

GST and Real Property

SMALL-SCALE PROPERTY DEVELOPERS



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GST and the Small-Scale Property Developer: Registration, Risks and Reliefs

Introduction¹

Small-scale property projects can fall within the Goods and Services Tax (**GST**) system even where the owner does not regard themselves as a property developer. The decisive questions are whether the activities amount to an enterprise, whether projected GST turnover meets the registration threshold, and whether the sale is taxable, input taxed or GST-free.

A one-off project can be an enterprise. The GST concept of an enterprise is broader than carrying on a business for income tax purposes because it also includes an isolated adventure or concern in the nature of trade.

The GST and income tax tests are separate, but they examine many of the same facts: the owner's purpose, any change in intention, the scale and organisation of the works, the level of commercial activity and whether the sale is merely the orderly realisation of a private or investment asset.

A project may therefore be an enterprise for GST even if the owner is not carrying on a continuing property development business, and an income tax conclusion that the property is on capital account does not determine the GST outcome.

The practical risk is that GST is considered too late. By settlement, the seller may already be exposed to GST at one-eleventh of the price, purchaser withholding, denied credits, interest and penalties. Early classification also determines whether the margin scheme, going concern exemption, farmland exemption or other relief may be available.

This paper first addresses enterprise and registration, then examines Nerang and the supporting income tax authorities. It next considers common development scenarios, specific exemptions and relief, and the distinction between income tax capital treatment and GST. Worked examples and practical risk controls complete the analysis. The topics covered are:

- when a one-off or small-scale property project becomes a GST enterprise, how that differs from carrying on a business for income tax purposes, and when GST registration is required;
- the GST treatment of a knockdown and rebuild of a main residence into a duplex, including where one dwelling is retained and the other sold;
- when subdividing and selling part of a backyard remains the realisation of a private asset and when it moves into taxable development activity;

¹ This material has been prepared by personnel of Tax Navigate (Australia) Pty Ltd. Neither the author nor Tax Navigate accepts liability for the opinions expressed therein and it should not be treated as professional advice.

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- the GST consequences of property flipping, including whether renovated premises are new residential premises under Goods and Services Tax Ruling GSTR 2003/3;
- the treatment of land subdivisions and new dwellings transferred to family members, including gifts, below-market transfers and the associate rules;
- whether new residential premises or a development project can be sold as a GST-free going concern;
- how to establish eligibility for the margin scheme and avoid common contractual, valuation and record-keeping failures;
- when the subdivision and sale of a family farm may attract GST, and when the farmland concessions may apply;
- why capital-account treatment for income tax does not determine the GST outcome; and
- practical examples, common audit risks and planning steps for managing GST before construction, sale or transfer.

Unless otherwise stated, all legislative references are to the *A New Tax System (Goods and Services Tax) Act 1999* (the **GST Act**).

Registration: the two threshold questions

Is an enterprise being carried on?

GST applies only where the supply is made in the course or furtherance of an enterprise carried on by the supplier. An enterprise includes an activity, or series of activities, done in the form of a business or an adventure or concern in the nature of trade.² It does not include activities done as a private recreational pursuit or hobby, or activities of an individual without a reasonable expectation of profit or gain.

The indicators should be weighed together. Relevant matters include:

- the owner's purpose when the property was acquired and when the development decision was made
- whether there is a coherent plan directed to resale at a profit
- the scale and complexity of construction or subdivision
- the use of borrowed funds, project budgets, consultants and contractors
- changes in title, ownership structure or land use

² Subsection 9-20(1) of the GST Act.

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- marketing and sales activity
- whether the activities go beyond what is necessary to realise an asset to best advantage.

No single factor is conclusive. A project can move from private asset realisation into an enterprise when the owner adopts and implements a commercial development plan.³

Is registration required?

An entity carrying on an enterprise must register if its current or projected GST turnover meets the statutory threshold, generally \$75,000 for entities other than non-profit bodies. Projected turnover is tested over the relevant 12-month period.

