

# News

**March 2005**

## Property & Construction Newsletter

### **GST and Long-Term Non-Reviewable Contracts**

When GST was introduced on 1 July 2000, the GST transitional provisions allowed supplies made under some pre-8 July 1999 contracts to be GST free until 30 June 2005 (or an earlier "review" opportunity).

On 22 February 2005, the GST law was amended to allow suppliers and recipients to revise the price of their long term non-reviewable contracts to take into account the fact that supplies under those contracts would become taxable supplies from 1 July 2005.

There are now three possible GST outcomes for long-term non-reviewable contracts on and after 1 July 2005:

- 1 The contract price of the supply is not revised and the supplier pays the GST based on the existing price of the supply i.e. 1/11th of the existing contract price.** In this case, the supplier will effectively be paying 1/11th of the consideration for the supply out of its own resources to the Tax Office. If the recipient is registered for GST, it may be entitled to claim a GST credit and obtain a windfall benefit.
- 2 The contract price is reviewed by mutual agreement or a new agreement is entered into.** In either case, the supplier pays GST at 1/11th of the revised price. If the recipient is registered for GST, it may be entitled to claim a GST credit.
- 3 The contract price is not revised and the recipient (not the supplier) pays GST of 10% of the price of the taxable supply even if the recipient is not registered for GST.** The supplier will still receive 100% of the contract price and in this case will not have to remit GST to the Tax Office. The recipient will remit this GST. If the recipient is registered for GST it may be entitled to claim a GST credit.

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It is important to remember this option 3 only takes effect if:

- the recipient gives a written notice to the supplier of its election to pay GST. Once given, this election cannot be revoked. It is important that the supplier retains any written election for at least five years; or
- the recipient does not accept an arbitrated offer of a price revision if the supplier has followed the requirements of the arbitration process (see below).

However, option 3 does not apply if

- the contract specifically precludes a price revision to account for GST or a similar tax on the supply; or
- the price for that the supply was paid in full before 2 December 1998.

### **The Arbitration Process**

Where a supplier and a recipient cannot agree on a revised price for taxable supplies under their long-term non-reviewable contract, the supplier can initiate the following arbitration process:

- 1 The supplier provides a written price revision offer to the recipient stating the period for which the offer is open (no less than 28 days). If no response or a written rejection is received, then the supplier proceeds to step 2.
- 2 The supplier applies to an arbitrator to make an independent assessment. Regulations came into effect on 11 March 2005 stating that an "arbitrator" for this purpose is anyone who is a member of the Institute of Arbitrators and Mediators Australia or the Australian Commercial Disputes Centre or LEADR.
- 3 The arbitrator must make an assessment in writing within 28 days of the end of the offer period specified in the supplier's initial offer. The arbitrator must only take into account the impact of the new tax system changes on the supplier's costs and expenses, such as the amount of GST payable by the supplier.
- 4 The supplier provides a written final offer to the recipient setting out the arbitrator's determination of an appropriate price revision and stating the period for which the offer is open (no less than 21 days).
- 5 If the recipient accepts the final offer within the offer period, the supplier will be liable to pay GST of 1/11th of the revised price.
- 6 If the recipient does not accept the final offer within the offer period then the recipient will be liable to pay GST of 10% of the existing contract price.

Between 22 February 2005 and 30 June 2005, a variation to a long-term non-reviewable contract that only revises the price for supplies to be made on or after 1 July 2005 will not affect the GST free treatment of contract before 1 July 2005.

It is important for suppliers under long-term non-reviewable contracts, most notably long-term leases, to set in train a review process as a matter of urgency so that the supplier can complete the process in time to avoid the need for it to pay GST without a contribution from the recipient towards the GST liability.

This is a very technical area and specific advice should be sought in respect of each long-term non-reviewable contract entered into prior to 8 July 1999. Please refer any enquiries to Mr Bill d'Apice on 02 9233 9013 or Ms Vera Visevic on 02 9233 9083 of our office.

