



GST and Land Checklist

GST is not simple but there are some easy steps you can take to help protect you and your clients.

References to divisions and sections can be found in [A New Tax System \(Goods and Services Tax\) Act 1999 \(Cwth\)](#).

The threshold test for payment of GST

Supplies are not input taxed

AND

The supplier is registered or required to be registered for GST.

Input taxed supplies

Is the supply wholly input taxed?

There is no GST payable where the supply is input taxed such as existing residential premises. The recipient of an input taxed supply is not entitled to an input tax credit.

Supplies which are not input taxed (and therefore GST may apply) include:

- new residential premises – see [ATO information](#)
- vacant land - see s.9-5 and [ATO information](#)
- commercial real estate - see [ATO information](#)
- commercial residential premises - see [GSTR 2012/6](#) and [ATO information](#).
- See s.40-5 to s.40-130 and [GSTR 2012/5](#).

Registration

Is a party registered for GST?

- You can check a party's GST status by searching on the Australian Business Register (ABN lookup) for the entity's current details. You can search by name, ACN and/or ABN.
- If a party is a trustee you need to determine the GST status of the trust not the trustee.
- When a GST-registered entity supplies a capital asset, that it is not GST-free or input taxed, the supply will usually be taxable, as only a slight connection with an enterprise is required to satisfy the requirement that the supply be 'in the course or furtherance of an enterprise' (s.9-5, GST Act); see GST and the disposal of capital assets | Australian Taxation Office (ato.gov.au).

- There are instances where the supply of a real property will not be taxable such as:
 - when it is the supply of a capital asset or
 - supply made as part of the termination of an enterprise (s.188.25, GST Act) or
 - if there is no connection with the enterprise or
 - because it is the sale of a private asset such as a plumber's permanent place of residence that was 'new residential' (see paragraph 27 [GSTR 2001/7](#)).

If in doubt you can lodge an enquiry at the ATO's [Tax practitioner assistance service](#).

Is a party required to be registered?

Must register where turnover of an enterprise is \$75,000 or more.

- On the subject of when an entity will be considered to be carrying on an enterprise and entitled to an ABN and to GST registration, see MT 2006/1.
- Turnover consists of current GST turnover and projected GST turnover and includes turnover from all activities and sources save for the exceptions listing in GSTR 2001/7.
- Sometimes the sale of an asset, such as land, may be considered the sale of trading stock where for example, the property was purchased for development and resale. The proceeds will be considered turnover and not capital and the sale of the asset will trigger the requirement for registration where the proceeds of sale price bring the turnover to, or above, the registration threshold of \$75,000. See [GSTR 2001/7](#) and [MT 2006/1](#) about the meaning of enterprise, turnover and isolated transactions.

Land transactions and special rules

Do any of the following special rules apply?

New or substantially renovated residential premises [s.40-75](#)

- New residential premises include residential premises that have been substantially renovated
- Subject to s.9-5 the sale of new residential premises will be a taxable supply if since being built or renovated, it hasn't been sold or rented out for at least five years
- Substantial renovations of a building means all, or substantially all, of a building is removed or replaced. However, the renovations need not involve removal or replacement of foundations, external walls, interior supporting walls, floors, roof or staircases. Read s.195-1 and examples in [GSTR 2003/3](#)
- Selling the principal place of residence of a natural person that is new residential premises will not attract GST as it is the sale of a personal asset and not a supply in the course or furtherance of an enterprise.

When acting for vendor:

- seek instructions as to whether the price is 'plus GST' or 'GST inclusive'
- where instructed that the price is 'plus GST' the relevant 'plus GST' box in the particulars of sale must be checked if using the LIV form of contract.

Margin scheme

- When selling using the margin scheme GST is calculated on the difference between the value of the land when acquired and the sale price on a subsequent sale.

For example, a homeowner sells their existing home to a developer for \$500,000. The developer then builds five townhouses on the land. The developer can use the margin scheme in the contracts of sale for the five townhouses. Assume each sold for \$600,000 with an initial land value of \$100,000 each. GST is calculated on \$500,000 (\$600,000 minus \$100,000) and the GST is \$50,000.

