GSTR 1999/D9 - Goods and Services Tax: the margin scheme for supplies of real property held prior to 1 July 2000

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Draft Goods and Services Tax Ruling
Goods and Services Tax: the margin scheme for supplies of real property held prior to 1 July 2000

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Preamble

This document is a draft for industry and professional comment. As such, it represents the preliminary, though considered, views of the Australian Taxation Office. This draft may not be relied on by taxation officers, taxpayers and practitioners, as it is not a ruling or advice in terms of section 37 of the ***Taxation Administration Act 1953****. When officially released it will be a public ruling for the purposes of section 37 and may be relied upon by any person to whom it applies.*

What this Ruling is about

1. Division 75 of *A New Tax System (Goods and Services Tax) Act 1999* ('GST Act') allows you to use a 'margin scheme' to work out the amount of Goods and Services Tax ('GST') payable on certain taxable supplies of **real property**.

2. Where you hold the real property prior to 1 July 2000, you need a valuation of the real property if you wish to apply the margin scheme.

3. Under Division 75 of the GST Act, the Commissioner can determine, in writing, any requirements that must be complied with for making valuations under the margin scheme.[1] This Ruling sets out the proposed requirements for making those valuations.

4. All legislative references in this Ruling are to the GST Act unless otherwise stated.

5. Certain terms used in this Ruling are defined or explained in the **Definitions** section of the Ruling. These terms, when first mentioned elsewhere in the body of the Ruling, will appear in **bold** type.

[1] Paragraph 75-10(3)(b).

Date of effect

6. This Ruling, when finalised, will apply on and from 8 July 1999 (the date of Royal Assent to the GST Legislation).

Background

7. If you are registered or required to be registered and you make a taxable supply of real property, you must pay GST on that supply.

8. If you make a taxable supply of real property, the GST payable is 1/11 of the price. However, under section 75-5, if you make a taxable supply of real property by:

(a) selling a freehold interest in land; or

(b) selling a stratum unit; or

(c) granting or selling a **long-term lease**;

you may choose to apply the margin scheme in working out the amount of GST payable on the supply.

9. Under the margin scheme, GST on the supply of certain real property by way of sale or granting a long-term lease of 50 years or more, is 1/11 of the margin for the supply. GST payable under the margin scheme may be substantially lower than under the usual rules.

10. The margin scheme is, therefore, especially relevant if the recipient of your supply of real property is not entitled to an input tax credit for the acquisition.

Ruling

How the valuations under Division 75 are to be made

11. The Commissioner requires that you obtain a valuation in one of two ways. You can engage a professional valuer to provide you with a valuation. Alternatively, you can arrive at a valuation by using the cost of completion method.

Method 1 - valuation by a professional valuer

What is a professional valuer?

12. A professional valuer[2] is:

[2] This definition was framed with the assistance of the Australian Property Institute and the Law Council of Australia.

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

(b) a person registered, licensed, or approved to carry out property valuations under a Commonwealth, State or Territory law.

13. You may use an in-house employee who is a professional valuer.

Criteria to be met

14. Valuations provided by a professional valuer should comply with the following criteria:

(a) where the property to be valued consists of subdivided allotments or land and buildings completed as at the valuation date, then the valuer should undertake a valuation of the allotments, the building, or individual stratum units within the building having regard to comparable sales data;

(b) where the property to be valued consists of a land subdivision, or land and buildings that are partly completed as at the valuation date, then the valuer should undertake the valuation having regard to:

(i) the market value of the completed land subdivision, or land and buildings;

(ii) the cost to complete the project; and

(iii) the profit margin and holding costs that are attributable to the period on or after the valuation date;

(c) where the property to be valued is land (with or without improvements as at the valuation date) where no subsequent improvement is made on or after the valuation date, then the valuer should undertake the valuation having regard to the market value of the land, based on comparable sales data;

(d) where the supplier of the property is the Commonwealth, a State or Territory, and:

(i) the supplier has held the interest, unit or lease since before 1 July 2000;

(ii) there were no improvements on the land in question as at 1 July 2000; and

(iii) there are improvements on the land in question on the day on which the taxable supply takes place,

then the valuer should undertake the valuation having regard to what the market value of the land would be had the improvements not been made, and should base the valuation on comparable sales data.

