

BETWEEN:

COMMISSIONER OF TAXATION
Appellant

and

UNIT TREND SERVICES PTY LTD (ACN 010 382 242)
Respondent

APPELLANT'S SUBMISSIONS

Part I: Internet publication

1 The appellant certifies that these submissions are in a form suitable for publication on the Internet.

Part II: Issues

2 The application for special leave concerns the proper interpretation of s.165-5(1)(b) of the *New Tax System (Goods and Services Tax) Act 1999* ("the GST Act") and, in particular, the identification of the requisite nexus between the GST benefit an "avoider" gets from a scheme and the making of a choice, election, application or agreement (collectively a "choice") that is expressly provided for by the GST law, the wine tax law or the luxury car tax law (collectively "the GST law").

Part III: Judiciary Act 1903

3 The appellant certifies that he has considered whether any notice should be given in compliance with section 78B of the *Judiciary Act 1903* and has concluded that no such notice should be given.

Part IV: Decisions below

4 There is no authorised report of the decision at first instance. The decision is reported as *Re The Taxpayer and Commissioner of Taxation* in (2010) ATR 917; (2010) ATC 1-022. The Internet citation of the decision at first instance is *The Taxpayer and Commissioner of Taxation* [2010] AATA 497.

5 The authorised report of the decision on appeal to the Full Court of the Federal Court of
Australia ("the Full Court") is *Unit Trend Services Pty Ltd v Federal Commissioner of Taxation*
(2012) 205 FCR 29.

Part V: Relevant facts

6 The relevant facts are as follows.

7 The respondent ("Unit Trend") is the representative member of a GST group of companies¹
which included Simnat Pty Ltd ("Simnat"), Blesford Pty Ltd ("Blesford") and Mooreville
Investments Pty Ltd ("Mooreville"). All of those companies are wholly owned subsidiaries of
Raptis Group Limited.²

8 By a contract completed in April 1999, Simnat purchased a parcel of land at Surfers Paradise
on the Gold Coast for \$30m.³ Simnat obtained development approval to construct on the
land three high-rise towers containing residential apartments⁴ (which towers are referred to
as "Tower I", Tower II" and "Tower III").

9 Simnat engaged another Raptis company, Rapcivic Contractors Pty Ltd ("Rapcivic"), to
construct Tower I.⁵ Simnat sold units in Tower I to the public and the "margin scheme" under
the GST Act⁶ was applied to those sales.⁷

10 On 13 December 2002, a survey plan was registered, which plan subdivided the original
block so that the land on which Towers II and III was to be constructed was subdivided into
separate lots with separate titles.⁸

11 In July 2002, Simnat engaged Rapcivic to construct Tower II.⁹ Simnat marketed Tower II and
began selling units in Tower II off the plan.¹⁰ On 14 April 2004 a contract was entered into for

1 Approved by the applicant ("the Commissioner") for that purpose under s.48-5 of the GST Act.

2 Full Court Reasons [57].

3 Full Court Reasons [58].

4 Full Court Reasons [59].

5 Full Court Reasons [60].

6 As provided for by Division 75 of the GST Act as it then stood.

7 Tribunal Reasons [5]. See also Full Court Reasons [60].

8 Full Court Reasons [61].

9 Tribunal Reasons [5]. See also Full Court Reasons at [62].

10 Tribunal Reasons [11].

the sale of Tower II by Simnat to Blesford ("the Tower II contract").¹¹ This sale was completed on 7 May 2004.¹² This occurred at a time when:

- (a) the construction of Tower II was at an advanced stage (construction was completed in June 2004);¹³
- (b) Simnat had entered into contracts to sell 230 of the 289 apartments in Tower II.¹⁴

The Tower II contract provided for the price to be fixed by an independent valuer. It was subsequently fixed at \$149.8m.¹⁵ By the Tower II contract, Simnat assigned to Blesford all existing contracts for the sale of units in Tower II.¹⁶ The benefit of the building contract for Tower II was assigned by Simnat to Blesford.¹⁷

12 On 29 January 2003, Simnat engaged Rapcivic to construct Tower III.¹⁸ Simnat marketed Tower III and began selling units in Tower III off the plan.¹⁹ On 15 April 2004 a contract for the sale of Tower III by Simnat to Mooreville ("the Tower III contract") was executed (the day after the Blesford contract).²⁰ This sale was completed on 23 November 2004.²¹ At the time of transfer, Tower III was at an advanced stage of construction²² and Simnat had entered into contracts to sell 142 of the 241 units.²³

