


GSTR 2003/3A2 - Addendum - Goods and services tax: when is a sale of real property a sale of new residential premises?

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Addendum

Goods and Services Tax Ruling

Goods and services tax: when is a sale of real property a sale of new residential premises?

This Addendum amends Goods and Services Tax Ruling GSTR 2003/3 as a consequence of a change in the Commissioner's view relating to the characterisation of a supply of a part interest in real property comprising residential premises. The existing view contained in GSTR 2003/3 was reconsidered in the context of GSTR 2009/2 Goods and services tax: partitioning of land. GSTR 2009/2 explains the goods and services tax consequences of the partitioning of real property among joint tenants or tenants in common. This Addendum amends GSTR 2003/3 as it relates to the treatment of sales of a part interest in real property that comprises residential premises.

GSTR 2003/3 is amended as follows:

1. Paragraphs 51 and 52

Omit the paragraphs; substitute:

51. The newly created strata titled units may then be transferred between the individual participants so that each becomes the sole owner of specified residential units. For example, A and B are tenants in common in equal shares of land and enter into a joint venture to construct 6 units. A transfers his interest in 3 units to B and B transfers his interest in 3 units to A.

52. In the scenario referred to in paragraph 51 of this Ruling, the transfer of each participant's interest in the 3 units as tenant in common to the other is a sale of residential premises to the extent of the interest supplied by each participant. This is because, pursuant to the definition of 'residential premises' in section 195-1, the interest in the units sold by A and B is in respect of premises that are intended to be occupied, and are capable of being occupied, as a residence or for residential accommodation.

GSTR 2003/3

52A. Subsection 40-65(2) provides contextual support for the view that the transfer of each participant's interest in the relevant units is properly characterised as a sale of residential premises to the extent of the interest supplied by each participant. Amongst other things, this subsection provides that a sale of residential premises is not input taxed to the extent that the residential premises are new residential premises. We consider that the words 'to the extent' mean that residential premises may in part be new residential premises as defined in section 40-75. That is, a sale of the residential premises in their entirety may consist of both taxable and input taxed parts.

52B. For instance, with reference to the scenario at paragraph 51 of this Ruling, a subsequent sale of an individual unit by B would therefore be partly an input taxed supply of residential premises in respect of the interest that has previously been sold as new residential premises by A to B and partly a taxable supply of new residential premises with respect to the interest that has not previously been sold as new residential premises.^{20A}

52C. If instead of A and B becoming sole owners of specified units, A and B sold the newly strata titled units together, the sale of each individual unit would be a sale of residential premises in its entirety.^{20B}

2. Related Rulings/Determinations

Insert:

GSTR 2003/13; GSTR 2009/1; GSTR 2009/2

This Addendum explains the Commissioner's view of the law as it applies from its date of issue. You can rely upon this Addendum on and from its date of issue for the purpose of section 105-60 of Schedule 1 to the *Taxation Administration Act 1953*.

Commissioner of Taxation

8 April 2009

^{20A} Subject to the application of subsection 40-75(2). Refer to paragraphs 89 to 93 of this Ruling.

^{20B} It is also noted that if A and B were a partnership for the purposes of the GST Act, in this case there may be a sale of residential premises in their entirety to each partner. See paragraphs 85A to 85P, paragraph 135 and paragraphs 135A to 135G of Goods and Services Tax Ruling GSTR 2003/13 Goods and services tax: general law partnerships for a further explanation of an in-specie distribution by a partnership to a partner.

ATO references

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