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

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Goods and Services Tax Ruling

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

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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 how the margin scheme applies to a supply of a freehold interest, stratum unit,[1] or long-term lease[2]

[1] 'Stratum unit' is defined in section 195-1 as having 'the meaning given by subsection 124-190(3) of the *Income Tax Assessment Act 1997*. Subsection 124-190(3) defines a stratum unit as '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'.

[2] 'Long-term lease' is defined in section 195-1 as:
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,

(referred to in this Ruling collectively as 'real property') on or after 1 December 2005 that was acquired or held before 1 July 2000.

2. This Ruling also explains how the *A New Tax System (Goods and Services Tax) Margin Scheme Valuation Requirements Determination MSV 2005/3* (MSV 2005/3) and *A New Tax System (Goods and Services Tax) Margin Scheme Valuation Requirements Determination MSV 2009/1* (MSV 2009/1) apply to taxable supplies of real property made on or after particular dates.

3. MSV 2005/3 and MSV 2009/1 are made under section 75-35 of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act). A copy of each determination is attached as a Schedule to this Ruling.

4. Section 75-35 of the GST Act provides for the Commissioner to determine, in writing, the requirements for making valuations for the purposes of Division 75 and that a valuation made in accordance with these requirements is an approved valuation.

5. MSV 2005/3 and MSV 2009/1 are about the requirements for making an approved valuation of property. MSV 2005/3 applies to taxable supplies of real property made on or after 1 December 2005 and before 1 March 2010. MSV 2009/1 applies to taxable supplies of real property made:

- on or after 1 March 2010 for valuations obtained by the supplier; and
- before, and on or after, 1 March 2010 for valuations obtained by the Commissioner.

Each determination is a legislative instrument and has the force of law. Unlike public rulings which are binding only on the Commissioner, MSV 2005/3 and MSV 2009/1 are binding on both the Commissioner and suppliers.

6. The Ruling explains in particular:

(a) how valuations are to be made under MSV 2005/3 and MSV 2009/1 (paragraphs 70 to 85 of this Ruling);

(b) what documentation is required by a professional valuer to satisfy MSV 2005/3 and MSV 2009/1 (paragraph 79 of this Ruling); and

(c) when valuations are required to be made under Division 75 of the GST Act (paragraphs 70 to 72A of this Ruling).

7. The Ruling also discusses:

(a) when you can apply the margin scheme (paragraphs 24 to 36);

(b) when you supply or acquire or hold an interest, unit or lease (paragraphs 42 to 45E);

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as they apply to the *recipient are substantially the same as those under which the supplier held the premises.

(c) how the margin for a supply is calculated (paragraphs 46 to 47);

(d) the margin for the supply of real property acquired from a deceased estate (paragraphs 48 to 54);

(e) the margin for the supply of real property acquired from an associate (paragraphs 55 to 58);

(f) whether the consideration for a supply or an acquisition includes settlement adjustments (paragraph 59);

(g) the meaning of 'Commonwealth, a State or a Territory' for the purposes of items 2A and 4 in the table in subsection 75-10(3) (paragraphs 89 to 95);

(h) the meaning of 'land on which there are no improvements' and 'no improvements on the land' for the purposes of the table in subsection 75-10(3) and subsection 75-10(3A) (paragraphs 96 to 100);

(i) how the margin scheme applies to mixed supplies (paragraphs 101 to 103);

(j) increasing adjustments if part of your acquisition was ineligible for the margin scheme (paragraphs 106 to 129);

(k) working out the margin if not all the consideration has been paid (paragraphs 130 to 134);

(l) representatives of an incapacitated entity and the application of the margin scheme (paragraph 134A);

(m) entitlement to input tax credits (paragraph 135);

(n) tax invoices (paragraph 136); and

(o) record keeping requirements (paragraph 137 to 139).

8. This Ruling does not deal in detail with subsection 75-10(2). Under subsection 75-10(2) the margin for the supply is calculated by reference to the consideration for the supplier's acquisition of the real property rather than by reference to a valuation. The consideration for the acquisition is addressed at paragraphs 48 to 68 in Goods and Services Tax Ruling GSTR 2006/8.[3]

9. It also does not deal in detail with taxable supplies of real property made before 1 December 2005. For supplies made before 1 December 2005 see Goods and Services Tax Ruling GSTR 2000/21.[4] GSTR 2000/21 must be read subject to those amendments made by the *Tax Laws Amendment (2005 Measures No. 2) Act 2005* (2005 Amendment Act) and by the *Tax Laws Amendment (2008 Measures No. 5) Act 2008* (2008 Amendment Act).

[3] Goods and services tax: the margin scheme for supplies of real property acquired on or after 1 July 2000.
[4] Goods and services tax: the margin scheme for supplies of real property held prior to 1 July 2000.

10. Unless otherwise stated, all references in this Ruling are to the GST Act.

Date of effect

11. This Ruling, except for the legislative amendments made by the 2005 Amendment Act, the 2008 Amendment Act, and the requirements for making valuations contained in *A New Tax System (Goods and Services Tax) Margin Scheme Valuation Requirements Determination MSV 2005/2* (MSV 2005/2), MSV 2005/3 and MSV 2009/1, applies 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).

12. The legislative amendments contained in the 2005 Amendment Act apply to supplies made on or after 17 March 2005, except for the amendments to section 75-5. The amendments to section 75-5 apply to supplies on or after 29 June 2005[5] that are:

(a) made under contracts entered into on or after 29 June 2005; and

(b) are not made pursuant to rights or options granted before 29 June 2005.

12A. The legislative amendments to Division 75 contained in the 2008 Amendment Act apply to supplies of real property where the real property was acquired on or after 9 December 2008[5A] and was not acquired:

(a) under a written agreement entered into before 9 December 2008; or

(b) pursuant to a right or option granted before 9 December 2008,

that specifies in writing the consideration, or a way of working out the consideration, for the supply.

13. The valuation requirements contained in MSV 2005/2 apply to supplies made on or after 1 July 2005 under contracts entered into before 1 July 2005. MSV 2005/3 applies to supplies of real property made on or after 1 December 2005 and before 1 March 2010. MSV 2009/1 applies to supplies made on or after 1 March 2010, except those requirements for making valuations obtained by the Commissioner which apply to supplies made before, and on or after 1 March 2010.

[5] The date of Royal Assent of the 2005 Amendment Act.
[5A] The date of Royal Assent of the 2008 Amendment Act.

14. You can rely upon this Ruling on and from its date of issue for the purposes of section 357-60 of Schedule 1 to the *Taxation Administration Act 1953* (TAA).

Note: The Addendum to this Ruling that issued on 22 June 2011, explains our view of the law as it applied both before and after its date of issue.. However, if prior to the issue of this Addendum, you relied on the public ruling that the Addendum amends, you are protected in respect of what you have done up to the date of issue of the Addendum.

15. [Omitted]

Margin scheme rulings

16. There are three main public rulings dealing with the margin scheme. The following table summarises the major differences between these rulings and may assist the reader is ascertaining which ruling is relevant to their circumstances.

Ruling Number	Description of the contents
GSTR 2000/21[6]	Applies where the real property was acquired or held before 1 July 2000 and was supplied before 1 December 2005.
GSTR 2006/7[7]	Applies where the real property was acquired or held before 1 July 2000 and was supplied on or after 1 December 2005.
GSTR 2006/8[8]	Applies where the real property that was supplied was acquired on or after 1 July 2000.

Background

17. If you make a taxable supply of real property, the GST payable under the basic rule in section 9-70 is 1/11th of the price.[9] However, under subsection 75-5(1), if you make a taxable supply of real property by:

- selling a freehold interest in land;
- selling a stratum unit; or

[6] Goods and services tax: the margin scheme for supplies of real property held prior to 1 July 2000.
[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.
[8] Goods and services tax: the margin scheme for supplies of real property acquired on or after 1 July 2000.
[9] Sections 9-70 and 9-75.

- granting or selling a long-term lease,

you may apply the margin scheme, if you and the recipient have agreed in writing that the margin scheme is to apply.[10]

18. Under the margin scheme, the GST payable on the supply of real property is 1/11th of the margin for the supply. The margin for the supply is the amount by which the consideration[11] for the supply exceeds the consideration for the acquisition of the real property unless subsection 75-10(3)[12] or section 75-11 applies. Section 75-11 applies to supplies made on or after 17 March 2005.

19. The GST payable under the margin scheme is usually lower than when the GST is worked out under the basic rule in section 9-70. Because of this, the margin scheme is used particularly if the recipient of the supply is not entitled to an input tax credit for the acquisition. The most common example is residential land or residential premises supplied to private owners for their own use or for investment purposes. However, the supplier can calculate GST under the margin scheme for supplies of all types of real property[13] including residential, commercial, retail and industrial property.

20. The Commissioner has previously issued GSTR 2000/21 which explained the *A New Tax System (Goods and Services Tax) Margin Scheme Valuation Requirements Determination (No. 1) 2000* and the *A New Tax System (Goods and Services Tax) Margin Scheme Valuation Requirements Determination (No. 2) 2000*. Additionally, the *A New Tax System (Goods and Services Tax) Margin Scheme Valuation Requirements Determination MSV 2005/1* was made on 11 March 2005.

21. MSV 2005/3 replaces these determinations for supplies of real property made on or after 1 December 2005. GSTR 2000/21 and the legislative determinations attached to the Ruling[14] now only apply to supplies of real property made before 1 December 2005.

21A. MSV 2009/1 replaces MSV 2005/3 for supplies of real property made on or after 1 March 2010. MSV 2005/3 now only applies to taxable supplies of real property made on or after 1 December 2005 and before 1 March 2010.

22. MSV 2005/3 and MSV 2009/1 do not replace MSV 2005/2.

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[10] The requirement for the agreement to be in writing does not apply if the supply falls within subsection 75-5(1) prior to its amendment. Subsection 75-5(1) prior to its amendment is addressed at paragraphs 29 to 34 and 36.

[11] Consideration is inclusive of GST, if any.

[12] Subsection 75-10(3) applies to supplies of real property acquired or held before 1 July 2000.

[13] Provided the supply is a sale of a freehold interest or stratum unit or a grant or sale of a long-term lease and the other requirements of section 75-5 are met.

[14] *A New Tax System (Goods and Services Tax) Margin Scheme Valuation Requirements Determination (No. 1) 2000* and the *A New Tax System (Goods and Services Tax) Margin Scheme Valuation Requirements Determination (No. 2) 2000.*

23. MSV 2005/2 extends the operation of the costs of completion valuation method[15] to supplies made after 1 July 2005, where the contract for the supply was entered into before that date.