13 The Tower III contract provided for the price to be fixed by an independent valuer. It was subsequently determined to be \$109.5m.²⁴ The Tower III contract also provided for an

11 Tribunal Reasons [8]. See also Full Court Reasons at [62].

12 Tribunal Reasons [8]. See also Full Court Reasons at [65].

13 Tribunal Reasons [12].

14 Tribunal Reasons [12]. See also Full Court Reasons at [65].

15 Tribunal Reasons [8]. See also Full Court Reasons at [62].

16 Full Court Reasons [64].

17 Tribunal Reasons [8].

18 Full Court Reasons [67].

19 Tribunal Reasons [11].

20 Tribunal Reasons [9]. See also Full Court Reasons at [67].

21 Tribunal Reasons [9]. See also Full Court Reasons at [69]. The period between contract and settlement included a six month delay in Simnat's financier approving the transfer.

22 Tribunal Reasons [10].

23 Tribunal Reasons [12]. See also Full Court Reasons at [69].

24 Tribunal Reasons [9]. See also Full Court Reasons at [67].

assignment to Mooreville of all contracts for sale of units in the building.²⁵ The benefit of the building contract for Tower III was assigned by Simnat to Mooreville.²⁶

- 14 Following the sales, Blesford and Mooreville completed the construction of Towers II and III and continued the process of marketing and selling unsold apartments.²⁷ Following completion of Towers II and III, Blesford and Mooreville settled all sales of units in the respective Towers (including contracts entered into by Simnat as well as contracts which they had entered into with end buyers) and applied the margin scheme to the sales to the end buyers. The margin upon which GST would be paid was calculated by reference to the difference between a proportion of the \$149.8m or \$109.5m and the contract price of the end sales.²⁸
- 15 The Commissioner issued, inter alia, a declaration to Unit Trend under s.165-40(a) of the GST Act negating GST benefits in excess of \$21m.²⁹ Following objection by Unit Trend, Unit Trend applied to the Administrative Appeals Tribunal (“the Tribunal”) for a merits review of the Commissioner’s decisions (including the decision in respect of penalty).
- 16 The Tribunal found the existence of a “scheme” for the purposes of Division 165.³⁰ The Tribunal found that the scheme included:³¹

- “(a) a group of companies that engage in property development (at least included companies A and B);
- (b) company A owns or buys land proposed for development, and undertakes the development to a point where the development has substantially progressed, and the overall value of the development is considerably higher than the price A paid for the land;
- (c) company A sells the partially completed development to company B at market value. The timing of the sale is to occur at a time when the market value is significantly higher than the price A paid for the land;
- (d) the sale by A to B is to be free of GST (either because it is a sale of a going concern, or because A and B are within a registered GST group under Division 48);

25 Full Court Reasons [68].

26 Tribunal Reasons [9].

27 Tribunal Reasons [11].

28 Full Court Reasons [66], [71]. See also [3], [4] and [11].

29 Full Court Reasons [13].

30 Full Court Reasons [110]-[111].

31 Tribunal Reasons [85].

- (e) company B completes the development, and sells to end buyers. Any sales made by A to end buyers would be honoured and completed by B;
- (f) upon transfer to end buyers, company B would choose to apply the margin scheme in respect of its liability for GST (calculated based upon consideration B provided to A)."

17 For the purposes of determining whether Unit Trend got a GST benefit from the scheme, the Tribunal found³² (in respect of all contracts that settled prior to 17 March 2005) that absent the scheme:

- (a) there would have been no transfer of Towers II and III to Blesford and Mooreville, Simnat would have continued as the owner and developer of Towers II and III, Simnat would have been the vendor of the contracts that were made for the sale of units in Towers II and III, and Simnat would have completed all contracts of sale;
- (b) Simnat would have elected to apply the margin scheme in respect of all sales;
- (c) the GST (on the sale to end buyers) would have been calculated on the margin between:
 - (i) Simnat's sale price to the buyer; and
 - (ii) the value of what was sold to the end buyer based upon a proportion of the value of the property as at 1 July 2000.

18 For the purpose of s.165-5(1)(a) of the GST Act, the Tribunal found³³ that the GST benefit from the scheme (on all sales that settled prior to 17 March 2005) ("**the GST benefit**") was the difference between:

- (a) the GST payable calculated as the margin between the sale price to the end buyer, and a proportionate share of the value of the property as at 1 July 2000; and
- (b) the GST payable calculated as the margin between the sale price to the end buyer, and a proportionate share of the \$149.8m and \$109.5m paid by Blesford and Mooreville respectively.

