GSTR 2000/21 - Goods and services tax: the margin scheme for supplies of real property held prior to 1 July 2000

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From 1 July 2015, the term 'Australia' is replaced in nearly all instances within the GST, Luxury Car Tax, and Wine Equalisation Tax legislation with the term 'indirect tax zone' by the *Treasury Legislation Amendment (Repeal Day) Act 2015*. The scope of the new term, however, remains the same as the now repealed definition of 'Australia' used in those Acts. This change was made for consistency of terminology across the tax legislation, with no change in policy or legal effect. For readability and other reasons, where the term 'Australia' is used in this document, it is referring to the 'indirect tax zone' as defined in subsection 195-1 of the GST Act.

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Generated on: 23 November 2026, 11:58:17 PM

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 was published prior to 1 July 2010 and was a public ruling for the purposes of former section 37 of the ***Taxation Administration Act 1953*** *and former section 105-60 of Schedule 1 to the* ***Taxation Administration Act 1953.***

From 1 July 2010, this document is taken to be a public ruling under Division 358 of Schedule 1 to 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.

[Note: This is a consolidated version of this document. Refer to the Legal Database (http://law.ato.gov.au) to check its currency and to view the details of all changes.]

What this Ruling is about

1. This ruling explains the determinations that the Commissioner has made under paragraph 75-10(3)(b) of the *A New Tax System (Goods and Services Tax) Act 1999* ('GST Act'). The determinations are about the requirements for making valuations of a freehold interest, **stratum unit**, or **long-term lease** held prior to 1 July 2000.

1A. If real property is supplied on or after 17 March 2005 and before 1 December 2005, the reader should also have regard to:

- the legislative amendments contained in the *Tax Laws Amendment (2005 Measures No. 2) Act 2005*; and

- A New Tax System (Goods and Services Tax) Margin Scheme Valuation Requirements Determination MSV 2005/1.

2. The ruling explains in particular:

(a) in what circumstances the margin scheme may be used;

(b) how valuations are to be made under the determinations made by the Commissioner;

(c) what documentation is required to satisfy the determinations; and

(d) when valuations are to be made under the GST Act.

A copy of the determinations are attached at Schedule 1 and 2.

3. This ruling does not deal with the application of the margin scheme where the supplier acquired the freehold interest in land, the stratum unit, or the long-term lease on or after 1 July 2000.

4. 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, appear in **bold** type.

5. Unless otherwise stated, all references in this ruling are to the GST Act.

Date of effect

6. This Ruling applies [to tax periods commencing] both before and after its date of issue. However, this Ruling 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 Ruling (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10).

6A. This Ruling does not apply to supplies made on or after 1 December 2005. For supplies made on or after 1 December 2005, refer to Goods and Services Tax Ruling 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.*

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.[1] This is referred to in this ruling as the basic rule. 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, the GST payable on the supply of certain real property is 1/11 of the margin for the supply. The margin for the supply is the difference between the consideration for the supply and the consideration for the acquisition of the interest, unit or long-term lease unless subsection 75-10(3) applies.
Subsection 75-10(3) applies if you have obtained a valuation of the property that is in accordance with the Commissioner's written determination, and:

- you acquired (or in some cases held) the real property before 1 July 2000; or
- you acquired the real property on or after 1 July 2000, but the supply to you:
  - (a) was GST-free under subsection 38-445(1A); and
  - (b) related to a supply before 1 July 2000, by way of lease, that would have been GST-free under section 38-450 had it been made on or after 1 July 2000 (item 2A).

10. The GST payable under the margin scheme may be substantially lower than under the basic rule. The margin scheme can apply to all types of property including residential, commercial, retail and industrial and is particularly relevant if the recipient of your supply is not entitled to an input tax credit for the acquisition.

Ruling and explanations

Who can use the margin scheme?

11. You may choose to apply the margin scheme if you make a taxable supply of real property by:

[1] Sections 9-70 and 9-75.

- selling a freehold interest in land; or
- selling a stratum unit; or
- granting or selling a long-term lease.