Ruling with Explanation

When can you apply the margin scheme?

24. Subsection 75-5(1) deals with applying the margin scheme. It was amended by the 2005 Amendment Act. At the same time, subsection 75-5(1A) was inserted into the GST Act.

25. Subsection 75-5(1A) and the amendment to subsection 75-5(1) apply to supplies that are:

(a) made under contracts entered into on or after 29 June 2005; and

(b) are not made pursuant to rights or options granted before 29 June 2005.

26. In all other circumstances, subsection 75-5(1) prior to its amendment 75-5(1) applies.

Amended subsection 75-5(1) and subsection 75-5(1A)

27. Subsection 75-5(1) provides that you may use the margin scheme if the supplier and the recipient have agreed in writing that the margin scheme is to apply. Subsection 75-5(1A) provides that the agreement must be made on or before making the supply, or within such further period as the Commissioner allows.[16]

28. The decision to allow or not allow a further period within which to make an agreement is a reviewable GST decision under item 51 in the table in subsection 110-50(2) of Schedule 1 to the TAA.

Subsection 75-5(1) prior to amendment by the 2005 Amendment Act

29. Subsection 75-5(1), prior to its amendment, applies to supplies where the contract for the real property was entered into before 29 June 2005[17]. Similarly, if prior to 29 June 2005, the recipient of the supply had a right or option to purchase real property, then when the

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[15] The costs of completion method is explained in detail in GSTR 2000/21.

[16] Guidelines regarding when the Commissioner will consider allowing a further period to make an agreement are set out in Law Administration Practice Statement PS LA 2005/15 which deals with the Commissioner's discretion to extend the time in which the agreement in writing must be made to apply the margin scheme under Division 75 of the GST Act.

[17] The date of Royal Assent of the 2005 Amendment Act.

right or option is exercised, the supply of this property falls within subsection 75-5(1) prior to its amendment.[18]

30. It provides that the supplier 'may choose to apply the margin scheme in working out the amount of GST' if the supplier makes a taxable supply of real property. It does not expressly state when the choice to use the margin scheme needs to be made.

31. However, it is the Commissioner's view that, to be entitled to apply the margin scheme under subsection 75-5(1) prior to its amendment, the supplier must have chosen to apply the margin scheme at or before the time it makes the supply. If the choice is not made by that date, it is the Commissioner's view that it cannot be made at a later date.

32. Support for this view is found in the wording contained in Division 75. For example, the language of subsection 75-20(1) provides that an acquisition is not a creditable acquisition if the supply was a taxable supply under the margin scheme. This suggests that the choice to apply the margin scheme must have been made by the time the taxably supply was made for the supply to be a 'taxable supply under the margin scheme'.

33. Similarly, paragraph 75-25(1)(a) refers to 'a taxable supply of real property under the margin scheme' and subsection 75-30(1) refers to 'a supply of real property under the margin scheme'. These provisions appear to be founded on the assumption that it will be known that the supply is a supply under the margin scheme, which can only be the case if the supplier has chosen to apply the margin scheme by the time the supply is made.

34. However, in limited circumstances, the Commissioner allows GST to be calculated under subsection 75-5(1) prior to its amendment as if the choice to apply the margin scheme had been made by the time the supply is made.[19]

Conditional application of the margin scheme

35. Commonly, contracts specify that there is no GST payable on a supply, but that if the supply is taxable then the GST payable will be calculated under the margin scheme. In these circumstances, the Commissioner accepts that the requirements in paragraph 75-5(1A)(a) have been satisfied.

36. Similarly, where subsection 75-5(1) prior to its amendment applies, the supplier has made a choice to apply the margin scheme before the supply has been made.

[18] Items 9 and 10 of Schedule 6 of the 2005 Amendment Act.
[19] See PS LA 2005/2 (GA): GST and time of choice to apply the margin scheme.

What is the margin for the supply?

37. The margin for the supply is the difference between the consideration for the supply and the consideration[20] for the acquisition of the real property unless subsection 75-10(3) or section 75-11 applies.

Subsection 75-10(3)

38. Subsection 75-10(3) applies if an approved valuation has been made and:

- the circumstances in section 75-11 do not apply; 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:
  - (i) was GST-free under subsection 38-445(1A); and
  - (ii) 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).

39. Under subsection 75-10(3), the margin for the supply is the difference between the consideration for the supply and the amount determined by the approved valuation. In the context of subdivisions, if land that is part of the original broadacres is used for public purposes, such as, roads, parklands or utilities ('lost land'), the valuation of the entire broadacres is apportioned to the total number of subdivided lots, so that the sum of the apportioned amounts equals the valuation for the broadacres (including the 'lost land').

40. When the margin scheme applies to the supply but there is no valuation, or a valuation is not an approved valuation under section 75-35, then the margin for the supply is calculated under subsection 75-10(2), provided section 75-11 does not apply.

Section 75-11

41. Section 75-11 applies if the real property was acquired from:

- a deceased estate and the deceased acquired it before 1 July 2000;[21] or
- an associate.[22]

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[20] Consideration in each case is inclusive of GST, if any.
[21] Section 75-11 also applies where the deceased acquired the property on or after 1 July 2000 – see paragraph 48 to 54 of this Ruling.
[22] Subsections 75-11(1) to (2B) do not apply to real property that you supply, if you acquired it on or before 1 July 2000.

When do you supply or acquire real property?

42. Most legal interests in Torrens title land are created or transferred only upon registration of the relevant instrument.

43. However, because of the practical difficulties of determining precisely when the instrument is registered or lodged for registration, that would arise if a literal interpretation of the law is to be taken, the Commissioner considers that Parliament would have intended that, in the context of GST, a less strict approach should apply.

44. For that reason, the Commissioner considers that for the sale of a freehold interest or stratum unit, the supply and the acquisition is made at settlement as this is when the purchaser (or the purchaser's agent) obtains:

- unconditional possession of a registrable instrument of transfer; or
- an instrument of transfer that would be registrable once stamped.

45. If the supply is made by way of sale or grant of a long-term lease, the lease is supplied and acquired when the recipient obtains a leasehold estate in the land. However, if registration of the lease or instrument of transfer is required under the State or Territory legislation applying when the lessee obtains the leasehold interest, the Commissioner considers that the lease is supplied and acquired when the recipient (or the recipient's agent) obtains:

- unconditional possession of a registrable lease or instrument of transfer of the lease; or
- a lease or an instrument of transfer of lease that would be registrable when it is stamped.

Again, as in the case of a sale of a freehold interest or a stratum unit, this is at settlement.

When are you taken to have held or acquired real property for the purposes of subsection 75-10(3)?

45A. The Commissioner considers that the Full Federal Court decision in *Brady King v. Commissioner of Taxation*[22A] (*Brady King*) is authority for the view that, for the purposes of subsection 75-10(3), an entity supplying real property is taken to have held or acquired a sufficient interest in that property at the time it entered into a contract for its acquisition. As such, if the entity entered into the contract before 1 July 2000, the entity may work out its GST liability under the margin scheme by reference to an approved valuation of the real property as at the day specified in subsection 75-10(3), even if settlement of the contract occurred on or after 1 July 2000 (assuming the requirements for application of the margin scheme are satisfied).

[22A] *Brady King Pty Ltd v. Commissioner of Taxation* [2008] FCAFC 118; 2008 ATC 20-034; (2008) 168 FCR 558.

45B. In particular, under the Commissioner's view, if an entity entered into a contract for the acquisition of freehold title to land, out of which stratum units were to be created, the entity is taken, for the purposes of subsection 75-10(3), to have held or acquired a sufficient interest in the stratum units on entering into the contract. Similarly, if an entity entered into a contract for the acquisition of freehold title to land for subdivision, the entity is taken, for the purposes of subsection 75-10(3), to have held or acquired a sufficient interest in the subdivided lots at the time the entity entered into the contract.

45C. However, the Commissioner does not consider that it follows from the *Brady King* decision that a supply or acquisition of the real property itself[22B] occurs at the time of entry into a contract for the sale and purchase of that property. As stated in paragraphs 44 and 45 of this Ruling, the Commissioner considers that the supply or acquisition of the property occurs on settlement of the contract.

45D. In *Brady King*, the Full Court decided that the taxpayer, by holding or acquiring contractual rights as the purchaser under an uncompleted contract of sale, held or acquired a sufficient interest in the relevant real property for the purposes of items 1 and 3 in the table in subsection 75-10(3). The Full Court did not decide that a taxable supply or creditable acquisition of real property is made on entering into a contract for sale and purchase. Such a conclusion would be contrary to the High Court judgment in *Commissioner of Taxation v. Reliance Carpet Co Pty Limited.*[22C] It is clear from that judgment that, in the case of a completed contract for the sale of real property, there is only a single taxable supply which occurs at settlement of the contract.

45E. The comments of Greenwood J in *Aurora Developments Pty Ltd v Commissioner of Taxation*[22D] (*Aurora Developments*) provide further support for the Commissioner's view that the *Brady King* decision is not relevant in determining the time at which the supply or acquisition of the real property itself occurs. In *Aurora Developments*, Greenwood J considered the expression 'the day of the supply' as it appears in subsection 38-325(2) in the context of a contract involving the supply of land. Greenwood J concluded, taking into account the circumstances of the case, that 'the day of supply' for the purposes of subsection 38-325(2) was the date at which settlement occurred and not, as the applicant had contended, the date at which the contract had been entered into. Relevantly, Greenwood J noted (at paragraph 258):

> [t]he decision of the Full Court in *Brady King Pty Ltd v Federal Commissioner of Taxation* 2008 ATC 20-034; [2008] FCAFC 118; (2008) 168 FCR 558 in relation to the proper construction

[22B] 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.

[22C] *Commissioner of Taxation v. Reliance Carpet Co Pty Limited* [2008] HCA 22 at [42]; (2008) 68 ATR 158; (2008) 2008 ATC 20-028.

[22D] *Aurora Developments Pty Ltd v Commissioner of Taxation* [2011] FCA 232; 2011 ATC 20-250.

to be adopted concerning s 75-10 of the GST Act does not assist in the determination of the construction of s 38-325(2).

How is the margin calculated?

