

# API E - News

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*Leading the property profession*

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## National Director's Report



### Authorisation

In some instances, the ACCC may grant immunity on public benefit grounds against actions under the competition provisions of the Trade Practices Act. Generally, the Commission can grant immunity from the application of the competition provision of the Act if the proposed conduct results in a benefit to the public that outweighs the detriment to the public from any lessening of competition. The exemption, if granted, is referred to as "Authorisation".

For associations such as API, the need for this immunity may go to the core of its being as it may include reference to certain statements or sections within the Constitutions, By-Laws, Code of Ethics and Rules of Conduct or Complaints Procedures.

In 1994 API applied for "Authorisation" from the then Trade Practices Commission which was granted in perpetuity. While the Authorisation, as such, remains in place any changes to a Constitution, By Laws, Code of Ethics, Rules of Conduct, or Practice Standards needs to be fully reported to and considered by ACCC.

With the advent of desktop valuations and National Councils considered position on this development, it was suggested to the Institute that it may be in breach of the TPC legislation. On 22 April 2005, API approached the ACCC and lodged an application for a minor variation of Authorisation A90545 under section 91A of the Trade Practices Act 1974.

After receiving API's application for Authorisation, the ACCC invited interested parties to make submissions on it within a defined period. The ACCC also endeavoured to consult with all parties likely to be affected by the propose conduct.

Application for Authorisation is a rigorous task with many applications from associations being denied.

Subsequent to API's submission we have been notified of our continuing "Authorisation in Perpetuity" for the Institute's Constitution, By Laws, Code of Ethics, Rules of Conduct and Practice Standards.

The continued Authorisation allows API to successfully manage its own affairs.

### Financial Services Reform Act

As mentioned in the August 2005 edition of the Australian Property Journal, valuations pertaining to Company Title (and related Titles) were identified as an issue and the Institute had arranged an exemption order from ASIC. The Institute's submission was viewed in a favourable light, however, until this ruling is gazetted members are advised they may still need legal advice.

The API Member Financial Services Reform survey results are currently being tabulated and while soon be available for perusal.

The Parliamentary Joint Committee on Corporations and Financial Services (JCCFS) and the Ministerial Council on Consumer Affairs (MCCA) have submitted a number of recommended regulatory changes to the Government. One report suggested that a Financial Services Licence should be mandatory for anyone providing property advice.

It has also been suggested that the Government should expand financial literacy programs to include the property sector.

**Mark Howland**

## **Release of GST Public Rulings: GSTR 2005/4 and GSTR 2005/5**

The Institute provides the following information received from the Australian Taxation Office on the release of the following Goods and Services Tax (GST) Rulings:

• **GSTR 2005/4 Goods and Services tax:** arrangements of the kind described in Taxpayer Alerts TA 2004/6 and TA 2004/7: use of the Grouping or Margin Scheme provisions of the GST Act to avoid or reduce the Goods and Services Tax on the sale of new residential premises.

• **GSTR 2005/5 Goods and Services tax:** arrangements of the kind described in Taxpayer Alert TA 2004/8: use of the Going Concern provisions and the Margin Scheme to avoid or reduce the Goods and Services Tax on the sale of new residential premises.

These Rulings and recent changes to the GST legislation that clarify the application of the GST law, confirm the Tax Office's view that arrangement utilising the grouping, going concern and margin scheme provisions of the law to avoid GST on the sale of new residential premises are ineffective.

Specific issues which are discussed in these Rulings include:

### **Goods and Services Tax Ruling – GSTR 2005/4**

- Whether the intra-group sale of completed premises is the first sale of new residential premises,
- Whether the acquiring GST group member can apply the margin scheme on the first supply of the new residential premises to third parties.
- The GST effect of the intra-group transfer of substantially completed premises within GST group

- Whether the representative member of the GST group is entitled to input tax credits on the costs of constructions and/or acquisition of the land; and

- Whether the GST anti-avoidance provisions may apply to the arrangements.