12. 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 an unregistered purchaser

In the situations described above the purchaser is not entitled to an input tax credit for the acquisition.

What is a taxable supply of real property?

13. 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 of 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 for GST.

However a supply is not a taxable supply to the extent that it is **input taxed** or GST-free.[2]

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

[2] Section 9-5.

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	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

15. You can only apply the margin scheme if the supply is a taxable supply. If the supply is **new residential premises** then the first supply will be a taxable supply to which the margin scheme can apply but subsequent sales of the property as **residential premises** will be input taxed under Subdivision 40-C. Subsequent sales of vacant residential land will be a taxable supply if sold by a supplier who is registered or required to be registered for GST.

How is the margin calculated?

16. Where the interest, unit, or long-term lease is acquired on or after 1 July 2000, and the circumstances in item 2A of the table in subsection 75-10(3) do not apply, then the margin is the difference between the consideration for the supply and the consideration for the acquisition of the interest, unit or long-term lease.[3] The consideration for the acquisition of the interest, unit or long-term lease is the original purchase price or in the case of subdivided land or a stratum unit the corresponding proportion of the original purchase price paid to acquire the relevant land. It does not include costs later incurred in developing the interest, unit or long-term lease.[4]

[3] Subsection 75-10(2).
[4] [Deleted]

16A. Where the interest, unit, or long-term lease is held at 1 July 2000 the margin for the supply is the difference between the consideration for its supply and the consideration for its acquisition unless subsection 75-10(3) applies. Subsection 75-10(3) will only apply if you have obtained a valuation in accordance with the Commissioner's written determination, and:

- you acquired the real property before 1 July 2000; or
- you acquired the real property on or after 1 July 2000, but the supply to you:
  - (a) was GST-free under subsection 38-445(1A); and
  - (b) related to a supply before 1 July 2000, by way of lease, that would have been GST-free under section 38-450 had it been made on or after 1 July 2000 (item 2A).

If subsection 75-10(3) applies, the margin is the difference between the consideration for the supply and the valuation of the interest, unit or long-term lease at the relevant date.

16B. For the purposes of subsection 75-10(3), the Commissioner considers that you have acquired or have held a sufficient interest in real property when you enter into, but have not completed a contract for the acquisition of the real property.[4A]

16C. In particular, if you had entered into a contract for the acquisition of freehold title to land, out of which stratum units were to be created, for the purposes of subsection 75-10(3) you are taken to have held or acquired a sufficient interest in the stratum units on entering into the contract. Similarly, if you had entered into a contract for the acquisition of freehold title to land for subdivision, for the purposes of subsection 75-10(3) you are taken to have held or acquired a sufficient interest in the subdivided lots at the time you entered into the contract.

16D. However, the Commissioner does not consider that a supply or acquisition of the real property itself[4B] occurs at the time of entry into a contract for the sale and purchase of that property. The Commissioner considers that the supply or acquisition of the property occurs on settlement of the contract.[4C]

[4A] *Brady King Pty Ltd v Commissioner of Taxation* [2008] FCAFC 118; 2008 ATC 20-034; (2008) 168 FCR 558.

[4B] That is, the real property that is to be conveyed to the recipient on completion of the contract, as distinct from the contractual rights the recipient receives upon entry into the contract.

[4C] See paragraphs 42 to 45E of Goods and Services Tax Ruling 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.

What is the date of valuation of the property?

17. If you choose to apply the margin scheme, and to calculate the margin for the supply under subsection 75-10(3), then you will be required to obtain a valuation. The table below sets out the particular circumstances and the date on which a valuation is required:

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
2A	You acquired the freehold interest, stratum unit or long-term lease on or after 1 July 2000, but the supply to you: (a) was GST-free under subsection 38-445(1A); and (b) related to a supply before 1 July 2000, by way of a lease, that would have been GST-free under section 38-450 had it been made on or after 1 July 2000.	1 July 2000
3	You were registered or required to be registered and held the freehold interest, stratum unit or long-term lease since before 1 July 2000, 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 since before 1 July 2000 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.

