



# Examples of tax consequences on sales of land including small-scale land subdivision

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## Purpose

The purpose of this document is to provide examples of the tax consequences on sales of land (including small-scale land subdivision). It should be read in conjunction with [Vacant land and subdividing](#) and [Tax consequences on sales of property](#).

## Example 1 – land acquired and held for long-term capital growth

*In 2015, Build Co as trustee for Kate Build Discretionary Trust (the Trust) purchases a vacant 10-hectare parcel of land (zoned residential) for \$290,000. Its director intends to hold it for long-term capital growth.*

*The Trust has no other assets and has not previously acquired vacant land as a speculation. The Trust does not have an Australian business number (ABN) and is not registered for goods and services tax (GST).*

*Kate Build is the director of the trustee and principal beneficiary of the Trust. She has never directly, or indirectly (through control of other entities), carried on a land development business or undertaken land development activities.*

*The trustee enters a contract to sell the land for \$580,000 in January 2023 (settling in March 2023).*

*The land has not been subdivided, developed or used to generate income.*

*The trustee incurs associated costs of \$40,000 in connection with the purchase, holding and subsequent sale.*

### Sale as part of a business activity

*The trustee's profit is not business income since the trustee did not sell the land in the course of carrying on a business.*

### Sale as part of an isolated profit-making transaction

*Although the trustee is not carrying on a business, the profit could still be income if the trustee purchased the land with the intention of making a profit and made the profit through carrying out an isolated business operation or commercial transaction.*

*However, in this case:*

- *The scale of the trustee's activities is small.*
- *The trustee's activities are not especially complex.*
- *The trustee has not undertaken any activities to increase the value of the land.*
- *The trustee has not had any previous dealings in property.*

*These factors indicate that the trustee's profit is not made in the course of a business operation or commercial transaction.*

### Sale subject to capital gains tax

*A capital gains tax (CGT) event (disposal of a CGT asset) happens on the sale of the land in the 2022–23 income year. Any costs incurred in purchasing, holding and selling the land will form part of the cost base for working out the capital gain. As the land was held for more than 12 months, the trustee can claim a 50% discount on the capital gain.*

Table 1: Calculation of net capital gain

|                                                                                        |                  |
|----------------------------------------------------------------------------------------|------------------|
| <i>Sale price</i>                                                                      | <i>\$580,000</i> |
| <i>Less: cost base</i>                                                                 |                  |
| • <i>purchase price (\$290,000)</i>                                                    |                  |
| • <i>purchase, holding and selling costs (\$40,000)</i>                                | <i>\$330,000</i> |
| <b>Capital gain</b>                                                                    | <b>\$250,000</b> |
| <i>Net capital gain to be included in the Trust's tax return (after 50% discount)*</i> | <i>\$125,000</i> |

\* The Trust has no other capital gains or capital losses.

### **GST consequences on the sale**

*The Trust's activities do not amount to an enterprise as they were not carried on in the form of a business or adventure or concern in the nature of trade and there has been no leasing or licencing of the property to another party. The land has also not been used in any other business activity – for example, as business premises. Therefore, GST does not apply to the sale.*

## Example 2 – residential suburban block land subdivision

*In August 2018, Harrison buys his first home on a block of land of 810 square metres for \$780,000.*

*He has never directly or indirectly (through control of other entities) carried on a land development business or undertaken land development activities.*

*In late 2019, he makes enquiries about subdividing the land, with the intent of selling part of the land he does not need, to lessen his home loan burden.*

*In April 2020, Harrison applies to subdivide his land into 2 separate blocks of 405 square metres each. Approval is granted in July 2020.*

*Harrison engages a valuer at that same time, to apportion the block's initial cost of \$780,000. The valuer determines that the block containing his home represents 60% of the total value of the land, with the other block representing the remaining 40%.*

*Harrison enters a contract to sell that other block for \$550,000 in September 2020 (settling in November 2020) and continues to live on the block with his home on it.*