46. Unless subsection 75-10(3) or section 75-11 apply, the margin for the supply is calculated under subsection 75-10(2). Under subsection 75-10(2) the margin for the supply is the amount by which the consideration for the supply exceeds the consideration for its acquisition. The consideration for the acquisition is discussed in detail at paragraphs 48 to 68 in GSTR 2006/8.

47. 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. Subsection 75-10(3) applies if an approved valuation has been made and:

(a) the circumstances in section 75-11 do not apply; and

(b) you acquired (or in some cases held) the real property before 1 July 2000; or

(c) you acquired the real property on or after 1 July 2000, but the supply to you:

  (i) was GST-free under subsection 38-445(1A); and

  (ii) was 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 of the table in subsection 75-10(3).

Margin for the supply of real property acquired from a deceased estate

48. Subsections 75-11(3) and (4) address how the margin scheme applies when you supply real property that you acquired by inheriting it. Section 195-1 specifies the manner in which real property can be inherited. It states that you inherit a freehold interest in land, a stratum unit or a long-term lease if you become an owner of the interest, unit or lease:

(a) under the will of a deceased person, or that will as varied by a court order; or

(b) by operation of an intestacy law, or such a law as varied by a court order; or

(c) because it is appropriated to you by the legal personal representative of a deceased person in satisfaction of a pecuniary legacy or some other interest or share in the deceased person's estate; or

(d) under a deed of arrangement if:

(i) you entered into the deed to settle a claim to participate in the distribution of the deceased person's estate; and

(ii) any consideration given by you for the interest, unit or lease consisted only of the variation or waiver of a claim to one or more other assets that formed part of the estate.

49. Subsection 75-11(3) applies if the deceased acquired the real property before 1 July 2000, while subsection 75-11(4) applies if the deceased acquired the property on or after that date.[23] Both these subsections only apply if subsections 75-11(1) to (2B) do not apply (GST groups and GST joint ventures).

50. If you supply real property that you inherit, and the deceased acquired it before 1 July 2000, then paragraph 75-11(3)(ca) allows you to choose to use the consideration for the deceased's acquisition of the real property when calculating the margin for the supply. However, paragraph 75-11(3)(ca) can only apply if:

- you know the amount of the consideration for the deceased's acquisition of the property; and
- you choose to use this amount when calculating the margin for the supply.

51. Under paragraph 75-11(3)(ca) the margin for the supply is the amount by which consideration for the supply you make exceeds the consideration for the deceased's acquisition of the property.

52. If you do not know the consideration for the deceased's acquisition of the real property, or you do not choose to calculate the margin for the supply under paragraph 75-11(3)(ca), then the margin is calculated under paragraph 75-11(3)(d) or 75-11(3)(e).[24]

Paragraph 75-11(3)(d)

53. Paragraph 75-11(3)(d) applies if, immediately before the time that you inherited the real property, the deceased was neither registered or required to be registered. If paragraph 75-11(3)(d) applies, the margin for the supply is the amount by which the consideration for the supply exceeds an approved valuation of the real property as at the latest of:

- 1 July 2000;
- the day on which you inherited the real property; or
- the first day on which you were registered or required to be registered for GST.

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[23] Subsection 75-11(4) is addressed at paragraphs 102 to 105 of GSTR 2006/8.

[24] Paragraph 75-11(3)(e) does not apply to real property acquired before 1 July 2000. Paragraph 75-11(3)(e) is addressed at paragraph 101 in GSTR 2006/8.

54. It is evident from paragraph 6.29 of the Revised Explanatory Memorandum to the Tax Laws Amendment (2005 Measures No. 2) Bill 2005 that Parliament's intention is that the day on which you inherited the real property will ordinarily be the date of death of the deceased.[25] However, in some circumstances such as where a will is varied by a court order or the beneficiaries of the estate enter into a deed of arrangement, then the day on which you inherited the real property will be the date the court order or deed of arrangement becomes effective.

Margin for the supply of real property acquired from an associate

55. Subsection 75-11(7) deals with the supply of real property that you acquired from an associate.[26] It only applies when the other subsections in section 75-11 do not apply.

56. Paragraph 75-11(7)(c) applies if before 1 July 2000 you acquire real property from an entity who was your associate at the time. When you supply the real property, the margin for the supply under paragraph 75-11(7)(c) is the amount by which the consideration for the supply exceeds an approved valuation of the real property as at 1 July 2000.[27]

57. Subsection 75-11(8) extends the application of subsection 75-11(7) to acquisitions through supplies made by the following:

- a GST branch;
- a non-profit sub-entity; and
- a government entity of a kind referred to in sections 72-95 or 72-100,

in the same way as Subdivision 72-D affects the operation of Division 72.

58. The effect of this is that subsection 75-11(7) applies not only to associates as defined in section 195-1 but also treats the following as if they were associates:

(a) a GST branch of an entity as if it were an associate of:

(i) that entity;

(ii) every other GST branch of that entity; and

(iii) any other associate of that entity;

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[25] Paragraph 6-29 of the Revised Explanatory Memorandum to the Tax Laws Amendment (2005 Measures No. 2) Bill 2005 states that 'in most cases the day on which you inherit property is the date of death of the deceased'.

[26] Under section 195-1, 'associate' is defined as having the meaning given by section 318 of the *Income Tax Assessment Act 1936.*

[27] Paragraph 75-11(7)(d) deals with how the margin scheme applies if you acquire real property on or after 1 July 2000. This is explained at paragraphs 106 to 109 in GSTR 2006/8.

(b) a non-profit sub-entity of an entity as if the non-profit sub-entity were an associate of:

(i) that entity;

(ii) every other non-profit sub-entity of that entity; and

(iii) any other associate of that entity;

(c) a government entity that is:

(i) a Department of State of the Commonwealth;

(ii) a Department of the Parliament;

(iii) an Executive Agency, or Statutory Agency, within the meaning of the *Public Service Act 1999;* or

(iv) an organisation, established by the Commonwealth, of a kind referred to in paragraph (e) of the definition of government entity in section 41 of the *A New Tax System (Australian Business Number) Act 1999,*

as if the government entity were an associate of the Commonwealth, of every other government entity of a kind referred to in paragraph (i), (ii), (iii) or (iv) and of any other associate of the Commonwealth.

Consideration for the supply and settlement adjustments

59. The consideration for the supply and the consideration for the acquisition may be either monetary or non-monetary or both. The consideration for the supply or acquisition should take into account adjustments on settlement that are commonly made for rates, land tax and other outgoings. Goods and Services Tax Determination GSTD 2006/3[28] contains a detailed discussion on this topic.

[28] Goods and services tax: are settlement adjustments taken into account to determine the consideration for the supply or acquisition of real property?

Valuation dates

60. Valuations are required to work out the margin for supplies of real property under paragraph 75-10(3)(b) and in particular circumstances, under section 75-11. The table below sets out the valuation dates for the purposes of these provisions.

Section	When valuations may be used	Valuation date
Item 1 of the table in subsection 75-10(3).	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
Item 2 of the table in subsection 75-10(3).	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 on which you applied for registration.
Item 2A of the table in subsection 75-10(3).	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) was 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
	Note: The terms 'Commonwealth, a State or Territory' and 'improvements' are referred to in subsection 38-445(1A) and section 38-450. The meaning of these terms is discussed at paragraphs 89 to 100.	
Item 3 of the table in subsection 75-10(3).	You are registered or required to be registered and have 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
Item 4 of the table in subsection 75-10(3).	The supplier is the Commonwealth, State, or Territory and it 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. Note: The terms 'Commonwealth, a State or Territory' and 'improvements' are discussed at paragraphs 89 to 100.	The day on which the taxable supply takes place.

Paragraph 75-11(3)(d).	You inherited the real property and the deceased had acquired the property before 1 July 2000.	The latest of: (a) 1 July 2000; (b) the day that you inherited the real property; or (c) the first day that you registered or were required to be registered.
Paragraph 75-11(7)(c).	You acquired the real property before 1 July 2000 from an associate, and the other subsections in section 75-11 do not apply.	1 July 2000.

Note:

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

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

Time to make valuations

61. To work out the margin for the supply of real property, you require a valuation as at the valuation date. The valuation process itself does not have to be undertaken on that date.

62. The valuation must be made by the due date for lodgment of the supplier's Activity Statement for the tax period to which the GST on the supply is attributable, unless paragraph 63, 63A or 64 of this Ruling applies.

63. If the Commissioner has allowed a further period under paragraph 75-5(1A)(b) for the supplier and the recipient to agree in writing that the margin scheme is to apply in working out the GST on the supply, under MSV 2005/3, the valuation must be made by the later of:

(i) six weeks from the further period that the Commissioner has allowed under paragraph 75-5(1A)(b); or

(ii) six weeks from the date of the Commissioner's decision to extend the further period under paragraph 75-5(1A)(b).

63A. Under MSV 2009/1, the time by which the valuation must be made has been extended by two weeks in recognition that this is a more realistic timeframe. The valuation must be made by the later of:

(i) eight weeks from the further period that the Commissioner has allowed under paragraph 75-5(1A)(b); or

(ii) eight weeks from the date of the Commissioner's decision to extend the further period under paragraph 75-5(1A)(b).

64. If the valuation is not undertaken within the time periods specified in paragraphs 62 to 63A of this Ruling, the Commissioner may for good reason allow an additional period to obtain a valuation.[29]

65. The time periods mentioned in paragraphs 62 to 64 for obtaining valuations do not affect the date by which the choice or agreement to apply the margin scheme must be made – see paragraphs 27 to 36.

What is the real property that you value?

66. If subsection 75-10(3) or any of the provisions of section 75-11 require you to obtain an approved valuation, the real property that you value is the interest, unit or lease that is in existence at the valuation date. This will not always be the real property that is supplied.

67. Often the real property that is supplied was not in existence at the valuation date. Examples of this are:

- land that is acquired as broadacres and is later subdivided and sold; and
- land on which strata units are built.

68. If the real property that is supplied was not in existence at the valuation date but was, for example, subdivided from the interest that was in existence at that date, the valuation must be made as follows:

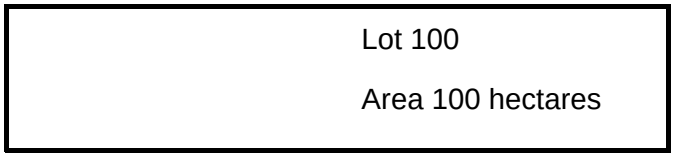
(a) a valuation of the interest, unit or lease in existence at the valuation date is undertaken; and

(b) the valuation of that interest, unit or lease is then apportioned on any fair and reasonable basis, to ascertain the part of the valuation that relates to the interest, unit or lease that you supplied. It is not necessary for the apportionment to be undertaken by a professional valuer if the professional valuation method is used to value the real property.

