



Property

Consider your tax obligations if you buy, sell, rent, invest property or land including income tax, CGT and GST.

Property development, building and renovating



Find out how building or renovating properties will affect your tax obligations and entitlements.

Property used in running a business



Work out your GST, capital gains tax, and tax return obligations when you own property used for business purposes.

Tax consequences on sales of small scale land subdivisions



Work out the income tax and GST consequences of subdivided land sales and if it's a capital gain or ordinary income.

In detail



Detailed information about tax and property.

Property development, building and renovating – v4

Find out how building or renovating properties will affect your tax obligations and entitlements.

Last updated 1 July 2021

How you go about building or renovating properties (for example, as a one-off or as a regular activity) will affect your tax obligations and entitlements.

In any case, you should consider your obligations for:

- [GST and property development](#)
- [Building and construction services reporting](#)

If you are unsure if your activities are personal or business, see [Are you in the business of renovating properties?](#)

GST and property development

You may need to register for GST if:

- the turnover from your property transactions and other taxable transactions is more than the GST registration threshold
- your activities are regarded as an enterprise.

If you are registered or required to be registered for GST, you may be liable to pay GST on your property sale. You can generally claim GST credits for your construction costs and purchases related to the sale.

Buyers of new residential premises or potential residential land must withhold GST from the contract price and pay it to us. This change, known as GST at settlement, started on 1 July 2018.

See also:

- [Property and registering for GST](#)
- [GST and property](#)
- [GST at settlement](#)
- [GST and the margin scheme](#)

Building and construction services reporting

Businesses in the building and construction industry need to report to us each year the total payments they make to each contractor for building and construction services.

Find out about:

- Renovating properties
- Building and construction – residential premises
- Property and construction industry support

Demo1903



This is a demo.

Renovating properties



If you renovate one or more properties, how you go about it can affect your tax obligations and entitlements.

Building and construction – residential premises



If you build new residential premises for sale you're liable for GST and can claim GST credits on some costs.

QC 23643

Demo1903

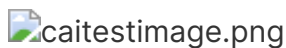
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QC 9990597

Renovating properties

If you renovate one or more properties, how you go about it can affect your tax obligations and entitlements.

Last updated 10 July 2020

If you renovate one or more properties, how you go about it can affect your tax obligations and entitlements. It depends on whether you are:

- a [personal property investor](#)
- engaged in the [profit-making activity of property renovations](#)
- carrying on a [business of renovating properties](#).

For help working out which one applies to you, visit [Are you in the business of renovating properties?](#)

Personal property investor

If you're considered a personal property investor, your net gain or loss from the renovation is treated as a capital gain or capital loss.

A capital gain or loss is the proceeds from the sale of the property, less the purchase price and other costs associated with buying, renovating and selling.

Capital gains tax (CGT) concessions such as the CGT discount and the main residence exemption may reduce your capital gain.

For GST purposes, you are not conducting an enterprise and are not required to register for GST. But if you are registered in some other business capacity, you do not pay GST on any sale proceeds or claim GST credits for related purchases.

See also:

- Capital gains tax: Building or renovating your home

Profit-making activity of property renovations

If you're carrying out a profit-making activity of property renovations also known as 'property flipping', you:

- report your net profit or loss from the renovation in your income tax return
- are entitled to an Australian business number (ABN)
- may be required to register for GST if the renovations are substantial.

See also:

- Property and registering for GST
- To decide whether or not a property has been substantially renovated, read from paragraph 53 of **GSTR 2003/3: Goods and services tax: when is a sale of real property a sale of new residential premises?**

Business of renovating properties

If you're carrying on a business of renovating properties or 'flipping' properties:

- they are regarded as trading stock (even if you live in one for a short period)
- the costs associated with buying and renovating them form part of the cost of your trading stock until they're sold

- you calculate your business's annual profit or loss in the same way as any business with trading stock.
- you're entitled to an Australian business number (ABN)
- you may be required to register for GST if the renovations are substantial.

CGT doesn't apply to assets held as trading stock, and CGT concessions (such as the CGT discount, small business concessions and main residence exemption) don't apply to any income from the sale of the properties.

See also:

- Are you in the business of renovating properties?
- Accounting for business trading stock
- Property and registering for GST
- To decide whether or not a property has been substantially renovated, read from paragraph 53 of *GSTR 2003/3: Goods and services tax: when is a sale of real property a sale of new residential premises?*
- *MT 2006/1: The New Tax System: the meaning of entity carrying on an enterprise for the purposes of entitlement to an Australian Business Number*

QC 23644

Building and construction – residential premises

If you build new residential premises for sale you're liable for GST and can claim GST credits on some costs.

Last updated 10 July 2020

Residential premises include houses, units and flats that are occupied or can be occupied as residences. They are considered new when any of the following apply:

- they haven't been sold as residential premises before
- they've been created through substantial renovations
- new buildings replace demolished buildings on the same land.

If you build new residential premises for sale:

- you're liable for GST on the sale
- you can claim GST credits for construction costs and any purchases you make related to the sale (subject to normal GST credit rules).

GST on building and construction

Generally, you pay the normal GST rate of one-eleventh of a property's sale price.

However, if you're eligible, you can work out your GST liability using the **margin scheme**. Under the margin scheme you pay one-eleventh of the margin for the sale of the property, rather than one-eleventh of the total sale price.

If you sell residential premises or potential residential land:

- you may be required to notify your purchaser in writing (before settlement) whether or not they are required to withhold GST from the contract price and pay this directly to us
- you are still required to report the sale on your business activity statement.

Different rules apply for residential premises that are no longer new.

Residential premises are not considered new if they have been rented out continuously for five years or more (unless they were held for sale and rent at the same time).

