Policy

Policy Directive: compliance is mandatory

GST Impact on Property Disposal Policy Directive

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Summary

The objective of the GST Impact on Property Disposal Policy Directive is to ensure that the transfer of land and/or real property within SA Health is disposed and accounted for correctly according to the commonly accepted accounting principles, in particular Accounting Policy Framework (APF) III Asset Accounting Framework, AASB 116 Property, Plant and Equipment and A New Tax system (Goods and Services Tax) Act 1999 (GST Act).

This Policy Directive does not include the sale of plant and equipment. Refer to Plant and Equipment Retirement Policy Directive.

Keywords

GST, Sale of Property, Margin Scheme, New Sales, Existing Sales, Property Disposal, GST Impact on Property Disposal Policy Directive

Policy history

Is this a new policy? **Y**
Does this policy amend or update an existing policy? **N**
Does this policy replace an existing policy? **N**

Applies to

All SA Health Portfolio

Staff impact

All Staff

PDS reference

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SA Health

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GST Impact on Property Disposal Policy Directive

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Version V1.0
Portfolio Executive Approved

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SA Health

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GST Impact on Property Disposal Policy Directive

1. Objective

The objective of this policy directive is to ensure that the transfer of land and/or real property within SA Health is disposed and accounted for correctly according to the commonly accepted accounting principles, in particular Accounting Policy Framework (APF) III *Asset Accounting Framework*, AASB 116 Property, Plant and Equipment and *A New Tax system (Goods and Services Tax) Act 1999 (GST Act).*

2. Scope

This policy directive is applicable to the entire SA Health Portfolio.

3. Principles

The following principals must be adhered to:

- Compliance with Accounting Policy Framework (APF) III *Asset Accounting Framework,* Australian Accounting Standards Board (AASB) 116 *Property, Plant and Equipment*, and A New Tax System (Goods and Services Tax) Act 1999.
- The correct entity must be identified when disposing of surplus real property.
- The sale of real property after 1 July 2000 is subject to 10% GST.
- All sales of real property are assessed by SA Health Taxation Service, with advice sought as to the tax implications of real property disposal.

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4. Detail

This policy directive document provides general guidance on the treatment of goods and services tax (GST) when properties are disposed by SA Health.

This policy directive requires that Infrastructure must ensure that all sales of real property are assessed by Taxation Services, within the Finance and Business Services Division, prior to disposal in order that GST is correctly applied to the sale, and any other taxation implications are addressed. Infrastructure must seek specific advice from Taxation Services prior to the disposal of any real property.

Infrastructure is responsible for the evaluation and ultimate disposal of surplus properties within the SA Health. This includes disposals of property which may be owned by the Minister, the department or the LHNs/SAAS.

The Urban Renewal Authority and the Department of Environment, Water and Natural Resources (DEWNR) are the agents for surplus land, and crown land disposals by all government agencies. It is customary for these agents to determine the taxable status, and ultimately the taxable value of the property disposal transaction.

4.1. Identification of the Supplier

The entity making the supply for consideration needs to be concerned with GST. The entity with title to the real property is the entity making the supply for GST purposes.

Care should be taken to identify the correct supplier to ensure that this supplier pays the GST due, and also issues a tax invoice; where required. The vendor may be the Minister, a separately incorporated health service, or, in some cases, another Minister or department which has title to the property, but has provided use of the property to SA Health.

4.2. Sale of Property

As a general rule the sale of real property after 1 July 2000 is subject to 10% GST. The GST payable is equal to 1/11th of the actual disposal proceeds. GST is payable in the month that settlement occurs under a standard land sale contract.

When these sales occur a tax invoice must be rendered to the purchaser by the vendor.

The exceptions to this general rule of being subject to GST are as follows:

- Margin scheme (election to tax only the increase in value since 1 July 2000, or since the purchase date) as discussed below;
- Sales of existing non-commercial residential property;
  - New sales;
  - Existing sales; and
  - Substantial Renovations.
- Sale of Commercial Residential Premises; or
- First sale of Unimproved Crown Land.

In each of these scenarios, specific advice should be sought from Taxation Services help desk prior to disposal.