### **Goods and Services Tax Ruling – GSTR 2005/5**

- Whether the supply of partially or substantially completed residential units, houses, or lots without other things is the supply of a going concern,

- Whether an entity that acquires a going concern can choose to apply the margin scheme on the supply of new residential premises or other real property to third parties, and

- Whether the GST anti-avoidance provisions may apply to the arrangements.

The Rulings are published on the ATO website [www.ato.gov.au](http://www.ato.gov.au).

To assist members in complying with their taxation obligations, Members are advised of the following matters:

- The release of the two rulings (GSTR 2005/4 and GSTR 2005/5)

- If they have previously received a private ruling and the advice contained in that ruling is inconsistent with the Tax Office view expressed in the public rulings then the public rulings will prevail.

- If they have previously received a private ruling and it does not specifically address the anti-avoidance provisions then the Commissioner may, if the members' circumstances exhibit some or all of the features of the arrangements, apply the anti-avoidance provisions.

## Implications of the new proportionate liability regime

### A national regime

The commonwealth, states and territories have agreed to introduce a nationally consistent proportionate liability regime (PL Regime). Each jurisdiction has introduced its own legislation. This makes it difficult to consider general principles applying across states and raised a number of practical implications, particularly the ability to contract out.

### Restoring fairness

The PL Regime applies to claims for economic loss or damage to property in an action for damages (tort, contract, misleading or deceptive conduct or otherwise) arising from the failure to take reasonable care.

Before the introduction of the PL Regime, the legal responsibility of parties to a contract was determined by the principles of joint and several liability. This allowed a plaintiff to recover all its loss from one or more wrongdoers, irrespective of the extent to which they had caused or contributed to the loss.

As wrongdoers have different capacities to pay, a 'deep pockets' approach to litigation has resulted, where claims are often only brought against insured people or those seen to have sufficient funds to pay. The PL Regime aims to overcome the perceived unfairness.

The object of the PL Regime is to divide the loss among the various wrongdoers according to their level of responsibility. In order to recover 100% of loss, a plaintiff must sue each wrongdoer who has contributed to that loss.

### Practical issues

Difficulties may arise where one or more wrongdoers is unavailable or there are many concurrent wrongdoers. Depending on the defendant's liquidity, the plaintiff may find that it can only recover a small portion, if any, of its loss. To address this issue, a first step is to ensure that all possible concurrent wrongdoers – for example subcontractors, consultants and suppliers – maintain adequate insurance coverage.

Arbitration and expert determinations raise the problem that responsible third parties can only be joined by mutual agreement.

A significant feature of the PL Regime in NSW, Western Australia and Tasmania is that parties are permitted to expressly exclude the operation of the legislation in contracts. Parties should carefully consider their liability when negotiating construction contracts.

A principal would generally want to exclude the PL Regime from its contract to ensure the contractor is fully (as opposed to proportionately) liable. Similarly, a head contractor might exclude the PL Regime from its subcontracts. There is risk both ways, but probably more risk is not excluding the PL Regime from its Joint Venture agreements also require particular attention.

In the states and territories where it is possible to contract out, a principal may wish to protect its interests by structuring the contract to avoid the effect of the Act, with claims arising not from breaches of duties of care, but from contractual indemnities to pay. Careful consideration needs to be given to how this might be achieved in any given project.

In other states and territories, parties may also consider contracting in a jurisdiction that allows contracting out (say, NSW). However keep in mind that this may impact any future litigation occurring in a state or territory that does not allow the exclusion.

The right to contract out has not yet tested by any court and it will be interesting to monitor future developments.

By Scott Budd and David Fabian  
Minter Ellison Lawyers

This article has been reproduced with permission from Minter Ellison Lawyers, 'Implications of the new proportionate liability regime', 21 September 2005.

## A New Tax System (Goods and Services Tax) Margin Scheme Valuation Requirements Determination MSV 2005/1

### Citation

This Determination may be cited as the A New Tax System (Goods and Services Tax) Margin Scheme Valuation Requirements Determination MSV 2005/1.

