


# ***PS LA 2005/16 - 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.***

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# Practice Statement Law Administration

**PS LA 2005/16**

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**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 Australian Tax Office (ATO) staff unless doing so creates unintended consequences. Where this occurs ATO staff must follow their Business Line's escalation process.*

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|-----------------|---|
| <b>SUBJECT:</b> | <b>Further period to make an approved valuation for the purposes of working out the margin for the supply under Division 75 of the <i>A New Tax System (Goods and Services Tax) Act 1999</i>.</b> |
| <b>PURPOSE:</b> | <b>To provide guidance on the circumstances that the Commissioner will consider in determining whether to allow a further period to obtain an approved valuation.</b>                             |

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## 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 following determinations have been made under section 75-35 of the GST Act:
  - (i) *A New Tax System (Goods and Services Tax) Margin Scheme Valuation Requirements Determination MSV 2005/3* (MSV 2005/3); and
  - (ii) *A New Tax System (Goods and Services Tax) Margin Scheme Valuation Requirements Determination MSV 2009/1* (MSV 2009/1).

3. Each determination (other than in respect of Method 4 in MSV 2009/1) provides that a valuation must be made within the timeframes in paragraphs 4 to 6 of this practice statement.
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.<sup>1</sup>
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:
  - (i) if MSV 2005/3 applies:<sup>2</sup>
    - 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; or
  - (ii) if MSV 2009/1 applies:<sup>3</sup>
    - 8 weeks from the further period that the Commissioner has allowed under paragraph 75-5(1A)(b) of the GST Act; or
    - 8 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 of this practice statement, 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 of this practice statement 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.<sup>4</sup> 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

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<sup>1</sup> 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.

<sup>2</sup> Applies from 1 December 2005 and before 1 March 2010.

<sup>3</sup> Applies from 1 March 2010 for valuations obtained by the supplier, and before 1 March 2010 for valuations obtained by the Commissioner.

<sup>4</sup> *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] FCA 1198; (1999) 99 ATC 4852; (1999) 42 ATR 672..

- 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;
  - (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.<sup>5</sup>

### **Requests to the ATO to exercise the discretion**

10. It is not necessary to request the Commissioner to exercise the discretion to extend the period for obtaining a valuation, unless the issue is raised by the ATO, 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 ATO.
12. The ATO 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 ATO 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).

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<sup>5</sup> *Federal Commissioner of Taxation v. Asiamet (No.1) Resources Pty Ltd* (2004) 137 FCR 146; [2004] FCAFC 73.

## **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 110-50(2) of the *Tax Administration Act 1953*. However, if a taxpayer feels the Commissioner has made a mistake in not exercising the discretion, in the interests of sound administration, the ATO would generally review the decision, as mentioned in the Taxpayers' Charter.

**Amendment history**

| <b>Date of amendment</b> | <b>Part</b>            | <b>Comment</b>   |
|--------------------------|------------------------|--|
| 25 February 2010         | Paragraph 2            | Added reference to determination MSV 2009/1  |
|                          | Paragraph 3            | Updated to include determination MSV 2009/1.   |
|                          | Paragraph 5            | Amended to include 8 week timeframe allowed under determination MSV 2009/1<br>Updated to include footnote 2 and 3. |
|                          | Paragraph 14           | Updated legislative provision and reference to the Commissioner and Australian Tax Office.                         |
|                          | Contact details        | Updated.   |
|                          | Related public rulings | Updated.   |
| 20 February 2009         | Contact details        | Updated.   |
| 25 February 2008         | Contact details        | Updated.   |

|                                |  |
|--------------------------------|--|
| Subject references             | GST<br>Approved valuation<br>Margin scheme<br>Valuation  |
| Legislative references         | ANTS(GST)A 1999 Div 75<br>ANTS(GST)A 1999 75-5(1)<br>ANTS(GST)A 1999 75-5(1A)<br>ANTS(GST)A 1999 75-5(1A)(b)<br>ANTS(GST)A 1999 75-35<br>Tax Administration Act 1953 110-50(2)<br>A New Tax System (Goods and Services Tax) Margin Scheme Valuation Requirements Determination MSV 2005/3<br>A New Tax System (Goods and Services Tax) Margin Scheme Valuation Requirements Determination MSV 2009/1 |
| Case references                | Brown v. Commissioner of Taxation (Cth) [1999] FCA 563; 99 ATC 4516; (1999) 42 ATR 118<br>Commissioner of Taxation (Cth) v. Brown [1999] FCA 1198; 99 ATC 4852; (1999) 42 ATR 672<br>Federal Commissioner of Taxation v. Asiamet (No.1) Resources Pty Ltd [2004] FCAFC 73; (2004) 137 FCR 146  |
| Related public rulings         | GSTR 2000/21<br>GSTR 2000/21A<br>GSTR 2000/21A2<br>GSTR 2000/21E<br>GSTR 2006/7<br>GSTR 2006/7A<br>GSTR 2006/7A2<br>GSTR 2006/8<br>GSTR 2006/8A<br>GSTR 2006/8A2<br>GSTR 2009/1<br>GSTR 2009/1A<br>GSTR 2009/2<br>GSTR 2009/2A   |
| Related practice statements    | PS LA 2005/15  |
| File references                |  |
| Date issued                    | 25 February 2010   |
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| Other Business Lines consulted | OCTC, LB&I, SB, OPS, SPR, PTAX, EXC, SNC   |