If residential premises are not new, the sale of the property after being rented out is input-taxed. If you have claimed GST credits on construction costs and related purchases of non-new premises, you will have to make adjustments that reverse these credits. This is because you are not entitled to GST credits for things purchased to make input-taxed supplies.

If you rent out the new premises while you are planning to sell it, you will need to adjust part of the GST credits you claimed. You must show

you intend to sell the premises. Actively marketing the premises for sale is one way of showing this.

See also:

- GST and the margin scheme
- Registering for GST
- GST at settlement
- GST and residential property
- Change in use of your property

New residential premises off-the-plan

An off-the-plan purchase occurs when the buyer enters into a contract to buy new residential premises before construction is completed. At this stage the buyer is purchasing a contractual right to have the premises built.

On settlement, the buyer:

- generally pays a deposit and signs a contract with the developer, paying the balance of the purchase price
- is purchasing new residential premises and the purchase price includes GST.

However, if you as the 'buyer' sell the contractual right before settlement, you are not selling new residential premises. This means GST will apply if the sale is made in the course of your GST-registered business.

The sale of an off-the-plan property may be an enterprise in its own right and may form part of the seller's GST registration turnover threshold.

See also:

- GST and property
- *GSTR 2009/4: Goods and services tax: new residential premises and adjustments for changes in extent of creditable purpose*
- *GSTR 2003/3: Goods and services tax: when is a sale of real property a sale of new residential premises?*

- *GSTR 2000/24: Goods and services tax: Division 129 – making adjustments for changes in extent of creditable purpose*

QC 23645

Property used in running a business

Work out your GST, capital gains tax, and tax return obligations when you own property used for business purposes.

Last updated 21 June 2021

If you own, lease or rent property used for business purposes – whether commercial premises like a shop or office, or even your own home – you:

- must include any rental income in your tax return
- can claim deductions for some property expenses
- will be liable for capital gains tax on any capital gain if you sell the property
- may have GST obligations and entitlements.

If you're dealing with property, including one-off transactions (for example, you buy, sell, lease or develop), you may be considered to be conducting an enterprise. If your turnover from these activities is more than the GST registration turnover threshold, you may be required to register for GST.

See also:

- Working out your GST turnover

Find out about:

- Buying commercial property
- Selling commercial premises
- Leasing and renting commercial premises

- Commercial rent or lease payment changes
- Working farms
- Commercial residential premises and GST
- Retirement villages and GST

Buying commercial property



Make sure to keep records when you buy commercial property to claim deductions and GST credits for some costs.

Selling commercial premises



Work out your capital gains tax (CGT) when selling a commercial property.

Leasing and renting commercial premises



If you lease premises you may be liable for GST, and entitled to GST credits, check what to include in your tax return.

Commercial rent or lease payment changes



Tax implications for rent deferrals or waivers of commercial leases, including bankruptcy or insolvency variations.

Working farms



If you own a working farm, find out how capital gains tax (CGT) and goods and services tax (GST) applies.

Commercial residential premises and GST



Commercial residential premises you lease, buy and sell are taxable under GST.

Retirement villages and GST



Under certain conditions, the supply of accommodation in a retirement village is GST-free.

QC 23646

Buying commercial property

Make sure to keep records when you buy commercial property to claim deductions and GST credits for some costs.

Last updated 10 July 2020

When you buy or obtain a commercial property such as a shop, factory or office, it's important to keep records right from the start.

For example – commercial properties are subject to capital gains tax when you sell them. Even though it's in the future, you'll need records of the date and costs of buying the property, so you can work out your capital gain or loss later on.

Deductions for commercial property

If your property is used for business purposes you:

- can claim a deduction for expenses associated with owning it, such as interest on the loan to buy the property and maintenance expenses
- should keep records of all your expenses, so you can claim everything you're entitled to.

See also:

- [Business tax deductions](#)

GST on commercial property

If you buy commercial property, you may be eligible to claim GST credits:

- for the GST included in the purchase price
- on expenses relating to buying the property – such as the GST included in solicitors' fees and on-going running expenses.

You can't claim GST credits if:

- the seller used the margin scheme to work out the GST included in the price
- you buy property from someone who is not registered or required to be registered for GST
- you buy the property as a GST-free supply
- you're not registered for GST.

See also:

- Margin scheme
- Commercial residential premises and GST

QC 23647

Selling commercial premises

Work out your capital gains tax (CGT) when selling a commercial property.

Last updated 22 July 2020

When you sell (or otherwise cease to own) a commercial premises, you're likely to make a capital gain or capital loss. Capital gains are subject to capital gains tax (CGT). Individuals and trusts may be eligible for a discount on CGT, and small businesses have concessions.

You're also generally liable for GST on the sale price and can claim GST credits on related purchases.

A capital gain or capital loss is the difference between what it cost you to obtain and improve the property (the cost base), and what you receive when you sell (or otherwise dispose) of it. If you make a net capital gain in an income year, you'll generally be liable for capital gains tax (CGT). If you make a net capital loss you can carry it forward and deduct it from your capital gains in later income years.

Amounts that you've claimed (or could have claimed) as a deduction are excluded from the property's cost base.

If you acquired the property before CGT came into effect on 20 September 1985, any capital gain or capital loss is disregarded. However, capital gains or capital losses from capital improvements made since 20 September 1985 are subject to CGT, even if you acquired the property before that date.

See also:

- Selling and asset and other CGT events
- Cost base

Discounts and concessions

If you own the property as an individual (including as a partner in a partnership), and you've owned it for at least 12 months, you may be eligible to discount your capital gain by 50%. This discount is also available to trusts, but not to companies.

