GSTR 2006/6DC - Draft Consolidation - Goods and services tax: improvements on the land for the purposes of Subdivision 38-N and Division 75

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Goods and Services Tax Ruling

Goods and services tax: improvements on the land for the purposes of Subdivision 38-N and Division 75

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Preamble

This publication provides you with the following level of protection:

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What this Ruling is about

1. This Ruling discusses the meaning of the phrase 'improvements on the land' in the context of the phrases 'improvements on the land' or 'no improvements on the land' or equivalent phrases in Subdivision 38-N and Division 75 of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act).

2. These phrases appear in Subdivision 38-N and Division 75:

- 'land on which there are no improvements' in subsection 38-445(1) and section 38-450;
- 'no improvements on the land' in paragraph 38-445(1A)(c);
- 'no improvements on the land or premises' in item 4 of the table contained in subsection 75-10(3) and subsection 75-10(3A); and
- 'improvements on the land or premises' in item 3 of the table contained in subsection 75-10(3) and in paragraph 75-10(3A)(b).

3. Unless otherwise stated, all references in this Ruling are to the GST Act.

Date of effect

4. This Ruling applies [to tax periods commencing] both before and after its date of issue. However, this Ruling will not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of this Ruling (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10).

5. [Omitted.]

6. [Omitted.]

7. [Omitted.]

8. [Omitted.]

Ruling with Explanation

Supplies under section 38-445 or 38-450

9. Whether there are improvements on the land is relevant in establishing whether a supply made by the Commonwealth, a State or Territory[1] is GST-free under sections 38-445 and 38-450 of the GST Act.

10. Under subsection 38-445(1), if the Commonwealth, a State or a Territory makes a supply of land on which there are no improvements and the supply is of a freehold interest or long-term lease, it is GST-free unless the land has been previously supplied as a GST-free supply under section 38-445.

11. Under subsection 38-450(1), a supply by the Commonwealth, a State or a Territory of land on which there are no improvements is GST-free if the supply is by way of a lease other than a long-term lease and the lease is subject to conditions that when satisfied entitle the recipient to the grant of a freehold interest in or long-term lease of the land.

12. When the Commonwealth, a State or Territory subsequently supplies the freehold interest or long-term lease, it is GST-free under subsection 38-445(1A), unless the land has previously been supplied as a GST-free supply under section 38-445.

Surrender of a lease under subsection 38-450(2)

13. Under subsection 38-450(2) the surrender of a lease to the Commonwealth, a State or Territory is GST-free if:

- the supply of the lease was GST-free under subsection 38-450(1), or would have been GST-free

[1] Goods and Services Tax Ruling GSTR 2006/5 *Goods and services tax: the meaning of 'Commonwealth, a State or a Territory'* discusses the Commonwealth, a State or a Territory.

under that subsection if it had not been made before 1 July 2000; and

- solely or partly in return for the surrender of the lease, the Commonwealth, State or Territory makes a supply of the land to the lessee that is GST-free under section 38-445.

Paragraph 75-10(3)(b)

14. Whether there are improvements on the land is also relevant if a taxable supply of real property is made under the margin scheme and the margin for the supply is calculated under subsection 75-10(3).

15. If subsection 75-10(3) applies, the margin for the supply is the difference between the consideration for the supply and an approved valuation of the real property at the relevant date specified in the table in paragraph 75-10(3)(b). Whether there are improvements on the land may determine which item in the table applies to the supply. The item in the table then establishes the valuation date.

16. For example, item 4 of the table applies where the supplier is the Commonwealth, a State or Territory and has held the interest, unit or lease since before 1 July 2000, and there were no improvements on the land or premises in question as at 1 July 2000. Under item 4, the valuation must reflect the value of the real property on the day on which the taxable supply takes place. In addition, if item 4 of the table applies, then the valuation excludes any improvements on the land or premises at the valuation date.[2]

Legislative context of the term 'improvements on the land'

17. The Explanatory Memorandum to the A New Tax System (Goods and Services Tax) Bill 1998 in respect of subsection 75-10(3), and the House of Representatives Supplementary Explanatory Memorandum to the Indirect Tax and Consequential Amendments Bill (No 2) 1999 in respect of subsection 75-10(3A), refer to unimproved land held by the Commonwealth, a State or a Territory as at 1 July 2000, which is subsequently improved before the supply.

