GSTR 2006/6A3 - Addendum - Goods and services tax: improvements on the land for the purposes of Subdivision 38-N and Division 75

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Addendum

Goods and Services Tax Ruling

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

This Addendum is a public ruling for the purposes of the *Taxation Administration Act 1953*. It amends Goods and Services Tax Ruling GSTR 2006/6 to reflect the Full Federal Court's decision in *Commissioner of Taxation v Landcom* [2022] FCAFC 204. The Full Federal Court held that the margin scheme provisions in the *A New Tax System (Goods and Services Tax) Act 1999* apply separately to each freehold interest in land, even if several freehold interests are supplied as a single parcel of land.

GSTR 2006/6 is amended as follows:

1. Preamble

Omit the preamble; substitute:

> **Relying on this Ruling**
>
> This publication is a public ruling for the purposes of the *Taxation Administration Act 1953*.
>
> If this Ruling applies to you, and you correctly rely on it, we will apply the law to you in the way set out in this Ruling. That is, you will not pay any more tax or penalties or interest in respect of the matters covered by this Ruling.

2. Table of contents

Omit the table of contents; substitute:

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3. Paragraph 2

(a) In dot point 3, omit 'item 4 of the table contained in'; substitute 'table item 4 of'.

(b) In dot point 4, omit 'item 3 of the table contained in'; substitute 'table item 3 of'.

4. Paragraph 4

(a) After the paragraph, insert new paragraphs 4A and 4B:

4A. Changes made to this Ruling by addenda that issued since its original publication have been incorporated into this version of the Ruling. Refer to each addendum for details of how that addendum amended the Ruling, including the date of effect of the amendments.

4B. Where an addendum applies to tax periods both before and after its date of issue, both the pre-addendum wording of the Ruling and the revised wording in the addendum apply for tax periods prior to the issue date of the addendum. In these circumstances, entities can choose to rely on either version when applying the Ruling to the past periods.[A1]

(b) At the end of new paragraph 4B, insert new footnote A1:

[A1] Subsection 357-75(1A) of Schedule 1 to the *Taxation Administration Act 1953*. See also paragraph 58A of TR 2006/10.

5. Paragraph 9

In the heading, omit 'with Explanation'.

6. Paragraph 15

Omit both instances of 'item in the table'; substitute 'table item'.

7. Paragraph 16

(a) Omit both instances of 'item 4 of the table'; substitute 'table item 4'.

(b) I n the second sentence, omit 'item 4'; substitute 'table item 4'.

8. Paragraph 21

In the quote, omit ''improvement''; substitute '"improvement."'

9. Paragraph 21B

(a) Omit '*Limited*'; substitute '*Ltd*'.

(b) In the quote, omit 'one'; substitute '… one'.

10. Paragraph 21C

In footnote 2A, omit '*Limited*'; substitute '*Ltd*'.

11. Paragraph 34

(a) Insert table caption:

Table 1: Day when land is to be examined for improvements on the land

(b) Omit the table; substitute:

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
table item 2A of 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
table item 3 of subsection 75-10(3)	1 July 2000
table item 4 of subsection 75-10(3)	1 July 2000
subsection 75-10(3A)	the day on which the taxable supply takes place

12. Paragraphs 47A to 47D

(a) In the heading, omit '**titles**'; substitute '**interests**'.

(b) Omit the wording of the paragraphs (including footnote 5A); substitute:

47A. For the purposes of applying sections 38-445 or 38-450, or working out the margin for a supply under subsection 75-10(3), each freehold interest, stratum unit or long-term lease is to be considered separately.

47B. In *Commissioner of Taxation v Landcom*[5B], the Full Federal Court held that the terms of paragraph 75-5(1)(a) define the subject matter of a supply of real property with reference to the form of legal interest supplied, being either a freehold interest in land, a stratum unit or a long-term lease.[5C] In the context of considering paragraph 75-5(1)(a), the Full Federal Court held that the structure of the GST Act, and the language of Division 75, support the view that Division 75 applies separately to each individual interest supplied.[5D] Applying the same approach to paragraphs 75-5(1)(b) and (c) means that Division 75 applies separately to each individual stratum unit and long-term lease.

47C. Similarly, sections 38-445 and 38-450 apply to the supply of a freehold interest in land, or a supply by way of long-term lease. Therefore, consistent with *Commissioner of Taxation v Landcom*, each individual freehold interest or long-term lease is also to be considered separately when applying these sections.

47D. In the Australian Capital Territory (ACT), a long-term lease is granted in the form of a Crown lease. Each Crown lease identifies the land subject to the lease by reference to division, section and block numbers.[5E] Regardless of the number of blocks covered by the Crown lease, the single Crown lease represents a single long-term lease. Therefore, when applying Division 75 and sections 38-445 and 38-450 to a supply of a long-term Crown lease in the ACT, the provisions apply separately to each long-term Crown lease supplied.

(c) In new paragraph 47B, after *Landcom*, insert new footnote 5B:

[5B] [2022] FCAFC 204.

(d) In new paragraph 47B, after the first sentence, insert new footnote 5C:

[5C] [2022] FCAFC 204 at [29–30].

