GSTR 2006/7A2 - Addendum - Goods and services tax: how the margin scheme applies to a supply of real property made on or after 1 December 2005 that was acquired or held before 1 July 2000

Addendum

Goods and Services Tax Ruling

Goods and services tax: how the margin scheme applies to a supply of real property made on or after 1 December 2005 that was acquired or held before 1 July 2000

Goods and Services Tax Ruling GSTR 2006/7 explains how the margin scheme applies to a supply of a freehold interest, stratum unit,[1] or long-term lease[2] (referred to in GSTR 2006/7 collectively as 'real property') on or after 1 December 2005 that was acquired or held before 1 July 2000.

GSTR 2006/7 also explains how the *A New Tax System (Goods and Services Tax) Margin Scheme Valuation Requirements Determination MSV 2005/3* (MSV 2005/3) applies to taxable supplies of real property made on or after 1 December 2005.

MSV 2005/3 does not apply to supplies of real property made on or after 1 March 2010. Instead, *A New Tax System (Goods and Services Tax) Margin Scheme Valuation Requirements Determination MSV 2009/1* (MSV 2009/1) applies to a supply of real property made on or after 1 March 2010 that was acquired or held before 1 July 2000.

MSV 2009/1 also specifies requirements for valuations obtained by the Commissioner in specified circumstances for a supply of real property made before, on or after 1 March 2010.

This Addendum amends GSTR 2006/7 to reflect the above. Some minor wording alterations (for example to headings in the Ruling) are also made to enhance the clarity of the Ruling.

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[1] 'Stratum unit' is defined in section 195-1 of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act) as having 'the meaning given by subsection 124-190(3) of the *Income Tax Assessment Act 1997*. Subsection 124-190(3) of the GST Act defines a stratum unit as 'a lot or unit (however described in an Australian law or a foreign law relating to strata title or similar title) and any accompanying common property'.

[2] 'Long-term lease' is defined in section 195-1 of the GST Act as:

> a supply by way of lease, hire or licence (including a renewal or extension of a lease, hire or licence) for at least 50 years if:
>
> (a) at the time of the lease, hire or licence, or the renewal or extension of the lease, hire or licence, it was reasonable to expect that it would continue for at least 50 years; and
>
> (b) unless the supplier is an *Australian government agency – the terms of the lease, hire or licence, or the renewal or extension of the lease, hire or licence, as they apply to the *recipient are substantially the same as those under which the supplier held the premises.

GSTR 2006/7 is amended as follows:

1. Preamble

Omit 'section 37 of'; substitute 'section 105-60 of Schedule 1 to'.

2. Paragraphs 2 and 3

Omit the paragraphs; substitute:

> 2. This Ruling also explains how the *A New Tax System (Goods and Services Tax) Margin Scheme Valuation Requirements Determination MSV 2005/3* (MSV 2005/3) and *A New Tax System (Goods and Services Tax) Margin Scheme Valuation Requirements Determination MSV 2009/1* (MSV 2009/1) apply to taxable supplies of real property made on or after particular dates.
>
> 3. MSV 2005/3 and MSV 2009/1 are made under section 75-35 of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act). A copy of each determination is attached as a Schedule to this Ruling.

3. Paragraph 5

Omit the paragraph; substitute:

> 5. MSV 2005/3 and MSV 2009/1 are about the requirements for making an approved valuation of property. MSV 2005/3 applies to taxable supplies of real property made on or after 1 December 2005 and before 1 March 2010. MSV 2009/1 applies to taxable supplies of real property made:
>
> - on or after 1 March 2010 for valuations obtained by the supplier; and
> - before, and on or after, 1 March 2010 for valuations obtained by the Commissioner.
>
> Each determination is a legislative instrument and has the force of law. Unlike public rulings which are binding only on the Commissioner, MSV 2005/3 and MSV 2009/1 are binding on both the Commissioner and suppliers.