18. The Explanatory Memoranda confirm that GST is intended to be applied to the difference between the sale price and the value of the land component at the date of sale. The effect is that the value of the land is not subject to GST and that only the value of improvements is taxed.

19. The Explanatory Memoranda also state that this outcome is intended to be consistent with the operation of Subdivision 38-N of the GST Act which provides that grants of freehold interests in unimproved land by governments are GST-free. Accordingly, the

[2] Subsection 75-10(3A).

treatment of improvements is the same for subsections 75-10(3) and 75-10(3A) as it is for Subdivision 38-N.

20. ~~Unimproved land is taken to be l~~Land in its natural state is unimproved land. Thus, to establish whether there are, or were, improvements on the land for the purpose of these provisions, a comparison is made between the state of the land in question at the relevant time ~~is compared with~~ and that same land in its natural state.

The meaning of 'improvements on the land'

21. In considering ~~T~~the meaning of 'improvements' in the context of land tax, ~~has been held by~~ the High Court in *Morrison v. Federal Commissioner of Land Tax* (1914) 17 CLR 498 at 503 ~~to be~~ held that:

> Any operation of man on land which has the effect of enhancing its value comes within the definition of 'improvement'.

21A. In other contexts a broader meaning has been given to 'improvements'. In *Commonwealth of Australia v. Oldfield* (1976) 133 CLR 612 (*Oldfield*), Jacobs J stated that:

> It appears to me that the considerations which led the court in these cases to give the word "improvements" a meaning which would include what is done in improvement of quality of the soil and thereby *the usefulness of the land* apply as much to the words of this lease as to the words of that statute…[2A] (emphasis added)

21B. In *Dampier Mining Company Limited v. Federal Commissioner of Taxation* [1979] FCA 53, (1979) 10 ATR 193, 79 ATC 4469, a case on the expressions 'effecting improvements upon land' and 'making improvements…on…land' that were used in the *Income Tax Assessment Act 1936*, Brennan J in the Full Federal Court stated[2B] that:

> one cannot find an 'improvement' in the present case unless the dredging enhances the value of land, *or makes the use of land more efficient* (emphasis added).

21C. On appeal to the High Court, Stephen J also expressed a broad view on the meaning of improvements[2C]:

> I would not confine the notion of improvements in Div. 4 to that which enhances the market value of land; some improvements, not made in the course of putting land to its best economic use but, rather, so as to meet the particular requirements of its occupier, may, I suppose, have the effect of actually depreciating its market value.

[2A] 133 CLR 612 at 619.
[2B] *Dampier Mining Company Limited v. Federal Commissioner of Taxation* [1979] FCA 53, (1979) 10 ATR 193, 79 ATC 4469.
[2C] *Dampier Mining Company Limited v. Federal Commissioner of Taxation* (1981) 147 CLR 408 at 419. However, it is noted that in this case (and in the earlier cases of *Goldsworthy Mining Ltd v. Commissioner of Taxation* (1975) 132 CLR 463 and *Brisbane City Council v. Valuer-General for State of Queensland* (1978) 140 CLR 41) Gibbs CJ took a more limited view on the meaning of improvements as being that which enhanced the value of the land.

22. ~~Applying this principle means that,~~While the meaning of 'improvements' will depend on the statutory purpose and context in which it is used, there is nothing in the GST Act which requires a restrictive or narrow meaning to be adopted. In accordance with the ordinary meaning of the word and taking into account the views expressed in the cases referred to above, for there to be 'improvements on the land':

- there must have been some human intervention;
- the human intervention must have been physically located on the land; and
- at the relevant date[3] for ascertaining whether there are improvements on land the~~at~~ human intervention must enhance the~~:~~:
  - value of the land; ~~at the relevant date for ascertaining whether there are improvements on land.~~
  - usefulness of the land; or
  - both the value and usefulness of the land.

22A. A physical human intervention on land that enhances the usefulness of the land does not necessarily have to also result in an increase in the value of that land to constitute an improvement on the land. It is sufficient that what was done has made the land more useful to an occupier.

23. Where there have~~s~~ been a number of human interventions on the land it is necessary to establish whether any of the human interventions enhance the value or usefulness of the land. If any of the human interventions located on the land enhance its value or usefulness at the relevant date, then there are improvements on the land. This is regardless of whether the net value of the human interventions enhances the overall value of the land.

