What are we going to cover today?

GST and the Margin Scheme

Part 2

Calculation

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This is Part 2 of a 2 Part Series

We previously covered

GST and the Margin Scheme, Eligibility, Part 1

We are now going to cover

GST Margin Scheme, Calculation, Part 2

Starting with a quick recap from

Margin Scheme, Part 1, Eligibility

And some basic principles

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Why was the margin scheme introduced?

The broad intention was primarily to provide a concession for the GST payable on the 'family home', being most forms of residential homes that are not commercial residential premises

- starting in July 2000 and to continue forever into the future
- for new homes, including substantially renovated homes, whether supplied direct to owner occupiers or to investors

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Can it only be used for residential premises?

No ! Why ?

It would normally be better for the margin scheme to be used for residential premises because the purchaser would not be able to claim GST input tax credits, so it’s better for the GST in the price to be as low as possible

However, if an individual who was not registered for GST bought a non-residential unit for private purposes (eg an industrial unit to store a boat or household goods), it would also be better for the GST in the price to be as low as possible

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Don’t guess GST definition of "real property"

SECTION 195.1

"real property" includes:

(a) any interest in or right over land; or

(b) a personal right to call for or be granted any interest in or right over land; or

(c) a licence to occupy land or any other contractual right exercisable over or in relation to land.

So, it can apply to much more than mere land and buildings!

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Notes and Common Issues

Cost includes GST on the margin of previous supply under the margin scheme

Cost does not include fully ‘absorbed’ costs nor purchaser’s costs like stamp duty, but may include ‘contractual adjustments’ however described or calculated and does include ‘settlement day adjustments’

Valuation on 30 June 2000 is not the same as valuation on 1 July 2000

There cannot be a negative margin

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Notes and Common Issues

Valuations must be ‘inclusive of GST’, not ‘exclusive of’ nor ‘plus GST’

‘GST-free’ is not the same as ‘could have been GST-free’

‘improvements’ have been subject to full analysis and rulings by the ATO

when a ‘supply’ takes place for GST purposes may differ to when a ‘sale’ or ‘transaction’ or ‘event’ occurs for other purposes like for CGT or Stamp Duty

An ‘approved valuation’ is a different concept to ‘market value’ and is always inclusive of GST

The ever changing margin scheme laws

As a result of many unexpected outcomes, the GST laws were changed in March 2005 (some effective July 2000 and some March 2005), and in December 2008 (some effective July 2000, some March 2005 and some December 2008) and many more since (some effective at many different times). It's a minefield.

However, you don't want me to be telling you that it's all impossible, and you'd like some broad guidance that applies in most normal cases. So that is the approach I'll take but do beware.

Let's only look at law from 17 March 2005

There have been a vast number of changes to Division 75 since 2000, not only changing eligibility to elect to use the margin scheme, but even when you are eligible, provisions relating to how to calculate the margin and the GST payable under the margin scheme.

The variations to the GST laws are tortuous to get through, so to be a bit practical, let’s start with legislation as it applied to supplies made on and from 17 March 2005

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What is “amount”?

SECTION 9.70

The amount of GST on a * taxable supply is 10% of the * value of the taxable supply.

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What is “price” and “value” for GST?

SECTION 9.75

The value of taxable supplies

(1) The ***value*** of a * taxable supply is as follows:

price x 10/11

where: “price” is the sum of:

(a) so far as the * consideration for the supply is consideration expressed as an amount of * money--the amount (without any discount for the amount of GST (if any) payable on the supply); and

(b) so far as the consideration is not consideration expressed as an amount of money--the * GST inclusive market value of that consideration.

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What does the margin scheme do?

➡️ **SECTION 75.5**

(1) The * margin scheme applies in working out the amount of GST on a * taxable supply of * real property that you make by:

(a) selling a freehold interest in land; or

(b) selling a * stratum unit; or

(c) granting or selling a * long - term lease

What does the margin scheme do?