*Harrison incurs subdivision costs of \$50,000 and selling costs of \$18,000.*

### Sale as part of a business activity

*The profit made by Harrison is not business income since he did not sell his land in the course of carrying on a business.*

### Sale as part of an isolated profit-making transaction

*Although Harrison is not carrying on a business, the profit could still be income if Harrison purchased the land with the intention of making a profit and made the profit through carrying out an isolated business operation or commercial transaction.*

*However, in this case:*

- *Harrison purchased the property to be his home.*
- *He had no previous dealings in properties.*
- *The subsequent subdivision of the unimproved block is relatively straightforward.*
- *Harrison has not undertaken further activities to increase the value of the land.*

*These factors indicate that Harrison's profit was not made in the course of a business operation or commercial transaction.*

### Sale subject to capital gains tax

*Each block that results from the subdivision is a CGT asset. The subdivided block is taken to have been acquired at the time the original block was acquired. A CGT event (disposal of a CGT asset) happens when Harrison sells the subdivided block. The cost base of the original land is divided between the subdivided blocks on a reasonable basis. For more information, refer to Taxation Determination [TD 97/3](#) Income tax: capital gains: if a parcel of land acquired after 19 September 1985 is subdivided into lots ('blocks'), do Parts 3-1 and 3-3 of the Income Tax*

*Assessment Act 1997 treat a disposal of a block of the subdivided land as the disposal of part of an asset (the original land parcel) or the disposal of an asset in its own right (the subdivided block)?*

*As the land was held for more than 12 months, a 50% discount applies to the calculation of the net capital gain.*

Table 2: Calculation of net capital gain

|                                                                                                                                                                                                                                                                                                       |                  |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------|
| <i>Sale price of the subdivided block</i>                                                                                                                                                                                                                                                             | <i>\$550,000</i> |
| <i>Less: cost base</i> <ul style="list-style-type: none"><li>• <i>apportioned cost of land (<math>40\% \times \\$780,000 = \\$312,000</math>)</i></li><li>• <i>apportioned subdivision costs (<math>40\% \times \\$50,000 = \\$20,000</math>)</i></li><li>• <i>selling costs (\$18,000)</i></li></ul> | <i>\$350,000</i> |
| <b>Capital gain</b>                                                                                                                                                                                                                                                                                   | <b>\$200,000</b> |
| <i>Net capital gain to be included in Harrison's tax return (after 50% discount)*</i>                                                                                                                                                                                                                 | <i>\$100,000</i> |

*\* Harrison has no other capital gains or capital losses.*

### **GST consequences on the sale**

*Harrison's activities do not amount to an enterprise as they are not carried on in the form of a business or adventure or concern in the nature of trade and there has been no leasing or licencing of the property to another party. The land has also not been used in any other business activity – for example, as business premises. Therefore, GST does not apply to the sale.*

## Example 3 – property flipping (revenue)

*Amanita has a keen interest in investing in real property and has been researching the market and talking to experts in the industry to canvass suburbs that have good growth and potential for high resale value. Amanita intends to purchase, renovate and sell a property at a profit and repeat this activity if it is proven to be successful.*

*On 1 February 2020, after a few months of research, analysis and viewings, Amanita purchases an older property located in a high-growth suburb. The property is attractive to Amanita because it had defects that, if fixed, would increase its value significantly.*

*Prior to the purchase, Amanita obtained a valuation of the property and a feasibility report to determine an estimate of profitability. Amanita also secured a short-term bank loan to help fund the purchase of the property and the renovation costs.*

*Amanita purchases the property for \$950,000 with the intention of resale for a profit and she pays a price of \$950,000.*

*Amanita carries out the renovations required to, in her estimation, add sufficient value to the property to make it saleable at a profit. Amanita engages a marketing and sales agent who regularly keeps her updated with information about the demand for properties in and around the area.*

*On 31 December 2020, Amanita moves into the property while the renovations are in their final stages. The renovations are completed in February 2021, at a total cost of \$330,000.*

