GSTR 2009/1 - Goods and services tax: general law partnerships and the margin scheme

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Goods and Services Tax Ruling

Goods and services tax: general law partnerships and the margin scheme

Contents Para

Preamble

This document was published prior to 1 July 2010 and was a public ruling for the purposes of 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 Tax Office 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 in Division 75 of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act) applies to general law partnerships and its partners.

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

3. In particular, this Ruling addresses the following questions:

(a) Can a supply of real property as a capital contribution to a general law partnership in exchange for an interest in the partnership be a supply by way of sale under subsection 75-5(1)?

(b) How is the margin calculated if a general law partnership supplies before 17 March 2005 real property that was acquired from its partners by way of capital contribution?

(c) How is the margin calculated if a general law partnership supplies on or after 17 March 2005 real property that was acquired from its partners by way of capital contribution?

(d) If real property is held by a general law partnership, does a reconstitution of the partnership give rise to a supply or acquisition of the property?

(e) Can a distribution of real property by a general law partnership to a partner as a result of general dissolution[1] be a supply by way of sale for the purposes of subsection 75-5(1)?

(f) How is the margin calculated if a former partner in a general law partnership supplies real property that was acquired as a result of the partnership's general dissolution?

4. This Ruling does not discuss the partitioning of real property.

5. This Ruling does not apply to limited partnerships nor does it apply to tax law partnerships as defined in paragraph 14 of this Ruling.

6. This Ruling should be read, where applicable, together with the following Goods and Services Tax Rulings:

- GSTR 2003/13 Goods and services tax: general law partnerships (as amended with effect from 11 June 2008);
- GSTR 2000/21 Goods and services tax: the margin scheme for supplies of real property held prior to 1 July 2000;
- 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; and
- GSTR 2006/8 Goods and services tax: the margin scheme for supplies of real property acquired on or after 1 July 2000.

Date of effect

7. This Ruling explains the Commissioner's view of the law as it applies both before and after its date of issue.

[1] See paragraphs 128 to 147 of Goods and Services Tax Ruling GSTR 2003/13 Goods and services tax: general law partnerships for a discussion of the term 'general dissolution'.

8. Since the commencement of the GST Act there have been legislative amendments to Division 75. The legislative amendments contained in *Tax Laws Amendment (2005 Measures No. 2) Act 2005* (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[2] 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.

9. The legislative amendments to Division 75 contained in *Tax Laws Amendment (2008 Measures No. 5) Act 2008* (2008 Amendment Act) apply to supplies of real property where the real property was acquired on or after 9 December 2008 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.

10. You can rely upon this Ruling on and from its date of issue for the purposes of section 105-60 of Schedule 1 to the *Taxation Administration Act 1953*.

Background

Partnerships

11. A partnership is defined in section 195-1 of the GST Act by reference to the definition of a partnership in section 995-1 of the *Income Tax Assessment Act 1997* (ITAA 1997). That definition states:

> ***partnership*** means:
>
> (a) an association of persons (other than a company or a limited partnership) carrying on business as partners or in receipt of ordinary income or statutory income jointly; or
>
> (b) a limited partnership.

[2] The date of Royal Assent of the *Tax Laws Amendment (2005 Measures No. 2) Act 2005*.

12. The first limb of paragraph (a) of the definition refers to 'an association of persons carrying on business as partners'. This reflects the general law definition of a partnership.[3] The Commissioner refers to this type of partnership as a general law partnership.

13. The second limb of paragraph (a) of the definition refers to an association of persons that is not in business, but that is nevertheless in receipt of ordinary income or statutory income jointly. The Commissioner refers to this type of partnership as a tax law partnership. This Ruling does not discuss the application of the margin scheme to tax law partnerships.

Partnership an entity separate from its partners

14. The GST Act treats a partnership as an entity separate from its partners.[4] A supply, acquisition or importation made by or on behalf of a partner of a partnership in his or her capacity as a partner is taken to be made by the partnership, and not by that partner or any other partner of the partnership.[5]

Interest in a general law partnership

15. Upon the formation of a general law partnership, a partner acquires an interest in the partnership. If the partner contributes capital to the partnership, the partner also acquires an interest in the capital of the partnership. An interest in the partnership includes a right to a proportion of the surplus after the realisation of the assets and payment of the debts and other liabilities of the partnership. It also includes a partner's entitlement to a share in the capital of the partnership.[6]

16. In this Ruling, unless otherwise stated when reference is made to an interest in the partnership, this includes the partner's interest in the capital of the partnership.

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[3] The general law definition is set out in the Partnership Act of each State and Territory as follows: subsection 7(1) WA; subsection 5(1) Qld; subsection 5(1) Vic; subsection 1(1) SA; subsection 1(1) NSW; subsection 6(1) ACT; subsection 6(1) Tas; subsection 5(1) NT. This definition is adopted from the common law.
[4] Section 184-1.
[5] Subsection 184-5(1).
[6] See GSTR 2003/13 at paragraphs 33 to 35 for a discussion on interests in a partnership.

