



Taxpayer Alert

Contrived property development arrangements between related parties that defer recognition of income and exploit tax losses

About Taxpayer Alerts

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 Law Administration Practice Statement [PS LA 2008/15](#) *Taxpayer Alerts* for more information about Alerts. See [Alerts](#) issued to date.

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Overview

1. We are currently reviewing certain property development arrangements between related parties involving long-term construction contracts that appear to be designed to create an artificial mismatch between the recognition of income from the property development activity and deductions claimed for the costs of development, such that tax on the profits may be indefinitely deferred. The losses generated are utilised within the group to obtain a tax advantage.
2. In these arrangements, a special purpose developer entity (developer) is interposed between an entity that owns the land being developed (landowner) and another entity undertaking building and construction works on the land (builder). The interposition of the developer artificially separates the land-ownership and development activities which are, in substance, a single economic activity of property development.
3. This Alert outlines the features of concern, and the steps taxpayers should consider if they are involved in similar arrangements.

Description

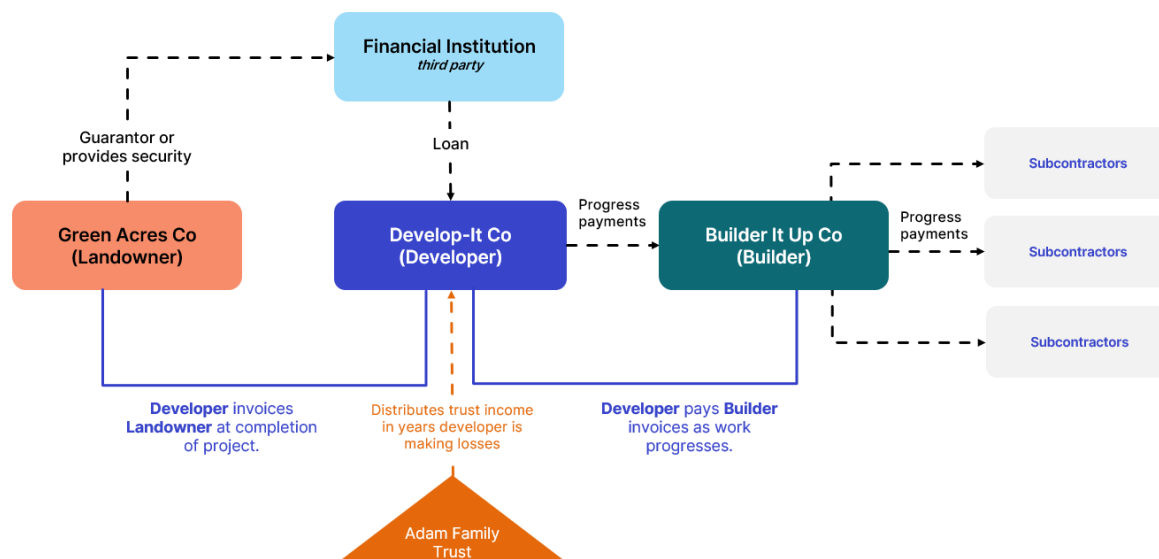
4. The property development arrangements under review typically involve the following characteristics:

- A separation of landownership and development activities is created through the interposition of an existing or newly established special purpose developer entity between the landowner and builder.
- The landowner and the developer are under common ownership or control.
- The landowner and the developer enter a Property Development Agreement (PDA) using a long-term construction contract that spans more than one income year.
- The terms of the contract deliberately provide that the developer does not derive any income for managing and delivering the development until the project is completed.
- While under the terms of the contract the developer purportedly provides development services to the landowner, in practice there is minimal or no evidence that the developer does, or has the capacity to, undertake the development. That is, the developer exists in form only, and it appears that the services provided to the landowner are all outsourced to the builder and funded by another party.
- The losses (arising from the deductions claimed progressively for construction costs while the recognition of income is deferred) are then offset against other income earned by the developer or used to offset other income of the economic group.
- This arrangement may be repeated in a deliberate manner to coordinate with the timing of income from the broader economic group or other development projects, resulting in minimal to no tax being paid across the economic group.
- While minimal to no tax is paid, there can be significant growth in the wealth of the economic group, and in some cases this wealth is subsequently extracted by individual controllers of the group for their personal benefit.