## Strata Laws

A number of important changes to the Strata Schemes Management Act 1996, Strata Schemes Management Regulation 1997 and related laws came into effect on 7 February 2005. A brief summary of some of these changes is as follows:

- **Special provisions for large schemes:**

Strata schemes with over 100 lots now have specific rules applying to them. These principally relate to financial matters for example:

- an annual audit is required,
- specific identification is required in the budget on certain individual items,
- two quotations are required for expenditure over \$25,000,
- there are limitations on the executive committee spending more than 10% above budgeted amounts for any items

In addition, at least 72 hours notice of executive committee meetings is to be given to Lot owners, decisions of the executive committee must be notified within seven days and certain provisions have changed relating to proxies.

- **Sinking funds:**

When devising the annual budget each year, all strata schemes will be required to specifically plan ahead for the estimated sinking fund expenditure over the ensuing 10 year period. Levies will have to be set accordingly to meet the 10 year sinking fund estimates.

- **Strata Managing Agents:**

A strata managing agent will not be able to transfer the management of a strata scheme to another strata management business without obtaining the approval of the owners corporation. Certain functions can only be delegated by an owners corporation to a strata managing agent e.g. preparation of administrative and sinking fund estimates, levy contributions, taking out insurance, etc.

- **Appointment of Managing Agent by Adjudicator or Tribunal:**

From 7 February 2005, a strata schemes adjudicator may appoint a strata managing agent to carry out some or all of the functions of an owners corporation where the owners corporation is not functioning satisfactorily or has failed with some statutory requirement or other duties including payment of judgment debts.

- **Common Property Alterations and Additions:**

The uncertainty about authorisation to do or allow the lot owner to add to the common property, alter the common property or erect a new structure on the common property has now been resolved. From 7 February 2005 the owners corporation has that authority.

- **Executive Committees:**

From 7 February 2005 the powers of strata executive committees have changed particularly in connection with the commencement of legal action on behalf of the owners corporation. In many instances, executive committees will no longer be able to commence legal proceedings or obtain legal advice on behalf of owners corporations. These matters will have to be decided by the owners corporation in a general meeting. This applies for legal matters involving anticipated expenditure of \$750 or more multiplied by the number of lots in the scheme, or \$10,000 whichever is the lesser.

- **Owners Corporation - Powers and Responsibilities:**

Several refinements have been made to the general powers and obligations of owners corporations including:

- Maintaining all records for a minimum of five years;
- Passing a resolution that there has actually been a contravention of a by-law before issuing a notice on a person to comply with the by-law;
- Capacity to accept verbal, electronic or written consent from a lot owner to permit a prospective purchaser to inspect records;
- Insurance must be taken out with an approved insurer;
- Powers to grant by special resolution a licence to a lot owner to use common property either generally or for a once only purpose.
- There have been a number of other changes to Strata Laws with effect from 7 February 2005.

Should further information be required please do not hesitate to contact Mr Bill d'Apice on 02 9233 9013 of our office.

## **Land Tax**

Further to our bulletin of 24 February 2005, we confirm that the State Government announced significant changes to land tax with effect from the 2005 Land Tax year. As a result, there is no longer a threshold value for properties below which land tax is not payable.

Therefore, if you own a property that is not your principal place of residence including a holiday house or unit, you may be liable to land tax whether or not that property earns income. This does not apply to religious institutions that previously qualified for land tax exemption - that exemption will remain.

If you think that you are liable for land tax then it is necessary to register for land tax. As the time has now expired for registration by individuals, it is possible to register through registered agents on or before 31 March 2005.

If you have neglected to register and wish to do so, our firm is a registered agent and we would be happy to arrange registration for any of our clients.

If you wish to take advantage of this please contact one of our senior property paralegals, Charmian Seil on 02 9233 9020.

## **Vendor Duty for Land Rich Companies and on Company Title Transfers**

With effect from 10 November 2004, the New South Wales Government's vendor duty will apply to indirect property transactions. This new legislation will impact transfers of shares in "land" rich companies.

It is also important for secretaries of home unit companies involved in company title transactions to ensure that the transfer of shares that transfer the interest in the underlying home unit is also marked with vendor duty.

Should further information be required please contact Mr Richard d'Apice on 02 9233 9013 of our office.