



Taxation Guide for landholders

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NSW Biodiversity Conservation Trust



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1. Introduction

This guide outlines how taxation — Goods and Services Tax, Income Tax, Capital Gains Tax, Land Tax and council rates — may affect landholders who are applying for or who hold biodiversity stewardship agreements (BSA) under the Biodiversity Offsets Scheme, funded conservation agreements (CA) under the BCT's Conservation Management Program, or agreements under the BCT's Conservation Partners Program.

Disclaimer

The information in this document is general in nature and is intended as a guide only. It is not designed to be, nor should it be regarded as, legal or accounting advice. The NSW Biodiversity Conservation Trust (BCT) will not accept liability for any reliance on the content of this document.

The BCT also notes that the business and financial structure for each landholder or entity entering or holding a private land conservation agreement is likely to be unique. Therefore, the way taxation law applies will depend on individual circumstances.



2. Land Ownership

The *Biodiversity Conservation Act 2016* stipulates that for agreements registered on title only the owner(s) of a parcel of land can enter private land conservation agreements;

In this guide the term ‘landholder’ means the owner of the land as it appears on the land title

2.1 Ownership Structures

There are different ownership structures in which a landholder can enter an agreement with the BCT. The associated management actions of a private land conservation agreement can be considered as undertaking a business enterprise which may require the registration of an Australian Business Number (ABN) in relation to that undertaking. Common ownership structures are:

- Sole traders: Sole traders are single owners and are legally responsible for all aspects of the business enterprise. This structure is the correct structure if there is only one person who is the landholder in his/her individual capacity. In this case, the ABN should be held by the individual landholder as a sole trader (for example, the ABN will be held by “Joanne Smith as sole trader”).
- Partnerships: Partnerships are two or more people or entities who run a business enterprise and distribute income and losses between themselves. This is the correct structure if there is more than one landholder. In this case, the ABN should be held by the partnership (for example, the ABN will be held by “the family partnership of Keith Jones and Kate Wilbanks”).
- Companies: Companies are separate legal entities registered with the Australian Securities and Investments Commission (ASIC). This is the relevant structure if the landholder is a company acting in its corporate capacity. In this case, the correct ABN should be held by the company (for example, the ABN of “ABC Pty Ltd”).
- Trusts: A trust via a trustee holds property or assets for the benefit of others (beneficiaries). This is the relevant structure if the land is held by a trustee of a trust. Trust ABNs are held by the trustee of the trust, for example, the “Trustee of the XYZ Family Trust”.

Land may also be owned by self-managed super funds, deceased estates or other entities. If your agreement is proposed to be held by an entity other than the four common types listed above, please contact the BCT to discuss suitable arrangements.

2.2 Trusts

If a landholder is entering an agreement in a trustee capacity, they must advise the BCT of this fact. If an entity owns land in a trustee capacity, the trustee should provide the following documents to the BCT to confirm their ownership capacity:

the document or meeting minutes where it was resolved to act as trustee for the beneficiaries of the trust;

the Deed establishing the trust; and

the most recent Financial Statement that evidences that the subject land is trust property.

In such cases, the BCT will enter an agreement with the company trustee in both of its capacities: in its capacity as a company; and as trustee for the trust.

Once the BCT has verified that the land is held in a trustee capacity, any payments can be made into the trust bank account or the company bank account. This is because the company is the legal owner, and the trust account is held by the company in a trustee ownership capacity.

Agreements entered in the past

If an existing agreement is for land owned in a trustee capacity (for example, if a company is asking for payment to be made into a trust bank account), the BCT will make enquiries and take steps to verify the ownership capacity as set out above.

Once the trustee capacity is verified, the BCT may amend the agreement, so that the counterparty is updated to include both the company in its corporate capacity and in its capacity as trustee for the trust.

2.3 Payments in special circumstances

Non-owners: What will happen if the BCT is asked to make a payment into a bank account that is not in the owner's name? For agreements registered on title, the BCT's default position is to only pay into the owner of the subject land bank account. If this is not feasible, payment to non-owners will be assessed on a case-by-case basis supported by sufficient evidence

Some owners: What will happen if the BCT is asked to make a payment into a bank account held in only one or more owners' names, but not held by all the owners? Payments can be made into an account that is held by one or more of the owners of the land but only if the BCT holds a written letter of authorisation from all the other owners.

