
Background and General Economic Impact of a Goods and Services Tax ('GST') on the Real Estate Industry

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Abstract

As part of fundamental tax reform in Australia, a Goods and Services Tax ('GST') was passed into law in July 1999, to take effect from 1 July 2000. The changes introduced as part of these reforms will impact significantly on Australia's building and construction industry, not just in the day-to-day affairs of running a real estate business but on the building industry and economy as a whole. The first part of this article will examine the background to the introduction of the GST, including an explanation of how the GST system works. It will then discuss the economic impact of a GST on the real estate industry. Finally, the article will highlight and explain the main provisions of the GST rules as they apply to various real estate transactions. The transitional rules relating to the GST as it applies to the real estate industry are not discussed in detail in this article.

Background to the Introduction of the Goods and Services Tax in Australia

As part of its tax reform package, the Commonwealth Government announced its intention to introduce a broad-based Goods and Services Tax ('GST'). The legislative package¹ to implement the GST was introduced into the lower House of Parliament (the 'House of Representatives'), on 2 December 1998 and was promptly passed by that House but it was partially rejected by the upper House of Parliament (the

'Senate'). Subsequent to this, amendments were made to the package to take into account recommendations by the Australian Democrats. Significant among those amendments was the exclusion of basic food from the GST rules. The legislative scheme was finally passed by both Houses of Parliament on 30 June 1999, and received Royal Assent on 8 July 1999. The GST takes effect on 1 July 2000.

What is a GST?

A GST is commonly described as an 'indirect, broad-based consumption tax'. It is *indirect* in the sense that it is levied on goods, services and related activities, rather than directly on personal income. It is *broad-based* in that it applies generally to a wide range of transactions, with only limited exceptions. It can be contrasted with more specific taxes, such as a sales tax, which generally only applies to transactions in goods. In fact, despite its name, a GST is not limited to goods and services in the usual sense of these words. The fact that it includes real estate and the creation of rights is evidence of how wide-ranging the tax is.

¹ There are a number of Acts of the Commonwealth Parliament that govern the imposition and rate of the GST. These include: *A New Tax System (Goods and Services Tax) Act 1999* (Cth), *A New Tax System (Goods and Services Transition) Act 1999* (Cth), *A New Tax System (Goods and Services Tax Imposition - Customs) Act 1999* (Cth), *A New Tax System (Goods and Services Tax Imposition - Excise) Act 1999* (Cth), and *A New Tax System (Goods and Services Tax Imposition - General) Act 1999* (Cth). Also of relevance is the *Taxation Administration Act 1953* (Cth), as amended by the *A New Tax System (Goods and Services Tax Administration) Act 1999* (Cth), *A New Tax System (Australian Business Number) Act 1999* (Cth), *A New Tax System (Luxury Car Tax) Act 1999* (Cth), *A New Tax System (Wine Equalisation Tax) Act 1999* (Cth), *A New Tax System (Wine Equalisation Tax and Luxury Car Transition Tax) Act 1999* (Cth), and *A New Tax System (End of Sales Tax) Act 1999* (Cth).

It is a *consumption tax* as it applies generally to expenditure (amounts spent) rather than income (amounts earned or received). Ultimately, it is a tax that is finally borne by consumers, rather than producers or suppliers. Finally, a GST is similar to taxes known in other countries by its European title of Value Added Tax ('VAT'),² reflecting the fact that the tax is imposed on the valued-added by firms at each stage of production.

GST Terminology

To assist in understanding the basic operation of the GST system, a number of key terms need definition:

Supply: Is defined widely³ and includes a supply of *goods*,⁴ a supply of services, provision of advice or information, a grant, assignment or surrender of *real property*,⁵ whether the acts constituting the supply are legal or not. The meaning of supply is not restricted to sales.

Taxable supply: GST is payable on taxable supplies. A taxable supply is defined to mean a *supply connected with Australia*⁶ for *consideration*⁷, made in the course

or furtherance of an *enterprise*⁸ carried on by a *registered person* (see below). However, a supply is not a taxable supply if it is *GST-free* or *input taxed* (see below).

