

# ***GSTR 2006/6A2 - Addendum - Goods and services tax: improvements on the land for the purposes of Subdivision 38-N and Division 75***

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## Addendum

### Goods and Services Tax Ruling

#### Goods and services tax: improvements on the land for the purposes of Subdivision 38-N and Division 75

This Addendum is a public ruling for the purposes of the *Taxation Administration Act 1953*. It amends Goods and Services Tax Ruling GSTR 2006/6 to confirm the ATO view, providing greater certainty to the community.

#### **GSTR 2006/6 is amended as follows:**

##### **1. Paragraph 4**

- (a) In the first sentence, remove brackets
- (b) After 'TR 2006/10', insert '*Public Rulings*'.

##### **2. Paragraph 17**

Omit 'House of Representatives Supplementary Explanatory Memorandum to the Indirect Tax and Consequential Amendments Bill (No 2) 1999'; substitute 'House of Representatives Supplementary Explanatory Memorandum to the A New Tax System (Indirect Tax and Consequential Amendments) Bill (No 2) 1999'.

##### **3. Paragraph 20**

Omit the paragraph; substitute:

Land in its natural state is unimproved land. Thus, to establish whether there are, or were, improvements on the land for the purpose of these provisions, a comparison is made between the state of the land in question at the relevant time and that same land in its natural state.

##### **4. Paragraph 21**

- (a) Omit the introductory sentence; substitute:

In considering the meaning of 'improvements' in the context of land tax, Griffith J, in the High Court decision of *Morrison v Federal Commissioner of Land Tax* [1914] HCA 10 held:

- (b) After the paragraph, insert new paragraphs 21A, 21B and 21C:

21A. In other contexts, a broader meaning has been given to 'improvements'. In *Commonwealth v Oldfield* [1976] HCA 17, Jacobs J stated (emphasis added):

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It appears to me that the considerations which led the Court in these cases to give the word “improvements” a meaning which would include what is done in improvement of quality of the soil and thereby **the usefulness of the land** apply as much to the words of this lease as to the words of that statute.

21B. In *Dampier Mining Company Limited v The Commissioner of Taxation of the Commonwealth of Australia* [1979] FCA 93, a case on the expressions ‘effecting improvements upon land’ and ‘making improvements ... on ... land’ that were used in the *Income Tax Assessment Act 1936*, Brennan J in the Full Federal Court stated (emphasis added):

one cannot find an “improvement” in the present case unless the dredging enhances the value of land, **or makes the use of land more efficient**.

21C. On appeal to the High Court, Stephen J also expressed a broad view on the meaning of improvements<sup>2A</sup>:

I would not confine the notion of improvements in Div. 4 to that which enhances the market value of land; some improvements, not made in the course of putting land to its best economic use but, rather, so as to meet the particular requirements of its occupier, may, I suppose, have the effect of actually depreciating its market value.

(c) At the end of the introductory sentence of paragraph 21C, insert footnote 2A:

<sup>2A</sup> *Dampier Mining Co Limited v Commissioner of Taxation (Cth)* [1981] HCA 29. However, it is noted that in this case (and in the earlier cases of *Goldsworthy Mining Ltd v Commissioner of Taxation (Cth)* [1975] HCA 3 and *Brisbane City Council v Valuer-General (Q)* [1978] HCA 40 Gibbs CJ took a more limited view on the meaning of improvements as being that which enhanced the value of the land.

## 5. Paragraph 22

(a) Omit the paragraph (excluding footnote 3); substitute:

While the meaning of ‘improvements’ will depend on the statutory purpose and context in which it is used, there is nothing in the GST Act which requires a restrictive or narrow meaning to be adopted. In accordance with the ordinary meaning of the word and taking into account the views expressed in the cases referred to in paragraphs 21 to 21C of this Ruling, for there to be ‘improvements on the land’:

- there must have been some human intervention;
- the human intervention must have been physically located on the land; and
- at the relevant date<sup>3</sup> for ascertaining whether there are improvements on land the human intervention must enhance the
  - value of the land;
  - usefulness of the land; or
  - both the value and usefulness of the land.

(b) In footnote 3, after ‘Paragraph 34’, insert ‘of this Ruling’.