Partnership property

17. Real property becomes partnership property when the partners make an in kind capital contribution of the property to the partnership, or the real property is acquired by the partners in their capacity as partners in the partnership.[7] An in kind capital contribution of real property by a partner is a supply to the partnership for consideration, being the interest in the capital of the partnership as part of a wider interest in the partnership.[8]

18. A partnership does not have a legal personality separate from its members. This means that a partnership cannot 'hold' the legal interest in real property. The legal interest in real property is normally either held by the partners or held by some of the partners on trust for all the partners.

19. For GST purposes, a transfer of the beneficial (and legal) interest in real property that is partnership property to a partner in its own capacity is taken to be a supply made by the partnership.[9]

20. An *in specie* distribution of partnership property by the partnership to a partner upon general dissolution of the partnership is a supply made in the course of the termination of the partnership enterprise.[10]

Margin scheme

21. If you make a taxable supply of real property, the GST payable under the basic rules is 1/11th of the price.[11] However, if you make a taxable supply of real property under the margin scheme, the GST payable is 1/11th of the margin.

22. Supplies can be made under the margin scheme if:

- the supply is a taxable supply of real property that you make by:
  - (a) selling a freehold interest in land; or
  - (b) selling a stratum unit; or
  - (c) granting or selling a long term lease,

  or alternatively the supply is a taxable supply of the freehold interest in land, ownership of a stratum unit, or long term leasehold interest in real property that you make to an associate with or without consideration,[12]

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[7] In determining whether real property has become partnership property it is necessary to look at the intentions of the partners. This involves an examination of the partnership agreement and any relevant conduct of the partners.
[8] See GSTR 2003/13 at paragraphs 65 to 70 for a discussion on acquisitions by partnership on formation.
[9] Pursuant to paragraph 184-5(1)(a), a supply or acquisition made by or on behalf of a partner in their capacity as a partner of the partnership is taken to be made by the partnership.
[10] See GSTR 2003/13 at paragraph 135 for a discussion on final distributions to partners.
[11] Sections 9-70 and 9-75.
[12] Subject to the application rules set out in paragraph 9 of this Ruling, subsection 75-5(1B) provides that a supply of real property is taken to be a sale for

- the other requirements in subsections 75-5(1) and 75-5(1A) are satisfied; and
- subsection 75-5(2) does not apply.

23. If a supply is made under the margin scheme, the margin for the supply is calculated under either section 75-10 or section 75-11, taking into account section 75-13.[13]

Subsection 75-10(2)

24. Under subsection 75-10(2), the margin for the supply of real property is the amount by which the consideration for the supply exceeds the consideration for its acquisition. Subsection 75-10(2) does not apply if subsection 75-10(3) or section 75-11 applies.

Subsection 75-10(3)

25. If the real property is acquired before 1 July 2000 and the supplier has a valuation of the real property that is in accordance with one of the Commissioner's written determinations[14] then unless section 75-11 applies, the margin for the supply is calculated under subsection 75-10(3).[15] The margin for the supply under subsection 75-10(3) is the amount by which the consideration for the supply exceeds the valuation of the real property at the date specified in the table in subsection 75-10(3).

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the purposes of subsection 75-5(1) whether or not the supply is for consideration. A supply of real property to an associate without consideration may be a taxable supply under subsection 72-5(1) if the associate is not registered or required to be registered or does not acquire the real property solely for a creditable purpose.

[13] In specified circumstances section 75-12 and section 75-15 may also impact on the calculation of the margin. Refer to GSTR 2006/7 at paragraph 130 and GSTR 2006/8 at paragraphs 171 to 173 and paragraph 52 for further explanation of the application of these sections.

[14] 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; A New Tax System (Goods and Services Tax) Margin Scheme Valuation Requirements Determination MSV 2005/3; and *A New Tax System (Goods and Services Tax) Margin Scheme Valuation Requirements Determination MSV 2009/1*.

[15] In limited circumstances, subsection 75-10(3) can also apply where real property was acquired on or after 1 July 2000.

Section 75-11

Subsections 75-11(1) to 75-11(5)

26. Subsections 75-11(1) to 75-11(5) apply in circumstances where an entity supplies real property that was acquired:

- from a fellow member of a GST group (subsections 75-11(1) and 75-11(2));
- from a joint venture operator of a GST joint venture (subsections 75-11(2A) and 75-11(2B));
- from a deceased estate (subsections 75-11(3) and 75-11(4)); and
- as a GST-free going concern or as GST free-farmland (subsection 75-11(5)).