Documentation required

15. The valuer should provide a signed certificate which specifies:

(a) a full description of the property being valued;

(b) the valuation date;

(c) the date the valuer provides the valuation to the supplier;

(d) the market value of the property including the valuation approach and the valuation calculation; and

(e) the qualifications of the valuer as outlined in paragraph 12 above.

Method 2 – valuation using cost of completion

16. This method requires you to calculate the costs incurred prior to the valuation date as a percentage of the total costs of completion.

17. The valuation under Division 75 is this percentage applied to the consideration for the supply of the property.

What is the total cost of completion?

18. When calculating the total cost, you should include all of the costs you incur in completing the development or subdivision. This is not limited to purchase of land and direct construction costs. We also consider infrastructure costs (both internal and external) to be so closely associated with the development or subdivision, that they should be absorbed into the cost of the items of real property (absorption costing). In the case of stratum units, the costs of completion include the costs of developing the common property.

19. Costs which you should not include are administrative costs that cannot be directly related to the finished premises, and holding costs, such as rates and taxes, or interest on borrowings to acquire or develop the property.

20. The total costs of completing a development or subdivision may be calculated in the same manner as trading stock at cost for income tax purposes.

(See paragraphs 31 to 51 for further explanation and examples of the cost of completion method.)

Explanations (this forms part of the Ruling)

Taxable supplies of real property

21. GST is payable on a taxable supply of real property. A supply is a taxable supply if:

(a) you make the supply for consideration; and

(b) you make the supply in the course or furtherance of an enterprise that you carry on; and

(c) the supply is connected with Australia; and

(d) you are registered, or required to be registered.

However, a supply is not a taxable supply to the extent that it is **input taxed** or GST-free.[3]

22. The following table illustrates how GST is applied to some supplies of real property by way of sale:

Type of supply	GST consequences
Sale of residential properties that are not new, for example existing residential properties.	Input taxed
Sale of newly constructed residential property in the course or furtherance of an enterprise (irrespective of whether bought by an owner occupier or as an investment property).	Taxable supply
Sale of commercial or industrial property.	Taxable supply
Sale of vacant land by an individual not in the course or furtherance of an enterprise.	Not a taxable supply
Sale of vacant land by a developer in the course of the developer's enterprise (except for residential land not being supplied for the first time).	Taxable supply
Sale of real property as part of a going concern, when the recipient is registered or required to be registered. However, both parties must agree in writing that the supply is a going concern.	GST-free
Sale of farming land to a recipient who intends to carry on farming.	GST-free

[3] Section 9-5.

Who can use the margin scheme?

23. You may choose to apply Division 75 if you make a taxable supply of real property by:

(i) selling a freehold interest in land; or

(ii) selling a stratum unit; or

(iii) granting or selling a long-term lease.

24. Some situations where you, as the supplier of real property, can choose to apply the margin scheme are when you:

- as a developer, sell new residential units;
- as a project builder, sell house and land packages; or
- sell land to unregistered purchasers.

In these situations the purchaser is not entitled to input tax credits for the acquisition.

25. You can only apply the margin scheme to the first supply of residential land and premises, defined as **new residential premises** under the GST Act. Subsequent sales of residential property will be input taxed under Subdivision 40-C.

How is the margin calculated?

26. Under the margin scheme the amount of GST on a supply is 1/11 of the margin for the supply. The margin for the supply is the amount by which the consideration for the supply exceeds the consideration for your acquisition of the interest, unit or lease in question.[4]

Valuation of property

27. If the interest, unit or lease is held at 1 July 2000, subsection 75-10(3) applies. You work out the margin on the basis of the valuation of the property at a certain date rather than the original acquisition price. The table below sets out the date for valuation in relation to particular circumstances:

[4] Subsection 75-10(2).

