



GSTA TPP 011 - Goods and services tax: Where a property has been sold using the margin scheme, does Division 72 of the GST Act have any effect if the consideration paid by the associate is below market value?

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 This document has changed over time. This is a consolidated version of the ruling which was published on *14 June 2005*



Goods and Services Tax Advice

Goods and services tax: Where a property has been sold using the margin scheme, does Division 72 of the GST Act have any effect if the consideration paid by the associate is below market value?

Preamble

*This document is a ruling for the purposes of section 37 of the Taxation Administration Act 1953. It illustrates the principles contained in **Goods and Services Tax Ruling GSTR 2000/21 on the margin scheme**. You can rely on the information presented in this document, which provides advice on the operation of the GST system.*

Answer

Division 72 of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act) has no effect on the calculation of GST payable on a supply of a freehold interest in land where the margin scheme has been applied.

Note: Measures contained in Tax Laws Amendment (2005 Measures No.2) Bill 2005 when passed may affect this GST Advice.

Background

Company A owns and develops land which it purchased for, or was valued at 1 July 2000, at \$200,000. This land is sold to an associate for \$100,000. The sale is genuine and there is no intention to avoid or minimise GST.

For stamp duty purposes the State Revenue Office values the property at market value of \$250,000.

Section 75 is correctly applied and the correct amount of consideration has been used in calculating the GST.

Explanation

Division 75 of the GST Act allows a supplier to use the margin scheme when they make a taxable supply of real property by selling a freehold interest in land.

The amount of GST on the supply is one eleventh of the margin. The margin for the supply is the amount by which the consideration for the supply

exceeds the consideration for your acquisition of the interest.

Where the supplier acquired the interest before 1 July 2000, the margin for the supply is the amount by which the consideration for the supply exceeds the valuation of the interest as at 1 July 2000.

Consideration for a supply or acquisition means any consideration, within the meaning given by section 9-15 of the GST Act, in connection with the supply or acquisition (section 195-1).

Division 72 ensures that supplies and acquisitions between associates without consideration are brought within the GST system, and that supplies to associates for inadequate consideration are properly valued for GST purposes.

Subsection 72-70(1) provides that if a supply to your associate for consideration that is **less** than the GST inclusive market value is a taxable supply, its **value** is the GST exclusive market value of the supply. Section 9-70 provides that the amount of GST payable on a taxable supply is 10% of the value of the taxable supply.

However, if the supplier chooses to apply the margin scheme, the amount of GST payable on the taxable supply is 10% of the margin rather than the value of the taxable supply. Because the margin is based on the consideration received for the supply rather than the value of the supply, Division 72 has no effect on the calculation of GST.

The margin for the supply is the amount by which consideration for the supply of the property (\$100,000 in your example) exceeds the consideration for the acquisition of the property or the valuation of the interest as at 1 July 2000 (\$200,000). The margin in these circumstances and the amount of GST payable on this supply is nil.

Should a registered associate choose to sell the interest and apply the margin scheme, the consideration for the acquisition on which the margin will be calculated will be the \$100,000 paid.

Where real property is supplied to an associate for no consideration, the margin scheme is not available as there is no 'supply of real property by

selling a freehold interest in land; or **selling** a stratum unit.’

This answer assumes the transaction is one to which the anti-avoidance provisions of Division 165 of the GST Act have no application.

Application of this GST Advice

This Advice is based on GSTR 2000/21. It explains our view of the law as it applied from 1 July 2000. You can rely on this Advice on and from its date of issue for the purposes of section 37 of the *Taxation Administration Act 1953*. Goods and Services Tax Ruling GSTR 1999/1 explains the GST rulings system and our view of when you can rely on our interpretation of the law in GST public and private rulings.

If this Advice conflicts with a previous private ruling that you have obtained, this public ruling prevails. However, if you have relied on a private ruling, you are protected in respect of what you have done up to the date of issue of this public ruling. This means that if you have underpaid an amount of GST, you are not liable for the shortfall prior to the date of issue of this later ruling. Similarly, you are not liable to repay an amount overpaid by the Commissioner as a refund.

Commissioner of Taxation

Date

Subject references:

margin scheme
associate
consideration

Legislative references:

ANTS(GST)A 1999 9-5
ANTS(GST)A 1999 9-70
ANTS(GST)A 1999 Div 72
ANTS(GST)A 1999 Div 75
TAA 1953 37

Other references

Australian Parliamentary Information

ATO references

NO:	05/3095
ISSN:	1833-0053