*On 1 May 2021 (15 months after the purchase date), the property is sold for \$2.2 million to an unrelated party. Amanita's total selling cost is \$110,000. Amanita uses the proceeds from the sale to purchase a second property to renovate and resell, again within 15 months. Subsequently, Amanita purchases a third property to renovate and resell, within 17 months.*

### Sale as part of a business activity

*Amanita's activities show factors that would be expected from a person carrying on a business of property renovation, including the clear intention to make a profit, undertaking market research, seeking professional advice, acquiring a business loan and carrying out the activities in a business-like manner. Although Amanita lived in the property, this does not change the fact that it was acquired in the course of her gaining or producing assessable income.*

*The repetition, regularity, and also the continuity of her profit making activities also indicates she is carrying on a business (that is, she purchased, renovated and sold the property within 15 months then repeated the activities).*

*The property was acquired for the purpose of resale in the ordinary course of Amanita's business and is therefore trading stock of the business. Profit from the sale of the property is assessable as ordinary income. This conclusion is reached irrespective of whether Amanita has an ABN or is registered for GST.*

Table 3: Calculation of net profit for income tax

|                                                                                                                                                                                                                     |                         |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------|
| <i>Sale price of the property - business income</i>                                                                                                                                                                 | <i>\$2,200,000</i>      |
| <i>Less: business expenses</i> <ul style="list-style-type: none"> <li><i>• acquisition price (\$950,000)</i></li> <li><i>• development costs (\$330,000)</i></li> <li><i>• selling costs (\$110,000)</i></li> </ul> | <i>\$1,390,000</i>      |
| <b><i>Amount to be reported as profit</i></b>                                                                                                                                                                       | <b><i>\$810,000</i></b> |

### **Sale as part of an isolated profit-making transaction**

*Amanita's activities go beyond an isolated profit-making transaction. She purchased another property with the intention of continuing to renovate and sell the properties for a profit which is evidence of the repetition, regularity and continuity of the activity. Therefore, the sale of the property is not the outcome of an isolated profit-making transaction. In this instance, the property is trading stock sold in the ordinary course of a business.*

### **Sale subject to capital gains tax**

*CGT provisions do not apply to assets that are held as trading stock. Consequently, the CGT discount, small business concessions and the main residence exemption do not apply to any income from the sale of the property.*

### **GST consequences on the sale**

*The activities undertaken by Amanita are an enterprise for GST purposes. Such activities are commercial or business-like in nature, despite Amanita living in the property for a period of time. While the renovation works were significant, they are not considered to be [substantial renovations](#) for GST purposes as substantial renovations require all, or substantially all, of the building to be removed or replaced. The renovations have not created [new residential premises](#). Therefore, the sale of the property is not a taxable supply, it is input taxed. GST does not apply on the sale and Amanita is not entitled to any GST credits on the acquisition, development and selling costs.*

## Example 4 – property flipping (capital)

*Jill lives with her teenage daughter, who she wants to enrol into Adelaide High School. However, they are living outside the designated zone, so are not eligible.*

*Jill decides to purchase a property within the designated zone and live in it as her main residence, so that her daughter will be eligible to be enrolled into the school.*

*On 1 July 2018, Jill purchases a residential property in Brompton which is within the designated zone with the intention of renovating the property and using it as her main residence. She purchases the property at a reduced price of \$450,000 due to its age and significant repairs required.*

*Jill undertakes extensive renovations to the property to meet her living requirements. She carries out most of the renovations herself on weekends and only uses qualified tradespeople where necessary.*

*The total cost of renovations is \$160,000. Jill funds the purchase and renovations by using the equity in her home to secure a loan and also borrows money from family and friends.*

*In August 2019, Jill is made redundant by her employer and her husband becomes ill. Jill is no longer able to afford the loan repayments and lists the renovated property for sale. During the time the renovations were being completed, house prices in Brompton started to soar due to increased demand for properties in the area. On 1 October 2019, Jill sells the property in Brompton for \$850,000. The total holding and selling costs amount to \$40,000.*

*Jill does not use the property as her main residence during the period of her ownership of the property.*