4. Paragraph 6

Omit the paragraph; substitute:

> 6. The Ruling explains in particular:
>
> (a) how valuations are to be made under MSV 2005/3 and MSV 2009/1 (paragraphs 70 to 85 of this Ruling);

(b) what documentation is required by a professional valuer to satisfy MSV 2005/3 and MSV 2009/1 (paragraph 79 of this Ruling); and

(c) when valuations are required to be made under Division 75 of the GST Act (paragraphs 70 to 72A of this Ruling).

5. Paragraph 9

At the end of the third sentence, insert:

> and by the *Tax Laws Amendment (2008 Measures No. 5) Act 2008* (2008 Amendment Act)

6. Paragraph 11

Omit the paragraph; substitute:

> 11. This Ruling, except for the legislative amendments made by the 2005 Amendment Act, the 2008 Amendment Act, and the requirements for making valuations contained in *A New Tax System (Goods and Services Tax) Margin Scheme Valuation Requirements Determination MSV 2005/2* (MSV 2005/2), MSV 2005/3 and MSV 2009/1, explains the Commissioner's view of the law as it applies before and after the date of issue of the Ruling. The legislative amendments and legislative instruments have different dates of effect depending on when the relevant supply is made.

7. Paragraph 12

After the paragraph insert:

> 12A. The legislative amendments to Division 75 contained in the 2008 Amendment Act apply to supplies of real property where the real property was acquired on or after 9 December 2008[5A] and was not acquired:
>
> (a) under a written agreement entered into before 9 December 2008; or
>
> (b) pursuant to a right or option granted before 9 December 2008,
>
> that specifies in writing the consideration, or a way of working out the consideration, for the supply.

[5A] The date of Royal Assent of the 2008 Amendment Act.

8. Paragraphs 13 to 15

Omit the paragraphs; substitute:

> 13. The valuation requirements contained in MSV 2005/2 apply to supplies made on or after 1 July 2005 under contracts entered into before 1 July 2005. MSV 2005/3 applies to supplies of real property made on or after 1 December 2005 and before 1 March 2010. MSV 2009/1 applies to supplies made on or after 1 March 2010, except those requirements for making valuations obtained by the Commissioner which apply to supplies made before, and on or after 1 March 2010.
>
> 14. You can rely upon this Ruling on and from its date of issue for the purposes of section 105-60 of Schedule 1 to the *Taxation Administration Act 1953* (TAA). Goods and Services Tax Ruling GSTR 1999/1 explains the GST rulings system and the Commissioner's view of when you can rely on this interpretation of the law in GST public and private rulings.

9. Paragraph 21

After the paragraph, insert:

> 21A. MSV 2009/1 replaces MSV 2005/3 for supplies of real property made on or after 1 March 2010. MSV 2005/3 now only applies to taxable supplies of real property made on or after 1 December 2005 and before 1 March 2010.

10. Paragraph 22

Omit the paragraph; substitute:

> 22. MSV 2005/3 and MSV 2009/1 do not replace MSV 2005/2.

11. Paragraph 28

Omit the paragraph; substitute:

> 28. The decision to allow or not allow a further period within which to make an agreement is a reviewable GST decision under item 51 in the table in subsection 110-50(2) of Schedule 1 to the TAA.

12. Paragraph 62

At the end of the paragraph; insert:

> , unless paragraph 63, 63A or 64 of this Ruling applies

13. Paragraph 63

Omit the paragraph; substitute:

> 63. If the Commissioner has allowed a further period under paragraph 75-5(1A)(b) for the supplier and the recipient to agree in writing that the margin scheme is to apply in working out the GST on the supply, under MSV 2005/3, the valuation must be made by the later of:
>
> (i) six weeks from the further period that the Commissioner has allowed under paragraph 75-5(1A)(b); or
>
> (ii) six weeks from the date of the Commissioner's decision to extend the further period under paragraph 75-5(1A)(b).
>
> 63A. Under MSV 2009/1, the time by which the valuation must be made has been extended by two weeks in recognition that this is a more realistic timeframe. The valuation must be made by the later of:
>
> (i) eight weeks from the further period that the Commissioner has allowed under paragraph 75-5(1A)(b); or
>
> (ii) eight weeks from the date of the Commissioner's decision to extend the further period under paragraph 75-5(1A)(b).