24. Determining whether a human intervention enhances the value or usefulness of the land entails an objective test. This means that whether an intervention enhances the value or usefulness should not be determined by reference to ~~use~~ actual, or intended, use by ~~either the supplier or the recipient.~~ a specific occupier. Rather, a comparison should be made between the value or usefulness of that land in its natural state and its value or usefulness at the time provided for in the relevant provisions[3A], to any potential occupier.[3B]

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[3] Paragraph 34 discusses the relevant day for ascertaining whether there are improvements on the land.
[3A] Sections 38-445, 38-450 and 75-10.
[3B] *Trust Company of Australia Ltd v. Valuer-General* [2007] NSWCA 181, (2007) 154 LGERA 437 at [95]. See also paragraph 36 of this Ruling.

Human interventions

25. The following are examples of human interventions that may enhance the value or usefulness of land:

- houses, town-houses, stratum units, separate garages, sheds and other out-buildings;
- commercial and industrial premises;
- farm houses, farm outbuildings, internal fencing, stockyards, wells and bores, excavated tanks, dams, surface drains, culverts, bridges, sown pasture, formed internal roads, and irrigation layouts;
- formed driveways, swimming pools, tennis courts, and walls;
- any other similar buildings or structures;
- fencing – internal or boundary fencing;
- utilities, for example, water, electricity, gas, sewerage connected or available for connection;
- clearing of timber, scrub or other vegetation;
- excavation, grading or levelling of land;
- drainage of land;
- building up of soil fertility;
- removal of animal pests, rabbit burrows etc;
- removal of rocks, stones or soil; and
- filling of land.

Enhancing the value or usefulness of the land

26. A human intervention is not necessarily an improvement. To be an improvement, the human intervention must enhance the value or usefulness of the land.

27. In some circumstances, a human intervention on land neither enhances nor decreases the value or usefulness of land. For example, fire breaks, solely to allow access to fire equipment and reduce the spread of a fire, may not enhance the value or usefulness of the particular land.

28. In other circumstances, human interventions that were once improvements but that have deteriorated over time or have contributed to land degradation, may no longer enhance the value or usefulness of the land and are not improvements. For example, clearing is a human intervention which ordinarily enhances the value or usefulness of the land. However, clearing may deteriorate over time with the regrowth of the same type of vegetation or even different vegetation (for example, lantana, blackberry or other noxious

weeds). Clearing also may degrade the land by later causing erosion or salinity problems.

29. Similarly, a building that initially enhanced the value or usefulness of the land may have deteriorated over time to such an extent that it is a detriment as it is uninhabitable and has been condemned by order of the local council. This building is not considered to be an improvement.

30. In some situations, improvements may have been on the land but no longer exist as improvements on the relevant day specified in the table below. For example, bushland owned by the Commonwealth, a State or a Territory may have originally been fenced, but due to deterioration, no valuable or useful fencing exists on the relevant day.

30A. In other circumstances, a human intervention that enhanced the value or usefulness of land will not cease to enhance the value or usefulness of the land simply because of a change in the preferred use of the land. In other words, a human intervention on land will not cease to be an improvement if there is no physical change to it. For example, fencing may be constructed to enhance the value or usefulness of land used for farming. The fencing may remain in good repair. If the land can now be better used for mining, for which the fence will be of no use, it does not mean that the fencing no longer enhances the value or usefulness of the land. Compared to the land in its natural state, the fencing continues to enhance the value or usefulness of the land to an occupier who wants to put the land to use for farming.[3C]

31. The following High Court cases provide support for considering the impacts of deterioration or degradation:

- *Morrison v. Federal Commissioner of Land Tax* (1914) 17 CLR 498 at 504:

  While improvements or the consequent operations of nature are still going on, the value of improvements may, of course, increase from year to year, just as, in the case of some improvements, *it may be exhausted* [emphasis added].

- *Lewis Kiddle and another v. Deputy Federal Commissioner of Land Tax 27 CLR 316 at 320:*

  Presumably, a purchaser of land, if he considered this question at all, would determine that the amount to be attributed to value of improvements would be equal to the amount which he gained or saved by reason of the improvements having been made, he being thereby relieved from the necessity of making them. This amount would be found by ascertaining the amount which it would cost to make the improvements in question at the relevant date, including a proper allowance for loss of interest on all outlay during the period which must elapse before such outlay became fully productive, and *by deducting from the sum so*

[3C] See paragraphs 24 and 35 of this Ruling.

> *ascertained a proper allowance for depreciation or partial exhaustion of the improvements* [emphasis added].

