

Morrows In Brief

A key article to keep you in touch with news and developments regarding GST implications on particular transactions.

GST-proposed changes for going concern and farm land sales

We continue to await draft legislation on the Federal Governments' 14 December 2013 announcement of replacing the GST-free going concern and farmland provisions with a reverse charge mechanism. Once legislated, the proposed changes will have a profound impact on the current application of the GST free sale of a going concern concession and the GST free farmland concessions.

It is expected the changes will be in line with previous recommendations (2009) which included that GST be payable on the sale of going concerns and farm land but the parties will be able to agree for the purchaser to be responsible for the payment. This is known as a reverse charge mechanism.

In order for the reverse charge mechanism to be available:

- the supply will have to satisfy the test for a going concern or farm land, and
- the purchaser must be registered or required to be registered for GST.

If these criteria are not met the reverse charge mechanism will fail and the vendor will be liable for any GST.

Where the reverse charge mechanism is available and agreed to by the parties it is expected the purchaser will be entitled to an input tax credit for the GST paid at the same time as the GST is payable, thereby requiring no payment.

The test for a going concern will be relaxed so the supplier will only have to supply 'substantially' all things necessary for the going concern and a broader range of supplies may be considered going concerns.

This change will require amendment to contracts currently used for the sale of going concerns and farm land. The Law Institute of Victoria is working on a special condition to assist practitioners in anticipation the legislative change is made.

It is not known what the policy of the SRO is to reverse charging of GST and whether the GST will be added to the contract sum for duty purposes but it remains a distinct possibility.

If you believe this change may be relevant to you, please call Morrows to discuss and get advice on how to proceed.

We would like to thank the Legal Practitioners' Liability Committee (www.lplc.com.au) for this article.

Disclaimer: *The information provided in this communication is general in nature and not intended to be advice. You should contact our office for further information or for a tailored solution to your needs.*