



# Real Estate

## Continuing Professional Development

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# Goods and Services Tax (GST)

**Estimated time needed: 1.5 hours**

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## Learning outcomes

At the end of this topic, you will be able to:

- explain key terms relating to GST
- explain key taxation legislation around land transactions
- explain some potential GST issues related to land transactions
- explain the documentation required around GST in real estate interactions and transactions.

## Terms used in this guide

In this guide, we will use various terms related to real estate agency work and complaints processes. This table will explain key terms

Term/abbreviation	Notes
CAC	This abbreviation stands for the Complaints Assessment Committee.
Client	A client is a person on whose behalf an agent carries out real estate agency work under a signed agency agreement.  In this guide, we will consider that the agency has a client relationship with the seller and, therefore, that seller is their 'client,' and any buyers or potential buyers are 'customers'.
Code of Conduct	We will refer to the Real Estate Agents Act (Professional Conduct and Client Care) Rules 2012 as the 'Code of Conduct'.
Consumer	In the context of this guide, the word 'consumer' refers to buyers, sellers, and potential buyers and sellers in the real estate sale and purchase process.
Customer	A customer is a person who is a party or a potential party to a transaction and excludes a client or potential client (as defined in rule 4.1 of the Real Estate Agents Act (Professional Conduct and Client Care) Rules 2012).  The meaning of 'customer' depends on with whom the agency has a client relationship.
Disciplinary Tribunal	We will refer to the Real Estate Agents Disciplinary Tribunal as the Disciplinary Tribunal.
Purchaser	The person buying the land or business (sometimes referred to as the 'buyer')
REA	This abbreviation stands for the Real Estate Authority.
Vendor	The person selling the land or business (sometimes referred to as the 'seller')

## Introduction

A 2024 NielsenIQ survey of consumer perceptions in real estate transactions, commissioned by REA, highlighted that 11% of consumers who bought or sold, or tried to buy or sell, residential real estate over the previous 12-month period had difficulty understanding the price or value of the property.<sup>1</sup>

Confusion over pricing can relate to the GST treatment of the sale. Many consumers enter into a sale and purchase agreement unaware of the GST implications, the treatment of GST under the agreement, and without seeking accounting or legal advice. The consequence of this can be that a GST liability is triggered that the parties did not anticipate at the time of signing the agreement.

Under the Code of Conduct licensees are expected to exercise skill and care and diligence and have a sound knowledge of legislation relevant to real estate agency work (Rule 5.2) This requires licensees to have working understanding of GST in the real estate transaction context.

Licensees are not expected to be GST experts. REA strongly suggests you recommend vendors and potential buyers seek their own expert GST and general tax advice due to the complex issues that can arise with the sale and purchase of a property or a business or commercial lease arrangements. Ideally, vendors should take this advice before listing their property or lease, business, so they have a clear idea of what their price expectations can be. Both parties should get this advice before signing the sale and purchase agreement. We suggest recording your recommendations to take expert advice in writing.

In addition to recommending parties get expert tax advice, you do need to understand what GST issues can come up and how to communicate this with clients and customers. Seek advice from your supervising branch manager or agent if you are unsure in this area.

The purpose of this guide is to reinforce key points around GST and real estate transactions.

## What is GST?

Goods and Services Tax (GST) is a consumption tax charged on supplies of most goods, services and other items sold and consumed in New Zealand. The standard rate of GST is 15% but a 0% rate can apply in certain instances. GST can apply to the sale of businesses and to people who buy and sell residential property.

Before we look at GST in detail, the section below explains key terminology used.

## Key terms related to GST

### Types of supply

A 'supply' is the sale of goods or services.

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<sup>1</sup> 2024 NielsenIQ Annual Perceptions Report commissioned by REA

## Registered person

A 'registered person' is a person who is registered for GST or is liable to be registered for GST under the Goods and Services Tax Act 1985 ("the GST Act"). 'Registered persons' **must** charge and collect GST, file GST returns, and account for GST to Inland Revenue.

## Input tax

When a **registered person buys goods or services** to use in a taxable activity and to make taxable supplies, the **GST charged by the seller is called input tax**. It is commonly referred to as a **GST credit** and can be claimed back from Inland Revenue when filing GST returns.

Input tax also includes:

the GST charged on imported goods by New Zealand Customs Services and goods held in bond

3/23 (the GST fraction) of the cash price of second-hand goods bought for a business from

- a non-registered person, or
- a registered person where the goods are not part of their business, or
- a registered person where the goods are exempt from GST

## Output tax

Output tax is **GST charged by a registered person on goods and services supplied** as part of a taxable activity. It includes GST charged on the sale of assets. Output tax is usually called **GST payable or GST collected**. Output tax does not apply to exempt supplies.

## Trader

A trader in a property context is a person who buys and sells property with the intention of making a profit, such as through capital gain or renovations. If this activity is carried out in a continuous manner, it may be considered a taxable activity under the GST Act.

## Types of supply

### Exempt Supply

An exempt supply is described in Section 14 of the GST Act. 'Exempt' means that GST of 15% is **not chargeable** on the sale of these goods or services, and input tax cannot be claimed for related expenses.

There are several supplies (sales) in the GST Act that are deemed exempt from GST. Examples are precious metals and financial services (including shares). Leasing residential dwellings are also typically treated as exempt supplies.

