

***MSV 2005/1 - Explanatory statement -***



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# A New Tax System (Goods and Services Tax) Margin Scheme Valuation Requirements Determination MSV 2005/1

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## Explanatory Statement

### General Outline of Instrument

This Determination specifies requirements for making valuations for the purposes of the margin scheme under Division 75 of the *A New Tax System (Goods and Services Tax) Act 1999* ('the GST Act').

The Determination is a Legislative Instrument for the purposes of the *Legislative Instruments Act 2003*. It is made by, and is legally binding upon, the Commissioner of Taxation.

### Date of effect

This Determination commences on 16 March 2005 and applies in respect of valuations made for the purposes of applying the margin scheme in working out the amount of GST on taxable supplies made on or after 17 March 2005. As explained further below, the commencement date of 16 March 2005 ensures that suppliers have the benefit of the valuation method specified in the Determination from the commencement of new provisions proposed by the *Tax Laws Amendment (2005 Measures No. 2) Bill 2005* which is anticipated to be introduced on 17 March 2005. It has therefore not been practicable to lodge it for registration under the *Legislative Instruments Act 2003* on or before it commenced on 16 March 2005.

### What is this instrument about:

Under Division 75 of the GST Act, the margin scheme may be applied to work out the GST on certain supplies of real property. The GST worked out under the margin scheme is 1/11<sup>th</sup> of the 'margin' for the supply.

Subsection 75-10(3) provides that in specified circumstances the margin is the amount by which the consideration for the supply exceeds a valuation of the relevant freehold interest, stratum unit or long-term lease, commonly at 1 July 2000, the date of introduction of the

Goods and Services Tax (GST). The valuation must comply with any requirements determined in writing by the Commissioner for making valuations for the purposes of Division 75 of the GST Act.

This Determination specifies requirements for making valuations for that purpose.

### **What is the effect of this instrument:**

A valuation that complies with this Determination may be relied upon by suppliers calculating GST under the margin scheme in accordance with paragraph 75-10(3)(b) of the GST Act.

However, this Determination does not alter or withdraw the valuation methods under the existing Determinations made by the Commissioner for the purposes of Division 75, namely the *A New Tax System (Goods and Services Tax) Margin Scheme Valuation Requirements Determination (No. 1) 2000* and the *A New Tax System (Goods and Services Tax) Margin Scheme Valuation Requirements Determination (No. 2) 2000*. These existing Determinations are appended to *Goods and Services Tax Ruling GSTR 2000/21* as Schedules 1 and 2 respectively. GSTR 2000/21 may be found at [www.ato.gov.au](http://www.ato.gov.au).

Rather, it specifies an additional valuation method. The valuation methods specified in those existing Determinations continue to be available in the circumstances set out in those Determinations.

The valuation method specified in this Determination is a valuation of the market value of the freehold interest, stratum unit or long-term lease at the valuation date determined in writing by a professional valuer.

However, if:

- the supplier is the Commonwealth, a State or a Territory; and
- the supplier has held the interest, unit or lease since before 1 July; and
- there were no improvements on the land or premises in question on the day on which the taxable supply takes place,

the valuation must be undertaken as if there are no improvements on the land or premises on that day.

### **Background:**

This Determination is necessary because of the introduction of the *Tax Laws Amendment (2005 Measures No. 2) Bill 2005* ('the Bill').

Subsection 75-10(3) of the GST Act, as proposed to be amended by Item 14 and clause 75-11 in Item 16 in Schedule 6 to the Bill, provide for an 'approved valuation' for margin scheme purposes. Clause 75-35 in Item 20 in Schedule 6 to the Bill, provides that the Commissioner may determine in writing requirements for making valuations and a valuation made in accordance with those requirements is an approved valuation. Under the Bill, those provisions are to be effective from the date of introduction of the Bill.

Item 21 in Schedule 6 to the Bill is a savings provision. Under this provision, a valuation requirements determination made by the Commissioner that is in force immediately before the introduction of the Bill continues in force as if it had been made under the proposed new section 75-35.

However, the existing Determinations only apply where the supplier acquired the relevant

freehold interest, stratum unit or long-term lease before 1 July 2000. Proposed new section 75-11 also operates in relation to suppliers who acquired a freehold interest, stratum unit or long-term lease on or after 1 July 2000. Accordingly, there would be no Determination in force for making valuations in relation to real property covered by those new provisions until a new Determination could be made under proposed section 75-35. That cannot occur unless or until the Bill is passed and receives Royal Assent.

Accordingly, this new Determination has been made under the current provisions. Unlike the existing Determinations, its application is not limited to cases where the supplier acquired the relevant freehold interest, stratum unit or long-term lease before 1 July 2000. This Determination will be taken to be in force on the commencement of the amendments as if it had been made under proposed section 75-35. The valuation method specified in the Determination will therefore be available for all valuations for the purposes of Division 75 of the GST Act.

### **Consultation:**

The Commissioner is satisfied that consultation is unnecessary and inappropriate in relation to this Determination.

The Determination is required urgently so that it is in force immediately before the Bill is introduced and thus given effect under the savings provision. Additionally, because the Determination was made before the Bill was introduced, but this Explanatory Statement refers to the Bill, meaningful consultation has not been possible. Further, the Determination does not disadvantage any person as it specifies a new valuation method for margin scheme purposes; as mentioned above, the methods under the existing Determinations remain available for the purposes of paragraph 75-10(3)(b).

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### **Commissioner of Taxation**

16 March 2005

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*Previous draft:*

[release date]

*Related Rulings/Determinations:*

GSTR 2000/21

GSTR 2000/21A

GSTR 2000/21ER

*Previous Rulings/Determinations:*

[list]

*Subject references:*

freehold interest

long-term lease

margin

margin scheme

real property

stratum unit

taxable supply

valuation

*Legislative references:*

*ANTS[GST]A Div 75*

*ANTS[GST]A 75(10)(3)*

*ANTS[GST]A 75(10)(3)(b)*

*ANTS[GST]A 75-11*

*ANTS[GST]A 75-35*

*Case references:*

*[list]*

*Other references:*

*A New Tax System (Goods and Services Tax) Margin Scheme Valuation Requirements Determination (No. 1) 2000*

*A New Tax System (Goods and Services Tax) Margin Scheme Valuation Requirements Determination (No. 2) 2000.*

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ATO references

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