

GSTD 2006/3A1 - Addendum - Goods and services tax: are settlement adjustments taken into account to determine the consideration for the supply or acquisition of real property?

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Addendum

Goods and Services Tax Determination

Goods and services tax: are settlement adjustments taken into account to determine the consideration for the supply or acquisition of real property?

This Addendum amends Goods and Services Tax Determination GSTD 2006/3 to remove reference to and discussion of two single judge decisions of the Federal Court of Australia that have been subject to appeal to the Full Federal Court, namely, *Coles Supermarkets Pty Ltd v. Westley Nominees Pty Ltd and Another* 60 ATR 52; 2005 ATC 4484 and *DB Reef Funds Management Ltd v. Federal Commissioner of Taxation* [2005] FCA 509; 2005 ATC 4302; (2005) 59 ATR 388.

The decision of the Full Federal Court in *Westley Nominees Pty Ltd and Another v. Coles Supermarkets Australia Pty Ltd and Another* (2006) 152 FCR 461; (2006) 62 ATR 682; 2006 ATC 4363 takes a contrary view to the single judge decision on the point referred to as support for the alternative view in GSTD 2006/3. This removes the relevance of these cases for the alternative view in GSTD 2006/3.

GSTD 2006/3 is amended as follows:

1. Paragraph 19

Omit the paragraph.

2. Paragraph 20

Omit the paragraph.

3. Case references

Omit:

- *Coles Supermarkets Pty Ltd v. Westley Nominees Pty Ltd and Another* 60 ATR 52; 2005 ATC 4484
- *DB Reef Funds Management Ltd v. Federal Commissioner of Taxation* [2005] FCA 509; 2005 ATC 4302; (2005) 59 ATR 388

GSTD 2006/3

This Addendum explains our view of the law as it applies both before and after its date of issue. You can rely upon this Addendum on and from its date of issue for the purpose of section 105-60 of Schedule 1 to the *Taxation Administration Act 1953*. If this Addendum conflicts with a previous private ruling that you have obtained or a previous public ruling, this Addendum prevails. However, if you have relied on a previous ruling (including the public ruling that the Addendum amends), you are protected in respect of what you have done up to the date of issue of this Addendum or, if there is a change to the legislation, you are protected in respect of what you have done up to the date the legislative change takes effect. This means that if you have relied on the earlier ruling and have underpaid an amount of GST, you are not liable for the shortfall prior to either the issue date of this Addendum or the date the legislative change takes effect, as appropriate. Similarly, if you have relied on the earlier ruling you are not liable to repay an amount overpaid by the Commissioner as a refund.

Commissioner of Taxation

16 April 2008

ATO references

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