Input taxed⁹ supply: If a supply is input taxed, it means that there is no GST payable on it, but the supplier cannot claim *input tax credits* (see below) for the things that are acquired by the supplier to make the supply. Examples of input taxed supplies are financial services and residential rents. The difference between this type of supply and a *GST-free supply* (see below) is that no input tax credit is available to the supplier of input taxed supplies, while input tax credits are available to suppliers of GST-free supplies.

Input tax credit:¹⁰ Means a credit that is available to *registered persons* (see below) for GST paid on the supply of goods or services used in connection with a taxable supply. In other words, it is a credit for the GST payable on business inputs.

GST-free¹¹ supply: If a supply is GST-free, this means that no GST is payable on it (supplies are zero-rated), however the supplier is entitled to claim credits for the GST payable on the things acquired by the supplier to make the GST-free supply (its business inputs). Supplies which are GST-free falls into various categories including health, education, food, child care, supplies of water and sewerage services (including the emptying of septic tanks), and precious metals.

Registered person:¹² A person can only be registered if they are carrying on an enterprise (business). Registration is compulsory if the annual turnover for a

² GST and VAT are terms that are generally interchangeable. New Zealand, Canada, Singapore, South Africa and Australia use the term GST while France, Germany, the United Kingdom and other European Community Member Countries use the term VAT. In principle, the two systems are very similar. Perhaps one main difference between the two systems lies in the number of exemptions – European VAT systems generally have more exemptions than the GST systems of countries like New Zealand and Australia.

³ Section 9-10 *A New Tax System (Goods and Services Tax) Act 1999* (Cth) ('*GST Act*'). Legislative references in subsequent footnotes (including Sections, Divisions and Parts) are to the *GST Act* unless otherwise stated.

⁴ Defined as any form of tangible personal property: s 195-1.

⁵ Defined as any interest in or right over land; or a personal right to call for or be granted any interest in or right over land; or a licence to occupy land or any other contractual right exercisable over or in relation to land: s 195-1.

⁶ Elaborated on in s 9-25. For present purposes, a supply of real property is connected with Australia if the real property is in Australia: s 9-25(4).

⁷ Widely defined to include any payment, or any act or forbearance in connection with a supply of anything: s 9-15.

⁸ Defined to essentially mean a business but excluding activities carried out as an employee or as a private recreational pursuit or hobby: s 9-20.

⁹ Has the meaning given by s 9-30(2) and Division 40.
¹⁰ Defined in s 195-1.

¹¹ Has the meaning given by s 9-30(1) and Division 38.

¹² Registration is covered by Part 2-5.

person exceeds a certain threshold.¹³ Below the threshold requirement, registration is optional. Registration is relevant for a number of reasons including: (1) GST is not payable on a supply unless the supplier is registered; (2) GST credits can only be claimed if a person is registered (hence, some people may wish to optionally register despite being below the specified thresholds for compulsory registration); and (3) GST returns and other requirements must be completed by registered persons.

When a registered person issues a tax invoice when supplying goods and/or services, they will be required to include their Australian Business Number ('ABN'). The ABN that is required to appear on the tax invoice is part of a wider identification system conducted by the Australian Taxation Office, intended to reduce multiple government registrations for businesses and also to facilitate improved compliance. Consistent with this, a business's ABN will also act as its public GST registration number.

The Mechanics of the GST System

GST is imposed when a 'taxable supply' is made. The rate of GST is 10%. This is included in the price paid to a supplier by a customer. The supplier must account for this amount of GST to the Australian Taxation Office ('ATO'). If the supplier acquires goods or services as part of their business, they can claim a credit for the GST that has been included in the price. This is called an 'input tax credit' and refers to the credit applicable on business inputs. The overall effect of the GST system is that the ultimate burden of the GST falls on end-users, or private consumers. Businesses that form part of the chain of supply act as collectors of the tax, but by virtue of the input tax credit mechanism, they do not bear the burden of it.

