

TA 2009/4 - Land owner's use of a registered associate to maximise input tax credit entitlements and reduce Goods and Services Tax (GST) payable under the margin scheme

⚠ This cover sheet is provided for information only. It does not form part of *TA 2009/4 - Land owner's use of a registered associate to maximise input tax credit entitlements and reduce Goods and Services Tax (GST) payable under the margin scheme*

⚠ This document has changed over time. This version was published on *17 February 2009*



Taxpayer Alert

TA 2009/4

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 Australian Taxation Office has under risk assessment, or where there are recurrences of arrangements that have been previously risk assessed.

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 tax officers of new and emerging higher risk tax planning issues. Not all potential tax planning issues that the Tax Office 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 Tax Office. In these latter cases the Taxpayer Alert will be withdrawn and a notification published which will be referenced to that Taxpayer Alert.

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 are of concern to the Tax Office. These issues will generally require more detailed analysis to provide the Tax Office 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 Tax Office's position through a private ruling (noting that the Taxation Administration Act 1953 sets out circumstances where the Commissioner may decline to issue such a ruling). Such taxpayers might also contact the tax officer named in the Taxpayer Alert and/or obtain their own advice.

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

TITLE: Land owner's use of a registered associate to maximise input tax credit entitlements and reduce Goods and Services Tax (GST) payable under the margin scheme

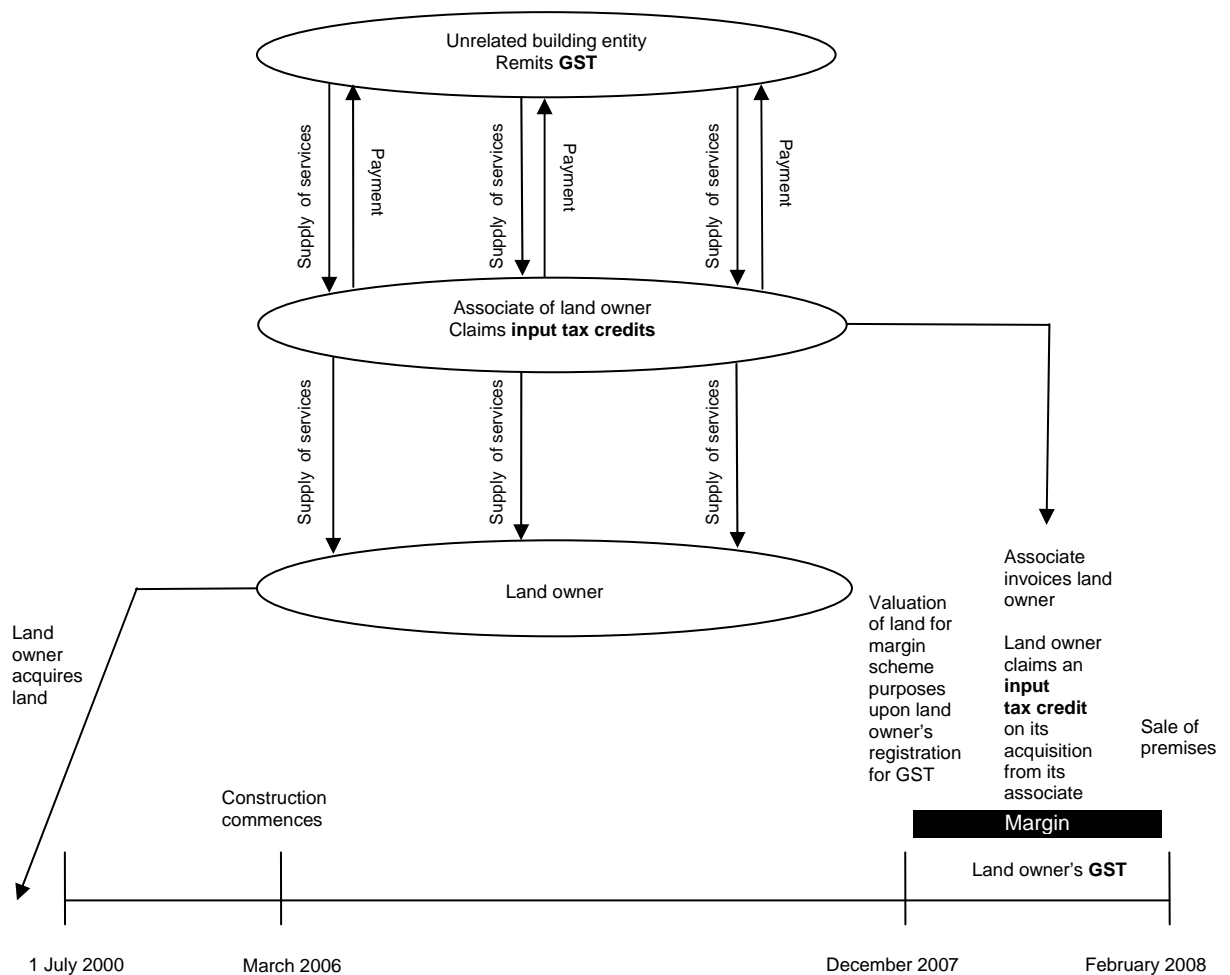
This Taxpayer Alert describes an arrangement that purportedly allows a land owner to register for GST as late as possible to minimise its GST payable under the margin scheme, but still claim a full input tax credit on its acquisition of construction services from its associate.