If you are a small business entity and the property you sell is your business premises, you may be able to reduce the capital gain using one of four small business concessions:

- 15-year exemption
- 50% active asset reduction
- Retirement exemption
- Rollover

See also:

- The discount method of calculating your capital gain
- Small business CGT concessions

GST on the sale of commercial premises

If you sell commercial premises, such as shops, factories or offices, you're generally liable for GST on the sale price. This means you:

- may be eligible to use the [margin scheme](#), where you pay GST of one-eleventh of the sale price rather than one-eleventh of the total selling price
- can claim GST credits on your purchases that relate to selling the property (subject to the normal rules on GST credits) – such as the GST included in a real estate agent's fees.

GST doesn't apply to property when you [sell it as part of a GST-free sale of a going concern](#).

If your commercial property is being leased when you sell it, you may be able to treat your sale as a [GST-free supply of a going concern](#).

Margin scheme

You may be eligible to use the margin scheme to work out the GST on the sale of commercial premises (or new residential premises). Under this scheme, your GST liability is one-eleventh of the margin on the sale of the property, rather than one-eleventh of the total selling price. You can only apply the margin scheme if the sale is taxable.

The margin is generally the difference between the sale price and either:

- the amount you paid for the property
- an appropriate property valuation.

Whether you can use the margin scheme depends on how and when you purchased the property.

If you sell the property using the margin scheme any GST charged can't be claimed by the purchaser.

See also:

- GST and the margin scheme

Registering for GST

If you are dealing with property, including one-off transactions (for example, you buy, sell, lease or develop), you may be considered to be conducting an enterprise. If so, you may be required to register for

GST if your turnover from these activities exceeds the GST registration turnover threshold.

See also:

- Registering for GST
- Working out your GST turnover

Selling a business as a going concern

If you sell property as part of a GST-free sale of a going concern:

- you're not liable for GST on the sale
- the seller and the purchaser may be able to claim GST on other expenses that relate to selling and buying the property – such as the GST in solicitors' fees.

A sale of a going concern is GST-free if **all** of the following apply:

- payment is made for the supply
- the purchaser is registered (or required to be registered) for GST
- the buyer and seller have agreed in writing that the sale is of a going concern
- the supplier supplies all things necessary for the continued operation of the business
- the supplier carries on the business until the day of supply.

Property that is part of a sale of a going concern can include:

- the premises, together with the assets and operating structure of the business
- a fully tenanted building, where the property and all leases, agreements and covenants are included in the sale
- the sale of a partially tenanted building, where **both** of the following apply
 - the vacant part of the building is either being actively marketed for lease or undergoing repairs or refurbishment
 - all leases, agreements and covenants are included in the sale.

See also:

- Sale of a business as a going concern

QC 23648

Leasing and renting commercial premises

If you lease premises you may be liable for GST, and entitled to GST credits, check what to include in your tax return.

Last updated 10 July 2020

If you lease premises, you need to include your rental income in your tax return. You may be able to claim deductions for expenses related to the property. You may also be liable for goods and services tax (GST) and entitled to GST credits.

Leasing (as owner)

Commercial property owners have obligations for:

- [Income and deductions](#)
- [GST on commercial premises](#).

Income and deductions

As a commercial property owner, if you choose to lease the premises to others you:

- must include the full amount of rent you earn in your income tax return
- can claim a deduction for your related expenses for the period your property is rented or available for rent
- can generally claim an immediate deduction for expenses relating to the management and maintenance of the property, including interest on loans.

Other expenses are claimed over a number of years, including depreciation costs (such as the decline in value of depreciating assets – for example, carpet, furniture and appliances) and certain construction expenditure.

You can't claim a deduction for expenses you incur for:

- acquisition and disposal costs of the property – these are usually included in the property's cost base for capital gains tax purposes
- expenses not actually paid by you, such as water or electricity charges paid by tenants
- expenses not related to the rental property.

See also:

- Residential rental properties

GST on commercial premises

If you're registered, or required to be registered for GST, you're liable for GST on the rent you charge on commercial premises.

You may be required to register for GST if you're dealing with property and your turnover from these activities exceeds the **GST registration turnover threshold**. This includes one-off transactions like buying, selling, leasing and developing (which may constitute conducting an enterprise).

You can generally claim GST credits on purchases that relate to renting out your property, such as the GST included in the managing agent's fees.

See also:

- When to register for GST
- Claiming GST credits

Renting (as tenant)

If you rent a commercial property as your business premises, the rent is deductible.

As the renter (tenant), you may be able to claim GST credits for the GST included in the rent if you and the lessor are registered, or required to be registered, for GST.

See also:

- When to register for GST
- Claiming GST credits

QC 23653

Working farms

If you own a working farm, find out how capital gains tax (CGT) and goods and services tax (GST) applies.

Last updated 3 July 2020

A capital gain on the sale of a working farm is subject to capital gains tax (CGT), while selling, leasing or subdividing a working farm is GST-free in some circumstances.

Capital gains tax (CGT)

If you sell all or part of your farmland for a profit, you may be liable for CGT.

Some discounts and concessions apply for individuals, trusts, and small businesses.

If your home is part of the working farm, you may also be eligible for a partial main residence exemption.

See also:

- Selling commercial premises: Capital gains
- Subdividing land
- Your main residence

Goods and services tax (GST)

Different rules apply depending on whether you're dealing with farmland or subdivided farmland.

Farmland you sell, or you transfer by assigning a lease with an Australian government agency or by assigning a long-term lease, is GST-free if **both** of the following apply:

- the land was used for a farming business for at least five years immediately before the sale
- the buyer intends to use it for a farming business.

