Sale of Non-Residential Properties

Audit Results

IRAS reviewed 284 GST-registered businesses that sold non-residential properties during the period 1 Oct 2013 to 31 Dec 2015. Of these, 55 businesses had failed to charge and/or account for GST collected on the sale of non-residential properties in their GST returns. The total amount of tax and penalty recovered is $5.5 million.

Common GST Mistakes

The reason for the omission of GST on sales of non-residential properties was mainly due to the inadequate understanding of the GST rules on the following transactions:

1. **Sale of property owned by sole-proprietor / partnership**

   Some GST-registered sole-proprietors and partnerships did not charge and account for GST on the sale of non-residential property owned by them as they did not regard the sale of property as part of their business.

   A GST-registered sole-proprietor/partnership has to charge and account for GST on the sale of the non-residential property if input tax has been claimed on the purchase of the non-residential property or if the property has been recognised as a business asset in the accounts of the sole-proprietor/partnership.

2. **Transfer of property that did not involve any monetary consideration (e.g. in-specie distribution)**

   Some GST-registered businesses did not account for GST on the transfer of property as they did not receive any consideration from the transfer of property.

   A GST-registered business has to account for GST on the transfer of property even though he did not receive any consideration, if it had previously claimed input tax on the purchase of property.

3. **Sale of property in-satisfaction of debt by the liquidator/receiver**

   Some liquidators and receivers did not collect and pay the GST to IRAS on the sale of non-residential property on behalf of the GST-registered owner.

   When a property is sold in-satisfaction of debt, the liquidator/receiver has to collect and pay the GST to IRAS on the sale of non-residential property on behalf of the GST-registered owner.

Some other common mistakes made by these businesses are:

4. Late accounting of GST on the receipt of booking fee/option money

For sale of property, a GST-registered business would normally receive the booking fee/option money from the interested purchaser, followed by a deposit when the option is exercised by the purchaser. The balance payment would be received only upon the completion of the sale.

Some GST-registered businesses had accounted for GST on the booking fee and option fee only when the option is exercised or when the sale is completed.

Under the time of supply rule, the GST-registered business would need to account for GST at the earliest of the following events:

(i) when payment is received;

(ii) when an invoice is issued;

(iii) when the title of the property is transferred upon legal completion; or

(iv) when the property is made available to the buyer for occupation.

Based on the time of supply rule, the GST-registered business has to account for GST on the booking fee/option money when payment is received.

5. No tax invoice for the option money/deposit received

Some GST-registered businesses had only issued a tax invoice for the full selling price of the sale of property upon the completion of sale.

A GST-registered business has to issue a tax invoice within 30 days from the time of supply. Hence, for the option money/booking fee, the GST-registered business should issue a tax invoice within 30 days from the date of receipt of the option money/booking fee from the purchaser.

6. Over-claiming of input tax

Some GST-registered businesses had wrongly claimed input tax directly attributable to exempt supplies (i.e. sale and lease of residential properties) and common input tax in full.

As these GST-registered business were partially exempt businesses and had failed the De Minimis rule, they cannot claim the input tax incurred for the making of exempt supplies. They would also be required to apportion their common input tax and claim only the part of the common input tax that was attributable to the making of taxable supplies.

Case Stories

Case story 1

Company A had transferred two factories to Company B. No GST was charged by Company A on the transfer of the factories.

Company A explained that no GST was charged because the transfer of the factories to Company B was by way of distribution in specie as a form of dividend distribution and loan repayment to the shareholders. The shareholders had jointly designated Company B as their nominee to be the transferee of the properties pursuant to the distribution in specie.

In situation where properties are transferred by way of distribution in specie, notwithstanding that the GST-registered business did not receive consideration for the transfer of the properties, the GST-registered business is making a supply of goods pursuant to paragraph 5(1) of the Second Schedule to the GST Act and is required to account for deemed output tax if it had previously claimed input tax on the properties.

In this case, as Company A had previously claimed input tax on the purchase of the factories, Company A is required to deem output tax on the transfer of the factories to Company B based on open market value of the factories.

Case story 2

Company C had purchased an office unit from the developer and had paid progress payments up to 90% of the purchase price. The final 10% of the purchase price was to be paid upon the legal completion of the property purchase.

Before the legal completion of the property purchase, Company C sub-sold the office unit to Company D. As the developer had not called for the final 10% progress payment, Company C had excluded this 10% progress payment from his selling price to Company D and charged GST only on the net amount.

For the sale of completed property, Company C has to charge and account for GST on the sale of the office unit to Company D based on the full selling price. This is notwithstanding that Company C did not receive full payment from Company D due to uncalled progress payment from the developer.