It is much easier to understand the operation of the GST system in the context of an example, and as the key concepts have now been defined, a simple example follows to illustrate how the GST operates.

Example

John buys a woollen jumper from a retailer. The retailer acquired the jumper from a manufacturer of woollen jumpers, who acquired the wool from a wool merchant. The GST system would apply as follows.

1. The *wool merchant* sells the wool to the manufacturer for \$20 plus 10% GST (\$2). The manufacturer therefore pays the wool merchant \$22. When the wool merchant completes its GST return, it takes the GST on its sale (called output tax, \$2), subtracts any GST it paid for its business inputs (its input tax credits, in this case \$0) and sends the difference ($\$2 - \$0 = \$2$) to the ATO.
2. The *manufacturer* processes and treats the wool and makes the jumper, selling it to a retailer \$50 plus 10% GST (\$5). The retailer therefore pays \$55 for the jumper. When the manufacturer completes its GST return, it takes the GST it collected from the sale to the retailer (\$5), subtracts the GST it paid for its business inputs (\$2 paid to the wool merchant on the purchase of the wool) and sends the difference ($\$5 - \$2 = \$3$) to the ATO. The ATO has therefore collected \$5 in total so far.
3. The *retailer* sells the jumper to John for \$90 plus 10% GST (\$9). John therefore pays \$99. When the retailer completes its GST return it takes the GST it collected from the sale to John (\$9), subtracts the GST paid to the manufacturer for the jumper (\$5), and sends the difference ($\$9 - \$5 = \$4$) to the ATO. The ATO has now collected \$9 in total.

This simple example shows that the total GST payable on the jumper was \$9, which represents the total amount sent to the ATO. It also shows that through the

¹³ Initially set at \$50,000 per annum, or for non-profit bodies \$100,000 per annum: s 23-15.

input tax credit mechanism, businesses did not bear the GST, which was ultimately borne by the final customer and included in part of the price paid.

Economic Impact of the GST on the Real Estate Industry

The introduction of a GST will have a significant effect on Australia's building and construction industry, not just in the day-to-day running of businesses in this industry but on the building industry and economy as a whole. In attempting to analyse the economic impact of the GST on the real estate industry, it is important to appreciate the fundamental assumptions underlying the estimates made by the government when it introduced the changes, as well as distinguishing between short- and long-term effects of the GST.

At the outset, it is important to appreciate that in introducing the GST, the government expected to eliminate a number of taxes at both Commonwealth and State level. Indeed, this elimination was promoted as much a simplification measure as it was a cost-reducing one. However, as a result of amendments encountered as the legislation proceeded through Parliament (chiefly excluding basic food from the GST net), the abolition of these taxes is now on a less complete basis than first announced, to ensure that the books could be balanced. The final outcome achieved is a gradual abolition of taxes as follows:

From 1 July 2000 (commencement of the GST):

- Wholesale sales tax; and
- Accommodation (bed) taxes.

From 1 July 2001:

- Financial institutions duty ('FID'); and
- Stamp duty on marketable securities.

From 1 July 2005:

- Bank account debits ('BAD') taxes.

In addition, the abolition of various other taxes has now been 'deferred', so these taxes will continue until further notice. These taxes include:

- Stamp duties on leases;
- Stamp duties on mortgages, bonds, debentures and other loan securities;
- Stamp duties on credit arrangements, instalment purchase arrangements, and rental (hiring) agreements;
- Stamp duties on cheques, bills of exchange and promissory notes; and
- Conveyancing duties on business property.

The impact of these changes on the real estate industry is quite dramatic. Before excluding basic food from the GST tax net, the tax plan was in fact expected to reduce pre-GST housing construction costs, mainly because raw material costs were expected to fall by nearly 6 per cent as sales taxes, stamp duties, BAD taxes and diesel fuel taxes were removed.¹⁴

Now, with basic food being GST-free, there will be delays in the abolition of some of the other state taxes (see above). Because of the deferral of the abolition of these taxes, some of which will be implemented well after the introduction of the GST, the Housing Industry Association ('HIA') expects that the GST will have a significant impact on both new house and renovation prices, and the level of future demand.¹⁵ The HIA estimates that on its introduction, the GST will add around 8 per cent to the cost of a new house and land package in the short term (as compared with a long term forecast of an increase of 5 per cent¹⁶) and result in a fall in demand for housing in 2000/2001 of around 12

¹⁴ Housing Industry Association, *Building with the GST* (1999), p42.

