

Property development - GST tax traps to watch out for

By Eljaaz Alavi
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Have you ever developed a property and upon completion changed your intention from selling the property to leasing the property?

In this scenario a developer may be required to pay back a portion of the GST they have previously claimed to the ATO, where a property is no longer being used for a 'creditable purpose'. Take the below for example:

A property developer claims GST on costs incurred throughout the development of a number of apartments which they intend to sell. Subsequently there is a market downturn and the developer decides to rent out one of the unsold apartments and hold one of the apartments for their own private use.

In this example the private use and residential lease of a dwelling is not considered business related activity and the developer may be required to repay a significant amount of GST to the ATO.

Applying Division 129

The following scenarios provide an example of when a Division 129 adjustment may apply to your development. This may apply to the entire property and/or specific lots within the property;

- Sole purpose of property has changed to be for residential leasing purposes;
- Sole purpose of property has changed to be held for private purposes; or
- A dual purpose where it is to be held for both residential leasing purposes and is still being actively held for sale.

How to minimise your tax risk?

It is important that you keep records of all the costs incurred and GST claimed on projects in order to be able to apply the Division 129 adjustment calculations in case of a future change of intention.

The ATO use sophisticated data-matching to identify potential GST risks and commence audits in this space. We have seen data sources being used from the State Revenue Office, documents issued by local authorities (such as permits), Real Estate advertisements and third party suppliers such as Core Logic to evidence a change in intention.

If you have recently changed intention or are considering a change in intention in relation to your property development, please contact your [Fordham Partner](#) for further information.

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