

Tax implications of a biobanking agreement

There are likely to be tax implications for landowners who enter into a biobanking agreement under the BioBanking Scheme.

This guide covers income tax (including capital gains tax) and the goods and services tax (GST). It outlines how taxation law might affect you. However, the exact manner in which taxation laws will affect you depends on your individual circumstances.

This advice relies heavily on a sound understanding of the BioBanking Scheme. For all the necessary background information, please consult the *Guide to establishing a biobank site*, which can be downloaded from the biobanking website landowners' page.

All landowners are likely to be subject to income tax, including capital gains tax, but not all will be subject to GST. The Australian Taxation Office (ATO) has provided rulings on these taxes. Whether or not GST applies will depend on the nature of your involvement in the BioBanking Scheme. If you are entering the scheme as part of your business and you are registered for GST purposes you may need to comply with GST rules.

If you are entering the scheme as a private landowner who wants to participate in BioBanking for altruistic reasons, you may not need to comply with GST rules.

Seek independent legal and taxation advice

We strongly advise you to seek legal and/or taxation advice before deciding to enter into a biobanking agreement or before making any decisions based on this information.

The information contained here needs to be taken as guidance rather than personalised legal or taxation advice.

Every effort has been made to ensure this information is accurate at the time of publication. However, it is intended as a guide only and does not replace the need for independent advice.

Note Figures used in the examples are general in nature and do not represent real scenarios. You should obtain independent valuation advice where market values are required.

Australian Taxation Office rulings

The Department of Environment, Climate Change and Water (DECCW), which administers the Biobanking Scheme, sought two rulings from the ATO to provide a foundation for basic guidance to biobanking participants.

When reviewing how taxation law might affect you, refer to:

- the private binding ruling on GST (authorisation number 1011357060386)
- the class ruling on income tax including capital gains tax (CR2009/77).

These rulings cover those landowners who are undertaking an enterprise or business, or otherwise hold their land as a capital asset. These rulings do not consider landowners who hold their land on revenue account.

Capital gains tax and conservation covenants

The Commonwealth Department of Environment, Water, Heritage and the Arts has ruled that a biobanking agreement is a conservation covenant. When you enter into a conservation covenant, a capital gains tax event occurs. Therefore, entering into a biobanking agreement may result in a capital gain or loss arising. Additionally, the disposal of your biodiversity credits is a capital gains tax event so when you sell or retire your biodiversity credits, a capital gain or loss may arise.

Capital gain or loss on land value on signing the agreement

The method for determining a capital gain or loss on entering into the biobanking agreement is set out in section 104-47 of the *Income Tax Assessment Act 1997*.

If you make a capital gain on entering into the biobanking agreement, you may be eligible for certain capital gains tax concessions, including:

- capital gains tax discounts
- an exemption for landowners who acquired their land prior to 20 September 1985
- small business capital gains tax concessions if the land is an active business asset.

You make a capital gain if the proceeds from entering into the biobanking agreement are more than the cost-base of the land that is apportioned to the biobanking agreement. You make a capital loss if the proceeds from entering into the biobanking agreement are less than the reduced cost-base of the land that is apportioned to the biobanking agreement.

$$\text{Capital gain (or loss)} = \text{capital proceeds} - \text{cost-base (or reduced cost-base) of land apportioned to the biobanking agreement}$$

Capital proceeds

Your capital proceeds from entering into the biobanking agreement are the value of the biodiversity credits created by the biobanking agreement. This amount is specified in clause 5.3 of the biobanking agreement. It is likely to be equivalent to the Part B payment you expect to receive when you sell your biodiversity credits.

Where you are registered for GST, the amount taken to be your capital proceeds should be exclusive of GST (for further details refer to the GST section following).

Cost-base of land apportioned to the biobanking agreement

The formula to calculate the cost-base or reduced cost-base of the land apportioned to the biobanking agreement is:

$$\text{Cost-base (or reduced cost-base) of the land} \times \frac{\text{capital proceeds from entering into the biobanking agreement}}{\text{(capital proceeds from entering into the biobanking agreement) + market value of the land after entering into the biobanking agreement}}$$

Cost-base of land

The cost-base of your land generally includes:

- the money you paid to acquire it and the market value of any property you gave to acquire it
- certain incidental costs incurred in relation to the land (e.g. stamp duty, costs of obtaining valuations, borrowing costs) to the extent that you have not already obtained deductions for these expenses
- costs related to owning the land (e.g. rates or land tax, interest on money borrowed to acquire the land) to the extent that you have not already obtained deductions for these expenses.

