

PR 2018/10A1 - Addendum - Income tax and goods and services tax: tax consequences for a Participant in an urBau joint venture project

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Addendum

Product Ruling

Income tax and goods and services tax: tax consequences for a Participant in an urBau joint venture project

This Addendum is a public ruling for the purposes of the *Taxation Administration Act 1953*. It amends Product Ruling PR 2018/10 to reflect changes made to the Joint Venture Deed.

PR 2018/10 is amended as follows:

1. Paragraph 2

(a) Omit the paragraph; substitute:

2. In this Product Ruling the scheme is offered by urBau Pty Ltd (urBau) and involves entry into a joint venture (the Joint Venture) regulated by, and under the terms of, a Joint Venture Deed to facilitate a Project constituting the development of land (the Land) as a residential development comprising Apartment Lots and Retail Lots^{A1}, if any (the Development), each of which, upon conclusion of the Development, will be strata divided, partitioned and transferred to a Participant (as a Joint Venturer).

(b) After 'Retail Lots' in paragraph 2, insert footnote A1:

^{A1} An Apartment Lot is a Lot that is designated, and permitted to be used, as a dwelling and a Retail Lot is a Lot that is not an Apartment Lot.

2. Paragraph 3

Insert after the second bullet point:

- the tax consequences for Participants that enter into a Joint Venture Deed for the purpose of occupying a Retail Lot
- the tax consequences associated with the holding of the Land by the Development Company on trust for Participants
- the GST consequences for Participants, other than to the extent addressed in paragraphs 15(h) and 38 to 41 of this Product Ruling

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3. Paragraph 6

Insert after the third bullet point:

- that enter into the scheme for the purpose of having a Retail Lot transferred to them

4. Paragraph 15

(a) In subparagraphs 15(d) and 15(h), omit the word 'Apartment'.

(b) In subparagraph 15(f), omit the last sentence; substitute:

The Outgoing Participant's capital proceeds under section 116-20 from the transfer will be their Initial Equity Contribution, as paid to the Outgoing Participant for the transfer.

(c) In subparagraph 15(g), omit the last sentence; substitute:

The defaulting Participant's capital proceeds under section 116-20 from the transfer will be their Initial Equity Contribution, as paid by the new Participant.

5. Paragraph 16

Omit the first and second bullet points; substitute:

- application for a Product Ruling as constituted by documents and information received on 21 February 2018, 8 March 2018, 21 May 2018, 20 June 2018 and 1 February 2019
- draft Joint Venture Deed between the Participants and the Development Company, received on 1 February 2019

6. Paragraph 19

(a) In subparagraph 19(a), omit the word 'Apartment'.

(b) Omit sub-subparagraph 19(b)(ii); substitute:

(ii) the liability of the Participants with respect to the Joint Venture will be several (and not joint and several) from the date of the Joint Venture Deed until the date the Land is transferred to the Participants; and joint and several from the date the Land is transferred to the Participants until the date the individual Lots have been partitioned and transferred to the Participants.

(c) Omit subparagraph 19(c); substitute:

(c) The Development Company (and/or its nominee) will either be the owner of the Land or, at the request of the Participants, the purchaser of the Land pursuant to a

Contract of Sale. Where the Development Company (and/or its nominee):

- (i) is the owner of the Land as at the date of the Joint Venture Deed, it will make a declaration effective from that same date that it holds the Land on trust for the Participants until such time as it is required to transfer the Land to the Participants as tenants in common
- (ii) is the purchaser of the Land under a Contract of Sale as at the date of the Joint Venture Deed, it will settle the purchase of the Land as bare trustee for the Participants and hold it for them until such time as it is required to transfer the Land to the Participants as tenants in common, and
- (iii) is the purchaser of the Land under a Contract of Sale as at the date of the Joint Venture Deed and has negotiated an extended settlement such that settlement will take place following completion of construction, it will nominate the Participants as tenants in common as the purchaser under the Contract of Sale.

In each of the above scenarios the Participants will be the registered proprietors of the Land prior to subdivision and partition.

