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Australian Government
Australian Taxation Office

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Legislative Instrument

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

I, Ben Kelly, Deputy Commissioner of Taxation, make this determination under subsection 75-35(1) of the *A New Tax System (Goods and Services Tax) Act 1999*.

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1. Name of instrument

This determination is the *A New Tax System (Goods and Services Tax) Margin Scheme Valuation Requirements Determination 2022*.

2. Commencement

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

3. Application

(1) This determination specifies the requirements for making valuations for the purposes of applying the margin scheme in Division 75 of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act).

(2) 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 supplies of real property made up to 3 months after the commencement of this instrument, where the taxpayer has a valuation which complies with the requirements in F2020L00346 on the day that this instrument commences.

4. Requirements for valuations

(1) This determination applies to entities that make taxable supplies of real property and want to apply the margin scheme to calculate their GST liability.

(2) A valuation of an interest, unit or lease made in accordance with one of the methods in this instrument, and any relevant requirements in this instrument, is an approved valuation of that interest, unit or lease for the purposes of Division 75 of the GST Act.

(3) If the real property that you supply by selling a freehold interest in land or selling a stratum unit or granting or selling a long-term lease is the same interest, unit or lease that existed at the valuation date, the valuation must be of that interest, unit or lease.

(4) If the real property that you supply is not the same interest, unit or lease that existed at the valuation date, but was derived from an interest, unit or lease that was in existence at that date, the valuation must be made as follows:

(a) a valuation of the interest, unit or lease in existence at the valuation date must be made; and

(b) the valuation of that interest, unit or lease must be apportioned on a fair and reasonable basis, to ascertain the part of the valuation that relates to the interest, unit or lease that you supply.

(5) If you make a supply of an interest, unit or lease that has separately identifiable taxable and non-taxable (that is, GST-free or input taxed) parts, the valuation of that 'mixed supply' must be made as follows:

(a) a valuation of the entire interest, unit or lease in existence at the valuation date must be made; and

(b) the valuation of that interest, unit or lease must be apportioned on a fair and reasonable basis, to ascertain the part of the valuation that relates to that part of the interest, unit or lease that you supply under the margin scheme (that is, the taxable part of the supply).

5. Method 1: valuation by a *professional valuer

For a valuation by a valuer to be an approved valuation for the purposes of Division 75 of the GST Act, that valuation must be made in accordance with the following requirements:

(a) the valuer must be a **professional valuer*;

(b) the valuation must be in writing;

(c) the valuation must determine the market value of the interest, unit or lease at the valuation date;

(d) the valuation must be made in a manner and in the form that complies with all legal and professional standards recognised in Australia for the making of real property valuations as identified and advised by the valuer's accrediting professional industry body (or bodies) and that are effective at the date of issue of the valuation;

(e) among other things, the valuation report must include:

(i) a full description of the property being valued;

(ii) the applicable valuation date;

(iii) the date the valuer provides the valuation to the supplier;

(iv) the market value of the property at the valuation date;

(v) the valuation approach and the rationale for its selection;

(vi) a full description of methodology, inputs and assumptions used in the valuation approach and the rationale for their selection;

(vii) the conclusions of value and principal reasons for any conclusions reached;

(viii) the valuation calculations;

(ix) the name and the qualifications of the valuer;

(x) the name and effective date of all professional standards recognised in Australia for the making of real property valuations as advised by the valuer's accrediting professional industry body and that were complied with by the valuer; and

(xi) a signed declaration that the valuation has been undertaken in accordance with all the legal and professional standards in Australia for the making of real property valuations, that are effective at the date of issue of the valuation.

(f) if the interest, unit or lease has been supplied by the Commonwealth, a State or a Territory, and

(i) the supplier has held the interest, unit or lease since 1 July 2000;

(ii) there were no improvements on the land or premises in question as at 1 July 2000; and

(iii) there are improvements on the land or premises in question on the day on which the taxable supply takes place;

the valuation must be made as if no improvements had been made at the date of the taxable supply; and

(g) the valuation must be made by the time specified in section 9 of this instrument.

6. Method 2: valuation based on the consideration received by the supplier under the contract of sale

(1) For a valuation based on the sale contract price to be an approved valuation for the purposes of Division 75 of the GST Act it must be made in accordance with the following requirements:

(a) the valuation must be made by adopting as the valuation the consideration received under the contract for the sale of the real property that has been executed or exchanged before the valuation date;

(b) the parties to the contract must be dealing at arm’s length; and

(c) the valuation must be made by the time specified in section 9 of this instrument.