69. This is diagrammatically represented below:

Lot 3 Area 25 hectares	

[29] Refer to clauses 15 to 17 of MSV 2005/3 and clauses 21 to 23 of MSV 2009/1. Law Administration Practice Statement PS LA 2005/16: Further period to make an approved valuation for the purposes of working out the margin for the supply under Division 75 of the *A New Tax System (Goods and Services Tax) Act 1999* sets out the circumstances when the Commissioner may exercise the discretion contained in the legislative instrument to extend the period for obtaining a valuation.



- At 1 July 2000 Lot 100 with an area of 100 hectares had a market value of $100,000. After 1 July 2000, Lot 100 was subdivided creating Lot 3 with an area of 25 hectares.
- The value of Lot 3 is the proportion of the valuation of the interest you acquired that is in existence as at 1 July 2000, that is, Lot 100. In the context of the diagram above, this proportion is $25,000 (1/4 of $100,000 on the assumption that the land is of approximately uniform value per square metre).

The requirements as determined by the Commissioner in MSV 2005/3 and MSV 2009/1 for making valuations

70. MSV 2005/3 and MSV 2009/1 set out the requirements as determined by the Commissioner for the following valuation methods:

(a) a valuation by a professional valuer (Method 1);[30]

(b) a valuation based on the consideration provided by a purchaser (that is, received by the supplier) under the contract of sale (Method 2); and

(c) a State or a Territory Government department valuation (Method 3).

70A. MSV 2009/1 also sets out the requirements as determined by the Commissioner for valuations obtained by the Commissioner in certain circumstances (Method 4).

70B. The requirements for each of these valuation methods are discussed in paragraphs 73 to 82J of this Ruling. Paragraphs 82A to 82J of this Ruling explain the circumstances in which the Commissioner may obtain a valuation for the purposes of subsection 75-10(3).

71. Under subsection 75-35(2), a valuation made in accordance with the requirements in MSV 2005/3 or MSV 2009/1 is an approved valuation.

72. If you have obtained a valuation in accordance with either *A New Tax System (Goods and Services Tax) Margin Scheme Valuation Requirements Determination (No. 1) 2000* or the *A New Tax System (Goods and Services Tax) Margin Scheme Valuation*

[30] If subsection 75-10(3A) applies, the determination provides that the valuation must be a valuation of the market value of the real property determined by a professional valuer as if there are no improvements on the real property on the valuation date. Goods and Services Tax Ruling GSTR 2006/6 discusses the meaning of 'improvements on the land'.

Requirements Determination (No. 2) 2000, in respect of a supply to which MSV 2005/3 should have applied, you are not required to obtain a new valuation if your valuation complies with the requirements of MSV 2005/3. It is an approved valuation under subsection 75-35(2).

72A. Similarly, if you have obtained a valuation in accordance with MSV 2005/3, for a supply to which MSV 2009/1 applies, you do not need to obtain a new valuation if your valuation complies with the requirements of MSV 2009/1. The valuation is an approved valuation under subsection 75-35(2).

Method 1: valuation by a professional valuer

72B. The requirements for making valuations under Method 1 are the same under both MSV 2005/3 and MSV 2009/1.

73. For a valuation by a professional valuer to be an approved valuation for the purposes of Division 75, that valuation must be made in accordance with the requirements specified in the determination. Subject to paragraph 74 of this Ruling, the valuation is the market value of the interest, unit or lease that you held at the valuation date (or, if item 2A applies, the interest you acquired on or after 1 July 2000), as determined in writing by a professional valuer, provided it is not contrary to professional standards recognised in Australia.

73A. As explained at paragraph 66 of this Ruling, the real property that is valued is the interest, unit or lease that is in existence at the valuation date. For example, if the subject real property is contaminated as it existed at the date of valuation, its market value is determined on the basis of its contaminated condition at the valuation date and not as adjusted to its remediated condition. The valuation would only take into account the value added by remediation of the property up to the valuation date.

74. If item 4 in the table in paragraph 75-10(3)(b) (item 4) applies and there are improvements on the land when the taxable supply is made, the valuation is to be made as if there were no improvements on the land or premises at 1 July 2000.[31]

75. Item 4 applies if:

- the supply is made by the Commonwealth, a State or a Territory;
- the Commonwealth, a State or a Territory held the interest, unit or lease since before 1 July 2000; and
- at 1 July 2000 there were no improvements on the land or premises in question.

[31] Subsection 75-10(3A).

Professional valuers

76. A professional valuer[32] is:

(a) a person registered or licensed to carry out real 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 who is accredited as a Certified Practising Valuer.

76A. In MSV 2009/1, the definition of a professional valuer also includes:

(a) a member of the Royal Institution of Chartered Surveyors and accredited as a Chartered Valuation Surveyor; and

(b) a member of the Australian Valuers Institute and accredited as a Certified Practising Valuer.[32A]

76B. Although members of the Royal Institution of Chartered Surveyors or Australian Valuers Institute are not specifically referred to in the definition of 'professional valuer' in MSV 2005/3, they would have been covered by the definition in subparagraphs 76A(a) and 76(b) of this Ruling. To make this clear, MSV 2009/1 specifically includes members of these bodies in the definition of 'professional valuer'.

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

78. A supplier may engage a professional valuer to undertake the valuation or accept a valuation made by a professional valuer commissioned by another party, for example, a purchaser.

Documentation that a professional valuer is required to provide

79. The valuation must include a signed certificate which specifies:

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

(b) the applicable valuation date (refer to the table in paragraph 60);

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

(d) the market value of the property at the valuation date;

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[32] Refer to the definition section of MSV 2005/3 at Schedule 1.
[32A] Refer to the definition section of MSV 2009/1 at Schedule 2.

(e) the valuation approach and the valuation calculation; and

(f) name and the qualifications of the valuer.[32B]

Method 2: valuation based on the consideration provided by a purchaser (that is, received by the supplier) under the contract of sale

80. Method 2 is expressed in MSV 2005/3 as 'the consideration provided by the purchaser'. In MSV 2009/1 the wording has been changed to the 'consideration received by the supplier' so that it is immediately clear that this method is not the same as the consideration method under subsection 75-10(2)..

80A. For a valuation based on the sale contract price to be an approved valuation for the purposes of Division 75, that valuation must be made by adopting as the valuation the consideration received by the supplier under the contract of sale of the real property that has been executed or exchanged before the valuation between parties dealing at arm's length.[33]

80B. The method only applies if the contract is executed and exchanged before the valuation date and settlement occurs after that date. In these limited circumstances, the valuation of the interest, unit or lease would be the same as the consideration for the supply of the interest, unit or lease. Under this valuation method, the margin for the supply is nil.

Method 3: State Government or Territory Government department valuation

81. The requirements for this method have been amended in MSV 2009/1.

81A. The requirements under Method 3 in MSV 2005/3 refer to 'the unimproved value, site value, or the capital value of the land' for rating or land tax. In MSV 2009/1, Method 3 does not make reference to 'the unimproved value, site value, or the capital value of the land'. This clarifies that a valuation made by or on behalf of a State or a Territory Government department for rating or land tax purposes is eligible as an approved valuation under Method 3 regardless of how the valuation may be described under the relevant State or Territory legislation.

[32B] The requirements set out under Method 1 in MSV 2005/3 do not specifically require the name of the valuer on the signed certificate, but this requirement is implied.

[33] 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; (1995) 129 ALR 503, *Barnsdall v. FC of T* (1988) 19 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.

81B. For a valuation made by or on behalf of a State or a Territory Government department for rating or land tax purposes to be an approved valuation for the purposes for Division 75, that valuation must be made by adopting as the valuation the most recent valuation of the interest, unit or lease made before the valuation date. The valuation is made by a State or a Territory Government department, or by a professional valuer on behalf of a State or a Territory Government department.

82. The amount that may be adopted as the valuation as at the valuation date is the value shown in a notice of valuation or land tax notice of assessment or other similar document.

Method 4: valuation obtained by the Commissioner in certain circumstances (MSV 2009/1 only)

82A. The requirements under Method 4 apply to valuations obtained by the Commissioner. A valuation can only be obtained by the Commissioner to calculate the margin pursuant to subsection 75-10(3) *if all* of the following circumstances apply:

- for the purposes of calculating the margin under subsection 75-10(3), the supplier has not produced a valuation to the Commissioner or the valuation produced is not an approved valuation;
- the Commissioner has provided a notification in writing to that effect to the supplier (incorporating, where applicable, the reasons for not accepting the valuation produced is an approved valuation) and advised that the supplier must produce an approved valuation to the Commissioner within eight weeks of that notification;
- the supplier does not produce an approved valuation to the Commissioner within that eight weeks or any extended time which the Commissioner for good reason allowed;
- the margin (in the absence of an approved valuation being produced by the supplier) would be calculated under subsection 75-10(2);
- the margin, if calculated under subsection 75-10(2), would result in GST payable on value added to the real property prior to the commencement of, or entry into, the GST system; and
- the margin, if calculated using a valuation obtained by the Commissioner, would be less than the margin calculated under subsection 75-10(2).

82B. By obtaining an approved valuation in these circumstances the Commissioner is able to ensure that GST is only payable by the supplier on the value added to the real property after the

commencement of, or entry into, the GST system in accordance with the policy intent of Division 75.

82C. By way of background to Method 4, if a supplier has been notified by the Commissioner that its valuation is not an approved valuation and the supplier does not subsequently obtain and produce an approved valuation, the Commissioner would issue an assessment (or an amended assessment) of the relevant amount of GST using the consideration method under subsection 75-10(2).

82D. However, in circumstances involving real property acquired before 1 July 2000, application of the consideration method may result in GST payable on the value added to the real property prior to the commencement of, or entry into, the GST system. This is contrary to the policy intent of Division 75 which is to only tax value added after the commencement of, or entry into, the GST system.

82E. Method 4 therefore provides for the Commissioner to obtain a valuation for the purposes of subsection 75-10(3) in these circumstances to ensure that the policy intent of Division 75 is achieved.

82F. If the Commissioner does not accept that a valuation produced by the supplier is an approved valuation, written notification to that effect is required to be provided to the supplier incorporating reasons for not accepting that valuation. A copy of any valuation critique obtained by the Commissioner would also be provided to the supplier.