### **Sale as part of a business activity**

*Jill acquired the property for the purpose of using it as her main residence. She had no intention of making a profit at the time of acquisition and this intention did not change. Her activities do not show any of the factors that would be expected from a person carrying on a business.*

### **Sale as part of an isolated profit-making transaction**

*The sale of the property is not an isolated profit-making transaction because Jill's intention at the time of acquisition was to use the property as her main residence and not to make a profit and this intention did not change. There are also no factors to suggest Jill's activities amount to a business operation or commercial transaction.*

### **Sale subject to capital gains tax**

*The sale of the property is considered to be a disposal of a CGT asset. Any costs incurred in purchasing, holding, developing and selling the land will need to be considered in working out the amount of capital gain made. As the property was held for more than 12 months, Jill can claim a 50% discount on the capital gain made. The main residence exemption is not available as Jill did not use the dwelling as her main residence.*



Table 4: Calculation of net capital gain

|                                                                                                                                                                    |                  |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------|
| <b>Sale price</b>                                                                                                                                                  | <b>\$850,000</b> |
| <b>Less: cost base</b> <ul style="list-style-type: none"> <li>• purchase price (\$450,000)</li> <li>• renovation, holding and selling costs (\$200,000)</li> </ul> | <b>\$650,000</b> |
| <b>Capital gain</b>                                                                                                                                                | <b>\$200,000</b> |
| <b>Net capital gain after 50% CGT discount*</b>                                                                                                                    | <b>\$100,000</b> |

\* Jill did not have any other capital gains or losses.

### **GST consequences on the sale**

*The activities undertaken by Jill are not an enterprise for GST purposes. Such activities are not commercial or business-like in nature and therefore there is no requirement to register for GST. The sale of the property is not considered a taxable supply for GST purposes and therefore GST does not apply.*

## Example 5 – mere realisation of a capital asset (capital)

On 1 March 2017, Blewit purchases a property in the Adelaide Hills for \$800,000 from a private seller. The property is 10,000 square metres in size and has an existing dwelling. Blewit uses the dwelling and surrounding 1,000 square metres of land as his main residence. He also operates a horse training business on 5,000 square metres of the property which is fenced off. The business generates approximately \$60,000 income per year. Blewit is not registered nor required to be registered for GST.

The remaining 4,000 square metres is left as vacant land. This vacant land is valued at \$200,000 which is 25% of the purchase price of the whole property.

In July 2021, due to growing debt and ill health, Blewit decides to subdivide and sell off the 4,000 square metres of vacant land. His intention of using the property as his main residence and to conduct the horse training business has not changed.

Blewit does not have any experience in land subdivision. He engages construction contractors, engineers and other professionals and pays a flat fee for the management of the subdivision activities which includes planning, development application, construction works and marketing the blocks. Construction of water and sewerage facilities to the relevant blocks are completed and fencing is erected on all boundaries to meet council requirements. Blewit does not undertake any other activities to further develop the blocks.

The vacant land is subdivided into 4 separate blocks and by 30 June 2022, Blewit sells all 4 vacant subdivided lots for a total of \$2.8 million. The total subdivision cost is \$150,000. Blewit's intention does not change to profit-making at any time.

### Sales as part of a business activity

The sale of the subdivided blocks represents the realisation of a capital asset and not the conduct of a business to generate income. This conclusion is based on the fact that Blewit continued to hold the land for use as his main residence and to conduct the business of horse training. Blewit had no intention of reselling the property for a profit when he purchased it. Apart from the activities necessarily undertaken to obtain approval for subdivision of the property, there was nothing to suggest a change in the purpose or object for which the property was held.

### Sales as part of an isolated profit-making transaction

Although Blewit is carrying on a business of horse training, the profit from the sale of property would not be considered income of that business. However, if Blewit purchased the land with the intention of making a profit from the sale and made the profit through carrying out an isolated business operation or commercial transaction, the associated profit could be assessable as income.

In this case:

- Blewit purchased the property to be his home and to operate a horse training business.
- He had no previous dealings or experience in property development.
- The subdivision of the unimproved block was relatively small scale and of low complexity.
- Apart from undertaking activities to obtain council approval for subdivision of the property, no further activities were undertaken to increase the value of the land.