(2) Method 2 is not available if:

(a) the interest, unit or lease has been supplied by the Commonwealth, a State or a Territory;

(b) the supplier has held the interest, unit or lease since before 1 July 2000;

(c) there were no improvements on the land or premises in question as at 1 July 2000; and

(d) there are improvements on the land or premises in question on the day on which the taxable supply takes place.

7. Method 3: State Government or Territory Government department valuation

For a valuation based on a valuation made by or on behalf of a State Government or a Territory Government to be an approved valuation for the purposes of Division 75 of the GST Act, that valuation must be made in accordance with the following requirements:

(a) the valuation must be made by adopting as the valuation the most recent valuation of the interest, unit or lease made before the valuation date by or on behalf of a State Government or a Territory Government department for rating or land tax purposes; and

(b) the valuation must be made by the time specified in section 9 of this instrument.

8. Method 4: valuation obtained by the Commissioner in certain circumstances

(1) Method 4 is only applicable if all of the following circumstances apply:

(a) for the purposes of calculating the margin under subsection 75-10(3) of the GST Act, a valuation has not been produced to the Commissioner or the valuation produced is not an approved valuation;

(b) the Commissioner has provided a notification in writing to the supplier that a valuation or an approved valuation has not been produced (incorporating, where applicable, the reasons for not accepting the valuation produced as an approved valuation) and advised that the supplier must produce an approved valuation to the Commissioner within 8 weeks;

(c) the supplier does not produce an approved valuation to the Commissioner within the 8 weeks or any extended time which the Commissioner may for good reason allow;

(d) the margin, in the absence of an approved valuation being produced by the supplier, would be calculated under subsection 75-10(2) of the GST Act;

(e) the margin, if calculated under subsection 75-10(2) of the GST Act, would result in GST payable on value added to the real property prior to the commencement of, or entry into, the GST system; and

(f) the margin, if calculated using a valuation obtained by the Commissioner, would be less than the margin calculated under subsection 75-10(2) of the GST Act.

(2) If the Commissioner obtains any of the following valuations, the valuation is an approved valuation for the purposes of subsection 75-10(3) of the GST Act:

(a) a valuation by a valuer which meets the requirements set out in paragraphs 5(a) to 5(f) of this instrument under method 1 other than the requirement in paragraph 5(e)(iii) of this instrument;

(b) a valuation based on the consideration received by the supplier under a contract of sale which meets the requirements set out in paragraphs 6(1)(a) and 6(1)(b) of this instrument; and where subsection 6(2) of this instrument does not apply; or

(c) a valuation based on a valuation made by or on behalf of a State Government or a Territory Government which meets the requirements set out in paragraph 7(a) of this instrument.

(3) A copy of any approved valuation obtained by the Commissioner and used to calculate the margin is to be provided to the supplier.

9. Timing requirements for valuations under methods 1, 2 and 3

(1) The valuation under methods 1, 2 and 3 must be made by the due date for lodgment of the Business Activity Statement for the tax period to which the GST payable on the taxable supply of the real property is attributable.

(2) However, if the Commissioner has allowed a further period under paragraph 75-5(1A)(b) of the GST Act for the supplier and recipient to agree in writing that the margin scheme is to apply in working out the GST on the supply, the valuation must be made by the later of:

(a) 8 weeks from the end of the further period that the Commissioner has allowed under paragraph 75-5(1A)(b) of the GST Act; or

(b) 8 weeks from the date of the Commissioner's decision to extend the further period under paragraph 75-5(1A)(b) of the GST Act.

(3) If the valuation is not made within the time periods specified in this instrument, the Commissioner may for good reason allow an additional period within which a valuation may be made.

10. Definitions

(1) ***Professional valuer*** means:

(a) a person registered or licensed to carry out real property valuations under a Commonwealth, a State or a Territory law; or

(b) a person who carries on a business as a valuer in a State or a Territory where that person is not required to be licensed or registered to carry on a business as a valuer; or

(c) a person who is:

(i) a member of the Australian Property Institute and accredited as a Certified Practicing Valuer; or

(ii) a member of the Royal Institution of Chartered Surveyors and accredited as a Chartered Valuation Surveyor; or

(iii) a member of the Australian Valuers Institute and accredited as a Certified Practicing Valuer.

(2) Terms in this determination that are defined in the GST Act have the same meaning as in that Act.

11. Repeal

The instrument that is specified in Schedule 1 to this instrument is repealed.

Schedule 1

A New Tax System (Goods and Services Tax) Margin Scheme Valuation Requirements Determination 2020 (F2020L00346)