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?

This cover sheet is provided for information only. It does not form part of *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?*

This document has changed over time. This is a consolidated version of the ruling which was published on *31 October 2012*

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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 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.]*

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;

[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'.

- 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.

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

12. [Omitted.]

Commissioner of Taxation
26 April 2006

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 2006/10; 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 Sch 1 Div 358

Other references:

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

ATO references

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