

GSTR 2015/2A1 - Addendum - Goods and services tax: development lease arrangements with government agencies

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Addendum

Goods and Services Tax Ruling

Goods and services tax: development lease arrangements with government agencies

[Note: This is a consolidated version of this document. Refer to the Legal database (ato.gov.au/law) to check its currency and to view the details of all changes.]

This Addendum is a public ruling for the purposes of the *Taxation Administration Act 1953*. It amends Goods and Services Tax Ruling GSTR 2015/2 to:

- improve clarity
- specify that the Ruling does not apply to the arrangements specifically dealt with in Goods and Services Tax Determination GSTD 2021/1 *Goods and services tax: development works in the Australian Capital Territory*
- include additional references to Goods and Services Tax Ruling GSTR 2001/6 *Goods and services tax: non-monetary consideration in relation to non-monetary consideration where relevant*, and
- provide further details regarding the calculation of the market value of development works.

GSTR 2015/2 is amended as follows:

1. Paragraph 1

After the word 'agency' in the second dot point, insert 'ultimately'.

2. Paragraph 2

(a) In footnote 4, omit the word 'at'; substitute 'in'.

(b) After '**development works**' in the third sub-dot point, insert footnote 4A:

^{4A} The term '**development works**', as used in this Ruling, is defined in paragraph 146A of this Ruling.

(c) Omit footnote 5; substitute:

In accordance with paragraph (b) of the formula in subsection 9-75(1) of the GST Act, the value of a taxable supply includes the GST inclusive market value of any consideration that is not consideration expressed as an amount of money.

3. Paragraph 6

- (a) Omit the last two sentences; substitute 'The principles outlined in this Ruling may apply to these arrangements in the ACT.'
- (b) After the paragraph, insert new paragraph 6A:
6A. This Ruling does not apply to the other common way in which a government agency of the ACT releases land to developers. Under these arrangements, a long-term lease (usually 99 years) may be granted to a developer on settlement of the contract. No holding lease is entered into under these arrangements (discussed in detail in Goods and Services Tax Determination GSTD 2021/1 *Goods and services tax: development works in the Australian Capital Territory*).

4. Paragraph 11

In the first sentence, omit the word 'makes'; substitute 'make'.

5. Paragraph 12

Omit the second dot point; substitute 'Divisions 81 and 82 do not apply'.

6. Paragraph 14

Omit footnote 6.

7. Paragraph 33

In footnote 9, omit the third and fourth sentences.

8. Paragraph 36

At the end of the paragraph, insert 'This means that the supply of the development services will not be consideration for the supply of the land in this situation.'

9. Paragraph 38

- (a) In footnote 12, after the first occurrence of the word 'thing' in the first sentence, insert '(in this case, the land)'.
- (b) At the end of the paragraph, insert 'Any initial payment for the option is not consideration for the supply of the land.'

10. Paragraph 58

Omit the second dot point (excluding the footnote); substitute 'Divisions 81 and 82¹⁵ do not apply'.

11. Paragraph 59

Omit the words 'Division 82 does not apply'; substitute 'Divisions 81 and 82 do not apply'.

12. Paragraph 68

At the end of the paragraph, insert 'The meaning of the term 'market value' is considered in further detail in paragraphs 140 to 158 of GSTR 2001/6.'

13. Paragraph 69

Omit footnote 19; substitute:

See paragraph 155 of GSTR 2001/6 which states that where you are making a taxable supply and you are dealing with another party at arm's length, you can use a reasonable valuation method as determined between you and the other party. Also, paragraph 142 of GSTR 2001/6 provides further guidance on valuing the consideration.

14. Paragraph 71

(a) Omit the paragraph (including footnote 20 but excluding footnote 21); substitute:

Similarly, a professional valuation of the land can be used in calculating the GST-inclusive market value of the development services. The professional valuation of the land must:

- include the development works on the land that are supplied to the government agency; and
- exclude development works on the land that are not supplied to the government agency.