There are some exceptions to the exemption for residential property. For example, if the property is an apartment and it is managed as a 'hotel pool' (that is, short-term letting), or if it is not the occupants 'principal place of residence' then GST may be payable.

## The Compulsory Zero-Rating Scheme (CZR)

Although the standard rate for GST is 15%, some goods and services are required to be 'zero-rated'. This means the supplies are taxed at a rate of 0% rather than 15%.

Prior to 1 April 2011, a GST registered person selling land (other than residential land) generally charged and paid output tax on the sale (unless it was the supply of a going concern). Also, a person buying land from an unregistered person could potentially claim the input tax charged on the land. There was a risk to the Inland Revenue that if the person selling the land did not pay the output tax, Inland Revenue would still have to pay the customer (buyer) their input tax they incurred.

As a result, the government introduced the Compulsory Zero-Rating scheme (CZR). Section 11(1) (mb) was inserted into the GST Act to specify the legal requirements for the CZR. This section came into effect on 1 April 2011. Under this provision, GST on a transaction including the sale of land is assessed at the rate of zero percent where:

- the sale is from one GST registered person to another GST registered person
- the property is used or intended to be as part of a taxable activity of the buyer, and
- no part of the property is expected to be used as a principal place of residence for the buyer (or an associated person).

To be a zero-rated supply, all these conditions for zero-rating **must** be satisfied prior to or at the time of settlement of the transaction. If any of these conditions are not satisfied at the time of settlement, the GST registered seller must charge GST at the standard rate (15%) on the sale price.

If the land is only part of the transaction between the two GST registered parties, the whole transaction will still be zero-rated. If a commercial or residential lease is part of the transaction, it may also be zero-rated.

Where the sale of land is between two GST registered parties (and the criteria listed above are satisfied) the transaction is required to be treated as a zero-rated supply. This is still a taxable supply for GST purposes and is part of the vendor's taxable activity and is required to be disclosed in the vendor's GST return. Whether the transaction is "Plus GST (if any)" or including GST should be agreed between the parties at the time of completely signing the sale and purchase agreement.

### Sale as a 'Going Concern'

A going concern is the sale of a business that is capable of continuing operations after the transfer. If certain conditions are met, the transaction may be zero-rated for GST purposes. It is defined in section 4 of the GST Act.

If the sale involves the transfer of a capital assets for a business, but not the actual business activity, it is not the sale of a business as a going concern for GST purposes.

To be a going concern<sup>2</sup>:

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<sup>2</sup> <https://www.ird.govt.nz/gst/charging-gst/zero-rated-supplies>

- the sale **must** be the supply of the whole or stand-alone part of the taxable activity, from one registered person to another
- the sale **must** be the supply of all the goods and services necessary for the continued operation of the activity
- both parties **must** agree that there is a supply of a going concern and record this agreement in a sale and purchase agreement.
- both parties **must** intend that the activity is capable of being carried on as a going concern by the customer (buyer)
- the business (taxable activity) **must** be a going concern at the time of supply and carried on up to the time of the transfer to the customer.

A sale of a going concern by one registered person to another registered person is able to be zero-rated. Also, when only part of a taxable activity (able to operate separately) is sold as a going concern, the sale is zero-rated.

It is important to note that where a going concern includes land, it will be required to be zero-rated under the CZR rules discussed above (as these rules are compulsory). The zero-rating as a going concern rules are optional and include the sales of businesses that do not include a land element.

Care **must** be taken to clarify the nature of a going concern sale, particularly in rural sales where the ownership of the land may be separate from the ownership of the stock and/or plant.

All details of a going concern sale **must** be included in the Further Terms of Sale in the Sale and Purchase Agreement.



## Activity

Chris is a dairy farmer who owns their own property.

1. If Chris sells their dairy farm (including land, herd, all buildings, and all machinery required to run the business) to another GST-registered farmer, does this count as a sale of a going concern? Why?

The details of the sale are stated in the 'Further Terms of Sale' section of the Sale and Purchase agreement. The farm continues to be operational through to settlement day.

2. If Chris sells the land and the buildings to another GST-registered farmer but keeps the herd of cows and most of the machinery

a. does this count as a sale of a going concern? Why?

b. what would be the GST rate on the land portion of the sale?

## Who must register for GST?

Usually residential land (that is, residential land and buildings on the land) is not subject to GST when sold. It is usually developers, builders and traders (i.e. “flippers” who would have to concern themselves with GST.

Most buyers of residential land are not GST-registered and will not use the land to make supplies which are subject to GST. Therefore, they can’t claim GST on the sale if it is charged. For example, if a person who is not GST-registered buys from a builder they will be charged GST but will not be able claim it back, the builder will have to account to Inland Revenue for the GST he has collected because he has a taxable activity of building and selling properties.



Traders **must** register for GST if their annual turnover in the previous 12 months was more than \$60,000 (or is likely to be in the next 12 months)<sup>3</sup>. Turnover is the total value of supplies made for a person's taxable activities, excluding GST.

Problems can arise with GST and the sale and purchase of residential land when:

- either party is not GST registered, or
- the parties have different GST registration statuses, or
- there is an extended settlement date (because the parties' GST status is determined at settlement date, which could change if the settlement is extended).

Parties should seek their own specialist advice if they are unsure whether GST is payable.

You should **always advise parties in writing to seek their own specialist tax advice** even if they claim to understand the GST implications of the transaction.