### Commencement

This Determination commences on 16 March 2005.

### Additional valuation method

This Determination specifies an additional valuation method for the purposes of paragraph 75-10(3)(b) of the GST Act.

The A New Tax System (Goods and Services Tax) Margin Scheme Valuation Requirements Determination (No.1) 2000 and the A New Tax System (Goods and Services Tax) Margin Scheme Valuation Requirements Determination (No.2) 2000 are not altered or withdrawn by this Determination and continue in force.

A valuation complies with the requirements for making valuations for the purposes of Division 75 of the GST Act if it is made in accordance with the following method:

### Method

A valuation of the market value of the interest, unit or lease at the valuation date determined in writing by a professional valuer. However, if:

- (a) the supplier is the Commonwealth, a State or a Territory; and
- (b) the supplier has held the interest, unit or lease since before 1 July 2000; and
- (c) there were no improvements on the land in question as at 1 July 2000; and
- (d) there are improvements on the land in question on the day on which the taxable supply takes place, then the valuation must be the market value of the land determined in writing by a professional valuer as if there are no improvements on the land or premises on that day.

### Application

This Determination applies in respect of valuations made for the purposes of applying

the margin scheme in working out the amount of GST on supplies made on or after 17 March 2005.

### Definitions

**Professional valuer** is defined for the purposes of this Determination to mean:

- (a) a person registered or licensed to carry out property valuations under a Commonwealth, State or Territory law; or
- (b) a person who carries on business as a valuer in a State or 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 a member of the Australian Property Institute and is accredited as a Certified Practising Valuer.

Other expressions in this Determination have the same meaning as in the A New Tax System (Goods and Services Tax) Act 1999.

Dated this 11th day of March 2005

Bruce William Quigley  
Deputy Chief Tax Counsel and  
Delegate of the Commissioner  
11th day of March 2005

### Explanatory Statement

#### General Outline of Instrument

This Determination specifies requirements for making valuations for the purposes of the margin scheme under Division 75 of the A New Tax System (Goods and Services Tax) Act 1999 ('the GST Act').

The Determination is a Legislative Instrument for the purposes of the Legislative Instruments Act 2003. It is made by, and is legally binding upon, the Commissioner of Taxation.

#### Date of effect

This Determination commences on 16 March 2005 and applies in respect of valuations made for the purposes of applying the margin scheme in working out the amount of GST on taxable supplies made on or after 17 March 2005. As explained further below, the commencement date of 16 March 2005 ensures that suppliers have the

benefit of the valuation method specified in the Determination from the commencement of new provisions proposed by the Tax Laws Amendment (2005 Measures No. 2) Bill 2005 which is anticipated to be introduced on 17 March 2005. It has therefore not been practicable to lodge it for registration under the Legislative Instruments Act 2003 on or before it commenced on 16 March 2005.

**What is this instrument about:**

Under Division 75 of the GST Act, the margin scheme may be applied to work out the GST on certain supplies of real property. The GST worked out under the margin scheme is 1/11th of the 'margin' for the supply.

Subsection 75-10(3) provides that in specified circumstances the margin is the amount by which the consideration for the supply exceeds a valuation of the relevant freehold interest, stratum unit or long-term lease, commonly at 1 July 2000, the date of introduction of the Goods and Services Tax (GST). The valuation must comply with any requirements determined in writing by the Commissioner for making valuations for the purposes of Division 75 of the GST Act. This Determination specifies requirements for making valuations for that purpose.

**What is the effect of this instrument:**

A valuation that complies with this Determination may be relied upon by suppliers calculating GST under the margin scheme in accordance with paragraph 75-10(3)(b) of the GST Act.