(d) Omit subparagraph 19(h); substitute:

- (h) Each Participant's liability for Project Costs incurred and payable in relation to the Joint Venture is capped at the amount of their Equity Contribution (discussed in subparagraph 19(i) of this Ruling). Such Project Costs will be paid for by the Development Company, and advanced to the Development Company for that purpose by both the Participants via the payment of their Equity Contributions and by any Borrowings procured by the Development Company from the Financier in accordance with the terms set out in the Joint Venture Deed.

(e) After subparagraph 19(h), insert new subparagraph 19(ha):

- (ha) Any Borrowings provided by the Financier to the Development Company is conditional upon each and every Participant:
 - (i) entering into a home loan facility with the Financier to the extent required for the purpose of enabling them to pay the balance of their Equity Contribution, or

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- (ii) where a Participant is able to satisfy payment of the balance of their Equity Contribution from their own cash reserves, depositing that balance into an account with the Financier.
- (f) Omit sub-subparagraphs 19(i)(i) and (ii); substitute:
 - (i) an Initial Equity Contribution of 10 per cent of a Participant's Equity Contribution (or such lesser amount as the Development Company may accept), payable on or about the date of entering into the Joint Venture Deed, and
 - (ii) the balance of a Participant's Equity Contribution, payable at the time the Land is transferred to the Participant.
- (g) Omit subparagraph 19(k), including sub-subparagraphs (i), (ii) and (iii); substitute:
 - (k) The Participants and the Development Company will acknowledge that the number of Participants in the Joint Venture as at the commencement date will be as a result of the Development Company's preliminary feasibility for the Development resulting in the same number of Lots. In the event, however, that planning approval is only granted for a lesser number of Lots than that applied for, and the Development Company decides to proceed with the reformulated Development, the Development Company will advise the Participants (the Outgoing Participants) that they will no longer receive a Lot as part of the Development. Under such circumstances, an Outgoing Participant:
 - (i) will immediately cease to have an interest in the Joint Venture and, to that end, will have their Participating Interest transferred to the other Participants in proportion to each of their Participating Interest
 - (ii) must have their Initial Equity Contribution refunded in full within 21 days of receipt of this notice (as consideration for the transfer of their Participating Interest), and
 - (iii) must be released from any home loan facility entered into with the Financier.

- (h) In sub-subparagraph 19(l)(iii), omit the words 'and Land Settlement Equity Contribution (if any)'.
- (i) In subparagraphs 19(m) and 19(n), omit all instances of the word 'Apartment'.
- (j) In subparagraph 19(o), after 'Event of Default', insert 'by the Participant,'.
- (k) In sub-subparagraph 19(o)(i), omit 'and Land Settlement Equity Contribution (if any)'.
- (l) Omit subparagraph 19(q); substitute:
 - (q) The Joint Venture shall continue until the earlier of the Joint Venture Vesting Time, as defined in the Joint Venture Deed, and the date the Joint Venture is terminated in accordance with the terms of the Joint Venture Deed.

7. Paragraph 20

At subparagraphs 20(b) and 20(c), omit the word 'The'; substitute 'An'.

8. Paragraphs 24, 28, 30, 31 and 41

At all occurrences, omit the word 'Apartment'.

9. Paragraph 35

Omit the first sentence; substitute:

Pursuant to the general rules about capital proceeds under subsection 116-20(1), the Outgoing Participant's capital proceeds from the transfer of their Participating Interest will be their Initial Equity Contribution, being the money the Outgoing Participant receives, or is entitled to receive, proportionately from the other Participants in respect of the transfer.

10. Paragraph 37

Omit the first sentence; substitute:

Pursuant to the general rules about capital proceeds under subsection 116-20(1), the defaulting Participant's capital proceeds from the transfer of their Participating Interest will be their Initial Equity Contribution, being the money the defaulting Participant receives, or is entitled to receive, from the new Participant in respect of the transfer.

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11. Paragraph 40

Omit the last sentence; substitute:

The supply by the Participant (via their Attorney) of a partial interest held by them in various Lots under the partition, other than their particular Apartment Lot being retained, will therefore not be a taxable supply under section 9-5 of the GST Act.

This Addendum applies on and from 22 August 2018.

Commissioner of Taxation

27 March 2019

ATO references

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