The reduced cost-base of your land does not include the costs related to owning the land.

Market value of land

The market value of the land can be determined by the usual land valuation methods such as engaging a qualified valuer and researching recent sales history. A conservation covenant places restrictions on the use of the land and attaches to the land title so it may affect the market value of the land.

Example 1

This simplified example (without reference to possible discount provisions) shows how the capital gain or loss formula works.

A landowner receives biodiversity credits worth **\$20,000** (for the Part B portion) for entering into a biobanking agreement. The land was bought 10 years ago for **\$300,000**. However, since the property was purchased it has increased in value to **\$400,000**. After entering the biobanking agreement, with the estimated devaluation due to of the conservation covenant, the land is worth \$385,000.

The cost-base of the land apportioned to the biobanking agreement is:

$$\mathbf{\$300,000 \times [\$20,000 \div (\$20,000 + \$385,000)] = \$14,815}$$

Given that the capital proceeds are **\$20,000**, the landowner has made a capital gain for income tax purposes of **\$5,185** (i.e. **\$20,000 – \$14,815**).

At the time of signing your biobanking agreement, you will not have sold any credits or received any cash. Depending on your circumstances, you may need to ensure you will be able to sell your credits before your tax liability for the year in which you sign your biobanking agreement is due.

Note: this example does not consider GST.

Capital gain or loss when you sell or retire biodiversity credits

For landowners who hold their credits on capital account, biodiversity credits are treated as capital gains tax assets (not trading stock or depreciating assets). Therefore you can also make a capital gain or loss on your biodiversity credits when you sell them.

If you make a capital gain on selling your biodiversity credits you may be eligible for certain capital gains tax concessions, including:

- capital gains tax discount
- small business capital gains tax concessions.

Similar to the method for calculating capital gain or loss on land value, the capital gain or loss on biodiversity credits is calculated by subtracting the cost-base (or reduced cost-base) of the credits from the capital proceeds when the credits are sold.

The cost-base of the credits should be the amount specified in clause 5.3 of the biobanking agreement. For capital gains tax purposes this is taken to be the 'money paid' to acquire – that is, the likely value of – the biodiversity credits. The cost-base of the biodiversity credits also includes the application fee paid to DECCW and fees to consultants or legal advisors incurred to acquire the biodiversity credits.

Where you are registered for GST, the amounts forming part of your cost-base should be exclusive of GST (for further details, refer to the GST section later in this guide).

The capital proceeds from biodiversity credits are made up of the Part B amount and the market value of the right to receive annual payments from the BioBanking Trust Fund (from the Part A amount known as the Total Fund Deposit). On the basis that annual payments have been calculated solely to enable the landowner to satisfy their obligations (i.e. the management actions), the likely outcome is that the market value of these payments will be \$0. The Part A amount itself is not capital proceeds.

Example 2

A landowner receives **\$15,000** for the Part B payment on the sale of biodiversity credits. The market value of the right to receive annual payments is **\$0**. Therefore, the capital proceeds received on the sale of the credits is **$\$15,000 + \$0 = \$15,000$** .

The cost-base of the credits on the date the biobanking agreement was signed was **\$20,000**. The application fee paid to DECCW to enter into the agreement was **\$612** and **\$2,288** was paid to an accredited BioBanking Assessor for the site assessment. Therefore the cost-base of the biodiversity credits is **\$22,900**.

Given that the capital proceeds from the sale were **\$15,000**, the landowner has made a capital loss of **\$7,900**.

If this loss was made in a different income year to when the landowner entered into the biobanking agreement then they could not use it to offset any gain arising from entering into the biobanking agreement.

Note: this example does not consider GST.

Income tax

On the sale of biodiversity credits, the Part A portion of the proceeds is not treated as ordinary assessable income as it is deposited directly into the Biobanking Trust Fund. However, the Part B portion is treated as ordinary assessable income through the capital gains tax provisions (outlined earlier).

The annual payments from the Biobanking Trust Fund are treated as ordinary assessable income. Bonus payments from the Biobanking Trust Fund are also treated as ordinary assessable income.

Under section 8-1 of the *Income Tax Assessment Act 1997*, you may be able to claim expenses as income tax deductions to the extent they are incurred in gaining or producing your assessable income; for example, costs incurred in maintaining or improving biodiversity through management actions. This could include labour and administration costs for management actions such as weed control, annual compliance monitoring fees, and annual rates and insurance payments (apportioned appropriately where they relate to property other than the biobanking site). Additionally, a deduction may be claimed for the decline in value of equipment where the equipment is purchased to carry out management actions.