- Any type of real property can be sold on the margin scheme so long as the supply is not ineligible. Ineligibility includes:
 - the supply to the vendor was taxable, whether 'plus GST' or GST inclusive, and the margin scheme was not applied. For example, if vacant residential land was purchased and full GST was paid, once developed it cannot be sold on the margin scheme.
 - the supply to the vendor was GST-free by reason of the going concern exemption but the previous vendor had been registered for GST and acquired the interest through a taxable supply that did not apply the margin scheme (s.75-5(3)(e))
 - additional circumstances of ineligibility set out in s.75-5(3)
- Special rules relating to calculating the cost of acquisition apply in certain circumstances. See s.75-11.

See also [ATO information](#), rulings [GSTR 2006/7 \(for supplies of property held or acquired before 1/7/2000\)](#), [GSTR 2006/8 \(for supplies of property acquired after 1/7/2000\)](#) and [Determination MSV 2009/1](#).

For a sale on the margin scheme:

- seek instructions as to whether the price is 'plus GST' or 'GST inclusive'
- where instructed that the price is 'plus GST' the relevant 'plus GST' box in the particulars of sale must be checked if using the LIV form of contract
- the relevant 'margin scheme' box in the particulars of sale must be checked if using the LIV form of contract.

For a purchase on the margin scheme:

- the purchaser should be advised an input tax credit cannot be claimed where the margin scheme applies. The vendor is not obliged by law to provide a tax invoice. See s.75-20 and s.75-30 (but see general condition 19.3 of the LIV form of contract copyright August 2019).

See LPLC's [FAQs on margin scheme](#).

 Going concern

The sale of a going concern is GST-free if all of the following requirements are met:

- the supply of all things necessary for the continued operation of an enterprise carried on until the day of supply
- the supplier and recipient must be registered for GST purposes and
- the supplier and recipient must agree in writing that the supply is of a going concern

- where there is a nomination, the nominee and the supplier need to agree in writing that the supply is of a going concern.

For the sale of tenanted commercial premises:

- the going concern being supplied is the letting enterprise conducted by the vendor
- the relevant boxes in the particulars of sale for 'going concern' and 'subject to lease' must be checked if using the LIV form of contract
- if before settlement a tenant vacates, the ATO considers that an entity's letting enterprise continues when premises that have been let become vacant and the landlord immediately commences and maintains a marketing campaign to re-let the property on reasonable commercial terms
- the purchaser cannot be the tenant
- the supply of tenanted residential premises (other than commercial residential premises) should never be treated as the supply of a going concern.

See s. 38-325, s.135-5, s.135-10 and [GSTR 2002/5](#).and LPLC's [FAQs on going concern](#).

Farmland

The sale of farmland is GST-free if the relevant requirements are met:

- a farming business has been carried on for at least five years preceding the supply, regardless of whether it was carried on by the current or previous owner or a tenant
- the recipient of the supply intends that a farming business be carried on, again it doesn't matter who will carry it on, after the supply
- the nature of the farming business does not have to remain the same during the period before and after supply
- the farming activity, pre and post settlement, must fit within the definition of 'farming business' and satisfy the ATO's criteria, as to scale (see s.38-475(2) and s.38-480)
- agistment operations do not qualify as a 'farming business'.
- although s.38-480 is silent on the point, the supplier should be registered, or required to be registered, for GST (if the supplier is not, the supply would not be taxable and the exemption would not be needed)
- the relevant 'farming business' box in the particulars of sale must be checked if using the LIV for of contract.

See [ATO information and LPLC's FAQs on Farm land](#).

Mixed supply

- Some supplies are mixed supplies for GST purposes, for example the supply of a dwelling and shop in the same building. This means GST is payable on the supply of the shop but not the supply of the dwelling (unless it is new residential premises).