(e) In new paragraph 47B, after the second sentence, insert new footnote 5D:

[5D] [2022] FCAFC 204 at [30–32].

(f) In new paragraph 47D, after the first sentence, insert new footnote 5E:

[5E] Section 9 of the *Districts Act 2002* (ACT).

13. Paragraph 47E

(a) In the heading, after '**separately titled**', insert '**freehold**'.

(b) Omit the wording of the paragraph; substitute:

Land described in 10 certificates of freehold title has been held by a state entity since before 1 July 2000 and has been used as a school site. The land on 7 of the freehold interests is cleared, with the school buildings being constructed across 5 of these freehold interests and the school oval and facilities established on the other 2 freehold interests. The remaining 3 freehold interests are in their natural state. The entire school site is marketed for sale as the XYZ School. A single contract for sale

is drawn up in which the land is described as XYZ School. The contract specifies a single price for XYZ School.

14. Paragraph 47F

Omit the wording of the paragraph; substitute:

Although the sale of the entire school site is for a single price under a single contract, each of the 10 freehold interests must be considered separately when applying section 38-445. The 3 freehold interests that remain in their natural state are each separate freehold interests in land on which there are no improvements at the time of sale and are GST-free under section 38-445. The other 7 freehold interests are land on which there are improvements and would not be GST-free under section 38-445. The state entity may use any fair and reasonable method to apportion the consideration across each of the 10 freehold interests being sold.

15. Paragraphs 47G and 47H

Omit the paragraphs.

16. Paragraph 47I

(a) In the heading, omit '***comprising separately titled lots as multiple supplies***'; substitute '***by way of long-term lease in the ACT***'.

(b) Omit the wording of the paragraph; substitute:

An ACT government entity enters into a single contract for the long-term lease of land in the ACT to another entity. The contract describes the subject land with reference to the Deposited Plan, comprising 15 separate blocks within the same division and section. Each block has a distinguishing block reference number. The contract specifies that 10 of the blocks are to be supplied by way of 10 separate long-term Crown leases. The remaining 5 blocks are to be supplied together under a single long-term Crown lease to facilitate the combined development of that land.

17. Paragraph 47J

Omit the wording of the paragraph; substitute:

For the purposes of applying Division 75 and sections 38-445 and 38-450 to the supply of the land by way of long-term lease, each of the 11 long-term Crown leases are to be considered separately when determining whether the land contains any improvements at the relevant time.

18. Paragraph 48

(a) In the heading, omit 'item 4 of the table in'; substitute 'table item 4 of'.

(b) After 'ineligible for consideration under', insert 'table'.

(c) After each 'on it', insert 'as'.

19. Paragraph 50

(a) Omit 'item 4'; substitute 'table item 4'.

(b) Omit 'larger area'; substitute 'englobo land'.

20. Paragraph 51

In the second sentence, omit 'rather than the legal interest'; substitute 'being supplied rather than the legal interest that existed as at 1 July 2000'.

21. Paragraph 51A

Omit both instances of 'supplied,'; substitute 'supplied (identified by reference to the form of legal interest), table'.

22. Paragraph 51B

(a) After '*At 1 July 2000, a*', omit '*large rural block*'; substitute '*state entity held a freehold interest in a large rural block that'.*

(b) Before the diagram, insert caption 'Diagram 1: The rural block as at 1 July 2000'.

23. Paragraph 51C

(a) Omit the wording of the paragraph; substitute:

After 1 July 2000, the rural block was subdivided into 3 freehold lots to be sold separately. The state entity cleared the rest of the original block and constructed new premises on each lot. Each lot is sold under the margin scheme.

(b) Before the diagram, insert caption 'Diagram 2: The rural block as at the time of sale after 1 July 2000'.

24. Paragraph 51D

(a) At the end of the paragraph, insert:

The state entity may work out the margin for the supply of each of the lots based on obtaining an approved valuation as mentioned in subsection 75-10(3). For the supply of lots 1 and 2, the relevant valuation date is set out in table item 3 of subsection 75-10(3).[7] *For the supply of lot 3, the relevant valuation date is set out in table item 4 of subsection 75-10(3).*

(b) After '*is set out in table item 3 of subsection 75-10(3).'*, insert new footnote 7:

[7] Goods and Services Tax Ruling GSTR 2006/7 *Goods and services tax: how the margin scheme applies to a supply of real property made on or after 1 December 2005 that was acquired or held before 1 July 2000* provides further information on calculating the margin. In accordance with paragraph 68 of that Ruling, the valuation of the entire rural block which existed at 1 July 2000 will need to be apportioned across each of the subdivided lots on a fair and reasonable basis.

25. Paragraph 51E

Omit the wording of the paragraph; substitute:

> *The same conclusion applies even if lots 1, 2 and 3 were sold as a single parcel of land, for a single price. However, the state entity would need to use a fair and reasonable method of apportionment to ascertain the consideration for each of the 3 freehold interests supplied.*

26. Paragraph 52

Omit the paragraph (including the heading).

This Addendum applies both before and after its date of issue.

Commissioner of Taxation
19 March 2025

ATO references

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