These factors indicate that Blewit's profit is not made in the course of a business operation or commercial transaction.

## Sales subject to capital gains tax

A CGT event happened when the land sales were made in the 2021–22 income year. Any costs incurred in purchasing, holding, developing and selling the land will form part of the cost base for working out the capital gain. The cost base of the original land is divided between the subdivided blocks on a reasonable basis. As the land was held for more than 12 months, Blewit can claim a 50% discount on the capital gains. The main residence exemption does not apply to the subdivided lots that are sold.

Table 5: Calculation of net capital gain

|                                                                                                                                                                                             |                    |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------|
| <i>Sale price of all 4 vacant subdivided lots*</i>                                                                                                                                          | <i>\$2,800,000</i> |
| <i>Less: cost base of all 4 vacant subdivided lots</i> <ul style="list-style-type: none"><li><i>• purchase price (\$200,000)**</i></li><li><i>• subdivision costs (\$150,000)</i></li></ul> | <i>\$350,000</i>   |
| <b>Capital gain</b>                                                                                                                                                                         | <b>\$2,450,000</b> |
| <i>Net capital gain to be included in Blewit's tax return (after 50% discount)^</i>                                                                                                         | <i>\$1,225,000</i> |

\* Each block that resulted from the subdivision is a separate CGT asset and any capital gain or loss need to be calculated separately. The table provides a sum for all 4 vacant blocks of land.

\*\* The purchase price of the vacant land was valued at 25% of the \$800,000.

^ Blewit did not have any other capital gains or losses.

## GST consequences on the sales

Blewit is not considered to be carrying on an enterprise of property development or in land sales. The sale of the separate blocks as the mere realisation of a capital asset would not be included in Blewit's GST turnover. Therefore, Blewit would remain below the GST registration turnover threshold and could remain unregistered for GST.

If Blewit remains unregistered, the sales would not be taxable supplies, GST does not apply and no GST credits are available on items he purchased related to the subdivision and sales.

## **Example 6 – beyond mere realisation of a capital asset (revenue)**

*On 1 August 2019, Ruby purchases a residential investment property for \$1.2 million. The property has a land area of 5,000 square metres with an existing dwelling which is tenanted until the end of October 2019. Ruby's intention is to subdivide the land and sell the lots for a profit.*

*Ruby engages services from several professionals and enters into a development agreement with a property developer. Under the development agreement, Ruby is to have oversight of the development and be charged a development fee. The development application submitted with the council involves subdividing the land into 5 lots and undertaking the minimum works required by council which include providing water, sewerage and adding fencing to all lots. In addition, the development application seeks approval for the construction of footpaths, fencing to boundaries and infrastructure for the fibre optic internet connection.*

*The development application is approved and shortly after the tenant vacates the property. The dwelling is demolished and subdivision works commence. Ruby has oversight of the development, is involved in the decision-making at every stage and ensures that the subdivision is completed according to the budget and plan.*

*On 1 July 2020, the subdivision is completed. By 1 January 2021, all residential lots are sold for a total of \$5.5 million to unrelated parties, with subdivision and selling costs amounting to \$2.2 million and \$110,000 respectively. The initial purchase and subdivision costs are funded by a short-term investment bank loan.*

*There is no agreement between Ruby and any of the purchasers to apply the margin scheme in respect of the sales.*

### **Sales as part of a business activity**

*Ruby is not carrying on a business of property development or land sales as her activities do not show the relevant indicators such as repetition, regularity and continuity. Ruby had the intention of holding the investment property for the purpose of subdivision and sale of the individual lots for profit and carried out the subdivision in a business-like manner (that is, she had oversight of the operations and was the decision-maker at every stage).*

### **Sales as part of an isolated profit-making transaction**

*The sales of the residential lots were part of an isolated profit-making transaction. This conclusion is based on factors showing the transaction amounted to a business operation or commercial transaction. Ruby had planned, organised and carried out the subdivision in a business-like manner which was directed at making a profit from the sale of the residential lots.*

*The subdivided residential lots were not trading stock as they were not sold in the ordinary course of a business. As this is 'beyond mere realisation' of a capital asset, the net profit is included in Ruby's*

income tax return and any capital gain is effectively reduced by any amount of net profit included in her return.