Multiple human interventions on the land

32. Where there are a number of human interventions on the land, it is not appropriate to take a holistic approach to establishing whether there are improvements on the land. Instead, it is necessary to determine whether any of the human interventions enhance the value or usefulness of the land. If any of the human interventions enhance the value or usefulness of the land there are improvements on the land.

33. For example, a building that is uninhabitable because it is derelict and condemned by order of the local council does not enhance the value or usefulness of the land. The building in these circumstances is a detriment rather than an improvement. However, if the land on which the building is located is cleared and the clearing has not deteriorated or has not degraded the land, there are improvements on the land. The clearing still enhances the value or usefulness of the land.

When you ascertain whether there are improvements on the land

34. The following table describes the relevant day for ascertaining whether there are improvements on land.

Section	***Relevant day for ascertaining whether there are improvements on the land***
Subsection 38-445(1)	When the supply is made.
Subsection 38-445(1A)	When the land was previously supplied by the Commonwealth, a State or a Territory by way of a lease to the recipient of the supply.
Subsection 38-450(1)	When the supply is made.
Item 2A of the table in subsection 75-10(3)	When the land was previously supplied by the Commonwealth, a State or a Territory by way of a lease to the recipient of the supply.
Item 3 of the table in subsection 75-10(3) .	1 July 2000.
Item 4 of the table in subsection 75-10(3).	1 July 2000.
Subsection 75-10(3A)	The day on which the taxable supply takes place.

~~Who establishes~~Establishing whether there are improvements on the land

35. Determining whether a human intervention enhances the value or usefulness of the land is an objective test. This means that whether an intervention enhances the value or usefulness of the land should not be determined by reference to ~~use~~ actual, or intended, use by either the supplier, ~~or~~ the recipient or a specific occupier. For example, real property with a building on it that is not condemned, enhances the value or usefulness of the land even though the recipient may intend to demolish the building and construct some other building in its place.

36. As the issue of whether there are improvements on the land is a question of fact, ~~it may be prudent to engage~~ a professional valuer's opinion may be of assistance ~~to establish this.~~ in determining whether the intervention enhances the value of the land. However, the valuation concept of 'highest and best use' is not relevant because the question is whether the intervention enhances the value of the land compared with its natural state.[3D] Furthermore, valuation concepts will not be relevant in determining whether the intervention objectively enhances the usefulness of the land to an occupier.

Meaning of 'on the land'

37. The term 'improvements on the land' refers to any human intervention on the land which has the effect of enhancing its value or usefulness. It is not limited to visible structural improvements and includes improvements below the surface of the land, such as underground drainage or other facilities.

38. Support for this view is found in the decision in ~~*Commonwealth of Australia of Australia v.* *Oldfield* (1976) 133 CLR 612; (1976) 10 ALR 243~~ where the High Court described the meaning of 'improvements on the land' in the following manner:

> We are concerned with the value at the relevant date of the physical consequences which enure to the land of the acts whereby the land attained a quality and usefulness additional to that which it had in its virgin state.
>
> …
>
> Improvements to land result in improvements on that land in the relevant sense. The preposition 'on' does not here mean 'on the surface of the land' or the like unless the word improvement is limited to physical objects placed or constructed in or in the soil and for the reasons which I have given I do not think that the word has that meaning.[4]

[3D] *Trust Company of Australia Ltd v. Valuer-General* [2007] NSWCA 181, (2007) 157 LGERA 437 at [95].

[4] 133 CLR 612 at 620.

Alternative view

39. There is an alternative view that the expression 'improvements on the land' is limited to visible structural improvements such as buildings and does not extend to things such as clearing and draining.

40. This view does not accept the principles adopted in the land tax cases as these cases considered a broader expression, being 'improvements thereon or appertaining to' the land.' The expression is broader, on this view, because the words 'appertaining to the land' extend the phrase to improvements that are not necessarily on the land~~'~~.

41. However, in *Brisbane City Council v. Valuer-General (Queensland)* [1978] HCA 40, Gibbs J, with whom the four other members of the Court agreed, when considering the meaning of the phrase 'thereon or appertaining thereto', noted at 47 that:

> [t]his means that the improvements, if not on the land, must be 'such as are in the strict legal sense 'appurtenant' to the property and incident to its ownership' (*McDonald v. Deputy Federal Commissioner of Land Tax (NSW)* (1915) 20 CLR 231, at pp 234-235).