27. There may be circumstances where these subsections will apply in the context of supplies of real property between a partnership and its partners. However the circumstances addressed by subsections 75-11(1) to 75-11(5) do not arise specifically in the context of supplies between a partnership and its partners. The application of these subsections is addressed more generally in GSTR 2006/7 and GSTR 2006/8.

Subsections 75-11(6) and 75-11(7)

28. Subsections 75-11(6) and 75-11(7) apply in circumstances where an entity supplies real property that was acquired from an associate.[16] As a partnership and its partners are associates the application of these subsections arises in the context of this Ruling. Subsection 75-11(7) is subject to the application rules set out in paragraph 8 of this Ruling and only has application to supplies of real property made on or after 17 March 2005. Subsection 75-11(6) is subject to the application rules set out at paragraph 9 of this Ruling and in broad terms will only apply to supplies of real property that were acquired on or after 9 December 2008.[17]

29. Therefore, for supplies made between a partnership and its partners on or after 17 March 2005 the margin for the supply is calculated under either subsection 75-11(6) or subsection 75-11(7), unless any of the other subsections in section 75-11 apply. This is because, for supplies made on or after 17 March 2005, section 75-11 takes precedence over subsections 75-10(2) and (3).

[16] The term 'associate' is defined in section 195-1 of the GST Act by reference to section 318 of the *Income Tax Assessment Act 1936* (ITAA 1936). The definition is very wide. Under the definition, partners in a partnership are associates of each other and the partnership. Associates of a partnership also include spouses and children of a partner of the partnership.

[17] See paragraph 9 of this Ruling for a more detailed explanation of the application rules relating to subsection 75-11(6).

30. Subject to the application rules set out in paragraph 9 of this Ruling, subsection 75-11(6) will apply when, amongst other things, a supply of real property was acquired from an associate for nil consideration. In accordance with the Commissioner's views as set out in paragraphs 59 and 85H to 85P of GSTR 2003/13, a capital contribution of real property by a partner to a partnership and the *in specie* distribution of real property from a partnership to a partner are supplies for consideration. Therefore, subsection 75-11(6) will not impact on the calculation of the margin when a partnership makes an *in specie* distribution of real property to a partner of the partnership.

31. Subsection 75-11(7) may impact on the calculation of the margin when a partnership makes an *in specie* distribution of real property to a partner of the partnership and the partnership acquired the real property by way of a capital contribution from one or more of its partners. Unlike subsection 75-11(6), subsection 75-11(7) will still apply even though the partnership's acquisition of the real property was for consideration. Under subsection 75-11(7) 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 1 July 2000 – if the acquisition was made from the associate before 1 July 2000; or
- the GST inclusive market value of the real property at the time of the acquisition – if the acquisition was made from the associate on or after 1 July 2000.

Section 75-13

32. Section 75-13 applies where, on or after 17 March 2005, real property is supplied under the margin scheme and the supply is to an associate. Section 75-13 treats the consideration for the supply as if it were the same as the GST inclusive market value of the real property at the time of the supply.

Ruling with explanation

33. For simplicity, the examples contained in this Ruling assume that the partnership only has one asset, being the real property. In reality, partnerships (particularly general law partnerships) often have a number of assets.

(a) Can a supply of real property as a capital contribution to a general law partnership in exchange for an interest in the partnership be a supply by way of sale under subsection 75-5(1)?

34. Yes, as long as the interest in real property, whether it is freehold or long-term leasehold, is supplied to the partnership such that it becomes partnership property.

35. The Commissioner accepts that the supply of real property as a capital contribution is a sale and, therefore, accords with the meaning of 'selling' for the purposes of subsection 75-5(1).[18] The margin scheme provisions can be applied to a capital contribution of real property to a general law partnership in exchange for an interest in the partnership.

36. The fact that the real property contributed is a supply for non-monetary consideration (an interest in the partnership)[19] does not preclude the supply from being a sale for the purposes of the margin scheme. For the purposes of the margin scheme, the consideration for the supply and the consideration for the acquisition may be either monetary or non-monetary or both.[20]

37. In *Federal Commissioner of Taxation v. Reliance Carpet Co Pty Ltd*[21] (*Reliance Carpet*) the High Court noted that, under section 9-15 of the GST Act, consideration includes, among other things, any payment 'in connection with' a supply of anything. The High Court in *Reliance Carpet* in analysing the decision of the European Court of Justice in *Société thermale d'Eugénie-les-Bains v. Ministère de l'Économie, des Finances et de l'Industrie*,[22] gave some indication that the connection between consideration and a supply need not be direct, though it did not expand on what the extent of the connection needs to be.[23]

38. For real property transactions 'consideration' may be regarded as anything that 'moves' the transfer. In *Re Navakumar v. Commissioner of State Revenue*[24] Deputy President Macnamara of the Victorian Civil and Administrative Tribunal said:[25]

