INSTITUTE OF FINANCIAL PROFESSIONALS AUSTRALIA

GST Margin Scheme

Presented by

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Questions?

Please ask questions through the Q & A pod not on the chat pod.

Not Answered Questions will be emailed to you along with the **webinar recording**

Started as a mess – so we abused it!!!!

Sale on or after 17 March 2005

Eligibility to use the margin scheme changed for sales of property made from 17 March 2005 onwards. This means you cannot use the margin scheme to sell a property if you:

- purchased the property as fully taxable and the margin scheme was not used
- inherited the property from a person who was not eligible to use the margin scheme
- obtained the property from a fellow member of a GST group who was not eligible to use the margin scheme and who had purchased it from an entity that was not a member of the GST group
- were a participant in a GST joint venture and obtained the property from the joint venture operator who had purchased the property through a sale that was ineligible for the margin scheme.

Purchase on or after 9 December 2008

If you are selling property that you originally purchased, or entered into a contract to purchase, after 9 December 2008, you cannot use the margin scheme if the entity you purchased the property from was not eligible to use the margin scheme and the property was purchased:

- as part of a GST-free going concern
- as GST-free farm land
- from an associate for no consideration (no payment).

If the entity you purchased the property from was eligible to use the margin scheme and you purchased the property through one of the above, you must include the value you and the previous seller added to the property when you calculate the margin.

Why do we have the margin scheme? Fairness!

- I am registered for GST and want to buy a site for my business. I like 91 Normal Street and ask my bad advisor to buy it for me. He accidently buys (with my money) 19 Normal Street from the unregistered owners for $1.1 million.

- When I work out the mistake I offer to sell it back for $1.1 million. They agree, but as I am registered for GST I have to remit 1/11th in GST so I have just lost $100k... That is unfair!

- But what if GST was only on the margin? Bought for $1.1 million, sold for $1.1 million

  Margin = $0

  1/11th of $0 = $0 GST... Fair!

Wonderful Concession

- Even the High Court of Australia (Belconnen Lakeview) has acknowledged that *"the price of property is often the price"...*
- You don't or can't add up the costs of building and put a margin on top.
- So this is one of the rare situations of the less GST you pay, the higher your profit is.
- In addition, stamp duty is calculated on a GST inclusive purchase price, so reduced GST amount also results in a lower amount of stamp duty payable.
- Everyone is a winner (other than the Commissioner).

When can we NOT used the margin scheme?

- Let's start with the **gatekeeper question**... When can we not apply the margin scheme?
- The easy first answer is **if you purchased the property as fully taxable and the margin scheme wasn't used**.
- But then it gets hard... You can't use the margin scheme if you:

1. **inherited** the property **from a person who wasn't eligible** to use the margin scheme; or
2. obtained the property from a fellow member of a **GST group** who **wasn't eligible,** and they purchased it from an entity that wasn't a member of the GST group; or
3. were a participant in a **GST joint venture** and obtained the property from the joint venture

When can we NOT used the margin scheme?

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- The easy first answer is **if you purchased the property as fully taxable and the margin scheme wasn't used**.
- But then it gets hard... You can't use the margin scheme if you:

4. property was purchased as part of a **going concern** and the entity you bought the property from **wasn't eligible** for the margin scheme; or
5. property was purchased as **GST-free farmland** and the entity you bought the property from **wasn't eligible** for the margin scheme; or

When can we NOT used the margin scheme?

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- The easy first answer is **if you purchased the property as fully taxable and the margin scheme wasn't used**.
- But then it gets hard... You can't use the margin scheme if you:

6. property was purchased from an **associate for no consideration (no payment)** and the entity they bought the property from **wasn't eligible** for the margin scheme.

When can we NOT used the margin scheme?

- Of course there is a challenge in determining the seller's eligibility
- If you want to use the margin scheme when selling property purchased as part of a going concern, you need to know if the previous owner was eligible to use the margin scheme.

  In June 2019, Sam, a GST-registered entity, sells the business as a going concern (business) sale that includes property to Daniel. Sam purchased the entire property through a fully taxable sale from Hugo and the GST was worked out without using the margin scheme.

  Sometime later, Daniel seeks to sell the property. AND NOW THE WORK BEGINS...

When can we NOT used the margin scheme?

- Of course, there is a challenge in determining the seller's eligibility
- If you want to use the margin scheme when selling property purchased as part of a going concern, you need to know if the previous owner was eligible to use the margin scheme.