82G. For taxable supplies of real property made on or after 1 March 2010, a valuation obtained by the Commissioner is an approved valuation for the purpose of Division 75 if it meets the requirements as determined under one of the three valuation methods (that is, Method 1, 2, or 3) set out in MSV 2009/1 (other than the requirement that the signed certificate must specify the date the valuer provides the valuation to the supplier). Each of these methods is described in paragraphs 72B to 82 of this Ruling.

82H. For taxable supplies of real property made before 1 March 2010, the valuation obtained by the Commissioner must be:

- based on one of the same valuation methods available to the supplier under the margin scheme valuation requirements determination that was in force when the supply was made; and
- made in accordance with the requirements stipulated by that determination (other than the requirements as to when the valuation must be made by and that the signed certificate must specify the date the valuer provides the valuation to the supplier).

82I. If the Commissioner obtains a valuation under Method 4 and uses it to calculate the margin for a taxable supply of real property, the Commissioner will provide a copy of the valuation to the supplier.

82J. While the Commissioner is not required to use the same valuation method used by a supplier, use of a different valuation method is expected to be rare. Further, if circumstances arise where it is considered necessary to use a different valuation method, the Commissioner will inform the supplier in writing of the reasons why it is considered necessary in a particular case to do so, and the supplier is to be given the opportunity to respond.

How to use the professional valuer's method when you have previously used the cost of completion method

83. For supplies made on or after 1 July 2005, you cannot use the cost of completion method to value the interest that you held at the valuation date, except in the limited circumstances covered by MSV 2005/2.[34] Instead, a valuation must be made using either Method 1, 2 or 3.

84. If you use the professional valuer's method for taxable supplies made on or after 1 December 2005 and:

(a) before 1 December 2005 you commenced a development on land that you held at the valuation date;

(b) you had made taxable supplies of real property subdivided from this land before 1 December 2005 and had used the cost of completion valuation method for all of these supplies; and

(c) you make taxable supplies of real property subdivided from this land on or after 1 December 2005,

then a valuation of the entire interest you held at the valuation date must be made in accordance with one of the approved methods. The part of the valuation amount that relates to the supplies that you make on or after 1 December 2005 must be ascertained using any fair and reasonable basis of apportionment.

Example 1: using the professional valuer's method when cost of completion method previously used

85. *James is a property developer who has been registered for GST since 1 July 2000. At 1 July 2000 he held a large tract of broadacre land, which he intended to sell as part of a multi-staged development. At 30 June 2005 he had sold four of the five stages of the development under the margin scheme, and had used the cost of completion method to value the land and used that value to work out the margin for these supplies. The fifth stage of the development will be sold on or after 1 July 2005. To calculate the margin for the supplies for the fifth stage of the development, the value of the entire tract of broadacre land held at 1 July 2000 (the valuation date) must first be ascertained. Then the part of*

[34] MSV 2005/2 extends the operation of the costs of completion valuation method to supplies made after 1 July 2005, where the contract for the supply was entered into before that date.

the valuation that relates to the fifth stage of the development must be determined using any fair and reasonable basis.

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

86. For the purposes of Division 75 the GST inclusive sale price is the GST exclusive price plus the GST payable on the margin. The following example sets out how to calculate the GST inclusive price when initially only the GST exclusive price is known.

Example 2: where the GST exclusive price is known and a valuation as at the valuation date was obtained

87. The GST exclusive price is $96,364. A valuation was obtained for the purposes of the margin scheme as at the valuation date as $60,000. The GST inclusive price is calculated using the formula:

$$\text{GST inclusive price} = \frac{(E - V)}{10} + E$$

Where:

E is the GST exclusive price; and

V is the valuation as at the valuation date.

$$\text{GST inclusive price} = \frac{(\$96{,}364 - \$60{,}000)}{10} + \$96{,}364$$

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

$$\text{The margin for the supply} = \$100{,}000 - \$60{,}000$$

$$= \$40{,}000.$$

88. If the margin for the supply is calculated using the consideration for the acquisition, the same equation is used. However, V in the equation will be the consideration for the acquisition instead of the valuation at the valuation date.

Commonwealth, a State or a Territory

89. Whether a supply is made by the Commonwealth, a State or a Territory is relevant for establishing which item in the table contained in subsection 75-10(3) applies to the supply. The item in the table then establishes the valuation date.

90. If the Commonwealth, State or Territory supplies land on which there are no improvements, the supply is GST-free under subsection 38-445(1) provided the land has not been previously supplied as a GST-free supply under this section.

91. If the land was held before 1 July 2000 and there were improvements on the land as at 1 July 2000, then the Commonwealth, a State or a Territory can choose to apply the margin scheme to calculate the GST payable on the supply. Item 3 in the table in subsection 75-10(3) applies in these circumstances.

However, item 4 in the table in subsection 75-10(3) applies if the land has no improvements as at 1 July 2000 but there are improvements subsequently made to the land before it is supplied. The valuation of the land at the date of supply is undertaken, as if there were no improvements on the land at the date of supply.[35]

92. The Commissioner considers that for the purposes of items 2A and 4 the Commonwealth, a State or a Territory includes a department, agency or organisation of the type referred to in the definition of 'government entity' in section 195-1. For more information on the terms Commonwealth, a State or a Territory, see Goods and Services Tax Ruling GSTR 2006/5.[36]

Supplies between Commonwealth, State or Territory entities

93. A supply between two Commonwealth, State or Territory departments or other government entities is a taxable supply if the requirements in section 9-5 (other than paragraph 9-5(b)) are satisfied.[37] That is so even if the supplier and recipient entities are each part of the Commonwealth or the same State or Territory.

94. Item 4 of subsection 75-10(3) can apply to a supply by a department or agency of the Commonwealth, a State or a Territory where the real property was vested in that department or agency after 1 July 2000.

95. Goods and Services Tax Determination GSTD 2006/4[38] provides more information about the operation of item 4 of the table in subsection 75-10(3) where real property is vested in Commonwealth, State or Territory entities.

'Land on which there are no improvements' and 'no improvements on the land'

96. The terms 'land on which there are no improvements' and 'no improvements on the land' are relevant to the application of items 2A and 4 in the table in subsection 75-10(3).

97. For item 2A, the relevant day for ascertaining whether there were no improvements on the land is *when it was previously supplied* by the Commonwealth, a State or a Territory under a lease that was GST-free under subsection 38-450(1). For item 4, there must have been no improvements on the land or premises at 1 July 2000.

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[35] Subsection 75-10(3A).
[36] Goods and services tax: meaning of 'Commonwealth, a State or a Territory'.
[37] Sections 149-5 and 149-15 do not require an enterprise to be carried on by a government entity.
[38] Goods and services tax: government entities and the margin scheme – does item 4 in the table in subsection 75-10(3) apply if real property was vested for no consideration in a government department or agency on or after 1 July 2000 but was held by another department or agency of the Commonwealth or the same State or Territory since before 1 July 2000?

98. Numerous cases, including several at the High Court of Australia[39] have taken a broad view of the meaning of the expression, of 'improvements thereon or appertaining to' or similar expressions in the context of land tax and rating statutes, that is, not limiting it to visible structural improvements but taking it to embrace clearing, draining and any other operation on the land that has the effect of enhancing its value.

99. Applying this principle when interpreting the words 'land on which there are no improvements' and 'no improvements on the land' means that the term 'improvements' refers to any improvements through human intervention 'on' the land which have the effect of enhancing its value.

100. For more information on the phrases 'land on which there are no improvements' and 'no improvements on the land' see GSTR 2006/6.[39A]

Can you apply the margin scheme when you make a supply of real property that has separately identifiable taxable and non-taxable (that is, GST-free or input taxed) parts?

101. If a supply of real property is a mixed supply because it has separately identifiable taxable and non-taxable (that is GST-free or input taxed) parts, then the margin scheme can apply to the taxable component. Examples of supplies that may be mixed supplies are:

- a supply of a building that contains areas that are residential premises (the supply of which is input taxed) and commercial premises (the supply of which is a taxable supply); or
- a supply of a building that includes new residential premises (the supply of which is a taxable supply) as well as an area supplied as a GST-free supply of a going concern.

[39] The most commonly cited case seems to be *Morrison and others v. Federal Commissioner of Land Tax* (1914) 17 CLR 498. For a more detailed discussion see *Commonwealth of Australia v. Oldfield* 133 CLR 612, *McGeogh v. Federal Commissioner of Land Tax* (1929) 43 CLR 277. Also *Fisher v. Deputy Federal Commissioner for NSW Land Tax* (1915) 20 CLR 242 and *Keogh v. Deputy Federal Commissioner of Land Tax for NSW* (1915) 20 CLR 258. See also *Ex parte George Thomas* (1881) 2 LR NSW 39, a case concerning compensation for improvements 'upon' the land, an expression that Manning J at 44 took to mean no more than that 'the improvement should not be out of the land', such that ringbarking was an improvement, Martin CJ and Windeyer J reaching the same conclusion.

[39A] Goods and Services Tax Ruling GSTR 2006/6 Goods and services tax: improvements on the land for the purposes of Subdivision 38-N and Division 75.

102. In these circumstances, if the margin for the supply is calculated under subsection 75-10(2), the consideration for the supply and the consideration for the acquisition, are the amounts of the consideration that relate to the taxable component of the supply. You may use any fair and reasonable method of apportionment to ascertain the consideration for the supply and the consideration for the acquisition that relates to the taxable component of the supply.

103. If the margin for the supply is calculated using an approved valuation then the consideration for the supply and the approved valuation are the amounts that relate to the taxable component of the supply.

Approved valuation

104. The table in paragraph 60 specifies when an approved valuation is required to work out the margin for the supply.

105. If an approved valuation is required to work out the margin for the taxable component of a supply, the valuation is to be obtained for the entire real property supplied. The valuation is then apportioned on any fair and reasonable basis to ascertain the part of the valuation that relates to the taxable component of the supply.

Increasing adjustments for supplies made on or after 17 March 2005, where part of the acquisition was ineligible for the margin scheme

Subsection 75-22(1)

106. You may apply the margin scheme to the supply of real property even though you acquired part of the real property through a supply that was ineligible for the margin scheme.[40] An example of this is where a supplier acquires two adjoining properties and one of the properties was acquired as a taxable supply without using the margin scheme, and the other property was acquired as:

- a taxable supply using the margin scheme; or
- an input taxed, GST-free or non taxable supply.[41]

[40] Subsection 75-5(2) precludes a supply from being made under the margin scheme if you acquired the entire freehold interest, stratum unit or a long term lease through a supply that was ineligible for the margin scheme. Subsection 75-5(3) sets out the circumstances in which a supply of real property is ineligible for the margin scheme. Paragraphs 32 to 35 of GSTR 2006/8 contains a discussion on supplies that are ineligible for the margin scheme.

