GSTR 2015/2EC - Compendium

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Ruling Compendium – GSTR 2015/2

This is a compendium of responses to the issues raised by external parties to Draft Goods and Services Tax Ruling GSTR 2014/D5 *Goods and services tax: development lease arrangements with government agencies*

This compendium of comments has been edited to maintain the anonymity of entities that commented on the draft ruling.

Summary of issues raised and responses

Issue No.	Issue raised	ATO Response/Action taken
1.	**General comments** The publication of the draft ruling and the practical guidance the final ruling may provide to developers and government agencies on such arrangements is welcomed and broadly supported. It is noted that different views may exist as to the construction of the arrangements and their GST implications, including issues of attribution and/or supply and progressive supply. These alternative views may ultimately be subject to proceedings in the courts which may determine a different position to that set out in the draft ruling. Specifically, the characterisation of the arrangements between the parties as set out in the draft ruling, and the consequential GST implications, are not necessarily supported by the decision of the Full Court in *Gloxinia*,[1] as that case did not address these particular issues.	**No change made.** Comments noted.

[1] *Federal Commissioner of Taxation v. Gloxinia Investments (Trustee)* [2010] FCAFC 46; 2010 ATC 20-182; (2010) 75 ATR 806.

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2.	**Change of value after attribution** Suggest a sentence is included after paragraph 66 of the draft ruling to confirm the position that a change in the market value of non-monetary consideration after the time the relevant GST is attributed is not an adjustment event and does not change the GST liability (cross-referencing paragraph 164 of GSTR 2001/6).[2] If parties exchange tax invoices upfront on entering arrangements they would do so on the basis of a valuation of the non-monetary consideration made upfront (such as the full costing or professional valuation). However, the value of the development, or of the land, may change over time and the upfront valuation may be very different from a valuation undertaken at the end of the arrangement (that is, when the development reaches practical completion and/or when the land is transferred). We submit that any change in value after attribution arising due to change in market values, or factors other than a change in the development lease arrangement itself, should not require any adjustment to the GST previously attributed. This position would be the case where the price for either supply – the land or development – were agreed upfront on entering contracts but the value of what was supplied changes by the time it is delivered/settled. This position would be the case where the price for either supply – the land or development – were agreed upfront on entering contracts but the value of what was supplied changes by the time it is delivered/settled.	**Change made.** New paragraphs 72 and 73 inserted to address this issue. A footnote reference to paragraph 164 of GSTR 2001/6 has also been added at paragraph 72 of the Ruling.
2. cont.	In that case, the GST liability would still be determined by the price	

[2] Goods and Services Tax Ruling GSTR 2001/6 *Goods and services tax: non-monetary consideration*.

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	agreed by the parties in the exchanged contract. This position also reflects the position taken by the Commissioner in the existing public ruling on non-monetary consideration (refer to paragraph 164 of GSTR 2001/6). We note that if, after an upfront exchange of tax invoices triggering attribution, there is a variation of the development lease arrangement itself, this may result in an 'adjustment' for GST purposes if there is a change to what is being provided as non-monetary consideration (that is, a change to either the land being transferred or the development services being supplied compared to the land or services that were originally valued).	
3.	Where the parties exchange invoices upfront, have acted in good faith and at arm's length and have engaged a professional valuer or followed the draft ruling in respect of full costing of the relevant development works on a bona fide basis then it would be appropriate that no further GST adjustment be required where the market value of the property changes before completion of the arrangement. The ruling should make this clear provided there is no material change in the arrangement itself. It would be appropriate to insert this at or immediately after paragraph 66 of the draft ruling noting consistency with paragraph 164 of GSTR 2001/6.	**Change made.** See Issue 2 of this compendium.

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4.	**Consideration not known example** After Example 10, commentary and an example should be included confirming that full GST is triggered on the supply of either the development services or the land/option once any monetary consideration is paid, except in the circumstance that the full monetary consideration is not known at the time of the first payment/invoice. If the full monetary consideration is not known in relation to a development lease arrangement (for example, if there is a variable factor) we submit that the Commissioner's determination in Schedule 5 of GSTR 2000/29[3] would apply to attribute GST as and when each part of the monetary or non-monetary consideration is received. For the non-monetary supply of development services, the draft ruling already provides that this is received upon practical completion (see paragraphs 115-121 of the draft ruling as noted above).	**Change made.** New example 11 at paragraph 100 has been incorporated into the Ruling to illustrate the attribution outcomes where monetary consideration is provided prior to the completion of the development works. It is agreed that the Commissioner's determination in Schedule 5 of GSTR 2000/29 may apply in some cases depending upon particular facts and circumstances of individual arrangements.
5.	**Circumstances in the Australian Capital Territory (ACT)** As the holding lease/99 year lease arrangements are standard practice in the ACT, we suggest a specific consultation process be undertaken with relevant stakeholders to ensure the principles in the draft ruling can be applied without any unintended consequences or whether some modifications are required.	**No change made.** New paragraph 6 has been added to explain that the Ruling does not specifically address these types of arrangements. Consideration is to be given to undertaking further consultation with industry stakeholders, ACT government representatives and tax professionals about the GST issues arising under these particular arrangements that are commonly undertaken in the ACT.
5. cont.	The application of the draft ruling could mean that where there are no additional payments for the grant of the 99 year leases over	

