

september 2011

GST spoils a super transfer

**This article appeared in this month's edition of the Law Society Journal (NSW).**

You receive a letter and your client's financial planner instructing you that your clients are selling a 30 per cent interest in their commercial investment property to their self managed superannuation fund for its market value of \$300,000.

You are aware that as the client's super fund has been in existence for a number of years, concessional stamp duty of \$50 will be payable on the transfer from your clients to the self managed superannuation fund.

The letter from the financial planner also states that he has spoken to the client's accountant who is aware of the transfer and is taking care of its tax aspects.

You check your safe custody and discover that you hold the unencumbered title to the property.

You advise your client that in the circumstances there is no need for a Contract for Sale of Land and that a transfer alone is sufficient.

You prepare a *Real Property Act* transfer and after having it signed and stamped you send it, along with the certificate of title, to the Land Tiles Office for registration.

When the title is returned you file in safe custody and reflect on how simple the transaction was.

## The sting

What the financial planner's letter didn't tell you, and you didn't think to ask or check, was that your client is registered for GST as a tax law partnership.

As your clients are registered to GST they will need to pay GST of \$27,272.73 on the transfer.

In the eyes of the Tax Office, as expressed in GST ruling 2004/6, two people who jointly own property and receive income are a tax law partnership is carrying on an enterprise for GST purposes.

When your clients disposed of a 30 per cent interest in the property to their self managed superannuation fund the tax law partnership made a taxable supply.

To make matters worse, as the new tax law partnership between your clients and the self managed superannuation fund was not registered when it made the acquisition it is unable to claim an input tax credit on the GST component of the price.

Had GST being considered in advance, you would have been able to take advantage of the going concern concession and avoid the unwanted GST consequences.

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