It is **vital to document that you have recommended the parties seek their own expert tax advice.**

## GST on Commercial, Industrial and Rural Land

While it's rare for GST to be an issue with residential land, GST is typically charged on all commercial, industrial and some rural land transactions. Often the GST will be zero rated because the sale of the property is part of an ongoing taxable activity.

Rural land can present complications because not all rural land is subject to GST. Large farms (for example, dairy farms, sheep and beef farms, forestry and horticultural properties) will always attract GST because there is clearly a business activity on the land. Lifestyle blocks may or may not attract GST. The licensee should clarify this with the client. Here are examples of questions the licensee can use to find out key details:

- Are you registered for GST?
- Is the property being sold with GST included in the purchase price (for example, for residential land)?
- Is it being sold 'plus GST' (for example, for a working farm)?
- Is GST zero rated?

If a lifestyle block contains a house, gardens and a couple of paddocks that are kept tidy by a few sheep, it probably won't be subject to GST. However, if the vendor is breeding exotic sheep and selling them for a profit, this may be a taxable activity, and the vendor may be liable for GST on the paddocks when the property is sold. It is worth noting that where the supply of land includes a principal place of residence (i.e. a house) it will typically be

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<sup>3</sup> Section 51(1) of the GST Act

treated as a separate supply, therefore in this instance there would likely be a supply of land that is subject to GST and a supply of the house and gardens which are not.

When selling a property of this nature, if there is even a possibility a taxable use has been conducted from the property in the past, it is best practice to request the vendor to provide a written statement from their accountant confirming their GST status. This helps to ensure compliance and protects all parties involved in the transaction. It also ensures clarity of the GST position enabling all parties to check suitable advice.

## **GST issues in land transactions**

Errors in accounting for GST on property transactions are unfortunately quite common and may involve significant amounts of money to remedy if overlooked. These errors may result in a purchaser having to find 15% of the purchase price on settlement day or a vendor receiving less than they thought they were getting.

It is critical that the sale and purchase agreement clearly states the GST position of the parties to the agreement. This includes:

- whether the price is inclusive or exclusive of GST.
- whether the transaction is subject to GST, zero-rated, or exempt.
- the GST registration status of both the buyer and the seller.

Note that if a vendor is registered for GST, the contract price is treated as being inclusive of GST if:

- the parties choose this option on the Sale and Purchase Agreement, or
- the parties neglect to choose the GST status of the transaction on the Agreement,

This usually means the vendor will be required to return GST on the GST inclusive value of the purchase price to Inland Revenue and will not be entitled to charge the buyer an additional amount for the GST.

If GST is payable on a transaction in any of the options listed above and the purchase price is recorded as 'plus GST (if any)', the buyer would be required to pay GST to the vendor as part of the property transaction on top of the agreed upon purchase price. This means the sale price is the amount the client (vendor) will ultimately receive, and GST is added on to it, which is paid by the buyer.

It is best practice to recommend that parties obtain tax advice, especially if the sale will be inclusive of GST.

It is important to obtain written confirmation from the vendor of their GST status and confirm this with them at the point of listing.

## GST issues and Commercial leases

Generally, GST must be charged when commercial property is leased. This includes short-term leases and commercial accommodation like hotels, hospitals, residential care homes and some serviced apartments.

How much is charged depends on how long the tenant is staying and what kind of services are offered with the lease (i.e. cleaning, maintenance, electricity and heating).

It is important to obtain GST advice on commercial leases



### Key points

- Traders must register for GST if their turnover in the previous 12 months was more than \$60,000 (or is likely to be in the next 12 months).
- It is vital that both parties to the sale and purchase transaction (the customer and the client) understand the GST status of the other party, and that the GST status of the buyer and vendor is recorded accurately, to avoid situations where unexpected GST bills or penalties could result.
- You should advise the parties to seek expert advice on the GST treatment of the transaction.
- You should document that you have recommended the parties seek their own expert advice on GST.
- A trader who is registered for GST: should always select 'Yes' to the question on the front page of the Sale and Purchase Agreement regarding whether they are registered for GST, even if the sale is inclusive of GST.

## Licensee role regarding GST

As a licensee, your role is to represent and support clients throughout the property transaction process. However, it is important to recognise the boundaries of your professional responsibilities, particularly when it comes to GST and tax matters. While you want to be a trusted resource for your clients during the purchase process, you should not provide your client with advice that may be construed as tax advice. This includes making

suggestions or providing commentary, either verbally or in writing. At all times you **must** exercise due skill and care (Rule 5.1).

## GST and the Agency agreement

It is important to understand the vendor's GST position at the time of listing. There are various questions you can ask of the vendor to do this. For example:

- Are you GST registered?
- Does your GST registration relate to the property or business being listed?
- What is your GST registration number?
- Where the transaction is a sale of land, does it also include a residential dwelling?

The GST status of the vendor needs to be accurately recorded, ideally in the agency agreement.

Additionally, you need to inform the vendor of the following in writing and prior to the signing of the agency agreement:

- whether the agency's scale of charges is 'Plus GST' or 'Inclusive of GST'
- whether your appraisal is 'Plus GST' or 'Inclusive of GST'
- whether your calculated commission using the appraisal is 'Plus GST' or 'Inclusive of GST'.