Table 6: Calculation of net profit for income tax

|                                                                                                                                                                                                                                                  |                           |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------|
| <i>Sale price of the property (\$5 million net of GST) – ordinary income</i>                                                                                                                                                                     | <i>\$5,000,000</i>        |
| <i>Less:</i> <ul style="list-style-type: none"> <li><i>• acquisition price (\$1.2 million – no GST)</i></li> <li><i>• development costs (\$2 million – GST exclusive)</i></li> <li><i>• selling costs (\$100,000 – GST exclusive)</i></li> </ul> | <i>\$3,300,000</i>        |
| <b><i>Amount to be reported as profit</i></b>                                                                                                                                                                                                    | <b><i>\$1,700,000</i></b> |

### Sales subject to capital gains tax

The sale of the subdivided lots is considered to be beyond the mere realisation of a capital asset and therefore will not be subject to CGT. The CGT discount, small business concessions and the main residence exemption do not apply to any income from the sale of the property.

### GST consequences on the sales

The activities undertaken by Ruby are an enterprise for GST purposes. This conclusion is based on factors showing that Ruby's activities were in a business-like form or an adventure or concern in the nature of trade. Ruby had planned, organised and carried out the subdivision in a business-like manner which was directed at making a profit from the sale of the residential lots.

Ruby will be required to be [registered for GST](#) from 1 August 2019 because:

- the supply of the vacant residential lots would be included in Ruby's turnover calculation as they were not sales of capital assets
- the projected turnover from the supply of the residential lots (that is, the value of supplies likely to be made within 12 months) was likely to exceed the [GST turnover threshold](#).

Table 7: Calculation of net GST payable

|                                                                                    |                         |
|------------------------------------------------------------------------------------|-------------------------|
| <i>Total GST liability* on the sale of the lots (\$5.5 million)</i>                | <i>\$500,000</i>        |
| <i>Less: GST credits claimed on subdivision and selling costs (\$2.31 million)</i> | <i>\$210,000</i>        |
| <b><i>Net GST payable</i></b>                                                      | <b><i>\$290,000</i></b> |

\* Ruby may be required to provide a notification to the purchasers of the [GST at settlement](#) to be withheld and paid by them to the ATO.

## Example 7 – land acquired for multiple purposes

On 1 April 2018, Dean Developments Co as trustee for Fig Tree Grove Trust (the Trustee) purchases a vacant block of land from a private seller for \$5 million. The Fig Tree Grove Trust and the Trustee are part of a wider group of related entities.

On this date, the Trust holds an ABN and voluntarily registers for GST.

The Trustee purchases the land with the intention to subdivide it into smaller lots, develop commercial properties for lease and potentially sell the properties in the future under the right market conditions. Upon completion of construction, the commercial properties are to be leased until an opportunity arises to sell at a price that would maximise profits.

Prior to purchasing the land, the Trustee undertook extensive market research, sought advice from professionals within the property industry and obtained a feasibility analysis to evaluate the profitability and practicality of developing the land.

The Trustee obtained short-term finance to fund the purchase of the land. The loan application outlined the different commercial enterprises the land could be used for, including the sale and leasing of the commercial properties.

Dean is the sole director and shareholder of Dean Developments Co (the Trustee Company). Dean is an experienced businessman and has a history of working with others, using various business structures, including companies and trusts to purchase land in prime locations to build commercial properties, securing leases and then selling the properties for a profit. Dean makes all the decisions of the Trustee Company.

Multiple options are considered by the Trustee on how to deal with the land. There is no clear and specific plan to sell the properties at a particular point in time. Prior to the construction of the properties, the Trustee receives a number of offers to purchase the undeveloped land. The Trustee declines these offers as they do not wish to merely realise the value of the land but rather maximise their profits by developing, leasing and potentially selling the properties. The Trustee is willing to hold the land, develop and rent the properties until the conditions are right for sale at maximum profit.

