

GST alert

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on Goods and Services Tax issues
for clients in business.

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The Australian Taxation Office has continued the Government's focus on the margin scheme in recent months. The past month has seen the Australian Taxation Office issue three GST rulings and three practice statements each addressing implications of the margin scheme.

Real property acquired before 1 July 2000

Where the margin scheme is applied GST is payable on 1/11th of margin arising on the sale of the real property rather than the sale price itself. The margin is the difference between the sale proceeds and cost of acquisition (or relevant valuation, whichever is applicable).

The application of the margin scheme is dependant upon the satisfaction of a number of requirements, some of which changed prospectively under recent amendments. Some of the requirements for the application of the margin scheme include:

- The acquisition of the property must have been either a GST-free supply, a supply prior to 1 July 2000 or a supply upon which the margin scheme was applied
- Where relevant (for example where the land was acquired prior to 1 July 2000) a valuation of the land must be obtained
- The vendor and purchaser must agree in writing as to the application of the margin scheme.

Relevant valuations must be made by the due date for lodgement of the vendor's BAS in which the supply of property is to be included.

In A New Tax System (Goods & Services Tax) Margin Scheme Valuation Determination MSV 2005/3 the Commissioner outlines three acceptable valuation methodologies and also defines who, for the purposes of GST valuations, is a professional valuer. We note that the Commissioner accepts that a professional valuer may include an in-house employee, where that employee is appropriately qualified.

Real property acquired after 1 July 2000

The major difference between GSTR 2005/D4, dealing with property acquired post 1 July 2000, and GSTR 2005/D3 is that GSTR 2005/D4 addresses the apportionment of costs rather than valuations.

Where real property is subdivided or strata titled, the consideration paid for the acquisition of that property is to be apportioned appropriately. Any costs of subdividing or building the strata title lots are not apportioned in determining the cost for the purposes of the margin scheme - costs for which you are entitled to a GST input tax credit do not increase the cost of land so as to reduce the margin upon which the GST liability is calculated, as this would result in a 'double-dip' - *Sterling Guardian Pty Ltd v FCT* [2005] FCA 1166.



Adjustments to consideration

The Commissioner considers that the supply of real property arises on settlement rather than at the time of registration of the relevant instrument (being the time when legal title passes). The consideration for the supply includes all monetary and non-monetary consideration. Accordingly, settlement adjustments may alter the consideration paid for a supply.

However, in GSTR 2005/D3, the Commissioner considers that where the purchaser applies part of the purchase price as shown in the contract to meet a liability of the vendor, no such adjustment to consideration would arise. This would be the case where the purchaser pays consideration net of unpaid rates in respect of the vendor's ownership period.

The Ruling also comments on supplies which are mixed supplies, i.e. partly taxable and partly input taxed supplies. In this situation, the Commissioner advises that the margin scheme can apply to the taxable component of the supply. For example, mixed supplies can arise where there is a supply of:

- Residential and commercial premises, being input-taxed and taxable respectively
- New residential and business premises, which may be taxable and GST-free (as a going concern) respectively.

ATO Practice Statements

In addition to the above Rulings, the ATO also released the following practice statements:

- PSLA 2005/2 (GA), on GST and the timing of the choice to apply the margin scheme
- PSLA 2005/15, on 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 GST Act
- PSLA 2005/16, on the period to make an approved valuation for the purposes of working out the margin for the supply under Division 75 of the GST Act.

Each Practice Statement outlines the limited circumstances where a supplier can use the margin scheme to calculate GST, although the supplier had not previously contemplated using the margin scheme with respect to the supply. These circumstances include:

- Where the omission was a genuine mistake
- All other requirements for the margin scheme had been met
- The recipient is not likely to be entitled to an input tax credit on the acquisition of the real property
- The sale price had not been agreed between the parties as including GST on 1/11th of the total sale proceeds
- There is no arrangement in place which would have the effect of producing an outcome contrary to the legislative policy of the margin scheme.

Similar circumstances are considered with regard to the Commissioner's discretion to extend the time in which to make an agreement with respect to the application of the margin scheme.

With respect to an extension of time to obtain a valuation, the Commissioner will consider the precise reasons for the delay as well as any other relevant circumstances.

GST Treatment of Guarantees and Indemnities

On 28 September 2005 the ATO released GSTR 2005/D2 which addresses the GST treatment of guarantees and indemnities.

The ATO considers that the supply of a guarantee will be the supply of a financial supply, and hence input-taxed, for GST purposes. A guarantee will include an indemnity for these purposes, but will not include a warranty. There can often be a fine line between the legal distinction of these items and hence the GST treatment. Suffice to say that where guarantees, warranties and indemnities are used for any purpose, the GST consequences need to be carefully considered.

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