For this purpose, the proceeds from a sale may be excluded if the property is a capital asset of the enterprise. That exclusion is narrower than the income tax concept of capital account. Land acquired, developed or held for sale is ordinarily trading stock or a revenue asset of the development enterprise, even if the project is isolated. The gross sale proceeds, not the expected profit, are therefore commonly counted.

Voluntary registration may be available below the threshold, but it brings reporting, record-keeping and adjustment obligations. Registration should not be pursued merely to obtain construction credits without first confirming that the intended supplies are taxable.

Nerang Subdivision — development arrangements can require the landowner to register

In *Nerang Subdivision Pty Ltd & Ors v Hutson & Anor* [2023] QSC 268, substantial land on the Gold Coast formed part of a deceased estate. The estate administrator and developers entered into a development deed and development leases governing its development. In proceedings between those parties, Cooper J held that the administrator was carrying on an enterprise in the form of a business. The Court also held that the GST turnover threshold was met, so the administrator was required to register for GST.

The practical lesson is that a landowner does not necessarily remain outside the GST system merely because developers undertake the development work. The owner's activities and contractual arrangements must be assessed as a whole. However, the case concerned a substantial development and should not be treated as establishing that every development agreement, or simple subdivision, constitutes an enterprise. The subsequent appeal, *Nerang Subdivision Pty Ltd v Hutson* [2024] QCA 174, concerned the construction of the development deed's GST gross-up provisions, rather than a reconsideration of the enterprise and registration finding.

Income tax precedents

The decision in *Nerang Subdivision* directly addresses the GST enterprise and registration questions. The following income tax authorities provide a different form of guidance: they

³ See paragraphs 262-302 of Miscellaneous Taxation Ruling MT 2006/1; also Goods and Services Tax Determination GSTD 2006/6, which confirms the enterprise principles contained in MT 2006/1 also apply for GST purposes.

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identify factors distinguishing a business or commercial profit-making venture from the mere realisation of an asset. Those factors inform whether the development activities themselves constitute an enterprise under paragraphs 9-20(1)(a) and (b), but the income tax and GST statutory tests remain distinct.

Further, the Commissioner draws on *Statham* and *Casimaty* in paragraph 264 of MT 2006/1 and identifies relevant subdivision indicators in paragraph 265. Paragraph 1 of GSTD 2006/6 confirms that MT 2006/1's principles concerning entities and enterprises apply equally and can be relied upon for GST purposes.

Whether the development activities constitute an enterprise must be distinguished from whether a disposal occurs in the course or furtherance of an existing enterprise, such as leasing or farming. A capital realisation for income tax may satisfy the latter requirement without constituting a separate development enterprise. The registration and projected GST turnover rules discussed above, including the capital asset exclusion, remain separate questions, as do the remaining requirements for a taxable supply.

Myer Emporium — isolated commercial profits can be income

In *FC of T v The Myer Emporium Ltd* (1987) 163 CLR 199, Myer lent money to a subsidiary and, as intended from the outset, assigned the right to future interest to a financier for a lump sum while retaining the right to repayment of principal. The High Court held that the lump sum was income under former subsection 25(1) of the *Income Tax Assessment Act 1936 (Cth)* (ITAA).

Its reasoning had two strands: the receipt arose from a profit-making transaction entered into in the course of Myer's business, although outside its ordinary course, and the assignment of the interest entitlement without the underlying debt converted future income into present income. The broader principle is that a profit from an isolated transaction may be ordinary income where the transaction is entered into with a profit-making purpose and has the character of a business operation or commercial transaction. A desire to obtain the best price for a capital asset does not, without more, satisfy that principle.

Whitfords Beach — capital land committed to a development business

In *FC of T v Whitfords Beach Pty Ltd* (1982) 150 CLR 355, the company acquired land to secure its original shareholders' access to beach shacks, not for development and resale. Developers later acquired all its shares, its articles were changed, and it embarked on extensive development, subdivision and sales activities.