[41] A common example of a non taxable supply is a supply by an entity that is not registered or required to be registered for GST.

107. If you apply the margin scheme in these circumstances, you have an increasing adjustment. The increasing adjustment is an amount equal to the previously attributed input tax credit amount[42] for the acquisition of the land.

108. Subsection 75-22(1) applies to supplies made on or after 17 March 2005 and may apply to:

(a) the subdivision of broadacres; or

(b) construction of stratum units.

Subdivision of broadacres

109. If you acquire adjoining properties, one of which is acquired through a supply that is ineligible for the margin scheme and you subdivide the properties, the margin scheme can be used for the supply of some of the lots created from the subdivision.

110. The margin scheme:

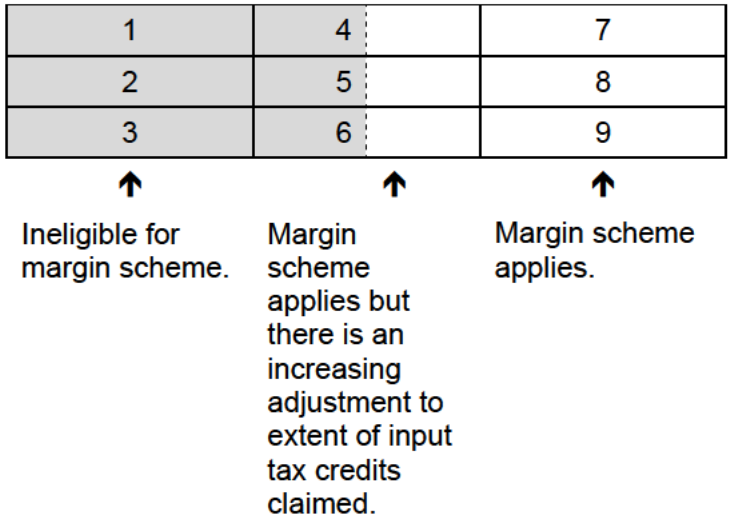
- cannot be applied to the supply of those lots that were derived *entirely* from land that was acquired through a supply that was ineligible for the margin scheme as subsection 75-5(2) applies;
- can be applied to the supply of those lots derived partly from land that was acquired through a supply that was ineligible for the margin scheme as subsection 75-5(2) does not apply. However, you have an increasing adjustment to the extent of the input tax credit entitlement for the acquisition of the land from which these lots were created; and
- can be applied for the supply of those lots that were derived *entirely* from land that was acquired through a supply that was eligible for the margin scheme.

111. This is diagrammatically represented below as:

4.5 hectares acquired by taxable supply without the margin scheme being applied	4.5 hectares acquired before 1 July 2000

[42] Previously attributed input tax credit amount has the meaning given by section 19-75.

- The land is then subdivided into 9 one hectare blocks.



112. In the context of the diagram, the real property that was acquired through a supply that would have been ineligible for the margin scheme is shaded.

113. The margin scheme cannot apply to the supply of Lots 1 to 3 as they were acquired *entirely* through a supply that was ineligible for the margin scheme under subsection 75-5(2). The margin scheme can apply to the supply of Lots 7 to 9 because subsection 75-5(2) does not apply to make the supply of them ineligible. The margin scheme can also apply to the supply of Lots 4 to 6 as the entire interest in each of those lots was not acquired through a supply that was ineligible for the margin scheme. They are therefore not excluded by subsection 75-5(2).

114. If the margin scheme is applied to the supply of Lots 4 to 6, there is an increasing adjustment under subsection 75-22(1). The increasing adjustment for each supply is a proportionate amount of the previously attributed input tax credit amount for the acquisition of the land. You may use any fair and reasonable basis of apportionment in working out the extent of the increasing adjustment.

Stratum unit

115. 'Stratum unit' is defined in section 195-1 as having the meaning given by subsection 124-190(3) of the *Income Tax Assessment Act 1997*. Subsection 124-190(3) defines a stratum unit as '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.' The Commissioner considers that the reference to 'similar title' in the definition of stratum unit includes other arrangements such as group title arrangements.

116. The definition of stratum unit in section 195-1 encompasses a legal arrangement where real property is divided into units or allotments and common property. The common property is usually held by a body corporate as agent for the land owners as tenants in common.

117. For the purpose of the discussion below, the term 'strata title' refers to a strata plan where the boundaries of unit are defined by reference to the structures (for example, walls floors and ceilings). For example, a single building divided into units.

118. In the discussion below the term 'group title' refers to arrangements where the real property is divided into allotments of land and common property. The boundaries are defined by reference to land rather than by reference to building structure.

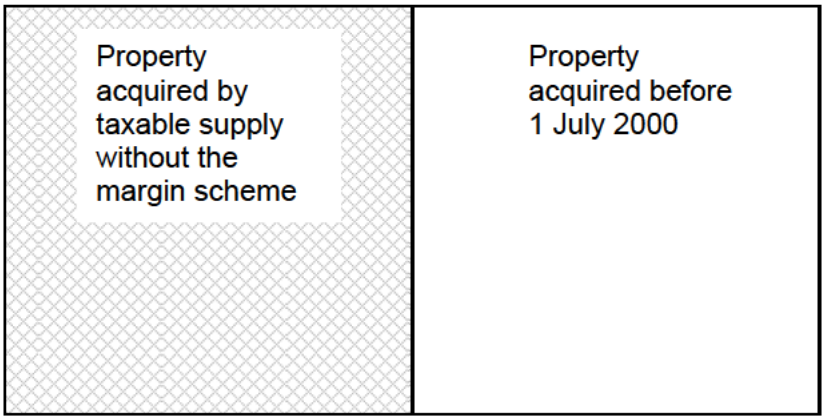
Strata title

119. If you acquire adjoining properties, one of which was acquired through a supply that is ineligible for the margin scheme, and you then construct stratum units on the properties, then ordinarily some part of the common property will be constructed on land that was acquired through:

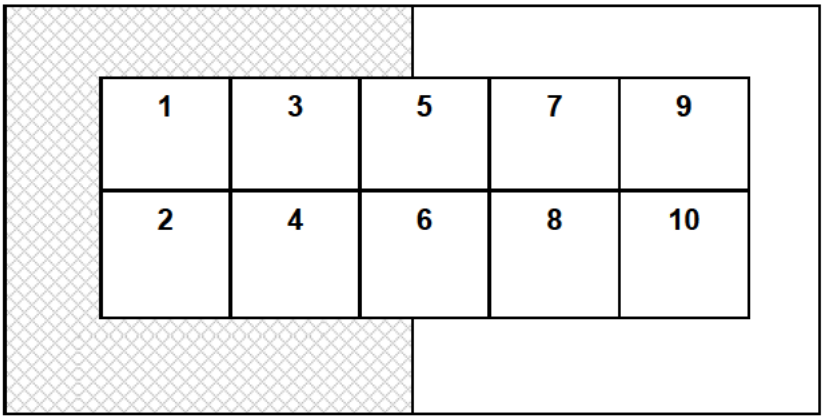
- a supply that is eligible for the margin scheme; and
- a supply that is ineligible for the margin scheme.

120. In these circumstances, all of the stratum units have been partly derived from land that was acquired through a supply that was ineligible for the margin scheme. The supply of these units can be made under the margin scheme as subsection 75-5(2) does not apply. However, because the units were partly acquired through land that was acquired through a supply that was ineligible for the margin scheme you have an increasing adjustment under subsection 75-22(1). The increasing adjustment is the proportionate amount of the input tax credits for the acquisition of the land referable to the supply of each stratum unit.

121. This is diagrammatically represented below as:



- 10 stratum units are then built on the land.



122. The real property that was acquired through a supply that would have been ineligible for the margin scheme is shaded in the diagram.

123. The common property in this example is made up of property that was acquired through a supply that would have been ineligible for the margin scheme as well as property that was eligible for the margin scheme.

124. Therefore, the margin scheme can apply to the supply of all the stratum units as the entire interest in each of the stratum units, including the common property, was not acquired through a supply that was ineligible for the margin scheme. They are therefore not excluded from the margin scheme by subsection 75-5(2).

125. If the margin scheme is applied to the supply of any of the stratum units, there is an increasing adjustment under subsection 75-22(1). The increasing adjustment is equal to the proportion of the input tax credit for the acquisition of the land that relates to the stratum unit supplied. To ascertain the extent of the increasing adjustment, you may use any reasonable basis of apportionment.

Group title

126. The margin scheme can be used in group title arrangements where:

- the allotment and the common property have been entirely derived from land that was acquired through a supply that was eligible for the margin scheme;
- the allotment was derived entirely from land that the margin can apply to but some or all of the common property was derived from land that was acquired through a supply that was ineligible for the margin scheme. In these circumstances, you have an increasing adjustment to the extent of the input tax credit entitlement in respect of the acquisition of the lot; and

- both the allotment and the common property were partly derived from land that was acquired through a supply that was ineligible for the margin scheme. However, in these circumstances, you have an increasing adjustment to the extent of the input tax credit entitlement in respect of the acquisition of the lot.

Subsection 75-22(2)

127. Subsection 75-22(2) applies to supplies made on or after 17 March 2005. Under subsection 75-22(2), you may use the margin scheme if you inherit real property and the deceased acquired part of that property through a supply that was ineligible for the margin scheme. An example of this is where:

- you inherit real property from the deceased;
- the deceased acquired two adjoining properties – one of the properties acquired was acquired through a supply that was ineligible for the margin scheme and the other property was acquired through a supply to which was eligible for the margin scheme; and
- the deceased subdivided the properties, or constructed stratum units on them.

128. If you apply the margin scheme in these circumstances you have an increasing adjustment to the extent of any input tax credits for the acquisition of the land.

129. The increasing adjustment is worked out in the same manner as indicated in paragraphs 114 and 120.

Supplies made on or after 17 March 2005 where the full consideration for the acquisition has not been paid

130. If an entity makes a supply of real property but does not pay the full contract price for the acquisition of that property, section 75-12 applies. It provides that the margin for the supply is worked out as the amount by which the consideration for the supply exceeds the consideration *paid* for the acquisition (which may not be the consideration for the acquisition reflected in the contract). Section 75-12 applies to supplies made on or after 17 March 2005.