14. Paragraph 64

Delete 'and 63'; substitute 'to 63A of this Ruling'.

15. Footnote 29

Omit the first sentence; substitute:

> Refer to clauses 15 to 17 of MSV 2005/3 and clauses 21 to 23 of MSV 2009/1.

16. Paragraph 70

Omit the paragraph (including heading); substitute:

> **The requirements as determined by the Commissioner in MSV 2005/3 and MSV 2009/1 for making valuations**
>
> 70. MSV 2005/3 and MSV 2009/1 set out the requirements as determined by the Commissioner for the following valuation methods:
>
> (a) a valuation by a professional valuer (Method 1);[30]
>
> (b) a valuation based on the consideration provided by a purchaser (that is, received by the supplier) under the contract of sale (Method 2); and
>
> (c) a State or a Territory Government department valuation (Method 3).
>
> 70A. MSV 2009/1 also sets out the requirements as determined by the Commissioner for valuations obtained by the Commissioner in certain circumstances (Method 4).
>
> 70B. The requirements for each of these valuation methods are discussed in paragraphs 73 to 82J of this Ruling. Paragraphs 82A to 82J of this Ruling explain the circumstances in which the Commissioner may obtain a valuation for the purposes of subsection 75-10(3).

17. Paragraph 71

After 'MSV 2005/3'; insert ' or MSV 2009/1'.

18. Paragraph 72

Omit the paragraph; substitute:

> 72. If you have obtained a valuation in accordance with either *A New Tax System (Goods and Services Tax) Margin Scheme Valuation Requirements Determination (No. 1) 2000* or the *A New Tax System (Goods and Services Tax) Margin Scheme Valuation Requirements Determination (No. 2) 2000*, in respect of a supply to which MSV 2005/3 should have applied, you are not required to obtain a new valuation if your valuation complies with the requirements of MSV 2005/3. It is an approved valuation under subsection 75-35(2).

[30] If subsection 75-10(3A) applies, the determination provides that the valuation must be a valuation of the market value of the real property determined by a professional valuer as if there are no improvements on the real property on the valuation date. Goods and Services Tax Ruling GSTR 2006/6 discusses the meaning of 'improvements on the land'.

72A. Similarly, if you have obtained a valuation in accordance with MSV 2005/3, for a supply to which MSV 2009/1 applies, you do not need to obtain a new valuation if your valuation complies with the requirements of MSV 2009/1. The valuation is an approved valuation under subsection 75-35(2).

Method 1: valuation by a professional valuer

72B. The requirements for making valuations under Method 1 are the same under both MSV 2005/3 and MSV 2009/1.

19. Paragraph 73

Omit the paragraph including heading; substitute:

73. For a valuation by a professional valuer to be an approved valuation for the purposes of Division 75, that valuation must be made in accordance with the requirements specified in the determination. Subject to paragraph 74 of this Ruling, the valuation is the market value of the interest, unit or lease that you held at the valuation date (or, if item 2A applies, the interest you acquired on or after 1 July 2000), as determined in writing by a professional valuer, provided it is not contrary to professional standards recognised in Australia.

73A. As explained at paragraph 66 of this Ruling, the real property that is valued is the interest, unit or lease that is in existence at the valuation date. For example, if the subject real property is contaminated as it existed at the date of valuation, its market value is determined on the basis of its contaminated condition at the valuation date and not as adjusted to its remediated condition. The valuation would only take into account the value added by remediation of the property up to the valuation date.

20. Paragraph 74

Omit the paragraph; substitute:

74. If item 4 in the table in paragraph 75-10(3)(b) (item 4) applies and there are improvements on the land when the taxable supply is made, the valuation is to be made as if there were no improvements on the land or premises at 1 July 2000.[31]

[31] Subsection 75-10(3A).