SECTION 75.10

The amount of GST on taxable supplies

(1) If a * taxable supply of * real property is under the * margin scheme, the amount of GST on the supply is 1 / 11 of the * margin for the supply

So, the application of the margin scheme does not make part of the supply GST-free. It's still a fully taxable supply. The margin scheme provision is strictly a special or concessional way to 'calculate' the GST payable on a taxable supply. That is, GST is only payable on the 'margin'

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What does the margin scheme do?

Also note that you cannot ever claim a GST input tax credit of GST if the GST was calculated under the margin scheme, even though it's a taxable supply

SECTION 75.20

Supplies under a margin scheme do not give rise to creditable acquisitions

(1) An acquisition of a freehold interest in land, a * stratum unit or a * long - term lease is not a * creditable acquisition if the supply of the interest, unit or lease was a * taxable supply under the * margin scheme.

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Simple Example: Multiple cumulative margins

Consider the following where all were registered for GST:

- Investor 1 held property on 1/7/00 worth $200,000
- Investor 1 sells to Investor 2 on 1/7/02 for $300,000 plus $10,000 GST = $310,000
  - Margin = $100,000 x 10% GST
- Investor 2 sells to Investor 2 on 1/7/03 for $410,000 plus $10,000 GST = $420,000
  - Margin = $100,000 x 10% GST
- Investor 3 sells to Investor 2 on 1/7/04 for $520,000 plus $10,000 GST = $530,000
  - Margin = $100,000 x 10% GST

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Simple Example: Multiple margins

Each investor added a margin of $100,000, each paying GST of $10,000 on their $100,000 margin to the ATO

As the GST charged on the margin cannot be claimed back as an input tax credit, the ATO keeps each payment of GST it receives each time the property is sold under the margin scheme

After 1 July 2000, there was a total margin of $300,000 on which $30,000 GST was paid in the margin scheme, which the ATO received and kept

GST margin scheme law from 17 March 2005

SECTION 75.10

The amount of GST on taxable supplies

(1) If a * taxable supply of * real property is under the * margin scheme, the amount of GST on the supply is 1 / 11 of the * margin for the supply.

(2) Subject to subsection (3) and section 75 - 11, the ***margin*** for the supply is the amount by which the * consideration for the supply exceeds the consideration for your acquisition of the interest, unit or lease in question.

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GST margin scheme law from 17 March 2005

(3) Subject to section 75 - 11, if:

(a) the circumstances specified in an item in the second column of the table in this subsection apply to the supply; and

(b) an * approved valuation of the freehold interest, * stratum unit or * long - term lease, as at the day specified in the corresponding item in the third column of the table, has been made;

the ***margin*** for the supply is the amount by which the * consideration for the supply exceeds that valuation of the interest, unit or lease.

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GST margin scheme law from 17 March 2005

(3A) If:

(a) the circumstances specified in item 4 in the second column of the table in subsection (3) apply to the supply; and

(b) there are improvements on the land or premises in question on the day on which the * taxable supply takes place;

the valuation is to be made as if there are no improvements on the land or premises on that day.

(4) This section has effect despite section 9 - 70 (which is about the amount of GST on taxable supplies).

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Use of valuations to work out margins		
Item	**When valuations may be used**	**Days when valuations are to be made**
1	The supplier acquired the interest, unit or lease before 1 July 2000, and items 2, 3 and 4 do not apply.	1 July 2000
2	The supplier acquired the interest, unit or lease before 1 July 2000, but does not become * registered or * required to be registered until after 1 July 2000.	The date of effect of your registration, or the day on which you applied for registration (if it is earlier)

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Use of valuations to work out margins		
Item	**When valuations may be used**	**Days when valuations are to be made**
2A	The supplier acquired the interest, unit or lease on or after 1 July 2000, but the supply to the supplier: (a) was * GST - free under subsection 38 - 445(1A); and (b) related to a supply before 1 July 2000, by way of lease, that would have been GST -free under section 38 - 450 had it been made on or after 1 July 2000.	1 July 2000
3	The supplier is * registered or * required to be registered and has held the interest, unit or lease since before 1 July 2000, and there were improvements on the land or premises in question as at 1 July 2000.	1 July 2000

Use of valuations to work out margins		
Item	**When valuations may be used**	**Days when valuations are to be made**
4	The supplier is the Commonwealth, a State or a Territory and has held the interest, unit or lease since before 1 July 2000, and there were no improvements on the land or premises in question as at 1 July 2000.	The day on which the * taxable supply takes place

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

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.

