


# ***GSTR 2005/3A2 - Addendum - Goods and services tax: arrangements of the kind described in Taxpayer Alert TA 2004/9 - exploitation of the second-hand goods provisions to obtain input tax credits***

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## Addendum

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### Goods and Services Tax Ruling

Goods and services tax: arrangements of the kind described in Taxpayer Alert TA 2004/9 – exploitation of the second-hand goods provisions to obtain input tax credits

This Addendum amends Goods and Services Tax Ruling GSTR 2005/3 to implement the decision in *LeasePlan Australia Limited v. Commissioner of Taxation* [2009] FCA 1309.

#### **GSTR 2005/3 is amended as follows:**

##### **1. Paragraph 45**

After the paragraph, insert:

45A. In *LeasePlan Australia Limited v. Commissioner of Taxation*,<sup>14A</sup> the Court accepted that the whole transaction was a composite operation where disposal of the motor vehicles for forecasted valuable consideration was integral to Leaseplan's business.

45B. The Commissioner accepts that lessors that regularly purchase second-hand motor vehicles from unregistered lessees on lease terms that provide for a period of leasing, followed by sale, are entitled to input tax credits on the acquisition of the vehicles under Division 66.<sup>14B</sup>

45C. The same principle would apply if other second-hand goods are acquired by lessors in similar circumstances.

45D. However, this does not mean that entities are entitled to input tax credits under Division 66 in all cases where there is an intention that the second-hand goods acquired will ultimately be sold.

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<sup>14A</sup> [2009] FCA 1309.

<sup>14B</sup> If the other requirements of Division 66 are satisfied.

# GSTR 2005/3

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45E. For instance, a tradesperson may purchase a second-hand vehicle (from an unregistered person) for use in their enterprise but also with a view to selling it at some future time. In these circumstances, the Commissioner's view remains that it would not be accurate to characterise the tradesperson as purchasing the motor vehicle for the purpose of sale or exchange. On these facts, the purpose is to use the vehicle in the enterprise of the tradesperson.

45F. An entity that purchases second-hand goods for use in its enterprise and sells those goods after they are no longer required is not entitled to input tax credits under Division 66.

## 2. Case references

Insert:

- LeasePlan Australia Limited v. Commissioner of Taxation [2009] FCA 1309

This Addendum explains the Commissioner's view of the law as it applies both before and after its date of issue.

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**Commissioner of Taxation**

13 October 2010

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ATO references

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