Example 3: full consideration not paid

131. *Terry supplies real property to Adam. The consideration for the supply is $770,000. However, Adam only pays Terry $700,000. Adam then sells the property to Wendy for $1,100,000 and uses the margin scheme to calculate the GST payable on the supply. When Adam calculates the margin for the supply, the consideration for the acquisition is the amount he paid Terry ($700,000).*

132. *The margin for the supply is $400,000 ($1,100,000 - $700,000).*

Decreasing adjustment for later payment of consideration

133. If section 75-12 applies, and you later make a further payment of the acquisition consideration, you have a decreasing adjustment under section 75-27. Subsection 75-27(2) applies to supplies made on or after 17 March 2005. It provides that the amount of the decreasing adjustment is equal to 1/11th of the further amount of consideration paid.

Example 4: consideration later paid

134. *Using the facts in the example shown above, if Adam subsequently pays Terry the remaining $70,000, Adam has a decreasing adjustment of $6,364 (1/11 × $70,000).*

Representatives of an incapacitated entity and the application of the margin scheme

134A. A representative of an incapacitated entity[42A], in its capacity as a representative, may make a supply of real property that was acquired by the incapacitated entity. In this circumstance, Division 58, which deals with representatives of incapacitated entities, treats the supply as made by the incapacitated entity.[42B] As a result, the term "you" in Division 75 is, when used to refer to the supplier of real property, taken to mean the incapacitated entity.

134B. If all the requirements for applying the margin scheme under Division 75 are satisfied when the incapacitated entity is taken to make the supply, the representative of the incapacitated entity may apply the margin scheme in respect of the supply. However, providing the requirements for a representative to be liable for GST under section 58-10 are met, it is the representative of the incapacitated entity (and not the incapacitated entity) that will be liable for the GST calculated under the margin scheme..

Entitlement to input tax credits

135. If the GST payable on a supply of real property has been worked out under the margin scheme, the acquisition of the property by the recipient of the supply is not a creditable acquisition. This means that the recipient is not entitled to an input tax credit for the acquisition of the real property.[43]

[42A] The terms 'representative' and 'incapacitated entity' are both defined in section 195-1 of the GST Act. In general, they refer to insolvency practitioners such as liquidators, receivers and administrators, and the entity they are appointed over.
[42B] Section 58-5.
[43] Section 75-20.

Tax invoices

136. A supplier is not required to issue a tax invoice for a taxable supply that is solely a supply of real property under the margin scheme.[44]

Record keeping requirements

137. Section 382-5 of Schedule 1 to the TAA requires you to keep records that record and explain all transactions and other acts that you engage in that are relevant to the supply. You must retain these records for the longest of:

(a) 5 years after the completion of the transactions or acts to which they relate; and

(b) the period of review for any assessment of an assessable amount to which those records, transactions or acts relate; and

(c) if such an assessment has been amended under Subdivision 155-B, the period of 4 years mentioned in paragraph 155-70(2)(a) (which provides for a refreshed period of review) that applies to the latest such amendment.[44A]

138. As well as retaining accounting records documenting the transaction, you must also retain records showing how you have applied the margin scheme. Examples of these records include:

(a) contracts of sale and purchase together with settlement statements; and

(b) details of how you worked out the margin for any supply of real property under the margin scheme.

139. The following records must also be retained, if applicable:

(a) the approved valuation you obtained;

(b) any written request for a further period to obtain an approved valuation and the Tax Office response; and

(c) if an approved valuation is required, documents describing the real property at the valuation date

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[44] Section 75-30.

[44A] For tax periods that start on or after 1 July 2012 an assessment is made when a BAS is lodged. These assessments will have a period of review, and if amended, a refreshed period of review: see sections 155-35 and 155-70 of the TAA. For tax periods that started before 1 July 2012, paragraph 382-5(1)(b) of the TAA formerly read: '(b) retain those records for at least 5 years after the completion of the transactions or acts to which they relate.

(d) the agreement in writing to use the margin scheme;[45] and

(e) the request for a further period in which to agree to use the margin scheme and the Tax Office response.

[45] An agreement in writing is not required if subsection 75-5(1) (as amended by the 2005 Amendment Act) does not apply.

Detailed contents list

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Commissioner of Taxation
26 April 2006

Previous drafts:

GSTR 2005/D3

Related Rulings/Determinations:

TR 2006/10; GSTD 2006/3; GSTD 2006/4; GSTR 2000/21; GSTR 2006/5; GSTR 2006/6; GSTR 2006/8

Subject References:

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

Legislative References:

- ANTS(ABN)A 1999
- ANTS(ABN)A 1999 41
- ANTS(GST)A 1999 9-5
- ANTS(GST)A 1999 9-5(b)
- ANTS(GST)A 1999 9-70
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- ANTS(GST)A 1999 19-75
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- ANTS(GST)A 1999 Subdiv 38-N
- ANTS(GST)A 1999 38-445(1)
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- ANTS(GST)A 1999 Div 58
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- ANTS(GST)A 1999 Subdiv 72-D
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- ANTS(GST)A 1999 75-5(1A)
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- ANTS(GST)A 1999 75-11(2B)
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- ANTS(GST)A 1999 75-30
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- Tax Laws Amendment (2005 Measures No. 2) Act 2005 Sch 6
- Tax Laws Amendment (2008 Measures No. 5) Act 2008

Case References:

- Aurora Developments Pty Ltd v Commissioner of Taxation [2011] FCA 232; 2011 ATC 20-250
- 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
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- Commonwealth of Australia v. Oldfield 133 CLR 612
- Ex parte George Thomas (1881) 2 LR NSW 39
- Fisher v. Deputy Federal Commissioner for NSW Land Tax (1915) 20 CLR 242
- Granby v. FC of T (1995) 30 ATR 400; 95 ATC 4240; (1995) 129 ALR 503
- Keogh v. Deputy Federal Commissioner of Land Tax for NSW (1915) 20 CLR 258
- McGeogh v. Federal Commissioner of Land Tax (1929) 43 CLR 277
- Morrison and others v. Federal Commissioner of Land Tax (1914) 17 CLR 498
- The Trustee of the Estate of the Late AW Furse No. 5 Will Trust (1990) 21 ATR 1123; 91 ATC 4007

Other References:

- A New Tax System (Goods and Services Tax) Margin Scheme Valuation Requirements Determination (No. 1) 2000
- A New Tax System (Goods and Services Tax) Margin Scheme Valuation Requirements Determination (No. 2) 2000
- A New Tax System (Goods and Services Tax) Margin Scheme Valuation Requirements Determination MSV 2005/1
- A New Tax System (Goods and Services Tax) Margin Scheme Valuation Requirements Determination MSV 2005/2
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- A New Tax System (Goods and Services Tax) Margin Scheme Valuation Requirements Determination MSV 2009/1
- Explanatory Memorandum to the A New Tax System (Goods and Services Tax) Bill 1998
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- Revised Explanatory Memorandum to the Tax Laws Amendment (2005 Measures No. 2) Bill 2005

ATO references

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Schedule 1

A New Tax System (Goods and Services Tax) Margin Scheme Valuation Requirements Determination MSV 2005/3

I, Neil Edward Mann, make the following determination under subsection 75-35(1) of the *A New Tax System (Goods and Services Tax) Act 1999* ('the GST Act').

Citation

1. This determination may be cited as the *A New Tax System* (*Goods and Services Tax*) *Margin Scheme Valuation Requirements Determination* MSV *2005/3*.

Commencement

2. This determination commences on 1 December 2005.

Application of this Determination

3. This determination specifies the requirements for making valuations for calculating the margin for taxable supplies of real property made on or after 1 December 2005 for the purposes of Division 75 of the GST Act.

4. The *A New Tax System* (*Goods and Services Tax*) *Margin Scheme Valuation Requirements Determination* (*No. 1) 2000*, the *A New Tax System* (*Goods and Services Tax*) *Margin Scheme Valuation Requirements Determination* (*No. 2) 2000* and the *A New Tax System* (*Goods and Services Tax*) *Margin Scheme Valuation Requirements Determination* MSV 2005/1 continue to apply for supplies made before 1 December 2005, but do not apply to supplies made on or after 1 December 2005. The *A New Tax System (Goods and Services Tax) Margin Scheme Valuation Requirements Determination MSV 2* continues to apply in the circumstances specified in that determination.

What is the freehold interest, stratum unit or long-term lease that you value?

5. If the real property supplied is the same interest, unit or lease that existed at the valuation date, the valuation must be of that interest, unit or lease.

6. If the real property that is supplied is not the same interest, unit or lease that existed at the valuation date, but was derived from an interest, unit or lease that was in existence at that date, the valuation must be made as follows:

(a) a valuation of the interest, unit or lease in existence at the valuation date must be made; and

(b) the valuation of that interest, unit or lease must be apportioned on a fair and reasonable basis, to ascertain the part of the valuation that relates to the interest, unit or lease that you supply.

Mixed supplies

7. If you make a supply of an interest, unit or lease that is partly input taxed and partly taxable or partly taxable and partly GST-free (a mixed supply), the valuation must be made as follows:

(a) a valuation of the entire interest, unit or lease in existence at the valuation date must be made; and

(b) the valuation of that interest, unit or lease must be apportioned on a fair and reasonable basis, to ascertain the part of the valuation that relates to that part of the interest, unit or lease that you supply under the margin scheme.

The valuation methods that can be used for the purposes of Division 75

8. A valuation complies with the requirements determined by the Commissioner under subsection 75-35(1) if it is made in accordance with any of the following methods and is made by the time specified in paragraphs 15 and 16 below.

Method 1:

9. A written valuation by a professional valuer determining the market value of the interest, unit or lease at the valuation date. The valuation must be made in a manner that is not contrary to the professional standards recognised in Australia for the making of real property valuations.

10. The valuation must include a signed certificate which specifies:

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

(b) the applicable valuation date;

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

(d) the market value of the property at the valuation date;

(e) the valuation approach and the valuation calculation; and

(f) the qualifications of the valuer.

11. However, if:

(a) the interest, unit or lease has been supplied by the Commonwealth, a State or a Territory; and

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

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

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

the valuation must be a valuation, made in writing by a professional valuer determining the market value of the interest, unit or lease, that is not contrary to professional standards recognised in Australia for the making of real property valuations, as if no improvements had been made at the date of the supply.