  Daniel needs to work out if Sam was eligible to use the margin scheme before he can use it:

  - *Daniel purchased the property from Sam as part of a sale of a going concern that was GST-free*
  - *Sam was registered for GST at the time of Daniel's purchase*
  - *Sam purchased the entire property as a fully taxable sale and GST was worked out without using the margin scheme so no margin scheme*

Selling amalgamated land – All eligible or all not eligible

- While the margin scheme can't be used if the entire amalgamated property for sale is ineligible for the margin scheme, we may be able to use the margin scheme if part of the property purchased is eligible for the margin scheme.
    - *Chris amalgamates property she purchased partly through a supply that was:*
    - *ineligible for the margin scheme (the supply from Julieanne to Chris)*
    - *partly through a supply that was eligible for the margin scheme (the supply from Matt to Chris).*
    - *Chris can use the margin scheme on her sale as she didn't acquire the entire property through a sale that was ineligible for the margin scheme. However, Chris must make an adjustment which is repaying the GST claimed on the part of the land that was not originally eligible for the margin*

Selling amalgamated land – All eligible or all not eligible

- While the margin scheme can't be used if the entire amalgamated property for sale is ineligible for the margin scheme, we may be able to use the margin scheme if part of the property purchased is eligible for the margin scheme.

- However, in this case we will need to make an adjustment.

*75-22 You have an increasing adjustment if: (a) you make a * taxable supply of * real property under the * margin scheme ; and (b) an acquisition that you made of part of the interest, unit or lease in question was made through a supply that was * ineligible for the margin scheme ; and (c) you were, or are, entitled to an input tax credit for the acquisition. The amount of the increasing adjustment is an amount equal to the * previously attributed input tax credit amount for the acquisition.*

Eligibility – need to have an agreement in writing

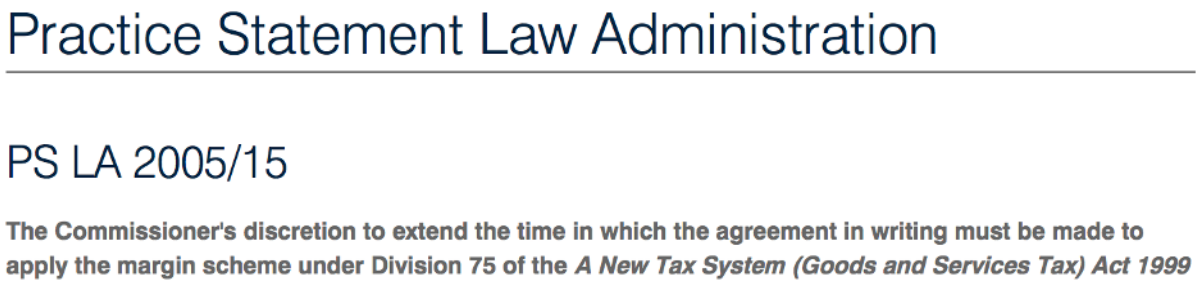
75-5 Applying the margin scheme

*(1) The * margin scheme applies in working out the amount of GST on a * taxable supply of * real property that you make … if you and the * recipient of the supply have agreed in writing that the margin scheme is to apply.*

(1A) The agreement must be made: (a) on or before the making of the supply; or (b) within such further period as the Commissioner allows.

- Vendor and purchaser must both agree in writing that the margin scheme is to be used BY settlement
- A discretion for seller to choose not enough… there needs to be an agreement by both parties

Eligibility – need to have an agreement in writing



Practice Statement Law Administration

PS LA 2005/15

The Commissioner's discretion to extend the time in which the agreement in writing must be made to apply the margin scheme under Division 75 of the *A New Tax System (Goods and Services Tax) Act 1999*

- The Commissioner has the discretion to extend the time in which the agreement in writing must be made

  the supplier and recipient of the supply agreed to apply the margin scheme, but inadvertently failed to put the agreement in writing by the time the supply is made

  the failure to agree to apply the margin scheme was due to a genuine mistake. For example, the supply was mistakenly believed to be a GST-free supply or the supplier mistakenly considered it was not required to be registered for GST

Eligibility – need to have an agreement in writing

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the supply was intended to be made to an entity that was entitled to an input tax credit on its acquisition, but instead the supply was made to an entity that was not entitled to an input tax credit. For example, the supply was made to an unregistered entity

the supply was made without the parties agreeing to apply the margin scheme, but the recipient of the supply realises that it wishes to apply the margin scheme to a supply that it will subsequently make to a third party (which the recipient cannot do if GST on the supply to it is not calculated under the margin scheme).

How to calculate the margin?

- GST to one eleventh of the margin. The margin is generally the difference between the sale price and either the:
  - amount you paid for the property
  - value of the property provided in an approved valuation of the property
- Cases and rulings have confirmed that the purchase price does not include:
  - Costs spent on improving, constructing or developing the property
  - Legal expenses, estate agent fees and stamp duty
  - Acquisitions or work bringing the real property into existence (e.g. subdivision costs)

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  - Legal expenses, estate agent fees and stamp duty
  - Acquisitions or work bringing the real property into existence (e.g. subdivision costs)
  - Settlement adjustments for things such as rates, land tax and other outgoings form part of the purchase price
  - Stamp duty is not part of the purchase price
  - Option fee associated with the purchase

How to calculate the margin?