Transparent communication ensures that both parties understand the financial implications and helps prevent disputes or misunderstandings later in the transaction. Further Rule 9.9 of the Code of Conduct requires that all material particulars are included in all contractual documents provided to a client or customer.

In the example from an agency agreement shown below, the scale of charges, appraisal value and commission amount should clearly show whether they are 'Plus GST' or 'Inclusive of GST'.

### 5.3 How Commission is calculated:

The Agent's commission is calculated as follows:

A base fee of \$

Plus  % of the first \$  of the sale price;

Plus  % of the balance of the sale price.

plus GST.

For example, based upon (tick one ☐ ):

- ☐ the Client's asking price (where an appraisal figure was not possible to be given) or
- ☐ the appraised value,

A sale price of \$  would mean an estimated commission of \$  Including GST.

If the appraisal states a price range, both values must be calculated and described as 'Inclusive of GST' or 'Plus GST', as appropriate.

## GST and the Sale and Purchase Agreement

The Agreement for Sale and Purchase of Real Estate, includes specific clauses and warranties with regards to GST, zero-rating and the supply of a going concern. This Agreement is proposed by REINZ and by The Law Association of New Zealand (formally the Auckland District Law Society).

Changes were made to the Agreement when the CZR (compulsory zero-rating) regime changes came into effect. These changes were designed to avoid any difficulties with zero rating. Note that the images on the following pages are from the 'Agreement for Sale and Purchase of Real Estate' (Eleventh edition 2022 (3)).

It is critical that the GST status of the purchaser and vendor is accurately recorded in the agreement failure to do so can result in unintended GST liabilities. For example:

- If the agreement states the price is 'inclusive of GST', the vendor must return 15% of the sale price to Inland Revenue (if GST applies), effectively reducing their net proceeds.
- If the agreement states 'plus GST (if any)', the buyer must pay an additional 15% on top of the agreed purchase price, provided GST is applicable.

It's critical that the GST position of buyer and vendor is recorded accurately in order to avoid any unexpected GST implications at settlement.

It is important that the parties obtain technical advice (such as taxation or accountancy advice) and **you must allow the parties a reasonable opportunity to obtain such advice (Rule 9.7).**

### Correctly recording the GST position

On the front page of a standard Agreement for Sale and Purchase of Real Estate, the vendor is required to warrant their GST status to the buyer. The vendor will either be registered for GST or they won't be, and they will either be required to return GST to the IRD on the purchase price or not. This means the statement regarding GST status is a statement of fact.

The GST status of the vendor is important as this affects the purchase price a vendor is willing to accept.

In addition, the parties must elect whether the transaction will be 'plus GST (if any)' or 'inclusive of GST'.

Note that **if no election is made** as to the GST status of the transaction, then **the agreement will deem the contract price to be inclusive of GST.**

This is where the client (vendor) warrants their GST status to the buyer. **This panel must be completed** (meaning 'Yes' or 'No' must be deleted).

The vendor is registered under the GST Act in respect of the transaction evidenced by this agreement and/or will be so registered at settlement:

Yes/No

**PROPERTY**

Address:

Estate: **FREEHOLD**  
**CROSSEASE (FREEHOLD)**

**LEASEHOLD**  
**CROSSEASE (LEASEHOLD)**

**STRATUM IN FREEHOLD**

**STRATUM**  
(freehold)

Legal Description:  
**Area (more or less):**

**Lot/Flat/Unit:**

**DP:**

**Record of Title**

It **must** be clear whether the Purchase price is 'Plus GST' or 'Inclusive of GST'.

**PAYMENT OF PURCHASE PRICE**

Purchase price: \$

**Plus GST (if any) OR Inclusive of GST (if any)**  
If neither is deleted, the purchase price includes GST (if any).  
**GST date (refer clause 13.0):**

**Deposit (refer clause 2.0): \$**

**Balance of purchase price to be paid or satisfied as follows:**

(1) By payment in cleared funds on the settlement date which is

OR

(2) In the manner described in the Further Terms of Sale.

**Interest rate for late settlement:**

**% p.a.**

Where the **sale is between two registered parties**, CZR must be applied and **the purchase price must be 'Plus GST'**. The text 'Inclusive of GST (if any)' **must** be deleted.

Where the **vendor is a non-registered person**, the purchase price must be **'Inclusive of GST (if any)'**.

***When the sale is made by a registered vendor to a non-registered buyer***

If the sale is inclusive of GST and the buyer is not registered, zero-rating would not apply to the sale. In this case, the vendor may make the contract 'Plus GST (if any)', and this would mean the buyer would have to pay the additional (GST) amount.

**The vendor must be GST registered to be able to charge GST on the sale.**

**Recording the GST particulars**

Further GST information must be included in Schedule 1 of the Sale and Purchase agreement (GST information). These details are used to find out whether a GST obligation will exist or not for both the vendor and the buyer.



## SCHEDULE 1

(GST Information – see clause 14.0)

This Schedule must be completed if the vendor has stated on the front page that the vendor is registered under the GST Act in respect of the transaction evidenced by this agreement and/or will be so registered at settlement. Otherwise there is no need to complete it.

