MSV 2005/3 - Explanatory statement -

Australian Government
Australian Taxation Office

Australian Taxation Office Legislative Instrument
Instrument ID: MSV 2005/3

A New Tax System (Goods and Services Tax) Margin Scheme Valuation Requirements Determination MSV 2005/3

Explanatory Statement

General Outline of Instrument

1. 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').
2. 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

3. This determination commences on 1 December 2005 and applies to valuations made for the purposes of applying the margin scheme in working out the amount of GST on taxable supplies made on or after 1 December 2005.

What is this instrument about:

4. 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 1/11th of the 'margin' for the supply.
5. Subsection 75-10(3) and section 75-11 provide that in certain circumstances the margin for the supply is the amount by which the consideration for the supply exceeds a valuation of the relevant freehold interest, stratum unit or long-term lease. 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.
6. This determination specifies requirements for making valuations for that purpose.

Valuation methods

7. The determination provides that a valuation of the market value of real property at the valuation date may be made by using one of the following methods.

Method 1

8. A professional valuer determining in writing the market value of the real property in a manner that is not contrary to professional standards recognised in Australia. [1]

9. The valuation must include a signed certificate from the professional valuer containing the following details:

    (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 qualifications of the valuer.

Method 2

10. Adopting as the valuation the consideration in a contract for the sale of real property executed or exchanged before the valuation date by parties dealing at arm's length. For example, if you purchased the real property in May 2000, and the valuation date was 1 July 2000, you may choose to adopt the purchase price in the contract as the approved valuation.

Method 3

11. Adopting as the valuation the most recent value as determined before the valuation date by or on behalf of a State or a Territory Government department as the unimproved value, the site value, or the capital value of the land, for rating or land tax purposes.

12. Under this method you may adopt as an approved valuation, a valuation shown on a rates or land tax notice provided the valuation is the most recent before the valuation date.

What is the real property that is valued?

13. The real property that is valued is the interest, unit or lease that is in existence at the valuation date. This will not always be the real property that is supplied.

14. Commonly the real property that is supplied was not in existence at the valuation date. Examples of this are:

    - land that is acquired as broadacres and is later subdivided and sold; and
    - land on which strata units are built.

15. It is not appropriate in these circumstances to value the subdivided land or the stratum units as if they existed at the valuation date. Instead, the real property that existed on the valuation date is valued, and then that value is apportioned on a fair and reasonable basis to ascertain the part of the valuation that relates to real property that is supplied. In the example of subdivided land this will be the broad acres that are first valued and then an apportionment undertaken, while for the strata units, it is the land on which the units were built that is first valued and then apportioned.

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[1] If subsection 75-10(3A) applies, the Determination provides that the valuation must be 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

16. Where the supply of real property is partly input taxed and partly taxable or partly taxable and partly GST-free (a mixed supply), the valuation is of the entire interest, unit or lease in existence at the valuation date. This valuation is 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 as a taxable supply under the margin scheme.

Time to make valuations

17. To work out the margin for the supply of real property, a valuation is required as at the valuation date. The valuation process itself does not have to be undertaken on that date.

If the supplier and recipient have agreed in writing that the margin scheme is to apply on or before the making of the supply

18. The valuation must be made by:

    (a) the due date for lodgment of the supplier's Activity Statement for the tax period to which the GST on the supply is attributable, or

    (b) an additional period that the Commissioner may for good reason allow.

If the supplier and recipient have not agreed in writing that the margin scheme is to apply on or before the making of the supply

19. If the Commissioner has allowed a further period under paragraph 75-5(1A)(b), the valuation must be made by the later of:

    (a) 6 weeks from the end of the further period that the Commissioner has allowed the parties to agree in writing that the margin scheme is to apply to the supply; or

    (b) 6 weeks from the date of the Commissioner's decision to grant the parties a further period to agree in writing that the margin scheme will apply; or

    (c) an additional period that the Commissioner may for good reason allow.

20. Generally the later of the two periods specified in subparagraphs 19(a) and (b) will be 6 weeks from the end of the further period that the Commissioner has allowed (subparagraph 19(a) above). However, the circumstances in subparagraph 19(b) may apply in limited circumstances. Example 1 illustrates the circumstances where subparagraph 19(b) applies.

Example 1:

21. *Geoff Jay Pty Ltd, which lodges its activity statements monthly, makes a taxable supply of real property that it acquired before 1 July 2000 to its associate, Greg Bee Pty Ltd, on 30 May 2006. The parties sign the agreement to apply the margin scheme on 3 June 2006 and calculate the margin for the supply under subsection 75-10(2).*

22. *An ATO officer subsequently visits Geoff Jay Pty Ltd and advises the company that the written agreement to apply the margin scheme should have been made on or before 30 May 2006. Geoff Jay Pty Ltd requests the ATO to exercise its discretion under paragraph 75-5(1A)(b).*

23. *On 30 June 2006 the ATO sends Geoff Jay Pty Ltd a letter stating that it has exercised its discretion in paragraph 75-5(1A)(b) to extend the time for making the written agreement to 3 June 2006, the date on which the agreement was made. In the letter, the ATO states that as the parties are associates, the margin for the supply should be calculated under paragraph 75-11(7)(c). To calculate the margin for the supply under paragraph 75-11(7)(c) Geoff Jay Pty Ltd requires an approved valuation of the real property as at 1 July 2000.*

24. *Geoff Jay Pty Ltd must obtain the valuation by the later of 6 weeks from the end of the period allowed for agreeing to use the margin scheme (6 weeks from3 June 2006) and 6 weeks from date of the Commissioner's decision to allow a further period (30 June 2006).*

25. *In this instance, the later of the two periods is 6 weeks from the date of the Commissioner's decision to allow a further period (6 weeks from 30 June 2006).*

What is the effect of this instrument:

26. The effect of this determination is that the following determinations made by the Commissioner for the purposes of Division 75 will not apply to supplies made on or after 1 December 2005:

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

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

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

27. The above determinations will continue to apply to supplies made before 1 December 2005.

28. This determination does not affect the operation of *A New Tax System* (*Goods and Services Tax*) *Margin Scheme Valuation Requirements Determination MSV 2005/2.*

29. A valuation that complies with this determination is an approved valuation under section 75-35 and may be relied upon by suppliers calculating GST under the margin scheme in accordance with paragraph 75-10(3)(b) and where applicable, section 75-11 of the GST Act.

30. To be an approved valuation, the valuation must be undertaken using one of the following valuation methods in the determination; and be made within the time period specified.

Consultation:

31. This determination has been the subject of consultation with the taxation professional peak bodies and relevant groups or associations in the property construction industry.

Commissioner of Taxation
7 September 2005

Related Rulings/Determinations:

GSTR 2000/21

GSTR 2000/21A

GSTR 2000/21ER

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

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. 1) 2000

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

A New Tax System (*Goods and Services Tax*) *Margin Scheme Valuation Requirements Determination MSV 2005/2*

ATO references

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