



Taxpayer Alert

TA 2007/1

The ATO view on the arrangement described in this Taxpayer Alert is set out in Goods and Services Tax Determination GSTD 2007/2.

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: **Lease by a charitable institution to an associated endorsed charitable institution designed to gain input tax credits.**

This Taxpayer Alert describes arrangements designed to gain entitlement to input tax credits by treating otherwise input taxed supplies of residential accommodation as GST-free. These arrangements involve charitable institutions leasing land and buildings to associated endorsed charitable institutions in an attempt to increase the cost of making supplies of accommodation to residents and thereby satisfying a concessional GST provision.

DESCRIPTION

The alert applies to arrangements that exhibit some or all of the following features.

1. Entity A, a charitable institution, owns land and buildings from which it makes or could make supplies of residential accommodation.
2. Supplies of residential accommodation by Entity A would be input taxed as they are made for consideration that is 75% or more of the GST inclusive market value of the supply and 75% or more of the cost to Entity A of providing the accommodation (sections 40-35 and 38-250 of the *A New Tax System (Goods and Services Tax) Act 1999*) (GST Act).
3. Entity A enters into a lease to supply the land and buildings to Entity B, an associated endorsed charitable institution.
4. The lease payments from Entity B to Entity A are recorded as book entries and no actual payments are made.
5. Entity B then provides the accommodation to residents.
6. The lease payments recorded from Entity B to Entity A serve to increase the cost to Entity B of providing the accommodation, so that the consideration to Entity B falls below 75% of the cost to the supplier of providing the accommodation.
7. Entity B treats the supplies of accommodation to residents as GST-free and claims input tax credits.

FEATURES WHICH THE TAX OFFICE CONSIDERS GIVE RISE TO TAXATION ISSUES

The Tax Office considers that the arrangement outlined above gives rise to taxation issues that include whether:

- (a) Entity B's supply of accommodation to residents is GST-free under section 38-250 of the GST Act; and
- (b) The anti-avoidance provisions of Division 165 of the GST Act apply, as the arrangement appears artificial and contrived in its design and execution.

The Australian Taxation Office is examining these arrangements.

<i>subject references:</i>	<i>charitable institutions Goods and Services Tax GST-free supply input taxed supply accommodation</i>
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<i>legislative references:</i>	<i>A New Tax System (Goods and Services Tax) Act 1999 Subdivision 38-G Subdivision 40-B Division 165</i>
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related taxpayer alerts:

related practice statements: *PS LA 2005/13*

Related Rulings/Determinations: GSTR 2001/1

related media releases:

file references:

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