Australian Government
Australian Taxation Office

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;

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

(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;

(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 the supplier that a valuation or an approved valuation has not been produced (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 the 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:

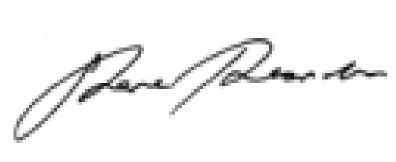
        (a) a member of the Australian Property Institute and accredited as a Certified Practicing Valuer; or

        (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