However, this Determination does not alter or withdraw the valuation methods under the existing Determinations made by the Commissioner for the purposes of Division 75, namely the A New Tax System (Goods and Services Tax) Margin Scheme Valuation Requirements Determination (No. 1) 2000 and the A New Tax System (Goods and Services Tax) Margin Scheme Valuation Requirements Determination (No. 2) 2000. These existing Determinations are appended to Goods and Services Tax Ruling GSTR 2000/21 as Schedules 1 and 2 respectively. GSTR 2000/21 may be found at [www.ato.gov.au](http://www.ato.gov.au).

Rather, it specifies an additional valuation method. The valuation methods specified in those existing Determinations continue to be available in the circumstances set out in those Determinations.

The valuation method specified in this Determination is a valuation of the market value of the freehold interest, stratum unit or long-term lease at the valuation date determined in writing by a professional valuer.

However, if:

- the supplier is the Commonwealth, a State or a Territory; and
- the supplier has held the interest, unit or lease since before 1 July; and
- there were no improvements on the land or premises in question on the day on which the taxable supply takes place, the valuation must be undertaken as if there are no improvements on the land or premises on that day.

**Background:**

This Determination is necessary because of the introduction of the Tax Laws Amendment (2005 Measures No. 2) Bill 2005 ('the Bill').

Subsection 75-10(3) of the GST Act, as proposed to be amended by Item 14 and clause 75-11 in Item 16 in Schedule 6 to the Bill, provide for an 'approved valuation' for margin scheme purposes. Clause 75-35 in Item 20 in Schedule 6 to the Bill, provides that the Commissioner may determine in writing requirements for making valuations and a valuation made in accordance with those requirements is an approved valuation. Under the Bill, those provisions are to be effective from the date of introduction of the Bill.

Item 21 in Schedule 6 to the Bill is a savings provision. Under this provision, a valuation requirements determination made by the Commissioner that is in force immediately before the introduction of the Bill continues in force as if it had been made under the proposed new section 75-35.

However, the existing Determinations only apply where the supplier acquired the relevant freehold interest, stratum unit or long-term lease before 1 July 2000. Proposed new section 75-11 also operates in relation to suppliers who acquired a freehold interest, stratum unit or long-term lease on or after 1 July 2000. Accordingly, there would be no Determination in force for making valuations in relation to real property covered by those new provisions until a new Determination could be made under proposed section 75-35. That

cannot occur unless or until the Bill is passed and receives Royal Assent.

Accordingly, this new Determination has been made under the current provisions. Unlike the existing Determinations, its application is not limited to cases where the supplier acquired the relevant freehold interest, stratum unit or long-term lease before 1 July 2000.

This Determination will be taken to be in force on the commencement of the amendments as if it had been made under proposed section 75-35. The valuation method specified in the Determination will therefore be available for all valuations for the purposes of Division 75 of the GST Act.

**Consultation:**

The Commissioner is satisfied that consultation is unnecessary and inappropriate in relation to this Determination.

The Determination is required urgently so that it is in force immediately before the Bill is introduced and thus given effect under the savings provision. Additionally, because the Determination was made before the Bill was introduced, but this Explanatory Statement refers to the Bill, meaningful consultation has not been possible. Further, the Determination does not disadvantage any person as it specifies a new valuation method for margin scheme purposes; as mentioned above, the methods under the existing Determinations remain available for the purposes of paragraph 75-10(3)(b).

Commissioner of Taxation  
16 March 2005

Source: This information has been extracted from the Australian Taxation Office website [www.ato.gov.au](http://www.ato.gov.au)

## **A New Tax System (Goods and Services Tax) Margin Scheme Valuation Requirements Determination MSV 2005/2**

**Citation**

This determination may be cited as the A New Tax System (Goods and Services Tax) Margin Scheme Valuation Requirements Determination MSV 2005/2.

**Commencement**

This determination commences on 1 July 2005.

**Extension of costs of completion method - pre 1 July 2005 contracts**

This determination extends the availability of Method 2 - Value as determined using costs of completion method ('the cost of completion method') in the A New Tax System (Goods and Services Tax) Margin Scheme Valuation Requirements Determination (No. 2) 2000 to the calculation of GST on supplies made after 1 July 2005 under contracts entered into before 1 July 2005.