For the sale of a mixed supply:



- the purchase price must be apportioned between the different components of the sale
- apportionment can be on any reasonable commercial basis that does not skew the apportionment towards one component or the other. It can be on the basis of rents or council values or a written appraisal and/or sworn valuation from an estate agent or valuer. See [GSTR 2001/8](#)
- a special condition in the contract should set out the basis of the apportionment including which part of the supply is taxable, input taxed, going concern, farming business as applicable.
- seek instructions as to whether the price is 'plus GST' or 'GST inclusive' in relation to any taxable supply
- where part of the supply is a going concern the 'going concern' box in the particulars of sale must be checked if using the LIV form of contract
- where part of the supply is farmland the 'farming business' box in the particulars of sale must be checked if using the LIV form of contract

Purchaser withholding

Vendor withholding notice and purchaser withholding

- The vendor must give the purchaser a notice in relation to withholding before the vendor makes a supply of the following property:
 - residential premises (not commercial residential) or
 - potential residential land except where the recipient is registered for GST and acquires the land for a creditable purpose.
- The notice must state whether or not a withholding payment is required and, if payment is required, the name and ABN of the entity liable for GST on the supply and the amount to be withheld.
- Penalties apply if the notice is not given.
- Withholding does not apply if:
 - the supply is not taxable or
 - the new residential premises were created by substantial renovations or
 - the supply is potential residential land and the recipient is registered for GST and acquires the land for a creditable purpose or
 - the potential residential land is not included in a plan of subdivision or includes a building in use for a commercial purpose.
- The purchaser must withhold the GST payable and pay it to the Australian Taxation Office or give the vendor a bank cheque at settlement made payable to the Australian Taxation Office. See sections 14-250, 14-255 and 16-30(3), schedule 1 of *Taxation Administration Act 1953* (Cwth) and [LCR 2018/4](#).
- Read general condition 25 of the LIV form of contract (copyright August 2019) and any special condition in the contract about withholding.



Relying on the vendor's notice

- If the supply is a taxable supply of new residential premises and the vendor's notice says the purchaser does not have to withhold, then the purchaser can rely on that notice providing nothing makes it unreasonable to believe the notice.
- If there are suspicions that the vendor is required to be registered for an isolated transaction alone, without knowing the facts to determine whether the vendor is making a supply in the course or furtherance of an enterprise, is not enough to make it unreasonable to believe the notice.

How much to withhold

- The withholding amount is:
 - 7 percent of the 'contract price' in the case of margin scheme supplies and
 - one-eleventh of the 'contract price' in the case of other supplies.
- The expression 'contract price' refers to:
 - the contract sum, excluding adjustments, in a GST inclusive sale and
 - the contract sum plus GST reimbursement in a plus GST sale, as 'price' is given a GST inclusive character in the GST Act

See:

- LPLC's alerts [Some purchasers required to withhold GST from 1 July 2018](#) and [GST withholding practical examples](#)
- [Flow chart one. Do GST withholding provisions apply?](#)
- [Flow chart two. GST withholding provisions apply – steps](#)

Other considerations

Are the parties 'associates'?

The supply to an associate is deemed to be at market value except where the recipient is registered for GST and would be entitled to a full input tax credit.

See Division 72.

Is a party a bare trustee?

Special rules apply where an entity causes the trustee of real property (held on a bare trust for the entity) to transfer the property to a third party. For example, no GST is payable on a transfer by a retiring bare trustee to a new bare trustee.

See [GSTR 2008/3](#)

The contract

Is GST properly dealt with in the contract?

When completing the particulars of sale in the LIV standard contract of sale:

- obtain instructions from your client about whether 'plus GST' box needs to be checked
- double check the right boxes are checked about GST.

Settlement

Has GST been accounted for on the adjustments?

See ATO rulings about adjustments: [GSTR 2004/9](#) and [GSTD 2006/3](#)

Is a tax invoice required?

- A tax invoice is required for all taxable supplies other than margin scheme supplies. In preparation for settlement make a written request for a tax invoice at least 28 days prior to settlement.
- See s.29.70 which gives a supplier 28 days to provide a tax invoice on request. Note general condition 19.3 of the LIV contract of sale (copyright August 2019) provides that the purchaser is not obliged to pay any GST until a tax invoice has been provided and does not make an exception for margin scheme supplies.

Does the tax invoice contain all relevant information?

Relevant information includes ABN of supplier and price for the supply.

More information

- GST section on the [LPLC website](#)
- Find the answer in the [LPLC GST FAQs](#) .
- If the answer is not there, please email Derry Davine from the [LPLC GST hotline](#) - dc.davine@bigpond.com