(b) After the paragraph, insert new paragraphs 71A, 71B, 71C and 71D:

71A. In using the professional valuation to calculate the GST-inclusive market value of the development services, adjustments need to be made for any monetary consideration provided for the land by the developer. The professional valuation of the land provides a reasonable basis for calculating the price of the government agency's supply of land (or grant of a call option).²¹

71B. The professional valuation of the land must comply with professional guidelines^{21A} and the law. The High Court in *Turner v Minister of Public Instruction* [1956] HCA 7 (*Turner*) 93 CLR 245, at 297, stated:

... A purchaser considering buying land for the purpose of subdividing it would necessarily require a margin between the purchase price of the land and the expected or estimated net return on realization of it in subdivision, and this fact was recognized in this case. The extent of the margin, that is the difference between the purchase price which a purchaser would be prepared to pay for land *in globo* and the net return expected to be derived from it on sale in subdivision is a matter to be ascertained from the opinions of experts based upon their experience and their analyses of transactions of this type.

71C. The approach adopted in *Turner* was confirmed by the High Court in *Northern Territory v Mr A. Griffiths (deceased) and Lorraine Jones on behalf of the Ngaliwurru and Nungali Peoples* [2019] HCA 7 at [84] and applied in numerous other cases. In *Australia Pacific LNG Pty Limited & Ors v The Treasurer, Minister for Aboriginal and Torres Strait Islander Partnerships and Minister for Sport* [2020] QCA 15, it was stated at [81]:

... In the case of hypothesising a sale of undeveloped land for valuation purposes, it would be an error of law to value the land as if its *potential* to be fully developed and subdivided had *already been realised* and existed at the date of the hypothetical sale transaction.

71D. A professional valuation must take into account the market the supply is made in.^{21B} For example, the sale of land from the government agency to the developer is analogous to a wholesale market supply in contrast to the sale by the developer of individual properties in the retail market.

- (c) After 'guidelines' in paragraph 71B, insert new footnote 21A:

^{21A} See, for example, [Australian Property Institute Technical Information Paper – Valuation Procedures – Real Property](#). It states as a general principle that the valuation of multiple properties in one development, sold to one buyer, should be valued as if there was one transaction and incorporate appropriate discounts.

- (d) At the end of the first sentence in paragraph 71D, insert new footnote 21B:

^{21B} See paragraphs 141, 142 and 154 of GSTR 2001/6.

15. Paragraph 81

In the first sentence, omit 'certain'; substitute 'development'.

16. Paragraph 82

In footnote 23, after 'GSTR 2001/6', insert 'provide advice on the apportionment of non-monetary consideration where there is a transaction involving money'.

17. Paragraph 105

Omit footnote 28; substitute:

For further information regarding when a copy of a contract can be an invoice, see paragraphs 27 and 30 of Goods and Services Tax Ruling GSTR 2000/34 *Goods and services tax: what is an invoice for the purposes of the A New Tax System (Goods and Services Tax) Act 1999 ('GST Act')*?

18. Paragraph 114

At the end of the sentence, insert '*Public Rulings*'.

19. Paragraph 127

At the beginning of the paragraph, omit 'In all cases, through'; substitute 'The developer by'.

20. Paragraph 131

Omit the word 'For'; substitute 'Where an invoice has not been issued and the only consideration provided is non-monetary consideration, for'.

21. Paragraph 134

- (a) Omit the words 'The broader context of a'; substitute 'A'.
- (b) Omit the last sentence.

22. Paragraph 135

- (a) Omit the first sentence (including the footnote).
- (b) Omit the second sentence; substitute 'The completion of the development and any specified additional works is the relevant supply.'

23. Paragraph 143

After the words 'development services', insert 'and development works'.

24. Paragraph 146

After the paragraph, insert new paragraph 146A:

146A. **Development works**, when used in this Ruling, refers to those development works that are required to be carried out by the developer under the development lease arrangement.

This Addendum applies on and from 31 March 2021.

Commissioner of Taxation

31 March 2021

ATO references

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 Goods and services tax ~~ Property ~~ Premises ~~ New residential premises
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