21. Paragraph 76

After the paragraph; insert:

> 76A. In MSV 2009/1, the definition of a professional valuer also includes:
>
> (a) a member of the Royal Institution of Chartered Surveyors and accredited as a Chartered Valuation Surveyor; and
>
> (b) a member of the Australian Valuers Institute and accredited as a Certified Practising Valuer.[32A]
>
> 76B. Although members of the Royal Institution of Chartered Surveyors or Australian Valuers Institute are not specifically referred to in the definition of 'professional valuer' in MSV 2005/3, they would have been covered by the definition in subparagraphs 76A(a) and 76(b) of this Ruling. To make this clear, MSV 2009/1 specifically includes members of these bodies in the definition of 'professional valuer'.

22. Paragraph 79

Omit subparagraph (f); substitute:

> (f) name and the qualifications of the valuer.[32B]

23. Paragraphs 80 and 81

Omit the paragraphs (including headings); substitute

> **Method 2: valuation based on the consideration provided by a purchaser (that is, received by the supplier) under the contract of sale**
>
> 80. Method 2 is expressed in MSV 2005/3 as 'the consideration provided by the purchaser'. In MSV 2009/1 the wording has been changed to the 'consideration received by the supplier' so that it is immediately clear that this method is not the same as the consideration method under subsection 75-10(2).

[32A] Refer to the definition section of MSV 2009/1 at Schedule 2.

[32B] The requirements set out under Method 1 in MSV 2005/3 do not specifically require the name of the valuer on the signed certificate, but this requirement is implied.

80A. For a valuation based on the sale contract price to be an approved valuation for the purposes of Division 75, that valuation must be made by adopting as the valuation the consideration received by the supplier under the contract of sale of the real property that has been executed or exchanged before the valuation between parties dealing at arm's length.[33]

80B. The method only applies if the contract is executed and exchanged before the valuation date and settlement occurs after that date. In these limited circumstances, the valuation of the interest, unit or lease would be the same as the consideration for the supply of the interest, unit or lease. Under this valuation method, the margin for the supply is nil.

Method 3: State Government or Territory Government department valuation

81. The requirements for this method have been amended in MSV 2009/1.

81A. The requirements under Method 3 in MSV 2005/3 refer to 'the unimproved value, site value, or the capital value of the land' for rating or land tax. In MSV 2009/1, Method 3 does not make reference to 'the unimproved value, site value, or the capital value of the land'. This clarifies that a valuation made by or on behalf of a State or a Territory Government department for rating or land tax purposes is eligible as an approved valuation under Method 3 regardless of how the valuation may be described under the relevant State or Territory legislation.

81B. For a valuation made by or on behalf of a State or a Territory Government department for rating or land tax purposes to be an approved valuation for the purposes for Division 75, that valuation must be made by adopting as the valuation the most recent valuation of the interest, unit or lease made before the valuation date. The valuation is made by a State or a Territory Government department, or by a professional valuer on behalf of a State or a Territory Government department.

[33] Judicial interpretation of the phrase 'dealing at arm's length' can be found in *Collis v. FC of T* (1996) 33 ATR 438; 96 ATC 4831, *Granby v. FC of T* (1995) 30 ATR 400; 95 ATC 4240; (1995) 129 ALR 503, *Barnsdall v. FC of T* (1988) 19 ATR 1352; 88 ATC 4565, *The Trustee of the Estate of the Late AW Furse No. 5 Will Trust* (1990) 21 ATR 1123; 91 ATC 4007.