Item	When valuations may be used	Valuation date
1	You acquired the freehold interest, stratum unit or long-term lease before 1 July 2000 and Items 2, 3, and 4 do not apply.	1 July 2000
2	You acquired the freehold interest, stratum unit or long-term lease before 1 July 2000 but you were not registered or required to be registered until after 1 July 2000.	The earlier of the date of effect of your registration or the date of your application for registration
3	You were registered or required to be registered and held the freehold interest, stratum unit or long-term lease and there were improvements on the land or premises as at 1 July 2000.	1 July 2000
4	The supplier is the Commonwealth, State, or Territory and has held the freehold interest, stratum unit or long-term lease and there were no improvements on the land or premises as at 1 July 2000.	The day on which the taxable supply takes place

Note:

(a) a valuation must be made for the date specified in column 3 of the table; and

(b) the valuation must comply with all requirements determined in writing by the Commissioner.

28. The margin scheme ensures that, in these circumstances, GST is payable only on the increase in the value on or after the valuation date.

29. Where the Commonwealth, a State or Territory holds unimproved land at 1 July 2000 that is subsequently improved, GST may be worked out on the supply of that land under the margin scheme. In this case, you work out the GST on the difference between the consideration for the supply and the value of the land at the date of supply as if there are no improvements on the land on that day.[5]

Days when valuations are to be made

30. If you choose to use the margin scheme to calculate GST payable, you require a valuation of the real property as at the valuation date. The valuation process itself does not have to be undertaken on that date. It is sufficient that the valuation is undertaken no later than

[5] See proposed subsection 75 10(3A), *A New Tax System (Indirect Tax and Consequential Amendments) Bill (No 2) 1999*. As at 17 December 1999, this Bill is awaiting Royal Assent.

the end of the tax period in which the GST payable on the supply is attributable.

Costs of completion

Types of costs incurred using the cost of completion method

31. Residential subdivision may involve a developer buying broadacres, obtaining appropriate approvals, carrying out various construction works on the broadacres, subdividing the broadacres and selling the subdivided lots. Typically, subdivisional costs include internal and external infrastructure costs.

32. Internal infrastructure costs are those associated with developing the infrastructure land, i.e., the part of the unsubdivided land that does not ultimately form part of the subdivided lots (e.g., streets or specially dedicated areas).

33. External infrastructure costs may arise where a developer is required to undertake infrastructure works outside the subdivision area. Those works may include upgrading of roads, sewage treatment works, water and sewerage mains, drainage schemes, etc. Alternatively, a developer may be required to make financial contributions towards such works.

34. If you are in the business of developing and subdividing undeveloped land, the approach to determining costs is the same as for valuing land as trading stock at cost for income tax purposes.[6] The same approach applies to the construction of stratum units or commercial premises.

Example 1: residential subdivision

35. A land developer who, on 1 July 2000 is registered for GST, acquires four hectares of undeveloped land for development, subdivision and sale. The developer subdivides this land into a residential estate of thirty allotments. The development includes the provision of services and facilities.

36. At 30 June 2000, the costs incurred are:

[6] Refer *FC of T v. Kurts Development Ltd* 98 ATC 4877; (1998) 39 ATR 493.

	$
Land at cost	1,150,000
Legal fees	50,000
Design fees	60,000
Local government fees	20,000
Site administration expenses	20,000
Earthworks	200,000
Total	**1,500,000**

37. The total actual costs of completing the development and getting the allotments ready for sale is $2,500,000. The percentage of completion is 1,500,000 / 2,500,000, or 60%.

38. The allotments are of a uniform area, but are sold for varying sale prices, reflecting their positions on the estate. The sale prices are:

	$
15 allotments, each	100,000
10 allotments, each	125,000
5 allotments, each	150,000
Total	**3,500,000**

39. The valuations of the allotments as at 1 July 2000 are:

	$
$100,000 allotments	60,000
$125,000 allotments	75,000
$150,000 allotments	90,000

40. The GST payable under the margin scheme on each of the 15 allotments sold for $100,000 is calculated as follows:

Margin = GST inclusive sale price - value at 1 July 2000
= $100,000 - $60,000
= $40,000
GST payable = 1/11 of $40,000

You work out the margin and the GST payable on the other allotments in the same way.