John is a GST registered builder. On 1 December 2020, they purchased land for $500,000 from a vendor who wasn't registered for GST. Later, they construct a house on the land and sell the house and land for $900,000. Jan choses to use the margin scheme to work out the GST on the sale. The margin for the sale of the house and land package is $400,000: Sale price $900,000 – $500,000 = $400,000

John pays GST at one eleventh of the margin ($36,363): $400,000 × 1 ÷ 11 = $36,363

They have tax invoices they can claim in the tax periods the purchases apply for conveyancing fees & purchases made when building the house

How to calculate the margin?

- Special rules for…
  - GST Groups & JVs & Inherited & Associates for no consideration – What they purchased it for (if eligible)
  - Purchased as a going concern or farm land

How to calculate the margin?

In September 2018, Heather sold her going concern to Jamie, which included property. Heather originally purchased the property using the margin scheme in August 2014 for $320,000. A rates valuation made in 2014 by the relevant state government stated the value of the property was $330,000 on the valuation date. This was given to Jamie. Heather was registered for GST when Jamie purchased it. Heather and Jamie aren't members of the same GST group, nor are they part of the same GST joint venture.

In 2020, Jamie decides to sell the property to Aldo using the margin scheme for $880,000. Jamie uses the 2014 state government approved valuation and works out the margin for her sale. The margin for Jamie's sale is $550,000. The sale price ($880,000) exceeds the approved valuation of the property on the date Heather purchased it ($330,000). Jamie has to use the actual purchase price of $320,000 if she didn't have an approved valuation. Jamie reports the sale on her activity statement in the period the

My Home Town - Canberra

Australian Government
Australian Taxation Office

Goods and Services Tax Determination
GSTD 2021/1

Status: **legally binding**

Goods and Services Tax Determination

Goods and services tax: development works in the Australian Capital Territory

Subdivision

- To work out the portion of the purchase price for a subdivided allotment or strata title unit you may use any reasonable method of apportionment. If you purchase land and subdivide it or build strata title units on it and later apply the margin scheme, the margin is the selling price less the price you paid for the portion of property.

JWDev is a GST-registered property developer. It bought a 2,000 square metre block of land for $240,000 from a private individual who wasn't required to be registered for GST. The block is of equal value per square metre. JWDev subdivided the block into two lots of 600 square metres each and one lot of 800 square metres. JWDev used an area basis to work out the purchase price of the subdivided lots:

600sqm lots at $72,000 (600 ÷ 2,000 × $240,000) 800sqm lot art $96,000 (800 ÷ 2,000 × $240,000)

If JWDev sells the 800 square metre lot for $140,000, the GST payable will be the selling price minus the purchase price of the property divided by eleven, that is ($140,000 – $96,000) × 1 ÷ 11 = $4,000 in GST to pay.

GST Withholding & the Margin Scheme

- Buying taxable supplies of new residential premises or potential residential land, purchasers pay at settlement a withheld amount of GST direct to the Commissioner, with the balance of the sale price of the property, minus the withholding amount to the supplier.

- The amount a purchaser must withhold is:

  - one eleventh of the contract price (for fully taxable supplies)

  - 7% of the contract price (for margin scheme supplies)

  - 10% of GST exclusive market value of the supply (for supplies between associates for a price less than GST inclusive market value).

GST Withholding & the Margin Scheme

BuildCo has land they acquired for $228,000 in 2009 and built a new residential house on it. The supply to Buildco used the margin scheme and Buildco can apply the margin scheme to subsequent sales as long as the purchaser agrees.

On 9 August 2018, Tom enters into a contract to purchase the new house from BuildCo for $800,000 and pays an $80,000 deposit. Tom and BuildCo have agreed in writing that the supply will be made using the margin scheme.

The contract of sale includes the required supplier notification, $56,000 (7% of $800,000) to be withheld and remitted to the ATO & the balance of the sale to be paid to BuildCo.

The notification enables Tom's conveyancer to complete the GST property settlement withholding notification (Form one) online and get a payment reference number (PRN) and lodgment reference

- Report the amount of the 'margin' on your sale at G1.
- If the margin is nil (or a negative amount), don't report any amount at G1 (total sales).
- Report the amount of GST on your margin at 1A (GST on sales).
- Only report the GST on the sale on the BAS at label 1A, not the withholding amount paid by the purchaser.
- And remember, if you buy property and the GST included in the price was worked out using the margin scheme, you aren't entitled to a GST credit for the purchase.

Valuations

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Decision Impact Statement

Decleah Investments Pty Ltd and anor as Trustee for the PRS Unit Trust and Commissioner of Taxation

Court Citation(s):
[2021] AATA 4821
2021 ATC 10-607

Venue: Administrative Appeals Tribunal
Venue Reference No: 2016-0200
Judge Name: Deputy President O'Loughlin
Judgment date: 24 December 2021
Appeals on foot: No
Decision Outcome: Unfavourable to the Commissioner

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Thank you

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