


GSTR 2000/21A3 - Addendum - Goods and services tax: the margin scheme for supplies of real property held prior to 1 July 2000

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Addendum

Goods and Services Tax Ruling

Goods and services tax: the margin scheme for supplies of real property held prior to 1 July 2000

Goods and Services Tax Ruling GSTR 2000/21 explains how the margin scheme applies to a supply of a freehold interest, stratum unit,¹ or long-term lease² (referred to in GSTR 2000/21 collectively as 'real property') made on or after 1 July 2000 and before 1 December 2005 that was acquired or held prior to 1 July 2000.

This Addendum amends GSTR 2000/21 to reflect the Full Federal Court decision of *Brady King Pty Ltd v Commissioner of Taxation* [2008] FCAFC 118; 2008 ATC 20-034; (2008) 168 FCR 558 (*Brady King*). The ATO's view of this decision was outlined in a Decision Impact Statement which issued on 12 August 2008. Incorporation of this view into GSTR 2000/21 was delayed pending the judgment of Greenwood J in *Aurora Developments Pty Ltd v Commissioner of Taxation* [2011] FCA 232; 2011 ATC 20-250. This judgment had the potential to provide further clarification on the issue of the time of supply and acquisition of real property.

GSTR 2000/21 is amended as follows:

1. Preamble

Omit the preamble; substitute

This document was published prior to 1 July 2010 and was a public ruling for the purposes of former section 37 of the Taxation Administration Act 1953 and former section 105-60 of Schedule 1 to the Taxation Administration Act 1953.

¹ 'Stratum unit' is defined in section 195-1 of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act) as having 'the meaning given by subsection 124-190(3) of the *Income Tax Assessment Act 1997*. Subsection 124-190(3) of the GST Act defines a stratum unit as 'a lot or unit (however described in an Australian law or a foreign law relating to strata title or similar title) and any accompanying common property'.

² 'Long-term lease' is defined in section 195-1 of the GST Act as:
a supply by way of lease, hire or licence (including a renewal or extension of a lease, hire or licence) for at least 50 years if:
(a) at the time of the lease, hire or licence, or the renewal or extension of the lease, hire or licence, it was reasonable to expect that it would continue for at least 50 years; and
(b) unless the supplier is an *Australian government agency – the terms of the lease, hire or licence, or the renewal or extension of the lease, hire or licence, as they apply to the *recipient are substantially the same as those under which the supplier held the premises.

GSTR 2000/21

From 1 July 2010, this document is taken to be a public ruling under Division 358 of Schedule 1 to the Taxation Administration Act 1953.

A public ruling is an expression of the Commissioner's opinion about the way in which a relevant provision applies, or would apply, to entities generally or to a class of entities in relation to a particular scheme or a class of schemes.

If you rely on this ruling, the Commissioner must apply the law to you in the way set out in the ruling (unless the Commissioner is satisfied that the ruling is incorrect and disadvantages you, in which case the law may be applied to you in a way that is more favourable for you - provided the Commissioner is not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any underpaid tax, penalty or interest in respect of the matters covered by this ruling if it turns out that it does not correctly state how the relevant provision applies to you.

2. Paragraph 6A

(a) Before 'GSTR 2006/7'; insert 'Goods and Services Tax Ruling'.

(b) At the end of the paragraph; insert:

You can rely upon this Ruling on and from its date of issue for the purposes of section 357-60 of Schedule 1 to the *Taxation Administration Act 1953* (TAA).

3. Paragraph 6A - Note

(a) Omit '**Note:**'; substitute '**Note 1:**'.

(b) After **Note 1**; insert:

Note 2: The Addendum to this Ruling that issued on 22 June 2011, explains the Commissioner's view of the law as it applies both before and after its date of issue.

However, if prior to the issue of each Addendum, you relied on the public ruling that that Addendum amends, you are protected in respect of what you have done up to the date of issue of that Addendum.

4. Paragraph 16A

After the paragraph; insert:

16B. For the purposes of subsection 75-10(3), the Commissioner considers that you have acquired or have held a sufficient interest in real property when you enter into, but have not completed a contract for the acquisition of the real property.^{4A}

^{4A} *Brady King Pty Ltd v Commissioner of Taxation* [2008] FCAFC 118; 2008 ATC 20-034; (2008) 168 FCR 558.

16C. In particular, if you had entered into a contract for the acquisition of freehold title to land, out of which stratum units were to be created, for the purposes of subsection 75-10(3) you are taken to have held or acquired a sufficient interest in the stratum units on entering into the contract. Similarly, if you had entered into a contract for the acquisition of freehold title to land for subdivision, for the purposes of subsection 75-10(3) you are taken to have held or acquired a sufficient interest in the subdivided lots at the time you entered into the contract.

16D. However, the Commissioner does not consider that a supply or acquisition of the real property itself^{4B} occurs at the time of entry into a contract for the sale and purchase of that property. The Commissioner considers that the supply or acquisition of the property occurs on settlement of the contract.^{4C}

5. Case references

Insert:

- Brady King Pty Ltd v. Commissioner of Taxation [2008] FCAFC 118; 2008 ATC 20-034; (2008) 168 FCR 558

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

Commissioner of Taxation

22 June 2011

ATO references

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^{4B} That is, the real property that is to be conveyed to the recipient on completion of the contract, as distinct from the contractual rights the recipient receives upon entry into the contract.

^{4C} See paragraphs 42 to 45E of 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.