Example 2: House and land package

41. Jack is a builder. He is registered on 1 July 2000 for GST. On this date he has a house under construction on land which he had previously purchased for $100,000. He sells the house and land on completion for $340,000. At 30 June 2000, Jack had incurred the

following costs for land, labour, materials, subcontractors and other costs:

	$
Land at cost	100,000
Local government application fees	2,000
Legal fees	1,000
Design fees	1,000
Labour	14,000
Materials	44,000
Subcontractors	21,000
Total	**183,000**

The total cost of the house and land package at completion is $305,000. The percentage complete as at the start of 1 July 2000 is $183,000/305,000, or 60%. Therefore, the value of the house and land package as at 1 July 2000 is 60% of $340,000, or $204,000.

42. The GST payable under the margin scheme is calculated as follows:

Margin = GST inclusive sale price – value at 1 July 2000.
= 340,000 – 204,000
= $136,000
GST Payable = 1/11 of $136,000.

Example 3: strata title units of equal value

43. Townhouses Pty Ltd constructs a block of 4 units. The company is registered for GST as at 1 July 2000. At 30 June 2000, it incurs costs of $900,000 made up as follows:

	$
Land	250,000
Local government application fees	20,000
Legal fees for acquisition	10,000
Design fees	40,000
Construction costs	580,000
Total	**900,000**

Total costs to completion are $1,200,000. Construction costs include labour, materials and subcontracting expenses which relate both to the units directly and to common property.

44. The percentage of completion as at 1 July 2000 is calculated as 900,000/1,200,000, or 75%. The developer sells each of the residential units for $360,000. The value of each residential unit at

1 July 2000 is apportioned accordingly as 75% of $360,000, or $270,000.

45. The GST payable under the margin scheme is calculated as follows:

Margin	= GST inclusive sale price - value at 1 July 2000
	= $360,000 –$270,000
	= $90,000
GST payable	= 1/11 of $90,000

Strata title units of differing value

46. In some projects the selling price of the strata title units may vary over a wide range. This would usually happen when the project consists of a multi-storey development with penthouses selling at a substantial premium over units at lower levels.

47. The valuation of each unit is that percentage completed applied to the sale price for each of the units to be valued.

Example 4

48. Azure Apartments Pty Ltd is a project developer registered on 1 July 2000 for GST. It constructs a residential tower which comprises five storeys, including a mix of one-bedroom apartments, two-bedroom apartments and penthouses:

Levels 1 and 2	10 one-bedroom apartments
Levels 3 and 4	8 two-bedroom apartments
Level 5	2 penthouses

49. At 30 June 2000, work has not commenced on the upper two levels of the building, but the developer has incurred the following costs:

	$
Land	1,100,000
Local government fees	60,000
Legal fees	20,000
Design fees	80,000
Construction costs	1,740,000
Total	**3,000,000**

50. On completion the developer finds that total project costs are $6,000,000. The percentage completion as at 1 July 2000 is calculated

at 3,000,000/6,000,000, or 50%. The valuation of each apartment at 1 July 2000 is calculated as 50% of the sale price for the apartments.

51. The valuations for each apartment using this method are:

Apartment	GST inclusive sale price per unit	Unit valuation	Total unit valuation
6 one-bdrm	250,000	125,000	750,000
4 one-bdrm	240,000	120,000	480,000
8 two-bdrm	350,000	175,000	1,400,000
Penthouse	740,000	370,000	370,000
Penthouse	700,000	350,000	350,000
Total			**3,350,000**

Impact on input tax credits

52. If you purchase real property under the margin scheme, you are not entitled to an input tax credit for the GST payable on the acquisition.[7] However, you may be allowed input tax credits on any costs of improvements subsequently made to the real property, e.g., if you are a developer.

The distinction between section 19 of the GST Transition Act and Division 75

53. Section 19 of the *A New Tax System (Goods and Services Tax) Transition Act 1999* ('the Transition Act') and Division 75 are not alternative methods of valuing property in a particular situation. Section 19 applies to certain construction agreements which span 1 July 2000, and requires a valuation of work and materials permanently affixed to the construction site as at the start of 1 July 2000, or a later date as determined by the Commissioner.