> Consideration is a very wide concept. In Equity consideration generally denotes something of significant value, at common law something purely nominal such as $1, a peppercorn or a chocolate wrapper may constitute consideration. In revenue law the meaning of consideration is wider still, it is that which 'moves' the conveyance

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[18] For a discussion of the Commissioner's view on the meaning of 'selling' in the context of section 75-5, see Goods and Services Tax Ruling GSTR 2009/2 Goods and services tax: partitioning of land at paragraphs 102 to 110.
[19] See GSTR 2003/13 at paragraph 59.
[20] See GSTR 2006/7 at paragraph 59 and GSTR 2006/8 at paragraph 47.
[21] [2008] HCA 22 at [7].
[22] [2007] 3 CMLR 1003.
[23] [2008] HCA 22 at [30].
[24] [2007] VCAT 476 at [43].
[25] See also comments made by Gleeson CJ and Callinan J in their dissenting judgment in the High Court decision *Chief Commissioner of State Revenue (NSW) v. Dick Smith Electronics Holdings Pty Ltd* (2005) 213 ALR 230 at 235-236 at [22] to [24].

or transfer. See *Archibald Howie Pty Ltd v. Commissioner of Stamp Duties (NSW)* (1948) 77CLR 143, 152 per Dixon J.

39. Also, the fact that the contributing partner has a beneficial interest[26] in the real property that is partnership property does not mean that the real property has not been supplied to the partnership. For GST purposes, a partnership is a separate entity, and the supplies and acquisitions made by partners as partners are treated as supplies or acquisitions made by the partnership.[27]

40. Consistent with this, the Commissioner takes the view that a partnership, through the acts of a partner in the capacity of partner, may enter into transactions with a partner in its own capacity. Thus, when a partnership acquires real property contributed by a partner in its own capacity, the property becomes partnership property.

41. A partner may contribute real property to a partnership upon formation of the partnership or alternatively, during the course of the operation of a partnership.

42. Where a partner contributes real property upon formation of the partnership, the contribution is for consideration equal to the value of the relevant proportion of the initial interest that the partner obtains in the partnership. It is expected that ordinarily the value of this initial interest that the partner obtains in the partnership would be reflected by the value of the property contributed.

43. Where a partner contributes real property to a partnership during the continued operation of the partnership, the contribution is for consideration equal to the increase in the value of the partner's interest in the capital of the partnership. It is expected that ordinarily the relevant increase in the value of the partner's interest in the capital of the partnership would be reflected by the value of the property contributed.

44. In the circumstances described in paragraphs 41 to 43 of this Ruling, the contribution of the real property is a supply for GST purposes and will be a taxable supply if the requirements of section 9-5 are met.[28]

45. Similarly, the partner or partners holding legal title to the real property do so in their capacity as partners of the partnership or on trust for themselves and the other partners. The real property is treated as partnership property as the partnership is taken to have acquired the property.

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[26] See *Canny Gabriel Castle Jackson Advertising Pty Ltd and Anor v. Volume Sales (Finance) Pty Ltd* (1974) 131 CLR 321 at page 327; 3 ALR 409 at page 412.

[27] Sections 184-1 and 184-5(1).

[28] The supply of the real property by the partner will be input taxed under section 40-65 where it consists of residential premises other than new residential premises or commercial residential premises.

46. Where a partner contributes an interest in real property to a partnership, resulting in the partner's capital account in the partnership's accounts being credited with its agreed value, the Commissioner considers that the partner has supplied its interest in the real property to the partnership and that interest in the real property has become partnership property. As stated in Lindley and Banks:[29]

> Once a partner has brought in the asset and been credited with its agreed 'capital' value in the firm's books, the asset as such will cease to be his property and will thereafter belong to the firm.

Example 1: real property becomes partnership property where legal title remains with the contributing partner

47. *Steve, Tony and Garry form a general law partnership to carry on a property development business. Steve and Garry each make a cash contribution of $500,000. It is agreed that Tony will contribute real property that he currently owns to the partnership. The agreed value of the land contributed by Tony is $500,000 and Tony's capital account in the partnership accounts is credited with the agreed value of $500,000.*

48. *With the agreement of the other partners, Tony as a partner in the partnership retains the legal title to the property. The partnership consisting of Steve, Tony and Garry has acquired the real property contributed by Tony. The supply by Tony of the real property to the partnership will be a taxable supply where the requirements of section 9-5 are satisfied and is a sale for the purposes of subsection 75-5(1).*

49. In contrast, where a partner merely permits the partnership to have use of the real property, for example by way of a lease or licence, the land does not become partnership property and the partner will not have supplied its interest in the land by way of sale. Lord Lindley observed that:

> ….it by no means follows that property used by all the partners for partnership purposes is partnership property. For example, the house and land in and upon which partnership business is carried on often belongs to one of the partners only, either subject to a lease to the firm, or without any lease at all.[30]

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[29] Ed RC I'Anson Banks, 1995, *Lindley and Banks on partnership* (Lindley and Banks), 18th edition, Sweet & Maxwell, London at paragraph 17-02.
[30] Ed RC I'Anson Banks, 1995, *Lindley and Banks on partnership* (Lindley and Banks), 18th edition, Sweet & Maxwell, London at paragraph 18 to 33.

