The tax consequences of land subdivision

It's quite common for individuals to subdivide land they own, and then sell off one of the blocks. Depending on the circumstances, this can have capital gains tax (CGT) and GST implications.

Capital gains tax

If you subdivide a block of land, each resulting block is registered with a separate title. For capital gains tax (CGT) purposes, the original land parcel is divided into two or more separate assets.

The profit from selling subdivided land may be a capital gain or ordinary income, depending on the circumstances.

If you subdivide a block of land and sell the new block, any profit is generally treated as a capital gain subject to CGT.

However, any profit you make is treated as ordinary income (not a capital gain) if both of the following apply:

- your intention or purpose in subdividing was to make a profit
- the profit was made in the course of carrying on a business, a business operation or commercial transaction.

This is true even if you aren't in business (for example, if it's a one-off transaction by an individual).

Where the amount is treated as ordinary income, CGT concessions (such as the 50% discount) are not available.

If you sell any land separately from your home, it is invariably subject to CGT. Only land sold with the home that is your main residence can receive the main residence exemption. Land is adjacent to your home if it is close to, near, adjoining or neighbouring it.

Goods and services tax

You may have GST obligations and entitlements if you sell with the intention of making a profit:

- in the course of carrying on a business, or
- as a business or commercial transaction.

If you're unsure whether your subdivision falls into the above categories, consult with us.

Even with a one-off transaction, you may still be required to register for GST because your transaction may have the characteristics of a business deal/enterprise. Whether an enterprise is being carried on (and therefore whether you need to register for and charge GST) will depend on a range of factors.

If several of these factors are present it may be an indication that an enterprise is being carried on (as distinct from the land being sold as is):

- there is a change of purpose for which the land is held
- additional land is acquired to be added to the original parcel of land
- the parcel of land is brought into account as a business asset
- there is a coherent plan for the subdivision of the land
- there is a business organisation - for example a manager, office and letterhead
- borrowed funds financed the acquisition or subdivision
- interest on money borrowed to defray subdivisional costs was claimed as a business expense
- there is a level of development of the land beyond that necessary to secure council approval for the subdivision and
- buildings have been erected on the land.

Once registered for GST, you will:

- need to include GST in the price of goods you sell, including land that you've subdivided
- be able to claim credits for the GST included in the price of most of your business purchases (subject to the normal GST rules)
- report these transactions by completing an activity statement.

If you are considering subdividing and selling, or even just selling vacant land, we can advise you of both the CGT and GST consequences.

DISCLAIMER

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