³² Tribunal Reasons [97], [100]-[102], Full Court Reasons [119]-[122], [156].

³³ Tribunal Reasons [102].

In respect of all sales (i.e. including those settling on or after 17 March 2005), the total amount of the GST benefit was of the order of \$21m. There was no finding as to the dollar amount of the GST benefit on the sales that settled before 17 March 2005.

19 In respect of those contracts of sale that were settled before 17 March 2005 and in respect of which Simnat was the original contracting party, the Tribunal found that:

- (a) the dominant purpose of those who entered into and carried out the scheme was to secure the GST benefit;³⁴
- (b) the principal effect of the scheme was the achieving of the GST benefit.³⁵

20 The Tribunal held, relevantly, that the declaration in relation to the application of the anti-avoidance provisions of Division 165 was affirmed in so far as the proceedings concerned supplies made prior to 17 March 2005³⁶ pursuant to contracts originally entered into by Simnat.³⁷

21 Unit Trend appealed that part of the Tribunal's decision (and other parts of the decision) to the Full Court. The Full Court held, by majority of Bennett and Greenwood JJ ("the majority"),³⁸ that s.165-5(1)(b) was not satisfied, in that the GST benefit was attributable to the making of a choice, election or agreement expressly provided for by the GST law.

22 The choices and agreements that Unit Trend relied upon in relation to s 165-5(1)(b) were:

- (a) the choice made by Blesford and Mooreville to become members of the GST group, being a choice made under s.48-5 of the Act;
- (b) the agreement by Simnat and Blesford that the supply of Tower II was of a going concern, being an agreement made under s.38-325(1)(c) of the GST Act;

³⁴ Tribunal Reasons [148].

³⁵ Tribunal Reasons [161].

³⁶ Settlements (supplies) made prior to 17 March 2005 were governed by Division 75 as it stood prior to the commencement of the *Tax Laws Amendment (2005 Measures No. 2) Act 2005 (Cth)*, No. 78 of 2005, and settlements on or after 17 March 2005 were governed by Division 75 as amended: Full Court Reasons [78]-[79]. See also [12].

³⁷ Full Court Reasons [141], [143], [148]. The decisions were set aside in relation to supplies the subject of contracts originally entered into by Blesford and Mooreville respectively.

³⁸ Dowsett J dissenting.

- (c) the agreement by Simnat and Mooreville that the supply of Tower III was of a going concern, being an agreement made under s.38-325(1)(c) of the GST Act;
- (d) the choices made by Blesford and Mooreville to apply the margin scheme in respect of supplies to end buyers, each being a choice made under s.75-5 of the GST Act.³⁹

23 The Court concluded that the anti-avoidance division, Division 165, did not apply in relation to the supplies, and that the Tribunal's decision on that issue should be set aside.⁴⁰

Part VI: Argument

Introduction

24 Division 165 is the anti-avoidance division. Division 165 operates to deter schemes which have the purpose or effect of reducing GST, increasing refunds, or altering the timing of payment of GST or refunds. In broad terms, Division 165 has application where:

- (a) there is a scheme, from which an entity gets a GST benefit;
- (b) the entity entered into or carried out the scheme for the sole or dominant purpose of getting the GST benefit;
- (c) alternatively to (b), the principal effect of the scheme was that the entity gets the GST benefit;
- (d) the GST benefit is not attributable to the making by the entity of a choice expressly provided for under the Act.

Where those requirements are satisfied, the Commissioner is empowered to make a declaration, which has the effect of negating the entity's GST benefit.⁴¹

25 In the present case, there are findings (which are no longer disputed) that:

- (a) there is a scheme (as set out in para.16 above);
- (b) Unit Trend derived a GST benefit from the scheme (para.18 above);

³⁹ Tribunal Reasons [105]; Full Court Reasons [132].

⁴⁰ Full Court Reasons [204], [206].

⁴¹ Section 165-40 of the GST Act.

- (c) the dominant purpose of Unit Trend in entering into and carrying out the scheme was to secure the GST benefit;
- (d) the principal effect of the scheme was the achieving of the GST benefit;
- (e) the Commissioner made a declaration negating the GST benefit.

The matter in issue is whether the requirement of s.165-5(1)(b) is satisfied, namely that the GST benefit is not attributable to the making of a choice expressly provided for by the Act.