The High Court held that the profits were assessable under former subsection 25(1) of the ITAA. The company's changed purpose and the substantial commercial activities undertaken after the takeover distinguished the sales from a mere realisation of its original asset. The decision illustrates that land originally held on capital account can subsequently be committed to a development business. Neither a change in shareholders nor a change of intention, considered alone, makes a later sale a revenue transaction.

Westfield — profit-making purpose must encompass resale

In *Westfield Ltd v FC of T* (1991) 28 FCR 333, Westfield acquired land in connection with a possible shopping centre development and later sold it to an insurer that engaged Westfield to

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design and construct the centre. The Full Federal Court held that the land-sale profit was not assessable under former subsection 25(1) or section 26(a) of the ITAA. The sale was not an ordinary incident of Westfield's business, and the necessary purpose of making a profit by resale had not been established at acquisition.

In applying Myer to a transaction outside the ordinary course of business, a general commercial objective of making profits is insufficient: the relevant purpose must encompass the means by which the particular profit is made. The precise transaction need not be foreseen in every detail, but a mere possibility of resale at a profit is not equivalent to the requisite purpose. The decision does not preclude a later commitment of an existing capital asset to a business or commercial profit-making venture.

Statham — subdivision remained a capital realisation

In *Statham v FC of T* 89 ATC 4070, land acquired for residential and farming purposes was subdivided and sold following the failure of a farming venture. The owners relied on the local council for subdivision works and on agents for sales, with limited direct involvement and no separate business organisation for land development.

The Full Federal Court held that the subdivision and sales constituted the mere realisation of a capital asset, rather than a business operation or profit-making undertaking of the relevant kind. The decision establishes no numerical or works-based safe harbour. Its significance is that subdivision, including works needed to facilitate sales and obtain a better return, can remain a capital realisation when the activities are considered as a whole. Engaging contractors or agents is relevant to that assessment but does not itself prevent an owner from carrying on a development business or commercial venture.

Casimaty — staged subdivisions remained a capital realisation

In *Casimaty v FC of T* 97 ATC 5135, the taxpayer undertook successive subdivisions and sales of parts of a long-held farming property against a background of financial difficulties and ill health. Ryan J held that the proceeds were not assessable as income from a land development business under former subsection 25(1), or as profits from a profit-making undertaking or scheme under the second limb of former section 25A, of the ITAA.

Relevant considerations included the absence of an overarching development plan, the continuing use of the remaining property as a residence and farm, and works directed to obtaining subdivision approval rather than additional improvements such as constructing houses. The sales were characterised as a piecemeal realisation of the property. The decision is fact-specific: financial pressure, staged sales and works confined to approval requirements are relevant indicators, not independent exemptions from revenue treatment.

Stevenson — organised subdivision constituted a development business

In *Stevenson v FC of T* 91 ATC 4476, the taxpayer undertook a substantial subdivision of land previously used for farming and was closely involved in arranging finance, engaging and supervising contractors, and managing the project. On appeal from the Administrative Appeals Tribunal, the Federal Court upheld the conclusion that the activities constituted a business of developing and selling land, with the resulting income assessable under former subsection

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25(1) of the ITAA. The scale and organisation of the operations, together with the taxpayer's sustained managerial involvement, supported that conclusion.

The case contrasts with *Statham* and *Casimaty* but does not make personal involvement or subdivision size a decisive test. The question remains whether the activities, viewed as a whole, have the character of a development business rather than the mere realisation of an existing asset.

Income tax authorities: key implications for GST

These decisions illustrate how purpose, changes in intention, development activities and organisation distinguish a commercial venture from the mere realisation of an asset. Their ordinary income principles remain relevant to section 6-5 of the Income Tax Assessment Act 1997 (Cth). The former statutory profit-making provisions discussed in the cases are separate provisions and are not interchangeable with section 6-5.