A valuation therefore compiles with the requirements for making valuations for the purposes of Division 75 of the GST Act if the valuation is made:

a) in accordance with the costs of completion

method; and

b) for the purposes of calculating GST on a supply made under a contract entered into before 1 July 2005, if the supplier could have used the costs of completion method under the A New Tax System (Goods and Services Tax) Margin Scheme Valuation Requirements Determination (No. 2) 2000 but for the supply being made after 1 July 2005.

Neil Edward Mann  
Deputy Commissioner and Delegate of the Commissioner  
27 June 2005

### **Explanatory Statement**

**General Outline of Instrument**

This determination specifies requirements for making valuations for the purposes of the margin scheme under paragraph 75-10(3)(b) of the A New Tax System (Goods and Services Tax) Act 1999 ('the GST Act').

The determination is a Legislation Instrument for the purposes of the Legislative Instruments Act

2003. It is made by, and is legally binding upon, the Commissioner of Taxation.

**Date of effect**

This determination commences on 1 July 2005 and applies to valuations made for the purposes of applying the margin scheme in working out the amount of GST on taxable supplies made on or after 1 July 2005.

**What is this instrument about?**

Under Division 75 of the GST Act, the margin scheme may be applied to work out the GST on certain supplies of real property. The GST worked out under the margin scheme is 1/11th of the 'margin' for the supply.

In specified circumstances, the margin for the supply is the amount by which the consideration for the supply exceeds a valuation of the relevant freehold interest, stratum unit or long-term lease at the valuation date, commonly 1 July 2000 (the date of commencement of GST). The valuation must comply with any requirements determined in writing by the Commissioner for making valuations for the purposes of Division 75 of the GST Act.

This determination specifies requirements for making valuations for that purpose.

**What is the effect of this instrument?**

This determination extends the operation of the costs of completion valuation method contained in A New Tax System (Goods and Services Tax) Margin Scheme Valuation Requirements Determination (No. 2) 2000. Under that determination, the costs of completion method could be used to value premises that were partly completed at the valuation date. However, the costs of completion method could not be used for supplies made after 1 July 2005.

The condition that the costs of completion method could not be used for supplies made after 1 July 2005 could operate harshly where a supplier had entered into a contract on the basis that the supply would be made by 1 July 2005, but for whatever reason, settlement is delayed until after that date. In these circumstances, without this determination, it would be necessary for the supplier to incur additional

valuation costs.

To make compliance with the valuation requirements easier and cheaper in these circumstances, this determination extends the availability of the costs of completion method to supplies made after 1 July 2005 where:

- (a) the supplier entered into a contract for the supply of property before 1 July 2005, but the supply under the contract is made after that date; and
- (b) the supplier would have been able to use the costs of completion method in accordance with the A New Tax System (Goods and Services Tax) Margin Scheme Valuation Requirements Determination (No.2) 2000 but for the supply being made after 1 July 2005 .

**Consultation:**

This valuation method has been the subject of consultation with the Australian Taxation Office's Tax Professionals Industry Partnership (TPIP) and GST Property & Construction Industry Partnership (P&CIP) and the Indirect Taxes Rulings Panel.

Commissioner of Taxation  
27 June 2005

Source: This information has been extracted from the Australian Taxation Office website [www.ato.gov.au](http://www.ato.gov.au)

## A New Tax System (Goods and Services Tax) Margin Scheme Valuation Requirements Determination MSV 2005/3

### Citation

This determination may be cited as the A New Tax System (Goods and Services Tax) Margin Scheme Valuation Requirements Determination MSV 2005/3.

### Commencement

This determination commences on 1 December 2005.

### Application of this Determination

This determination specifies the requirements for making valuations for calculating the margin for taxable supplies of real property made on or after 1 December 2005 for the purposes of Division 75 of the GST Act.

