



## Sale of 1.47 hectares - One-off Profit making Scheme

The taxpayer, Paul Lance, argued that the sale of Sutton Farm as one block with subdivision approval was the sale of a property that he had intended to occupy as his home. He tried to argue that he only applied for the subdivision so his children could live there too. Therefore, he claimed that it followed that GST did not apply to the sale as it was not part of an enterprise.

Before I delve further into this case it is important to point out that the taxpayer was registered for GST due to other businesses so there is no option here to argue that the sale was not part of turnover so no need to register for GST. While it was not directly addressed in the case, the fact that the AAT found that he purchased Sutton Farm with the intention of resale for a profit could possibly have pointed to this sale being part of the business turnover forcing the taxpayer to register for GST anyway.

The point here is that it is not a question of whether the taxpayer needed to be registered for GST, he already was. It is a question of whether this sale was part of an enterprise. The AAT member pointed out that it is well accepted that the definition of enterprise is wider than just being in business.

In 2013 Paul Lance purchased Sutton Farm as his ideal retirement home for \$1.6mil. A total of 1.47 hectares containing uninhabitable historical buildings. In 2020 he sold the same 1.47 hectares for \$4.25mil, still not subdivided but with considerable infrastructure and council approval.

Mr Lance was quite partial to talking to the press about his grand plans for the property. Newspaper articles from 2014, 2015, 2016 and 2017 were presented to the tribunal, where he talked about converting the run down historical buildings into a restaurant, wine bar, coffee house, art studio and blocks for canal front homes. During the project he claimed the GST input credits on expenses associated with the development. Nevertheless, when it came to selling the farm he claimed it was not owned as part of an enterprise so GST did not apply.

When facing the AAT he said he just wanted to divide the land into four lots. One for he and his wife to retire on, one for his daughter, one for his son and one as a memorial for a deceased child. He did not build a residence on the land, the closest he came was staying in a caravan on the land when he visited. The caravan was not part of the sale and as the buildings were still uninhabitable it could not be considered the sale of residential property.

Another problem was that he had borrowed \$1.5mil from his brother-in-law to cover part of the purchase and development costs. It was clear he could not afford his dream without selling off a lot

of the land. The AAT member did not find him a reliable witness. The ATO presented many credible examples of him contradicting himself in other correspondence to them.

The onus of proof always rests with the taxpayer and in this situation he had to prove he had not purchased the property with the intention of making money from selling it. While it was not beyond belief that he may well have intended to live on a small part of the land, he could not afford to do so without selling some of it, so there was the intention to sell right from the start.

Here is what I think had the most influence:

- 1) The heavy borrowings for the property meant that he could not afford to proceed without selling some of the land off to repay a debt
- 2) The member found Mr Lance to be an unreliable witness, the ATO presenting many examples of statements he had made that contradicted his claims in the AAT.
- 3) Substantial value was added to Sutton Farm by the subdivision approval and infrastructure works.
- 4) The taxpayer had been claiming GST input credits on costs associated with the development.

Ultimately, if you are improving the value of land through rezoning it is difficult to avoid being an enterprise. You would need to show that you had some other purpose for purchasing the land and explain why that changed. Successful cases are when the property is bought for another purpose such as farming and then many, many years later subdividing to fund retirement or reduce the work load. In these cases it was also necessary to show that the only works done were the bare minimum required by council. This made the venture less business like and more like realising an asset than a profit making venture.

The important warning here is if the ATO or a judge finds that the finer points of your circumstances do not fit, the cost to you is more than just legal fees and fines. By this time you have probably lost the opportunity to utilise the margin scheme and claim GST input credits. The amount involved makes it worthwhile applying for a private ruling before you start the process. If the ruling comes back against you, at least you can take steps to minimise the GST impact or crunch the numbers on selling without going too far on the development. Development doesn't just add extra costs and GST, it also involves a lot of stress and risks. Is it really worth it or better left to the professionals?