Where you are registered for GST, the amounts assessable and deductible should be exclusive of GST (for further details refer to the GST section below).

In the event of an unsuccessful application, you may be able to claim deductions over five years for the preliminary costs incurred (e.g. fees incurred assessing the proposed biobanking site and fees incurred for professional or legal advice regarding entering into the biobanking agreement). This will depend on your individual circumstances. For further information refer to paragraphs 80–85 of the class ruling.

For individuals, these deductions may be denied under the non-commercial loss provisions.

Example 3

A landowner receives an annual payment of **\$10,000** from the BioBanking Trust Fund to cover the anticipated cost of management actions detailed in the biobanking agreement. During the year the landowner incurs actual expenses of **\$6,000** in delivering these management actions. At the end of June, the landowner receives a bonus payment of **\$2,000** to reflect the better-than-anticipated return for the BioBanking Trust Fund. The landowner must declare a total income of **$\$10,000 + \$2,000 = \$12,000$** .

The landowner can claim a deduction of **\$6,000**.

The landowner makes a net profit/surplus for tax purposes of **$\$12,000 - \$6,000 = \$6,000$** .

Assuming a business tax rate of 30% and no other applied provisions, the landowner is liable to pay **$\$6,000 \times 0.3 = \$1,800$**

Note This example does not consider the application of GST.

Goods and services tax

Three BioBanking transactions involve a goods and services tax (GST) liability for landowners who are registered for GST. These are:

- the creation of biodiversity credits on entering into a biobanking agreement
- the sale of credits
- the annual payment.

There will also be GST implications for registered landowners for other related transactions such as the acquisition of goods or services when performing management actions.

GST on the creation of biodiversity credits

Biodiversity credits are created when a landowner enters into a biobanking agreement. The notional value of these credits, which includes GST, is set out in clause 5.3 of the biobanking agreement.

The landowner agreeing to the obligations of the biobanking agreement and DECCW creating biodiversity credits are both supplies that are provided in connection with each other for GST purposes. This means both DECCW and the landowner (who is registered for GST):

- are required to pay GST in respect of their supply. The GST to be paid is calculated on the notional value of the credits. Both parties will need to issue tax invoices in respect of their supply.
- can claim an input tax credit (ITC) in respect of the tax invoice they have received from the other party.

As the GST payable and the input tax credit that can be claimed are the same amount, the net GST position for both the landowner and DECCW is zero.

GST when you sell your biodiversity credits

For the purposes of GST, the sale of credits is the supply of goods. This means a purchaser of your credits has to pay you GST on the total amount; that is, both the Part A and Part B amounts. This is the case even though the Part A amount (net of GST) is paid by the purchaser directly into the BioBanking Trust Fund.

GST and your annual payments

For the purposes of GST, the management actions that you agree to do are considered a service. If you are registered for GST, this means the BioBanking Trust Fund will include an amount for GST when making the annual payments for management actions you deliver. It is then the responsibility of the landowner to pay the GST liability to the ATO. Given the BioBanking Trust Fund is registered for GST, an input tax credit will be claimed for the GST included in the payment made to the landowner.

Registering for GST

If, by participating in the BioBanking Scheme, you are carrying on an 'enterprise', and your annual income meets or exceeds \$75,000 (or \$150,000 for a non-profit organisation) you are required to register for GST.

'Enterprise' has a broad definition and includes activities that are in the form of a business or in the form of a concern in the nature of trade.

If you are not carrying on an enterprise by participating in the BioBanking Scheme, you will not be required to register or remit GST to the ATO. Also, you will not be entitled to claim input tax credits.

If you do not meet the monetary threshold but are carrying on an enterprise by participating in the BioBanking Scheme, you are still entitled to register for GST if you wish. This will enable you to claim an input tax credit for GST expenses incurred in delivering management actions.

If you do not register for GST you may be liable for an out-of-pocket expense to the value of GST incurred by DECCW on creating the credits.

If you do register for GST and you are carrying on an enterprise, you are required to lodge business activity statements (BAS).

Business activity statement

In order to report on your GST obligations, you are required to submit a business activity statement (BAS) to the ATO.

In order to comply with GST reporting requirements, you must issue a tax invoice for the sale of the credits with a breakdown of Part A and B payments and GST. An invoice template for the sale of credits can be downloaded from the BioBanking website.

Input tax credits

You may be entitled to claim input tax credits for the goods and services you acquire as part of your BioBanking enterprise. This may include costs of establishing your land as a biobank site (e.g. fees for professional advice) and the costs of carrying out management actions.

