TA 2004/6 - Use of the Grouping provisions of the GST Act to avoid Goods and Services Tax (GST) on the sale of new residential premises

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Australian Government
Australian Taxation Office

Taxpayer Alert
TA 2004/6

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

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 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 of the GST Act to avoid Goods and Services Tax (GST) on the sale of new residential premises**

This Taxpayer Alert describes an arrangement that uses the grouping provisions in an attempt to avoid GST on the sale of new residential premises. The parties to the arrangement use a GST group structure for the purposes of creating an 'internal sale' of new home units/houses between GST group members. 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 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 constructs or arranges the construction of residential units/houses on the land.

3. The group member sells the 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. The acquiring group member sells the units/houses to third parties, and treats the sales as input taxed for GST purposes. The sale is claimed not to be that of "new residential premises", having previously been sold within the group. (Supplies of new residential premises are taxable supplies).

5. Despite the acquiring group member treating the sale of the units/houses to third parties as input taxed, the GST group claims input tax credits on the costs of constructing the units/houses 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) sale of the new home units/houses within the group is the first sale of residential premises;

(b) sale of real property within the group is a taxable supply despite the operation of subsection 48-40(2);

(c) GST group representative is entitled to input tax credits on the costs of construction and/or the acquisition of the land; and

(d) 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

related taxation rulings:

legislative references:
GST Act Division 165
GST Act Division 48
GST Act Division 9

	GST Regulation 48
related taxpayer alerts:	TA 2004/2
related practice statements:	PS LA 2008/15 - Taxpayer Alerts
related media releases:	
file references:	

Date issued:	
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