

## **Factsheet – Margin Scheme, GST application, CGT application. Subdivisions.**

The **Margin Scheme** in Australia, administered by the Australian Taxation Office (ATO), is a GST (Goods and Services Tax) accounting method designed to reduce the GST liability on the sale of certain properties, particularly real estate. Here's a concise summary:

1. **Purpose:** The Margin Scheme allows sellers to pay GST only on the **margin** (the difference between the sale price and the cost base of the property), rather than on the full sale price.
2. **Applicability:** It applies to the sale of:
  - **Real property** (e.g., land, buildings) that was not purchased new as part of a GST-taxable supply.
  - Properties where the seller did not claim full GST credits on the purchase.
3. **Calculation:**
  - The margin is generally the difference between the **sale price** and either:
    - The **original purchase price**, or
    - The **property's value as of 1 July 2000** (if applicable).
  - GST is then calculated as **1/11 of the margin**.
4. **Eligibility:** To use the scheme:
  - The sale must be a **taxable supply**.
  - Both the buyer and seller must agree in writing to apply the Margin Scheme.
5. **Benefits:**
  - Reduces GST liability for sellers.
  - Can make properties more affordable for buyers, as GST is lower.
6. **Exclusions:** The scheme cannot be used for:
  - New residential properties (sold as part of a business).
  - Properties where the seller claimed full GST credits on the purchase.
7. **Documentation:** Sellers must keep records to substantiate the margin calculation.

The Margin Scheme is particularly useful for developers and investors dealing with second-hand properties or land. Always consult the ATO or a tax professional for specific advice.

if we buy an old home on a property and then subdivide the property keeping the old house intact are we eligible for the margin scheme

Yes, you may be eligible to use the **Margin Scheme** for the sale of the subdivided lots, provided certain conditions are met. Here's a concise explanation:

1. **Eligibility for Margin Scheme:**

- The Margin Scheme applies to the sale of **real property** (e.g., land) that is not considered a **new residential property**.
- Since you are keeping the old home intact and subdividing the land, the subdivided lots (excluding the old home) may qualify for the Margin Scheme, as they are not considered "new" residential properties.

2. **Key Conditions:**

- The old home must **not be substantially renovated or rebuilt** (as this could make it a "new" property, disqualifying it from the scheme).
- The subdivided land must be sold as **vacant land** or with the old home remaining in its original condition.
- You must **not have claimed full GST credits** on the purchase of the property (if GST was included in the purchase price).

3. **Calculation:**

- The margin is the difference between the **sale price** of each subdivided lot and the **cost base** (e.g., the proportionate purchase price of the original property or its value as of 1 July 2000, if applicable).
- GST is calculated as **1/11 of the margin**.

4. **Agreement with Buyer:**

- Both you (the seller) and the buyer must agree in writing to apply the Margin Scheme.

5. **Exclusions:**

- If you build new homes or substantially renovate the old home on the subdivided lots, those lots may no longer qualify for the Margin Scheme, as they could be considered **new residential properties**.

6. **Documentation:**

- Keep detailed records of the original purchase, subdivision costs, and sales to substantiate the margin calculation.

Always consult the ATO or a tax professional to ensure compliance with GST rules and confirm eligibility for the Margin Scheme in your specific circumstances.

## Clarification:

### Key Point:

- **Subdivided land** is generally **not considered "new" property** for GST purposes, **unless** it has been significantly altered or developed (e.g., by building new structures or substantially renovating existing ones).

### In Your Scenario:

#### 1. Old Home Intact:

- If you keep the old home **unchanged** (i.e., no substantial renovations or rebuilding), the old home itself is **not considered "new"**.
- The **land around the old home** that you subdivide into new lots is also **not considered "new"**, provided you are only subdividing and not developing the land (e.g., building new homes or infrastructure).

#### 2. Subdivided Lots:

- The subdivided lots are **new titles**, but they are **not automatically "new residential properties"** for GST purposes.
- They are treated as **existing property** because the land itself has not been significantly altered or developed beyond the subdivision process.

#### 3. Margin Scheme Eligibility:

- Since the subdivided lots are **not "new residential properties"**, you can apply the **Margin Scheme** to the sale of these lots, provided:
  - You did not claim full GST credits on the original purchase of the property.
  - You and the buyer agree in writing to use the Margin Scheme.

### Why This Matters:

- If you were to **build new homes** or **substantially renovate the old home** on the subdivided lots, the lots would then be considered **"new residential properties"**, and the Margin Scheme would **not apply** to those lots.