<b>Section 1 Vendor</b>	
1(a) The vendor's registration number (if already registered):	
1(b) (i) Part of the property is being used as a principal place of residence at the date of this agreement.	Yes/No
(ii) That part is: (e.g. "the main farmhouse" or "the apartment above the shop")	Yes/No
(iii) The supply of that part will be a taxable supply.	Yes/No
<b>Section 2 Purchaser</b>	
2(a) The purchaser is registered under the GST Act and/or will be so registered at settlement.	Yes/No
2(b) The purchaser intends at settlement to use the property for making taxable supplies.	Yes/No
If the answer to either or both of questions 2(a) and 2(b) is "No", go to question 2(e)	
2(c) The purchaser's details are as follows:	
(i) Full name:	
(ii) Address:	
(iii) Registration number (if already registered):	
2(d) The purchaser intends at settlement to use the property for making taxable supplies associated with the purchaser under section 2A(1)(c) of the GST Act (connected by blood relationship or adoption).	
<b>OR</b> The purchaser intends at settlement to use part of the property (and no other part) as a principal place of residence by the purchaser or by a person associated with the purchaser under section 2A(1)(c) of the GST Act. That part is: (e.g. "the main farmhouse" or "the apartment above the shop")	Yes/No
2(e) The purchaser intends to direct the vendor to transfer title to the property to another party ("nominee").	Yes/No
If the answer to question 2(e) is "Yes", then please continue. Otherwise, there is no need to complete this Schedule any further.	
<b>Section 3 Nominee</b>	
3(a) The nominee is registered under the GST Act and/or is expected by the purchaser to be so registered at settlement.	Yes/No
3(b) The purchaser expects the nominee at settlement to use the property for making taxable supplies.	Yes/No
If the answer to either or both of questions 3(a) and 3(b) is "No", there is no need to complete this Schedule any further.	
3(c) The nominee's details (if known to the purchaser) are as follows:	
(i) Full name:	
(ii) Address:	
(iii) Registration number (if already registered):	
3(d) The purchaser expects the nominee to intend at settlement to use the property as a principal place of residence by the nominee or by a person associated with the nominee under section 2A(1)(c) of the GST Act (connected by blood relationship, marriage, civil union, de facto relationship or adoption).	Yes/No
<b>OR</b> The purchaser expects the nominee to intend at settlement to use part of the property (and no other part) as a principal place of residence by the nominee or by a person associated with the nominee under section 2A(1)(c) of the GST Act. That part is: (e.g. "the main farmhouse" or "the apartment above the shop")	Yes/No

Note that this statement says Schedule 1 **must** be completed if the vendor has stated on the front page that they are registered for GST.

## Implications when the GST status of the buyer changes between signing the agreement and settlement

Sometimes whether the buyer will be GST-registered is not known at the time of signing the Sale and Purchase Agreement. This may arise when a nominee is the ultimate buyer. In these circumstances, a buyer may:

- sign the agreement in the name of a non-registered GST entity and plan to nominate a GST-registered entity before settlement, or
- sign the agreement in the name of a GST-registered entity and plan to nominate a non-registered entity to complete the purchase before settlement, or
- nominate another party to complete the purchase.

Consequently, a vendor cannot always be absolutely certain whether the ultimate buyer of the property will be registered for GST or not. The sale and purchase agreement includes mechanisms to amend the GST information before settlement.

Often it is assumed that GST is 'not applicable (to the party)' or 'zero-rated'. However, this may not be the case.

Always advise parties to seek technical advice regarding their GST status if there is any doubt regarding the GST treatment of the transaction, irrespective of their experience in buying and selling property.

If the buyer is dependent on a certain GST status at settlement, Clause 14.1 of the Sale and Purchase Agreement warrants that the vendor's GST status in relation to the transaction is correct at the date of the agreement and will remain correct at settlement.

Under Clause 14.8, if the particulars of the purchaser change between the date of the agreement and the date of settlement, meaning the GST treatment of the sale is no longer zero-rated, the purchase price will be altered to reflect this.

## Clauses related to GST

Further detail regarding GST is included in the clauses in the Sale and Purchase Agreement.

### *Clause 13 - Goods and services tax*

Clause 13 outlines the requirements for buyers and vendors to pay GST, as indicated on the front page of the agreement. If the buyer is required to pay GST but has not done so by the settlement date (or another specified date), the buyer must pay the vendor interest along with any default sum of GST (Clause 13.1(3)).

### *Clause 14 - Zero-rating*

Clause 14.1 provides a warranty that the GST statement on the front page, and any particulars stated by the vendor in Schedule 1, regarding the vendor's GST registration status in relation to the transaction, are correct at the date of the agreement and will remain correct at settlement. Clause 14.2 also warrants that the buyer's details relating to GST in Schedule 1 are correct at the date of the agreement. The remaining sub-clauses (14.3 to 14.8) clarify the circumstances under which GST must be paid and requirements for making GST payments.

Clause 14.5 (1) states that if any particulars stated by the purchaser in Schedule 1 are incomplete or alter between the date of the agreement and settlement, the purchaser must notify the vendor of the particulars which have not been completed and the altered particulars **as soon as practicable before settlement**.

Clause 14.8 addresses the implications if the buyer's GST status changes between the date of signing and settlement, affecting the GST treatment of the transaction. If the details recorded on the front page and in Schedule 1 are such that GST is chargeable at 0%, but the particulars stated by the purchaser alter between the date of the agreement and settlement such that GST no longer becomes chargeable on the supply at 0% then:

- The purchase price shall be plus GST (if any), even if it has been expressed as being inclusive of GST (if any) on the front page of the agreement
- If the vendor has already accounted to Inland Revenue for GST on the basis that the supply would be zero-rated, and it is later determined that GST is in fact payable, the purchaser must reimburse the vendor for the GST (or any default GST) immediately upon demand.
- If the purchaser fails to make this payment, they will be liable to pay interest at the default interest rate on the unpaid amount, calculated from the date of the vendor's demand until full payment is made.

