



GSTR 2002/5DA - Draft Addendum - Goods and services tax: when is a 'supply of a going concern' GST-free?

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 This document has changed over time. This is a consolidated version of the ruling which was published on *12 August 2009*



Draft Addendum

Goods and Services Tax Ruling

Goods and services tax: when is a 'supply of a going concern' GST-free?

This draft Addendum, when finalised, will amend Goods and Services Tax Ruling GSTR 2002/5 to clarify the Tax Office view on when an enterprise of leasing commercial property is operating and able to be supplied as a GST-free 'supply of a going concern'. It clarifies that the activity of leasing commences and is operating on and from the day that at least one tenant enters into an actual lease, or occupies the building under a periodic tenancy arrangement.

This draft Addendum also amends GSTR 2002/5 to reflect the withdrawal and replacement of Miscellaneous Taxation Ruling MT 2000/1 and Goods and Services Tax Determination GSTD 2000/8 with Miscellaneous Taxation Ruling MT 2006/1 and Goods and Services Tax Determination GSTD 2006/6, respectively.

Note that the legislative citations in this Draft Addendum refer to the *A New Tax System (Goods and Services Tax) Act 1999*.

GSTR 2002/5 is amended as follows:

1. Footnote 3

Omit the text; substitute:

Refer to Goods and Services Tax Determination GSTD 2006/6 and Taxation Ruling MT 2006/1 for a discussion on the meaning of the term 'enterprise'.

2. Paragraph 151

Omit the paragraph; substitute:

151. The activity of leasing a building which has previously been leased to a tenant remains an 'enterprise' of leasing under paragraph 9-20(1)(c) during a period of temporary vacancy while the building owner is actively seeking a new tenant. However, where a building has not previously been leased to a tenant, but is being actively marketed, an 'enterprise' of leasing under paragraph 9-20(1)(c) is not operating until the activity of leasing actually commences. The activity of leasing commences and operates on and from the day that at least one tenant enters into an actual lease, or occupies the building under a periodic tenancy arrangement.

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151A. During the development and construction of commercial premises, negotiations may be undertaken with prospective tenants and one or more agreements for lease entered into. At the stage when these activities are being undertaken, as explained in paragraph 151 of this Ruling, an activity of leasing has not commenced, and an enterprise of leasing under paragraph 9-20(1)(c) is not operating.

151B. Although an enterprise of leasing under paragraph 9-20(1)(c) is not operating, depending upon the relevant facts and circumstances, an enterprise may nevertheless be operating during a period when commercial premises that are to be leased are under development.

151C. For example, the development activities and negotiations with future tenants may be activities undertaken as part of a business^{18A} of developing for sale, the commercial premises that are to be leased. This being the case, an enterprise under paragraph 9-20(1)(a) will have commenced operating from the time the activities began, and the incomplete premises will be one of the things necessary for the continued operation of that enterprise.

3. Related Rulings/Determinations

- (a) Omit 'MT 2000/1'; substitute 'MT 2006/1'.
- (b) Omit 'GSTD 2000/8'; substitute 'GSTD 2006/6'.

Your comments

You are invited to comment on this draft Addendum. Please forward your comments to the contact officer by the due date.

A compendium of comments is also prepared for the consideration of the relevant Rulings Panel or relevant tax officers. An edited version (names and identifying information removed) of the compendium of comments will also be prepared to:

- provide responses to persons providing comments; and
- publish on the Tax Office website at www.ato.gov.au

Please advise if you do not want your comments included in the edited version of the compendium.

^{18A} Determining whether an entity's activities are being undertaken in the form of a business requires an examination of the relevant facts and circumstances in each individual case. Refer to paragraphs 177 to 179 of MT 2006/1 for further information about the factors relevant to determining whether or not an activity or series of activities, amounts to a business.

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It is proposed that when finalised, the Addendum will amend GSTR 2002/5 with effect from the date of issue of the finalised Addendum.

This draft Addendum when finalised will explain the Commissioner's view of the law as it applies from the date of issue of the final Addendum. You will be able to rely upon the final 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 the final Addendum conflicts with a previous private ruling that you have obtained or a previous public ruling, the final Addendum prevails. However, if you have relied on a previous ruling (including the public ruling that the final Addendum amends), you are protected in respect of what you have done up to the date of issue of the final 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 the final 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 Taxation12 August 2009

ATO references

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