



GST implications of certain development lease arrangements

Alerts provide a summary of our concerns about new or emerging higher risk tax or superannuation arrangements or issues that we have under risk assessment.

While an Alert describes a type of arrangement, it is not possible to cover every potential variation of the arrangement. The absence of an Alert on an arrangement or a variation of an arrangement does not mean that we accept or endorse the arrangement or variation, or the underlying tax consequences.

Refer to [PS LA 2008/15](#) for more information about Alerts. See [Alerts](#) issued to date.

Overview

We are currently reviewing arrangements involving property developers acquiring land from government entities, specifically where the developer purportedly provides certain development works to the government entity as payment for the land.

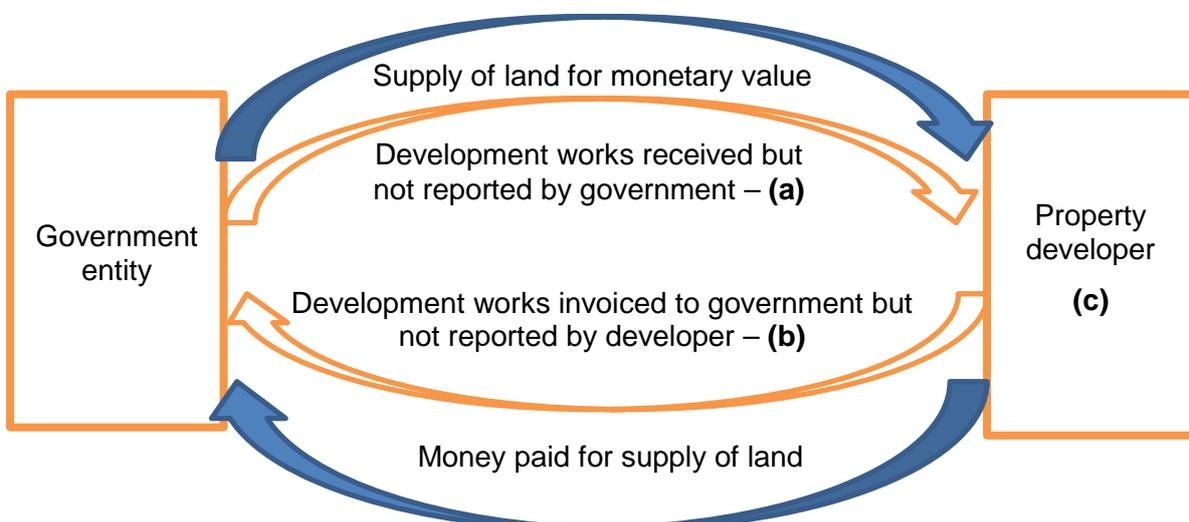
There are instances where the developer and the government entity are not reporting the value of their supplies under these arrangements in a consistent manner, resulting in the underpayment of GST.

Description

In property development arrangements of this type the parties to the arrangement each agree to provide things of equal value to each other. The 'things' provided may be money and/or development works in exchange for the supply of land.

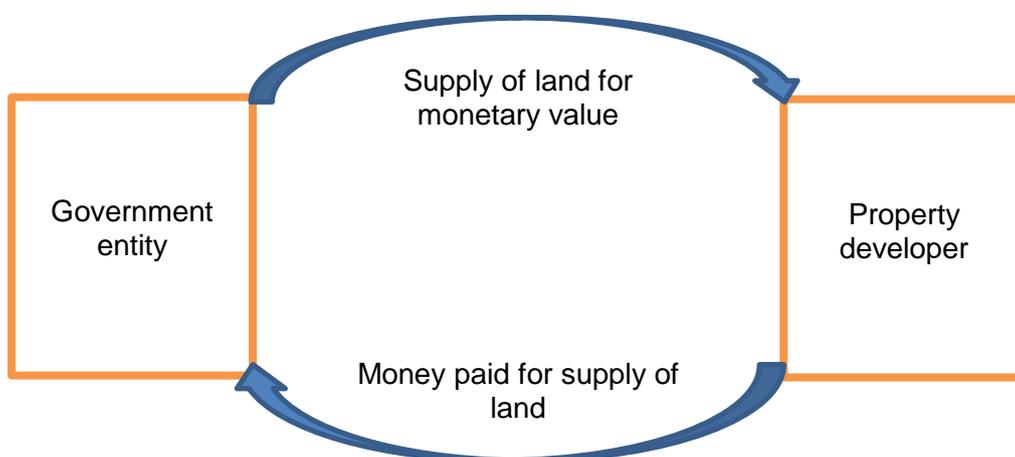
We are concerned about arrangements that involve the following features:

Example 1



- The government entity agrees to supply land to a property developer. The agreement requires the developer to pay an amount of money, and also requires the developer to do certain development works, as payment for the supply of the land.
- The developer pays the amount of money to the government entity.
- The government entity may grant the developer a short term lease, or licence, to allow the developer to complete the development works on the land.
- Upon completion of the development works the developer invoices the government entity for the value (inclusive of GST) of those development works.
- The government entity supplies the land to the developer by granting the developer a long term lease, or transferring title, over the land.
- When reporting their GST obligations in their activity statements
 - (a) The government entity claims an input tax credit for the amount of GST included on the invoice received from the developer for the supply of development works. However, the government entity only reports the monetary payment received for the land, without reporting the value of the development works provided by the developer as payment for the land. This results in the government entity under-paying GST on the supply of land, whilst receiving the benefit of the input tax credit relating to the development works.
 - (b) The developer does not report the supply of the development works it invoiced to the government entity. This results in the developer not paying GST on the development works provided to the government entity, despite having claimed input tax credits on all the acquisitions it used in completing those development works.
 - (c) Additionally, the developer may include the value of all the development works completed on the land (including the development works invoiced to the government entity), in the cost of the development when applying the 'margin scheme'. This significantly reduces the amount of GST that the developer pays on their supply of the property (as vacant land or a residential unit) to a customer.

Example 2



- The government entity agrees to supply land to a developer in return for the developer paying an amount of money. The agreement does not require the developer to provide any works to the government entity as payment for the supply of the land.
- The developer pays the amount of money and the government entity supplies the land to the developer by granting a long term lease, or transferring title, over the land.
- Upon completion of the development, without the knowledge or agreement of the government entity, the developer includes the value of all the development works completed on the land in the cost of the development when applying the 'margin scheme'. The developer contends that the development works were provided to the government entity more than four years earlier, despite the developer never invoicing the government entity for the works or reporting the supply in their activity statement. By including the value of the development works in the cost of the development when applying the margin scheme, the developer significantly reduces the amount of GST that they pay on their supply of the property (as vacant land or a residential unit) to a customer. This means the developer does not pay GST on the value of all their development work, despite having claimed input tax credits on all the acquisitions it used in completing those development works.
- In some instances, the developer may change the supplies that they have previously reported in their activity statements in order to reduce the amount of GST payable on their supply of property to customers.

What are our concerns?

We are concerned about arrangements where the developer and the government entity do not report the value of their supplies in a consistent manner, resulting in the underpayment of GST. In some instances this may arise because the value of the development works has not been agreed between the government entity and developer, or the supply is not reported until GST can no longer be recovered due to the statutory time limits for amending activity statements.

The contractual obligations that arise under an agreement are binding on both parties and the whole of the arrangement must be examined to ensure that all supplies and acquisitions are correctly accounted for under the *A New Tax System (Goods and Services Tax) Act 1999* and the *Income Tax Assessment Act 1997*.

Whether development work is required as payment for the supply of the land will turn on the specific terms of each arrangement. An attempt to treat all of the development or building works completed on the land as being payment for the supply of the land, where this is not supported by the contractual agreement between the parties, will incorrectly reduce the GST payable on the supply of property.

What are we doing?

We are engaging with taxpayers and government entities to examine the issues of concern and ensure that all parties have correctly accounted for their GST and income tax obligations. In situations where there is a change in how the arrangement is accounted for, after the fact, so as to gain an advantage due to the lapse of the statutory periods for amending activity statements, the fraud or evasion provisions may be considered.

Taxpayers who adopt these types of arrangements and their advisors will be subject to increased scrutiny from the ATO.

Penalties may apply to participants and promoters of these types of arrangements.

What should you do?

You should consider whether our concerns apply to you. If you are considering, or have entered into, a similar arrangement to that described in this Alert, we encourage you to do one of the following:

- Phone us at the contact details provided below.
- Email us at GSTmail@ato.gov.au (for GST queries).
- Ask the ATO for our view by applying for a private ruling.
- Seek independent advice as to the legal and tax consequences of your arrangement.

Penalties may apply if you have incorrectly reported your GST or income tax obligations in relation to an arrangement but will be significantly reduced if you contact us and make a voluntary disclosure. Generally, the reduction is greater if you make the disclosure before we notify you of an examination of your tax affairs.

If you are a registered tax agent or tax advisor who has been involved in the promotion of these arrangements, you may be perceived to be a 'promoter' of a scheme. We encourage you to engage with the ATO per the advice above.

Do you have information?

To provide information about this type of arrangement, or a promoter of this or another arrangement:

- Contact the officer named in this Taxpayer Alert with the relevant information or to arrange a meeting with us.
- Phone us on 1800 177 006 (after the initial messages, please leave a message).
- Email us at reportataxscheme@ato.gov.au.

Contact officer: Linda Griffiths
Email address: Linda.Griffiths@ato.gov.au
Telephone: (02) 4924 7882
Address: Australian Taxation Office
PO Box 9977
NEWCASTLE NSW 2300

Commissioner of Taxation

26 November 2018

References

ATOlaw topics	Goods and services tax ~~ General rules and concepts ~~ Input tax credits Goods and services tax ~~ Government ~~ Unimproved land
Legislative references	<i>A New Tax System (Goods and Services Tax) Act 1999</i> <i>Income Tax Assessment Act 1936</i>
Related practice statements	PS LA 2008/15
Related rulings	GSTR 2015/2
Authorised by	Timothy Dyce, Deputy Commissioner

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