For GST, the indicators must be applied through paragraphs 9-20(1)(a) and (b), subject to the exclusions in subsection 9-20(2). The discussion of isolated real property transactions in paragraphs 262–269 of MT 2006/1 and its application through GSTD 2006/6 provide the link explained above. Accordingly, a capital realisation for income tax may still occur in the course or furtherance of an existing leasing or farming enterprise, without resolving registration, turnover or the remaining requirements of section 9-5, including any input taxed or GST-free treatment.

Common small-scale development scenarios

Knockdown and rebuild of a main residence into a duplex

The following scenarios outline the main classification issues. The Practical examples section applies those principles to specific facts and identifies the relevant cases and ATO guidance. Demolishing a home and constructing a duplex creates new residential premises. The private history of the original home does not determine the GST treatment of the new dwellings. The key question is whether the construction and sale of one or both dwellings occur in an enterprise.

Risk is elevated where the plan from the outset is to retain one dwelling and sell the other, project finance depends on the sale, separate titles are created and the project is run on a commercial basis. The sale dwelling may be taxable even though the retained dwelling becomes the owner's home. Input tax credits must then be apportioned between private or input taxed use and the taxable sale.

Subdividing and selling the rear yard

A simple subdivision and sale of surplus land can remain the realisation of a private capital asset. GST risk increases where the owner undertakes material works, creates multiple lots, installs services, builds access, engages a project team, undertakes staged sales or acquires adjoining land.

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Vacant subdivided land is not residential premises merely because it was formerly part of the curtilage of a home. If the sale is made in an enterprise by an entity that is registered or required to be registered, it will generally be taxable unless another exemption applies.⁴

Buying, renovating and reselling property

Buying, renovating and reselling property for profit is a strong indicator of an enterprise. Repetition reinforces the conclusion, but one transaction can be sufficient. The premises sold may be new residential premises, including where substantial renovations have occurred or a new building replaces demolished premises.⁵

Cosmetic renovation alone will not usually create 'new residential premises' in the context of the GST Act. Substantial renovations require removal or replacement of all or substantially all of the building, with the work affecting the building as a whole. A 'flip' can nevertheless be an enterprise even where the ultimate sale is input taxed because the premises are not new. In that case, sale proceeds may be input taxed and related acquisitions generally do not give rise to input tax credits.⁶

Building and transferring dwellings to family members

A development undertaken to provide dwellings to children or other relatives must be analysed on its actual legal and commercial terms. A gift can still be a supply, although a supply without consideration is not taxable under the ordinary rule unless a special associate provision applies. A transfer for less than market value may be treated at market value where the parties are associates and the recipient is not entitled to a full input tax credit.⁷

The analysis should identify who owns the land, who contracts with builders, who claims credits, whether family members contribute cash or assume debt, and whether the arrangement involves a sale, gift, partition, trust distribution or non-monetary consideration. Income tax, duty and asset-protection consequences should be reviewed alongside GST.

Specific exemptions and relief

Can new residential premises be sold as a going concern?

Yes, but only in limited circumstances. The going concern exemption applies to the supply of an operating enterprise, not merely to the sale of an asset. The recipient must be registered or required to be registered, both parties must agree in writing that the supply is of a going concern, and the supplier must provide all things necessary for the continued operation of the identified enterprise and carry it on until settlement.⁸

⁴ Sections 9-5, 40-65 and 40-75 of the GST Act.

⁵ See paragraphs 53-83 of GSTR 2003/3. The ruling remains current and has been updated following *Domestic Property Developments Pty Ltd as trustee for the Dals Property Trust v Commissioner of Taxation* [2022] AATA 4436.

⁶ Sections 40-65 and 40-75 of the GST Act; *Marana Holdings Pty Ltd v Commissioner of Taxation* [2004] FCAFC 307.

⁷ Sections 9-10, 9-15 and Division 72 of the GST Act.

