Chapter 1
GST margin scheme and subdivided land

Outline of chapter

1.1 Schedule X to this Bill amends the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act) to ensure that, where applicable, the margin for a taxable supply of subdivided land or premises can be calculated by reference to an approved valuation or the GST inclusive market value of the real property from which the land or premises was subdivided.

1.2 Unless otherwise specified, all legislative references in this Schedule are to the GST Act.

Context of amendments

1.3 Division 75 allows a taxpayer, in certain circumstances, to use the margin scheme instead of the normal GST rules when calculating their GST liability on a taxable supply of real property.

Calculating the GST payable on the supply of real property

1.4 Where the supplier and recipient of the supply agree in writing that the margin scheme is to apply, the margin scheme applies in working out the amount of GST on a taxable of real property made by:

- selling a freehold interest in land;
- selling a stratum unit; or
- granting or selling a long-term lease.

1.5 However, the margin scheme does not apply if the supplier acquired the real property through a supply that was ineligible for the margin scheme (see subsection 75-5(2) and subsection 75-5(3)).

1.6 The amount of GST on a taxable supply of real property under the margin scheme is one-eleventh of the margin for the supply. How the margin is calculated will depend upon which of the relevant provisions in section 75-10 or 75-11 of the GST Act is applicable. Depending upon the specific facts and circumstances, the margin for a taxable supply of real property is worked out by reference to:

- the consideration provided by the supplier of the real property, or another specified entity, for their acquisition of the interest, unit or lease in the real property;
- an approved valuation of the interest, unit or lease in the real property as at a specified date; or
- the GST inclusive market value of the interest, unit or lease in the real property as at a specified time.

Consideration

1.7 When the margin for a taxable supply of real property is to be worked out using the consideration provided for an acquisition of the interest, unit or lease in the real property, the margin for the supply is the difference between the consideration for the taxpayer's supply of the real property and the consideration that was provided for the relevant acquisition of the interest, unit or lease.

1.8 The consideration for the acquisition does not include costs incurred by the supplier in developing real property.

Approved valuations

1.9 When the margin for the supply of real property is to be worked out using an 'approved valuation' of the interest, unit or lease in the real property as at a specified date, the margin for the supply is the difference between the consideration for the taxpayer's supply of the real property and the 'approved valuation' of the interest, unit or lease as at the specified date.

GST inclusive market value

1.10 When the margin for the supply of real property is to be worked out using the GST inclusive market value of the interest, unit or lease in the real property as at a specified time, the margin for the supply is the difference between the consideration for the taxpayer's supply of the interest, unit or lease and the GST inclusive market value of the real property at the specified time.

Calculating the GST payable on the sale of subdivided land

1.11 Under the current provisions, where the relevant interest, unit or lease in real property that is sold has been subdivided from land or premises acquired by the taxpayer, there is some doubt about how the taxpayer can, where applicable, determine the margin for the supply by reference to an approved valuation or a market valuation of the real property supplied.

1.12 Where a taxpayer sells an interest, unit or lease in real property that has been subdivided from land or premises it acquired, section 75-15 of the GST Act currently allows the taxpayer to use a corresponding proportion of the consideration for the land or premises acquired in determining the margin for the taxable supply. However, there is no corresponding provision that specifically refers to a taxpayer using a corresponding proportion of an approved valuation or GST inclusive market value of the land or premises acquired in determining the margin for the taxable supply.

1.13 Although, in practice, taxpayers have used and, from an administrative perspective, have been allowed to use a corresponding proportion of an approved valuation or GST inclusive market value, where applicable, to determine the margin for a taxable supply of a subdivided interest, unit or lease in real property.

Summary of new law

1.14 This Schedule removes doubt as to the use of an approved valuation or GST inclusive market value to determine the margin for a taxable supply of a subdivided interest, unit or lease in real property. This is achieved by amending section 75-15 to expressly allow taxpayers, where relevant, to use a corresponding proportion of (as applicable):

- the consideration provided for the relevant acquisition of the land or premises from which the interest, unit or lease was subdivided;
- an approved valuation of the land or premises from which the interest, unit or lease was subdivided as at a specified date; or
- the GST inclusive market value of the land or premises from which the interest, unit or lease was subdivided at a specified time;

to calculate the margin for a taxable supply of a subdivided interest, unit or lease in real property.

1.15 This insertion maintains the integrity of the GST margin scheme by ensuring that the interaction between the margin scheme provisions will be consistent.

Comparison of key features of new law and current law

New law	*Current law*
A taxpayer can use, where relevant, a corresponding proportion of consideration provided, an approved valuation, or the GST inclusive market value of the land or premises acquired in determining the margin for the taxable supply of subdivided real property.	Section 75-15 only refers to a taxpayer using a corresponding proportion of the consideration provided for the land or premises acquired in determining the margin for the taxable supply of subdivided real property.