4.2.1. Margin Scheme

The margin scheme enables the GST on certain sales of real estate to be calculated on a concessional basis (Div 75 of the *GST Act*). It is typically applicable to new residential property developments and sale of subdivided land.

Normally, GST on a supply is calculated as 1/11th of the GST-inclusive price, and a purchaser can claim an input tax credit for the GST component. Under the margin scheme, however, the GST is instead calculated as 1/11th of the 'margin', and no input tax credit can be claimed by the purchaser.

In broad terms, the margin is calculated as follows:

  - if the property is acquired before 1 July 2000, the margin is the increase in value since that date the property was purchased, i.e. 1995.
  - if the property is acquired after 30 June 2000, the margin is the difference between your sale price and the price you paid.

The margin scheme will only apply where:

  - the property was purchased before 1 July 2000;
  - there is a taxable supply of real property; and
  - both parties agree in writing on or before the date the supply is made (normally settlement date) that the margin scheme will apply.

Margin scheme can be used on property purchased after 1 July 2000 if the property was purchased from someone that:

  - was not registered or required to be registered for GST;

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- sold SA Health the old residential premises;
- sold SA Health the property using the margin scheme;
- sold the property as part of the GST-free going concern; or
- sold the property to SA Health as GST-free farmland

A purchaser can only use the margin scheme on a subsequent sale if the property was purchased using the margin scheme. If the property is charged the full rate of GST when purchased, the margin scheme cannot be used. As use of the margin scheme prevents input tax credits being claimed, there is no obligation on the vendor to issue a tax invoice.

For further information regarding the advantages and disadvantages of Margin Scheme refer to Attachment B.

4.2.2. Sale of Non-Commercial Residential Property

Generally, the sale of "second hand" non-commercial residential premises is input taxed, if the premises are to be used predominantly for residential accommodation. This means that no GST is payable on the sale, and input tax credits for acquisitions relating to the sale are not available.

Land or a building occupied as a residence, or intended and capable of being occupied as a residence, generally has the following treatment.

New Sales

The sale of *new* residential premises is normally taxable. This means that GST may be payable if the vendor is registered for GST.

A compliant tax invoice must be provided by the vendor to the purchaser on sale; unless the margin scheme is used.

"New" residential premises fall into the following three categories:

1. Those that have not previously been sold as residential premises, or have not previously been subject to a long-term lease.
2. Those that have been created by "substantial" renovations.
3. Those that have been built to replace demolished premises.

Existing Sales

Where residential premises were used for residential accommodation before 2 December 1998, it is not "new residential premises" and the sale will not be subject to GST, it will be input taxed.

There is no GST on the sale of residential premises that are not "new".

These include premises used:

- for residential accommodation before 2 December 1998; or
- as a residence for 5 years continuously.

4.2.3. Sale of Commercial Residential Premises

Commercial residential premises are defined as a hotel, motel, boarding house, school accommodation, caravan park, camping ground, or houses that have been converted into an office which is not used for residential purposes.

Sales of commercial residential premises are subject to GST. The margin scheme can be applied; depending on the conditions mentioned in 4.2.1 'Margin Scheme'.

4.2.4. First Sale of Unimproved Crown Land

The supply of land, by way of freehold interest or long term lease greater than 50 years,

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by the Commonwealth, State or territory on which there are no improvements is GST-free.

This provision only applies to the first sale of unimproved Crown land.

The ATO has taken varying interpretations over time of what is 'unimproved' Crown land. The most recent view is contained in GSTR 2006/6 *Goods and services tax: improvements on the land for the purposes of Subdivision 38-N and Division 75*.

4.3. Non-Cash Consideration

GST may apply to real property disposals whether the consideration is in cash or non-cash form. This might include contractual obligations to provide certain services, or the receipt of other titles to property.

Specific advice should be sought where arrangements are entered into involving the transfer of property title in return for the receipt of other non-cash benefits.

5. Roles and Responsibilities

5.1. Infrastructure

Infrastructure is responsible for:

- the evaluation and disposal of surplus properties within the SA Health;
- ensuring that all sales of real property are assessed by Taxation Services prior to disposal of surplus properties; in order that GST is correctly applied to the sale, and any other taxation implications are addressed; and
- notifying the Fixed Assets team of the disposal of property using a Fixed Asset Update Form;

Project Managers within Infrastructure will raise tax invoices in accordance with current accounting and billing practices.