The sub-section requires proof of a negative.

- 26 The case essentially turns on the proper construction of sub-section 165-5(1)(b), in particular what is the requisite nexus between the GST benefit and the making of a choice expressly provided for by the Act.

The majority's reasoning

- 27 The majority initially said of the interpretation of s.165-5(1)(b):⁴²

“Having regard to the matters discussed at [168]–[176] of these reasons, the language of s 165-5(1) in the context of the Division as a whole, preventing the Division from operating, seems to more properly contemplate causation in an allocative sense asking whether the nexus between the GST benefit and the exercise of the statutory choice is sufficiently close to provide an answer to the question, is the choice etc made by the taxpayer as expressly provided by a GST law, the **predominant cause** or the **direct cause** of the GST benefit? In that sense, the subsection does not import by its terms in the context of the Division and the Act a concept of causation in which the relevant choice etc is simply **one of a number of contributory causes**, as a sufficient connection. Otherwise, the Division would seem to have little field of operation ...” (emphasis added)

- 28 However, the majority later eschewed a causal connection requiring a sole, dominant or direct causal relationship.⁴³ The majority concluded that the test in s.165-5(1)(b) is whether the GST benefit can be said to be “answerable to” or “explained by” or to “belong to” choices expressly provided for by the GST Act.⁴⁴ These are expressions of uncertain meaning.

- 29 The majority ended up seemingly accepting that the negative test under s.165-5(1)(b) is satisfied if a choice expressly provided for by the GST law is one of a number of contributory causes of the GST benefit produced by the scheme. The majority found that the scheme in

⁴² Full Court Reasons [194].

⁴³ Full Court Reasons [170], [195], [196], [199], [201], [202], [204] and [205].

⁴⁴ Full Court Reasons [205]. See also [196], [199] and [204].

the present case included a number of choices expressly provided for by the GST Act. They also accepted that the scheme included at least one “commercial” election or choice.⁴⁵ They reasoned that the fact that a GST benefit is attributable to a scheme that includes a series of choices does not prevent the GST benefit also being attributable to each choice comprised in the scheme.⁴⁶ From that platform they concluded that the GST benefit (as found by the Tribunal) was attributable to each of the choices (made under the GST Act) comprised in the scheme.

- 30 The approach of the majority reduces the scope for operation of Division 165. It may mean that Division 165 has less deterrence where a taxpayer constructs an aggregated arrangement (a scheme) which has the purpose or effect of reducing GST, but which incorporates within the scheme a choice expressly provided for under the GST Act, so as to exempt the scheme from Division 165. The decision of the majority impacts on the future application of Division 165.

The purpose of the legislation

- 31 As with all questions of causality, the starting point is the identification of the purpose (the legislative purpose) to which the question is directed.⁴⁷
- 32 The majority’s decision does not best achieve the object of Division 165.⁴⁸ The presence of s.165-5(1)(b) arises out of concern that Division 165 is in such broad terms that it might bring within its reach a person who simply chooses to make a choice expressly provided for by the GST law. The risk arises because the word “scheme” is cast in such wide terms that it can include the making of a choice expressly provided for by the GST law. The purpose of the sub-section was therefore to avoid Division 165 applying to a person who exercises his or her statutory right to make a choice expressly provided for by the Act.⁴⁹ This suggests that the section should be construed so as to only be satisfied where a person makes a specific choice under the GST law, and the GST benefit flows from that choice, taken discretely.

⁴⁵ Full Court Reasons [200]. The majority’s reference to a “commercial” choice appears to encapsulate a choice not provided for by the GST law.

⁴⁶ Full Court Reasons [202], read with [204].

⁴⁷ *Commissioner of Taxation v Sun Alliance Investments Pty Limited* (2005) 225 CLR 488 at 515, [77]; *Allianz Australia Insurance Ltd v GSF Australia Pty Ltd and Anor* (2005) 221 CLR 568 at [41]-[42], [54] per McHugh J, [95]-[96] per Gummow, Hayne and Heydon JJ.

⁴⁸ Section 15AA of the *Acts Interpretation Act 1901* (Cth).

⁴⁹ See the remarks of Bennett and Greenwood JJ at [192] and Dowsett J at [41].