¹⁵ *Ibid*, p3.

¹⁶ *Ibid*, p44.

per cent.¹⁷ Renovation prices are forecast to rise by around 6 per cent and result in a fall in demand of around 4 per cent.¹⁸

In relation to rental prices, the HIA predict that the increase in the relative price of new housing will make housing a less attractive investment leading to a gradual tightening in the rental market. According to the HIA, this tightening will continue until rents rise sufficiently to compensate rental investors for the higher cost of acquiring a rental property – in percentage terms, the HIA believes the rise to be 3.2 per cent, as compared with Treasury estimates of 2.3 per cent.¹⁹ This increase is less than the anticipated rise in new housing costs due in part to the fall in the costs of raw materials used in rental properties, including supplies of water and sewerage services (including the emptying of septic tanks), that are GST-free.

In relation to building activity, economic modelling undertaken by Econtech estimates that the increase in the cost of housing services will reduce the aggregate demand for housing services by 2.3 per cent, leading to a fall in residential building construction of about 2 per cent a year.²⁰ For other parts of the building and construction industry, road and bridge construction is estimated to increase by 4 per cent, as cheaper diesel fuel stimulates road freight transport, increasing the demand for roads.²¹

The above estimates (in relation to building activity and other parts of the building and construction industry) refer to the long term after the initial response to the GST tax changes has taken effect. In the short-term, it would be expected that new house sales would be brought forward ahead of the commencement date of the GST in anticipation of the increase in new house prices. After the initial surge in demand, it can be

expected that this will be followed by a period of sharply lower activity after the GST commences. Eventually, the HIA believes that the level of residential building activity will settle down but would be permanently 2 per cent lower over the longer term.²²

Certainly, this pattern is consistent with the experience in both New Zealand and Canada, where there was a significant pull forward of demand prior to the commencement of their respective GST regimes.²³ Confirmation is also evident in the leading indicators of housing industry activity (including home lending for new dwellings and building approvals) that are showing this pull forward in demand.

First Home Owners Scheme

To ameliorate the effects of the anticipated price increases, the various State Governments will offer a rebate to compensate for the expected increases, under an arrangement commonly referred to as the First Home Owners Scheme ('FHOS'). The rebate provided under the FHOS will apply to all Australian citizens who are permanent residents and who are buying or building their first home in Australia. This will apply whether or not the home is new. Successful applicants will be entitled to a one-off rebate of \$7,000 that is not means tested.

There are, however, a number of problems with the FHOS. First, the scheme not only applies to housing subject to the GST but also applies to first home buyers buying established houses which are GST-free.²⁴ Second, as the rebate is a flat \$7,000, individuals who buy more expensive properties will obtain a smaller proportional benefit relative to people who buy a less expensive home. Finally, while it is planned that stamp duties on mortgages (a relatively small cost) will eventually be eliminated (see above), the stamp duty on

¹⁷ Ibid, p3.

¹⁸ Ibid.

¹⁹ Ibid, p45.

²⁰ Ibid, p47.

²¹ Ibid.

²² Ibid.

²³ Ibid, p49.

²⁴ Ibid, p22.

residential property conveyances (a substantial cost) is to remain. The combination of these deficiencies has led the HIA to conclude that '[t]he compensation arrangement under the First Home Owners Scheme (FHOS) is inadequate and will do little to lessen the impact of the GST price effect on new homes.'²⁵

GST Treatment of Real Estate Transactions

The impact of the GST on property transactions will depend on a number of circumstances including whether:

- the sellers and purchasers are registered persons;
- the transactions are of a residential or commercial nature;
- in the case of residential property, whether it is new or established;
- the property is farm land, part of a going concern, unimproved Crown land or otherwise; and
- the normal rules or the margin scheme is chosen to calculate the GST liability.

