GSTD 2006/4 - 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?

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Generated on: 30 November 2026, 04:35:51 AM

Goods and Services Tax Determination

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?

Preamble

*This document is a ruling for the purposes of section 37 of the **Taxation Administration Act 1953**. You can rely on the information presented in this document which provides advice on the operation of the GST system.*

1. Yes, item 4 of the table in subsection 75-10(3) of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act) applies if:

- the supplier is a government department or agency that is part of the Commonwealth or a State or Territory;[1]
- the real property is vested in that government department or agency on or after 1 July 2000;
- another department or agency of the Commonwealth or the same State or Territory, held the real property before 1 July 2000; and
- there were no improvements on the land as at 1 July 2000.

2. If item 4 applies, for the purposes of calculating the margin for the supply under subsection 75-10(3) of the GST Act, the valuation of the interest, unit or lease is made as at the day on which the taxable supply takes place.

[1] The meaning of the term 'the Commonwealth, a State or a Territory' is discussed in Goods and Services Tax Ruling GSTR 2006/5 Goods and services tax: the meaning of 'Commonwealth, a State or a Territory'.

Explanation

3. In some circumstances, real property that was acquired by one government department or agency is vested in another government department or agency. This may occur as part of a transfer of departmental responsibilities.

4. In item 4, the words 'Commonwealth', 'a State' or 'a Territory' are not limited to a specific government entity but encompass all the departments and agencies that fall within the ambit of the term.

5. This means that where real property is held before 1 July 2000 by a government department or agency and on or after 1 July 2000 that property is vested in another department or agency that is part of the Commonwealth or the same State or Territory, the real property has been held by the 'Commonwealth, a State or a Territory' for the entire period.

6. This is consistent with paragraph 6.108 of the Explanatory Memorandum to the A New Tax System (Goods and Services Tax) Bill 1998. That paragraph confirms that, where the Commonwealth, a State or a Territory holds unimproved land at 1 July 2000 which is subsequently improved and sold, GST is to be payable under the margin scheme on the difference between the selling price and the unimproved value of the land at the date of sale.

Example

7. *In August 2001, a State Department of Main Roads had land vested to it from the Department of Primary Industries (DPI). The DPI had held the land since before 1 July 2000. There were no improvements on the land at that date. The Department of Main Roads constructed a road on part of this land and sold the remainder of the land to a developer. As the Department of Main Roads and the DPI are part of the same State, the real property has been held by the State since before 1 July 2000.*

8. *The Department of Main Roads uses the margin scheme and obtains an approved valuation of the land that it sold to the developer. The approved valuation is made at the day of the taxable supply.*

9. *As the circumstances in item 4 of the table in subsection 75-10(3) of the GST Act apply, the Department of Main Roads calculates the margin for the supply under subsection 75-10(3) rather than subsection 75-10(2).*

10. It is important to note that each Government department or agency that is registered for GST is treated as a separate entity carrying on an enterprise (section 149-15 of the GST Act). It follows that if the supply of real property between departments or agencies that are not members of the same GST group is for consideration, the supply is a taxable supply, provided the other requirements in section 9-5 of the GST Act are satisfied. This is so even though the departments or agencies are part of the Commonwealth or the same State or Territory. The margin scheme may apply to this supply. However, if a department or agency that is part of the Commonwealth, State or Territory later supplies the real property to another entity, the margin scheme can only be used if the earlier taxable supply was made under the margin scheme.

Date of Effect

11. This Determination explains our view of the law as it applied from 1 July 2000. You can rely upon this Determination on and from its date of issue for the purposes of section 37 of the *Taxation Administration Act 1953*. Goods and Services Tax Ruling GSTR 1999/1 explains the GST rulings system and our view of when you can rely on our interpretation of the law in GST public and private rulings.

12. If this Determination conflicts with a previous private ruling that you have obtained, this public ruling prevails. However, if you have relied on a private ruling, you are protected in respect of what you have done up to the date of issue of this public ruling. This means that if you have underpaid an amount of GST, you are not liable for the shortfall prior to the date of issue of this later ruling. Similarly, you are not liable to repay an amount overpaid by the Commissioner as a refund.

Commissioner of Taxation
26 April 2006

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

GSTR 1999/1; GSTR 2006/5

Subject references:

- Commonwealth
- government department or agency
- government entities
- real property
- State
- supply
- taxable supply
- Territory
- valuation
- vesting

Legislative references:

- ANTS(GST)A 1999 9-5
- ANTS(GST)A 1999 75-10(2)
- ANTS(GST)A 1999 75-10(3)
- ANTS(GST)A 1999 149-15
- TAA 1953 37

Other references:

- Explanatory Memorandum to the A New Tax System (Goods and Services Tax) Bill 1998

ATO references

NO:	2006/3078
ISSN:	1443-5179
ATOlaw topic:	Goods and Services Tax ~~ Property and construction ~~ margin scheme Goods and Services Tax ~~ Government ~~ other issues