



Legislative Instrument

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

I, Louise Clarke, Deputy Commissioner of Taxation, Policy, Analysis and Legislation, Law Design and Practice, make this determination under subsection 75-35(1) of the *A New Tax System (Goods and Services Tax) Act 1999*.

Louise Clarke

Deputy Commissioner of Taxation
Policy, Analysis and Legislation
Law Design and Practice
Dated: 16/03/2020

1. Name of instrument

This determination is the *A New Tax System (Goods and Services Tax) Margin Scheme Valuation Requirements Determination 2020*.

2. Commencement

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

3. Application

This determination specifies the requirements for making valuations for the purposes of applying the margin scheme in Division 75 of the GST Act. The requirements apply to valuations for taxable supplies of real property made on or after 1 March 2010.

This determination also specifies requirements for making valuations obtained by the Commissioner for the purposes of applying the margin scheme in specified circumstances. The requirements apply to valuations for taxable supplies of property made before and on or after 1 March 2010.

4. Determination

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

What is the freehold interest in land, stratum unit or long-term lease that you value?

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.

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:

- (1) a valuation of the interest, unit or lease in existence at the valuation date must be made; and
- (2) 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.

Mixed supplies

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:

- (3) a valuation of the entire interest, unit or lease in existence at the valuation date must be made; and
- (4) 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. The requirements for making valuations as determined by the Commissioner for the purposes of Division 75

A valuation of the interest, unit or lease made in accordance with the requirements set out by the Commissioner in this determination is an approved valuation of that interest, unit or lease.

The Commissioner has determined the following requirements for making valuations for the purposes of Division 75.

6. *Method 1: valuation by a *professional valuer*

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

- (1) the valuer must be a **professional valuer*;
- (2) the valuation must be in writing;
- (3) the valuation must determine the market value of the interest, unit or lease at the valuation date;
- (4) 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;

* Defined term, see the definitions in Section 11 of this instrument.

- (5) the valuation must include a signed certificate which specifies:
 - (a) a full description of the property being valued;
 - (b) the applicable valuation date;
 - (c) the date the valuer provides the valuation to the supplier;
 - (d) the market value of the property at the valuation date;
 - (e) the valuation approach and the valuation calculation; and
 - (f) the name and qualifications of the valuer;
- (6) if the interest, unit or lease has been supplied by the Commonwealth, a State or a Territory; and
 - (a) the supplier has held the interest, unit or lease since before 1 July 2000;
 - (b) there were no improvements on the land or premises in question as at 1 July 2000; and
 - (c) 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
- (7) the valuation must be made by the time specified in section 10 below.

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

For a valuation based on the sale contract price to be an approved valuation for the purposes of Division 75, that valuation must be made in accordance with the following requirements:

- (1) 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;
- (2) the parties to the contract must be dealing at arm's length; and
- (3) the valuation must be made by the time specified in section 10 below.

Method 2 is not available if:

- (4) the interest, unit or lease has been supplied by the Commonwealth, a State or a Territory;
- (5) the supplier has held the interest, unit or lease since before 1 July 2000;
- (6) there were no improvements on the land or premises in question as at 1 July 2000; and
- (7) there are improvements on the land or premises in question on the day on which the taxable supply takes place.

8. *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, that valuation must be made in accordance with the following requirements:

- (1) 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
- (2) the valuation must be made by the time specified in section 10 below.

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

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

- (1) for the purposes of calculating the margin under subsection 75-10(3), a valuation has not been produced to the Commissioner or the valuation produced is not an approved valuation;
- (2) 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;
- (3) 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;
- (4) the margin, in the absence of an approved valuation being produced by the supplier, would be calculated under subsection 75-10(2);
- (5) the margin, if calculated under subsection 75-10(2), would result in GST payable on value added to the real property prior to the commencement of, or entry into, the GST system; and
- (6) the margin, if calculated using a valuation obtained by the Commissioner, would be less than the margin calculated under subsection 75-10(2).

For taxable supplies of real property made on or after 1 March 2010, any one of the following valuations, if obtained by the Commissioner, is an approved valuation for the purposes of subsection 75-10(3):

- (7) a valuation by a valuer which meets the requirements set out in subsections 6(1) to (6) of this instrument under method 1 other than the requirement in paragraph 6(5)(c) of this instrument;
- (8) a valuation based on the consideration received by the supplier under a contract of sale which meets the requirements set out in subsections 7(1) and (2) of this instrument; and where subsections 7(4) to (7) of this instrument do not apply; or
- (9) 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 subsection 8(1) of this instrument.

For taxable supplies of real property made before 1 March 2010, a valuation, if obtained by the Commissioner, is an approved valuation for the purposes of subsection 75-10(3) if the valuation is:

- (10) based on one of the same valuation methods available to the taxpayer under the margin scheme valuation requirements determination in force when the supply was made; and
- (11) made in accordance with the requirements determined in the margin scheme valuation requirements determination in force when the supply was made

(other than the requirements as to when the valuation must be made and the date the valuation was provided to the supplier).

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

10. When must the valuation under methods 1 to 3 be made?

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

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:

- (1) 8 weeks from the end of the further period that the Commissioner has allowed under paragraph 75-5(1A)(b); or
- (2) 8 weeks from the date of the Commissioner's decision to extend the further period under paragraph 75-5(1A)(b).

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.

11. Definitions

Professional valuer means:

- (1) a person registered or licensed to carry out real property valuations under a Commonwealth, a State or a Territory law; or
- (2) 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
- (3) a person who is:
 - (a) a member of the Australian Property Institute and accredited as a Certified Practicing Valuer; or
 - (b) a member of the Royal Institution of Chartered Surveyors and accredited as a Chartered Valuation Surveyor; or
 - (c) a member of the Australian Valuers Institute and accredited as a Certified Practicing Valuer.

Other expressions in this determination have the same meaning as in the GST Act.

12. Repeals

This determination repeals *A New Tax System (Goods and Services Tax) Margin Scheme Valuation Requirements Determination MSV 2009/1* (F2009L03954) which was registered on 20 October 2009.