Method 2:

12. A valuation made by adopting as the value the consideration provided by a purchaser in a contract for the sale and purchase of the real property executed or exchanged before the valuation date by parties dealing at arm's length.

13. Method 2 is not available 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; and

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

(d) there are improvements on the land or premises in question on the day on which the taxable supply takes place.

Method 3:

14. A valuation made by adopting as the valuation the most recent value as determined before the valuation date by or on behalf of a State Government or a Territory Government department as the unimproved value, the site value, or the capital value of the land, for rating or land tax purposes.

When must the valuation be made?

15. The valuation must be made by the due date for lodgment of the supplier's Activity Statement for the tax period to which the GST on the supply is attributable.

16. However, if the Commissioner has allowed a further period under paragraph 75-5(1A)(b) for the supplier and recipient to agree in writing that the margin scheme is to apply in working out the GST on the supply, the valuation must be made by the later of:

(i) 6 weeks from the further period that the Commissioner has allowed under paragraph 75-5(1A)(b); or

(ii) 6 weeks from the date of the Commissioner's decision to extend the further period under paragraph 75-5(1A)(b).

17. If the valuation is not made within the time periods specified in paragraphs 15 and 16, the Commissioner may for good reason allow an additional period within which a valuation may be made.

Definitions

18. ***Professional valuer*** is defined for the purposes of this determination to mean:

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

(b) a person who carries on a 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.

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

Dated this 7th day of September 2005

Neil Edward Mann
Deputy Commissioner and
Delegate of the Commissioner

Schedule 2

A New Tax System (Goods and Services Tax) Margin Scheme Valuation Requirements Determination MSV 2009/1

I, Shane Reardon, make the following determination under subsection 75-35(1) of the *A New Tax System (Goods and Services Tax) Act 1999* ('the GST Act').

Citation

1. This determination may be cited as the *A New Tax System* (*Goods and Services Tax*) *Margin Scheme Valuation Requirements Determination* MSV *2009/1*.

Commencement

2. This determination commences on 1 March 2010.

Application of this Determination

3. This determination specifies the requirements for making valuations for the purposes of applying the margin scheme in Division 75. The requirements apply to valuations for taxable supplies of real property made on or after 1 March 2010.
4. This determination also specifies requirements for making valuations obtained by the Commissioner for the purposes of applying the margin scheme in specified circumstances. The requirements apply to valuations for taxable supplies of real property made before, and on or after, 1 March 2010.

5. The *A New Tax System (Goods and Services Tax) Margin Scheme Valuation Requirements Determination (No.1) 2000* (F2006B01549), the *A New Tax System (Goods and Services Tax) Margin Scheme Valuation Requirements Determination (No.2) 2000* (F2006B01564), the *A New Tax System (Goods and Services Tax) Margin Scheme Valuation Requirements Determination MSV 2005/1* (F2005L00726) continue to apply to taxable supplies of real property made before 1 December 2005, but do not apply to supplies made on or after 1 December 2005.

6. The *A New Tax System (Goods and Services Tax) Margin Scheme Valuation Requirements Determination MSV 2005/2* (F2005L01808) continues to apply to taxable supplies of real property made after 1 July 2005 under contracts entered into before 1 July 2005.

7. The *A New Tax System (Goods and Services Tax) Margin Scheme Valuation Requirements Determination MSV 2005/3* (F2005L02565) continues to apply to taxable supplies of real property made on or after 1 December 2005, but does not apply to supplies made on or after 1 March 2010.

What is the freehold interest in land, stratum unit or long-term lease that you value?

8. If the real property that you supply by selling a freehold interest in land or selling a stratum unit or granting or selling a long-term lease is the same interest, unit or lease that existed at the valuation date, the valuation must be of that interest, unit or lease.

9. If the real property that you supply is not the same interest, unit or lease that existed at the valuation date, but was derived from an interest, unit or lease that was in existence at that date, the valuation must be made as follows:

   (1) a valuation of the interest, unit or lease in existence at the valuation date must be made; and

   (2) the valuation of that interest, unit or lease must be apportioned on a fair and reasonable basis, to ascertain the part of the valuation that relates to the interest, unit or lease that you supply.

Mixed supplies

10. If you make a supply of an interest, unit or lease that has separately identifiable taxable and non-taxable (that is, GST-free or input taxed) parts, the valuation of that 'mixed supply' must be made as follows:

    (1) a valuation of the entire interest, unit or lease in existence at the valuation date must be made; and

(2) the valuation of that interest, unit or lease must be apportioned on a fair and reasonable basis, to ascertain the part of the valuation that relates to that part of the interest, unit or lease that you supply under the margin scheme (that is, the taxable part of the supply).

The requirements for making valuations as determined by the Commissioner for the purposes of Division 75

11. A valuation of the interest, unit or lease made in accordance with the requirements set out by the Commissioner in this determination is an approved valuation of that interest, unit or lease.

12. The Commissioner has determined the following requirements for making valuations for the purposes of Division 75.

*Method 1: valuation by a *professional valuer*

13. For a valuation by a valuer to be an approved valuation for the purposes of Division 75 that valuation must be made in accordance with the following requirements:

(1) the valuer must be a **professional valuer*;

(2) the valuation must be in writing;

(3) the valuation must determine the market value of the interest, unit or lease at the valuation date;

(4) the valuation must be made in a manner that is not contrary to the professional standards recognised in Australia for the making of real property valuations;

(5) the valuation must include a signed certificate which specifies:

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

(b) the applicable valuation date;

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

(d) the market value of the property at the valuation date;

(e) the valuation approach and the valuation calculation; and

(f) the name and qualifications of the valuer,

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* Defined term, see the Dictionary, at clause 24.

(6) if the interest, unit or lease has been supplied by the Commonwealth, a State or a Territory; and

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

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

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

the valuation must be made as if no improvements had been made at the date of the taxable supply; and

(7) the valuation must be made by the time specified in clauses 21 to 23 below.

Method 2: valuation based on the consideration received by the supplier under the contract of sale

14. For a valuation based on the sale contract price to be an approved valuation for the purposes of Division 75, that valuation must be made in accordance with the following requirements:

(1) the valuation must be made by adopting as the valuation the consideration received under the contract for the sale of the real property that has been executed or exchanged before the valuation date;

(2) the parties to the contract must be dealing at arm's length; and

(3) the valuation must be made by the time specified in clauses 21 to 23 below.

15. Method 2 is not available if:

(1) the interest, unit or lease has been supplied by the Commonwealth, a State or a Territory;

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

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

(4) there are improvements on the land or premises in question on the day on which the taxable supply takes place.

Method 3: State Government or Territory Government department valuation

16. For a valuation based on a valuation made by or on behalf of a State Government or a Territory Government to be an approved valuation for the purposes of Division 75, that valuation must be made in accordance with the following requirements:

    (1) the valuation must be made by adopting as the valuation the most recent valuation of the interest, unit or lease made before the valuation date by or on behalf of a State Government or a Territory Government department for rating or land tax purposes; and

    (2) the valuation must be made by the time specified in clauses 21 to 23 below.

Method 4: valuation obtained by the Commissioner in certain circumstances

17. Method 4 is only applicable if all of the following circumstances apply:

    (1) for the purposes of calculating the margin under subsection 75-10(3), a valuation has not been produced to the Commissioner or the valuation produced is not an approved valuation;

    (2) the Commissioner has provided a notification in writing to that effect to the supplier (incorporating, where applicable, the reasons for not accepting the valuation produced as an approved valuation) and advised that the supplier must produce an approved valuation to the Commissioner within 8 weeks;

    (3) the supplier does not produce an approved valuation to the Commissioner within that 8 weeks or any extended time which the Commissioner may for good reason allow;

    (4) the margin, in the absence of an approved valuation being produced by the supplier, would be calculated under subsection 75-10(2);

    (5) the margin, if calculated under subsection 75-10(2), would result in GST payable on value added to the real property prior to the commencement of, or entry into, the GST system; and

    (6) the margin, if calculated using a valuation obtained by the Commissioner, would be less than the margin calculated under subsection 75-10(2).

18. For taxable supplies of real property made on or after 1 March 2010, any one of the following valuations, if obtained by the Commissioner, is an approved valuation for the purposes of subsection 75-10(3):

    (1) a valuation by a valuer which meets the requirements set out in subclauses 13(1) to (6) under method 1 other than the requirement in subclause 13(5)(c);

    (2) a valuation based on the consideration received by the supplier under a contract of sale which meets the requirements set out in subclauses 14(1) and (2); and where clause 15 does not apply; or

    (3) a valuation based on a valuation made by or on behalf of a State Government or a Territory Government which meets the requirements set out in subclause 16(1).

19. For taxable supplies of real property made before 1 March 2010, a valuation, if obtained by the Commissioner, is an approved valuation for the purposes of subsection 75-10(3) if the valuation is:

    (1) based on one of the same valuation methods available to the taxpayer under the margin scheme valuation requirements determination in force when the supply was made; and

    (2) made in accordance with the requirements determined in the margin scheme valuation requirements determination in force when the supply was made (other than the requirements as to when the valuation must be made and the date the valuation was provided to the supplier).

20. A copy of any approved valuation obtained by the Commissioner and used to calculate the margin is to be provided to the supplier.

When must the valuation under methods 1 to 3 be made?

21. The valuation under methods 1 to 3 must be made by the due date for lodgement of the Business Activity Statement for the tax period to which the GST payable on the taxable supply of the real property is attributable.

22. However, if the Commissioner has allowed a further period under paragraph 75-5(1A)(b) of the GST Act for the supplier and recipient to agree in writing that the margin scheme is to apply in working out the GST on the supply, the valuation must be made by the later of:

    (1) 8 weeks from the end of the further period that the Commissioner has allowed under paragraph 75-5(1A)(b); or

(2) 8 weeks from the date of the Commissioner's decision to extend the further period under paragraph 75-5(1A)(b).

23. If the valuation is not made within the time periods specified in clauses 21 and 22, the Commissioner may for good reason allow an additional period within which a valuation may be made.

Dictionary

24. ***Professional valuer*** means:

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

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

(3) a person who is:

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

(b) a member of the Royal Institution of Chartered Surveyors and accredited as a Chartered Valuation Surveyor; or

(c) a member of the Australian Valuers Institute and accredited as a Certified Practicing Valuer.

25. Other expressions in this determination have the same meaning as in the GST Act.

Dated this 14th day of October 2009



Shane Reardon
Deputy Commissioner of Taxation