Subdivided farmland you sell, or transfer by assigning a lease with an Australian government agency or by assigning a long-term lease, is GST-free if **all** of the following apply:

- the land could potentially be used for residential purposes (but does not contain any residential buildings)
- the land is subdivided from land that has been used as a farming business for at least five years immediately before the sale
- the supply is made to an associate of the supplier (such as a relative or a closely connected company or trust) for less than market value.

Note: A long-term lease means a lease that is for at least 50 years if:

- at the time of the lease or the renewal or extension of the lease, it was reasonable to expect that the lease would continue for at least 50 years
- the terms of the lease or the renewal or extension of the lease, as they apply to the recipient, are substantially the same as those terms under which the supplier held the premises (unless the supplier is an Australian government agency).

See also:

- Selling a business as a going concern
- Subdividing land
- GST and commercial property: Farmland

Commercial residential premises and GST

Commercial residential premises you lease, buy and sell are taxable under GST.

Last updated 1 July 2021

The sale and lease of commercial residential premises is subject to goods and services tax (GST).

Commercial residential premises include:

- hotels, motels, inns
- hostels, boarding houses
- caravan parks, camping grounds
- other establishments that provide similar services to the above.

For GST purposes, retirement villages are not commercial residential premises.

Buying and selling commercial residential premises

If you buy commercial residential premises, you can claim a credit for the GST included in the purchase price if you are registered for GST and if either:

- the seller did not use the margin scheme to work out the GST
- the sale was not a GST-free sale of a going concern and the seller was registered, or required to be registered, for GST.

A going concern is a business that is operating and making a profit.

You may also be able to claim a GST credit on other expenses, such as solicitor's fees, that relate to buying the property.

If you sell commercial residential premises, you're generally liable for GST on the sale price. This means you:

- pay GST equal to one-eleventh of the sale price (unless you use the margin scheme to work out the GST)

- can claim GST credits on purchases that relate to selling the property (subject to the normal rules on GST credits) – for example, the GST included in a real estate agent's fees.

See also:

- Margin scheme
- Selling a business as a going concern
- Commercial residential property

Leasing commercial residential premises

If you're registered (or required to be registered) for GST, your GST liability depends on what you provide:

- short-term accommodation – when a guest stays for less than 28 continuous days, you're liable for GST
- long-term accommodation – when a guest stays for 28 or more continuous days, concessional GST treatment applies
- primarily long-term accommodation – if at least 70% of your guests stay for 28 or more continuous days, concessional GST treatment applies.

See also

- *GSTR 2012/7 Goods and services tax: long-term accommodation in commercial residential premises* for more information about concessional treatment
- GST and commercial property
- Holiday apartments in commercial residential properties

QC 23656

Retirement villages and GST

Under certain conditions, the supply of accommodation in a retirement village is GST-free.

Last updated 14 September 2016

If you provide accommodation in a GST retirement village you're generally making an input taxed supply and you don't charge GST.

A GST retirement village is residential premises in which:

- the accommodation is intended for people at least 55 or older
- there are communal facilities for the residents to use.

A GST retirement village is not considered to be commercial residential premises for GST purposes.

Under certain conditions, the supply of accommodation in a serviced apartment in a village is GST-free when the resident of the apartment is also provided with certain care services.

Where the village is operated by an endorsed charity, the provision of accommodation in the entire village is GST-free.

See also:

- Retirement villages
- GSTR 2012/3 Goods and services tax: GST treatment of care services and accommodation in retirement villages and privately funded nursing homes and hostels
- GSTR 2004/09 Goods and services tax: GST consequences of the assumption of vendor liabilities by the purchaser of an enterprise – Addendum
- GSTR 2011/1 Goods and services tax: development, lease and disposal of a retirement village tenanted under a 'loan-lease' arrangement

QC 23659

Tax consequences on sales of small-scale land subdivisions

Work out the income tax and GST consequences of subdivided land sales and if it's a capital gain or ordinary income.

Last updated 13 July 2023

Understanding land subdivisions

When you undertake any subdivision of land that is not part of a property development business, even if it includes your family home, you need to understand when:

- any gains or losses are treated as a gain or loss of income or capital
- an activity is considered to be carrying on an enterprise for **ABN** and **GST** purposes.

This is not applicable if you are involved in property development and purchased land in the course of your **business**.

Income or capital

Your purpose when you entered into an arrangement to purchase, develop or sell the land determines if gains or losses are a capital gain or ordinary income.

Your purpose may:

- occur several years after you acquired the land
- change throughout your ownership period.

The tax outcome depends on whether that disposal was:

- a simple realisation of the property – the gain or loss is a capital gain or loss
- a disposal undertaken as either part of a
 - business – the money received is assessable income of the business (see more about issues arising from being in a development **business**)
 - profit-making undertaking – the net profit is assessable income.

It's likely that any gain will be a profit for income tax purposes and not merely a capital gain if your activities leading up to a sale look like either:

- a commercial transaction
- part of an arrangement to make a profit beyond the appreciation in the value of the land only.

If land is purchased as a capital asset, and there is a change in intention, the ultimate overall gain should be split between a capital gain and ordinary income.

It is only the net profit you make from your profit-making undertaking that will be assessable as ordinary income.

GST consequences

You may have GST obligations and entitlements if you subdivide and sell land:

- with the intention of making a profit
- while carrying on a business
- as part of a business or commercial transaction.

Where the gain or loss on the sale of subdivided land is considered to be ordinary income for income tax purposes, the sale will be:

- part of an enterprise for GST
- included in calculating your **turnover for GST** registration purposes
- subject to GST if you exceed the **GST registration threshold** or are otherwise already registered for GST.

Where the gain or loss on the sale is considered a capital gain, you may still have GST consequences on the sale if either you:

- used the land in an enterprise you were carrying on – the sale of the subdivided land will be a sale undertaken as part of that enterprise
- are registered or required to be registered for GST – your sale may be subject to GST.