The A New Tax System (Goods and Services Tax) Margin Scheme Valuation Requirements Determination (No.1) 2000, the A New Tax System (Goods and Services Tax) Margin Scheme Valuation Requirements Determination (No.2) 2000 and the A New Tax System (Goods and Services Tax) Margin Scheme Valuation Requirements Determination MSV 2005/1 continue to apply for supplies made before 1 December 2005, but do not apply to supplies made on or after 1 December 2005. The A New Tax System (Goods and Services Tax) Margin Scheme Valuation Requirements Determination MSV 2 continues to apply in the circumstances specified in that determination.

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

If the real property supplied 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 is supplied 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.

### Mixed supplies

If you make a supply of an interest, unit or lease that is partly input taxed and partly taxable or partly taxable and partly GST-free (a mixed supply), the valuation 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.

### The valuation methods that can be used for the purposes of Division 75

A valuation complies with the requirements determined by the Commissioner under subsection 75-35(1) if it is made in accordance with any of the following methods and is made by the time specified in paragraphs 15 and 16 below.

#### Method 1:

A written valuation by a professional valuer determining the market value of the interest, unit or lease at the valuation date. 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.

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 qualifications of the valuer.

However, if:

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

Territory; and  
(b) the supplier has held the interest, unit or lease since before 1 July 2000; and  
(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, the valuation must be a valuation, made in writing by a professional valuer determining the market value of the interest, unit or lease, that is not contrary to professional standards recognised in Australia for the making of real property valuations, as if no improvements had been made at the date of the supply.

**Method 2:**

A valuation made by adopting as the value the consideration provided by a purchaser in a contract for the sale and purchase of the real property executed or exchanged before the valuation date by parties dealing at arm's length.

Method 2 is not available if:

- (a) the interest, unit or lease has been supplied by the Commonwealth, a State or Territory; and
- (b) the supplier has held the interest, unit or lease since before 1 July 2000; and
- (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.

**Method 3:**

A valuation made by adopting as the valuation the most recent value as determined before the valuation date by or on behalf of a State Government or a Territory Government department as the unimproved value, the site value, or the capital value of the land, for rating or land tax purposes.

**When must the valuation be made?**

The valuation must be made by the due date for lodgment of the supplier's Activity Statement for the tax period to which the GST on the supply is attributable.

However, if the Commissioner has allowed a further period under paragraph 75-5(1A)(b) 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:

- (i) 6 weeks from the further period that the Commissioner has allowed under paragraph 75-5(1A)(b); or
- (ii) 6 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 paragraphs 15 and 16, the Commissioner may for good reason allow an additional period within which a valuation may be made.

**Definitions**

Professional valuer is defined for the purposes of this determination to mean:

- (a) a person registered or licensed to carry out real property valuations under a Commonwealth, State or Territory law; or
- (b) a person who carries on a business as a valuer in a State or Territory where that person is not required to be licensed or registered to carry on a business as a valuer; or
- (c) a member of the Australian Property Institute and is accredited as a Certified Practising Valuer.

Other expressions in this determination have the same meaning as in the A New Tax System (Goods and Services Tax) Act 1999.

Neil Edward Mann  
Deputy Commissioner and  
Delegate of the Commissioner  
7 September 2005

**Explanatory Statement**

**General Outline of Instrument**

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

The determination is a Legislative Instrument for the purposes of the Legislative Instruments Act 2003 . It is made by, and is legally binding upon, the Commissioner of Taxation.

**Date of effect**

This determination commences on 1 December 2005 and applies to valuations made for the purposes of applying the margin scheme in work-

ing out the amount of GST on taxable supplies made on or after 1 December 2005.

#### **What is this instrument about:**

Under Division 75 of the GST Act, the margin scheme may be applied to work out the GST on certain supplies of real property. The GST worked out under the margin scheme is 1/11th of the 'margin' for the supply.

