GSTR 2006/8A2 - Addendum - Goods and services tax: the margin scheme for supplies of real property acquired on or after 1 July 2000

Addendum

Goods and Services Tax Ruling

Goods and services tax: the margin scheme for supplies of real property acquired on or after 1 July 2000

This Ruling explains how the margin scheme applies to a supply of a freehold interest, stratum unit,[1] or long-term lease[2] (referred to in the Ruling collectively as 'real property') on or after 1 July 2000 that was acquired on or after that date.

It 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 on or after 1 July 2000.

MSV 2009/1 also specifies requirements for valuations obtained by the Commissioner in specified circumstances for a supply of real property acquired before 1 July 2000.

This Addendum amends GSTR 2006/8 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.

---

[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 2006/8 is amended as follows:

1. Preamble

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

2. Paragraph 6

Omit the paragraph; substitute:

> 6. This Ruling, except for the legislative amendments made by the *Tax Laws Amendment (2005 Measures No. 2) Act 2005* (2005 Amendment Act), the *Tax Laws Amendment (2008 Measures No. 5) Act 2008* (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 2005/1* (MSV 2005/1)*, 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), 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 the legislative instruments have different dates of effect depending on when the relevant supply is made.

3. Paragraph 7

After the paragraph; insert:

> 7A. 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 *Tax Laws Amendment (2008 Measures No. 5) Act 2008*.

4. Paragraphs 8 to 10

Omit the paragraphs; substitute:

> 8. The valuation requirements in MSV 2005/1 apply to supplies made on or after 17 March 2005 and before 1 December 2005. MSV 2005/3 applies to supplies made on or after 1 December 2005 and before 1 March 2010. The requirements in MSV 2009/1 apply 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.
>
> 9. 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.

5. Paragraph 19

Omit the paragraph; substitute:

> 19. 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.

6. Paragraph 117

(a) At the end of the second sentence; insert:

> and before 1 March 2010

(b) After the paragraph; insert:

> 117A. MSV 2009/1 was registered on 20 October 2009. It replaces MSV 2005/3, and applies to supplies of real property made on or after 1 March 2010.[26A] (MSV 2009/1 also includes a new method 4 which applies to certain taxable supplies of real property acquired before 1 July 2000).[26B]

[26A] MSV 2009/1 does not replace MSV 2005/2 which applies to taxable supplies of real property made on or after 1 July 2005 under contracts entered into before 1 July 2005.

[26B] Refer to paragraphs 70A, 70B and 82A to 82H of GSTR 2006/7.

7. Paragraph 118

Omit the paragraph; insert:

> 118. 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);
>
> (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).
>
> 118A. The requirements for each of these valuation methods are discussed at paragraphs 118B to 118F of this Ruling and paragraphs 73 to 82 of Goods and Services Tax Ruling GSTR 2006/7.[26C]
>
> ***Method 1: valuation of the market value determined by a professional valuer***
>
> 118B. The requirements for method 1 are the same under both MSV 2005/3 and MSV 2009/1.
>
> 118C. 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. 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 the valuation date) as determined in writing by a professional valuer, provided it is not contrary to professional standards recognised in Australia.
>
> ***Method 2: valuation based on the consideration provided by a purchaser (that is, received by the supplier) under the contract of sale***
>
> 118D. The requirements set out under Method 2 in MSV 2005/3 refer to a valuation based on the *consideration provided by a purchaser* in a contract for the sale and purchase of real property. MSV 2009/1 merely rewords the requirements in MSV 2005/3 in terms of 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).

[26C] 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.

118E. 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 provided by a purchaser (that is, received by the supplier) under the contract of sale of the real property that has been executed or exchanged before the valuation date between parties dealing at arm's length.[27A]

Method 3: State Government or Territory Government department valuation

118F. The requirements set out under method 3 in MSV 2005/3 refer to a valuation based on the most recent unimproved value, site value, or the capital value of the land for rating or land tax purposes before the valuation date. Method 3 in MSV 2009/1 omits the words 'unimproved value, site value, or the capital value'. 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.

8. Paragraph 122

At the end of the paragraph; insert:

, unless paragraph 123, 123A or 124 of this Ruling applies.

9. Paragraph 123

Omit the paragraph; substitute:

123. 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).

[27A] 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.

123A. 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).

10. Paragraph 124

Omit 'and 123'; substitute 'to 123A of this Ruling'.

11. Footnote 33

Omit the first sentence; substitute:

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

12. Footnote 34

Omit 'paragraph'; substitute 'clause'.

13. Paragraph 130

After the paragraph; insert:

130A. In MSV 2009/1, the definition of a professional valuer also includes:

- a member of the Royal Institution of Chartered Surveyors and accredited as a Chartered Valuation Surveyor; and
- a member of the Australian Valuers Institute and accredited as a Certified Practising Valuer.[34A]

130B. 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 paragraphs (a) and (b) of the definition above. To make this clear, MSV 2009/1 specifically includes members of these bodies in the definition of 'professional valuer'.

[34A] The term 'professional valuer' is defined in clause 23 of MSV 2009/1.

14. Paragraph 132

Omit the paragraph; substitute:

> 132. For supplies of real property made on or after 1 December 2005, clause 10 of MSV 2005/3 and subclause 13(5) of MSV 2009/1 state that the valuation must include a signed certificate which specifies:
>
> (a) a full description of the property being valued;
>
> (b) the applicable valuation date (refer to the table in paragraph 120 of this Ruling);
>
> (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.[34B]

15. Heading before paragraph 133

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?**

16. Paragraph 133

Omit the words '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,

17. Paragraph 178

Delete 'Section 70 of the *Tax Administration Act 1953*'; substitute 'Section 382-5 of Schedule 1 to the TAA'.

[34B] 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.

18. Detailed contents list

(a) Omit:

(b) Insert:

19. Legislative references

Omit:

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

Substitute:

- TAA 1953 105-60
- TAA 1953 110-50(2)
- TAA 1953 382-5
- Tax Laws Amendment (2008 Measures No. 5) Act 2008

20. Other references

Insert:

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

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

NO:	1-1V1SMRP
ISSN:	1443-5160
ATOlaw topic:	Goods and Services Tax ~~ Property and construction ~~ margin scheme Goods and Services Tax ~~ Miscellaneous rules ~~ deceased estates