(c) After the paragraph, insert new paragraph 22A:

22A. A physical human intervention on land that enhances the usefulness of the land does not necessarily have to also result in an increase in the value of that land to constitute an improvement on the land. It is sufficient that what was done has made the land more useful to an occupier.

## **6. Paragraph 23**

Omit the first and second sentences; substitute:

Where there have been a number of human interventions on the land it is necessary to establish whether any of the human interventions enhance the value or usefulness of the land. If any of the human interventions located on the land enhance its value or usefulness at the relevant date, then there are improvements on the land.

## **7. Paragraph 24**

(a) Omit the paragraph; substitute:

Determining whether a human intervention enhances the value or usefulness of the land entails an objective test. This means that whether an intervention enhances the value or usefulness should not be determined by reference to actual, or intended, use by a specific occupier. Rather, a comparison should be made between the value or usefulness of that land in its natural state and its value or usefulness at the time provided for in the relevant provisions<sup>3A</sup>, to any potential occupier.<sup>3B</sup>

(b) After the word 'provisions' in the last sentence, insert footnote 3A:

<sup>3A</sup> Sections 38-445, 38-450 and 75-10.

(c) At the end of the paragraph, insert footnote 3B:

<sup>3B</sup> *Trust Company of Australia Ltd v The Valuer-General* [2007] NSWCA 181 at [95]. See also paragraph 36 of this Ruling.

## **8. Paragraphs 25, 26 (including the heading), 27, 28, 32, 33 and 37**

After each occurrence of the word 'value', insert 'or usefulness'.

## **9. Paragraph 29**

(a) After the word 'value', insert 'or usefulness'.

(b) After the word 'council', insert '. This building'.

## **10. Paragraph 30**

(a) After the word 'valuable', insert 'or useful'.

(b) After the paragraph, insert new paragraph 30A:

30A. In other circumstances, a human intervention that enhanced the value or usefulness of land will not cease to enhance the value or usefulness of the land simply because of a change in the preferred use of the land. In other words, a

human intervention on land will not cease to be an improvement if there is no physical change to it. For example, fencing may be constructed to enhance the value or usefulness of land used for farming. The fencing may remain in good repair. If the land can now be better used for mining, for which the fence will be of no use, it does not mean that the fencing no longer enhances the value or usefulness of the land. Compared to the land in its natural state, the fencing continues to enhance the value or usefulness of the land to an occupier who wants to put the land to use for farming.<sup>3C</sup>

- (c) At the end of paragraph 30A, insert footnote 3C:

<sup>3C</sup> See paragraphs 24 and 35 of this Ruling.

## 11. Paragraph 31

Omit the paragraph; substitute:

The following High Court cases provide support for considering the impacts of deterioration or degradation:

- *Morrison v Federal Commissioner of Land Tax* [1914] HCA 10, per Griffith CJ (emphasis added):

While improvements or the consequent operations of nature are still going on, the value of improvements may, of course, increase from year to year, just as, in the case of some improvements, **it may be exhausted**.

- *Lewis Kiddle v Deputy Federal Commissioner of Land Tax* [1920] HCA 17, per Knox CJ (emphasis added):

Presumably, a purchaser of land, if he considered this question at all, would determine that the amount to be attributed to value of improvements would be equal to the amount which he gained or saved by reason of the improvements having been made, he being thereby relieved from the necessity of making them. This amount would be found by ascertaining the amount which it would cost to make the improvements in question at the relevant date, including a proper allowance for loss of interest on all outlay during the period which must elapse before such outlay became fully productive, and **by deducting from the sum so ascertained a proper allowance for depreciation or partial exhaustion of the improvements**.

## 12. Paragraph 35

- (a) In the heading, omit 'Who establishes'; substitute 'Establishing'.

- (b) Omit the paragraph; substitute:

Determining whether a human intervention enhances the value or usefulness of the land is an objective test based on the facts. This means that whether an intervention enhances the value or usefulness of the land should not be determined by reference to actual, or intended, use by either the supplier, the recipient or a specific occupier. For example, real property with a building on it that is not condemned, enhances the value or usefulness of the land even though the recipient may intend to demolish the building and construct some other building in its place.