Partners: If the structure in which a business enterprise is carried on is a partnership, and the bank account is for that partnership, payment can be made into that account. What will happen if the BCT is asked to make a payment into the bank account of one

partner of a partnership? Payments can be made into an account that is held by one partner but only if the BCT holds a written letter of authorisation from all the other partners.

3. Biodiversity stewardship agreements

3.1 Applying for a biodiversity stewardship agreements

A landholder applying for a BSA must provide the BCT with an ABN registered for Goods and Services Tax (GST) to be able to enter an agreement and to receive payments.

The BCT will verify that the person or entity that holds the ABN is appropriately linked to the relevant land ownership.

3.2 Capital Gains Tax – entering a biodiversity stewardship agreement

A capital gains tax (CGT) event (type D4¹) occurs upon entry into a BSA. The landholder may make a capital gain or loss depending on the capital proceeds and cost base of the land. The capital proceeds on entering a BSA are equal to the value of the biodiversity credits.

Because of this (and because of GST requirements – see section 3.5 below), the BCT and the landholder must agree on the expected market value of the biodiversity credits.

The BCT will ask the landholder to provide an estimated market value and the BCT will generally agree if it thinks this estimate is plausible. The BCT would consider an estimate to be plausible if it is broadly consistent with current or expected market prices for the types of credits being generated under the agreement.

Documenting this agreed market value provides greater certainty to the landholder as to the capital gains tax arising on entering the BSA and upon a subsequent sale of the biodiversity credits (see below).

¹ Your accountant or taxation adviser can advise on what this means.

3.3 Capital Gains Tax – selling biodiversity credits

A CGT event (type A1²) occurs upon the sale of biodiversity credits. The owner of the credits³ may make a capital gain or loss depending on the capital proceeds and cost base of the credits.

It is recommended that landholders seek their own taxation advice in calculating this capital gains (or loss) tax amount as well as the construction of the credit sales agreement to suit their specific circumstances.

Credit owners and buyers should also consider that when the credits are sold or transferred for the first time, the Total Fund Deposit (TFD) is required to be paid into the Biodiversity Stewardship Payments Fund (BSPF) to effect the registration of the sale or transfer of the biodiversity credits.

3.4 Income Tax – receiving biodiversity stewardship payments

Payments made by the BCT from the BSPF to BSA holders are a contractual payment for the performance of services and should be ordinary income and assessable for income tax purposes. Landholders may be able to claim deductions.

3.5 Registering for Goods and Services Tax

Landholders wishing to enter a BSA must register for GST. Landholders should be aware that:

- Landholder activities performed under a BSA should satisfy the requirements for a landholder to be ‘carrying on an enterprise’ for GST purposes.
- Landholders must register for GST if their turnover exceeds \$75,000 per annum (or \$150,000 for a non-profit organisation) and the landholder is ‘carrying on an enterprise’ (this turnover figure includes the estimated market value of entering the BSA). It is expected that this would be the situation for most BSAs.
- Landholders should consider voluntarily registering for GST, even if their turnover under the BSA is to be worth less than \$75,000.

The GST registration must match the ABN of the business enterprise carrying on the business.

² Your accountant or taxation adviser can advise on what this means.

³ This will usually be the current landholder. However, the landholder that entered the BSA may have sold the land prior to selling the credits, in which case they would still own the credits. In such cases, the new owner would be the recipient of future stewardship payments.

3.6 Goods and Services Tax – entering a biodiversity stewardship agreement

When the BCT and a landholder enter a BSA, the landholder makes a taxable supply by entering the agreement in return for the biodiversity credits issued by BCT; and the BCT makes a taxable supply of biodiversity credits in return for the landholder entering the agreement. These are non-monetary transactions.

The BCT and the landholder (if both are registered for GST):

- are required to pay GST in respect of their supply, calculated on the estimated value of the credits; and
- can claim an input tax credit (ITC) in respect of the tax invoice received from the other party.

If a landholder is registered for GST, the BCT will issue a BCT GST invoice and Recipient Created Tax Invoice (RCTI) on behalf of the landholder when we send the registered BSA to the landholder. The BCT will use the estimated market value of the biodiversity credits for the purposes of these invoices. **As the GST payable and the input tax credit that can be claimed are the same amount, the net GST position for both the landholder and BCT is zero. This means that these invoices do not need to be paid.**

However, both the BCT and the landholder are required to account for the GST payment and the input tax credit in their business activity statements (BAS).