The development approval is granted on 30 June 2018. The total cost to develop the properties is \$3.3 million.

Prior to the completion of the construction, the Trustee secures leases for 70% of the commercial properties, with possession to take place after construction is complete. The purposes for profit has not changed.

On 1 January 2019, the construction of the commercial properties is completed and the Trustee obtains a valuation, which indicates the properties are valued at a total of \$7 million.

Property prices skyrocketed in the area due to recent development projects announced by the local government. As a result, the Trustee receives numerous offers to purchase the properties and by 30 March 2019, all the properties are sold for a total of \$11 million (GST-inclusive) to unrelated parties. There is no agreement to apply the margin scheme to the sale or sell the leased properties as a GST-free going concern.

### Sales as part of a business activity

All of the factors and circumstances of the purchase and sale must be objectively considered. This includes the behaviour and previous activities of the taxpayer and the person making the decisions (controlling mind).

*The Trustee purchased the land to build commercial properties for lease, but also considered selling the properties under the right market conditions. From an objective consideration of the facts surrounding the transaction, it is concluded that the land was purchased and held for more than one purpose, being to build for lease as the dominant purpose and build to sell at a profit as a significant purpose.*

*The sales are considered to be the result of a business activity. The Trustee had the intention of developing the land and selling it for a profit and undertook steps in a business-like way to ensure the development was commercially viable.*

*Dean, as director and sole shareholder of the Trustee, is considered to be the controlling mind in the purchase, development and sale activities of the Trust. His experience and history of purchasing, developing and selling land is a factor attributable in determining that the Trust is carrying on a business of property development.*

*Therefore, profit from the sale of the properties is assessable as ordinary income and the properties are considered trading stock of the Trust's business.*

Table 8: Calculation of net profit for income tax

|                                                                                                                                                                                                                                                        |                           |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------|
| <i>Sale price of the property (\$10 million net of GST) - business income</i>                                                                                                                                                                          | <i>\$10,000,000</i>       |
| <i>Less: business expenses</i> <ul style="list-style-type: none"> <li><i>• acquisition price (\$5 million no GST)</i></li> <li><i>• development costs (\$3 million net of GST)</i></li> <li><i>• selling costs (\$1 million net of GST)</i></li> </ul> | <i>\$9,000,000</i>        |
| <b><i>Amount to be reported as profit</i></b>                                                                                                                                                                                                          | <b><i>\$1,000,000</i></b> |

## **Sales as part of an isolated profit-making transaction**

*The Trust is carrying on a business of property development in association with Dean as the controlling mind of the Trustee Company. The sales are considered to be the result of an on-going business activity and therefore beyond an isolated profit-making transaction.*

## **Sales subject to capital gains tax**

*The CGT provisions do not apply to assets that are held as trading stock. Further, concessions such as the CGT discount, small business concessions and main residence exemption do not apply to any income from the sale of these properties.*

## **GST consequences on the sales**

*The activities undertaken by the Trustee are an enterprise for GST purposes.*

*As the Trust is already registered for GST, the supplies of the commercial properties by way of lease and on the sale of the properties (which occurred in the March 2019 quarter) will be subject to GST.*



Table 9: Calculation of net GST payable on sale of the properties

|                                                                      |                    |
|----------------------------------------------------------------------|--------------------|
| <i>Total GST liability* on the sale of the lots (\$11 million)</i>   | <i>\$1,000,000</i> |
| <i>Less: GST credits claimed on construction and selling costs**</i> | <i>\$400,000</i>   |
| <b>Net GST payable</b>                                               | <b>\$600,000</b>   |

\* The properties have not been sold using the margin scheme or as a GST-free going concern.

\*\* GST credit claim – GST paid on development and selling costs is \$400,000 (\$300,000 + \$100,000), GST credits are recoverable if lease is commercial and sale of premises is taxable.

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