

Article Information

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GST sale of going concern and farmland exemptions to be abolished

Taxation specialist Will Fennell reports on a recent announcement to abolish GST exemptions relevant to agribusiness transactions.

On 14 December 2013 the Assistant Treasurer announced that both the GST-free supply of a going concern and the GST-free farmland exemptions were to be abolished in favour of a 'reverse charge' mechanism. The press release indicated that it was expected the changes would be passed sometime during 2014.

In broad terms, the GST-free 'supply of a going concern' exemption applies where the supply is for consideration, the recipient is registered for GST, the parties agree in writing for the supply to be a going concern, the supplier provides everything necessary for the continued operation of the enterprise and the supplier carries on the enterprise up until the day of supply. The GST-free farmland exemption is slightly less onerous, requiring only that the land has been used for farming for the past 5 years and that the recipient intends to carry out a farming business on the land. Whilst the press releases did not provide any further details as to the workings of the reverse charge scheme, based on a previous Rudd Government Treasury Discussion paper released in 2009, it is likely that the reverse charge will operate whereby the parties to the contract would agree to 'reverse charge' the GST impost, such that the purchaser would be liable for the GST on the supply (as opposed to the supplier in the usual case of a taxable supply).

As the purchaser would both be entitled to an input tax credit for the acquisition and also liable for the GST, and as those amounts would be netted out in the first GST return following the acquisition, the overall result would be that no GST would in effect be payable. The changes are said to improve the operation of the existing exemptions with other provisions of the GST Act.

Effect on Stamp Duty

Whilst the reverse charge mechanism may bring the same GST result of no net GST being payable, one of the potential downsides to the reverse charge regime is its effect on stamp duty. Specifically, it is foreseeable that some States and Territories would regard the amount of GST paid by the purchaser as consideration for the transaction for stamp duty purposes. For example, in South Australia, section 15A of the Stamp Duties Act 1923 states that for the purpose of ascertaining value, an amount of "*GST payable on its sale or supply*" forms part of the value for stamp duty purposes. Accordingly, as the SDA is silent regarding which party must be liable for that GST, it may be that RevenueSA will consider that an amount of reverse charged GST paid by the purchaser is part of the consideration for stamp duty purposes.

Another approach that the revenue authorities may take is that the purchaser has agreed to discharge a liability of the vendor, and therefore the amount of liability discharged forms a component of the consideration for stamp duty purposes. For example, under section 12 of the Duties Act (Queensland), the consideration for a dutiable transaction includes "*the amount of any liabilities assumed under the transaction*". Equally, in both NSW and Victoria, the dutiable value of dutiable property includes the value of non-monetary consideration given (which could be taken to include an amount of GST liability assumed by a purchaser under a reverse charge agreement).

Accordingly, it may be that the changes could lead to increased stamp duty liabilities on some sale of business transactions. We will report on further announcements from State and Territory revenue authorities as they emerge.