TA 2004/7 - Use of the Grouping provisions and the Margin Scheme to avoid or reduce the 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 2004/7 - Use of the Grouping provisions and the Margin Scheme to avoid or reduce the Goods and Services Tax (GST) on the sale of new residential premises*

The Taxation Office view on this arrangement is set out in GST Ruling - GSTR 2005/4.

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Australian Government
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TA 2004/7

Taxpayer Alert

FOI status: may be released

Taxpayer Alerts are intended to be an "early warning" of significant new and emerging higher risk 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 higher risk tax planning issues. Not all potential tax planning issues that the ATO has under risk assessment will be 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.

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 also contact the ATO officer named in the Alert and/or obtain their own advice.

This Taxpayer Alert is issued under the authority of the Commissioner.

TITLE: **Use of the Grouping provisions and the Margin Scheme to avoid or reduce the Goods and Services Tax (GST) on the sale of new residential premises**

This Taxpayer Alert describes an arrangement that uses the grouping provisions and the margin scheme in an attempt to avoid or reduce GST on the sale of new residential premises. Relying on a concession within the grouping provisions, substantially completed residential units/houses are sold within a group and not treated as a taxable supply. The acquiring group member completes the residential units/houses and sells them as a taxable supply to third parties, paying GST only on the margin between this sale price and the intra-group sale price. The effect of the intra-group sale is to avoid or reduce the margin for GST on the sale to the third party.

DESCRIPTION

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

1. Two or more entities apply for approval as a GST group, or are currently members

of a GST group. The entities may be new or existing.

2. A group member owns or acquires land and substantially completes, or arranges the substantial completion, of residential units/houses on the land.

3. The group member sells the substantially completed residential units/houses to another group member without levying GST. A supply between GST group members is treated as if it were not a taxable supply.

4. In some instances, the intra-group sale is claimed to be a GST-free supply of a going concern.

5. The acquiring group member completes, or arranges the completion of, the residential units/houses, and sells them to third parties, paying GST only on the margin between the relevant sale price and the intra-group sale price.

6. The GST group claims input tax credits on the costs of construction, and/or the acquisition of the land.

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 whether the:

(a) acquiring group member can apply the margin scheme on the sale of the units/houses to third parties;

(b) intra-group sale is the supply of a GST-free going concern; and

(c) 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.

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subject references:	input tax credit residential premises new residential premises GST group input taxed Goods and Services Tax margin scheme going concern
related taxation rulings:	
legislative references:	GST Act Division 165 GST Act Division 75 GST Act Division 48

GST Act Subdivision 38-J

related taxpayer alerts:	TA 2004/2, TA 2004/6
related practice statements:	PS 2001/15 - Taxpayer Alerts
related media releases:	
file references:	

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