



Australian Government
Australian Taxation Office

TA 2004/1

Taxpayer Alert

ATO Media Release - NAT 04/040 notes the jailing of two men for attempted GST fraud in an arrangement of the type outlined in this alert. Please note that NAT 04/040 has been removed from www.ato.gov.au. This is in accordance with ATO policy on media releases relating to court decisions about individuals.

FOI status: may be released

Taxpayer Alerts are intended to be an "early warning" of significant new and emerging tax planning issues or arrangements that the ATO has under risk assessment.

Taxpayer Alerts will provide information that is in the interests of an open tax administration to taxpayers. Taxpayer Alerts are written principally for taxpayers and their advisers and they also serve to inform ATO officers of new and emerging tax planning issues. Not all potential tax planning issues that the ATO has under risk assessment will be the subject of a Taxpayer Alert, and some arrangements that are the subject of a Taxpayer Alert may on further examination be found not to be of concern to the ATO.

Taxpayer Alerts will give the title of the issue (which may be a scheme, arrangement or particular transaction), briefly describe the issue and will highlight the features which the ATO considers give rise to taxation issues. These issues will generally require more detailed analysis to provide an ATO view to taxpayers.

The developers and marketers of an arrangement which is the subject of a Taxpayer Alert should provide the full facts of the arrangement to the ATO to enable the ATO to finalise its view.

Taxpayers who have entered into or are contemplating entering into an arrangement similar to that described in this Taxpayer Alert can seek a formal determination of the ATO's position through a Private Ruling. Such taxpayers might obtain their own advice and/or contact the ATO officer named in the Alert.

This Taxpayer Alert is issued under the authority of the Commissioner.

TITLE: **Non-arm's length arrangements using Goods and Services Tax (GST) cash / non-cash accounting methods to obtain a GST benefit.**

This Taxpayer Alert describes non-arm's length arrangements where an entity makes acquisitions from another entity at commercially unrealistic prices to obtain an inflated input tax credit. The arrangements seek to manipulate a timing advantage between a vendor using a cash basis of accounting and a purchaser using a non-cash basis of accounting.

DESCRIPTION

The Alert applies to arrangements having some or all of the following features:

1. The vendor and the purchaser are not dealing at arm's length.
2. The vendor makes a supply to the purchaser at a price that is not in keeping with the commercial value of the supply.
3. For GST purposes, the vendor is registered, accounts on a cash basis, and may have quarterly tax periods. (A vendor accounting for GST on a cash basis is only required to attribute GST to a tax period to the extent of the consideration received in the tax period).
4. For GST purposes, the purchaser is registered, accounts on a non-cash basis, and may have monthly tax periods. (A purchaser accounting for GST on a non-cash basis can claim the full input tax credit in the period in which any of the consideration is provided or an invoice is issued).
5. Under a typical agreement the vendor supplies an item to the purchaser for consideration that is inflated to a commercially unrealistic amount inclusive of GST, for example, \$550,000.
6. The purchaser may be required to make an initial payment, for example, \$1,000 with the balance to be paid in instalments. The payment schedule is structured so that the subsequent payments are spread over a number of years.
7. The purchaser claims the \$50,000 input tax credit on the acquisition in the tax period in which the tax invoice is received. This will usually be in the tax period in which the agreement is made.
8. The vendor remits GST on the payment of \$1,000 in the period it is received. The vendor is not required to account for the balance of the GST payable on the supply until the subsequent payments are received.
9. The purchaser claims refunds of input tax credits in a tax period much earlier than the GST is required to be paid by the vendor.
10. Often under these arrangements the vendor and the purchaser are related parties.
11. In some instances payments are never made and goods 'acquired' do not exist.

FEATURES WHICH THE ATO CONSIDERS GIVE RISE TO TAXATION ISSUES

The ATO considers that the arrangements outlined above give rise to taxation issues that include whether:

- (a) the valuation methods used to value the supply and acquisition in non-arm's length transactions, whether or not by associated entities, are appropriate; and
- (b) the anti-avoidance provisions of Division 165 of the *A New Tax System (Goods and Services Tax) Act 1999* ('GST Act') apply, as the arrangements appear artificial and contrived in their design and execution (see note 1).

Note 1

In appropriate cases possible sanctions under criminal law may apply.

The Australian Taxation Office is examining these arrangements.

subject references: Goods and Services Tax
input tax credit
valuation

related taxation rulings:

legislative references: GST Act subsection 9-5
GST Act subsection 11-5
GST Act Division 29
GST Act Division 165

related taxpayer alerts:

related practice statements: PS LA 2008/15 - Taxpayer Alerts

related media releases:

file references:

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