⁸ Section 38-325 of the GST Act; Goods and Services Tax Ruling GSTR 2002/5.

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A completed but unsold dwelling is not, by itself, a going concern. A sale of a genuine leasing enterprise may qualify where the lease and all things necessary to continue that enterprise pass to the buyer. A sale of an active development enterprise may also qualify where the project, approvals, contracts, work in progress and operational structure necessary to continue it are supplied. The exemption should never be assumed merely because the contract uses the words “going concern”.⁹

If the going concern treatment fails and the property is new residential premises, the seller may face GST on the sale price. The contract should therefore contain a robust GST recovery clause and allocate the risk of an adverse ruling.

Margin scheme

The margin scheme can reduce GST by applying one-eleventh to the statutory margin rather than the full selling price.¹⁰ It is a method of calculation, not an exemption. Eligibility depends heavily on how the seller acquired the property. In broad terms, it cannot ordinarily be used where the seller acquired the property through a fully taxable supply on which the seller was entitled to an input tax credit.

Practical controls include:

- trace the GST status of every acquisition and obtain the prior contract and settlement records;
- confirm eligibility before marketing and pricing;
- include a written agreement to apply the margin scheme no later than settlement;
- identify whether the consideration or valuation method applies;
- obtain an approved valuation where required;
- remember that the purchaser cannot claim an input tax credit for an acquisition under the margin scheme; and
- align the contract with GST withholding obligations for new residential premises or potential residential land.

The Commissioner has a discretion to allow additional time for the written agreement¹¹, but reliance on that discretion is a repair strategy, not sound transaction planning.¹²

⁹ *Aurora Developments Pty Ltd v Commissioner of Taxation* [2011] FCA 232. The development-site sale was held not to be a GST-free going concern because the identified development enterprise was not supplied and continued as required.

¹⁰ Division 75, especially s75-5; Goods and Services Tax Ruling GSTR 2006/8.

¹¹ Paragraph 75-5(1A) of the GST Act.

¹² Goods and Services Tax Ruling GSTR 2006/7 applies to relevant interests held before 1 July 2000. Goods and Services Tax Ruling GSTR 2000/21 is historical only and does not apply to supplies made on or after 1 December 2005. See also GSTD 2006/3 on settlement adjustments and consideration, and *Brady King Pty Ltd v Commissioner of Taxation* [2008] FCAFC 118 on the margin scheme.

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Farmland exemption

The subdivision and sale of a farm can attract GST if it forms part of an enterprise and the owner is registered or required to be registered. The private or long-term nature of ownership does not itself prevent GST from applying to a sale.

A sale of farming land may be GST-free where the land has been used for a farming business for at least the preceding five years and the recipient intends that a farming business be carried on. The test applies to the land supplied. Subdivided residential or development lots may fail if the relevant land has ceased to be used for farming or the buyer does not have the required farming intention.¹³

A separate GST-free rule can apply to farmland supplied to an associate for no consideration or inadequate consideration where the statutory conditions are met.¹⁴ Detailed evidence of historic land use, cessation dates, lot boundaries and the recipient's intended use is essential.

Capital account for income tax does not decide GST

A property can be held on capital account for income tax purposes and still be sold in the course or furtherance of an enterprise for GST purposes. The statutes ask different questions. Income tax classification focuses on ordinary income, profit-making schemes and capital gains treatment. GST focuses on enterprise, registration and the character of the supply.

Examples include:

- a capital asset used in an existing leasing or farming enterprise;
- land originally acquired for private or investment purposes but later committed to a commercial development venture;
- a one-off development that is an adventure or concern in the nature of trade for GST purposes; and
- a sale excluded from projected GST turnover as a capital asset, while still being made in the course of an enterprise by an entity already registered.

