Australian Government
Australian Taxation Office

Practice Statement Law Administration

PS LA 2005/16

FOI status: may be released

This practice statement is issued under the authority of the Commissioner and must be read in conjunction with Law Administration Practice Statement PS LA 1998/1. It must be followed by Tax office staff unless doing so creates unintended consequences. Where this occurs Tax office staff must follow their Business Line's escalation process.

SUBJECT: **Further period to make an approved valuation for the purposes of working out the margin for the supply under Division 75 of the *A New Tax System (Goods and Services Tax) Act 1999*.**

PURPOSE: **To provide guidance on the circumstances that the Commissioner will consider in determining whether to allow a further period to obtain an approved valuation.**

STATEMENT

Background

1. Section 75-35 of the *A New Tax System* (*Goods and Services Tax) Act 1999* (GST Act) provides that the Commissioner may, by legislative instrument, determine in writing requirements for making valuations for the purposes of Division 75 of the GST Act. A valuation made in accordance with those requirements is an approved valuation.

2. For the purposes of working out the GST on a supply under the margin scheme, the *A New Tax System* (*Goods and Services Tax*) *Margin Scheme Valuation Requirements Determination* MSV *2005/3* (the Determination) has been made under section 75-35 of the GST Act.

3. The Determination provides that a valuation must be made within the timeframes in paragraphs 4 to 6 below.

4. The valuation must be made by the due date for lodgment of the supplier's Activity Statement for the tax period to which the GST on the supply is attributable, unless 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.[1]

[1] Law Administration Practice Statement PS LA 2005/15 sets out the circumstances when the Commissioner will exercise the discretion in paragraph 75-5(1A)(b) of the GST Act.

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

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

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

6. If the valuation is not undertaken within the time periods specified in paragraphs 4 and 5, the Commissioner may for good reason allow an additional period to obtain a valuation.

7. This practice statement sets out the circumstances the Commissioner will consider in determining whether to exercise the discretion referred to in paragraph 6 to allow a further period to obtain a valuation.

Circumstances where the Commissioner may for good reason allow a further period to obtain an approved valuation

8. In considering whether to exercise the discretion to allow a further period to obtain an approved valuation, the Commissioner will look at the circumstances of each case to consider what would be fair and reasonable to all the parties. In doing so, the Commissioner will consider the delay in obtaining an approved valuation, the explanation for the delay and any other relevant circumstances, bearing in mind that this is an ameliorating provision designed to avoid injustice.[2] While each case will need to be considered on its individual merits, ordinarily the Commissioner will allow a further period to obtain an approved valuation in the following circumstances:

   (a) A supplier obtained a valuation that is not an approved valuation (an invalid valuation), for example, a valuation obtained from other than a professional valuer, or a valuation obtained from a professional valuer that is contrary to professional standards recognised in Australia.

   (b) The parties contracted on the basis that the supply is GST-free, input taxed or otherwise non-taxable, but the supply is a taxable supply.

   (c) Genuine mistake, for instance, the supplier:

      - mistakenly believed that a valuation was not required; or

      - mistakenly believed that a valuation had already been obtained.

   (d) Inadvertent oversight, for example, where the supplier and recipient agree to use the margin scheme but the supplier:

      - forgot to instruct the valuer; or

      - failed to notice that the valuer had not valued all the lots in a subdivision.

[2] *Brown v. Commissioner of Taxation (Cth)* (1999) 99 ATC 4516; (1999) 42 ATR 118; [1999] FCA 563 at para 59; appeal dismissed in *Commissioner of Taxation (Cth) v. Brown* (1999) 99 ATC 4852; (1999) 42 ATR 672; [1999] FCA 1198.

(e) A valuation not undertaken for reasons outside the control of the parties, for example:

- settlement is close to the end of a tax period and the supplier has taken reasonable steps to obtain a valuation on time, but there is insufficient time to obtain one; or

- any other reasons outside the control of the parties that a valuation is not undertaken.

9. The Commissioner ordinarily will not allow a further period to obtain an approved valuation if the Commissioner considers that the granting of a further period is sought to allow the supplier or the recipient to obtain a benefit that is contrary to the scheme of the GST Act[3].

Requests to the Tax Office to exercise the discretion

10. It is not necessary to request the Tax Office to exercise the discretion to extend the period for obtaining a valuation, unless the issue is raised by the Tax Office, where:

- the supplier is merely substituting an approved valuation for an invalid valuation; and

- the value determined under the approved valuation does not exceed the amount purportedly determined under the invalid valuation.

11. In all other circumstances, requests for the discretion to be exercised should be made in writing by the supplier to the Tax Office.

12. The Tax Office will advise the supplier in writing whether the discretion has been exercised or not. If the discretion is exercised, the notification will specify the further time period allowed. If the discretion is not exercised, the Tax Office will include the reasons in the response.

13. Any decision to exercise the discretion must be approved by an Executive Level 2 officer (or above).

Review Rights

14. A decision not to exercise the discretion to extend the period for obtaining an approved valuation is not a reviewable GST decision under subsection 62(2) of the *Tax Administration Act 1953*. However, if a client feels we have made a mistake in not exercising the discretion, in the interests of sound administration we would generally review the decision, as mentioned in the Taxpayers' Charter.

[3] *Federal Commissioner of Taxation v. Asiamet (No.1) Resources Pty Ltd* (2004) 137 FCR 146; [2004] FCAFC 73.

Subject references	GST Approved valuation Margin scheme Valuation
Legislative references	*A New Tax System (Goods and Services Tax) Act 1999* Division 75 *A New Tax System (Goods and Services Tax) Act 1999* subsection 75-5(1) *A New Tax System (Goods and Services Tax) Act 1999* subsection 75-5(1A) *A New Tax System (Goods and Services Tax) Act 1999* paragraph 75-5(1A)(b) *A New Tax System (Goods and Services Tax) Act 1999* section 75-35 *Tax Administration Act 1953* subsection 62(2)
Case references	*Brown v. Commissioner of Taxation (Cth)* (1999) 99 ATC 4516; (1999) 42 ATR 118; [1999] FCA 563 *Commissioner of Taxation (Cth) v. Brown* (1999) 99 ATC 4852; (1999) 42 ATR 672; [1999] FCA 1198 *Federal Commissioner of Taxation v. Asiamet (No.1) Resources Pty Ltd* (2004) 137 FCR 146; [2004] FCAFC 73
Other references	*A New Tax System (Goods and Services Tax) Margin Scheme Valuation Requirements Determination MSV 2005/3*
Related public rulings	GSTR 2000/21 GSTR 2000/21A GSTR 2000/21E GSTR 2005/D3 GSTR 2005/D4
Related practice statements	PS LA 2005/15
File references	

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