


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

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## Addendum

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### Goods and Services Tax Ruling

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

Goods and Services Tax Ruling GSTR 2000/16 explains the Commissioner's view of the extent to which a supply made on or after 1 July 2000, which is identified in a written agreement made before 8 July 1999, will be GST-free under section 13 of the *A New Tax System (Goods and Services Tax Transition) Act 1999* (GST Transition Act).

Amendments of the GST Transition Act by the *Tax Laws Amendment (Long-term Non-reviewable Contracts) Act 2005* have changed the circumstances that would have previously resulted in section 13 of the GST Transition Act ceasing to apply. This Addendum amends GSTR 2000/16 to reflect this change.

GSTR 2000/16, as amended by this Addendum, explains our view of the law as the law applied from 22 February 2005. For the purposes of section 37 of 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. New paragraph 4A**

Insert the following text as new paragraph 4A:

4A. The Ruling also considers whether section 13 can continue to apply to a supply if there is no review opportunity arising under the agreement before 1 July 2005 but the consideration is changed for supplies to be made after 30 June 2005.

##### **2. New paragraphs 61A, 61B, 61C and 61D**

(a) Insert the following text as new paragraphs 61A, 61B, 61C and 61D, including the footnotes:

# GSTR 2000/16

61A. There is an exception to the principle in paragraphs 57 and 58. This is because of amendments of the GST Transition Act which took effect from 22 February 2005.<sup>14A</sup> If a review opportunity does not arise under the agreement before 1 July 2005, suppliers and recipients can negotiate (through arbitration, if necessary) GST-inclusive prices for supplies under existing agreements and have section 13 continue to apply to supplies made before 1 July 2005. Whether a supply is GST-free under section 13 is not affected by a later agreement which merely changes the consideration for supplies that are specifically identified in the earlier agreement if:

- the change is made on or after 22 February 2005 (whether it is agreed to or the negotiations commenced before, on or after 1 July 2005); and
- the change applies only to supplies made on or after 1 July 2005.<sup>14B</sup>

## *Example*

61B. *Bill and Ben Constructions (B & B), a property developer, and Chandra Canning Services (CCS) made a written agreement before 1 December 1998 for B & B to lease a building to CCS from 1 July 2000, subject to completion of construction before that date. The agreement to lease includes a copy of the lease that the parties will execute and all the essential terms of the agreement. The lease does not give rise to a review opportunity before 1 July 2005. The lease is executed on 15 June 2000 without any changes to the specific supply or consideration identified in the agreement to lease. On 20 May 2005 the parties replace the lease with a new lease that increases the rent for the supply to be made after 30 June 2005 but otherwise contains the same terms as the first lease.*

61C. *The supply made under the lease executed on 15 June 2000 is GST-free under section 13 to the extent it is made before 1 July 2005. This is because both the consideration and the supply made under the lease were specifically identified in the agreement to lease, as required by subsection 13(1).*

61D. *Section 13 also continues to apply to supplies made before 1 July 2005 under the replacement lease. This is because the only change to the terms of the lease is the increase in the rent. This is a change to the consideration, made on or after 22 February 2005, for supplies to be made on or after 1 July 2005.<sup>14C</sup> The parties remain bound by the original terms of their agreement to lease in all other respects. They have merely agreed to give effect to the change to the consideration by replacing the lease with a new lease that contains the change but is the same in all other respects.*

(b) Insert new footnotes 14A, 14B and 14C:

<sup>14A</sup> *Tax Laws Amendment (Long-term Non-reviewable Contracts) Act 2005.*

<sup>14B</sup> Subsection 13(4C).

<sup>14C</sup> Subsection 13(4C).

### **3. Paragraph 69**

In the second sentence, delete the words 'will cease to apply when the variation is made because this will result in a new agreement' and substitute 'can cease to apply because the variation will result in a new agreement for purposes of section 13'.