Example

5. The following example illustrates the common features of these arrangements.

Diagram 1: Typical long-term construction contract arrangement – exploiting developer's losses



6. Adam controls a number of entities (Adam's economic group). An entity in Adam's economic group, Green Acres Co, owns land that was acquired for development. Prior to the commencement of development of the land, Adam establishes a special purpose company, Develop-It Co, who will be responsible for conducting the development activity. Adam is the director of the company and he and his wife each hold 50% of the shares in the company. Develop-It Co then enters into a PDA with Green Acres Co.

7. A contract between the parties documents the responsibilities and the payment obligations of the parties. Under the terms of the contract, Develop-It Co is entitled to invoice Green Acres Co progressively for the development services. The life of the PDA is expected to be 3 years.

8. Develop-It Co has no employees and holds minimal assets, such that it cannot undertake the development without obtaining funding from another party. The funds are borrowed from a financial institution. Green Acres Co's land is put up as security for the loan provided to Develop-It Co.

9. Develop-It Co contracts with Build-It-Up Co (an unrelated company) to carry out the physical construction work. Develop-It Co incurs construction costs and pays Build-It-Up Co progressively throughout the duration of the project and, in turn, claims tax deductions for the costs progressively as they are incurred. However, Develop-It Co chooses not to invoice Green Acres Co for the development services it provides on a progressive basis.

10. This mismatch between income earned and deductions claimed on the property development activity results in Develop-It Co generating tax losses. These losses are utilised over the life of the development, offsetting distributions of income from the Adam Family Trust.

11. In the final year of the development, Adam creates another company within the group to acquire another parcel of land for development. This company enters into a PDA with Develop-It Co so that when Develop-It Co recognises the income from the development of Green Acres Co, losses are being incurred to offset that income. Adam

replicates this structure across multiple consecutive or concurrent projects, which results in the perpetual deferral of tax on group profits, potentially indefinitely.

Our concerns

12. We are concerned that related parties undertaking these arrangements are, in substance, undertaking a single economic activity of property development, yet have artificially separated landownership and development activities to gain a tax advantage.

13. We are concerned that the arrangements are contrived and designed to artificially separate the landownership and development activities to:

- inappropriately manipulate application of the trading stock provisions under Division 70 of the *Income Tax Assessment Act 1997* by the landowner entity
- inappropriately defer the recognition of income by the developer entity
- generate artificial losses in the developer entity that are used to offset other income within the economic group, leading to reduced tax or no tax being paid
- with repeated use of the arrangement in a deliberate manner, ensure reduced tax or no tax being paid, sometimes indefinitely and enable wealth extraction.

14. These arrangements may be a scheme under section 177D to which the general anti-avoidance provisions in Part IVA of the *Income Tax Assessment Act 1936* apply.

What we are doing

15. We are actively reviewing arrangements involving long-term construction contracts that exhibit features similar to those described in this Alert. To address the concerns identified, we will:

- engage with taxpayers involved in these arrangements involving related parties that raise compliance risks
- shortly publish a draft practical compliance guideline for comment to accompany this Alert. The draft Guideline will outline our proposed compliance approach, including indicators of higher-risk arrangements and illustrative examples likely to attract scrutiny, including when we are likely to undertake further compliance activity through reviews and audits.

16. Our aim is to ensure the consistent application of tax law and to deter the use of contrived structures that compromise the integrity of the tax system and disadvantage compliant taxpayers.

What you should do

17. If you are currently involved in, or considering entering into, an arrangement of this nature, you should:

- Seek independent professional advice.
- Ask us for our view through a [private ruling](#).
- Make a [voluntary disclosure](#) to reduce potential penalties.

18. Penalties may apply to participants in, and promoters of, this type of arrangement. This includes serious penalties for promoters under Division 290 of Schedule 1 to the *Taxation Administration Act 1953*. Registered tax agents involved in the promotion of this type of arrangement may be referred to the Tax Practitioners Board to consider whether there has been a breach of the *Tax Agent Services Act 2009*.

Providing information

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

- phone us on **1800 060 062**
- complete the ATO [Tip off form](#), or
- contact the officer named in this Alert.

Contact officer: Dean Karlovic
Email: dean.karlovic@ato.gov.au
Phone: 03 9285 1686

Commissioner of Taxation
14 January 2026

References

Legislative references:

ITAA 1997 Div 70

ITAA 1936 Pt IVA

ITAA 1936 177D

TAA 1953 Sch 1 Div 290

Tax Agent Services Act 2009

*Related practice statements:*PS LA 2008/15

ATO references

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