The different treatment arising from the above situations will be examined in this section of the article. Core terms that will be used in this section have been defined in the 'GST Terminology' section earlier in the article, and readers should refer back to those definitions as required.

As a preliminary matter, it is instructive to examine the treatment of ancillary costs associated with real property transactions. These costs generally fall into three categories: GST-free, input taxed and subject to GST. The following costs are *GST-free*: water and sewerage rates and charges,²⁶ local government rates, land tax and stamp duty. Home loans and home loan fees are *input taxed* as financial supplies, so no GST is

payable on these items. Finally, other costs that are *subject to GST* include: estate agent and solicitors' fees on conveyances, new house construction costs, house alterations,²⁷ and body corporate fees.

Sale of Real Estate

The GST status of real estate depends on whether the premises is residential or commercial, and in the case of residential property, whether the premises is new or established. In addition to the core terms described in the 'GST Terminology' section earlier in the article, it is useful to examine the definitions of the key concepts for this section of the article, namely: residential premises, new residential premises, long-term lease and commercial residential premises.

Residential premises: means land or building occupied or intended to be occupied as a residence, and includes a floating home.²⁸

New residential premises: means residential premises that have not previously been sold as residential premises and have not previously been the subject of a long-term lease.²⁹

Long-term lease: is defined to mean 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, where there is no reasonable expectation that it will be terminated before then.³⁰

²⁵ Ibid, p41.

²⁶ Sewerage services, including the emptying of septic tanks, are GST-free: ss 38-290, 38-295. However, it is not intended that the supply or installation of septic tanks will be GST-free.

²⁷ The effect on prices will vary as some items (eg kitchen and bathroom fittings) are presently subject to sales tax, which will no longer apply once the GST takes effect.

²⁸ Section 195-1. A 'floating home' is defined in turn to mean a structure that is composed of a floating platform and a building designed to be occupied as a residence that is permanently affixed to the platform, but does not include any structure that has means of, or is capable of being readily adapted for, self-propulsion: s 195-1.

²⁹ Ibid.

³⁰ Ibid.

Commercial residential premises: includes a hotel, motel, inn, hostel or boarding house, as well as a caravan park and camping ground.³¹



Sale of Established Residential Premises

The sale of established residential premises is input taxed.³² This means that no GST is payable and no GST credits can be claimed. Therefore, in most cases, if an established home or land is sold privately, it will not be subject to GST. This makes sense as most owners will not be selling in the course of an enterprise and accordingly will not be registered, so no taxable supply would occur.

It should be noted that the sale of residential premises is treated in this way only *to the extent* that the premises are used *predominantly* for residential

accommodation.³³ For example, if a sale involves a flat on top of a shop, the transaction must be apportioned (though the legislation gives no guidance on how this is to be done) and the proportion attributable to the supply of the shop would then be taxable.

Sale of New Residential Premises

If new residential premises are sold, the sale will *not* be input taxed.³⁴ Rather, this sale will be subject to GST. Therefore, the sale of new residential houses by registered businesses (such as builders and developers) or the sale of premises that have been converted for residential use (such as warehouses or CBD office blocks), will be taxable supplies and subject to GST.

Two points need to be made in relation to the above treatment. First, it does not automatically follow that new house prices will increase by 10%. For example, a builder will be able to pass on cost reductions resulting from the abolition of sales tax on items used in the construction of the house. Nevertheless, the price increases are expected to be significant.³⁵ Second, to help compensate for these price increases, the FHOS rebate of \$7,000 has been introduced (see earlier discussion).

Sale of Commercial Residential Premises

If commercial residential premises are sold (such as hotels), input taxation does not apply.³⁶ This means that GST will be charged if the vendor is registered. There are some exceptions (in relation to Crown land, going concerns and farm land), and these will be covered later in the article. Such property can be sold under the normal tax rules or under the GST's 'margin system.'³⁷

³¹ Ibid.