33 However, on the interpretation adopted by the majority, Division 165 would be inapplicable to a range of situations far beyond the simple situation of an entity making a specific choice (under the GST law) which produces a specific GST benefit. On the majority's interpretation, a scheme which consists of a combination of steps, some being decisions or events not involving choices under the GST Act and others being choices expressly provided for under the GST Act, may be immune from the anti-avoidance division.⁵⁰ That was the situation in the present case. The better approach is that of Dowsett J, that the division is only rendered inapplicable where the GST benefit is produced by the individual choice, taken discretely.⁵¹ Where the GST benefit results from the interaction of a number of steps (even if one is a choice expressly provided for under the GST law), then it is better to regard the GST benefit as attributable to the interaction of those steps (i.e. the combined effect), rather than to each of the events making up the scheme. In that way the Division remains potentially applicable to the scheme, subject to satisfying the other statutory requirements, such as dominant purpose.

34 The original form of s 165-5(1) as contained in the *A New Tax System (Goods and Services Tax) Bill 1998* ("the **GST Bill**") did not contain a subsection in terms of s 165-5(1)(b) as subsequently enacted. It was included as an amendment to the GST Bill. The Supplementary Explanatory Memorandum tabled in the Senate in support of the amendments to the GST Bill ("the **SEM**") included, at paragraph 1.118, the following:

"Queries have been made about the scope of the current Division 165. It has been suggested that the Division may have unintended effects and may apply to transactions not intended to defeat GST law. In particular it has been suggested that the exercise of an explicit option under the GST law may trigger the anti-avoidance provisions . . ."

35 The object of s.165-5(1)(b) is to remove schemes from the field of operation of Division 165. The Division was otherwise intended to have wide application (as illustrated by the broad definition of "scheme"), with a discretion left to the Commissioner to refrain from negating the GST benefit in respect of a particular arrangement. The legislative purpose of Division 165 would be advanced by confining the schemes which sub-section (1)(b) will remove from the

⁵⁰ See Full Court Reasons [177].

⁵¹ Dowsett J., [46] and [47]

scrutiny of Division 165 to just the situation addressed in the SEM. That is, by confining the operation of the sub-section so far as necessary to avoid a clash between a statutory choice under the GST Act (the exercise of which will confer a particular benefit) and Division 165. To adopt an interpretation which allows the sub-section to remove from the scrutiny of Division 165 a scheme comprised of an aggregated arrangement, which has the sole or dominant purpose or effect of producing a GST benefit, merely because a necessary element of the scheme is a statutory choice, runs counter to the legislative purpose of Division 165.

36 The majority adopted a test of causality which asks whether the GST benefit is “answerable to”, “explained by” or “belongs to” choices expressly provided for by the GST law. Such phrases do not identify the requisite nexus in a meaningful way. This is particularly so when the majority’s application of those expressions to the facts of the present case is considered. The end result of applying those expressions at which the majority arrived was consistent with a mere contributory causal connection being sufficient to satisfy the sub-section. In other words a “but for” connection. That interpretation should be rejected.

37 With respect to the meaning of “attributable” in s.165-5(1)(b), Hill J, speaking extra-judicially,⁵² expressed agreement⁵³ with the observation by Mr Pagone QC (as he then was)⁵⁴, in the context of Part IVA of the 1936 Act, that “attributable” calls for some sufficient relationship to exist between the tax benefit and the choice and, while the degree of sufficiency may still be an area for debate or exploration, it is unlikely that the requirement that the tax benefit be attributable to the choice will be satisfied merely by satisfying the “but for” test.

38 Pagone J expressed a similar view in a paper presented in March 2012.⁵⁵ His Honour also said in that paper:

“Furthermore the nexus to be established must be between the benefit, on the one hand, and something which may fairly be described as within the category of events described as ‘choice, election, application or agreement’ of something fitting the statutory meaning of having been ‘expressly provided for’. The use of the word

⁵² “Scheme New Zealand or An Example of The Operation of Div 165” [2003] eJTR 8.

⁵³ At p 6.

⁵⁴ In an article “The Divine Comedy: Consolidations and Part IVA of the *Income Tax Assessment Act 1936* (Cth) (2004) 32 *Australian Law Business Law Review* 35.

⁵⁵ “Division 165: A Sleeping Beauty?” TEN First Annual GST Conference, Gold Coast, 2 March 2012.

'expressly' preceding the word 'provided' is presumably intended to require the identification of some legislative purpose for the advantageous GST consequence and not merely something which was part of the general structure within which manipulation might be possible ..."