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

19. Where the Commonwealth, a State or Territory supplies land on which there are no improvements at 1 July 2000 the supply of the unimproved land will be GST-free.[5] If the land has improvements as at 1 July 2000, then the Commonwealth, a State, or Territory can still choose the margin scheme to calculate the GST payable on the supply under Item 3 in the Schedule in paragraph 17 above. However if the land has no improvements as at 1 July 2000 but there are improvements subsequently made to the land prior to the supply of the real property, the Commonwealth, a State, or Territory can 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 were no improvements on the land at the date of supply.[6]

When are the valuations to be made?

20. If you choose to calculate the margin for the supply under subsection 75-10(3), then 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 the end of the tax period in which the GST payable on the supply is attributable. For supplies of real property under a **standard land contract** the date the GST payable becomes attributable will be the date of settlement.[7]

How do you determine the value of completed premises as at the valuation date?

21. The value that you can adopt for completed premises or land subdivisional projects is:

(a) the market value of the property determined in writing by a professional valuer;

(b) the value of the consideration provided by a purchaser in a contract for the sale and purchase of real property executed or exchanged prior to 1 July 2000 by parties dealing at arm's length; or

(c) the value as determined by the State Government or Territory Government department as the unimproved value, the site value, or the capital value of the land.

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[5] Subsection 38-445.
[6] Subsection 75-10(3A).
[7] For a further discussion on attributing the GST payable under a standard land contract see GSTR 2000/28.

Method 1: Value determined by a professional valuer

22. A professional valuer[8] is:

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

(b) a person who carries on business as a valuer in a State or Territory where that person is not required to be licensed or registered to carry on a business as a valuer; or

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

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

24. Valuations provided by a professional valuer must comply with the following criteria:

(a) *Completed subdivided lots or land and buildings*.

If 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. However, where, having regard to the particular nature of the property, it is the expert opinion of the valuer that the use of comparable sales data is inappropriate, the valuation must be made using another acceptable method including summation, capitalization, and discounted cash flow; or

(b) The supplier is the Commonwealth, State, or Territory

If 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,

[8] Refer to clause 9 of the Determination in Schedule 1. This definition was framed with the assistance of the Australian Property Institute and the Law Council of Australia.

the valuer must have regard to what the market value of the land would be had the improvements not been made as at the date of supply, and should be based on comparable sales data. However, where, having regard to the particular nature of the property, it is the expert opinion of the valuer that the use of comparable sales data is inappropriate, the valuation must be made using another acceptable method including summation, capitalization, and discounted cash flow.

Documentation required

25. 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

(d) the qualifications of the valuer (**Note**: qualifications of the valuer will have to satisfy the requirements outlined in paragraph 22 above.)

Method 2: Value is the consideration provided by a purchaser in a contract for the sale and purchase of real property

26. You can adopt, as the value, the consideration provided by a purchaser in a contract for the sale and purchase of real property executed or exchanged prior to 1 July 2000 between parties dealing at arm's length[9].

[9] Judicial interpretation of the phrase 'dealing at arm's length' can be found in Collis v FC of T (1996) 33 ATR 438, 96 ATC 4831; Granby v FC of T (1995) 30 ATR 400, 95 ATC 4240; Barnsdall v. FC of T (1988) ATR 1352, 88 ATC 4565; The Trustee of the Estate of the Late AW Furse No 5 Will Trust (1990) 21 ATR 1123, 91 ATC 4007.

Method 3: Value as determined by the State Government or Territory Government

27. You can adopt as the value the most recent unimproved value, site value, or the capital value of the land as determined by a State Government or Territory Government department or undertaken by a professional valuer on behalf of a State Government or Territory Government department for rating or taxing purposes made prior to 1 July 2000. The value as at 1 July 2000 for the margin scheme purposes is the value shown in a notice of valuation or land tax notice of assessment or other similar document. This method will assist land developers who have large holdings of unimproved on hand at 1 July 2000.