If a landholder is not registered for GST, the BCT will be required to meet a GST liability to the Australian Taxation Office (ATO). The BCT will therefore issue a BCT GST invoice to the landholder and the landholder will be required to pay this amount to the BCT. The amount will be equal to 1/11th of the GST inclusive estimated market value of the credits. It is for this reason that the BCT recommends that landholders seeking to enter a BSA consider registering for GST.

3.7 Goods and Services Tax – selling biodiversity credits

For the purposes of GST, the sale of credits is a taxable supply of goods. This means that the owner of the credits⁴ is registered for GST or is required to register for GST, the biodiversity credit price should include GST that the credit seller then needs to pay to the ATO.

If the credit seller is not registered for GST, the seller should not be paid GST by the buyer of the biodiversity credits.

⁴ This will usually be the current landholder. However, the landholder that entered the BSA may have sold the land prior to selling the credits, in which case they would still own the credits. In such cases, the new owner would be the recipient of future stewardship payments.

3.8 Goods and Services Tax – receiving annual stewardship payments

The supply of stewardship services by a landholder to the BCT in return for payment of the annual biodiversity stewardship payment should be a taxable supply if the landholder is registered or required to be registered for GST.

If the landholder is registered for GST, the BCT will issue a recipient created tax invoice (RCTI) and include an amount for GST when making the annual biodiversity stewardship payments for management actions the landholder delivers. It is then the landholder's responsibility to pay the GST liability to the ATO.

If the landholder is not registered for GST, the annual biodiversity stewardship payments will not include GST. This means the landholder may be out-of-pocket if GST is paid on any goods or services used for carrying out the management actions, as these GST payments cannot be claimed as input tax credits.

3.9 Goods and Services Tax credits – paying for goods and services

Landholders may engage the services of GST registered contractors or professional service providers in carrying out management actions. Landholders may pay for goods (e.g. pesticides) to carry out management actions. Any GST paid on these goods or services may be able to be claimed as input tax credits to reduce a GST-registered landholder's GST liabilities.

3.10 NSW Land Tax exemption

Land that is the subject of a biodiversity stewardship agreement is exempt from land tax under section 10(1)(p) of the Land Tax Management Act 1956.

4. Funded conservation agreements

4.1 Applying for a funded conservation agreement

A landholder applying for a funded conservation agreement (CA) under the Conservation Management Program must provide the BCT with appropriate documentation to demonstrate proof of ownership of the land to be the subject of the conservation agreement. As a CA is registered on title, the BCT under its Act can only make payments to the owners of the land under the agreement. Please refer to Section 2 for information on appropriate documentation regarding land ownership.

4.2 Capital Gains Tax – entering a permanent funded conservation agreement

The first annual payment payable to the landholder upon entry into the CA is an advance payment for the landholder carrying out the first year of management actions under the CA (see income tax below). This first payment is intended to be refundable to the BCT if the landholder's obligations under the CA, including performing management actions, are not satisfied. On this basis, the first payment should not be considered capital proceeds for entry into the CA.

Landholders entering permanent or in-perpetuity conservation agreements may be entitled to a deduction as the landholder may be deemed to have received capital proceeds equal to the reduction in the value of the land that is the subject of the CA. Find out more from the Australian Taxation Office [here](#).

4.3 Income Tax – receiving annual conservation management payments

Payments made by the BCT from the Biodiversity Conservation Fund to CA holders are a contractual payment for the performance of services and should be ordinary income and assessable for income tax purposes. Landholders may be able to claim deductions.

4.4 Requirement for an Australian Business Number (ABN)

For all juridical entities, such as proprietary limited companies or partnerships (refer section 2 for further information), an ABN must be provided for payment purposes. This ABN is not required to be GST registered, however, if GST registration is not provided, no GST can be paid by the BCT.

It is not necessary for individual landholders to provide an ABN and as such, be GST registered. In the absence of an ABN a landholder must provide the BCT with a

“Statement by a Supplier” form or the BCT will be required to withhold 47% of any payments made to the landholder.

Landholders are encouraged to seek individual taxation advice as to whether they will be required to be GST registered under legislation (see section 4.5).

4.5 Registering for Goods and Services Tax

Landholders seeking to enter a funded CA should consider whether they should register for GST. Landholders should be aware that:

- Landholder activities performed under a CA should generally satisfy the requirements for a landholder to be ‘carrying on an enterprise’ for GST purposes.
- Landholders must register for GST if their turnover exceeds \$75,000 per annum (or \$150,000 for a non-profit organisation) and the landholder is ‘carrying on an enterprise’.
- Landholders may consider voluntarily registering for GST, even if their turnover under the CA is to be worth less than \$75,000.