DESCRIPTION

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

1. An unregistered entity (the land owner) acquires land prior to 1 July 2000.
2. The land owner engages a GST registered associate to construct and market residential premises.

3. The associate engages a builder to construct the residential premises, provides payment for the construction services and claims input tax credits on these acquisitions.
4. The associate on-supplies these services to the land owner but does not require progress payments for the services.
5. The land owner registers for GST and receives an invoice from its associate, just prior to the sale of the premises.
6. The land owner claims a full input tax credit on its acquisition of the services from its associate.
7. The land owner calculates its GST payable on the sale of the premises under the margin scheme using a valuation of the land at the date of its GST registration.
8. The basic features of this arrangement can be summarised diagrammatically as follows:



FEATURES WHICH CONCERN US

The Tax Office considers that an arrangement of the type described above gives rise to taxation issues that include whether:

- a. The land owner is entitled to a full input tax credit under Division 11 of the *A New Tax System (Goods and Services Tax) Act 1999* ('GST Act') on its acquisition of the services from its associate;
- b. The land owner is required under Divisions 23 and 188 of the GST Act to be registered at a point earlier than the date its registration takes effect;
- c. Any act or payment by the land owner causes the associate's GST to be attributable in accordance with section 29-5 of the GST Act to a tax period prior to the tax period to which the associate treats its GST as being attributable;
- d. Any act or payment by the land owner causes any input tax credit that the land owner is entitled to, to be unattributable under section 29-10 of the GST Act because the act or payment occurs at a time when the land owner is not registered or required to be registered for GST;
- e. The GST payable by the land owner on its sale of the residential premises is calculated correctly under the margin scheme in Division 75 of the GST Act; and
- f. The anti-avoidance provisions of Division 165 of the GST Act apply, as the arrangement appears artificial and contrived in its design and execution.

The Tax Office is currently reviewing these arrangements.

Note 1: *If you have received a private ruling in respect of your arrangement, please check that the application of Division 165 of the GST Act is considered in that ruling. The applicant may not have sought for us to rule on the application of Division 165 to the arrangement ruled upon, or to an associated or wider arrangement of which that arrangement is part. If you want us to rule on whether Division 165 applies to your arrangement, we will first need to obtain and consider all the relevant facts about the arrangement, including (if relevant) the manner in which it has actually been implemented.*

Note 2: *Base penalties of up to 50% of the tax avoided can apply where Division 165 is applied. Base penalties of up to 75% of the tax avoided can apply where you make a false and misleading statement to the Commissioner. Reductions in base penalty will be available if the taxpayer makes a voluntary disclosure to the Tax Office. If you have any information about the current arrangement, phone us on 1800 177 006. Tax agents wanting to provide information about people or companies who may be promoting arrangements covered by this alert should call the tax agent integrity service on 1800 639 745.*

Note 3: *Penalties of up to 5,000 penalty units for individuals, 25,000 penalty units for bodies corporate or up to twice the amount of consideration received or receivable may apply to promoters of tax exploitation schemes under Division 290 of Schedule 1 to the Taxation Administration Act 1953. The Commissioner can also apply to the Federal Court of Australia for restraining and performance injunctions against promoters where prohibited conduct has occurred, is occurring or is proposed.*

subject references:

Goods and Services Tax
Creditable acquisition
Pre-GST land
Margin scheme
Residential premises
GST registration
Associate

legislative references:

A New Tax System (Goods and Services Tax) Act 1999

[Division 11](#)
[Division 23](#)
[Section 29-5](#)
[Section 29-10](#)
[Division 75](#)
[Division 165](#)
[Division 188](#)

related practice statements:

[PS LA 2008/15 - Taxpayer Alerts](#)

file references:

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