### Example:

- You buy an old property with a house and subdivide the land into 3 lots:
  - **Lot 1:** Contains the old home (unchanged).
  - **Lot 2 and Lot 3:** Vacant land (no new structures or development).
- In this case:
  - **Lot 1:** The old home is not "new," so the Margin Scheme could apply if sold.
  - **Lot 2 and Lot 3:** The vacant land is not "new," so the Margin Scheme could apply if sold.

However, if you build a new house on Lot 2, then Lot 2 becomes a **"new residential property"**, and the Margin Scheme **cannot** be used for its sale.

## Conclusion:

Subdivided land is **not inherently "new property"** for GST purposes unless it is developed (e.g., by building new homes). As long as the old home remains intact and the subdivided lots are not developed, the Margin Scheme can apply to the sale of those lots.

Always consult the ATO or a tax professional to confirm your specific situation!

now if we sell the old house do we have to pay gst

Whether you need to **pay GST** when selling the old house depends on several factors, including your GST registration status, the nature of the property, and how it was used. Here's a concise breakdown:

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### 1. GST Registration:

- If you are **registered for GST**, you may need to account for GST on the sale of the old house if it is considered a **taxable supply**.
- If you are **not registered for GST**, you generally do not charge or remit GST.

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### 2. Nature of the Property:

- **Residential Property:** The sale of **existing residential premises** (e.g., an old home) is generally **input-taxed**, meaning:
  - **No GST** is charged on the sale.
  - You **cannot claim GST credits** for expenses related to the property.
- **Commercial Property:** If the old house was used for commercial purposes (e.g., a rental property or business), the sale may be subject to GST.

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### 3. Use of the Property:

- If the old house was used as a **private residence** and not for business purposes, the sale is **not subject to GST**.
- If the property was used for **business purposes** (e.g., rental income or development), GST may apply unless it qualifies as a **going concern** or is input-taxed.

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### 4. Subdivision and Development:

- If you subdivided the land but kept the old house intact and did not substantially renovate or develop it, the sale of the old house is likely **input-taxed** (no GST).

- If you substantially renovated or rebuilt the old house, it may be considered **new residential premises**, and GST may apply.
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## 5. Margin Scheme:

- If the old house is sold as part of a taxable supply and you are registered for GST, you may be able to use the **Margin Scheme** to calculate GST on the sale (if eligible).
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## Summary:

- If the old house is **residential** and was **not used for business purposes**, the sale is **input-taxed**, and **no GST** is payable.
- If the old house was used for **business purposes** or is considered **new residential premises**, GST may apply.
- Always confirm your specific circumstances with the ATO or a tax professional.

we are registered for gst and when we purchased the old house and land there was no gst because residential property is exempt from gst, we have subdivided the land and kept the old house intact and have rented it for a period of time, we are now selling the house, we want to know if there is gst payable, the house has always been used as a private residence

Thank you for providing these details. Based on your situation, here's a clear explanation of whether **GST is payable** on the sale of the old house:

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## Key Facts:

1. **GST Registration:** You are registered for GST.
  2. **Original Purchase:** The old house and land were purchased as **residential property**, and no GST was included in the purchase price (as residential property is **input-taxed**).
  3. **Subdivision:** You subdivided the land but kept the old house **intact** (no substantial renovations or rebuilding).
  4. **Use of the House:** The old house has always been used as a **private residence** (even though it was rented for a period, it was still residential in nature).
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## GST Treatment of the Sale:

- The sale of the old house is **input-taxed** because:
  - It is **residential premises**.
  - It has not been **substantially renovated** or rebuilt, so it is not considered **new residential premises**.

- It has been used primarily as a **private residence** (even though it was rented, this does not change its residential status).
  - **Input-taxed sales** mean:
    - **No GST** is charged on the sale.
    - You **cannot claim GST credits** for any expenses related to the property.
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## Renting the House:

- The fact that you rented the house for a period does not change its status as **residential premises**. Renting out a residential property does not make it a **commercial property** for GST purposes.
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## Subdivided Land:

- The subdivided land (if sold separately) may have different GST implications, but the old house itself remains **input-taxed** as long as it is sold as residential premises.
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## Conclusion:

- **No GST is payable** on the sale of the old house, as it is considered **input-taxed residential property**.
  - You do not need to charge GST to the buyer or remit GST to the ATO for this sale.
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## Important Note:

- Ensure that the sale is clearly documented as **residential property** and that no substantial renovations or rebuilding have occurred. If the property had been significantly renovated or rebuilt, it could be considered **new residential premises**, and GST would apply.

