TA 2004/8 - Use of the Going Concern 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 2004/8 - Use of the Going Concern provisions and the Margin Scheme to avoid or reduce the Goods and Services Tax (GST) on the sale of new residential premises*

Australian Government
Australian Taxation Office

Taxpayer Alert
TA 2004/8

The Taxation Office view on this arrangement is set out in GST Ruling GSTR 2005/5

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 Going Concern 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 involving an entity which makes a sale of substantially completed residential units/houses to another entity as a GST-free going concern. The acquiring entity 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 its acquisition cost, which is designed to set the price to reduce or eliminate the margin for GST.

DESCRIPTION

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

1. An entity owns or acquires land and substantially constructs, or arranges the substantial construction of, residential units/houses on the land.

2. The entity sells the substantially completed residential units/houses to another entity, which may or may not be an associate, as a GST-free going concern.

3. The acquiring entity completes, or arranges the completion of, the units/houses, and sells them as a taxable supply to third parties, applying the margin scheme to calculate the GST payable on those sales. GST is calculated only on the margin between the sale price to the third parties and the acquisition cost.

4. Both entities claim input tax credits on the costs incurred in 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) supply of the substantially completed residential units/houses is the supply of a GST-free going concern; and

(b) 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 going concern input taxed Goods and Services Tax margin scheme associates
related taxation rulings:	
legislative references:	GST Act Division 165 GST Act subdivision 38-J GST Act Division 72 GST Act Division 75
related taxpayer alerts:	TA 2004/2, TA 2004/6, and TA 2004/7
related practice statements:	PS LA 2008/15 - Taxpayer Alerts

related media releases:

file references:

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