If your gain or loss is capital because you merely realised the property value and did not use the land in an enterprise, your sale will **generally not be subject to GST**.

If you are required to pay GST, you can claim a credit for any GST included in the price you pay for things you purchased to make the sale. You must be registered for GST to claim a credit.

Factors to consider

When you acquire the land as a home, farm or other capital asset, your purpose and the steps you take to sell the land determines whether the gain for income tax purposes is either:

- a capital gain
- ordinary income from a profit-making undertaking.

The following factors will help you work out the tax treatment:

- [type of entity undertaking the subdivision](#)
- [types of activities you're involved in](#)
- [costs incurred prior to the sale](#)
- [complexity and steps undertaken](#)
- [parties and phases involved](#)
- [your relationship to other parties involved in the land subdivision](#)
- [your purpose in buying the land](#)
- [timing and steps undertaken for the sale](#)

This information is a guide only and provides additional detail in general terms for each of the factors in **Taxation Ruling 92/3** *Income tax: whether profits on isolated transactions are income*.

When considering the income tax and GST implications of your land subdivision, it is important to **weigh all the factors** together and not in isolation.

TR 92/3 will also provide guidance on whether gains from activities other than land subdivisions will be a profit for income tax purposes.

The type of entity undertaking the subdivision

To help determine if the land subdivision was commercial in nature and what the tax consequences are, consider the:

- type of entity involved in your land subdivision

- reasons for undertaking it.

Regardless of your structure, you are more likely to be carrying on a commercial business deal when you:

- engage a developer to carry out a development activity for a fee
- share in the profits from the sales with the developer.

Land subdivision

| More likely to be a capital gain if | More likely to be ordinary income if |
|--|--|
| <ul style="list-style-type: none"> • You are an individual and the subdivision and sale was driven by personal reasons. For example, a simple division and sale of part of land you no longer need. • You do not have a history as a developer. • If you own or control a business, it does not carry out any land dealing or development activities. | <ul style="list-style-type: none"> • A business entity (such as a partnership, trust, company) is established, acquires property with the intention of making a profit and enters into a small-scale development. |

The types of activities you're involved in

The types of activities you are involved in (not including the land subdivision in question) can help to determine if the subdivision was likely a part of a profit-making undertaking.

Land activities (not subdivision)

| More likely a capital gain if | More likely ordinary income if |
|---|---|
| <ul style="list-style-type: none"> • You are not engaged in business, or your business activities are not related to | <ul style="list-style-type: none"> • You have had previous commercial property transactions. |

| | |
|---|---|
| <p>property development or property transactions.</p> <ul style="list-style-type: none"> • You have not previously been involved in commercial property transactions or developments in any capacity. • You originally acquired the land primarily for investment purposes only, such as to earn rental income. | <ul style="list-style-type: none"> • You operate a business related to property development, construction, or sale. • You originally acquired the land with an intention to undertake development activities. |
|---|---|

The costs incurred prior to the sale

The costs incurred can help to determine if the land subdivision was commercial in nature.

Sales costs

| More likely a capital gain if | More likely ordinary income if |
|---|--|
| <ul style="list-style-type: none"> • The development cost is low compared to the value of the undeveloped land. • You were exposed to minimal financial risk in undertaking the activities leading to the sale. | <ul style="list-style-type: none"> • The development cost is significant compared to the value of the undeveloped land. For example, attributable to building on the land. • You were exposed to significant financial risk in undertaking the activities leading to the sale. For example, mortgaging the land to finance the activity. |

The example below goes into detail regarding a one-off-profit making subdivision activity.

Example: Claude's one-off profit-making subdivision activity

Claude purchased his home on a single title from a private seller on 1 July 2001 for \$300,000. The house was situated on the front portion of an 800m² block. Claude wished to remain in this home however maintaining the big backyard became a burden.

On 1 July 2020, Claude began detailed research and spoke with multiple local real estate agents to understand if he could subdivide his backyard to build a new house and sell it.

Claude's registered valuer valued the entire property at \$600,000 split 60%:40%:

- original house and land – \$360,000
- newly created subdivided lot – \$240,000.

Claude decided to subdivide, build a house, and sell the newly created subdivided development. To do this, he:

- lodged an application for subdivision and received council approval
- engaged a project developer to
 - prepare and submit a development application
 - build the new house.

Claude funded the development expenses of \$440,000 (GST inclusive) through a bank loan and expected the sale of the new house to pay the loan out in full.

He engaged a local real estate agent to sell the new house. He sold it via a contract signed on 1 July 2021 for \$1,210,000. There is no agreement to apply the **margin scheme** to the sale.

Income tax outcome

Once the backyard got its own title, it became its own asset and was no longer part of Claude's home as a domestic asset. Because Claude's transaction is more complex than just selling the vacant lot, his activities amount to a development activity.

The sale of the backyard became a profit-making activity once Claude made the decision to embark on that activity. The net profit from that activity will be included in his assessable income:

- Claude made an overall gain (net profit plus capital gain) of \$580,000. This will be the assessable income he pays tax on.
- The overall gain (\$580,000) is based on the GST exclusive sale proceeds (\$1,100,000) minus the GST exclusive development expenses (\$400,000) and the original cost attributable to the newly subdivided lot of \$120,000 ($\$300,000 \times 40\%$).
- The increase in the value of the newly created subdivided lot from when it was originally acquired (1 July 2001) up to when the profit-making activities began (1 July 2020) should be treated as a capital gain.
- The original cost, attributable to the newly created subdivided lot was \$120,000 ($40\% \times \$300,000$) on 1 July 2001.
- The value of the newly created subdivided lot at the time Claude began to undertake profit-making activities on 1 July 2020 was \$240,000. As Claude has held the subdivided block for greater than 12 months he is entitled to a 50% CGT discount, hence there is a discounted capital gain of \$60,000.
- The increase in the value of the newly created subdivided lot from when the profit-making activities began up to the time of sale should be treated as ordinary income.
- The net profit (\$460,000) will be based on the GST exclusive sale proceeds (\$1,100,000) minus the GST exclusive development expenses (\$400,000) and the value of the subdivided lot (\$240,000).

