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SOLICITORS & BARRISTERS

MORTGAGES & FINANCE

GST can bite when selling your business

Where people conduct a business which is registered or required to be registered for GST they face an obligation to collect 10% of the cost of supply of their goods or services and pass that onto the government by way of tax. Basically a business has to be registered where annual turnover exceeds fifty thousand dollars.

Usually the sale of a business is exempt from the payment of GST as there are provisions in the legislation for GST not to be applicable to a contract where the contract is for the sale of a "going concern".

There are many unresolved issues involving the application and payment of GST but whether a business qualifies as a "going concern" has recently raised some tricky issues.

It is very often considered convenient when selling a business for the buyer to enter into a new lease with the business' landlord – there are many reasons for this, such as the current lease may not have long to run, the rent may have been renegotiated or guarantors may be looking to be relieved of their obligations.

The Tax Office has ruled recently that where a business is sold with a new lease they are no longer "going concerns" because in order to draw up a new lease the seller must have surrendered it's old lease and therefore an integral part of the business is not being sold.

There are exceptions to this ruling if a term of the lease prevents assignment or a landlord denies a right to assign the lease.

It is vital if you are selling your business you get legal advice on this issue *before* you sign a Contract. If the "going concern" exemption is not available one eleventh of the sale price must be paid to the government by way of GST and usually it is the seller who will have to pay!