



GSTR 2003/16A1 - Addendum - Goods and services tax: inducements to enter into a lease of commercial premises

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Addendum

Goods and Services Tax Ruling

Goods and services tax: inducements to enter into a lease of commercial premises

This Addendum is a public ruling for the purposes of the *Taxation Administration Act 1953*. It amends Goods and Services Tax Ruling GSTR 2003/16 to reflect amendments made to the *A New Tax System (Goods and Services Tax) Regulations 1999* by the *A New Tax System (Goods and Services Tax) Amendment Regulation 2012 (No. 1)*.

The Addendum also updates the Date of Effect section to reflect amendments within the *Tax Laws Amendment (2010 GST Administration Measures No. 2) Act 2010* which came into effect on 1 July 2010.

GSTR 2003/16 is amended as follows:

1. Paragraph 6

Omit the paragraph; substitute:

6. This ruling applies both before and after its date of issue. However, this Ruling will not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of this Ruling (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10).

2. Paragraph 7

Omit the paragraph.

3. Paragraph 69

In the second bullet point, omit: 'paragraph 72'; substitute: 'paragraph 73'

4. Paragraph 72

Omit the paragraph.

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5. Paragraph 73

- (a) Omit the first sentence; substitute: 'Supplies of income guarantees are not financial supplies. Arrangements of this nature, although described as guarantees, are neither guarantees nor indemnities for the purposes of items 7 and 7A in the table in subregulation 40-5.09(3) of the *A New Tax System (Goods and Services Tax) Regulations 1999*.'
- (b) After the paragraph; insert:
- 73A. Item 7A, which applies from 1 July 2012, covers an indemnity that holds a person harmless from any loss as a result of a transaction the person enters with a third party. Income guarantees are not such indemnities as the harm against which protection is provided does not arise as a consequence of a transaction with a third party.

6. Paragraph 74

Before the first sentence; insert:

Prior to 1 July 2012, when the introduction of item 7A took effect, the provision, acquisition or disposal of an interest in or under an indemnity was covered by item 7.

7. Paragraph 75

- (a) Omit the second sentence; substitute:
- Given its use in former item 7 as part of the expression 'Guarantee including an indemnity' in the context of guarantees and indemnities of the type supplied for consideration, we consider that 'indemnity' was used in former item 7 in the sense articulated by the High Court in *Sunbird Plaza*.
- (b) After the paragraph; insert:
- 75A. Although item 7A expressly limits the type of indemnity that it covers, the introduction of item 7A does not indicate that the previous use of the term 'indemnity' in former item 7 had a broader meaning. To the contrary, in discussing the introduction of item 7A, the Explanatory Statement to the *A New Tax System (Goods and Services Tax) Amendment Regulation 2012 (No. 1)* states under the heading 'Guarantees and indemnities':
- It is not intended that these amendments change the existing interpretation of the terms guarantee, indemnity or warranty as set out under item 7 of the table in subregulation 40-5.09(3). The amendments merely clarify the drafting and confirm the existing treatment.

8. Related Rulings/Determinations

Omit:

GSTR 1999/1

Insert:

TR 2006/10

9. Legislative References

Omit:

TAA 1953 37

Insert:

- A New Tax System (Goods and Services Tax) Amendment Regulation 2012 (No. 1)
- TAA 1953 Div 358

10. Other References

Insert:

- Explanatory Statement to the A New Tax System (Goods and Services Tax) Amendment Regulation 2012 (No. 1)

This Addendum applies both before and after its date of issue, subject to the commencement and application provisions of each amending Act or Regulation to which it refers.

Commissioner of Taxation

11 December 2013

ATO references

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