

## Article on GST – Zero Rating

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### GST CHANGES – ZERO RATING ON LAND – IS IT BETTER?

By Justine Grey, Director

Many recent legislative changes provide ample subject matter, but as a property lawyer, the most prevalent are the changes to the Goods & Services Tax Act 1985 (GST) concerning land.

The brainchild for the change originates from “Phoenix” schemes. This is where a Purchaser of an associated Vendor claims the GST on a property transaction and the Vendor, now asset stripped, voluntarily liquidates and does not meet its GST obligations to IRD leaving them out of pocket.

By way of rescue, from **1 April 2011**, the Government implemented mandatory zero-rating on transactions involving a supply of land, however minimal the land component of the overall transaction. Vendors are required to zero rate land transactions provided:



- Both Vendor and Purchaser are GST registered;
- The Purchaser acquires the goods with the intention of using them as a taxable activity
- The Supply of land is not intended to be used by the Purchaser as the principal place of residence.

Sound simple – not quite. There are some hidden traps for the novice including purchasers ensuring their statements (new additions to Agreements) given either at time of entering an Agreement, but more importantly settlement, is accurate. If this is incorrect or post settlement the transaction should not have been zero rated then, IRD will look **directly to the Purchaser** for payment of the GST and possible penalties. ***If the Purchaser is required to pay the GST they cannot claim it back.***

In practice the changes will apply to commercial transactions with a land component. However, where the principal place of residence forms part of the larger supply eg: lifestyles blocks, we propose the normal practice of acquiring a dwelling & curtilage valuation will be sought to separate the principal place of residence (GST exempt) from the land component. Assessment of how the land component will be used by the purchaser will determine whether the remaining land is zero or standard rated at 15%.

Some welcome changes are: how nominations to third party entities are treated eliminating confusion whether more than one supply applies. Vendors will no longer have to pay GST at the time of supply nor will purchasers need to raise finance for the GST content and wait for the refund.

**OUR ADVICE - careful assessment will be required before settlement. We recommend you discuss this with your lawyer and accountant.**



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