[3] Goods and Services Tax Ruling GSTR 2000/29 *Goods and services tax: attributing GST payable, input tax credits and adjustments and particular attribution rules made under section 29-25.*

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	residential lots, then the ability to use the margin scheme is effectively lost. The interaction of Division 81 and 82 of the *A New Tax System (Goods and Services Tax) Act 1999* would also need to be considered in any detailed analysis of the position in the ACT.	
6.	**Transitional issues** The Commissioner should include a paragraph on transition allowing parties six months to confirm their position, agree values, swap tax invoices and remit the GST/claim input tax credits even if on the principles of the ruling the GST liability had already been triggered. Since the withdrawal of the previous ruling on development lease arrangements in May 2011, parties have had to determine and take their own position in development lease arrangements on the issues of the existence of non-monetary consideration, its value and its attribution. Members are aware that some positions that have been taken are not on all fours with the current draft ruling, particularly on the issues of attribution timing and whether the development services are progressive supplies or not (in addition to the potential issue in the ACT noted above). With this ruling now clarifying the attribution issue, we seek a six month grace period for taxpayers – developers and government entities – to confirm whether GST liability has already been triggered, agree a valuation or valuation method where necessary, swap tax invoices and remit GST/claim input tax credits in the next BAS rather than having to amend earlier BASs.	**Change made.** The date of effect section of the Ruling at paragraphs 113 to 118 includes transitional arrangements for the treatment of GST obligations and entitlements arising under a development lease arrangement where the parties were commercially committed to the particular arrangement prior to the date of issue of the Ruling. The date of effect section of the Ruling also allows a period of six months for parties commercially committed to a development lease arrangement to make revisions to activity statements to revise their GST treatment of a development lease arrangement in accordance with the views expressed in the Ruling, if they choose to do so. No penalties or interest will apply if necessary activity statement revisions are made within the specified six month period.
6. cont.	Given the complexity of some of these arrangements, the potential need for agreed valuation methods and the range of parties involved, a six month time period will be necessary to allow the necessary	

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	processes to confirm and action compliance with the ruling.	
7.	It would be reasonable for the final ruling to allow parties a reasonable period of time to review their affairs and rectify as appropriate by agreement on value, issue of tax invoices and payment of the resultant GST liability. It would be reasonable that this may be addressed in an activity statement within three months after the final ruling is issued even though attribution and liability may have been triggered at an earlier date in the terms of the draft ruling.	**Change made.** See response to issue 6 of this compendium.
8.	**Meaning of supply** We believe that readers would gain a better appreciation of how the Commissioner has arrived at his final position if the ruling were also cross-referenced with GSTR 2006/9[4] which deals with the meaning of supply and the analysis of arrangements in which supplies are made. A better appreciation of the process employed by the Commissioner should assist taxpayers with the analysis of development lease arrangements not directly addressed in the ruling. Further clarification received from the member on 2 April states: GSTR 2006/9 contains 10 'propositions for characterising and analysing supplies'. I was hoping they could cross-reference the development lease ruling with GSTR 2006/9 with a view to demonstrating how they had used GSTR 2006/9.	**Change made.** The Ruling is consistent with all of the propositions in GSTR 2006/9. For further clarity, where considered appropriate, some footnote references have been added to the Ruling to refer to relevant propositions in GSTR 2006/9. Relevantly the following footnote references have been added: • Footnote 7 at paragraph 23 refers to proposition 2 of GSTR 2006/9. • Footnote 8 at paragraph 27 refers to propositions 11 and 16 of GSTR 2006/9. • Footnote 9 at paragraph 33 refers to proposition 6 of GSTR 2006/9.
8. cont.		In addition, footnote 32 has been added at paragraph 119 of the Ruling as a signpost to readers to refer to GSTR 2006/9 for a more detailed consideration of what a supply is and when a supply is considered to have occurred.

[4] Goods and Services Tax Ruling GSTR 2006/9 *Goods and services tax: supplies*.

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9.	**Invoices** Paragraphs 93 to 96 of the draft ruling refer to invoicing arrangements and makes the statement 'The issue of a document by the developer to the government agency on entry into a development lease arrangement or at any time afterwards, notifying the government agency of an obligation to supply the land subject to the development works being completed, is an invoice…'. Does this statement contemplate that the actual development lease agreement (or other agreements as part of the broader commercial arrangements) being the invoice (like lease agreements can be), or does it consider that this needs to be a separate document and more akin to what would normally be understood in common practice to be an invoice?	**Change made.** We understand that it is often the case that upon entry into a development lease arrangement, the works that are to be undertaken by the developer are contingent upon the developer or another party obtaining relevant development approvals. Paragraphs 107 and 142 of the Ruling have been amended to explain that the agreement entered into by the parties at the commencement of a development lease arrangement will not be an invoice if the actual works that the developer is required to undertake are contingent upon the developer or another party obtaining relevant development approvals.