### **4. New paragraphs 69A, 69B, 69C and 69D**

(a) Insert the following text as new paragraphs 69A, 69B, 69C and 69D, including the footnotes:

69A. If the variation occurs on or after 22 February 2005 and merely changes the consideration, then:

- if the change relates to supplies made before 1 July 2005, section 13 ceases to apply to those supplies from when the change takes effect;<sup>14D</sup> and
- if the change only relates to supplies made on or after 1 July 2005, section 13 does not cease to apply to supplies made before 1 July 2005.<sup>14E</sup>

69B. For the purposes of paragraph 69A, a change to the consideration for a supply means a change to that consideration (including a change to the method by which the consideration is worked out) not provided for in the agreement.<sup>14F</sup> Therefore, the rules set out in paragraph 69A do not apply if the agreement provides for a change to the consideration. However, such a provision to change the consideration might give rise to a review opportunity as defined by subsection 13(5), which can cause a supply to cease to be GST-free under section 13 (see paragraphs 94 to 184 of this Ruling.)

69C. If a variation which changes the consideration was made before 22 February 2005 but was to take effect at some time after the variation was made, it remains our view that section 13 ceased to apply to the supplies from the date of the variation rather than the date on which the change takes effect. The new rule explained in paragraphs 69A and 69B of this Ruling applies only if the change is made on or after 22 February 2005.

69D. If the variation changes the character of the supply or other essential terms, section 13 ceases to apply from the date the variation was made (whether the variation was made before, on or after 22 February 2005). This is the case even if the variation, in addition, changes the consideration with effect from some time in the future.<sup>14G</sup>

(b) Insert new footnotes 14D, 14E, 14F and 14G:

<sup>14D</sup> Subsection 13(4B).

<sup>14E</sup> Subsection 13(4C).

<sup>14F</sup> Subsection 13(4D).

<sup>14G</sup> This is because there is a new agreement and the new rule explained in paragraphs 69A and 69B of this Ruling does not apply.

## 5. Paragraph 77

Delete paragraph 77.

## 6. Paragraph 78

In the third sentence, delete the words 'June 2000' and substitute 'March 2005'.

## 7. Paragraph 79

In the paragraph, delete all the words after 'agreement' and substitute 'on or after 22 February 2005, section 13 continues to apply to the supply made under the agreement from the date of the variation and before 1 July 2005'.

## 8. Paragraph 80

In the paragraph:

- (a) delete the first word 'However' and substitute 'Also'; and
- (b) delete the words 'the supplies' and substitute 'supplies made before 1 July 2005'.

## 9. Paragraph 205

In '**Existing agreements: no opportunity to review**', insert the following text of new subsections (4B), (4C) and (4D) after subsection (4A):

(4B) If:

- (a) a change is made to the consideration for supplies that are specifically identified by an agreement of the kind referred to in subsection (1);
- (b) the change is made after the commencement of this subsection; and
- (c) the change applies to supplies made before 1 July 2005;

supplies that are specifically identified by the agreement are not GST-free under this section to the extent that the supplies are made on or after the day on which the change takes effect.

- (4C) Whether a supply made before 1 July 2005 is GST-free under this section is not affected by:
- (a) a change (made after the commencement of this subsection), whether agreed to before, on or after 1 July 2005, to the consideration for supplies made on or after 1 July 2005 that are specifically identified by an agreement; or
  - (b) the carrying out, whether before, on or after 1 July 2005, of any of the processes referred to in Subdivision C of Division 2 in relation to supplies made on or after 1 July 2005 that are specifically identified by an agreement.
- (4D) In subsections (4B) and (4C):

**change**, to the consideration for a supply, means a change to that consideration (including a change to the method by which the consideration is worked out) not provided for in an agreement of the kind referred to in subsection (1).

## 10. Legislative references, etc

- (a) Add a new entry as follows:

*Related Rulings/Determinations:*

GSTD 2000/10

- (b) Under the heading legislative references add:

- ANTS (GSTTA)A99 13(4B)
- ANTS (GSTTA)A99 13(4C)
- ANTS (GSTTA)A99 13(4D)
- Tax Laws Amendment (Long-term Non-reviewable Contracts) Act 2005

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## Commissioner of Taxation

11 May 2005

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ATO references

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