How do you value partly completed premises as at the valuation date?

28. Partly completed premises means in relation to:

(a) a subdivision plan, where the linen plan has not been approved by the local government authority;

(b) a building unit or strata title plan, where a certificate of completion or a certificate of occupancy has not been issued the local government authority;

(c) the construction or major reconstruction of a building, where the building is still under construction.

29. The value that you can adopt for partly completed premises is:

(a) a value determined in writing by a professional valuer having regard to the criteria listed in paragraph 30; or

(b) the value determined by using the costs of completion method.

Method 1: Value determined by a professional valuer

30. 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:

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

(b) the cost to complete the project; and

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

Method 2: Value determined using the costs of completion method

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

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

33. The costs of completion method is an approximate method used to determine the value as at 1 July 2000. Accordingly you can only use this method if the sale of the freehold interest, stratum unit or long-term lease occurs prior to 1 July 2005. If the value is determined as a percentage of the sale price, it is considered that a sale occurring on or after this date will not reflect the value as at 1 July 2000 using this method. For sales occurring on or after 1 July 2005, the supplier will need a valuation by a professional valuer if the supplier chooses to calculate the GST payable using the margin scheme.

What types of costs are included using the costs of completion method?

34. When calculating the total cost, you should include all of the costs you incur in completing the development or subdivision. These costs are not limited to the purchase of land and the 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.

35. 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.

36. 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).

37. 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, sewerage treatment works, water and sewerage mains, drainage schemes, etc. Alternatively, a developer may be required to make financial contributions towards such works.

38. Costs which you should not include are:

- administrative costs that cannot be directly related to the finished premises or subdivided land; and
- holding costs, such as rates and taxes, or interest on borrowings to acquire or develop the property.

39. 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.[10] The same approach applies to the construction of stratum units or commercial premises.

Example 1: Residential subdivision

40. A land developer who, on 1 July 2000 is registered for GST, acquired the freehold interest in four hectares of undeveloped land on 13 September 1986 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.

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

	$
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**

42. 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%.

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

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

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

44. 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

45. 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.

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

Residential subdivision multistage development

47. In a multistage development the margin scheme should be used for each stage in the development as a separate development. Costs which can be specifically identified with a particular stage of a development should be allocated directly to that stage. However some of the development costs may be directly related to more than one stage of the development. In this situation, the costs should be allocated between the stages of development using one of the following methods:

- *anticipated selling price* – under this method, costs are allocated on the basis of the total anticipated selling price of each development stage;
- *lots or sites* – costs are allocated in proportion to the number of lots or sites;
- *area* – costs are allocated on the basis of the total saleable area in each development stage.

48. Development costs should only be allocated to development stages that are reasonably certain to proceed.

49. Some of the types of expenditure which would be allocated to more than one stage of development are:

- Dedicated reserves where the reserves are a condition of approval of more than one stage of development;
- Costs of constructing a bridge or access road that is to service all the stages of the development; or
- Construction of a reservoir to service all of the stages of the development.

50. Where development costs that are directly related to more than one stage of the development arise after one or more of the stages are completed, only significant costs should be allocated to the completed development stages. Minor costs incurred after that stage of development has been completed can be ignored for purposes of calculating the total cost of completion.

Example 2: Residential subdivision multistage development

51. Gina is a land developer who is registered on 1 July 2000 for GST. On 3 November 1998 she acquires a freehold interest in 70 hectares of land, which she plans to subdivide into residential allotments in 3 stages. The first stage will be released in October 2000, stage 2 will be released in June 2001 and the remaining stage will be released in June 2002. Work on stages 2 and 3 have not commenced. Gina decides to use the costs of completion method to determine a value for the land as at 1 July 2000.

52. As part of the conditions for obtaining development approval for the three stages, Gina must set aside a reserve of 10 hectares to be dedicated to the local council for parkland, and upgrade an access road to the development. At 1 July 2000 Gina had partially completed the upgrade of the access road.

