# *PS LA 2005/15 - The Commissioner's discretion to extend the time in which the agreement in writing must be made to apply the margin scheme under Division 75 of the A New Tax System (Goods and Services Tax) Act 1999*

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# PS LA 2005/15

# The Commissioner's discretion to extend the time in which the agreement in writing must be made to apply the margin scheme under Division 75 of the *A New Tax System (Goods and Services Tax) Act 1999*

This Practice Statement provides guidance on the circumstances in which the discretion to extend the time in which the agreement to apply the margin scheme should be made.

*This Practice Statement is an internal ATO document and an instruction to ATO staff.*

*Taxpayers can rely on this Practice Statement to provide them with protection from interest and penalties in the following way. If a statement turns out to be incorrect and taxpayers underpay their tax as a result, they will not have to pay a penalty, nor will they have to pay interest on the underpayment provided they reasonably relied on this Practice Statement in good faith. However, even if they do not have to pay a penalty or interest, taxpayers will have to pay the correct amount of tax provided the time limits under the law allow it.*

## 1. What this Practice Statement is about

The Commissioner has the discretion to extend the time in which the agreement in writing must be made to apply the margin scheme.[1] This Practice Statement sets out the circumstances in which this should be done.

## 2. Exercising the discretion

When exercising the discretion, you must consider the circumstances of each case to consider what would be fair and reasonable to all parties.

You should consider the delay in entering into the agreement, the explanation for the delay and any other circumstances, bearing in mind that the discretion exists in order to avoid injustice.

While each case should be considered on its merits, you may exercise the discretion if you are satisfied that:

- all the requirements (other than the agreement being made) to apply the margin scheme are met
- neither the recipient nor the supplier have reported their goods and services tax (GST) obligations based on the margin scheme not applying, and
- there is no arrangement that has the effect of producing an outcome contrary to the policy of the legislation.[2]

It would be inappropriate for you to exercise the discretion where there is an arrangement to avoid GST or otherwise obtain an outcome contrary to the policy of the legislation.

## 3. Approving the exercise of the discretion

Any decision to exercise the discretion must be approved by an Executive Level 1 officer (or above).

## 4. Limit to the discretion in relation to the margin scheme

The discretion only reaches as far as extending the time by which the agreement to apply the margin scheme must be made in writing. It cannot alter the circumstances under which the margin scheme can be applied.

You must be satisfied that all the requirements to apply the margin scheme have been met before you exercise the discretion to extend the timeframe.

## 5. When it may be appropriate to exercise the discretion

The following are examples of cases which may be more common and where it may be appropriate to exercise the discretion:

- the supplier and recipient of the supply agreed to apply the margin scheme, but inadvertently failed to put the agreement in writing by the time the supply is made
- the failure to agree to apply the margin scheme was due to a genuine mistake – for example, the supply was mistakenly believed to be a GST-free supply or the supplier mistakenly

[1] Subsection 75-5(1A) of the *A New Tax System (Goods and Services Tax) Act 1999*.

[2] *Commissioner of Taxation v Asiamet (No. 1) Resources Pty Limited* [2004] FCAFC 73.

considered it was not required to be registered for GST

- the supply was intended to be made to an entity that was entitled to an input tax credit on its acquisition, but instead the supply was made to an entity that was not entitled to an input tax credit – for example, the supply was made to an unregistered entity
- the supply was made without the parties agreeing to apply the margin scheme but the recipient of the supply realises, prior to claiming an input tax credit for its creditable acquisition, that it wishes to apply the margin scheme to a future supply to a third party (which the recipient cannot do if GST on the supply to it is not calculated under the margin scheme).

## 6. Requirements of a request to exercise the discretion

The request for the exercise of the discretion needs to be in writing and made on behalf of the supplier, the recipient or both (jointly).

The request should outline (in sufficient detail for you to make the decision) the delay, why it occurred and any other relevant circumstances.

The request should also confirm, with supporting documentation, that other than the agreement being made in writing, all the requirements to apply the margin scheme are met.

## 7. Notifying your decision

You should advise the applicant in writing of your decision regarding the discretion.

## 8. Taxpayers' review rights

A decision to exercise or not to exercise the discretion to extend the time (including the length of time) in which the agreement to apply the margin scheme should be made is a reviewable GST decision.[3]

Where either the supplier or recipient is dissatisfied with the decision, they can lodge an objection under the provisions of Part IVC of the *Taxation Administration Act 1953*.

## 9. More information

For more information on:

- the margin scheme, see GST and the margin scheme
- allowing further time to make an approved valuation for the purposes of working out the margin for the supply, see Law Administration Practice Statement PS LA 2005/16 *Further period to make an approved valuation for the purposes of working out the margin for the supply under Division 75 of the A New Tax System (Goods and Services Tax) Act 1999.*

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**Business line:** ISP – GST

[3] Under subsection 110-50(2) of Schedule 1 to the *Taxation Administration Act 1953*.

## Amendment history

**24 July 2025**

| Part | Comment |
|---|---|
| Throughout | Content checked for technical currency and accuracy.<br>Updated in line with current ATO style and accessibility requirements. |

**1 June 2018**

| Part | Comment |
|---|---|
| Contact details | Updated. |

**9 July 2015**

| Part | Comment |
|---|---|
| All | Updated to new LAPS format and style. |

**17 April 2014**

| Part | Comment |
|---|---|
| Contact details | Updated. |

**28 July 2011**

| Part | Comment |
|---|---|
| Paragraph 15 | Delegation changed from EL2 to EL1 for sign off on margin scheme cases. |
| Contact details | Updated. |

**15 September 2009**

| Part | Comment |
|---|---|
| Contact details | Updated. |

**6 August 2008**

| Part | Comment |
|---|---|
| Contact details | Updated. |

## References

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|---|---|
| **Legislative references** | ANTS(GST)A 1999 75-5(1A)<br>TAA 1953 Part IVC<br>TAA 1953 Sch 110-50(2) |
| **Case references** | Commissioner of Taxation v Asiamet (No 1) Resources Pty Limited [2004] FCAFC 73; 137 FCR 146; 2004 ATC 4303; 55 ATR 239; [2004] ALMD 4224 |
| **Other references** | GST and the margin scheme |
| **Related practice statements** | PS LA 2005/16 |

## ATO references

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