Subsection 75-10(3) and section 75-11 provide that in certain circumstances the margin for the supply is the amount by which the consideration for the supply exceeds a valuation of the relevant freehold interest, stratum unit or long-term lease. The valuation must comply with any requirements determined in writing by the Commissioner for making valuations for the purposes of Division 75 of the GST Act.

This determination specifies requirements for making valuations for that purpose.

#### **Valuation methods**

The determination provides that a valuation of the market value of real property at the valuation date may be made by using one of the following methods.

##### **Method 1**

A professional valuer determining in writing the market value of the real property in a manner that is not contrary to professional standards recognised in Australia.

The valuation must include a signed certificate from the professional valuer containing the following details:

- (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 qualifications of the valuer.

##### **Method 2**

Adopting as the valuation the consideration in a contract for the sale of real property executed or exchanged before the valuation date by parties dealing at arm's length. For example, if you purchased the real property in May 2000, and the valuation date was 1 July 2000, you may choose to adopt the purchase price in the contract as the approved valuation.

##### **Method 3**

Adopting as the valuation the most recent value

as determined before the valuation date by or on behalf of a State or a Territory Government department as the unimproved value, the site value, or the capital value of the land, for rating or land tax purposes.

Under this method you may adopt as an approved valuation, a valuation shown on a rates or land tax notice provided the valuation is the most recent before the valuation date.

#### **What is the real property that is valued?**

The real property that is valued is the interest, unit or lease that is in existence at the valuation date. This will not always be the real property that is supplied.

Commonly the real property that is supplied was not in existence at the valuation date. Examples of this are:

- land that is acquired as broadacres and is later subdivided and sold; and
- land on which strata units are built.

It is not appropriate in these circumstances to value the subdivided land or the stratum units as if they existed at the valuation date. Instead, the real property that existed on the valuation date is valued, and then that value is apportioned on a fair and reasonable basis to ascertain the part of the valuation that relates to real property that is supplied. In the example of subdivided land this will be the broad acres that are first valued and then an apportionment undertaken, while for the strata units, it is the land on which the units were built that is first valued and then apportioned.

Where the supply of real property is partly input taxed and partly taxable or partly taxable and partly GST-free (a mixed supply), the valuation is of the entire interest, unit or lease in existence at the valuation date. This valuation is 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 as a taxable supply under the margin scheme.

#### **Time to make valuations**

To work out the margin for the supply of real property, a valuation is required as at the valuation date. The valuation process itself does not have to be undertaken on that date.

If the supplier and recipient have agreed in writing that the margin scheme is to apply on or before the making of the supply

The valuation must be made by:

- (a) the due date for lodgment of the supplier's Activity Statement for the tax period to which the

GST on the supply is attributable, or  
(b) an additional period that the Commissioner may for good reason allow.  
If the supplier and recipient have not agreed in writing that the margin scheme is to apply on or before the making of the supply

If the Commissioner has allowed a further period under paragraph 75-5(1A)(b), the valuation must be made by the later of:

- (a) 6 weeks from the end of the further period that the Commissioner has allowed the parties to agree in writing that the margin scheme is to apply to the supply; or
- (b) 6 weeks from the date of the Commissioner's decision to grant the parties a further period to agree in writing that the margin scheme will apply; or
- (c) an additional period that the Commissioner may for good reason allow.

Generally the later of the two periods specified in subparagraphs 19(a) and (b) will be 6 weeks from the end of the further period that the Commissioner has allowed (subparagraph 19(a) above). However, the circumstances in subparagraph 19(b) may apply in limited circumstances. Example 1 illustrates the circumstances where subparagraph 19(b) applies.

**Example 1:**

Geoff Jay Pty Ltd, which lodges its activity statements monthly, makes a taxable supply of real property that it acquired before 1 July 2000 to its associate, Greg Bee Pty Ltd, on 30 May 2006. The parties sign the agreement to apply the margin scheme on 3 June 2006 and calculate the margin for the supply under subsection 75-10(2).

