TA 2010/1 - GST - interposing an associated 'financial supply facilitator' to enhance claims for reduced input tax credits for expenses incurred in the course of a company takeover

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Taxpayer Alert TA 2010/1

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 In these latter cases the Taxpayer Alert will be withdrawn and a notification published which will be referenced to that Taxpayer Alert.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: **GST - interposing an associated 'financial supply facilitator' to enhance claims for reduced input tax credits for expenses incurred in the course of a company takeover**

This Taxpayer Alert describes an arrangement that attempts to create or increase an entitlement to a reduced input tax credit (RITC) for an entity that makes a financial supply of acquiring shares in a company as part of a takeover.

DESCRIPTION

This Taxpayer Alert applies to arrangements having features that are substantially equivalent to the following:

1. A special purpose vehicle entity (SPV) is established for the purpose of acquiring shares in a company as part of a takeover.

2. Another entity within the broader economic group, that is an associate of the SPV but not a member of the same GST group, is designated to provide "arranging services" for the SPV's acquisition of shares. (Arranging services is a reduced credit acquisition which entitles the recipient to an RITC).

3. Under an "arranging services" agreement with the SPV, the associate undertakes to acquire and pay for, amongst other things, tax, legal, public relations and investment banking services supplied by third parties. These services are performed exclusively for the purpose of the SPV's takeover and there is insufficient commercial rationale for the associate's involvement in the supply of these services.

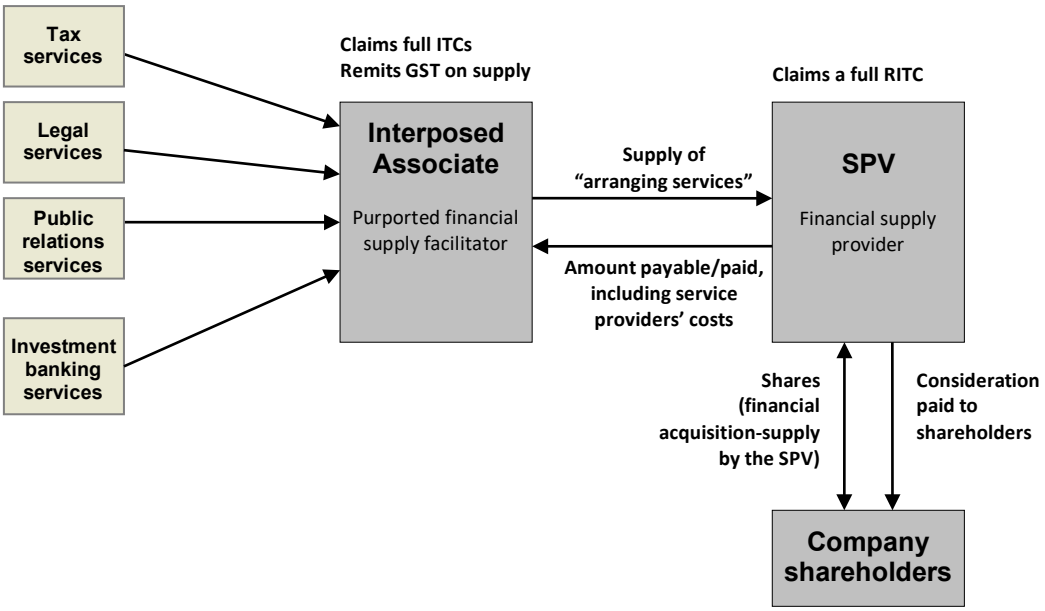
4. The associate claims input tax credits on its purported acquisitions of those services.

5. The associate then makes a single 'bundled' supply of 'arranging services' to the SPV, calculating its fee by reference to the costs it incurred in paying the service providers.

6. The SPV claims to have made a reduced credit acquisition on the basis that its interposed associate is a financial supply facilitator that has arranged the SPV's acquisition of the shares.

7. The SPV claims an RITC on its acquisition from its associate. The SPV would not have been entitled to an RITC on some or all of the acquisitions, such as tax, legal and public relations services, had it acquired those services directly from the service providers (i.e. without the interposition of the associate to provide the 'bundled' supply of 'arranging services').

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 associate may be entitled to input tax credits under Division 11 of the *A New Tax System (Goods and Services Tax) Act 1999* ('GST Act');

b. the associate may be a financial supply facilitator for the purposes of item 9 of the table in sub-regulation 70-5.02(2) of the *A New Tax System (Goods and Services Tax) Regulations 1999*; and if so, to what extent the services provided by the associate to the SPV may be covered by that item;

c. the anti-avoidance provisions of Division 165 of the *GST Act* may apply to the arrangement or any part of it; and

d. any entity involved in the arrangement may be a promoter of a tax exploitation scheme for the purposes of Division 290 of Schedule 1 to the *Taxation Administration Act 1953*.

The Tax Office is currently reviewing these arrangements.

***Note 1**: If you have received a private ruling in respect of your arrangement, please check whether the application of Division 165 of the GST Act is considered in that ruling. You may not have asked 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 you make a voluntary disclosure to the Tax Office. If you have any information about the current arrangement or about people or companies who may be promoting these or similar arrangements, please call us on 1800 060 062.*

***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.*

Amendment history

Date	Comment
19 January 2024	Updated ATO tip-off hotline number

Subject references:

- Arranging Services
- Arrangement
- Associate
- Creditable Acquisition
- Financial Supplies
- Financial Supply Facilitator
- Financial Supply Provider
- Goods and Services Tax
- Input Taxed Supplies
- Reduced Input Tax Credits

Legislative references:

- *A New Tax System (Goods and Services Tax) Act 1999*
  - **Division 11**
  - **Section 40-5**
  - **Division 70**
  - **Division 165**

- *A New Tax System (Goods and Services Tax) Regulations 1999*
  - **Subdivision 40-A**
  - **Regulation 70-5.02**

Related Practice Statements:

- **PS LA 2008/15 - Taxpayer Alerts**

Rulings

- **GSTR 2002/2**
- **GSTR 2004/1**
- **GSTR 2006/9**

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Authorised by:	**Stephanie Martin** Deputy Commissioner
Contact Officer:	**Nick Athans**
Business Line:	GST
Section:	Aggressive Tax Planning
Phone:	(03) 9275 5311