GST outcome

As Claude has entered a profit-making activity and the projected sale price of the developed land will exceed the GST registration turnover threshold, he is required to register for GST. He will:

- have a GST liability of \$110,000 on the sale price of the townhouse
- provide a notification to the purchaser of the amount at **settlement** to be withheld and paid to the ATO
- be able to claim \$40,000 credits for the GST included in the price of his development purchases (subject to the normal GST rules)

- report these transactions by completing business activity statements.

The complexity and steps undertaken

The complexity and steps undertaken to prepare the land for sale can help to determine if the subdivision was commercial in nature.

Preparing land for sale

| More likely a capital gain if | More likely ordinary income if |
|--|--|
| <ul style="list-style-type: none"> • The land sale involved: <ul style="list-style-type: none"> – a single transaction – the sale of an unimproved block. • The cost of development is low compared to the value of the undeveloped land. | <ul style="list-style-type: none"> • The land was purchased for the purpose of subdivision and sale. An indication of this is if you sought approvals soon after the land was acquired. • The land sale involved significant improvements. For example, to improve its condition to maximise profit, or the construction of houses, other buildings, roads or other community services to individual lots. • The overall project involved the purchase and development of neighbouring blocks. • The subdivision was subject to a decision by a government authority to rezone the land, that you or related parties lobbied for. • The costs of development are significant compared to the value of the undeveloped land. |

The parties and phases involved

The sale of your land subdivision is more likely to be considered commercial in nature and treated as ordinary income when:

- it occurred in phases over a period of time
- multiple parties were involved
- it required a series of transactions between various parties (such as professional agents and advisors) to enable the sale of the property.

Sale of land subdivision

| More likely a capital gain if | More likely ordinary income if |
|---|---|
| <ul style="list-style-type: none">• It is a straightforward one-off transaction between you and a purchaser.• The only element of the arrangement is an agreement to transact and sell land in its existing state.• There are no other parties involved in finalising the sale (except for real estate agents and conveyancers).• If you were approached by a third party to facilitate a sale, rather than actively marketing the property. | <ul style="list-style-type: none">• You transacted with multiple parties (such as architects, property developers and consultants) through various agreements to prepare the land subdivision for eventual sale.• The sale relied on a number of additional steps and was significantly more complex than a standard residential sale.• Engage a developer to carry out a development activity for a fee. |

Your relationship to other parties involved in the land subdivision

Your relationship with others involved in the land subdivision and sale can help to determine if the land subdivision is commercial in nature and treated as ordinary income.

Relationships in land subdivision and sales

| More likely a capital gain if | More likely ordinary income if |
|---|--|
| <ul style="list-style-type: none">• Type of parties involved were limited to those such as real estate agents, conveyancers and surveyors.• The arrangement is non-commercial and more in the nature of a family dealing (such as selling a granny flat previously used by a family member). | <ul style="list-style-type: none">• Where professional third-party experts (such as architects, developers and consultants) act on your instructions, their business activities are taken to be your activities. |

Your purpose in buying the land

The purpose for entering an arrangement to develop and sell land may occur several years after the land was acquired. The purpose may change throughout the ownership period.

If you purchased the land for sale and did not use it for any other purpose, the transaction was commercial in nature and ordinary income.

Purchase of land

| More likely to be a capital gain if | More likely to be ordinary income if |
|---|---|
| <ul style="list-style-type: none">• The land was purchased:<ul style="list-style-type: none">– exclusively for private purposes, such as your family home or holiday home, and was held for a significant period– as a rental investment property that was held for a significant period | <ul style="list-style-type: none">• The land was purchased:<ul style="list-style-type: none">– to be developed– for land banking (holding for future development). |

- | | |
|--|--|
| <ul style="list-style-type: none">– as a farm for the purpose of farming activities. | |
|--|--|

The example below demonstrates entering a mixed purpose development arrangement to rent and sell land.

Example: residential suburban block development

Mr and Mrs Block purchased a house to live in on a large block of land in 2000. In 2017, they applied to subdivide the land for development. They planned to demolish the house and build 3 townhouses:

- one townhouse for Mr and Mrs Block to live in
- one townhouse to rent out
- a third townhouse to be sold at a profit.

They hired an architect to design the townhouses. They engaged a developer to obtain the permit and subdivide the land. They funded the development using a bank loan and the property was used as security. The loan application and finance terms supported this.

The townhouses were completed in late 2018. Mr and Mrs Block planned to move into one townhouse. They hired a real estate agent to rent the second townhouse and sell the third.

However, an unexpected change in their circumstances occurred. Mr Block fell ill and had to move into a nursing home. Following their financial planner's written advice, they funded this move by selling all 3 townhouses in early 2019, making a substantial profit.

Income tax outcome

- The land subdivision and sale is not carrying on a business.
- The gain from the sale of the townhouse built to sell is ordinary income, from a profit-making undertaking or scheme.
- The gain from the 2 townhouses not built to sell is not part of a profit-making undertaking and is the realisation of the capital value of those assets.

GST outcome

Mr and Mrs Block's original intention for the townhouses included:

- a private purpose for the townhouse intended to be their home – not subject to GST
- making input taxed supplies (**residential rent**) for the townhouse intended to be a rental property
- sale (a taxable supply) for the townhouse intended for sale.

