



# ***GSTR 2000/16A2 - Addendum - Goods and services tax: transitional arrangements - GST-free supplies under existing agreements***

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## Addendum

### Goods and Services Tax Ruling

#### Goods and services tax: transitional arrangements – GST-free supplies under existing agreements

This Addendum amends Goods and Services Tax Ruling GSTR 2000/16 to reflect the Full Federal Court's decisions in *FCT v. DB Rreef Funds Management Ltd* and *Westley Nominees Pty Ltd v. Coles Supermarkets Australia Pty Ltd* on what is meant by a 'general review' for the purposes of paragraphs 13(5)(b) and 13(5)(c) of the *A New Tax System (Goods and Services Tax Transition) Act 1999*.

This Addendum applies on and from 8 July 1999 (which was the date of effect of GSTR 2000/16). For the purposes of section 105-60 of Schedule 1 to the *Taxation Administration Act 1953*, you can rely on GSTR 2000/16, as amended by this Addendum, on and from the date of issue of the Addendum.

#### **GSTR 2000/16 is amended as follows:**

**1. Paragraph 152**

Omit the last 2 sentences; substitute:

An opportunity to conduct a 'general review, renegotiation or alteration of the consideration' arises only if the whole or nearly all of the consideration is capable of review.

**2. Paragraphs 153 and 154**

(a) Omit the paragraphs including the footnotes; substitute:

153. In *FCT v. DB Rreef Funds Management Ltd*,<sup>17</sup> the Full Federal Court considered whether a lease agreement provided a lessor with the opportunity to conduct a general review of the consideration for the supply of commercial premises. The consideration for the supply comprised an annual rent amount together with the lessee's contribution to the lessor's outgoings. The lease agreement did not provide for any review, renegotiation or alteration of the contribution to the lessor's outgoings. Because the contribution to the lessor's outgoings amounted to about 17 per cent of the consideration for the supply and could not be reviewed, Edmonds J (with whose judgment the other Justices agreed) considered that

<sup>17</sup> [2006] FCAFC 89.

the lease agreement did not provide for a 'general review' of the consideration.

154. Similarly, in *Westley Nominees Pty Ltd v. Coles Supermarkets Australia Pty Ltd*,<sup>18</sup> the Full Federal Court held that the lessor in that case did not have an opportunity to conduct a general review of the consideration for the supply because two components of the consideration (the annual percentage rent and the lessee's contribution to outgoings) could not be reviewed and together constituted more than 48 per cent of the whole of the consideration. However, the Full Court suggested that a 'general review' did not necessarily require the whole of the consideration to be reviewed. The Court commented as follows:

Whether a general review of the (whole of the) consideration for the supply requires an opportunity to review the whole of that consideration may be doubted. For example, if all the elements of the consideration could be reviewed other than Coles' contribution to the promotion fund,<sup>18A</sup> then it would be open to conclude that the review was, nevertheless, a general review being a review of nearly all of the consideration: see *Case M58* (1990) 12 NZTC 2,333 at 2,338.<sup>18B</sup>

154A. In *DB Rreef Sackville J* at first instance found that no review opportunity arose for a different reason. The original rent was set at an amount to enable the lessor to recoup the cost of fitting out the leased premises at its own expense. But the lease agreement required the fit-out works to be ignored in reviewing the rent to market. Sackville J found that the opportunity to review the rent was limited because the valuer could not assess the value of that portion of the premises comprising the fit-out works. The value of the fit-out works was substantial. Hence no review opportunity arose. The Commissioner appealed but the Full Court dismissed the appeal, having identified no error in Sackville J's reasoning.

### 3. Case references

Add the following entries under the heading 'Case references':

- FCT v. DB Rreef Funds Management Ltd [2006] FCAFC 89
- Westley Nominees Pty Ltd v. Coles Supermarkets Australia Pty Ltd [2006] FCAFC 115

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<sup>18</sup> [2006] FCAFC 115.

<sup>18A</sup> The amount of Coles Supermarkets' contribution to the promotion fund represented about 0.5 per cent of the total consideration for the supply.

<sup>18B</sup> [2006] FCAFC 115, at 66.

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**Commissioner of Taxation**

27 September 2006

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ATO references

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