The income tax file is relevant evidence, but it should not be copied into the GST analysis. Inconsistent positions across income tax, GST, finance applications, planning documents and sale contracts are a common audit trigger.¹⁵

¹³ Sections 38-475(2) and 38-480; Goods and Services Tax Determination GSTD 2011/2; ATO Primary Production Industry Partnership, 'Sale of farmland — section 38-480'. The Industry Partnership issue is treated by the Commissioner as a public ruling.

¹⁴ GST Act s 38-475(1). The definition of 'farming business' is found in subsection 38-475(2).

¹⁵ The GST tests are distinct from the income tax characterisation, although the income tax cases referred to in MT 2006/1 remain useful factual comparators.

Practical examples

Example 1: duplex, retain one and sell one

An owner demolishes a long-held home, constructs two dwellings, moves into one and sells the other. The dwelling sold is new residential premises under section 40-75, but that classification alone does not make the sale taxable. A commercial plan to fund the project or retained dwelling through the sale, supported by finance arrangements, budgets and marketing, may establish an enterprise under section 9-20.

MT 2006/1, Example 29 at paragraphs 273–276, provides a useful comparison: Tobias acquires land intending to build a duplex, sell one unit and retain the other, and the Commissioner concludes that his activities constitute an enterprise. Unlike Tobias, this owner acquired the property long before the development, so the later decision and activities require separate assessment.

If the owner is registered or required to register and the other requirements of section 9-5 are met, the sale is taxable unless GST-free treatment applies. Registration must be tested under section 23-5 and Division 188, with the capital asset exclusion considered separately rather than assumed from the property's private history. Construction credits require a fair apportionment under sections 11-15 and 11-30 between the taxable sale and private use of the retained dwelling.

GSTR 2003/3 addresses new residential premises, and GSTR 2009/4 addresses creditable purpose and subsequent changes in use. Private occupation of the retained dwelling does not itself prevent GST on the dwelling sold.

Example 2: rear lot with minimum works

An owner subdivides a large backyard into one additional lot, undertakes only council-required works and sells the vacant lot. The owner has never developed property before and did not acquire the home for subdivision. Viewed together, those facts may support the mere realisation of a private asset rather than an enterprise.

MT 2006/1, paragraphs 264–265, draws on *Statham v FC of T* 89 ATC 4070 and *Casimaty v FC of T* 97 ATC 5135 and identifies relevant subdivision indicators. Those income tax decisions provide guidance, not a binding GST outcome for a backyard subdivision. Neither a first project nor works confined to council requirements is a safe harbour. Building a dwelling, undertaking extensive infrastructure or adopting a broader commercial profit-making plan may change the character of the activities.

GSTR 2012/5 explains why vacant land is not residential premises: the fact that the lot was once part of a home's grounds does not make its separate sale input taxed. Accordingly, if the activities constitute an enterprise and the owner is registered or required to register, the sale will generally be taxable under section 9-5 unless GST-free treatment applies. Registration for an unrelated business does not, by itself, turn a genuinely private disposal into an enterprise supply.

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Example 3: repeated renovation and resale

An individual buys older homes, renovates them using short-term finance and sells soon after completion. The repetition, profit objective and organised activity strongly support an enterprise, consistent with the ATO's guidance *Renovating properties* and the enterprise principles in MT 2006/1.

Each property must nevertheless be assessed separately under sections 40-65 and 40-75. Painting, replacing floor coverings and updating selected kitchens or bathrooms do not necessarily create new residential premises. Under paragraphs 60–79 of GSTR 2003/3, substantial renovations must affect the building as a whole and involve removal or replacement of all or substantially all of it. The Ruling's examples 3–5 distinguish limited or cosmetic works from substantial renovations. Demolition and replacement construction can independently create new residential premises under paragraph 40-75(1)(c).

If the premises remain existing residential premises, the sale is generally input taxed and related renovation and selling costs do not generate input tax credits. Input taxed sale proceeds are also excluded from current and projected GST turnover under sections 188-15 and 188-20, so repeated flipping does not itself establish compulsory registration where all sales are input taxed. If the works create new residential premises, registration and the remaining taxable supply requirements must be tested, with credits available only to the extent the acquisition rules are satisfied.