Example 2: real property is used by the partnership but is not partnership property

50. *Tania and Alex form a general law partnership to undertake a residential property development business. Tania owns a commercial office block and agrees to allow a suite in the office block to be used by the partnership in its residential property development business.*

51. *The office suite does not become partnership property and Tania's supply, to the partnership, of the right to use the suite in its business is not a supply by way of sale for the purposes of subsection 75-5(1).*

Example 3: capital contribution of a tenant in common interest in real property to a partnership

52. *Steven and Ron had co-owned land, in which they each held a 50% interest, as tenants in common. Steven and Ron decided to develop the land for sale. They formed a general law partnership that they registered for GST.*

53. *Steven and Ron each agreed to contribute their respective interests in the land to the newly formed partnership. The value of the land was $1,200,000 when the partnership was formed. The land was contributed to the partnership and Steven and Ron's capital accounts in the partnership's accounts were credited with an amount of $600,000 each.*

54. *Both Steven's and Ron's contributions of their respective 50% interests in the land to the partnership are taxable supplies where the requirements of section 9-5 are satisfied and are sales for the purposes of subsection 75-5(1).*

55. If a capital contribution of real property by a partner to the partnership is a taxable supply and all the other requirements in section 75-5 are met, the partner may apply the margin scheme in working out the GST on their supply of the real property to the partnership.

(b) How is the margin calculated if a general law partnership supplies before 17 March 2005 real property that was acquired from its partners by way of capital contribution?

56. This depends on whether subsection 75-10(2) or 75-10(3) applies. If subsection 75-10(2) applies, the margin for the supply is the amount by which the consideration for the supply exceeds the consideration for the acquisition.[31]

[31] Subsection 75-10(2) is subject to subsection 75-10(3).

57. If subsection 75-10(3) applies, the margin for the supply is the amount by which the consideration for the supply exceeds a valuation[32] of the interest, unit or lease at the valuation date prescribed in that subsection.

58. In applying subsection 75-10(2), the consideration for the acquisition of the real property by the partnership from the partner is an interest in the partnership (that is, non-monetary consideration). It is the value of that interest in the partnership that will be relevant for determining the consideration for the partnership's acquisition of the real property. The value of this interest in the partnership may be reflected by the value of the real property at the time of its acquisition by the partnership.

Example 4: partnership supplies before 17 March 2005 real property that was acquired from a partner on or after 1 July 2000

59. *On 1 December 1998, Steve inherited a block of land. At the time, the land was valued at $400,000. In August 2001, Steve and his spouse, Karen, decided to develop the land into residential units to sell. They formed a general law partnership that they registered for GST. Steve contributed the land and Karen contributed cash and other assets amounting to $600,000 into the partnership, in exchange for an interest in the partnership. At the time, the land was valued at $600,000 and this was reflected in the capital accounts of the partnership. The contribution of the land Steve made to the partnership is not a taxable supply, as it is not a supply made in the course or furtherance of an enterprise carried on by Steve.*

60. *In March 2002, the partnership sold the new residential premises for $1,821,000 and used the margin scheme to calculate the GST payable.*

61. *Under subsection 75-10(2), the partnership's consideration for the acquisition of the land is $600,000, being the value of the non-monetary consideration provided by the partnership (the interest in the partnership) for the land.*

62. *The margin for the supply is $1,221,000, being the difference between the consideration for the supply ($1,821,000) and the consideration for the acquisition by the partnership ($600,000).*

63. *The GST payable by the partnership on this supply is $111,000, being 1/11th of the margin of $1,221,000.*

[32] This is a reference to a valuation in accordance with the relevant Commissioner's determination.

Example 5: partnership supplies before 17 March 2005 real property that was acquired from a partner before 1 July 2000

64. *On 30 December 1999, Jim and John formed a general law partnership to carry out a land development business. Jim contributed land valued at $300,000 to the partnership while John contributed cash. The contribution of the land is not a taxable supply as it was made available*[33] *before 1 July 2000. In January 2001, the partnership sold the land for $820,000 and used the margin scheme to calculate the GST on the supply.*

65. *As the partnership acquired the land before 1 July 2000, it can calculate the margin for the supply under subsection 75-10(3) if it obtained a valuation of the land that was in accordance with one of the Commissioner's written determinations. The partnership obtained a valuation which states that on 1 July 2000, the market value of the land was $490,000.*

66. *Under subsection 75-10(3), the margin for the supply is $330,000, being the difference between the consideration for the supply and the market value of the land at 1 July 2000 as per the valuation held by the partnership (that is, $820,000 less $490,000).*

67. *The GST payable by the partnership on this supply is $30,000, being 1/11th of $330,000.*

(c) How is the margin calculated if a general law partnership supplies on or after 17 March 2005 real property that was acquired from its partners by way of capital contribution?