42. From the above it can be seen that the words 'appertaining to' only extend the meaning of the phrase to a limited extent. Given this, it seems that the conclusions in the rating and land tax cases are more likely based on the expression 'improvements thereon' rather than the improvements 'appertaining to' the land.

43. As the phrase 'improvements thereon' is analogous to 'improvements on the land', it is the Commissioner's view that the principles in the rating and land tax cases apply when ascertaining the meaning of 'improvements on the land'.

44. The alternative view also argues that the construction adopted in the rating and land tax cases may have been influenced by the perceived policy of that legislation, and consequently the decisions do not have application in the GST context.

45. In *McGeogh v. Federal Commissioner of Land Tax* (1929) 43 CLR 277, per Knox CJ and Dixon J at 290, the policy intent of the relevant legislation was articulated in the decision, in which the purpose of land tax was described as a policy of taxing the 'unearned increment'. That is, without regard to improvements effected by the owner or the owner's predecessors, but having regard to extrinsic circumstances, such as public roads or railways, increased settlement in the neighbourhood and other benefits not brought about by the operations on the land of successive operators. However, this reference to the apparent policy of land tax was not the primary basis for the decision.

46. For the ~~above~~ reasons stated, and having regard to the High Court decision in ~~*Commonwealth of Australia of Australia v.* Oldfield 10 ALR 243~~, the Commissioner considers the better view to be that improvements on the land, in the GST context, are not limited to visible structural improvements. This view is consistent with the

Explanatory Memorandum which refers to the provisions requiring that the land is 'unimproved' or land that 'has not been improved'.[5]

Improvements that are not on the land

47. While the term 'improvements on the land' is not limited to visible improvements, it should be noted that 'improvements on the land' does not include interventions that are not upon the land, such as amenities in the surrounding area, even though they may enhance the value of the land.

Supply of a piece of land with multiple titles

47A. Whether there is an improvement on land for the purposes of sections 38-445, 38-450 or subsection 75-10(3), is determined by considering the land that is the subject matter of a supply. The land that is the subject matter of the supply is usually identifiable from the terms of the contract between the supplier and the recipient of that land.

47B. If land that is the subject matter of a supply is identifiable under one contract as a single piece of land comprising separately titled lots, then it is necessary to consider whether there are improvements on that single piece of land as a whole. Each of the separately titled lots is not considered separately. Therefore, where separately titled lots are supplied as a single piece of land under one contract, and any of that single piece of land is land on which there are improvements, the single piece of land as the subject of the supply is land on which there are improvements.

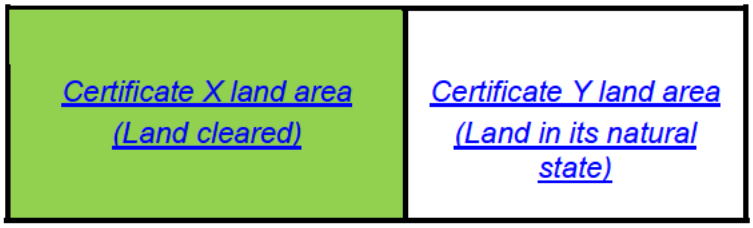
Example 1: A supply of a piece of land comprising separately titled lots

47C. *Under a contract for sale of land, the subject matter of the supply is a single piece of land comprising two separately titled lots, Certificate X and Certificate Y. Farming activities had previously taken place on the area of the land described in Certificate X, which was cleared.*

47D. *In contrast, the area of land described in Certificate Y has at all times remained in its natural state. This is diagrammatically represented as:*

[5] Explanatory Memorandum to the A New Tax System (Goods and Services Tax) Bill 1998, paragraph 5.132.

Single piece of land



47E. *In this instance, notwithstanding that the single piece of land is described in two certificates of title, the whole of the land being supplied is land on which there are improvements.*

Subdivided land and item 4 of the table in subsection 75-10(3)

48. In this part of the Ruling, the Commissioner considers whether a supply of a particular subdivided lot is ineligible for consideration under item 4 of subsection 75-10(3) because the larger area (englobo land) from which it was subdivided had improvements on it at 1 July 2000~~, even though~~. In this context, the physical area of the particular subdivided lot may have had no improvements, or part of an improvement, on it at 1 July 2000.

49. The issue is whether it is necessary to consider whether any part of the englobo land had improvements on it or whether regard should be had only to that part of the englobo land that forms the subdivided lot.

