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

Australian Government
Australian Taxation Office

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*

This Law Administration Practice Statement provides guidance on the circumstances that you should consider in determining whether to allow a further period to obtain an approved valuation

This practice statement is an internal ATO document, and is an instruction to ATO staff.

Taxpayers can rely on this practice statement to provide them with protection from interest and penalties in the following way. If a statement turns out to be incorrect and taxpayers underpay their tax as a result, they will not have to pay a penalty. Nor will they have to pay interest on the underpayment provided they reasonably relied on this practice statement in good faith. However, even if they don't have to pay a penalty or interest, taxpayers will have to pay the correct amount of tax provided the time limits under the law allow it.

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1. What this practice statement is about

Legislative determinations have been made[1] which provide for the requirements for making a 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*.[2]

Amongst other things, these determinations allow for further periods in which the valuations are to be made, if the Commissioner has allowed for that further period under paragraph 75-5(1A)(b).

However, even if the valuation is not undertaken within the further periods specified in the determinations, you may, if there is good reason, allow an additional period to obtain a valuation.

This practice statement sets out the circumstances where you should consider doing this.

2. What are the circumstances where a further period to obtain an approved valuation should be allowed

In considering whether to exercise the discretion to allow a further period you should look at the circumstances of each case to consider what would be fair and reasonable to all the parties, bearing in mind that paragraph 75-5(1A)(b) is a provision aimed at avoiding injustice.[3]

You should consider the length of the delay in obtaining an approved valuation, the explanation for the delay and any other relevant circumstances.

While you need to consider each case on its individual merits, ordinarily you should allow a further period to obtain an approved valuation in the following circumstances:

- a supplier obtained a valuation that is not an approved 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
- 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
- there has been a genuine mistake, for example, the supplier mistakenly believed that a valuation was not required or had already been obtained
- there has been an 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.
- a valuation was not undertaken for reasons outside the control of the parties. For example:
  - settlement was close to the end of a tax period and the supplier has taken reasonable steps to obtain a valuation on time, but there was insufficient time to obtain one, or
  - any other reasons outside the control of the parties that a valuation is not undertaken.

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[1] Under section 75-35 of the *A New Tax System (Goods and Services Tax) Act 1999*.
[2] All further legislative references in this practice statement are to the *A New Tax System (Goods and Services Tax) Act 1999*, unless otherwise specified.
[3] *Brown v. Commissioner of Taxation (Cth)* (1999) 99 ATC 4516; (1999) 42 ATR 118; [1999] FCA 563 at [59]; appeal dismissed in *Federal Commissioner of Taxation (Cth) v. Brown* [1999] FCA 1198; (1999) 99 ATC 4852; (1999) 42 ATR 672.

Importantly, you should not allow a further period to obtain an approved valuation if you consider 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.[4]

3. Who can approve the exercise of the discretion?

Any decision to exercise the discretion must be approved by an Executive Level 1 officer (or above).

4. How should the supplier request the ATO exercise the discretion?

Requests for the discretion to be exercised should be made in writing by the supplier to the ATO.

However, it is not necessary for them to request the exercise of the discretion (unless the issue is raised by us), 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.

5. Notifying your decision

You should advise the supplier in writing of your decision regarding the discretion.

If the discretion is exercised, the notification will specify the further time period allowed.

If the discretion is not exercised, you should include the reasons for not doing so in the notification.

6. What are the review rights for the supplier?

A decision not to exercise the discretion to extend the period for obtaining an approved valuation is not a reviewable GST decision.[5]

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.

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

[5] Under subsection 110-50(2) of Schedule 1 to the *Taxation Administration Act 1953.*

7. More information

For more information on the valuation process, see:

- GSTR 2006/7 *Goods and services tax: how the margin scheme applies to a supply of real property made on or after 1 December 2005 that was acquired or held before 1 July 2000.*
- GSTR 2006/8 *Goods and services tax: the margin scheme for supplies of real property acquired on or after 1 July 2000.*

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