carry on a continuing enterprise.

WHY UNDERPAYMENT MATTERS

In these cases, any underpayment of GST (either through applying the Margin Scheme when not eligible or through a miscalculation, or applying the Going Concern exemption when it was not available) exposes the seller. As the seller, it is your responsibility to correctly charge GST and to remit this amount to the ATO. If the ATO in a later audit or review finds that there has been a non-payment of GST or an underpayment, then the seller is liable for this amount. The seller can then request that the purchaser pay this amount, however most purchasers will enforce their contractual right to only pay the amount of the GST as agreed in the contract at the time of purchase. This then leaves the seller liable to pay the GST.

THE CLAUSE

It is for this reason that seller's should consider inserting a GST claw-back clause when making sales of property under the Margin Scheme and sales of a business using the Going Concern exemption. Indeed, you may wish to consider inserting such clauses in all contracts for all sales of property and businesses – regardless of whether the Margin Scheme or Going Concern exemption is used.

A generic claw back clause could take the form of:

"If GST applies to this transaction or is incorrectly calculated, the vendor reserves the right to recover any shortfall from the purchaser."

Google TR 97/17.

Outsourcing

In the modern commercial world it's quite common to outsource work to contractors. When doing so there are potential differences in the GST treatment of in-house employees and independent contractors. These differences become important if your business is not registered for GST or if you are a business that mainly makes input taxed supplies (for example, financial services). While you are not liable to pay GST on services employees provide to your business, GST-registered contractors generally will charge GST for taxable supplies/services they provide to your business. If they are providing services for the purpose of you making an input taxed supply or you are not GST-registered, then you will be unable to recover the GST they charge you.

In such cases, you may wish to consider having employees undertake those tasks if possible. Alternatively, if the contractor regularly provides these services to your

business, you may wish to consider employing them if feasible. This will ensure that GST is not charged on the services they provide to your business, hence saving you money. In taking on an employee there are of course other costs to consider; the main one of which is superannuation. However, under the contractor provisions of the superannuation legislation it may be the case that you are already liable to pay superannuation guarantee to the contractor in any case.

Equipment Purchases

When purchasing business equipment, there are a range of finance products provided by banks/financial institutions that you can use to make the acquisition. Each has differing GST treatment and will impact your cashflow differently:

Chattel Mortgage

Under this product, the goods become yours upon purchase, with the finance company taking a mortgage over those goods. The mortgage is discharged once final payment is made. At this point, you become the unencumbered owner. This form of finance is suitable regardless of your GST accounting basis, as GST is claimed upfront for both cash and accruals basis taxpayers. Other points to note about this form of finance include:

- As the borrower, you can claim interest and depreciation;
- The interest rate is fixed which makes the repayments easier to budget for;
- Balloon payments can be included during the term of the mortgage and at maturity if desired;
- The monthly repayment and any balloon amount is not subject to GST.

Finance Lease

Under this product, the financial institution pays the full amount to you (including GST). In return, you agree to make monthly repayments including GST. Therefore the lender owns the asset as lessor, and you effectively rent it via a monthly repayment (the repayment and the term are fixed). This product is therefore cashflow friendly and appeals to businesses that wish to minimise upfront, capital expenditure. GST is claimed on rental payments across the term of the arrangement. On the downside, lease arrangements are generally more expensive than other finance products. Furthermore, the terms of such arrangements can be complex. Also note that there is no depreciation available on the asset.

Hire Purchase

Under this product, you obtain the equipment by hiring it over the repayment term. Ownership is transferred to you when the financial provider receives the last repayment. Interest (which is fixed) and depreciation can be claimed.. As with a chattel mortgage, balloon payments can be included during the term of the mortgage and at maturity if desired.

From a GST standpoint, hire purchases were traditionally best suited to business clients on an accruals basis with GST being claimable upfront, while cash basis taxpayers had to claim GST progressively as each repayment was made. Taxpayers on a cash accounting basis can claim the full amount of any available GST credit at the time the first payment under the hire purchase is invoiced or paid.

This will certainly have a positive effect on cashflow and arguably makes the hire purchase option more attractive.

Feature	Buy Outright	Lease	Hire Purchase/ Chattel Mortgage
Upfront GST claim	Yes	No	Yes*
Ongoing GST claim on repayments	No	Yes	No*
Depreciation	Yes	No	Yes
Deductible monthly payments	N/A	Yes	No
Deductible interest on finance	Yes	No	Yes

*For hire purchase arrangements entered into before 1 July 2012, GST is not claimable upfront for cash accounting taxpayers. It is however claimable upfront for arrangements entered into after this date.

Want More?

For more GST strategies see last year's edition (and previous editions) of this GST publication which is available to download from our website www.mytaxsavers.com.au

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