53. Gina decides to allocate the cost of land and the access road according to the number of lots in each development stage. Stage 1 of the development has 40 lots. It is proposed that stages 2 and 3 will consist of 30 lots each. Gina allocates these costs, as at the start of 1 July 2000 in the following manner:

Expenditure	Costs at the start of 1 July 2000			
	Total	**Allocated to stage 1**	**Allocated to stage 2**	**Allocated to stage 3**
Cost of land to be subdivided	4,000,000	1,600,000	1,200,000	1,200,000
Cost of land for parkland	500,000	200,000	150,000	150,000
Costs of upgrading access road	500,000	200,000	150,000	150,000
Total	5,000,000	2,000,000	1,500,000	1,500,000

54. At the start of 1 July 2000, Gina had also incurred expenditure specifically on developing stage 1. The total costs incurred on stage 1 as at the start of 1 July 2000 are:

Allocated costs		
Land for allotments	$1,600,000	
Land for parkland	200,000	
Costs of upgrading access road	200,000	$2,000,000
Direct costs on stage 1 of the estate		
Roads and pathways	2,380,000	
Earthworks	2,600,000	
Contribution for headworks	280,000	
Design fees	120,000	
Legal fees	50,000	
Local government fees	30,000	
Site administration fees	40,000	5,500,000
Total		$7,500,000

55. At the time of completion, the total actual cost of completing stage 1 is $13,000,000. The percentage cost of completion is 7,500,000/13,000,000 or 57.7%.

56. The percentage cost of completion for stage 2 is $1,500,000 divided by the total actual cost of completion for stage 2.

57. After stage 1 of the project was completed, Gina incurred further expenditure on the parkland of $15,000. The amount of expenditure which would have been allocated to stage 1 is $6,000. As this amount is only minor in comparison the total expenditure on stage 1, it can be ignored. However, the remaining expenditure should be allocated to stages 2 and 3.

Example 3: House and land package

58. 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. Jack sold the house and land on completion for a GST inclusive price of $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**

59. 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.

60. 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 4: Strata title units of equal value

61. 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 at cost	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**

62. 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.

63. The percentage of completion as at 1 July 2000 is calculated as 900,000/1,200,000, or 75%. The developer sold each of the residential units for a GST inclusive price of $360,000. The value of each residential unit at1 July 2000 is apportioned accordingly as 75% of $360,000, or $270,000.

64. 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

65. 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.

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

Example 5: Strata title units of differing value

67. 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

68. 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 at cost	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**

69. 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 GST inclusive sale price for the apartments.

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

Apartment	GST inclusive sale price per unit	Unit valuation	Total unit valuation
6 one-bedroom	250,000	125,000	750,000
4 one-bedroom	240,000	120,000	480,000
8 two-bedroom	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**

What is your entitlement to input tax credits?

71. If you are a developer registered for the GST you can claim input tax credits for any creditable acquisitions you make in relation to improvements added to the property on or after 1 July 2000. For buildings or subdivisional developments partly completed as at 1 July 2000, the fact that you have claimed an input tax credit for the GST payable to complete the building or subdivisional development made on or after 1 July 2000 (eg. input tax credits on subcontractors or building materials) will not prevent you from choosing the margin scheme. However the purchaser of the real property under the margin scheme, will not be entitled to an input tax credit for the GST payable on the acquisition.[11]

How do you calculate the GST inclusive sale price and the margin?

72. For the purposes of Division 75 the GST inclusive sale price is the GST exclusive price plus the GST payable on the margin.

[11] Section 75-20.

73. A builder or land developer should have regard to the ACCC Guidelines on Price Exploitation which were released in March 2000 when calculating the GST exclusive price. The following examples set out how to calculate the GST inclusive price where a valuation was determined using the costs of completion method or a valuation was obtained from a professional valuer.

Example 6: Where the GST exclusive price is known and a valuation using the costs of completion method was used.