³² Section 40-65(1).

³³ Ibid.

³⁴ Section 40-65(2).

³⁵ See generally 'Economic Impact of the GST on the Real Estate Industry' section earlier in the article.

³⁶ Section 40-65(2).

³⁷ This optional system of calculation is detailed in Division 75. It is beyond the scope of this article to explain the detailed operation of the margin system.

Under the normal rules, GST is calculated for each tax period as 10% of the value of the sale, and credits can be claimed for GST paid on an earlier purchase. Under the margin system, GST is calculated as 1/11th of the registered business's gross margin on the sale of the property - usually the difference between the tax-inclusive sale price and the original purchase price.³⁸

Residential Rents

Under the GST rules, the supply of residential premises by way of lease, hire or licence (including a renewal or extension of a lease, hire or licence) is input taxed.³⁹ This ensures comparable treatment of tenants with owner-occupiers. Therefore, tenants of residential premises will not pay GST directly on their rents. At the same time, landlords of residential premises will not be able to claim input tax credits for GST paid on their business inputs (such as repairs and renovations). It may be reasonable to expect that given this situation, landlords may seek to pass on some or all of the increased costs that they incur in maintaining the premises by increasing rents. It was stated earlier in the article that the HIA estimates this increase to be 3.2 per cent.⁴⁰

The above analysis applies, subject to two important qualifications. First, the supply of residential premises is input taxed only *to the extent* that the premises are used *predominantly* for residential accommodation. A similar rule applies to the sale of residential premises.⁴¹ Thus, if an entity rents a flat that is located on top of a shop, the supply of the shop will be taxable.

Second, if the supply of established residential premises is by way of a long-term lease (see definition earlier), the supply is treated in the same way as a sale and is input taxed, so no GST is payable and no GST credits

can be claimed.⁴² However, the supply of new residential premises or commercial residential premises by way of a long-term lease is not input taxed and therefore would be subject to GST.⁴³

Commercial Rents

Rents on commercial premises such as shops and offices are not input taxed and accordingly will be subject to GST.⁴⁴ However, tenants in this situation will be able to claim GST credits for the GST if they are in business. Also, landlords of commercial premises will be able to claim input tax credits on any GST paid on purchases relating to the operation of the commercial premises.

In the case of a long-term lease of commercial residential premises (such as a 99-year lease of a hotel), GST would be applicable.⁴⁵ However, it should be noted that *long-term accommodation*⁴⁶ (accommodation for a continuous period of 28 days or more) is subject to special rules. If long-term accommodation is provided, a choice is provided to:

- treat the transaction as input taxed. This means that no GST will be charged, and no GST credits can be claimed; or
- treat the transaction as subject to concessional GST treatment,⁴⁷ designed as a matter of convenience for accommodation providers.

The issue of the treatment of long-term accommodation emerged as an important public policy area raised in the media recently, particularly in the context of long-term stays at caravan parks.

³⁸ Section 75-10.

³⁹ Section 40-35.

⁴⁰ See generally 'Economic Impact of the GST on the Real Estate Industry' section earlier in the article.

⁴¹ See generally 'Sale of Established Residential Premises' section earlier in the article.

⁴² Sections 40-35(2)(b), 40-70(1).

⁴³ Section 40-70(2).

⁴⁴ Section 40-35(1).

⁴⁵ Section 40-70(2).

⁴⁶ Section 87-20.

⁴⁷ This rules for this concessional treatment are contained in Division 87. It is beyond the scope of this article to examine these rules in detail.

The First Sale of Unimproved Crown Land

The first supply (sale) by the Commonwealth, a State or Territory of unimproved land after 1 July 2000 will be GST-free.⁴⁸ The supply of unimproved land means the supply of a freehold interest in land or the supply of a long-term lease of the land where the land has not been improved.⁴⁹ The subsequent supply of such land is not GST-free.⁵⁰

Property Sold as Part of a Going Concern

The sale of a 'going concern' is GST-free.⁵¹ This means that no GST is charged, but the seller is entitled to GST credits. A going concern means, in effect, a continuing business or enterprise.⁵² Typical examples could include the sale of a business or the sale of a tenanted commercial building or a factory.