24. Paragraph 82

After the paragraph; insert:

Method 4: valuation obtained by the Commissioner in certain circumstances (MSV 2009/1 only)

82A. The requirements under Method 4 apply to valuations obtained by the Commissioner. A valuation can only be obtained by the Commissioner to calculate the margin pursuant to subsection 75-10(3) *if all* of the following circumstances apply:

- for the purposes of calculating the margin under subsection 75-10(3), the supplier has not produced a valuation to the Commissioner or the valuation produced is not an approved valuation;
- the Commissioner has provided a notification in writing to that effect to the supplier (incorporating, where applicable, the reasons for not accepting the valuation produced is an approved valuation) and advised that the supplier must produce an approved valuation to the Commissioner within eight weeks of that notification;
- the supplier does not produce an approved valuation to the Commissioner within that eight weeks or any extended time which the Commissioner for good reason allowed;
- the margin (in the absence of an approved valuation being produced by the supplier) would be calculated under subsection 75-10(2);
- the margin, if calculated under subsection 75-10(2), would result in GST payable on value added to the real property prior to the commencement of, or entry into, the GST system; and
- the margin, if calculated using a valuation obtained by the Commissioner, would be less than the margin calculated under subsection 75-10(2).

82B. By obtaining an approved valuation in these circumstances the Commissioner is able to ensure that GST is only payable by the supplier on the value added to the real property after the commencement of, or entry into, the GST system in accordance with the policy intent of Division 75.

82C. By way of background to Method 4, if a supplier has been notified by the Commissioner that its valuation is not an approved valuation and the supplier does not subsequently obtain and produce an approved valuation, the Commissioner would issue an assessment (or an amended assessment) of the relevant amount of GST using the consideration method under subsection 75-10(2).

82D. However, in circumstances involving real property acquired before 1 July 2000, application of the consideration method may result in GST payable on the value added to the real property prior to the commencement of, or entry into, the GST system. This is contrary to the policy intent of Division 75 which is to only tax value added after the commencement of, or entry into, the GST system.

82E. Method 4 therefore provides for the Commissioner to obtain a valuation for the purposes of subsection 75-10(3) in these circumstances to ensure that the policy intent of Division 75 is achieved.

82.F If the Commissioner does not accept that a valuation produced by the supplier is an approved valuation, written notification to that effect is required to be provided to the supplier incorporating reasons for not accepting that valuation. A copy of any valuation critique obtained by the Commissioner would also be provided to the supplier.

82G. For taxable supplies of real property made on or after 1 March 2010, a valuation obtained by the Commissioner is an approved valuation for the purpose of Division 75 if it meets the requirements as determined under one of the three valuation methods (that is, Method 1, 2, or 3) set out in MSV 2009/1 (other than the requirement that the signed certificate must specify the date the valuer provides the valuation to the supplier). Each of these methods is described in paragraphs 72B to 82 of this Ruling.

82H. For taxable supplies of real property made before 1 March 2010, the valuation obtained by the Commissioner must be:

- based on one of the same valuation methods available to the supplier under the margin scheme valuation requirements determination that was in force when the supply was made; and
- made in accordance with the requirements stipulated by that determination (other than the requirements as to when the valuation must be made by and that the signed certificate must specify the date the valuer provides the valuation to the supplier).

82I. If the Commissioner obtains a valuation under Method 4 and uses it to calculate the margin for a taxable supply of real property, the Commissioner will provide a copy of the valuation to the supplier.

82J. While the Commissioner is not required to use the same valuation method used by a supplier, use of a different valuation method is expected to be rare. Further, if circumstances arise where it is considered necessary to use a different valuation method, the Commissioner will inform the supplier in writing of the reasons why it is considered necessary in a particular case to do so, and the supplier is to be given the opportunity to respond.

25. Paragraph 100

At the end of paragraph; insert the footnote:

[39A] Goods and Services Tax Ruling GSTR 2006/6 Goods and services tax: improvements on the land for the purposes of Subdivision 38-N and Division 75.

26. Paragraph 101

(a) Omit the heading; substitute:

Can you apply the margin scheme when you make a supply of real property that has separately identifiable taxable and non-taxable (that is, GST-free or input taxed) parts?

(b) Omit 'If a supply of real property is partly input taxed and partly taxable or partly taxable and partly GST-free (a mixed supply),'; substitute 'If a supply of real property is a mixed supply because it has separately identifiable taxable and non-taxable (that is GST-free or input taxed) parts,'.