- 39 The Commissioner's argument does not require that for the sub-section to operate the scheme must consist of a statutory choice and nothing else. But it does contemplate that there will need to be a close connection between the statutory choice and the GST benefit. How to express in words the closeness of the connection is challenging. But it should be a much closer connection than the majority in the Full Federal Court were prepared to accept. The Commissioner submits that the phrase "attributable to" should be construed so as to import the notion of a proximate (or immediate) cause and effect between the making of a choice expressly provided for by the GST law and the GST benefit. Such touchstones are ordinarily found in the insurance law context.⁵⁶ They found favour with the plurality in *Allianz Australia Insurance Ltd v GSF Australia Pty Ltd and Anor*⁵⁷ in the interpretation of compulsory third party insurance legislation.⁵⁸ The Commissioner submits that this way of expressing the statutory requirement is similar to Dowsett J's view that there must be a "direct link" between the GST benefit and the choice.⁵⁹ The adoption of a proximate or immediate causal connection would (consistently with Parliament's intention) foreclose entities from constructing artificial schemes which are immune from Division 165 because they include one or more statutory choices as part of the overall structure which generates a GST benefit.

The errors in the majority's reasoning

- 40 The majority's reasoning suffers from the problems that:
- (a) it ignores the need for there to be a proximate or immediate or direct connection between the GST benefit and a choice expressly provided for under the GST law;
 - (b) it accepts that the negative test under the section is satisfied if the relevant choice is simply one of a number of contributory causes (contrary to the interpretation of the

⁵⁶ Cf *Allianz Australia Insurance Ltd v GSF Australia Pty Ltd and Anor* (2005) 221 CLR 568 at [101].
⁵⁷ *Allianz Australia Insurance Ltd v GSF Australia Pty Ltd and Anor* (2005) 221 CLR 568, at [101]-[102] per Gummow, Hayne and Heydon JJ. Both McHugh J and the plurality considered that the subject, scope and purpose of the relevant legislation was critical to the question of causality: See [49], [53] per McHugh J; [101]-[102] per Gummow, Hayne and Heydon JJ.
⁵⁸ At [61].
⁵⁹ Reasons of Dowsett J., [46]

section earlier expressed by the majority judgment).⁶⁰ Indeed, the end result of the majority judgment echoes the “but for” test of causation;⁶¹

- (c) it does not take into account that the effect of a scheme (in terms of the GST benefit) may be greater than the sum of its parts.⁶² That is, the GST benefit produced by the interaction of the components of the scheme may be greater than the sum of the GST benefits produced by each component of the scheme taken individually.

A single choice

41 Subsection 165-5(1)(b) requires that the GST benefit is not attributable to the making of “a” choice expressly provided for by the GST law. If the legislature intended that two or more express choices could give rise to the GST benefit, it would have referred to “one or more choices”. Section 165-1 provides examples of schemes in respect of which Division 165 is not intended to have application. Each of the four examples concerns a single act or choice. Paragraph 1.118 of the SEM refers to “an explicit option” under the GST law (in the context of avoiding the “unintended effects” of applying Division 165 to transactions not intended to defeat the GST law). These matters negate the application of s.23 of the *Acts Interpretation Act* 1901 (Cth) insofar as s.165-5(1)(b) refers to “a” choice.⁶³ As Dowsett J (in dissent) observed:⁶⁴

“If I am correct in inferring that the inquiry posed by s 165-5(1)(b) is as to whether a GST benefit is attributable to a relevant scheme or to a relevant choice, it is most unlikely that Parliament intended that an outcome attributable to numerous choices would be excluded from the general operation of Div 165. After all, schemes will frequently involve multiple choices. Where one benefit is attributable to the interaction of numerous choices, it would be more accurate to attribute such benefit to that interaction, rather than to individual choices, taken discretely. The position may be otherwise where the scheme yields discrete benefits, each of which is attributable to a different, discrete choice.” (underlining added)

42 There is no indication in the language of Division 165, nor in the extrinsic material, that Parliament intended that Division 165 would be immune from application where the GST benefit was attributable to the exercise of more than one choice under the GST law, much

⁶⁰ Full Court Reasons [194].

⁶¹ Full Court Reasons [199], first sentence and [201], last sentence.

⁶² Which was essentially the point made by Dowsett J at [47] and [48], although his Honour did not express his reasons in those terms.

⁶³ See the observations of Dowsett J at [46].

⁶⁴ Full Court Reasons [47].

less a GST benefit obtained as a result of the interaction of two or more express choices and another (critical) step not involving an express choice under the GST law.