54. This valuation, which does not include land, means the builder will be subject to GST only on the work and materials supplied and permanently affixed on the site on and after 1 July 2000. For more information on section 19 of the Transition Act, see GST Bulletin 1999/2, entitled 'How to determine the value of construction work-in-progress'.

55. Under Division 75, the need for a valuation as at 1 July 2000 or later date only arises where a freehold interest in land, a stratum unit, or a long term lease which is acquired or held before 1 July 2000

[7] Section 75-20.

is granted or sold on or after that date. The valuation includes the land.

Example

56. Andrew owns land on which he is developing a block of units. On 15 March 2000, Andrew enters into an agreement with Bob, a builder, under which Bob carries out the construction work. Construction is in progress as at 1 July 2000. Bob may value, under section 19, the work and materials that have gone into the building as at 1 July 2000 and he is not liable for GST on that value.

57. If Andrew chooses to apply the margin scheme in working out the GST on the subsequent sale of the units, Andrew values as at 1 July 2000 the freehold interest in the land and the building being constructed. Andrew may engage a professional valuer to determine the valuation, or choose the cost of completion method. In either event the value of the land itself is included.

Definitions

Input taxed

58. Input taxed supply means a supply that is input taxed under Division 40. That Division sets out the supplies that are input taxed. They are financial supplies (section 40-5), residential rent (section 40-35), **residential premises** (section 40-65), certain supplies of precious metals (section 40-100) and school tuckshops and canteens (section 40-130). If a supply is input taxed you do not charge GST on the supply, but you are not entitled to input tax credits for anything acquired or imported to make the supply.

Long-term lease

59. Long–term lease means a supply by way of lease, hire or licence (including a renewal or extension of a lease, hire or licence) for at least 50 years if:

(a) at the time of the lease, hire or licence, or the renewal or extension of the lease, hire or licence, it was reasonable to expect that it would continue for at least 50 years; and

(b) unless the supplier is an Australian government agency – the terms of the lease, hire or licence, or the renewal or extension of the lease, hire or licence, as they apply

to the recipient are substantially the same as those under which the supplier held the premises.[8]

New residential premises

60. New residential premises means residential premises that:

(a) have not previously been sold as residential premises and have not previously been the subject of a long-term lease; or

(b) have been created through substantial renovations of a building; or

(c) have been built, or contain a building that has been built, to replace demolished premises on the same land.

To avoid doubt, if the residential premises are new residential premises because of paragraph (b) or (c) of this definition, the new residential premises include land of which the new residential premises are a part.[9]

Real Property

61. Real property has its ordinary meaning for the purpose of the GST Act. Real property includes:

(a) any interest in or right over land; or

(b) a personal right to call for or be granted any interest in or right over land; or

(c) a licence to occupy land or any other contractual right exercisable over or in relation to land.[10]

Residential premises

62. Residential premises means land or a building occupied or intended to be occupied as a residence, and includes a floating home.[11]

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[8] Section 195-1.
[9] This definition is in the proposed amendment to section 195-1 in *A New Tax System (Indirect Tax and Consequential Amendments) Bill 1999*. As at 17 December 1999, this Bill is awaiting Royal Assent.
[10] Section 195-1.
[11] Section 195-1.

Your comments

63. If you wish to comment on this draft Ruling, please send your comments promptly by **18 February 2000** to:

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Detailed contents list

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Commissioner of Taxation
22 December 1999

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Related Rulings/Determinations:

Subject references:
- freehold interest
- long- term lease
- margin
- margin scheme
- real property
- stratum unit
- taxable supply
- valuation

Legislative references:
- ANTS(GST)A99 75-5
- ANTS(GST)A99 75-10(2)
- ANTS(GST)A99 75-10(3)
- ANTS(GST)A99 75-20
- ANTS(GST)A99 195-1
- ANTS(GST)A99 Div 40-C
- ANTS(GSTT)A99 19

Case references:
- FC of T v Kurts Development Ltd 98 ATC 4877; (1998) 39 ATR 493

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