The couple were carrying on a development enterprise and were intending to start a leasing enterprise.

They are required to register as a partnership for GST. They would meet the turnover test and:

- the sale of the townhouses built to rent and sell will be taxable supplies as they will be made as part of their enterprises
- they are entitled to GST credits for construction costs of the townhouse built to sell
- they are not entitled to GST credits for construction costs of the other 2 townhouses
- they are entitled to an **adjustment** to claim GST credits for the taxable supply of the townhouse intended for rent.

The timing and steps undertaken for the sale

The length of time you own the land can help to determine if the land subdivision is commercial in nature and treated as ordinary income.

Owning land

| More likely a capital gain if | More likely ordinary income if |
|--|--|
| <ul style="list-style-type: none">• The land is owned for a significant period and used, for example, as a house or farm. This is evidence you acquired the land for those purposes. | <ul style="list-style-type: none">• The land was owned for a short period before being sold. |

| | |
|--|--|
| | |
|--|--|

Evidence to determine intent and purpose

Even when a land subdivision involves your family home, you need to keep evidence of the subdivision process.

Written records are the best evidence of your purpose and intention and are much more valuable than what you can remember in hindsight.

Further assistance

This information provides general examples that illustrate principles described in:

- *Taxation Ruling 92/3 Income tax: whether profits on isolated transactions are income*
- *Miscellaneous Taxation Ruling 2006/1 The New Tax System: the meaning of entity carrying on an enterprise for the purposes of entitlement to an Australian Business Number.*

See additional [Examples of tax consequences on sales of land including small-scale land subdivision](#) on our Legal database.

If your circumstances are not fully covered here or you are unsure how it applies to you, [contact us](#) or seek professional advice.

To seek a private ruling, see [Land subdivision – supporting information](#).

QC 71028

Property and construction industry support

Ensure you get your tax and super obligations right when dealing with clients, suppliers or workers and contractors.

Last updated 5 September 2023

Get your tax and super obligations right

There are a number of things you can do to ensure you get your tax and super obligations right when dealing with clients, suppliers or workers.

Cash is income too

It's well known that many tradies offer discounts for cash, but cash is no longer invisible to us.

We collect data from a number of sources, including banks, other government agencies and industry suppliers. We use this information in our risk models and compare it against what has been reported to us.

We also get many reports from the public, relatives, employees, and colleagues about being offered cash deals or knowing others who have because they are concerned about tax evasion.

When to register for GST

You need to register for GST if you run a business or enterprise and your GST turnover is \$75,000 or more (\$150,000 or more for non-profit organisations) over a 12 month period.

GST property decision tool

You can use the GST property decision tool to work out if GST applies to your property sales. It can be used to determine GST on the sale, lease or purchase of real property (including vacant land, residential and commercial premises).

Superannuation

Super is money you pay workers for their retirement.

It is important that your eligible employees are paid the correct amount of super. Our [Super guarantee contributions calculator](#) can help you work out how much super you need to pay.

You must pay your eligible employees super on time, in full and to the correct fund. If you do not meet your super guarantee (SG) obligations, you will need to lodge an SG charge statement and are liable for the super guarantee charge (SGC).

Help with lodging

To save you time and to help you get your tax return right, pre-fill information is automatically loaded into your tax return and can be accessed via myTax or your registered tax agent. This is usually available by early August.

To avoid penalties you need to lodge and pay on time. We understand that there may be times when you're unable to lodge or pay by the due date. If you're having difficulty, we can help. Contact us as soon as possible before the due date and we will work with you to find a solution.

If your business hires contractors

If your business hires contractors you have additional requirements, including the Taxable payments annual report (TPAR) and documents you need to obtain if you want to tender for certain government contracts. We have also identified a number of compliance risks and checks you should do to minimise your compliance risks and improve your tax governance.

If you hire workers, and you are unsure if they are an employee or contractor, use our [employee or contractor information pages](#) to work out their status for tax and super purposes.

Taxable payments annual report

Businesses in the building and construction industry need to report the total payments they make to each contractor for building and construction services each year. Businesses need to report these payments to us on the TPAR by **28 August** each year.

With the introduction of TPAR in 2012, we can now identify sub-contractors who haven't met their tax obligations.

Regardless of your situation, we want to work with you to progress your matter quickly and to do this we need the right information. We ask that you:

- talk to us as early as possible so that we can understand your circumstances
- maintain open and regular discussions on the facts and issues
- work with us to set timeframes for supplying information.

Government contracts

From 1 July 2019, tenderers and their first tier sub-contractors applying for Commonwealth Government contracts over \$4 million (including GST) must obtain a **statement of tax record** (STR) showing satisfactory engagement with the tax system.


Reduce exposure to compliance risks from your sub-contractors

If you hire workers, such as sub-contractors, and work in the property and construction industry, you may be exposed to compliance risk through your sub-contractors. If your sub-contractors are not meeting their obligations, this can also affect you.

We are committed to helping you reduce your compliance risks and improve your tax governance. The following contains a quick overview of how you can reduce your exposure to compliance risks from your sub-contractors.

Checks and considerations

Before hiring workers in your business, there are things you should check and consider before you enter into a work agreement or contract, including:

- Hiring workers for the first time – Checklist
- [Entering into a new business relationship](#) .

Sub-contractors and ABN/GST registration

If you employ contractors, ensure your contracts clearly identify who you are doing business with. You should only deal with contractors and sub-contractors who have an ABN and are registered for GST.

To confirm your sub-contractors' identities, we use the details from your TPR such as:


- Australian Business Number (ABN)
- legal name
- trading name
- entity or business name

- entity type
- business address and GST registration status against their tax invoice and ABN Lookup.