### *Clause 15 - Supply of a going concern*

Following on from the GST provisions, clause 15 relates to the supply of a taxable activity (going concern), where both vendor and buyer are GST registered at the time of supply. The criteria for a sale to be of a 'going concern' is outlined earlier in this workbook. If a sale meets these criteria, it is **zero-rated** (i.e. there is no GST content).

Read the following case study and answer the questions that follow.

### Case study 1

A vendor wished to sell their property that was being used as a backpacking business and was approved as accommodation for seasonal workers. Their intention was to sell it as a going concern. The vendor listed the property with an agency. The licensee assigned to the listing knew the property was being sold as a going concern.

A year later, the licensee received an offer for the property. They emailed the offer, in the form of a sale and purchase agreement, to the vendor who responded by saying, among other things, that they needed to go through the sale and purchase agreement together as it was "too much for [them] to take in all the legal details".

When meeting to discuss the offer, the licensee asked the vendor to insert their GST number into the sale and purchase agreement. The vendor did not insert their GST number into the agreement, but at one point offered to give it to the licensee. The licensee did not end up recording the vendor's GST registration status on agreement and mistakenly thought that the vendor's lawyer could "regularise" the GST position afterwards. The licensee recommended the vendor obtain legal advice and provided them with an opportunity to do so, but their lawyer did not review the sale and purchase agreement before they signed. Counteroffers were exchanged and the property was sold.

On the day of settlement, the vendor discovered that the licensee had filled out the sale and purchase agreement without recording that the vendor was GST registered. The licensee had also not recorded that the property was being sold as a going concern. As a result of not recording the vendor as GST registered on the sale and purchase agreement, the vendor was in breach of the vendor warranty under the terms of the agreement, and the purchaser was unable to claim a GST input credit of \$95,217.39. This was later settled between the vendor and purchaser for \$60,000 in addition to the purchaser's legal costs being paid by the vendor. The vendor also incurred their own legal and accounting costs. The licensee's agency voluntarily refunded the commission earned on the transaction.

The vendor made a complaint to REA, which was then referred to a CAC. Among other things, the CAC held that the licensee had breached r 9.9 of the Rules by not inserting the GST information into the sale and purchase agreement or recording the fact the property was being sold as a going concern, which should have been inserted as a term of sale. Rule 9.9 prohibits licensees from submitting a sale and purchase agreement to any party for signature unless all material particulars have been inserted into or attached to the document.

The CAC observed that the licensee was in such a hurry to get the sale and purchase agreement signed and completed by all parties that they overlooked the inability of the vendor to understand the sale and purchase agreement, which should have been apparent. The CAC also noted that licensee had less than 6 months' experience when they prepared the sale and purchase agreement, and their mistake was not picked up by their supervisor. Accordingly, the supervisor was also found to have breached their professional obligations.

The CAC ordered an apology, training, and a fine. It also referred the matter to the Tribunal to determine whether a compensation award should be made. Ultimately the Tribunal made a compensation award to the vendor of \$35,101.65 split between the licensee and their supervisor.

**Complaint number: C47579**

Date: 27 July 2023

You can read about this complaint and decision in the REA decisions database which you can find at the top of the homepage at [rea.govt.nz](http://rea.govt.nz)



## Questions

3. Why did failing to insert the vendor's GST registration status into the sale and purchase agreement lead to the vendor being liable for \$95,217.39?

4. When should the licensee have inserted the GST information into the sale and purchase agreement?

5. What could have prevented this situation from happening?

## GST requirements and the Rules

Several of the rules from the Code of Conduct are relevant licensee obligations when attending to handle GST-related matters in real estate transactions:

**Rule 5.2** all licensees **must** have a sound knowledge of legislation relevant to real estate agency work. This includes the GST Act, to the extent it applies to property transactions.

**Rule 6.2** states that the licensee **must** act in good faith and deal fairly with all parties engaged in the transaction. These are the minimum standards when dealing with the parties.

In relation to GST requirements, the licensee should ensure that they act in good faith and deal fairly with all parties. For example, if they become aware of information regarding the GST treatment of the transaction, they should ensure that all parties are made aware of any implications in a timely manner.

**Rule 9.7** requires licensees to recommend that their client or customer seek a potential customer of their right to independent legal and technical advice before they sign a Sale and Purchase Agreement or other contractual document. It also requires licensees to allow the person a reasonable opportunity to obtain advice if they choose to.

In terms of GST requirements, it is important that the parties are given a reasonable opportunity to seek legal and technical advice, such as accountancy and taxation advice.

**Rule 9.9** requires licensees to ensure all material particulars are inserted into and attached to a sale and purchase agreement, and agency agreement.

'Material particulars' includes GST information. The material particulars must be inserted/attached before the parties are asked to sign the agreement.

In terms of GST requirements, the licensee must ensure that the 'material particulars' relating to GST are entered on the agreement.

## Communicating the price of the property

It is very important that the price of the property is clear to you as the licensee and that it is clearly conveyed to other parties. At the time the sale and purchase agreement is drawn up and negotiated, it is critical that the parties are clear on whether the sale is inclusive or exclusive of GST and, if GST is payable, that they understand the amount that will be paid.

