TA 2004/2 - Avoidance of Goods and Services Tax (GST) on the sale of new residential premises

This cover sheet is provided for information only. It does not form part of *TA 2004/2 - Avoidance of Goods and Services Tax (GST) on the sale of new residential premises*

Australian Government
Australian Taxation Office

TA 2004/2

Taxpayer Alert

The Taxation Office view on this arrangement is set out in GST Ruling GSTR 2004/3.

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: **Avoidance of Goods and Services Tax (GST) on the sale of new residential premises**

This Taxpayer Alert describes an arrangement using the joint venture provisions to attempt to avoid GST on the sale of new residential premises. The parties to the arrangement purportedly form a joint venture for the purpose of creating an 'internal sale' of new home units/houses by the joint venture operator to a participant in the joint venture. This is to support a claim that the units/houses are no longer 'new residential premises'. On this basis, any subsequent sale of the residential units/houses is claimed to be input taxed and not subject to GST.

DESCRIPTION

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

1. Two or more entities, which typically include a developer and a marketer, enter into an arrangement, which they refer to as a joint venture, for the purpose of constructing and marketing residential premises.

2. The entities apply for approval as a GST joint venture.

3. The developer is nominated as the GST joint venture operator.

4. The developer owns or acquires land and engages a construction company, which may be an associate, to construct residential units/houses on the land.

5. The developer sells the units/houses to the marketer without paying GST. (Generally, sales of new residential premises are taxable supplies. However, a supply by a joint venture operator to an entity that is a participant in a GST joint venture is treated as if it were not a taxable supply).

6. The marketer subsequently sells the units/houses to third parties, and treats the sales as input taxed for GST purposes, as they are claimed to no longer be "new residential premises", having previously been sold by the developer to the marketer.

7. Notwithstanding that the sale of units/houses by the marketer to third parties is treated as being input taxed, the developer claims input tax credits on the costs of constructing the units/houses and/or the acquisition of the land.

8. The proceeds from the sale of the units/houses to third parties are distributed amongst the participants in the arrangement.

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:

(a) whether the structure adopted by the entities is a joint venture;

(b) if the structure is a joint venture, whether;

  (i) the transfer of the units/houses by the developer to the marketer is in the course of an activity for which the joint venture was entered into;

  (ii) the developer's sale of the new units/houses to the marketer is in the developer's capacity as the joint venture operator; and

(c) whether 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.

The Australian Taxation Office is examining these arrangements.

---

subject references: input tax credit
residential premises
new residential premises

	joint venture input taxed Goods and Services Tax
related taxation rulings:	
legislative references:	GST Act Division 165 GST Act subsection 51-5 GST Act subsection 51-30(2) GST Act subsection 40-75 GST Regulation 51-5.01
related taxpayer alerts:	
related practice statements:	PS LA 2008/15 - Taxpayer Alerts
related media releases:	
file references:	

Date issued:	
Authorised by:	**Mr Des Maloney First Assistant Commissioner**
Contact Officer:	**Mr Walter Hadeed**
Business Line:	**Goods and Services Tax**
Section:	**ILEC – Aggressive Tax Planning Team**
Phone:	**(03) 9275 -4307**