Always consult the ATO or a tax professional to confirm your specific circumstances.

how does your answer differ if we purchased the old house as an investment property which we rent out

If you purchased the old house **as an investment property** (i.e., specifically to rent out) and have been renting it out, the GST treatment of the sale **could differ** depending on the specific circumstances. Here's how the analysis changes:

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### Key Facts:

1. **GST Registration:** You are registered for GST.
  2. **Original Purchase:** The old house and land were purchased as an **investment property** (for rental purposes).
  3. **Use of the Property:** The house has been rented out as a **residential property** (not commercial).
  4. **Subdivision:** You subdivided the land but kept the old house **intact** (no substantial renovations or rebuilding).
  5. **Sale of the House:** You are now selling the old house.
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### GST Treatment of the Sale:

1. **Residential Property Used for Rent:**
    - The sale of **residential premises** that are used for **rental purposes** (as opposed to being new or substantially renovated) is generally **input-taxed**.
    - This means:
      - **No GST** is charged on the sale.
      - You **cannot claim GST credits** for expenses related to the property.
  2. **Investment Property vs. Private Residence:**
    - Even though the property was purchased as an **investment property** and rented out, it is still considered **residential premises** (not commercial property) because it was used for residential rental purposes.
    - As long as the property has not been **substantially renovated** or rebuilt, it is not considered **new residential premises**, and the sale remains **input-taxed**.
  3. **Subdivided Land:**
    - The subdivided land (if sold separately) may have different GST implications, but the old house itself remains **input-taxed** as long as it is sold as residential premises.
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### Key Difference from Previous Answer:

- In your original scenario, the house was used as a **private residence**, and the sale was clearly **input-taxed**.
- In this scenario, the house was used as an **investment property** (for rental purposes), but the GST treatment **remains the same** because:
  - It is still **residential premises**.

- It has not been **substantially renovated** or rebuilt, so it is not considered **new residential premises**.
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### Conclusion:

- **No GST is payable** on the sale of the old house, as it is considered **input-taxed residential property**.
  - You do not need to charge GST to the buyer or remit GST to the ATO for this sale.
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### Important Considerations:

- If you had **substantially renovated** or rebuilt the old house, it could be considered **new residential premises**, and GST would apply to the sale.
- If the property had been used for **commercial purposes** (e.g., as a business office or hotel), the sale might be subject to GST.

Always consult the ATO or a tax professional to confirm your specific circumstances, as the GST treatment can vary depending on the details of the property's use and development.

is there any capital gains tax payable

Yes, **Capital Gains Tax (CGT)** may be payable when you sell the old house, depending on several factors. Here's a concise explanation of how CGT applies in your situation:

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### Key Facts:

1. **Property Use:** The old house was purchased as an **investment property** and rented out.
  2. **Ownership Period:** The property was held for a period of time (not your main residence).
  3. **Subdivision:** You subdivided the land but kept the old house intact.
  4. **Sale:** You are now selling the old house.
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### CGT Treatment:

1. **CGT Event:**
  - Selling the old house triggers a **CGT event**.
  - You will need to calculate the **capital gain** or **capital loss** on the sale.



## 2. Calculation of Capital Gain:

- **Capital Gain = Sale Price - Cost Base**

- **Sale Price:** The amount you receive from selling the house.
- **Cost Base:** Includes the original purchase price, incidental costs (e.g., stamp duty, legal fees), and costs of owning, maintaining, or improving the property (e.g., subdivision costs, if applicable).

## 3. Discount Method:

- If you owned the property for **more than 12 months**, you may be eligible for the **CGT discount**:
  - **50% discount** for individuals and trusts.
  - **33.33% discount** for superannuation funds.
- This reduces the taxable capital gain.

## 4. Main Residence Exemption:

- Since the property was used as an **investment** (not your main residence), the **main residence exemption** does not apply.
- If the property was **partially used as your main residence**, a partial exemption may apply.

## 5. Subdivision Impact:

- If you subdivided the land, the **cost base** of the old house may need to be adjusted to reflect the value of the subdivided land separately.
- This ensures that the capital gain is calculated only for the portion of the property being sold (the old house).

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## Example Calculation:

- **Purchase Price:** \$500,000 (including incidental costs).
- **Subdivision Costs:** \$50,000 (added to the cost base).
- **Sale Price:** \$700,000.
- **Cost Base:** 550,000(550,000(500,000 + \$50,000)).
- **Capital Gain:** 700,000–700,000–550,000 = \$150,000.
- **CGT Discount:** If eligible, the taxable capital gain is reduced to 75,000(5075,000(50150,000)).

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## Reporting and Paying CGT:

- The capital gain must be reported in your **tax return** for the financial year in which the sale occurs.
- The gain is included in your **taxable income** and taxed at your marginal tax rate.

