Australian Government
Australian Taxation Office

Instrument ID: 2022/PW/0024

Explanatory Statement

A New Tax System (Goods and Services Tax) Margin Scheme Valuation Requirements Determination 2022

General outline of instrument

1. This instrument is made under subsection 75-35(1) of *A New Tax System (Goods and Services Tax) Act 1999* (GST Act).
2. This determination specifies requirements for making valuations for the purposes of the margin scheme under Division 75 of the GST Act.
3. The instrument is a legislative instrument for the purposes of the *Legislation Act 2003*.
4. Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws) the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.
5. All legislative references in this explanatory statement are to provisions in the GST Act unless otherwise specified.

Date of effect

6. This instrument commences on the day after it is registered on the Federal Register of Legislation.

What is the effect of this instrument

7. A valuation made in accordance with the requirements specified in this determination is an approved valuation under section 75-35. It may be relied on by suppliers calculating the margin scheme for taxable supplies of real property made under paragraph 75-10(3)(b) and where applicable, under section 75-11. It may also be relied on by suppliers calculating an increasing adjustment under section 75-22.
8. The Commissioner may also, in specified circumstances obtain a valuation that is an approved valuation to calculate the margin for taxable supplies of real property under subsection 75-10(3).
9. This instrument also provides transitional arrangements where, despite its repeal, the requirements contained in the *A New Tax System (Goods and Services Tax) Margin Scheme Valuation Requirements Determination 2020* (F2020L00346) continue to apply to valuations a supplier already has at the commencement of this instrument for 3 months. This means that the supplier can continue to use this valuation if they make supplies of the real property up to 3 months after the date of effect of this instrument.
10. This transitional arrangement ensures suppliers do not have additional compliance costs where a valuation compliant with F2020L00346 was obtained before the effect of this instrument and they sell relevant property within 3 months of the commencement of the instrument.

Compliance cost assessment

11. There will be minimal impact for both implementation and ongoing compliance costs. The legislative instrument is minor and machinery in nature

Background

12. Under Division 75 the margin scheme may be applied to work out the GST on certain taxable supplies of real property. The amount of GST on the supply is 1/11th of the margin for the supply.

13. Under subsection 75-10(2), the margin for the supply is the amount by which the consideration for the supply exceeds the consideration for the acquisition of the freehold interest, unit or lease in question.

14. However, subsection 75-10(3) and section 75-11 provide that in certain circumstances the margin for the supply is the amount by which the consideration for the supply exceeds an approved valuation of the relevant freehold interest, stratum unit or long-term lease.

15. Under section 75-35, the Commissioner of Taxation may determine in writing requirements for making valuations for the purposes of Division 75. A valuation made in accordance with the requirements determined by the Commissioner is an approved valuation.

16. This determination specifies requirements for making valuations for the purposes of Division 75. The requirements for making valuations of the kind referred to in this determination as methods 1, 2 and 3 apply to valuations produced by the supplier for the purposes of subsection 75-10(3) and section 75-11. The requirements for valuations referred to in this determination under method 4 apply to valuations obtained by the Commissioner in specified circumstances for the purposes of subsection 75-10(3).

17. This determination has been updated following the decision in *Decleah Investments Pty Ltd and anor as Trustee for the PRS Unit Trust v Commissioner of Taxation* [2021] AATA 4821 (*Decleah*).

18. *Decleah* concerned the calculation of GST payable under the margin scheme and whether valuation on an as is basis using hindsight information is an approved valuation for the purposes of the GST Act. The matter did not address whether the correct market value was used but rather whether the valuation used met the professional standards as an approved valuation.

19. The update is to confirm that the professional standards can change and the ATO expects that all valuations will meet the valuation standards at the time the valuation is made.

Consultation

20. Subsection 17(1) of the *Legislation Act 2003* requires that the Commissioner be satisfied that appropriate and reasonably practicable consultation has been undertaken before he makes a determination.

21. As part of the consultation process, you are invited to comment on the draft determination and its accompanying draft explanatory statement.

Please forward your comments to the contact officer by the due date.

Due date:	12 October 2022
Contact officer:	Ruth Hegney
Email:	Ruth.Hegney@ato.gov.au
Phone:	(08) 9268 6158

Legislative references

A New Tax System (Goods and Services Tax) Act 1999
Acts Interpretation Act 1901
Human Rights (Parliamentary Scrutiny) Act 2011
Legislation Act 2003

Statement of compatibility with Human Rights

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

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This legislative instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011.*

Overview of the legislative instrument

This disallowable legislative instrument provides the acceptable methods for valuing real property so that the supplier can use the GST margin scheme to calculate the amount of GST payable. The margin scheme allows a supplier to calculate the GST payable on the margin for the supply rather than the consideration received for the supply. There will generally be less GST payable on a supply if the margin scheme is used.

Human rights implications

This legislative instrument does not engage any of the applicable rights or freedoms because it provides property developers with the acceptable real property valuation methods to use in calculating their GST liability.

Conclusion

This legislative instrument is compatible with human rights as it does not raise any human rights issues.