

GSTD 2014/2 - Goods and services tax: where real property is acquired following the exercise of a call option, does the call option fee form part of the consideration for the acquisition for the purposes of subsection 75-10(2) of the A New Tax System (Goods and Services Tax) Act 1999?

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Goods and Services Tax Determination

Goods and services tax: where real property is acquired following the exercise of a call option, does the call option fee form part of the consideration for the acquisition for the purposes of subsection 75-10(2) of the *A New Tax System (Goods and Services Tax) Act 1999*?

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This publication (excluding appendixes) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

A public ruling is an expression of the Commissioner's opinion about the way in which a relevant provision applies, or would apply, to entities generally or to a class of entities in relation to a particular scheme or a class of schemes.

If you rely on this ruling, the Commissioner must apply the law to you in the way set out in the ruling (unless the Commissioner is satisfied that the ruling is incorrect and disadvantages you, in which case the law may be applied to you in a way that is more favourable for you – provided the Commissioner is not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any underpaid tax, penalty or interest in respect of the matters covered by this ruling if it turns out that it does not correctly state how the relevant provision applies to you.

Ruling

1. No, the call option fee does not form part of the consideration for the acquisition for the purposes of subsection 75-10(2) of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act).

Example

2. Martin is registered for GST and for a fee of \$22,000 he grants a call option to SlamRock Constructions (SlamRock) to purchase vacant land for \$660,000 (exclusive of the call option fee).

3. SlamRock exercises the call option and pays \$660,000 for the purchase of the land. Martin and SlamRock agree in writing that the margin scheme is to apply to the supply of the vacant land.

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4. The supply of the call option and the supply of the vacant land are two separate taxable supplies and as a consequence of subsection 9-17(1), the consideration for the supply of the vacant land is limited to any consideration provided in addition to the call option fee. This means that the consideration for the supply of the call option is the fee of \$22,000 and the consideration for the vacant land is \$660,000.

5. SlamRock constructs six strata titled residential units on the vacant land. Once the development is complete, SlamRock makes taxable supplies of the six new residential premises to various third party purchasers who agree that the amount of GST is to be worked out under the margin scheme. One of these units is purchased by Sandy for \$550,000.

6. In order to work out the amount of GST on the supply to Sandy, section 75-10 states that the amount of GST on the supply is $1/11^{\text{th}}$ of the margin, which is the amount by which the consideration for the supply exceeds the consideration for the acquisition of the interest, unit or lease.

7. Under paragraph 75-15(2)(a), the consideration for the acquisition is the corresponding proportion of the consideration provided to Martin by SlamRock for the purchase of the vacant land that is applicable to the sale of the unit to Sandy. As there are six residential units, SlamRock decides that it is reasonable that the relevant proportion of the consideration for the acquisition will be \$110,000.

8. Therefore the calculation for the amount of GST on the supply to Sandy is as follows:

$$\begin{array}{r} \$550,000 \\ - \quad \underline{\$110,000} \\ \$440,000 \times 1/11^{\text{th}} = \$40,000 \end{array}$$

9. The total amount of GST payable on the supply to SlamRock is \$40,000.

10. Under section 75-20, SlamRock is not entitled to input tax credits relating to the acquisition of the land as it was acquired under the margin scheme. SlamRock is however entitled to an input tax credit of \$2000 relating to the acquisition of the call option.

Date of effect

11. This Determination applies both before and after its date of issue. However, this Determination will not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of this Determination (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10).

Appendix 1 – Explanation

❶ *This Appendix is provided as information to help you understand how the Commissioner's view has been reached. It does not form part of the binding public ruling.*

Explanation

Meaning of 'call option'

12. According to the *Macquarie Dictionary* and the *Oxford Dictionary of English*, a call option is:
- a. the right to buy a specified commodity, parcel of shares, foreign exchange, etcetera, at a set price on or before a specified date (*Macquarie Dictionary*).
 - b. an option to buy assets at an agreed price on or before a particular date (*Oxford Dictionary of English*).
13. Options have been described as irrevocable offers or conditional contracts or *sui generis* arrangements.¹ For the purposes of this Determination, a call option is an agreement between the grantor and the grantee, the exercise of which allows the grantee to compel the grantor to transfer real property to the grantee within a specified period of time.

Margin scheme

14. Subsection 75-10(1) provides that the amount of GST on a taxable supply of real property made under the margin scheme is 1/11th of the margin for the supply. In circumstances where subsection 75-10(2) applies, the margin for the supply is the amount by which the consideration for the supply exceeds the consideration for the acquisition of the real property in question.