74. The GST exclusive price is $96,364 and the percentage of completion as at 1 July 2000 was calculated using the costs of completion method as 60%. The GST payable on the margin is calculated as follows:

I = 11E / (10 + C)

Where:

I is the GST inclusive price;

E is the GST exclusive price; and

C is the proportion of completion calculated using the costs of completion method and calculated as a decimal.

$$\text{GST inclusive price} = \frac{11 \times \text{GST exclusive price}}{(10 + \text{proportion of completion})}$$

$$= \frac{11 \times 96364}{(10 + 0.6)}$$

$$= \$100{,}000$$

Therefore the valuation as at 1 July 2000

using the costs of completion method = 100,000 x 60% or $60,000.

The Margin = 100,000 – 60,000 or $40,000.

The GST payable = 1/11 of $40,000.

Example 7: Where the GST exclusive price is known and a valuation as at 1 July 2000 was obtained.

75. The GST exclusive price is $96,364 and a valuation was obtained for the purposes of the margin scheme as at 1 July 2000 as $60,000. The GST inclusive price is calculated using the formula:

I = (11E –V)/10

Where:

I is the GST inclusive price;

E is the GST exclusive price; and

V is the valuation as at 1 July 2000.

$$\text{GST inclusive price} = \frac{(11 \times \text{GST exclusive price}) - \text{Valuation amount}}{10}$$

$$= \frac{(11 \times 96364) - 60000}{10}$$

$$= \$100{,}000$$

The Margin = 100,000 – 60,000 or $40,000.
The GST payable = 1/11 of $40,000.

Valuations made under section 19 of the GST Transition Act and Division 75 are not alternative methods for valuing real property.

76. 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.

77. 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 GST Transition Act, see GSTR 2000/14 titled 'Goods and services tax: transitional valuation of work in progress for head contractors in the building or civil engineering industries'.

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

Example 8: Section 19 and Division 75 valuations

79. 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.

80. 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

81. The following terms are defined for the purposes of this ruling. Terms with asterisks are defined in section 195-1 of the GST Act:

Input taxed

82. 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

83. 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.

New residential premises

84. 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 the building; or

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

85. 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.

Real property

86. 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.

Residential premises

87. Residential premises means land or a building that:

a) is occupied as a residence; or

b) is intended to be occupied, and is capable of being occupied, as a residence;

and includes a *floating home.

Standard land contract

88. A standard land contract means a standard contract for the sale of land as prepared by the various law societies or institutes and real estate institutes in Australia[12] that provides for:

a) the payment of a deposit that is either to be forfeited if the purchaser defaults or applied as consideration on settlement; and

b) the payment of the balance of the purchase upon settlement.

Stratum unit

89. A stratum unit is a lot or unit (however described in an Australian law or a foreign law relating to strata title or similar title) and any accompanying common property.

Detailed contents list

90. Below is a detailed contents list for this Taxation Ruling:

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[12] For example, see: New South Wales – *Contract for the sale of land – 1992 edition* (copyright of the Law Society of New South Wales and the Real Estate Institute of New South Wales); Victoria – *Contract of Sale of Real Estate* (copyright of Law Institute of Victoria and the Real Estate Institute of Victoria) Queensland – *Contract For Lots in a Community Titles Scheme* and *Contract For Houses and Land* (copyright of Real Institute of Queensland); South Australia – REISA *Contract* (copyright of Real Estate Institute of South Australia); Western Australia – *Joint Form of General Conditions for the Sale of Land* 1998 revision (copyright of The Law Society of Western Australia and The Real Estate Institute of Western Australia); and Tasmania – Contract for Sale of Real Estate (not for use of sale on terms) (copyright of the Law Society of Tasmania).