If you paid GST inclusive payments to sub-contractors who weren't registered for GST (when they were obliged to be), you may have to repay any input tax credits you claimed. It may also impact on whether you can claim a deduction for the payment made to the sub-contractor as payments made to a sub-contractor who has not provided a valid ABN are not deductible.

Registering for GST means you can generally claim GST credits. You should also ensure your suppliers are registered for GST. If not, you may be unable to claim GST credits.

Ensure all information you provide to us about your contractors and sub-contractors (including name and ABN) is complete and up-to-date.

You can use the [ABN Lookup tool](#)  to confirm the identity details of your sub-contractors and their GST status (this tool is also available on the ATO app). You may have software that can do this for you automatically. You may want to consider updating your software with any changes.

Sub-contractors and their tax lodgments

Sub-contractors who are not meeting their taxation obligations may also be behind on other administration tasks, for example, insurance and licensing which could affect the delivery of your projects.

You can include a clause in your contracts that stipulates that your sub-contractors have their personal and business tax compliance up-to date. It's good practice to regularly ask your sub-contractors for evidence of their tax compliance, for example, through ATO business portal printouts or statutory declarations attesting to their compliance.

You can remind your sub-contractors that they are required to lodge their activity statements and tax returns on time. It's important that they manage their tax debts, paying in full and by the due date.

Sub-contractors and tax debt

Sub-contractors may face cash flow difficulties from time to time and this may impact their ability to complete your projects.

If they can't pay a tax bill by the due date, they may be able to set up a payment plan to pay it by instalments. We have a range of tools, payment and self-serve options on our website at [Help with paying](#).

Even if they can't pay right now, it's important that you encourage them to talk to us so we can help before their debt escalates.

If your sub-contractors are unwilling to work with us to manage their debt, we may take firmer action. This could include sending you a garnishee notice requiring you to send some of the sub-contractor's payment to us to reduce their debt. This is another reason to remind sub-contractors to ensure that they are meeting their tax obligations.

Illegal phoenix activity

Illegal phoenix activity is when a company is deliberately liquidated, wound up or abandoned to defeat creditors, leaving its debts behind. Its assets or employees are shifted to the controllers or to a new entity that begins trading, often under a similar name.

Illegal phoenix activity isn't just a tax issue – it costs the entire community. It can mean that:

- building and construction timelines are disrupted
- creditors' debts go unpaid
- employees miss out on wages, entitlements and superannuation
- the government loses revenue to fund essential community services
- illegal phoenix operators can undercut competitors and gain an unfair competitive advantage over other businesses.





Some signs that a business may be involved in illegal phoenix activity include:


- offering significantly lower quotes compared to other businesses
- directors of the company have been involved with liquidated entities before
- a change of directors, name of the company or both – but managers and staff remain the same
- having the company request payments go to a new entity or asking for payments to go to another company
- the business doesn't have a valid ABN.

You can take some simple checks to help protect your business from illegal phoenix operators, including the following.

- Conduct an online search on the company or director's name to uncover relevant information relating to them, such as negative media reports.
- Do regular credit checks to ensure they're still financial viable.
- Ask your sub-contractor for references and details of previous work they have completed.
- Ask if any directors, office holders, major shareholders, nominees, persons of influence or any intended business partner ever
 - become bankrupt or entered into a debt agreement under Part IX of the *Bankruptcy Act 1986*?
 - entered into a composition, deed of arrangement or deed of assignment under Part X of the *Bankruptcy Act 1986*?
 - been a director, secretary, shareholder or person in a position to control or substantially influence a company's conduct or affairs where it is within 12 months of
 - a company being placed into receivership
 - official administration
 - under a legal deed of company arrangement
 - in liquidation or wound up for the benefit of creditors.

If the sub-contractor is a business or company, there are other checks you can do, including:

- searching for their ABN on the [Australian Business Register](#) 
- asking for proof that the company has registered for, and paid, their tax obligations
- finding free information about companies, business names and licences from the [Search ASIC registers](#)  on their website
- searching ASIC's [banned and disqualified register](#)  for information on people or organisations
- finding out if the person is bankrupt by searching the Australian Financial Security Authority's [Bankruptcy Register Search](#)  (BRS)

- if the client is a company, checking if they've gone into liquidation using ASIC's [Published notices search](#) 
- asking your accountant/advisor to run a credit check on the person under other possible business structures, such as a
 - business
 - partnership
 - company
 - sole trader.

Sub-contractors and superannuation

Sub-contractors who fail to meet their employee obligations are operating illegally and taking advantage of the workers you are relying on to complete your projects. This could result in workers leaving their employer, in turn delaying delivery of your project.

You can help sub-contractors by making sure they understand their obligation to pay superannuation for their workers.

Superannuation is an entitlement for workers on your projects and sites. Failure of their employer (your sub-contractor) to pay this presents a high reputational risk for your business.

We have a range of tools and online services to **help your sub-contractors get it right**.

Support we offer

We offer a range of tools and services to help make it easier for you and your contractors to get tax and super right. It's part of our commitment to improving your tax and super experience.

We encourage business and contractors to work together and ensure they understand their obligations.

QC 53172

Our commitment to you

We are committed to providing you with accurate, consistent and clear information to help you understand your rights and entitlements and meet your obligations.

If you follow our information and it turns out to be incorrect, or it is misleading and you make a mistake as a result, we will take that into account when determining what action, if any, we should take.

Some of the information on this website applies to a specific financial year. This is clearly marked. Make sure you have the information for the right year before making decisions based on that information.

If you feel that our information does not fully cover your circumstances, or you are unsure how it applies to you, contact us or seek professional advice.

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