An ATO officer subsequently visits Geoff Jay Pty Ltd and advises the company that the written agreement to apply the margin scheme should have been made on or before 30 May 2006.

Geoff Jay Pty Ltd requests the ATO to exercise its discretion under paragraph 75-5(1A)(b).

On 30 June 2006 the ATO sends Geoff Jay Pty Ltd a letter stating that it has exercised its discretion in paragraph 75-5(1A)(b) to extend the time for making the written agreement to 3 June 2006, the date on which the agreement was made. In the letter, the ATO states that as the parties are associates, the margin for the supply should be calculated under paragraph 75-11(7)(c). To calculate the margin for the supply under paragraph 75-11(7)(c) Geoff Jay Pty Ltd requires an approved valuation of the real

property as at 1 July 2000.

Geoff Jay Pty Ltd must obtain the valuation by the later of 6 weeks from the end of the period allowed for agreeing to use the margin scheme (6 weeks from 3 June 2006) and 6 weeks from date of the Commissioner's decision to allow a further period (30 June 2006).

In this instance, the later of the two periods is 6 weeks from the date of the Commissioner's decision to allow a further period (6 weeks from 30 June 2006).

**What is the effect of this instrument:**

The effect of this determination is that the following determinations made by the Commissioner for the purposes of Division 75 will not apply to supplies made on or after 1 December 2005:

- (a) A New Tax System (Goods and Services Tax) Margin Scheme Valuation Requirements Determination (No. 1) 2000;
- (b) A New Tax System (Goods and Services Tax) Margin Scheme Valuation Requirements Determination (No. 2) 2000;
- (c) A New Tax System (Goods and Services Tax) Margin Scheme Valuation Requirements Determination MSV 2005/1.

The above determinations will continue to apply to supplies made before 1 December 2005.

This determination does not affect the operation of A New Tax System (Goods and Services Tax) Margin Scheme Valuation Requirements Determination MSV 2005/2.

A valuation that complies with this determination is an approved valuation under section 75-35 and may be relied upon by suppliers calculating GST under the margin scheme in accordance with paragraph 75-10(3)(b) and where applicable, section 75-11 of the GST Act.

To be an approved valuation, the valuation must be undertaken using one of the following valuation methods in the determination; and be made within the time period specified.

**Consultation:**

This determination has been the subject of consultation with the taxation professional peak bodies and relevant groups or associations in the property construction industry.

Commissioner of Taxation  
7 September 2005

Source: This information has been extracted from the Australian Taxation Office website [www.ato.gov.au](http://www.ato.gov.au)



# International Property Conference 2006

## Plans for the Australian Property Institute and Property Institute of New Zealand International Property Conference are underway for 2006.

The API/PINZ International Property Conference will be held over three days at the Cairns Convention Centre in Queensland, from the 24–26 May 2006.

Cairns boasts excellent facilities for hosting an international property conference. Located in North Queensland, Cairns has much to offer visitors and tourists with its tropical rainforests and Great Barrier Reef activities.

An exciting line up of Australian and International speakers is being arranged for the 2006 API/PINZ Conference.

The 2006 Conference will build on the success of the first joint API/PINZ Conference held in Queenstown, New Zealand in 2004, where 37 speakers gave presentations and more than 675 property professionals attended the conference's busy program and themed dinner.

The 2006 International Property Conference will host the inaugural National Excellence in Property Award, destined to be a defining event in the Australian property calendar.

The conference website will be updated with the relevant information as soon as it is available. The website can be found at [www.api.org.au/cairns](http://www.api.org.au/cairns)

### Pre-Registration Form

To register your interest in attending the International Property Conference in 2006 send the following details to API National Office. Tel: 02 6282 2411 Fax: 02 6285 2194 Email: [national@api.org.au](mailto:national@api.org.au)

Name

Company

Address

Suburb  State  Postcode  Country

Telephone  Facsimile

Email

Are you interested in attending an API Risk Management Module on the day prior to the conference?

Yes  No (please tick)