**13. Paragraph 36**

- (a) Omit the paragraph; substitute:

As the issue of whether there are improvements on the land is a question of fact, a professional valuer's opinion may be of assistance in determining whether the intervention enhances the value of the land, provided that the valuer's opinion compares the land to its natural state. However, valuation concepts will not be relevant in determining whether the intervention objectively enhances the usefulness of the land to an occupier. Also, the concept of 'highest and best use' is not relevant because this approach assesses the best use to which the land can be applied, which does not test whether the intervention enhances the value or usefulness of the land compared with its natural state, as required.<sup>3D</sup>

- (b) At the end of the paragraph, insert footnote 3D:

<sup>3D</sup> *Trust Company of Australia Ltd v The Valuer-General* [2007] NSWCA 181 at [95].

**14. Paragraph 38**

- (a) Omit the words '*Commonwealth of Australia v. Oldfield* (1976) 133 CLR 612; (1976) 10 ALR 243'; substitute '*Commonwealth v Oldfield* [1976] HCA 17'.
- (b) Omit footnote 4.

**15. Paragraph 40**

At the end of the first and second sentences, omit the quotation marks.

**16. Paragraph 41**

Omit the paragraph; substitute:

However, in *Brisbane City Council v Valuer-General (Q)* [1978] HCA 40, Gibbs J, with whom the four other members of the Court agreed, when considering the meaning of the phrase 'thereon or appertaining thereto', noted that:

This means that the improvements, if not on the land, must be "such as are in the strict legal sense "appurtenant" to the property and incident to its ownership" (*McDonald v Deputy Federal Commissioner of Land Tax (N.S.W.)* ... (1915) 20 C.L.R. 231, at pp. 234-235).

**17. Paragraph 45**

In the first sentence omit '*McGeogh v. Federal Commissioner of Land Tax* (1929) 43 CLR 277, per Knox CJ and Dixon J at 290'; substitute '*McGeoch v Federal Commissioner of Land Tax* [1929] HCA 29, per Knox CJ and Dixon J'.

**18. Paragraph 46**

Omit the first sentence; substitute:

For the reasons stated, and having regard to the High Court decision in *Commonwealth v Oldfield* [1976] HCA 17, the Commissioner considers the better

view to be that improvements on the land, in the GST context, are not limited to visible structural improvements.

## 19. Paragraph 47

(a) After the paragraph, insert:

### **Supply of a piece of land with multiple titles**

47A. Sections 38-445 and 38-450 require identification of the 'supply ... of land'. Similarly, subsection 75-10(3) requires identification of 'the land or premises in question'. Each section requires identification of the land that is the subject matter of the supply. The total fact situation must be considered, although a written contract is a logical starting point when identifying the land that is the subject matter of the supply.<sup>5A</sup>

47B. The subject matter of the supply is identified as a matter of substance not form. It is not determined simply on titles to the land. That is, separately titled lots are not necessarily separate supplies of land for the purposes of sections 38-445, 38-450 or subsection 75-10(3). Nor is the subject matter of the supply determined simply on whether there is a single contract or multiple contracts.

47C. Ordinarily, the subject matter of the supply will be the totality of the land, even if it is under more than one title. This will be the case if that land:

- is contiguous
- has physical attributes that identify it as a single piece of land
- is supplied to a single recipient, and
- is supplied under a single arrangement.

There will be separate supplies where land on one or more titles is objectively separate from the rest of the land by reference to physical attributes, historical and current usage, prior dealings, commercial context and legal status.

47D. If land that is the subject matter of a supply is a single piece of land comprising separately titled lots, then it is necessary to consider whether there are improvements on that single piece of land as a whole. The separately titled lots are not considered separately. If any part of that single piece of land has improvements, the entire land that is the subject of the supply is land on which there are improvements.