The GST registration must match the ABN of the business enterprise carrying on the business.

4.6 Goods and Services Tax – receiving annual conservation management payments

The supply of conservation management actions by the landholder to the BCT in return for payment of annual conservation management payments may constitute a taxable supply.

If the business enterprise is registered for GST, the BCT will issue a recipient created tax invoice (RCTI) and include an amount for GST when making the annual conservation management payments for management actions the landholder delivers. It is then the landholder’s responsibility to pay the GST liability to the ATO.

If the landholder or business enterprise is not registered for GST, the annual payments will not include GST. This means the landholder may be out-of-pocket if GST is paid on any goods or services used for carrying out the management actions, as these GST payments cannot be claimed as input tax credits.

4.7 NSW Land Tax exemption for permanent agreements

Land that is the subject of a permanent conservation agreement under the *Biodiversity Conservation Act 2016* or the *National Parks and Wildlife Act 1974*, or land that is the subject of a permanent Trust agreement that was referred to in section 36 of the *Nature Conservation Trust Act 2001*, is exempt from land tax under subsections 10(1)(p1) and (p1A) of the *Land Tax Management Act 1956*.

4.8 Local government rates exemption

Land that is subject to a conservation agreement is exempt from rates under section 555(1)(b1) of the *Local Government Act 1993*.

5. Partnership conservation agreements or wildlife refuge agreements

5.1 Applying for an agreement

A landholder applying for a partnership conservation agreement (PCA) or wildlife refuge agreement (WRA) under the Conservation Partners Program will be asked for documentation for assessment purposes (refer Section 2 land ownership requirements).

5.2 Income Tax – receiving grants

Under the BCT's Conservation Partners Program, landholders with partnership conservation agreements or wildlife refuge agreements (agreements that do not include annual payments) can apply for conservation partners grants. On application for such grants, further information may be requested to facilitate future payments.

Following is a list of agreements that can receive grants from the BCT:

- Partnership conservation agreements (PCAs) or Wildlife Refuge Agreements (WRAs) under the *Biodiversity Conservation Act 2016* that do not receive annual conservation management payments
- Conservation Agreements or Wildlife Refuges under the *National Parks and Wildlife Act 1974*
- Trust Agreements under the *Nature Conservation Trust Act 2001*
- Registered Property Agreements under the *Native Vegetation Conservation Act 1997*
- Participants in the NSW Land for Wildlife or Wildlife Land Trust programs.

Grants made by the BCT are a contractual payment for the performance of services and should be ordinary income and assessable for income tax purposes. Landholders may be able to claim deductions. The BCT will require documentation relating to business and/or taxation registrations as well as bank account details.

5.3 NSW Land Tax exemption for permanent agreements

Land that is the subject of a permanent conservation agreement under the *Biodiversity Conservation Act 2016* or the *National Parks and Wildlife Act 1974*, or land that is the subject of a permanent Trust agreement that was referred to in section 36 of the *Nature Conservation Trust Act 2001*, is exempt from land tax under subsections 10(1)(p1) and (p1A) of the Land Tax Management Act 1956.

5.4 Income tax and capital gains tax concessions

The BCT recommends that each agreement holder seek taxation advice as to any income or capital gains concessions that may be available to them in association with

the agreement they hold. It may be possible that, depending on the circumstances of the agreement, the landholder may be eligible for conservation covenant concessions from the Australian Taxation Office.

5.5 Local government rates exemption for conservation agreements

Land that is subject to a conservation agreement⁵ is exempt from rates under section 555(1)(b1) of the *Local Government Act 1993*. This includes partnership conservation agreements under the *Biodiversity Conservation Act 2016* and conservation agreements under the *National Parks and Wildlife Act 1974*. This exemption is not available for wildlife refuge agreements, Trust agreements under the *Nature Conservation Trust Act 2001*, registered property agreements under the *Native Vegetation Conservation Act 1997* or participants in NSW Land for Wildlife or Wildlife Land Trust programs.



⁵ Clause 18 of the Biodiversity Conservation (Savings and Transitional) Regulation 2017 provides that any reference to a conservation agreement under section 69B of the [National Parks and Wildlife Act 1974](#) is to be read as a reference to a conservation agreement under Division 3 of Part 5 of the [Biodiversity Conservation Act 2016](#).