Application to the facts here

- 43 Addressing the elements of the scheme found by the Tribunal (see paragraph 16 above), the choices made under the express provisions of the GST Act account for steps (d) and (f). But they do not account for the other steps in the scheme. Most importantly, the choices made under the GST Act do not account for the timing of the intra-group transfers. The timing was critical to the uplift in the cost base (to be used in calculating the margin on which GST would be payable upon supply to the end buyer) which reduced the GST payable on the sale of units to the end buyers. Steps (b) and (c) of the scheme required that the intra-group transfers occur at a time when the development on the land had been substantially progressed, such that the overall value of the development was considerably higher than the price initially paid for the land. That occurred here. Simnat bought the entire parcel for \$30m in April 1999. Simnat entered into contracts to construct Towers II and III in July 2002 and on 29 January 2003 respectively. By the time the transfer of Towers II and III occurred in 2004, construction of both Towers had substantially progressed. Hence the market value of the properties at the time of transfer came to be \$149.8m and \$109.5m respectively.
- 44 Had Simnat remained the owner throughout, the cost base used for calculating the margin would have been calculated on the value of the properties as at 1 July 2000, which was a time before construction of Towers II and III had begun. That would have resulted in more GST being payable on the sale of units to the end buyers. The choice of the Raptis companies to be members of the GST Group, and the agreements to transfer Towers II and III as a going concern, had the result that there was no GST payable on the intra-group transfers of Towers II and III. But those choices did not determine the element of the scheme that the transfers take place at a time when development of Towers II and III had substantially added to the value of the property, so that the intra-group transfers would produce an uplift in the cost base. That was “a commercial election or choice” (as the majority characterised it at reasons [200]). That was crucial to the GST benefit found by the Tribunal.

45 Both the Tribunal⁶⁵ and Dowsett J.⁶⁶ held that the GST benefit was attributable to the higher amount paid as the consideration for the transfer of Towers II and III in the intra-group transfers. The majority recognised that it was a commercial election or choice that brought about the uplift in the intermediate cost base, but said that the intra-group transfers did involve agreement to transfer as a going concern, which was the making of an agreement expressly provided for by s.38-325(1)(c) of the GST Act.⁶⁷ However, the agreement to transfer as a going concern did not produce the GST benefit found by the Tribunal. That is for each of two reasons:

- (a) even if there was no agreement to transfer as a going concern there would have been no GST on the intra-group transfers, as they were transfers within a GST group, and were therefore taken not to be taxable supplies,⁶⁸
- (b) it was the timing of the transfers that was critical to the uplift in cost base. The “going concern” agreement is an aspect of the transfers, but does not account for the decision to time the transfers at a stage where the development had added substantial value to the land (beyond its value as at 1 July 2000).

46 None of the express choices forming part of the scheme in the present case, of itself, gave rise to the GST benefit found by the Tribunal. The GST benefit was not attributable to any one of the choices forming part of the scheme expressly provided for by the GST Act. Further, there was no proximate or immediate cause and effect relationship between any (or all) of the express choices and the GST benefit. The benefit arose for the interaction of a number of choices including the “commercial” choice. Each statutory choice formed part of the overall structure, but it was the overall structure that generated the GST benefit.

Subsection 165-5(3)

47 The respondent contends that the proposed appeal lacks utility because of the insertion of subsection (3) into s.165-5 in 2008. However, s.165-5(3) does not affect the meaning of (i.e. the causal connection required by) the phrase “attributable to” in s.165-5(1)(b). Section 165-

⁶⁵ Tribunal Reasons [110].

⁶⁶ Full Court Reasons [48].

⁶⁷ Full Court Reasons [200] and [201].

⁶⁸ As Dowsett J. observed at [45]: see s.48-40(2).

5(3) merely preserves the application of Division 165 to a particular situation, namely where the scheme was entered into for the purpose of generating the statutory choice (which gives rise to the GST benefit). Sub-section (3) operates on a sub-set of the situations in which (1)(b) falls to be applied. There will be many situations in which (1)(b) falls to be applied to which sub-section (3) has no application. The most obvious is where the statutory choice arises without the entity or entities engineering circumstances so as to generate that choice.

