



## ATO draft ruling confirms good GST news for developers.

The ATO has issued a draft ruling to confirm its revised opinion in relation to creditable purpose and adjustments as was originally set out in the ATO Interpretative Decision (ID) 2008/114. CBP's article "**Good GST News for Developers**" sets out the details of that decision and its importance to developers.

The decision (when it becomes final form) will ultimately create more flexibility and cash flow benefits for developers in tougher market conditions. Ultimately, these new benefits should increase the incentives to temporarily rent premises that are becoming difficult to sell. In conjunction with this article, we encourage developers to take a look at our previous article on the proposed changes (as linked above) having special regard to the "actively marketing the premises for sale" requirements.

### Draft GST Ruling GSTR 2008/D5

The draft ruling confirms that an entity that is registered for GST may construct new residential premises for the purpose of sale (being part of an enterprise that the entity is carrying on) and

would be entitled to input tax credits for the acquisitions relating to the construction of the new residential premises.

However, as we have seen in recent times, circumstances may arise such that the premises are rented prior to their sale.

In these cases, consideration must be given to the application of *Div 129 of the GST Act* which deals with changes in the extent of a creditable purpose. This is because the sale of new residential premises is a taxable supply but the rental of new residential premises is an input taxed supply. The critical difference in these concepts is that an acquisition (such as the acquisitions that are involved in construction) is not applied for a "**creditable purpose**" to the extent that its application relates to making input taxed supplies.

The draft ruling is good news to developers as previously it was the ATO's view that once a creditable purpose changed from selling the premises to renting the premises the entity was required to repay all GST claimed as input credits. With this recent publication, the ATO's new view is that the change

### What is an adjustment period?

An adjustment period for a purchase is a reporting period that:

- starts at least 12 months after the end of the reporting period in which you claimed your GST credit (or would have claimed the credit if you were entitled to), and
- ends on 30 June (unless you do not have a reporting period that ends on 30 June, in that case, the reporting period that ends close to 30 June).

in creditable purpose requires an entity to apportion their adjustment (i.e. their repayment) to the extent that the creditable purpose has changed.

### Apportionment

If an entity is required to apportion its creditable purpose it must do so by applying a method that is fair and reasonable in the circumstances of each case.

In circumstances where an entity constructs new residential premises for sale but they are subsequently rented, it is necessary to consider the different applications of the premises up to the end of the relevant adjustment period.

1. If the premises have been used for a creditable purpose (i.e. sale) and a non-creditable purpose (i.e. renting) during the relevant period and the premises have been sold prior to the end of the relevant adjustment period, one reasonable method of apportionment is an output based indirect method. This method is based on the following formula:

Consideration for the taxable supply of the premises

Consideration for the taxable supply of the premises + consideration for the input taxed supplies of residential rent

2. If the premises remain unsold at the end of the relevant adjustment period the actual consideration for the taxable supply of the premises on sale will not be known. Where the premises have been applied for a creditable purpose, to some extent, for the entire relevant period, one can adopt the above formula by using an estimate as to the consideration receivable for the taxable supply of the premises on sale.

### Acquisitions relating to new residential premises

Acquisitions which may be subject to an adjustment under Div 129 include:

- acquisitions of goods related to the construction of premises, eg construction materials such as bricks, concrete, roofing, paint, etc, and
- acquisitions of services related to the construction of premises, eg services of an electrician, plumber, bricklayer or an entire construction contract.

Acquisitions which relate directly to either the sale of the new residential premises or the leasing of the premises (such as real estate agent and marketing services acquired in relation to selling/leasing the premises) are not subject to an adjustment under Div 129.

## Final Ruling

The draft ruling has called for submissions with regard to the operation of the new decision and it is expected that sometime in the next few months that the decision will be finalised in a GST ruling. Until that time, the draft ruling does not operate as law so any considerations or application of this ruling should be done on a tentative basis.

We will send you further updates as they occur.

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