68. If, on or after 17 March 2005, the partnership supplies real property under the margin scheme that was acquired from a partner or its partners by way of capital contribution, the margin for the supply is calculated under subsection 75-11(7),[34] unless the other provisions in section 75-11 apply. Subsection 75-11(7) applies because a partnership and its partners are associates.[35]

69. As section 75-11 takes precedence, subsections 75-10(2) and 75-10(3) do not apply.

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[33] Refer to section 6 of *A New Tax System (Goods and Services Tax Transition) Act 1999* ('the GST Transition Act')

[34] Subsection 75-11(6) is not applicable to the calculation of the margin as the acquisition of the real property by the partnership from the partner by way of an in-kind capital contribution is for consideration being the interest in the partnership.

[35] The term 'associate' is defined in section 195-1 of the GST Act by reference to section 318 of the ITAA 1936. The definition is very wide. Under the definition, partners in a partnership are associates of each other and the partnership. Associates of a partnership also include spouses and children of a partner of the partnership.

70. Under subsection 75-11(7) 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 1 July 2000 – if the acquisition was made before 1 July 2000; or
- the GST inclusive market value of the real property at the time of its acquisition – if the acquisition was made on or after 1 July 2000.

Example 6: partnership supplies on or after 17 March 2005 real property that was acquired from a partner as a capital contribution

71. *On 1 December 2002, Graham and Lynette, who were not carrying on an enterprise, purchased a block of land as tenants in common for $400,000, with each having a 50% interest in the property. On 1 August 2004, they formed a general law partnership and contributed the land to the partnership for the purpose of carrying on a business of land development. The contribution of the land to the partnership was not a taxable supply. The partnership was registered for GST. When the land was contributed to the partnership, its GST inclusive market value was $600,000.*

72. *On 1 May 2005, the partnership sold the land to Murray for $710,000 and used the margin scheme to calculate the GST payable.*

73. *When the partnership acquired the land, the partnership and its partners were associates of each other. As the partnership acquired the land from associates and then supplied it on or after 17 March 2005, the margin for the supply is calculated under subsection 75-11(7).*

74. *The margin for the supply is $110,000 being the difference between the consideration for the supply and the GST inclusive market value of the land at the time of acquisition (that is, $710,000 less $600,000).*

75. *The GST payable by the partnership on this supply is $10,000, being 1/11th of the margin of $110,000.*

(d) If real property is held by a general law partnership, does a reconstitution[36] of the partnership give rise to a supply or acquisition of the property?

76. No. A reconstitution of the partnership does not give rise to a supply or acquisition of the real property from one partnership to another partnership because any property held by the partnership prior to its reconstitution is retained by the reconstituted partnership. Therefore, there is no supply to which the margin scheme can apply.

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[36] A reconstitution of a partnership occurs where a change in the partnership does not lead to the winding up of a partnership, but instead the continuing partners and any new partners conduct the business of the partnership without any break in its continuity. See GSTR 2003/13 at paragraphs 148 to 150 and paragraphs 170 to 171 for a discussion on reconstituted partnerships.

Example 7: reconstitution of a general law partnership

77. *Jessica, Lauren, and Sarah formed a general law partnership to carry on a business of land development. In August 2003, it acquired a large piece of land from an unregistered unrelated party for $600,000.*

78. *When the partnership was formed the written partnership agreement included a continuity clause in the event of a change in the membership of the partnership.*

79. *In November 2004, Jessica, Lauren and Sarah invited Thomas into the partnership. At that time the market value of the land was $800,000. The partnership supplied an interest in the partnership to Thomas in exchange for his capital contribution of $200,000.*

80. *When Thomas became a partner, there was no winding up of the original partnership because of the continuity clause in the partnership agreement. The partnership reconstituted, and no supply or acquisition of the land occurred as a result. If the partnership uses the margin scheme when it later sells the land and calculates the margin under subsection 75-10(2), the consideration for the acquisition of the land is $600,000.*

(e) Can a distribution of real property by a general law partnership to a partner as a result of general dissolution be a supply by way of sale for the purposes of subsection 75-5(1)?[37]

81. Yes, as long as the real property is supplied to the partner such that it becomes the property of the partner and is no longer partnership property.