The advertising for the property must make it clear if it is being sold 'plus GST'.

Read the following case study and answer the questions that follow.

### Case study 2

A licensee was a salesperson acting for a vendor developer selling a residential property. The property was to be sold at auction. The vendor told the licensee they were not GST registered and the licensee drafted a sale and purchase agreement recording the vendor as not registered for GST. This sale and purchase agreement was sent to the vendor's lawyer who did not raise any issues with the GST information.

The licensee noticed that the vendor had used a different name on the agency agreement to what was recorded on the record of title for the property. The vendor said their real name was the name on the agency agreement, but they used the other name because they had been made bankrupt a few years ago. The licensee also noted that there was a caveat on the record of title, lodged by the Commissioner of Inland Revenue.

Prior to the auction, representatives of the purchaser company asked the licensee whether the vendor was GST registered. The licensee told them the vendor was not, and this was reiterated by the auctioneer before the auction. The sale and purchase agreement provided to the purchasers also recorded the vendor as not being registered for GST.

The company purchaser was GST registered and intended to make a second-hand goods claim for GST on the purchase price and use the refund to develop the property. However, when the purchaser made the claim following purchase, the claim was refused on the basis that the transaction was zero rated because the vendor was registered for GST. The purchaser's tax agent made a complaint to REA on behalf of the purchaser, saying, among other things, that the purchaser wouldn't have purchased the property had it known the vendor was GST registered. The complaint was referred to a CAC.

The CAC found it proven that the vendor was GST registered and that the licensee had misrepresented the GST registration status of the vendor to the purchaser.

While the vendor's lawyer had been provided with the sale and purchase agreement to look over, the licensee was found to have not specifically asked the lawyer about the vendor's GST status, but

had simply inferred because the lawyer did not raise an issue about the GST status the lawyer was verifying that the vendor was not GST registered.

The CAC found that, because the purchaser was a company and the purchaser's representatives specifically asked about the GST registration status of the vendor, the licensee should have been prompted to ask why the purchaser was interested in the GST status and confirm the vendor's GST registration status. It wasn't sufficient for the licensee to rely on the fact the vendor's lawyer did not raise an issue about the GST information on the sale and purchase agreement as sufficient confirmation of the information provided to the licensee by the vendor.

The CAC noted that the licensee should have also been on notice to be more cautious about accepting a statement from the vendor that they were not GST registered due to the following red flags:

- the vendor was a developer
- the vendor used two different names
- the vendor had informed the licensee about previous insolvency
- the caveat lodged by the Commissioner of Inland Revenue on the record of title.

The CAC found that the appropriate course of action would have been for the licensee to either confirm the vendor's GST registration status or advise prospective purchasers that the vendor's GST information was supplied by the vendor and had not been verified.

According to the CAC, while the misrepresentation was not deliberate, it might have been avoided if the licensee had acted with more care, or if they had put the purchasers on notice to exercise more care themselves because the GST registration status of the vendor had not been independently verified.

The licensee's lack of skill, care, competence and misrepresentation were found to be a breach of rr 5.1 and 6.4 of the Rules. The CAC also made findings in relation to the licensee not verifying the vendor's identify. The CAC found the licensee had engaged in unsatisfactory conduct. They were censured and fined \$1,000.00.

**Complaint number: C23848**

Date: 28 September 2018

You can read about this complaint and decision in the REA decisions database which you can find at the top of the homepage at [rea.govt.nz](http://rea.govt.nz)



## Questions



6. Why did the CAC decide that the licensee had breached rule 6.4?

7. What was the CAC's reason for finding that the licensee's conduct was unsatisfactory regarding the vendor's GST registration status?

8. What were the implications of the incorrect vendor GST status being entered on the Sale and Purchase Agreement, in the purchasers' view?

9. Give **two** actions the licensee could have taken that may have avoided the issues which arose.

## Implications for Lifestyle and Rural Sales

Compulsory zero rating (CZR) **must be applied** to all sales of land where both parties are GST registered at settlement date and the relevant criteria discussed earlier in this workbook are satisfied. Care **must** be taken when dealing with the sale of lifestyle properties. If the owner is registered for GST, they have the option to charge GST on top of the sale price (i.e. "plus GST) or to sell the property "inclusive of GST".

If the owner sold the property inclusive of GST, they would have to return the GST in their GST return at the time of supply was triggered. Where the buyer is GST registered, and the vendor is not, the vendor would not have to account for any GST as they are not registered.

If the vendor is not GST registered, the sale will not be subject to GST. However, if the buyer is registered for GST and intends to use the lifestyle block to make taxable supplies they may be entitled to claim a second-hand goods input tax credit. Note that IRD could refuse a refund if they perceive the property to be a non-qualifying activity. IRD would look at this on a case by case basis.

### How GST is calculated on rural sales

If rural land is sold, and it attracts GST, the GST is typically not calculated on the full sale price. This is because most rural properties include a residential property i.e. a dwelling and domestic outbuilding, gardens, driveways and so on. This part of the property is called the curtilage. GST is not charged on the curtilage because there is no business activity taking place on that part of the land and it is treated as a separate supply for GST purposes.