### ***Example 1 – supply of land comprising separately titled lots used as a single site***

47E. *Land described in ten certificates of title has been used as a school site. The land on seven of the titles is cleared, with the school buildings being constructed across five of these titles and the school oval and facilities established on the other two titles. The remaining three titles are in their natural state. The entire school site is marketed for sale as the XYZ School. A single contract for sale is drawn up in which the land is described as XYZ School.*

47F. *In this instance, notwithstanding that the single piece of land is described in ten certificates of title, the whole of the land being supplied, namely the school site, is the subject matter of the supply. In this case, the land is contiguous and it is physically identified as a single school site. It is supplied to a single recipient under*

*a single arrangement. The historical usage and legal status each confirm that the subject matter of the supply is the whole school site. Because the land has improvements on it, the supply will not be a supply of land on which there are no improvements for the purposes of section 38-445.*

47G. *Even if the land was described in the contract by reference to the site components (the school buildings, the oval and the reserved land), the whole of the land being supplied would still be the subject matter of the supply.*

47H. *If land comprised of separately titled and separately identifiable lots, without any singular identity by reference to the factors stated in paragraph 47C of this Ruling, is supplied together, each individual lot is a separate supply of land for the purposes of sections 38-445, 38-450 or subsection 75-10(3) to determine if there are, or were, any improvements on the land.*

**Example 2 – supply of land comprising separately titled lots as multiple supplies**

47I. *A local council has land that is surplus to its needs, which it has held since before 1 July 2000. It subdivides the land into ten lots for sale for residential use. The subdivided lots are marketed as individual lots with a sale price for each lot. A local builder acquires four adjacent lots. A single contract for sale is drawn up in which the lots are listed individually with a separate price shown for each lot.*

47J. *In this instance, there are four separate supplies of land effected by way of a single contract. Although the land is contiguous and its historical usage was as a single piece of land, the commercial context and the legal status of the land involves the lots being offered for sale as subdivided individual lots. Each lot created from the subdivision has retained its own identity and has been dealt with by the supplier having regard to its individual title. The lots are being supplied on a single contract because it is commercially expedient to do so. Each individual lot is a separate supply of land for the purpose of determining under subsection 75-10(3) if there were any improvements on the land as at 1 July 2000.*

- (b) At the end of paragraph 47A, insert footnote 5A:

<sup>5A</sup> Paragraph 222 of Goods and Services Tax Ruling GSTR 2006/9 *Goods and services tax: supplies*.

**20. Paragraph 48**

Omit the paragraph; substitute:

In this part of the Ruling, the Commissioner considers whether a supply of a particular subdivided lot is ineligible for consideration under item 4 of subsection 75-10(3) because the larger area (englobo land) from which it was subdivided had improvements on it at 1 July 2000. In this context, the physical area of the particular subdivided lot may have had no improvements, or part of an improvement, on it at 1 July 2000.

**21. Paragraph 51**

- (a) After the paragraph, insert:



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51A. The consequence of this view is that where land is subdivided after 1 July 2000, it is necessary to examine the englobo land as it was at 1 July 2000 and identify if there were any improvements on that land. If the englobo land had improvements as at 1 July 2000, and any of those improvements, or parts of those improvements, were on the physical land that is supplied, item 4 will not apply. However, if the englobo land had improvements as at 1 July 2000 but none of those improvements, or parts of those improvements, were on the physical land that is supplied, item 4 can apply.

**Example 3 – land subdivided from land with improvements on the land at 1 July 2000**

51B. At 1 July 2000, a large rural block was in part cleared and levelled and in part remained in its natural state.

|  |   |
|--|---|
| This area had been cleared of trees and levelled | This area was in its natural state and there were no improvements |
|--|---|

51C. After 1 July 2000, the rural block is subdivided into three lots to be sold separately.

|       |       |       |
|-------|-------|-------|
| Lot 1 | Lot 2 | Lot 3 |
|-------|-------|-------|

51D. Lots 1 and 2 are land on which there were improvements as at 1 July 2000. Lot 3 is land on which there were no improvements as at 1 July 2000.

51E. If, however, lots 1, 2 and 3 were sold as a single piece of land, the whole supply would be a supply of land on which there were improvements as at 1 July 2000 (see Example 1 of this Ruling).

- (b) In footnote 6 omit the words 'Limited v.'; substitute 'Ltd v'.

## 22. Paragraph 52

Omit the detailed contents list; substitute:

|  | Paragraph |
|--|-----------|
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The Addendum applies before and after date of issue.

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**Commissioner of Taxation**

14 August 2019

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ATO references

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