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Commissioner of Taxation
28 June 2000

Previous draft

Previously issued in draft form as GSTR 1999/D9

Related Rulings/Determinations:

TR 2006/10; GSTR 2000/14; GSTR 2000/28; GSTR 2006/7

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 75-10(3)(a)
- ANTS(GST)A99 75-10(3)(b)
- ANTS(GSTT)A99 19
- Tax Laws Amendment (2005 Measures No. 2) Act 2005
- TAA 1953 Sch 1 Div 358

Case references:

- Barnsdall v. FC of T (1988) 19 ATR 1352, 88 ATC 4565
- Brady King Pty Ltd v. Commissioner of Taxation [2008] FCAFC 118; 2008 ATC 20-034; (2008) 168 FCR 558
- Collis v. FC of T (1996) 33 ATR 438, 96 ATC 4831
- FC of T v. Kurts Development Ltd (1998) 39 ATR 493, 98 ATC 4877
- Granby v. FC of T (1995) 30 ATR 400, 95 ATC 4240
- The Trustee of the Estate of the Late AW Furse No5 Will Trust; (1990) 21 ATR 1123, 91 ATC 4007

ATO references:
NO 99/17935-0
BO
FOI number: I 1021700
ISSN: 1443-5160

Schedule 1

COMMONWEALTH OF AUSTRALIA

A NEW TAX SYSTEM (GOODS AND SERVICES TAX) ACT 1999

A NEW TAX SYSTEM (GOODS AND SERVICES TAX) MARGIN SCHEME VALUATION REQUIREMENTS DETERMINATION (NO. 1) 2000

Under paragraph 75-10(3)(b) of the *A New Tax System (Goods and Services Tax) Act 1999* and subsection 4(1) of the *Acts Interpretation Act 1901*, I make the following determination:

Citation

1. This determination may be cited as the *A New Tax System (Goods and Services Tax) Margin Scheme Valuation Requirements Determination (No. 1) 2000.*

Commencement

2. This determination commences on the date the *A New Tax System (Goods and Services Tax) Act 1999* commences.

Circumstances in which the Determination will apply

3. This determination will apply where you acquired the freehold interest in land, stratum unit or long-term lease before 1 July 2000 and you:

(a) 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; and

(b) choose to apply the margin scheme in working out the amount of GST on the supply for completed premises and subdivisions as at the valuation date.

Requirements for making valuations for the purposes of Division 75

4. The valuation of a freehold interest, stratum unit or long-term lease mentioned in paragraph 75-10(3)(b) can be determined in accordance with any of these three methods:

Method 1: the market value of the property determined in writing by a professional valuer; or

Method 2: the value of the consideration provided by a purchaser in a contract for the sale and purchase of real property executed or exchanged prior to 1 July 2000 by parties dealing at arm's length; or

Method 3: the most recent value as determined by the State Government or Territory Government Department as the unimproved value, the site value, or the capital value of the land made prior to 1 July 2000.

Method 1: Value as determined by a professional valuer

5. (1) This clause applies to the valuation of a freehold interest, stratum unit or long-term lease that consists of subdivided allotments, or land and buildings, that have been completed at the valuation date.

(2) The valuation must be provided by a professional valuer.

(3) The valuation must include a valuation of the allotments, the building, or individual stratum units within the building having regard to comparable sales data.

(4) However, if, having regard to the particular nature of the property, it is the expert opinion of the valuer that the use of comparable sales data is inappropriate, the valuation must be made using another acceptable method.

Examples

Summation, capitalization or discounted cash flow.

6. (1) This clause applies to the valuation of a freehold interest, stratum unit or long-term lease if:

(a) the interest, unit or lease has been supplied by the Commonwealth, a State or Territory; and
(b) the supplier has held the interest, unit or lease since before 1 July 2000;
(c) there were no improvements on the land in question as at 1 July 2000; and
(d) there are improvements on the land in question on the day on which the taxable supply takes place

(2) The valuation must be provided by a professional valuer.

(3) The valuer must have regard to what the market value of the land would be had the improvements not been made as at the date of the supply, and should be based on comparable sales data.

(4) However, if, having regard to the particular nature of the property, it is the expert opinion of the valuer that the use of comparable sales data is inappropriate, the valuation must be made using another acceptable method.

Examples

Summation, capitalization or discounted cash flow.

Method 2: Value is the consideration provided by a purchaser in a contract for the sale and purchase of real property.