Farm Land

If a farm is sold as a going concern, that transaction will be GST-free in accordance with the rules explained under the previous heading. The sale of farm land and improvements, even if not part of a going concern, will be GST-free provided the seller has carried on a farming business on the land for at least five years previously and the buyer intends to carry on a farm business on the land.⁵³ This takes account of the normal practice involving the sale of farms where the underlying land is sold separately from the moveable property (such as stock and machinery).

If farm land is subdivided and sold as a number of going concerns, the sales may be GST-free in accordance with the rules explained under the previous heading. If the subdivided land is not sold as a going concern, it could still be GST-free if it satisfies the rules set out in the previous paragraph. Finally, a more limited concession applies where farm land is

subdivided and sold to associates (such as a relative) at less than market value, and where the land has been used by the seller for farming purposes for at least five years.⁵⁴ For example, if a farmer ran a farm for 15 years and subdivided part of it, selling vacant lots to his children for a nominal cost to enable them to build their homes, the sales would be GST-free. If the sale is made at market value, then GST will be payable in accordance with the general rules, where the seller can choose to use the margin system.⁵⁵

Transitional Rules

There are special transitional rules that govern the implementation of the GST and these rules can be quite complicated and detailed. While it is beyond the scope of this article to examine the detailed operation of these rules, in relation to construction contracts, there is a special rule that applies where a construction contract is made before 1 July 2000 and the completed project is made available on or after that date.⁵⁶ The rule requires that the work and materials that are permanently incorporated or affixed on the site of the building or civil engineering work, be valued as at the start of the GST (1 July 2000).⁵⁷ The GST is then calculated as the value of the total project less that amount.⁵⁸

At the time of writing, the ATO released guidelines on how to determine the value of work-in-progress for construction projects that span the GST implementation date of 1 July 2000.⁵⁹

Conclusion

The first part of this article examined the background to the introduction of the GST, including an explanation

⁴⁸ Section 38-445(1).

⁴⁹ Ibid.

⁵⁰ Section 38-445(2).

⁵¹ Section 38-325(1).

⁵² Section 38-325(2).

⁵³ Section 38-480.

⁵⁴ Section 38-475.

⁵⁵ See generally 'Sale of Commercial Premises' section earlier in the article, where the margin system is discussed.

⁵⁶ Section 19 *A New Tax System (Goods and Services Tax Transition) Act 1999* (Cth) ('*GSTT Act*').

⁵⁷ Section 19(2) *GSTT Act*.

⁵⁸ Section 19(3) *GSTT Act*.

⁵⁹ Australian Taxation Office, *GST Bulletin GSTB 1999/2*, 14 September 1999. Available at <http://www.taxreform.gov.au>.

of how the GST system works. It then discussed the economic impact of a GST on the real estate industry, highlighting some of the more salient indicators in relation to this industry and the potential impact on them as a result of the GST. Finally, the article highlighted and explained the main provisions of the GST rules as they apply to various real estate transactions.

In relation to real estate sales, it was seen that the GST status depends on whether the premises are new, residential or commercial. Sales of existing houses are input taxed, but would not normally be subject to GST because most owners would not be registered as dealers. The sale of new houses would be subject to GST, as is the sale of commercial residential premises such as hotels. Special rules are contained in the GST legislation to enable dealers and developers to calculate their GST on a “margin” basis.

In relation to rents, GST will not normally apply to residential rents, but special rules apply to long-term commercial residential accommodation. Rent on commercial premises is subject to GST, but renters could normally claim GST input credits if they are in business. Certain grants of Crown land, farm sales and farm subdivisions may be GST-free.

In summary, it may be said that the operation of the GST in relation to the real estate industry is quite extensive and at times complicated. It is hoped that this article has assisted in explaining the central features of how the GST will impact on the real estate industry in a straightforward yet comprehensive way.