50. It is the Commissioner's view that the words 'land or premises in question' in item 4 qualify the application of the improvements test to land that is supplied and not the larger area from which it is subdivided.

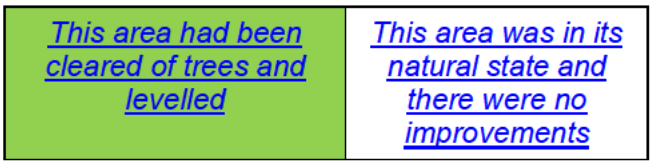
51. These words can be contrasted with the expression 'interest, unit or lease' which are used elsewhere in the item to refer to the legal interest being supplied under the margin scheme. This distinction supports the view that it is the physical land rather than the legal interest that is considered when determining whether there were improvements on the land at the relevant date.[6]

51A. The consequence of this view is that where land is subdivided after 1 July 2000, it is necessary to examine the englobo land as it was at 1 July 2000 and identify if there were any improvements on that land. If the englobo land had improvements as at 1 July 2000, and any of those improvements or parts of those improvements were on the physical land that is supplied, item 4 will not apply. However, if the englobo land had improvements as at 1 July 2000 but none of those improvements, or parts of those improvements, were on the physical land that is supplied, item 4 can apply.

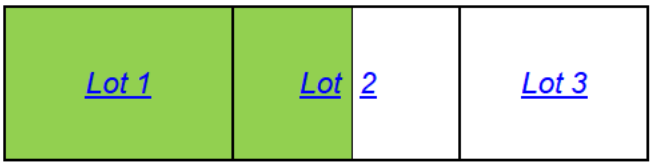
[6] This interpretation is also considered to be consistent with the practical approach to the interpretation of Division 75 adopted by Stone J in *Sterling Guardian Pty Limited v. Commissioner of Taxation* [2006] FCAFC 12.

Example 2: Land subdivided from land with improvements on the land at 1 July 2000

51B. *At 1 July 2000, a large rural block was in part cleared and levelled and in part remained in its natural state.*



51C. *After 1 July 2000, the rural block is subdivided into three lots to be sold separately.*



51D. *Lots 1 and 2 are land on which there were improvements as at 1 July 2000. Lot 3 is land on which there were no improvements as at 1 July 2000.*

51E. *If, however, lots 1, 2 and 3 were sold as a single piece of land under one contract, the whole supply would be a supply of land on which there were improvements as at 1 July 2000 (see Example 1 of this Ruling).*

Detailed contents list

52. Below is a detailed contents list for this draft Goods and Services Tax Ruling:

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Commissioner of Taxation
26 April 2006

Your comments

53. You are invited to comment on the draft changes to Goods and Services Tax Ruling GSTR 2006/6. Please forward your comments to either contact officer by the due date.

Draft update published: **27 June 2018**
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Previous drafts:
GSTR 2005/D5

Related Rulings/Determinations:
TR 2006/10; GSTR 2006/5

Legislative references:
- ANTS(GST)A 1999 Subdiv 38-N
- ANTS(GST)A 1999 38-445
- ANTS(GST)A 1999 38-445(1)
- ANTS(GST)A 1999 38-445(1A)
- ANTS(GST)A 1999 38-445(1A)(c)
- ANTS(GST)A 1999 38-450
- ANTS(GST)A 1999 38-450(1)
- ANTS(GST)A 1999 38-450(2)
- ANTS(GST)A 1999 Div 75
- ANTS(GST)A 1999 75-10(3)
- ANTS(GST)A 1999 75-10(3)(b)
- ANTS(GST)A 1999 75-10(3A)
- ANTS(GST)A 1999 75-10(3A)(b)
- TAA 1953 Sch 1 Div 358

Case references:
- Brisbane City Council v. Valuer-General (Queensland) [1978] HCA 40; (1978) 140 CLR 41
- Commonwealth of Australia v. Oldfield (1976) 133 CLR 612; (1976) 10 ALR 243
- Dampier Mining Company Limited v. Federal Commissioner of Taxation [1979] FCA 53, (1979) 10 ATR 193, 79 ATC 4469.
- Dampier Mining Company Limited v. Federal Commissioner of Taxation (1981) 147 CLR 408
- Goldsworthy Mining Ltd v. Commissioner of Taxation (1975) 132 CLR 463
- Lewis Kiddle and another v. Deputy Federal Commissioner of Land Tax 27 CLR 316
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