27. Paragraph 137

Omit 'Section 70 of the *Taxation Administration Act 1953*'; substitute: 'Section 382-5 of Schedule 1 to the TAA'.

28. Paragraph 140

Omit:

Method 2: a valuation by adopting the consideration provided by a purchaser in a contract for the sale and purchase of real property	80
Method 3: valuation by adopting value as determined by a State government or a Territory government	81
Can you apply the margin scheme when you make a supply of real property and the supply is partly taxable and partly input taxed or partly taxable and partly GST-free?	101
Schedule 1	Page 36

Insert:

The requirements as determined by the Commissioner in MSV 2005/3 and MSV 2009/1 for making valuations	70
Method 1: valuation by a professional valuer	72B
Method 2: valuation based on the consideration provided by a purchaser (that is, received by the supplier) under the contract of sale	80
Method 3: State Government or Territory Government department valuation	81
Method 4: valuation obtained by the Commissioner in certain circumstances (MSV 2009/1 only)	82A
Can you apply the margin scheme when you make a supply of real property that has separately identifiable taxable and non-taxable (that is, GST-free or input taxed) parts?	101
Schedule 1	Page 39
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29. Legislative references

Omit:

- TAA 1953 37
- TAA 1953 62(2)
- TAA 1953 70

Insert:

- ANTS(ABN)A 1999
- ANTS(GST)A 1999 Subdiv 38-N
- TAA 1953 Sch 1 105-60
- TAA 1953 Sch 1 110-50(2)
- TAA 1953 Sch 1 382-5
- Tax Laws Amendment (2008 Measures No. 5) Act 2008

30. Other references

Insert:

- A New Tax System (Goods and Services Tax) Margin Scheme Valuation Requirements Determination MSV 2009/1

31. Schedule 1

After the Schedule, insert:

Schedule 2

A New Tax System (Goods and Services Tax) Margin Scheme Valuation Requirements Determination MSV 2009/1

I, Shane Reardon, make the following determination under subsection 75-35(1) of the *A New Tax System (Goods and Services Tax) Act 1999* ('the GST Act').

Citation

1. This determination may be cited as the *A New Tax System* (*Goods and Services Tax*) *Margin Scheme Valuation Requirements Determination* MSV *2009/1*.

Commencement

2. This determination commences on 1 March 2010.

Application of this Determination

3. This determination specifies the requirements for making valuations for the purposes of applying the margin scheme in Division 75. The requirements apply to valuations for taxable supplies of real property made on or after 1 March 2010.

4. This determination also specifies requirements for making valuations obtained by the Commissioner for the purposes of applying the margin scheme in specified circumstances. The requirements apply to valuations for taxable supplies of real property made before, and on or after, 1 March 2010.

5. The *A New Tax System (Goods and Services Tax) Margin Scheme Valuation Requirements Determination (No.1) 2000* (F2006B01549), the *A New Tax System (Goods and Services Tax) Margin Scheme Valuation Requirements Determination (No.2) 2000* (F2006B01564), the *A New Tax System (Goods and Services Tax) Margin Scheme Valuation Requirements Determination MSV 2005/1* (F2005L00726) continue to apply to taxable supplies of real property made before 1 December 2005, but do not apply to supplies made on or after 1 December 2005.

6. The *A New Tax System (Goods and Services Tax) Margin Scheme Valuation Requirements Determination MSV 2005/2* (F2005L01808) continues to apply to taxable supplies of real property made after 1 July 2005 under contracts entered into before 1 July 2005.

7. The *A New Tax System (Goods and Services Tax) Margin Scheme Valuation Requirements Determination MSV 2005/3* (F2005L02565) continues to apply to taxable supplies of real property made on or after 1 December 2005, but does not apply to supplies made on or after 1 March 2010.

What is the freehold interest in land, stratum unit or long-term lease that you value?

8. If the real property that you supply by selling a freehold interest in land or selling a stratum unit or granting or selling a long-term lease is the same interest, unit or lease that existed at the valuation date, the valuation must be of that interest, unit or lease.