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.

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

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.

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

The requirements for making valuations as determined by the Commissioner for the purposes of Division 75

5. 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

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

10. 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.

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

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.

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

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;

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

(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;

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

(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.

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

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.

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

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.

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

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.

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Margin scheme in particular circumstances Section 75.11 GST Groups

Margin for supply of real property acquired from fellow member of GST group

(1) If:

(a) you acquired the interest, unit or lease in question at a time when both you and the entity from whom you acquired it were * members of the same * GST group; and

(b) on or after 1 July 2000, there has been a supply (an ***earlier supply***) of the interest, unit or lease that occurred at a time when the supplier was not a member of the GST group; and

(ba) the * recipient was at that time, or subsequently became, a member of the GST group;

the ***margin*** for the supply you make is the amount by which the * consideration for the supply exceeds:

(c) the consideration for the last such earlier supply, if the supplier and the recipient were not * associates at that time; or

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Margin scheme in particular circumstances Section 75.11 GST Groups

(d) the * GST inclusive market value of the interest, unit or lease at that time, if the 2 entities were associates at that time.

(2) If:

(a) you acquired the interest, unit or lease in question at a time when both you and the entity from whom you acquired it were * members of the same * GST group; and

(b) subsection (1) does not apply;

the ***margin*** for the supply you make is the amount by which the * consideration for the supply exceeds an * approved valuation of the interest, unit or lease as at 1 July 2000.

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Margin scheme in particular circumstances Section 75.11 Joint Venture

Margin for supply of real property acquired from joint venture operator of a GST joint venture

(2A) If:

(a) you acquired the interest, unit or lease in question at a time when you were a * participant in a * GST joint venture and the entity from whom you acquired it was the * joint venture operator of the joint venture; and

(b) you acquired the interest, unit or lease for consumption, use or supply in the course of activities for which the joint venture was entered into; and

(c) on or after 1 July 2000, there has been a supply (an ***earlier supply***) of the interest, unit or lease to the entity from whom you acquired it (whether or not that entity was the joint venture operator of the joint venture at the time of that acquisition);

the ***margin*** for the supply you make is the amount by which the * consideration for the supply exceeds:

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Margin scheme in particular circumstances Section 75.11 Joint Venture

(d) the consideration for the last such earlier supply, if the supplier and the * recipient were not * associates at the time of the earlier supply; or

(e) the * GST inclusive market value of the interest, unit or lease at that time, if the 2 entities were associates at that time.

- (2B) If:
  - (a) you acquired the interest, unit or lease in question at a time when you were a * participant in a * GST joint venture and the entity from whom you acquired it was the * joint venture operator of the joint venture; and
  - (b) you acquired the interest, unit or lease for consumption, use or supply in the course of activities for which the joint venture was entered into; and
  - (c) subsection (2A) does not apply;
- the ***margin*** for the supply you make is the amount by which the * consideration for the supply exceeds an * approved valuation of the interest, unit or lease as at 1 July 2000.

Margin scheme in particular circumstances Section 75.11 Inheritance

(3) If:

(a) you acquired the interest, unit or lease in question by * inheriting it; and

(b) none of subsections (1) to (2B) applies; and

(c) the entity from whom you inherited the interest, unit or lease (the ***deceased***) acquired it before 1 July 2000;

the ***margin*** for the supply you make is the amount by which the * consideration for the supply exceeds:

(ca) if you know what was the consideration for the supply of the interest, unit or lease to the deceased and you choose to use that consideration to work out the margin for the supply--that consideration; or

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Margin scheme in particular circumstances Section 75.11 Inheritance

(d) if paragraph (ca) does not apply and, immediately before the time at which you inherited the interest, unit or lease, the deceased was neither * registered nor * required to be registered--an * approved valuation of the interest, unit or lease as at the latest of:

(i) 1 July 2000; or

(ii) the day on which you inherited the interest, unit or lease; or

(iii) the first day on which you registered or were required to be registered; or

(e) if paragraph (ca) does not apply and, immediately before the time at which you inherited the interest, unit or lease, the deceased was registered or required to be registered--an approved valuation of the interest, unit or lease as at the later of:

(i) 1 July 2000; or

(ii) the first day on which the deceased registered or was required to be registered.