5.2. Taxation Services

Taxation Services is responsible for:

- assessing all real property sales;
- providing advice on the correct treatment of GST when properties are being disposed;
- ensuring that appropriate tax codes are applied when revenue is received; and
- ensuring that appropriate documentation is provided, i.e. valid tax invoices.

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6. Reporting

N/A

7. EPAS Considerations

N/A

8. Exemptions

NA

9. Associated Policy Directives / Policy Guidelines

- *Plant and Equipment Retirement Policy Directive*

10. References, Resources and Related Documents

This policy directive should be read in conjunction with the following documents:

- *AABS 116 'Property, Plant and Equipment'*
- *Accounting Policy Framework III 'Asset Accounting Framework'*
- A New Tax system (Goods and Services Tax) Act 1999 (GST Act)
- Fixed Asset Update Form
- GSTR 2006/6 *Goods and services tax: improvements on the land for the purposes of Subdivision 38-N and Division 75*.
- Margin Scheme - made easy
- Treasurer's Instruction 2 *Financial Management*

11. Other

N/A

12. National Safety and Quality Health Service Standards

N/A

13. Evaluation of Performance and Compliance

Compliance with this policy directive will avert any significant financial costs resulting from the underpayment of GST to the Australian Taxation Office, which would be unrecoverable from the purchaser.

14. Attachments

Attachment A: Margin Scheme Example

Attachment B: Margin Scheme Advantages and Disadvantages

15. Definitions

In the context of this document:

- **Margin Scheme** is the election to tax only the increase in value since 1 July 2000 or since the purchase date. This can only be used in the sale of new build residential premises or when subdivided land is sold.
- **Supplier** is the entity selling the property.

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ATTACHMENT

A Margin Scheme Example

Example – land or premises held 1 July 2000

Value of property 1 July 2000	$660,000
Sale price June 2012	$880,000

GST without the margin scheme:

1/11th x $880,000	$80,000

In some instances, this amount can be claimed as an Input Tax Credit.

GST with the margin scheme

Margin is $880,000 - $660,000 =	$220,000
GST is 1/11th x $220,000	$20,000

No tax invoice is required on the sale, and the GST credits cannot be claimed.

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B Margin Scheme Advantages and Disadvantages

Q: Is the application of the margin scheme disadvantageous for a developer who can claim input tax credits?

A: The application of the margin scheme may prove disadvantageous to buyers who are eligible to claim input tax credits in relation to the acquisition. The disadvantage is, that under the margin scheme, the purchaser of real property is ineligible to claim input tax credits relating to the purchase.

However, a consequential savings from a reduced stamp duty under the margin scheme may outweigh this disadvantage. By reducing the amount of GST on the sale of the property, the stamp duty payable is also reduced. This stamp duty savings is likely to be a major factor where the value of the sale is quite large, and the 'margin' to which GST is applied is comparatively small.

Q: On what basis is a developer obliged to charge GST when a house and land package is offered for sale when the margin scheme was applied to the purchase of the land?

A: Where the developer purchases land under the margin scheme, upon resale of the property, there is a choice to either apply the margin scheme again, or to treat the sale as a fully taxable supply.

Alternatively, where the developer has purchased the land as a taxable supply (not using the margin scheme), there is no option to apply the margin scheme to the resale.

Q: Is the developer's input tax credits blocked or can the developer claim credits for the building costs and then charge GST on the total price?

A: The sale of the new residential premise is a taxable supply, therefore GST must be charged on the total price of the house and land. The developer is entitled to claim input tax credits on the building costs. The developer's input tax credits will only be blocked in relation to the purchase of the land where the margin scheme, was applied.

Q: The Act does not consider the first sale of land being land, and the second sale house and land.

A: Logic would suggest that the second sale of the land would be the input taxed and the sale of the house, a taxable supply. This is incorrect. The subsequent sale of the house and land will be a sale of new residential premises and will be a taxable supply. There is no separation of land and house in the second sale. It is treated as being all land.

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