9. If the real property that you supply is not the same interest, unit or lease that existed at the valuation date, but was derived from an interest, unit or lease that was in existence at that date, the valuation must be made as follows:

   (1) a valuation of the interest, unit or lease in existence at the valuation date must be made; and

   (2) the valuation of that interest, unit or lease must be apportioned on a fair and reasonable basis, to ascertain the part of the valuation that relates to the interest, unit or lease that you supply.

Mixed supplies

10. If you make a supply of an interest, unit or lease that has separately identifiable taxable and non-taxable (that is, GST-free or input taxed) parts, the valuation of that 'mixed supply' must be made as follows:

   (1) a valuation of the entire interest, unit or lease in existence at the valuation date must be made; and

(2) the valuation of that interest, unit or lease must be apportioned on a fair and reasonable basis, to ascertain the part of the valuation that relates to that part of the interest, unit or lease that you supply under the margin scheme (that is, the taxable part of the supply).

The requirements for making valuations as determined by the Commissioner for the purposes of Division 75

11. A valuation of the interest, unit or lease made in accordance with the requirements set out by the Commissioner in this determination is an approved valuation of that interest, unit or lease.

12. The Commissioner has determined the following requirements for making valuations for the purposes of Division 75.

Method 1: valuation by a *professional valuer

13. For a valuation by a valuer to be an approved valuation for the purposes of Division 75 that valuation must be made in accordance with the following requirements:

(1) the valuer must be a **professional valuer*;

(2) the valuation must be in writing;

(3) the valuation must determine the market value of the interest, unit or lease at the valuation date;

(4) the valuation must be made in a manner that is not contrary to the professional standards recognised in Australia for the making of real property valuations;

(5) the valuation must include a signed certificate which specifies:

(a) a full description of the property being valued;

(b) the applicable valuation date;

(c) the date the valuer provides the valuation to the supplier;

(d) the market value of the property at the valuation date;

(e) the valuation approach and the valuation calculation; and

(f) the name and qualifications of the valuer,

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* Defined term, see the Dictionary, at clause 24.

(6) if the interest, unit or lease has been supplied by the Commonwealth, a State or a Territory; and

(a) the supplier has held the interest, unit or lease since before 1 July 2000;

(b) there were no improvements on the land or premises in question as at 1 July 2000; and

(c) there are improvements on the land or premises in question on the day on which the taxable supply takes place,

the valuation must be made as if no improvements had been made at the date of the taxable supply; and

(7) the valuation must be made by the time specified in clauses 21 to 23 below.

Method 2: valuation based on the consideration received by the supplier under the contract of sale

14. For a valuation based on the sale contract price to be an approved valuation for the purposes of Division 75, that valuation must be made in accordance with the following requirements:

(1) the valuation must be made by adopting as the valuation the consideration received under the contract for the sale of the real property that has been executed or exchanged before the valuation date;

(2) the parties to the contract must be dealing at arm's length; and

(3) the valuation must be made by the time specified in clauses 21 to 23 below.

15. Method 2 is not available if:

(1) the interest, unit or lease has been supplied by the Commonwealth, a State or a Territory;

(2) the supplier has held the interest, unit or lease since before 1 July 2000;

(3) there were no improvements on the land or premises in question as at 1 July 2000; and

(4) there are improvements on the land or premises in question on the day on which the taxable supply takes place.

Method 3: State Government or Territory Government department valuation

16. For a valuation based on a valuation made by or on behalf of a State Government or a Territory Government to be an approved valuation for the purposes of Division 75, that valuation must be made in accordance with the following requirements:

(1) the valuation must be made by adopting as the valuation the most recent valuation of the interest, unit or lease made before the valuation date by or on behalf of a State Government or a Territory Government department for rating or land tax purposes; and

(2) the valuation must be made by the time specified in clauses 21 to 23 below.

