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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This document has changed over time. This version was published on *12 February 2026*

This practice statement was originally published on 4 October 2005. Versions published from 20 February 2009 are available electronically - refer to the online version of the practice statement. Versions published prior to this date are not available electronically. If needed, these can be requested by emailing TCNLawPublishingandPolicy@ato.gov.au .

Generated on: 28 November 2026, 07:46:09 AM

Australian Government
Australian Taxation Office

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*

This Practice Statement provides guidance on the circumstances that you should consider in determining whether to allow a further period to obtain an approved valuation.

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.

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1. What this Practice Statement is about

Legislative determinations have been made[1] which provide for the requirements for making a 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* (GST Act).

Among other things, these determinations allow for further periods in which the valuations are to be made, if the Commissioner has allowed for that further period under paragraph 75-5(1A)(b) of the GST Act.

However, even if the valuation is not undertaken within the further periods specified in the determinations, you may, if there is good reason, allow an additional period to obtain a valuation.

This Practice Statement sets out the circumstances where you should consider doing this.

All further legislative references in this Practice Statement are to the GST Act, unless otherwise indicated.

2. Circumstances where a further period to obtain an approved valuation should be allowed

In considering whether to exercise the discretion to allow a further period to obtain an approved valuation, you should look at the circumstances of each case to consider what would be fair and reasonable to all the parties, bearing in mind that paragraph 75-5(1A)(b) is a provision aimed at avoiding injustice.[2]

You should consider the length of the delay in obtaining an approved valuation, the explanation for the delay and any other relevant circumstances.

While you need to consider each case on its individual merits, provided there are no other relevant matters, you would generally allow a further period to obtain an approved valuation in the following circumstances:

- a supplier obtained a valuation that is not an approved valuation – for example, a valuation obtained from other than a professional valuer or a valuation obtained from a professional valuer that is contrary to professional standards recognised in Australia
- the parties contracted on the basis that the supply is goods and services tax (GST)-free, input-taxed or otherwise non-taxable, but the supply is a taxable supply
- there has been a genuine mistake – for example, the supplier mistakenly believed that a valuation was not required or had already been obtained
- there has been an inadvertent oversight – for example, where the supplier and recipient agree to use the margin scheme, but the supplier
  - forgot to instruct the valuer, or
  - failed to notice that the valuer had not valued all the lots in a subdivision
- a valuation was not undertaken for reasons outside the control of the parties – for example
  - settlement was close to the end of a tax period and the supplier has taken reasonable steps to obtain a valuation on time, but there was insufficient time to obtain one, or
  - any other reasons outside the control of the parties that a valuation is not undertaken.

[1] Under section 75-35 of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act).

[2] *Brown v Commissioner of Taxation* [1999] FCA 563 at [59]; appeal dismissed in *Commissioner of Taxation v Brown* [1999] FCA 1198.

Importantly, you should not allow a further period to obtain an approved valuation if you consider that the granting of a further period is sought to allow the supplier or the recipient to obtain a benefit that is contrary to the scheme of the GST Act.[3]

3. Who can approve the exercise of the discretion

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

4. How the supplier should request the ATO exercise the discretion

Requests for the discretion to be exercised should be made in writing by the supplier to the ATO.

However, it is not necessary for them to request the exercise of the discretion (unless the issue is raised by us), where:

- the supplier is merely substituting an approved valuation for an invalid valuation, and
- the value determined under the approved valuation does not exceed the amount purportedly determined under the invalid valuation.

5. Notifying your decision

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

If the discretion is exercised, the notification will specify the further time period allowed.

If the discretion is not exercised, you should include the reasons for not doing so in the notification.

6. Review rights for the supplier

A decision not to exercise the discretion to extend the period for obtaining an approved valuation is not a reviewable GST decision.[4]

However, if a taxpayer feels the Commissioner has made a mistake in not exercising the discretion, in the interests of sound administration, we would generally review the decision, as mentioned in the ATO Charter.

A taxpayer may also object under the provisions of Part IVC of the *Taxation Administration Act 1953* against an assessment for the tax period in which the GST on the supply of the property is attributable to, on the basis that the amount of GST assessed is incorrect as a result of the discretion not being exercised.

7. More information

For more information on the valuation process, see:

- Goods and Services Tax Ruling GSTR 2006/7 *Goods and services tax: how the margin scheme applies to a supply of real property made on or after 1 December 2005 that was acquired or held before 1 July 2000*
- Goods and Services Tax Ruling GSTR 2006/8 *Goods and services tax: the margin scheme for supplies of real property acquired on or after 1 July 2000*.

Date issued: 25 February 2010

Date of effect: 1 March 2010

Business line: International, Support and Programs

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

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

Amendment history

12 February 2026

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

9 July 2015

Part	Comment
All	Updated to new LAPS format and style.

30 October 2012

Part	Comment
Related public rulings	Removed.
Contact details	Updated.

21 November 2011

Part	Comment
Contact details	Updated.

28 July 2011

Part	Comment
Paragraph 13	Delegation changed from EL2 to EL1 for sign off on margin scheme cases.

25 February 2010

Part	Comment
Paragraph 2	Added reference to determination MSV 2009/1.
Paragraph 3	Updated to include determination MSV 2009/1.
Paragraph 5	Amended to include 8 week timeframe allowed under determination MSV 2009/1. Updated to include footnote 2 and 3.
Paragraph 14	Updated legislative provision and reference to the Commissioner and Australian Tax Office.
Contact details	Updated.
Related public rulings	Updated.

20 February 2009

Part	Comment
Contact details	Updated.

25 February 2008

Part	Comment
Contact details	Updated.

References

Legislative references	ANTS(GST)A 1999 Div 75 ANTS(GST)A 1999 75-5(1A)(b) ANTS(GST)A 1999 75-35 TAA 1953 Sch1 110-50(2) TAA 1953 Pt IVC
Case references	Brown v Commissioner of Taxation [1999] FCA 563; 99 ATC 4516; 42 ATR 118 Commissioner of Taxation v Asiamet (No. 1) Resources Pty Limited [2004] FCAFC 73; 55 ATR 239; 137 FCR 146; 2004 ATC 4303; [2004] ALMD 4224 Commissioner of Taxation v Brown [1999] FCA 1198; 99 ATC 4852; 42 ATR 672
Other references	ATO Charter
Related public rulings	GSTR 2006/7 GSTR 2006/8

ATO references

ISSN	2651-9526
File references	1-MN40UPS; 1-14E5UUA8; 1-12MYCCS9
ATOlaw topic	Administration ~~ Internal ATO processes

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