82. The *in specie* distribution of real property by a partnership to a partner is a supply for consideration.[38] The consideration for the supply and the consideration for the acquisition may be either monetary or non-monetary or a combination of both.[39] See GSTR 2003/13 at paragraphs 85H to 85P and paragraphs 135A to 135G for an explanation of the consideration for an *in specie* distribution by a partnership to a partner.

83. If the distribution of the real property to the partner is a taxable supply and all the other requirements in section 75-5 are met, the partnership may apply the margin scheme in working out the GST on the supply.

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[37] The views set out under this sub-heading would equally apply where the distribution occurs during the continuance of the partnership.
[38] Irrespective of whether the supply is for consideration, subject to the application rules in paragraph 8 of this Ruling the supply to the partner would still be a sale for the purpose of the margin scheme pursuant to subsection 75-5(1B).
[39] See GSTR 2006/7 at paragraph 59 and GSTR 2006/8 at paragraph 47. See also paragraphs 35 and 36 of this Ruling for a discussion on consideration.

(f) How is the margin calculated if a former partner in a general law partnership supplies real property that was acquired as a result of the partnership's general dissolution?

84. Depending on when the property was acquired and supplied by the partner, the margin is calculated as follows.

Date partner supplies property	Date partner acquired the property	Calculation of margin
Before 17 March 2005	On or after 1 July 2000	Under subsection 75-10(2). Margin = supply consideration less acquisition consideration (refer to paragraph 25 of this Ruling). The consideration for the acquisition may be monetary, non-monetary or a combination of both. See paragraphs 85H to 85P of GSTR 2003/13 for what that consideration may be.
Before 17 March 2005	Before 1 July 2000	Under subsection 75-10(2) Margin = supply consideration less acquisition (refer to paragraph 25 of this Ruling); or Under subsection 75-10(3). Margin = supply consideration less approved valuation of the real property (refer to paragraph 26 of this Ruling).
On or after 17 March 2005	On or after 1 July 2000	Under subsection 75-11(7)[40] as a partnership and its partners are associates. Margin = supply consideration less the GST inclusive market value of the real property at the time of its acquisition (refer to paragraph 32 of this Ruling).
On or after 17 March 2005	Before 1 July 2000	Under subsection 75-11(7)[41] as a partnership and its partners are associates. Margin = supply consideration less an approved valuation of the real property as at 1 July 2000 (refer to paragraph 32 of this Ruling).

[40] Subsection 75-11(7) will apply to calculate the margin for the supply of the real property unless the other provisions in section 75-11 apply. Refer to paragraphs 26 to 31 of this Ruling.
[41] Subsection 75-11(7) will apply to calculate the margin for the supply of the real property unless the other provisions in section 75-11 apply. Refer to paragraphs 26 to 31 of this Ruling.

Example 8: property acquired by partner upon dissolution on or after 1 July 2000 and subsequently supplied before 17 March 2005

85. *In July 2000, Artie and Bertie who were not registered nor required to be registered for GST, contributed $350,000 each to form a general law partnership to carry on a business of land development. The partnership acquired land for $700,000 in August 2000.*

86. *In December 2001, the land was valued at $1,200,000. Artie decided to retire from the partnership and sold his interest in the partnership to Bertie for $600,000. At that time, Bertie registered for GST as he wanted to carry on the land development business. The partnership was dissolved because of Bertie acquiring Artie's interest in the partnership and Bertie acquired the land as a distribution from the partnership.*

87. *The distribution of the land to Bertie was for consideration being the amount of $1,200,000 debited to his capital account. At the time, the land was valued at $1,200,000 and this was reflected in the capital account of the partnership. The distribution of the land to Bertie was a taxable supply made by the partnership under the margin scheme. The margin for the supply calculated under subsection 75-10(2) was $500,000, being the difference between the consideration for the supply and the consideration for the acquisition by the partnership (that is, $1,200,000 less $700,000). The GST payable by the partnership on this supply was $45,455, being 1/11th of the margin of $500,000.*

88. *In March 2002, Bertie sold the land to Robert for $1,420,000 and applied the margin scheme. Under subsection 75-10(2), Bertie's consideration for the acquisition of the land is $1,200,000. The margin for the supply is $220,000, being the difference between the consideration for the supply and the consideration for the acquisition by Bertie (that is, $1,420,000 less $1,200,000).*

89. *The GST payable is $20,000, being 1/11th of the margin of $220,000.*

Example 9: property acquired upon dissolution before 1 July 2000 and subsequently supplied before 17 March 2005

90. *Jo and Wendy were in a partnership. The partnership property consisted of land for development. On 14 October 1999, Wendy sold her interest in the partnership to Jo resulting in the partnership being dissolved. The land was distributed to Jo.*

91. *Jo registered for GST as from 1 July 2000. She obtained a valuation of the land as at 1 July 2000 that valued the real property at $370,000. The valuation was in accordance with the Commissioner's written determinations. On 15 December 2001, Jo sold the land for $590,000 and used the margin scheme to calculate the GST on the supply.*