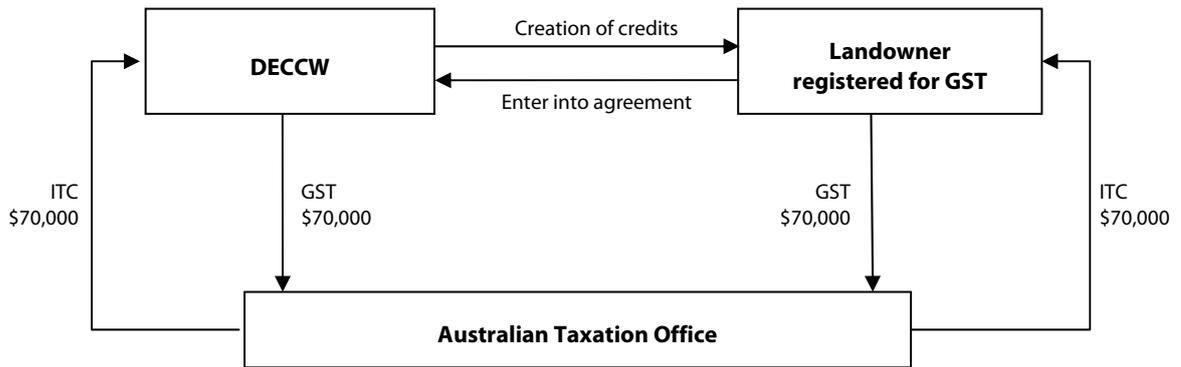
Remitting GST to the ATO

Landowners are required to pass on or remit, to the ATO, any GST received from the purchaser or BioBanking Trust Fund.

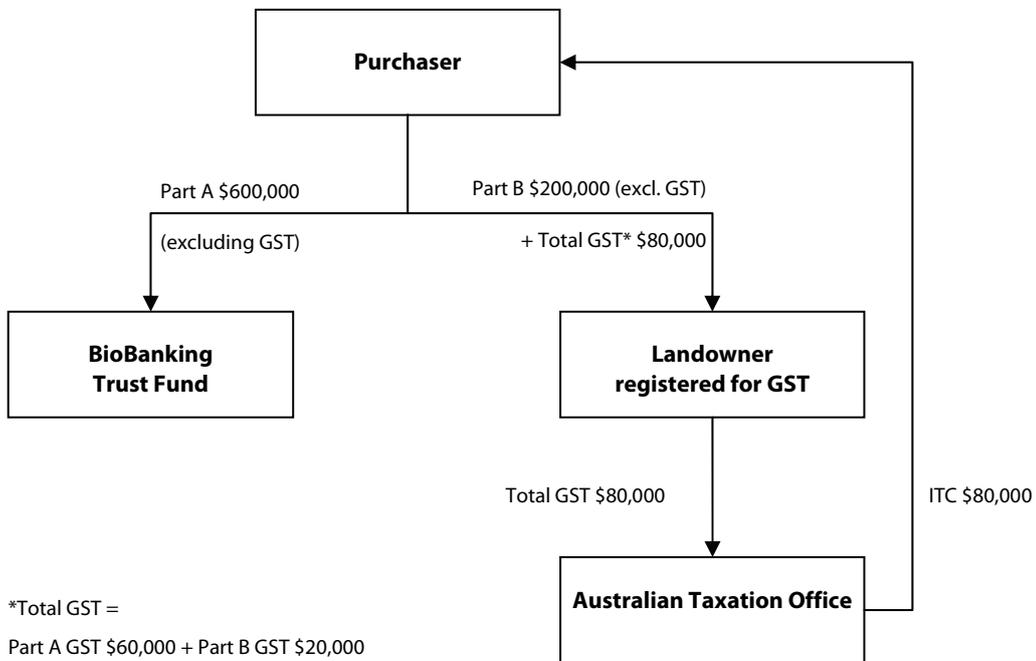
There are three BioBanking transactions that have a GST liability for the landowner. These are illustrated on the following page through an example that assumes:

- a total biodiversity credit value on entering into the biobanking agreement of \$770,000 (GST inclusive)
- sale of credits of \$880,000 (GST inclusive), being \$660,000 Part A and \$220,000 Part B
- an annual payment of \$44,000 (GST inclusive).

GST Liability 1: On entering a biobanking agreement and creating biodiversity credits



GST Liability 2: Sale of credits



GST Liability 3: Annual payment for management actions



More information



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DECCW has compiled this publication in good faith, with all due care and attention.

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