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## Key Considerations:

- **Record-Keeping:** Keep detailed records of the purchase, subdivision costs, and sale to accurately calculate the cost base and capital gain.
  - **Professional Advice:** Consult a tax professional or accountant to ensure accurate calculations and compliance with CGT rules.
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## Conclusion:

- **CGT is payable** on the sale of the old house because it was used as an investment property.
- The amount of CGT depends on the capital gain, your eligibility for the CGT discount, and your marginal tax rate.

Always seek professional advice to confirm your specific CGT obligations!

do we pay capital gains tax on our subdivision lots

Whether you need to pay **Capital Gains Tax (CGT)** on the sale of your **subdivision lots** depends on several factors, including the purpose of the subdivision, how the land was used, and whether the lots are considered **capital assets** or **trading stock**. Here's a detailed explanation:

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## Key Factors to Consider:

1. **Purpose of the Subdivision:**
  - If the subdivision was done as part of a **profit-making business** (e.g., you are a property developer), the lots may be considered **trading stock**, and the profits may be treated as **ordinary income** (not capital gains).
  - If the subdivision was done as part of a **capital investment** (e.g., you held the land for long-term appreciation), the lots are likely considered **capital assets**, and CGT will apply.
2. **Use of the Land:**
  - If the land was used for **private purposes** (e.g., as your main residence or for long-term investment), the sale of the subdivided lots may trigger CGT.
  - If the land was used for **business purposes** (e.g., as part of a development business), the profits may be treated as **ordinary income**.
3. **Main Residence Exemption:**
  - If the subdivided land includes your **main residence**, you may be eligible for a **partial or full CGT exemption** on the portion of the land used as your main residence (up to 2 hectares).
4. **Small Business CGT Concessions:**
  - If the land was used in a **small business**, you may be eligible for **small business CGT concessions**, which can reduce or eliminate CGT liability.

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## CGT Calculation for Subdivision Lots:

If the lots are considered **capital assets**, here's how to calculate CGT:

1. **Determine the Capital Proceeds:**
  - This is the **sale price** of each subdivided lot.
2. **Calculate the Cost Base:**
  - The **cost base** includes:
    - The **purchase price** of the original land.
    - **Incidental costs** (e.g., stamp duty, legal fees).
    - **Subdivision costs** (e.g., surveying, council fees, construction of infrastructure).
  - The cost base must be **apportioned** across the subdivided lots based on their relative value.
3. **Calculate the Capital Gain:**
  - **Capital Gain = Capital Proceeds - Cost Base**
4. **Apply the CGT Discount (if eligible):**
  - If you held the land for **more than 12 months**, you may be eligible for the **50% CGT discount** (for individuals and trusts) or the **33.33% discount** (for superannuation funds).
  - Companies are **not eligible** for the general CGT discount but may qualify for **small business CGT concessions**.
5. **Include the Net Capital Gain in Your Taxable Income:**
  - Add the net capital gain to your taxable income and pay tax at your **marginal tax rate** (for individuals) or the **corporate tax rate** (for companies).

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## Example Calculation:

- You purchased a block of land for **\$500,000**.
- You subdivided the land into 3 lots and sold them for **\$300,000 each**.
- Subdivision costs were **\$100,000**.
- **Cost Base per Lot:**  $(500,000 + 100,000) \div 3 = \$200,000$ .
- **Capital Gain per Lot:**  $300,000 - 200,000 = \$100,000$ .
- **CGT Discount (50%):**  $100,000 \times 50\% = 50,000$  taxable capital gain per lot\*\*.
- **Total Taxable Capital Gain:**  $50,000 \times 3 = 150,000$ \*\*.

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## Key Considerations:

1. **Trading Stock vs. Capital Assets:**
  - If the lots are considered **trading stock**, the profits are treated as **ordinary income** and taxed at your marginal tax rate.

- If the lots are considered **capital assets**, CGT applies.
  - 2. **Main Residence Exemption:**
    - If the subdivided land includes your **main residence**, you may be eligible for a partial or full CGT exemption.
  - 3. **Small Business CGT Concessions:**
    - If the land was used in a **small business**, you may qualify for concessions such as the **50% active asset reduction, retirement exemption, or 15-year exemption**.
  - 4. **Record-Keeping:**
    - Keep detailed records of the purchase, subdivision costs, and sale of each lot to accurately calculate the cost base and capital gain.
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## Conclusion:

- If the subdivided lots are considered **capital assets**, you will need to pay **CGT** on the sale.
- If the lots are considered **trading stock**, the profits are treated as **ordinary income**.
- Always consult a tax professional to determine the correct tax treatment and optimize your tax outcome.