The curtilage is the land and outbuildings directly surrounding the dwelling (i.e. the garden) that is primarily used for a private purpose. Whether land or buildings are appurtenant to a house and contained within its curtilage is based on both physical aspects (i.e., proximity to the house and separation from the house) and also on the use to which the land or buildings are put. Since this portion is typically used for private residential purposes, it is not ordinarily subject to GST on sale.

For lifestyle blocks (and small farms), the curtilage will often represent a significant portion of the property's total value. This means a high percentage of the sale price is exempt or not subject to GST.

The 'one acre' that surrounds the dwelling is the most valuable acre of the property. This is because under council regulations, it is usually the only portion where a dwelling can be built. Usually, no second dwelling is allowed on the land, so the other acres are less valuable. The value of the 'one acre' would equate to the value of a small bare block that is sold for someone to build a home, or the value of a new section in a local subdivision.

As an example, a 20-acre lifestyle block is sold where the vendor is breeding exotic sheep and selling them at a profit. This activity attracts GST, and the vendor requires the land for the activity, so GST is payable on the land. If the property sells for \$1,000,000, GST will be charged on the sale price less the value of the curtilage, the house and curtilage will be treated as a separate supply to the remaining land for GST purposes (i.e. there will be two separate supplies). The curtilage is the value of the house (let's say \$450,000), the value of

the domestic outbuildings and other assets like a swimming pool (let's say \$50,000) and the value of the one acre that surrounds the house (let's say \$350,000). The curtilage is therefore valued at \$850,000 and the balance of the land at \$150,000. GST is therefore charged on just \$150,000 of the sale price, even though the sale price was \$1,000,000.

GST will be much more significant on a large farm, where a lot of the value is in the land. If a dairy farm is sold for \$2,500,000 with a house and curtilage valued at \$900,000, GST will be charged on \$1,600,000. \$1,600,000 is the difference between the sale price and the value of the curtilage.

## Summary

Licensees are not expected to be GST experts. GST is a specialist knowledge area and can be complex. Under the Code of Conduct licensees are expected to exercise skill and care and diligence and have a sound knowledge of legislation relevant to real estate agency work (Rule 5.2) This requires licensees to have a working understanding of GST in the real estate transaction context.

We suggest when you are involved in a transaction that has a GST component:

- ask your client and customer:
  - Are they GST registered
  - Will GST apply to the sale/lease or will it be zero-rated
  - If they do not know they should seek tax advice
  - If there is a nominee what is the GST status of the nominee
- recommend that all parties seek expert tax advice
- record your recommendations to take expert advice in writing
- Complete Sale and Purchase Agreement, commercial leases and contractual documents fully
- keep good records

## CASE STUDY 1: Answers to questions



3. Why did failing to insert the vendor's GST registration status into the sale and purchase agreement lead to the vendor being liable for \$95,217.39?

Answer: Because both the purchaser and vendor were both registered for GST, the sale was zero-rated and purchaser was unable to claim the GST back from the purchase price.

4. When should the licensee have inserted the GST information into the sale and purchase agreement?

Answer: Before providing it to *either* party for signature. The prospective purchasers needed to know the GST information before making a written offer, and the vendor should not have been provided with the sale and purchase agreement to consider as an offer without the information being recorded in the agreement.

5. What could have prevented this situation from happening?

Answer:

There are many possible answers to this. They include:

- The licensee should have ensured they knew the GST information that needed to be recorded in the sale and purchase agreement prior to an offer being made on the property. Robust record keeping recording the vendor's GST information and thinking proactively would likely have prevented the licensee making such a mistake under pressure.
- The licensee was not aware of their professional obligations under r 9.9. Training and supervision could have helped prevent this mistake from happening.

The licensee should not have been drafting the sale and purchase agreement themselves due to their inexperience as a salesperson; proper supervision would have made the mistake less likely.

## CASE STUDY 2: Answers to questions

6. Why did the CAC decide that the licensee had breached rule 6.4?

The licensee misled the directors of the purchaser by advising them the vendor was not GST registered when the vendor was GST registered.

7. What was the CAC's reason for finding that the licensee's conduct was unsatisfactory regarding the vendor's GST registration status?

The Licensee failed to verify or caveat the vendor supplied information about the vendor's GST registration status.

8. What were the implications of the incorrect vendor GST status being entered on the Sale and Purchase Agreement, in the purchasers' view?

The purchasers bought the property with the intention of making a secondhand goods claim for GST on the purchase price, because they were GST registered and the vendor was not registered.

However, their claim for a GST refund was declined by IRD because the vendor was, in fact, GST registered. This meant, in the purchaser's opinion,

- they paid \$141,521.74 more for the property than they should have
- they couldn't use the GST refund to develop the property as they had intended
- they wouldn't have bought the property if they had known the sale was zero-rated.

8. Give two actions the licensee could have taken that may have avoided the issues which arose.

The actions the licensee could have taken include to: (two required)

- verify the information provided by the vendor regarding his GST registration status or caveat the information if it cannot be verified.
- ascertain why the vendor's GST registration status was important to the purchasers, what plans they had for the property, and what the purchasers' GST registration status was.
- enquire as to the reason for the caveat by the Commissioner of Inland Revenue on the title to the Property and, if necessary, take steps to verify the information provided.



## Putting my learning into practice

Describe **at least three** key learnings you will take away from this 'GST' topic.

Describe **at least one** change you will make to the way you work as a result of this topic.