Method 4: valuation obtained by the Commissioner in certain circumstances

17. Method 4 is only applicable if all of the following circumstances apply:

(1) for the purposes of calculating the margin under subsection 75-10(3), a valuation has not been produced to the Commissioner or the valuation produced is not an approved valuation;

(2) the Commissioner has provided a notification in writing to that effect to the supplier (incorporating, where applicable, the reasons for not accepting the valuation produced as an approved valuation) and advised that the supplier must produce an approved valuation to the Commissioner within 8 weeks;

(3) the supplier does not produce an approved valuation to the Commissioner within that 8 weeks or any extended time which the Commissioner may for good reason allow;

(4) the margin, in the absence of an approved valuation being produced by the supplier, would be calculated under subsection 75-10(2);

(5) the margin, if calculated under subsection 75-10(2), would result in GST payable on value added to the real property prior to the commencement of, or entry into, the GST system; and

(6) the margin, if calculated using a valuation obtained by the Commissioner, would be less than the margin calculated under subsection 75-10(2).

18. For taxable supplies of real property made on or after 1 March 2010, any one of the following valuations, if obtained by the Commissioner, is an approved valuation for the purposes of subsection 75-10(3):

    (1) a valuation by a valuer which meets the requirements set out in subclauses 13(1) to (6) under method 1 other than the requirement in subclause 13(5)(c);

    (2) a valuation based on the consideration received by the supplier under a contract of sale which meets the requirements set out in subclauses 14(1) and (2); and where clause 15 does not apply; or

    (3) a valuation based on a valuation made by or on behalf of a State Government or a Territory Government which meets the requirements set out in subclause 16(1).

19. For taxable supplies of real property made before 1 March 2010, a valuation, if obtained by the Commissioner, is an approved valuation for the purposes of subsection 75-10(3) if the valuation is:

    (1) based on one of the same valuation methods available to the taxpayer under the margin scheme valuation requirements determination in force when the supply was made; and

    (2) made in accordance with the requirements determined in the margin scheme valuation requirements determination in force when the supply was made (other than the requirements as to when the valuation must be made and the date the valuation was provided to the supplier).

20. A copy of any approved valuation obtained by the Commissioner and used to calculate the margin is to be provided to the supplier.

When must the valuation under methods 1 to 3 be made?

21. The valuation under methods 1 to 3 must be made by the due date for lodgement of the Business Activity Statement for the tax period to which the GST payable on the taxable supply of the real property is attributable.

22. However, if the Commissioner has allowed a further period under paragraph 75-5(1A)(b) of the GST Act for the supplier and recipient to agree in writing that the margin scheme is to apply in working out the GST on the supply, the valuation must be made by the later of:

    (1) 8 weeks from the end of the further period that the Commissioner has allowed under paragraph 75-5(1A)(b); or

(2) 8 weeks from the date of the Commissioner's decision to extend the further period under paragraph 75-5(1A)(b).

23. If the valuation is not made within the time periods specified in clauses 21 and 22, the Commissioner may for good reason allow an additional period within which a valuation may be made.

Dictionary

24. ***Professional valuer*** means:

(1) a person registered or licensed to carry out real property valuations under a Commonwealth, a State or a Territory law; or

(2) a person who carries on a business as a valuer in a State or a Territory where that person is not required to be licensed or registered to carry on a business as a valuer; or

(3) a person who is:

(a) a member of the Australian Property Institute and accredited as a Certified Practicing Valuer; or

(b) a member of the Royal Institution of Chartered Surveyors and accredited as a Chartered Valuation Surveyor; or

(c) a member of the Australian Valuers Institute and accredited as a Certified Practicing Valuer.

25. Other expressions in this determination have the same meaning as in the GST Act.

Dated this 14th day of October 2009

Shane Reardon
Deputy Commissioner of Taxation

This Addendum explains the Commissioner's view of *A New Tax System (Goods and Services Tax) Margin Scheme Valuation Requirements Determination MSV 2009/1* as it applies to certain supplies of real property made on or after 1 March 2010 and, in specified circumstances, before 1 March 2010. 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
3 March 2010

ATO references

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