


***Decleah Investments Pty Ltd and anor as Trustee for
the PRS Unit Trust and Commissioner of Taxation -***

Decision impact statement

Decleah Investments Pty Ltd and anor as Trustee for the PRS Unit Trust and Commissioner of Taxation

AAT citation:	[2021] AATA 4821
Venue:	Administrative Appeals Tribunal
Venue reference no:	2016/0200
AAT member name:	Deputy President O'Loughlin
Judgment date:	24 December 2021
Appeals on foot:	No
Decision outcome:	Unfavourable to the Commissioner

Impacted advice

 The ATO is reviewing the impact of this decision on related advice and guidance products.

A New Tax System (Goods and Services Tax) Margin Scheme Valuation Requirements Determination MSV 2020/1

Precis

This Decision impact statement outlines the ATO's response to this case, which concerns the calculation of goods and services tax (GST) payable under the margin scheme and whether a valuation on an 'as-is basis' using hindsight information is an approved valuation for the purposes of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act).

All legislative references in this Decision impact statement are to the GST Act, unless otherwise indicated.

Brief summary of facts

The taxpayer acquired land before the introduction of the GST Act, which came into effect on 1 July 2000. The land was subsequently subdivided and sold under the margin scheme provisions in Division 75. Subsection 75-10(3) provides for the taxpayer to use an approved valuation of the land's market value as at the commencement of GST on 1 July 2000, in order to calculate the margin to which GST applied.

Pursuant to section 75-35, a valuation that is made in accordance with requirements determined by the Commissioner by way of legislative instrument is an approved valuation. The Commissioner had issued 2 determinations that are relevant to this

dispute.¹ A requirement of both determinations is that 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. At issue before the Administrative Appeals Tribunal (Tribunal) was whether the valuation that the taxpayer obtained in 2009 was made in a manner that was not contrary to professional standards recognised in Australia for the making of real property valuations. In the original Tribunal decision², the Tribunal decided that the taxpayer's valuation methodology was flawed, as it used actual and not projected cashflows for the land development and was not made in accordance with professional standards. It therefore did not meet the requirements of the relevant determinations.

On appeal to the Federal Court, Steward J set aside the Tribunal decision and remitted the matter to the Tribunal for rehearing.³ His Honour observed that different valuers may conclude that the same land bears different market values as at the same date but nonetheless each resulting valuation may have been made in a manner not contrary to professional standards.⁴ Each would be an 'approved valuation'. Whether a valuation has been made in a manner contrary to professional standards would, in each case, be a matter to be determined by expert opinion.

His Honour also observed that mere ostensible compliance with professional standards would be unlikely to be a sufficient adherence to the method set out in the relevant determination.⁵ Substantial compliance is required. A valuation that is so unreasonable that no reasonable valuer could have made it could not be an 'approved valuation'. A valuation that applied a standard irrationally, or deployed absurd or fanciful reasoning, would not be one which complied with professional standards. Outside of these extremes, the requirements of the determinations contemplate considerable latitude in the formation of valuers of different opinions about the value of a given interest in land.

Steward J found that the Tribunal had misunderstood the legislative scheme as the mere misapplication of professional standards to given facts may not affect the capacity of a valuation to qualify as an approved valuation.⁶ His Honour concluded that the Tribunal had impermissibly overlooked the evidence of the ATO's valuer, who confirmed that the taxpayer's valuation was not made in a manner contrary to the standards.⁷

¹ *A New Tax System (Goods and Services Tax) Margin Scheme Valuation Requirements Determination MSV 2005/3* as to the taxpayer's land sales before 1 March 2010 and *A New Tax System (Goods and Services Tax) Margin Scheme Valuation Requirements Determination MSV 2009/1* for the taxpayer's land sales thereafter.

² *Decleah Investments Pty Ltd and Anor as Trustee for the PRS Unit Trust and Commissioner of Taxation* [2017] AATA 2418 at [66].

³ *Decleah Investments Pty Ltd and Prince Removal and Storage Pty Ltd as Trustees for the PRS Unit Trust v Commissioner of Taxation (No 2)* [2018] FCA 929.

⁴ *Decleah Investments Pty Ltd and Prince Removal and Storage Pty Ltd as Trustees for the PRS Unit Trust v Commissioner of Taxation* [2018] FCA 717 (*Decleah Investments*) at [12(5)].

⁵ *Decleah Investments* at [12(7)].

⁶ *Decleah Investments* at [19].

⁷ *Decleah Investments* at [27–29].

Issues decided by the Tribunal

The Tribunal found that the:

- taxpayer had provided an approved valuation pursuant to section 75-10(3) when they applied margin scheme⁸ to calculate the GST payable on sales of their property during the tax periods from 1 October 2009 to 30 June 2012; the taxpayer's valuer's valuation was not contrary to professional standards⁹, and
- penalties imposed on Decleah Investments Pty Ltd for the period 1 October 2009 to 30 June 2012 were excessive and consequently reduced to nil.

ATO view of decision

We accept that the relevant enquiry under subsection 75-10(3) is to whether there has been an approved valuation, rather than whether the correct market value has been identified. We also accept that different valuers can adopt different approaches and arrive at different conclusions as to the market value of land on 1 July 2000, without necessarily failing to comply with the professional standards applicable to the relevant valuation exercise.

We acknowledge that ascertaining if a valuation was made in a manner that is not contrary to professional standards for the purposes of subsection 75-10(3) and section 75-35, and the relevant determinations, is a question to be resolved by expert evidence. As we understand it, this decision does not relieve the need for valuations to comply in all respects with legislative requirements and the legal principles applicable to valuations generally.

Implications for impacted advice or guidance

We are reviewing our public advice and guidance products to determine what effect (if any) the decision may have on them.

Comments

We invite you to advise us if you feel this decision has consequences we have not identified. Please forward your comments to the contact officer.

Date issued: 10 November 2022

Contact officer details have been removed as the comments period has expired.

⁸ *Decleah Investments Pty Ltd and anor as Trustee for the PRS Unit Trust and Commissioner of Taxation* [2021] AATA 4821 at [82].

⁹ *Decleah Investments Pty Ltd and anor as Trustee for the PRS Unit Trust and Commissioner of Taxation* [2021] AATA 4821 at [79] and [81].

Legislative references

GST Act
Div 75
75-10(3)
75-35

Case references

Decleah Investments Pty Ltd and Prince Removal and Storage Pty Ltd as Trustees for the PRS Unit Trust v Commissioner of Taxation [2018] FCA 717; 107 ATR 815; 2018 ATC 20-656

Decleah Investments Pty Ltd and Prince Removal and Storage Pty Ltd as Trustees for the PRS Unit Trust v Commissioner of Taxation (No 2) [2018] FCA 929

Other references

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

ATO reference

ISSN: 2653-5424

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