7. The value is the consideration provided by a purchaser in a contract for the sale and purchase of real property executed or exchanged prior to 1 July 2000 by parties dealing at arm's length.

Method 3: Value as determined by the State Government or Territory Government.

8. The value is the most recent unimproved value, the site value or the capital value as determined by a State Government or Territory Government department or undertaken by a professional valuer on behalf of a State Government or Territory Government department for rating or taxing purposes made prior to 1 July 2000.

Definitions

9. (1) The following expressions are defined for the purposes of this determination:

professional valuer means a

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

(b) a person who carries business as a valuer in a State or Territory where that person is not required to be licensed or registered to carry on a business as a valuer; or

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

(2) Other expressions in this determination have the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999*.

Dated this 23rd day of June 2000

Lawrie Hill
Assistant Commissioner
Rulings
Goods and Services Tax Program
Delegate of the Commissioner

Schedule 2

COMMONWEALTH OF AUSTRALIA

A NEW TAX SYSTEM (GOODS AND SERVICES TAX) ACT 1999

A NEW TAX SYSTEM (GOODS AND SERVICES TAX) MARGIN SCHEME VALUATION REQUIREMENTS DETERMINATION (NO. 2) 2000

Under paragraph 75-10(3)(b) of the *A New Tax System (Goods and Services Tax) Act 1999* and subsection 4(1) of the *Acts Interpretation Act 1901*, I make the following determination:

Citation

1. This determination may be cited as the *A New Tax System (Goods and Services Tax) Margin Scheme Valuation Requirements Determination (No. 2) 2000.*

Commencement

2. This determination commences on the date the *A New Tax System (Goods and Services Tax) Act 1999* commences.

Circumstances in which the Determination will apply

3. This determination will apply where you acquired the freehold interest in land, stratum unit or long-term lease before 1 July 2000 and you:

(a) 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; and

(b) you choose to apply the margin scheme in working out the amount of GST on the supply for partly completed premises as at the valuation date.

Requirements for making valuations for the purposes of Division 75

4. The valuation of partly completed freehold interest, stratum unit or long-term lease mentioned in paragraph 75-10(3)(b) can be determined in accordance with any one of the following methods:

Method 1: the value of the property determined in writing by a professional valuer in accordance with the method described in clause 5; or

Method 2: the value determined under the costs of completion method.

Method 1: Value as determined by a professional valuer

5. (1) The valuation must be provided by a professional valuer.

(2) The valuer must have regard to:

(a) the market value of the completed premises;

(b) the cost to complete the partly completed premises; and

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

Method 2 – Value as determined using costs of completion method

6. (1) This method requires you to calculate the costs incurred prior to the valuation date as a percentage of the total costs of completion.

(2) Costs incurred are calculated on the basis of absorption costing and you must include the following costs in this method:

(a) land at cost;

(b) direct construction costs;

(c) internal infrastructure costs;

(d) external infrastructure costs directly related to the property.

(3) Costs that you must not include in this method are:

(a) administrative costs that cannot be directly related to the property; and

(b) holding costs, such as rates and taxes, or interest on borrowings to acquire or develop the property.

(4) The value is this percentage calculated in accordance with clause Sub clause 6(1) above applied to the consideration

for the supply of the property and will only apply to supplies of property that occur on or before 1 July 2005.

Definitions

7. (1) The following expressions are defined for the purposes of this determination:

completed premises means premises that are not partly completed premises;

partly completed premises means in relation to:

(a) a subdivision plan, where the linen plan has not been approved by the local government authority;

(b) a building unit or strata title plan, where a certificate of completion or a certificate of occupancy has not been issued by the local government authority;

(c) the construction or major reconstruction of a building, where the building is still under construction;

professional valuer means a

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

(b) a person who carries business as a valuer in a State or Territory where that person is not required to be licensed or registered to carry on a business as a valuer; or

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

(2) Other expressions in this determination have the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999*.

Signed this 23rd day of June 2000
Lawrie Hill
Assistant Commissioner
Rulings
Goods and Services Tax Program
Delegate of the Commissioner