

# CONTENTS

<b>FUNDAMENTALS OF GST AS IT APPLIES TO DEALINGS IN REAL PROPERTY .....</b>	<b>1</b>
INTRODUCTION .....	1
<i>Report of tax working group</i> .....	1
<i>GST: the charmed and accepted tax</i> .....	1
<i>Important new reforms applying to land and other transactions</i> .....	3
<i>GST highly contestable</i> .....	3
<i>Prosecution for GST defaults</i> .....	4
THE CHARGING MECHANISM .....	4
<i>Section 8: the charge</i> .....	4
MAKING TAXABLE SUPPLIES (IN PARTICULAR OF LAND) .....	5
<i>Overview</i> .....	5
<i>Registered persons</i> .....	5
<i>Carrying on a taxable activity</i> .....	5
<i>Activity that is essentially a private recreational pursuit or hobby</i> .....	7
<i>Definitions of “goods” and “services”</i> .....	7
<i>Certain supplies of land interests GST- exempt</i> .....	7
<i>Supply for a consideration</i> .....	9
<i>Questions of value</i> .....	9
<i>Zero-rated supplies</i> .....	10
<i>Nominations</i> .....	11
<i>Cancelled contracts</i> .....	11
<i>Treatment of “mixed” supplies</i> .....	12
SUPPLIES OF ACCOMMODATION IN DWELLINGS, COMMERCIAL DWELLINGS (AND SERVICED APARTMENTS) .....	12
<i>Overview</i> .....	12
<i>Revenue response</i> .....	13
RECOUPMENT OF GST .....	14
<i>All about the contract</i> .....	14
<i>Statutory right to recoup GST increase</i> .....	15
<i>Representations as to price</i> .....	17
TIMING OF GST LIABILITY .....	18
<i>Overview</i> .....	18
<i>Land transactions and Revenue Exposure Draft (INS 0102, GST: Time of Supply – Payments of Deposits Including as Stakeholder)</i> .....	18
<i>Offsets of GST</i> .....	19
CLAIMING GST INPUT TAX .....	20
<i>Overview</i> .....	20
<i>Present position</i> .....	21
<i>Principal purpose test</i> .....	21
<i>Requirement to hold tax invoice</i> .....	22
HOW MUCH GST INPUT TAX CAN BE CLAIMED BACK? .....	22
<i>Existing rules</i> .....	22
<i>Proposed reforms</i> .....	23
GST REFUNDS .....	26
<i>Overview</i> .....	26
<i>Revenue responses to GST refund situations</i> .....	27
<i>Amendment proposed</i> .....	28
SALES IN SATISFACTION OF DEBT .....	29
<i>Overview</i> .....	29
<i>Revenue’s concerns</i> .....	30
GST AND TAX AVOIDANCE .....	31
<i>Overview</i> .....	31
<i>General avoidance rule</i> .....	32
ILLUSTRATIONS OF GST AVOIDANCE .....	33
<i>Ch’elle Properties (NZ) Limited v C of IR</i> .....	33
<i>Glenharrow Holdings Ltd v C of IR</i> .....	34

<i>Summary of current tax avoidance principles</i> .....	36
GOVERNMENT REFORMS INVOLVING LAND AND OTHER HIGH-VALUE ASSETS .....	37
<i>Concerns regarding “phoenix-type” fraud</i> .....	38
<i>A domestic reverse charge?</i> .....	38
<i>Zero-rating land and other high-value transactions</i> .....	39
<i>Strengthening the application of s 19D?</i> .....	39
COLLECTING UNPAID GST .....	40
<i>Overview</i> .....	40
<i>Personal liability of business controllers for unaccounted for GST</i> .....	41
<i>Prosecutions for failing to file GST returns</i> .....	42
<i>Criminal prosecutions for tax evasion and other knowledge offences</i> .....	43
CONCLUSIONS.....	44