Consideration for the acquisition

15. Where a call option is granted, the grantee provides consideration to the grantor, commonly referred to as a call option fee.
16. Where an entity has exercised a call option to compel the transfer of real property, for GST purposes, the call option fee does not form part of the consideration for the property.
17. This is the case even if the agreement between the parties specifies that the call option fee forms part of the price for the supply of the real property. The operation of section 9-17 varies what may be the outcome under contract law.
18. Subsection 9-17(1) relevantly provides, that if an option to acquire a thing is granted, then the consideration for the supply of the thing on the exercise of the option is limited to any additional consideration provided either for the supply or in connection with the exercise of the option.

¹ See *Laybutt v. Amoco Australia Pty Ltd* (1974) 132 CLR 57 at 70 to 76; *CTI Joint Venture Co Ltd v. Chief Commissioner of State Revenue* [2013] NSWSC 20 at [31] to [33]; *Fowler v. Commissioner of Taxation* (2013) 212 FCR 149; [2013] FCAFC 69 at [65]; and *Principal Properties Pty Ltd v. Brisbane Broncos Leagues Club Ltd* [2013] QSC 148 at [11].

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19. In discussing former subsection 9-15(3),² the Explanatory Memorandum to the A New Tax System (Goods and Services Tax) Bill 1998 stated:

The supply of a right or option will be taxed when it is supplied. The later exercise of the right or option will be another supply. That later supply will not be taxable unless there is further consideration when the right or option is exercised.

20. Section 195-1 provides that consideration for a supply or acquisition means any consideration within the meaning given by sections 9-15 and 9-17, in connection with the supply or acquisition. Subsection 9-17(1) prescribes what is consideration in option situations, and section 195-1 incorporates these rules into the meaning of consideration for a supply or acquisition. Accordingly, subsection 9-17(1) is relevant to determining what is consideration for an acquisition under subsection 75-10(2). The Note to the definition of 'consideration' in section 195-1 does not refer to subsection 75-10(2) as a provision that affects the meaning of the definition.

21. In the context of a call option over real property, subsection 9-17(1) recognises that the supply of the option is a separate supply to the supply of the underlying property. As a consequence of subsection 9-17(1), the consideration for the call option is the call option fee, and the consideration for the supply or acquisition of the underlying property is limited to any additional consideration provided.

22. The interaction of subsections 9-17(1) and 75-10(2) of the GST Act results in the consideration for the acquisition of the interest, unit or lease being limited to the additional consideration provided on exercise of the call option. Therefore, the entity does not include the call option fee as part of the consideration for the acquisition in calculating the margin under subsection 75-10(2).³

23. Subsection 75-16(1), which applies where real property has been acquired through several acquisitions, is not applicable in the circumstances of this Determination. This is because the acquisition of the rights under a call option is not subject to any margin scheme provision listed in paragraph 75-16(1)(c).

² Subsection 9-15(3) was repealed and re-enacted as section 9-17 by the *Tax and Superannuation Laws Amendment (2012 Measures No. 1) Act 2012*.

³ An entity will not include the call option fee as part of the consideration for the acquisition of real property in calculating the margin under section 75-11.

References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 2006/10

Subject references:

- GST margin scheme
- GST sale of real property

Legislative references:

- TAA 1953
- ANTS(GST)A 1999
- ANTS(GST)A 1999 9-15
- ANTS(GST)A 1999 9-15(3)
- ANTS(GST)A 1999 9-17
- ANTS(GST)A 1999 9-17(1)
- ANTS(GST)A 1999 75-10
- ANTS(GST)A 1999 75-10(1)
- ANTS(GST)A 1999 75-10(2)
- ANTS(GST)A 1999 75-11
- ANTS(GST)A 1999 75-15(2)(a)
- ANTS(GST)A 1999 75-16(1)
- ANTS(GST)A 1999 75-16(1)(c)
- ANTS(GST)A 1999 75-20
- ANTS(GST)A 1999 195-1

- Tax and Superannuation Laws Amendment (2012 Measures No. 1) Act 2012

Case references:

- CTI Joint Venture Co Ltd v. Chief Commissioner of State Revenue [2013] NSWSC 20
- Fowler v. Commissioner of Taxation (2013) 212 FCR 149; [2013] FCAFC 69
- Laybutt v. Amoco Australia Pty Ltd (1974) 132 CLR 57
- Principal Properties Pty Ltd v. Brisbane Broncos Leagues Club Ltd [2013] QSC 148

Other references:

- Explanatory Memorandum to the A New Tax System (Goods and Services Tax) Bill 1998
- The Macquarie Dictionary, [online], viewed 14 October 2013, www.macquariedictionary.com.au
- The Oxford Dictionary of English, [online], viewed 14 October 2013, www.oxfordreference.com

ATO references

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