ATO ruling – development lease arrangements with government agencies

5 June 2015

In brief

On 3 June 2015, the Australian Taxation Office (ATO) issued Goods and Services Tax Ruling GSTR 2015/2 which sets out the Commissioner of Taxation's views on the GST treatment of particular transactions arising in the context of development lease arrangements entered into between government agencies and private developers.

Background

A development lease arrangement between a government agency and a private developer will typically have the following features:

- the government agency initially grants a short-term lease or licence (commonly referred to as a 'development lease') to allow the developer to enter the land and to carry out development works on the land. The developer may be required to pay rent or a lump sum amount to the government agency for the grant of the development lease
- all risks relating to the development works rest with the developer
- the developer undertakes the works on its own account and not as an agent for the government agency, and
- the government agency transfers or grants the freehold interest or long term leasehold of the land to the developer when the conditions specified in the development lease arrangement are satisfied.

In detail

Identifying and characterising supplies

The Commissioner notes that the supplies made under a development lease arrangement will typically give rise to the following:

- The government agency grants a development lease (i.e. short-term lease or licence) to the developer to allow the developer to undertake development works on the land.

  The Commissioner considers that the government agency is making a supply of land to the developer, and the developer makes a corresponding acquisition of the land. Where the development lease (or a related agreement) provides for the payment of rent or a lump sum, the payment of this amount is consideration for the supply of land.

- The developer undertakes development works on land owned by the government agency, and, on completion, the government agency transfers the freehold interest in (or grants a long-term lease over) the land, to the developer.

  Upon completion of the development work, the Commissioner considers that:

  1. the developer makes a taxable supply of development services to the government agency for consideration comprising the relevant interest in the land supplied by the agency, and

  2. The government agency makes a taxable supply of land to the developer for consideration comprising the development services provided by the developer

     provided there is sufficient nexus between the two. There will be a sufficient nexus if the development lease arrangement makes the supply of the land subject to or conditional on the developer completing specified development works.

  Where the government agency grants an option to the developer to call for the transfer of freehold title or the grant of a long-term lease of the land as a consequence of the completion of the development works, the grant of the call option is consideration for the developer's supply of development services.

Valuation of non-monetary consideration for supplies

Where the parties to a development lease arrangement are dealing at arm's length, the Commissioner considers that the things exchanged between the parties are of equal value and the parties can agree to use a reasonable valuation method to determine the GST-inclusive market value of the non-monetary consideration for the relevant supplies.

For example, the full costing of the development works, undertaken by the developer as part of a competitive tender process, provides a reasonable basis for determining the GST-inclusive market value of the supply of development services by the developer and the price of the government agency's related supply of land (or grant of a call option).

Of note, is that where a developer undertakes additional works on the government agency's land as part of the development agreement, the value of these works can form part of the consideration for the agency's original supply of the land to the developer.

Timing of GST liabilities and input tax credits

The government agency's GST liability for the supply of the land (or grant of a call option) is not attributable until the specified development is completed (or a specified stage is completed), unless an invoice has been issued or a monetary payment has been received in an earlier tax period.

From the developer's perspective, where no monetary consideration has been received and no invoice has been issued in an earlier tax period, the GST liability for its supply of development services is attributable

to the tax period in which the freehold or long-term leasehold interest in the land is transferred (or the call option is granted).

The takeaway

The Ruling addresses a number of key GST issues that typically arise out of a development lease arrangement between a government agency and a private developer. It is important for the parties to consider the specific terms of the particular development lease arrangement to ensure the correct GST treatment (including valuation and attribution rules) is applied to the relevant supplies and GST liabilities (and associated credit entitlements) appropriately correspond.

The Ruling applies on and from its date of issue, 3 June 2015. However, there are transitional rules which will apply to arrangements that have been commercially committed to by the parties before the date of issue of the Ruling.

Let's talk

For a deeper discussion of how these issues might affect your business, please contact:

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