92. *Jo calculated the margin for the supply under subsection 75-10(3). The margin is $220,000, being the difference between the consideration for the supply and the valuation (that is, $590,000 less $370,000). The GST payable is $20,000, being 1/11th of the margin of $220,000.*

Example 10: property acquired upon dissolution and subsequently supplied after 17 March 2005

93. *George and Jerry contributed $350,000 each on the formation of a general law partnership. The partnership acquired land in July 2000 for $700,000. In December 2004, the land was valued at $1,200,000. In December 2004, George retired from the partnership and sold his interest in the partnership to Jerry for $600,000.*

94. *At this time Jerry registered for GST as she intended to carry on an enterprise of land development in relation to the real property. The partnership was dissolved and the land was distributed to Jerry. The distribution of the land to Jerry was for consideration being the amount of $1,200,000 debited to her capital account.*

95. *The distribution of the land to Jerry was a taxable supply made by the partnership, which used the margin scheme to calculate the GST payable. The margin for the supply calculated under subsection 75-10(2) was $500,000, being the difference between the consideration for the supply and the consideration for the acquisition by the partnership (that is, $1,200,000 less $700,000). The GST payable by the partnership on this supply was $45,455, being 1/11th of the margin of $500,000.*

96. *In July 2005, Jerry sold the land to Tom for $1,530,000. The sale to Tom was a taxable supply and Jerry used the margin scheme to calculate the GST on the supply.*

97. *As the land was acquired by Jerry from an associate (the partnership), subsection 75-11(7) applies. The margin for the supply is $330,000, being the difference between the consideration for the supply and the GST inclusive market value of the real property at the time of acquisition (that is, $1,530,000 less $1,200,000).*

98. *The GST payable is $30,000, being 1/11th of the margin of $330,000.*

Detailed contents list

99. Below is a detailed contents list for this Goods and Services Tax Ruling:

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8 April 2009

Previous drafts:

GSTR 2008/D2

Related Rulings/Determinations:

GSTR 1999/1; GSTR 2000/21; GSTR 2003/13; GSTR 2006/7; GSTR 2006/8; GSTR 2009/2

Subject references:

- acquisition of real estate
- distribution in-specie
- GST consideration
- GST lease and real property
- GST margin scheme
- GST non-monetary consideration
- GST property and construction
- GST sale of real property
- GST supply
- partnership interests
- partnership restructuring
- partnerships
- real property
- taxable supply

Legislative references:

- ANTS(GSTT) Act 1999 6
- ANTS(GST) Act 1999 9-5
- ANTS(GST) Act 1999 9-15
- ANTS(GST) Act 1999 9-70
- ANTS(GST) Act 1999 9-75
- ANTS(GST) Act 1999 40-65
- ANTS(GST) Act 1999 Div 72
- ANTS(GST) Act 1999 72-5(1)

- ANTS(GST) Act 1999 Div 75
- ANTS(GST) Act 1999 75-5
- ANTS(GST) Act 1999 75-5(1)
- ANTS(GST) Act 1999 75-5(1A)
- ANTS(GST) Act 1999 75-5(1B)
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- Tax Laws Amendment (2005 Measures No. 2) Act 2005
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- Partnership Act Qld 1891 5(1)
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- Archibald Howie Pty Ltd v. Commissioner of Stamp Duties (NSW) (1948) 77 CLR 143; [1948] HCA 28
- Canny Gabriel Castle Jackson Advertising Pty Ltd and Anor v. Volume Sales (Finance) Pty Ltd (1974) 131 CLR 321; 3 ALR 409
- Chief Commissioner of State Revenue (NSW) v. Dick Smith Electronics Holdings Pty Ltd (2005) 213 ALR 230; [2005] HCA 3; 58 ATR 241; 2005 ATC 4052
- Federal Commissioner of Taxation v. Reliance Carpet Co Pty Ltd [2008] HCA 22; (2008) 68 ATR 158; (2008) 2008 ATC 20-028
- Re Navakumar v. Commissioner of State Revenue [2007] VCAT 476; (2007) 66 ATR 186
- Société thermale d'Eugénie-les-Bains v. Ministère de l'Économie, des Finances et de l'Industrie [2007] 3 CMLR 1003

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- A New Tax System (Goods and Services Tax) Margin Scheme Valuation Requirements Determination (No. 1) 2000
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- 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
- A New Tax System (Goods and Services Tax) Margin Scheme Valuation Requirements Determination MSV 2005/3
- A New Tax System (Goods and Services Tax) Margin Scheme Valuation Requirements Determination MSV 2009/1
- Ed RC I'Anson Banks, 1995, Lindley and Banks on partnership (Lindley and Banks), 18th edition, Sweet & Maxwell, London

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