Margin scheme in particular circumstances Section 75.11 Inheritance

(4) If:

(a) you acquired the interest, unit or lease in question by * inheriting it; and

(b) none of subsections (1) to (2B) applies; and

(c) the entity from whom you inherited the interest, unit or lease (the ***deceased***) acquired it on or after 1 July 2000;

the ***margin*** for the supply you make is the amount by which the * consideration for the supply exceeds:

(d) if you know what was the consideration for the supply of the interest, unit or lease to the deceased and you choose to use that consideration to work out the margin for the supply--that consideration; or

(e) if paragraph (d) does not apply--an * approved valuation of the interest, unit or lease as at the day on which the deceased acquired it.

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Margin scheme in particular circumstances Section 75.11 Going Concern or Farmland

(5) If:

(a) you acquired the interest, unit or lease in question from an entity as, or as part of:

(i) a * supply of a going concern to you that was * GST - free under Subdivision 38 - J; or

(ii) a supply to you that was GST - free under Subdivision 38 - O; and

(b) the entity was * registered or * required to be registered, at the time of the acquisition; and

(c) none of subsections (1) to (4) applies;

the ***margin*** for the supply you make is the amount by which the * consideration for the supply exceeds:

(d) if that entity had acquired the interest, unit or lease before 1 July 2000 and on that day was registered or required to be registered:

(i) if you choose to apply an * approved valuation to work out the margin for the supply--an approved valuation of the interest, unit or lease as at 1 July 2000; or

(ii) if subparagraph (i) does not apply--the * GST inclusive market value of the interest, unit or lease as at 1 July 2000; or

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Margin scheme in particular circumstances Section 75.11 Going Concern or Farmland

(e) if that entity had acquired the interest, unit or lease on or after 1 July 2000 and had been registered or required to be registered at the time of the acquisition:

(i) if the entity's acquisition was for consideration and you choose to apply an approved valuation to work out the margin for the supply--an approved valuation of the interest, unit or lease as at the day on which the entity had acquired it; or

(ii) if the entity's acquisition was for consideration and subparagraph (i) does not apply--that consideration; or

(iii) if the entity's acquisition was without consideration--the GST inclusive market value of the interest, unit or lease as at the time of the acquisition; or

(ii) if subparagraph (i) does not apply--the GST inclusive market value of the interest, unit or lease as at that day.

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Margin scheme in particular circumstances Section 75.11 Going Concern or Farmland

(f) if that entity had not been registered or required to be registered at the time of the entity's acquisition of the interest, unit or lease (and paragraph (d) does not apply):

(i) if you choose to apply an approved valuation to work out the margin for the supply--an approved valuation of the interest, unit or lease as at the first day on which the entity was registered or required to be registered; or

(ii) if subparagraph (i) does not apply--the GST inclusive market value of the interest, unit or lease as at that day.

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Margin scheme in particular circumstances Section 75.11 Associate

(6) If:

(a) you acquired the interest, unit or lease in question from an entity who was your * associate, and who was * registered or * required to be registered, at the time of the acquisition; and

(b) the acquisition from your associate was without * consideration; and

(c) the supply by your associate was not a * taxable supply; and

(d) your associate made the supply in the course or furtherance of an * enterprise that your associate * carried on; and

(e) none of subsections (1) to (5) applies;

the ***margin*** for the supply you make is the amount by which the consideration for the supply exceeds:

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Margin scheme in particular circumstances Section 75.11 Associate

(f) if your associate had acquired the interest, unit or lease before 1 July 2000 and on that day was registered or required to be registered:

(i) if you choose to apply an * approved valuation to work out the margin for the supply--an approved valuation of the interest, unit or lease as at 1 July 2000; or

(ii) if subparagraph (i) does not apply--the * GST inclusive market value of the interest, unit or lease as at 1 July 2000; or

(g) if your associate had acquired the interest, unit or lease on or after 1 July 2000 and had been registered or required to be registered at the time of the acquisition:

(i) if your associate's acquisition was for consideration and you choose to apply an approved valuation to work out the margin for the supply--an approved valuation of the interest, unit or lease as at the day on which your associate had acquired it; or

(ii) if your associate's acquisition was for consideration and subparagraph (i) does not apply--that consideration; or

(iii) if your associate's acquisition was without consideration--the GST inclusive market value of the interest, unit or lease at the time of the acquisition; or

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Margin scheme in particular circumstances Section 75.11 Associate

(h) if your associate had not been registered or required to be registered at the time of your associate's acquisition of the interest, unit or lease (and paragraph (f) does not apply):

(i) if you choose to apply an approved valuation to work out the margin for the supply--an approved valuation of the interest, unit or lease as at the first day on which the entity was registered or required to be registered; or

(ii) if subparagraph (i) does not apply--the GST inclusive market value of the interest, unit or lease as at that day.

(6A) Paragraphs (6)(c) and (d) do not apply if the acquisition from your * associate was not by means of a supply by your associate.

(6B) To avoid doubt, you cannot be taken, for the purposes of paragraph (5)(f) or (6)(h), to be * registeredor * required to be registered on a day earlier than 1 July 2000.

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Margin scheme in particular circumstances Section 75.11 Associate

(7) If:

(a) you acquired the interest, unit or lease in question from an entity who was your * associate at the time of the acquisition; and

(b) none of the other subsections of this section apply;

the ***margin*** for the supply you make is the amount by which the * consideration for the supply exceeds:

(c) if your acquisition was made before 1 July 2000--an * approved valuation of the interest, unit or lease as at 1 July 2000; or

(d) if your acquisition was made on or after 1 July 2000--the * GST inclusive market value of the interest, unit or lease at the time of the acquisition.

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Margin scheme in particular circumstances Section 75.11 Branch or Sub-entity

(8) Subsection (6) or (7) applies to an acquisition through a supply made by:

(a) a * GST branch; or

(b) a * non - profit sub - entity; or

(c) a * government entity of a kind referred to in section 72 - 95 or 72 - 100;

as if Subdivision 72 - D affected the operation of that subsection in the same way that it affects the operation of Division 72.

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If that wasn't enough …

There are also specific transitional provisions that relate to the introduction and commencement of some of the specific provisions above that you won't find in the legislation above, but you will find in the amending legislation. For example, in relation to:

75.11 (1B),(2A), (5), (6)(6A)(6B),(7),(8)

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and there's still even more …

75.12. Working out margins to take into account failure to pay full consideration

75.13. Working out margins to take into account supplies to associates

75.14. Consideration for acquisition of real property not to include cost of improvements etc.

75.15. Subdivided real property

75.16. Margins for supplies of real property acquired through several acquisitions

75.20. Supplies under a margin scheme do not give rise to creditable acquisitions

75.22. Increasing adjustment relating to input tax credit entitlement

75.25. Adjustments relating to bad debts

75.27. Decreasing adjustment for later payment of consideration

75.30. Tax invoices not required for supplies of real property under the margin scheme

75.35. Approved valuations

We don’t have time to cover …

There isn’t time to cover important other issues such as:

- Deep analysis of ”approved” valuations
- Commissioner’s discretion to allow further time to elect to use the margin scheme
- Disputed and multiple valuations
- Seeking ATO private binding rulings
- Getting information from previous vendors (especially if they no longer exist)
- And more- its complex

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Hi, my name is Ken

I am a GST Specialist, Advisor and Mentor empowering Boards, Executives and Business Owners to convert complex GST issues into tangible business opportunities using a proven methodology and keeping them safe

DON’T TAKE CHANCES BY ROLLING THE DICE ON GST

[Connect with Ken Fehily]

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