Detailed explanation of new law

1.16 This Schedule amends section 75-15 to confirm that in applying any of sections 75-10 to 75-14 of the GST Act in determining the margin for a taxable supply of an interest, unit or lease where the real property supplied has been subdivided from land or premises previously acquired by the supplier, the margin can be determined by reference to the corresponding proportion of:

- the consideration for the acquisition or supply (depending upon the specific statutory requirements) of the interest, unit or lease; ***[Schedule #, item 1, paragraph 75-15(2)(a)]***
- the approved valuation of that interest, unit or lease as at the specified date; ***[Schedule #, item 1, paragraph 75-15(2)(b)]*** or
- the GST inclusive market value of that interest, unit or lease as at the specified day or time. ***[Schedule #, item 1, paragraph 75-15(2)(c)]***

Example 1.1: Using the consideration method to calculate the margin on subdivided land

Caroline carries on a property development enterprise and is registered for GST. In July 2012, Caroline makes a taxable supply of real property when she sells a newly developed residential lot to Emily for

$450,000. The residential lot sold to Emily was subdivided from land and premises that Caroline acquired from Pat, an unregistered home owner, in June 2011 for consideration of $600,000.

Caroline and Emily agreed in writing that the margin scheme is to apply to Caroline's sale of the residential lot to Emily. Subsection 75-10(2) of the GST Act applies for the purposes of calculating the margin for the supply. The margin for the supply is equal to the difference between the sale price of $450,000 and the relevant proportion of the $600,000 consideration that Caroline provided for her acquisition of the land and premises she acquired from Pat, and from which the residential lot was subdivided.

The buildings on the land and premises that Caroline acquired from Pat were demolished and the remaining land was subdivided. Assuming the remaining land was subdivided into three residential lots of equal size and value, the margin for the sale of the single residential lot to Emily may be calculated as being equal to $450,000 - $200,000 (i.e. $600,000 divided by 3) = $250,000.

Example 1.2: Using an approved valuation to calculate the margin on subdivided land

Pearce Development Pty Ltd (PD) is a property development company and is registered for GST. On 6 July 2012, PD makes a taxable supply of real property when it sells a newly developed residential lot to Lisa for $500,000.

The residential lot sold to Lisa is referred to as Lot 42 in the registered plan of subdivision and was subdivided from land that PD held as at 1 July 2000. An approved valuation of the land held by PD as at 1 July 2000 was $36,000,000.

PD and Lisa agreed in writing that the margin scheme is to apply to the sale of Lot 42 to Lisa. Subsection 75-10(3) applies for the purposes of calculating the margin for the supply. The margin for PD's supply of Lot 42 to Lisa is equal to the difference between the sale price of $500,000 and the relevant proportion of the $36,000,000 approved valuation of the land held by PD as at 1 July 2000, and from which Lot 42 was subdivided.

Assuming the land that PD held as at 1 July 2000 was subdivided into 120 residential lots of equal size and value, then the margin for the sale of Lot 42 to Lisa may be calculated as being equal to $500,000 - $300,000 (i.e. $36,000,000 divided by 120) = $200,000.

Example 1.3: Using the GST inclusive market value to calculate the margin on subdivided land

John carries on a property development enterprise and is registered for GST. In July 2012, John makes a taxable supply of real property by selling a newly developed residential lot to Patrick for $400,000. The residential lot sold to Patrick was subdivided from land that John acquired from his father, Aston, on 10 August 2010 for no consideration. Aston held the land for private purposes and at the time that John acquired the land, Aston was not registered for GST. The GST inclusive market value of the land at 10 August 2010 was $1,800,000.

John and Patrick agreed in writing that the margin scheme was to apply to the sale of the residential lot to Patrick. John acquired the land from his father who is his associate for the purposes of the GST Act, and subsection 75-11(7) applies for the purposes of calculating John's margin for the sale of the residential lot to Patrick. The margin for John's sale to Patrick is equal to the difference between the sale price of $400,000 and the relevant proportion of the $1,800,000 GST inclusive market value of the land that John acquired from Aston at 10 August 2010.

Assuming the land that John acquired from Aston on 10 August 2010 was subdivided into twelve lots of equal size and value, then the margin for the sale of the residential lot to Patrick may be calculated as being equal to $400,000 - $150,000 (i.e. $1,800,000 divided by 12) = $250,000.

Application provisions

Consequential amendment

1.17 A note is inserted at the end of the definition of 'margin' in section 195-1 of the GST Act to clarify that the meaning of 'margin' is affected by sections 75-12, 75-13, 75-14 and 75-15 of the GST Act. ***[Schedule #, item 2, section 195-1]***

Application date

1.18 The amendments contained in this Schedule apply in relation to supplies made on or after the start of the first quarterly tax period starting on or after Royal Assent. ***[Schedule #, item 3(1)]***

1.19 It does not matter whether the taxpayer has quarterly tax periods or other tax periods. ***[Schedule #, item 3(2)]***

Chapter 2
Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

Schedule 1 — Assessment of amounts under indirect tax laws

2.1 This Schedule is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview

2.2 This Schedule amends the *A New Tax System (Goods and Services Tax) Act 1999*. The amendment ensures that taxpayers are able to use the consideration method, an approved valuation of the property or the GST inclusive market value of the premises when calculating the GST margin on a taxable supply of subdivided land.

Human rights implications

2.3 This Schedule does not engage any of the applicable rights or freedoms.

Conclusion

2.4 This Schedule is compatible with human rights as it does not raise any human rights issues.

David Bradbury, Assistant Treasurer, Minister Assisting for Deregulation