Example 4: family farm carved into lifestyle lots

A family ceases farming on part of its land, obtains rezoning, installs roads and services, and sells multiple lifestyle lots over several years. The combined development activities may constitute a separate enterprise under section 9-20. MT 2006/1, paragraphs 264–265, provides the relevant subdivision framework. *Stevenson* illustrates the significance of organised development and sustained managerial involvement, while *Statham* and *Casimaty* show why subdivision and staged sales are not conclusive by themselves.

These are income tax comparisons, not direct GST determinations. Even without a separate development enterprise, sales may occur in the course or furtherance of the existing farming enterprise. Section 38-480 must then be tested for each land supply: a farming business must have been carried on for the continuous five years immediately preceding the supply, and the buyer must intend that a farming business be carried on on the land. GSTD 2011/2 confirms that a cessation of routine farming activities in anticipation of sale does not automatically break the farming business requirement.

Actual conversion to a residential development and sales to buyers with no farming-business intention present different difficulties. The label lifestyle lot is not decisive. If the land is vacant, the supplier is registered or required to register and no GST-free provision applies, the sale will generally be taxable.

Example 5: completed dwellings sold with leases

A developer leases newly completed dwellings and sells them to an investor subject to the leases. Under section 38-325 and GSTR 2002/5, the sale may be GST-free as a going concern if the identified leasing enterprise is operating, the seller supplies all things necessary for its

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continued operation and carries it on until the day of supply. The supply must be for consideration, the recipient must be registered or required to register, and the parties must agree in writing that the supply is of a going concern.

Existing leases alone do not establish every condition. In particular, residential rents are input taxed and excluded from GST turnover, so this investment alone may not require the buyer to register. The buyer's registration position must therefore be confirmed, not assumed from the seller's development activity. If the buyer acquires a GST-free going concern intending to continue input taxed residential leasing, Division 135 may impose an increasing adjustment, so GST-free settlement does not necessarily eliminate the buyer's GST cost.

The seller must separately consider Division 129 adjustments where credits were claimed for an intended taxable sale but the dwellings were subsequently applied to input taxed leasing. GSTR 2009/4 explains the distinction between premises genuinely held for taxable sale while rented and premises applied exclusively to leasing. Brief leasing does not itself make newly completed premises cease to be new under section 40-75.

Risk controls and planning opportunities

The following controls should be applied before contracts are signed or material expenditure is incurred:

- document the original purpose for acquiring the property and every later change in intention
- prepare a GST position paper covering enterprise, registration, supply classification and available concessions
- model the cash impact under full GST and the margin scheme
- review projected GST turnover before construction and again before sale
- separate private, input taxed and taxable costs and establish a supportable credit apportionment method
- review associate transactions at market value and document any non-monetary consideration
- coordinate GST clauses, margin scheme agreements, going concern provisions and purchaser withholding notices
- retain acquisition contracts, valuations, invoices, development approvals, finance documents and sale records
- consider a private ruling where classification is genuinely uncertain and the value at risk is material.

A strong contract should state whether the price is GST-inclusive or GST-exclusive, permit recovery of additional GST if the assumed treatment is wrong, address tax invoices and

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adjustment events, preserve rights after completion, and deal expressly with the margin scheme or going concern treatment where relevant.

Conclusion

Small-scale developers are exposed because ordinary domestic decisions can acquire a commercial character before the owner recognises the GST consequences. The label attached to the owner or project is not decisive. What matters is the objective activity, the role of the property in that activity and the legal character of the supply.

The best relief is early analysis. Enterprise and registration should be tested before the project is committed. The sale contract should then be drafted around the identified GST treatment, with the margin scheme, going concern exemption, farmland exemption, associated-party rules, credit adjustments and purchaser withholding considered where relevant.



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