48 In applying s.165-5 one would ordinarily address first whether the situation falls within (1)(b), before addressing (3). It is only if the GST benefit is attributable to a statutory choice that one then addresses whether it was the purpose of the scheme to generate such choice.⁶⁹ In that event, it is then necessary to, first, identify any circumstance (or state of affairs) necessary to enable that choice to be made and, secondly, to determine whether the scheme (or part of the scheme) was entered into (or carried out) for the sole or dominant purpose of creating such circumstance (or state of affairs). Hence, sub-section (1)(b) continues to have work to do, notwithstanding the introduction of sub-section (3).

49 In any event, Division 75 of the *Fuel Tax Act 2006* (Cth) contains anti-avoidance provisions in analogous terms to Division 165 of the GST Act as it stood prior to 9 December 2008 (that is, including a term analogous to s.165-5(1)(b) but not s.165-5(3)).⁷⁰

Reasons why special leave should be granted

50 The special leave questions identified above concern the proper interpretation of a provision in a national statute. The section is a key provision in the application of the anti-avoidance division, Division 165, of the GST Act. The approach of the majority reduces the scope for operation of Division 165. It may mean that Division 165 has less deterrence where a taxpayer constructs an aggregated arrangement (a scheme) which has the purpose or effect of reducing GST, but which incorporates within the scheme a choice expressly provided for under the GST Act, so as to exempt the scheme from Division 165. The decision of the majority impacts on the future application of Division 165, and that has potentially significant implications for Commonwealth revenue.

⁶⁹ Cf para. 1.56 of the Explanatory Memorandum to the *Tax Laws Amendment (2008 Measures No. 5) Bill 2008*.
⁷⁰ See s.75-5(1)(b) of the *Fuel Tax Act*.

- 51 The section also governs amounts payable under Division 23 of the *A New Tax System (Wine Equalisation Tax) Act 1999*⁷¹ and amounts payable under Subdivision 13-B of the *A New Tax System (Luxury Car Tax) Act 1999*⁷² as if they were amounts payable under the GST Act. Further, Division 75 of the *Fuel Tax Act 2006* (Cth) contains anti-avoidance provisions in analogous terms to Division 165 of the GST Act as it stood prior to 9 December 2008 (including a term analogous to s.165-5(1)(b): see s.75-5(1)(b) of the *Fuel Tax Act*).
- 52 The majority's decision may also affect the interpretation of Part IVA of the 1936 *Income Tax Assessment Act* (Cth), in particular the phrase "attributable to" as it appears in subsections 177C(2)(a)(i), (b)(i), (c)(i) and (d)(i) and 177C(2A)(a)(i) and (b)(i) (forming part of Part IVA) of the *Income Tax Assessment Act 1936* (Cth) ("the 1936 Act"), subject to the caveat that Division 165 of the GST Act contains no analogue to s.177C(3) of the 1936 Act.
- 53 The reasoning of the majority is elusive. The reasoning of the majority leaves unclear how, in future cases, s.165-5(1)(b) should be applied.
- 54 There are competing views between the majority and Dowsett J which cannot be reconciled. The decision of the Full Court is the only Federal Court decision (to date) in which the operation of s.165-5(1)(b) of the GST Act has been given reasoned consideration.

Part VII: Applicable statutory provisions

- 55 The following applicable provisions of the GST Act, as they existed at the relevant time, are set out in the attached **Annexure "A"** at **Part A**: s.165-5; s.165-1; s.165-10; s.38-325; s.48-5; s.75-5; s.75-10.
- 56 Sections 165-10 and 38-325 are still in force, in that form, at the date of making these submissions.
- 57 A copy of each later provision and s.75-11 of the GST Act (together with any relevant transitional provision) is set out in the attached **Annexure "A"** at **Part B**.

Part VIII: Orders sought

- 58 The form of orders sought by the Commissioner is as follows:

⁷¹ See s.23-10 of the *Wine Equalisation Tax Act*.

⁷² See s.13-30 of the *Luxury Car Tax Act*.

- (a) special leave to appeal be granted;
- (b) the appeal be allowed;
- (c) order number 2 of the judgment of the Full Court is set aside and, in its place, it is ordered that the issue of remission of penalty in relation to the declaration pursuant to s.165-40 of the GST Act be remitted to the Administrative Appeals Tribunal for further consideration;
- (d) order number 7 of the judgment of the Full Court is set aside and, in its place, it is ordered that Unit Trend Services Pty Ltd pay the Commissioner's costs of and incidental to the appeal and cross-appeal in the Full Court;
- (e) order number 8 of the judgment of the Full Court is set aside and, in its place, it is ordered that any monies paid into the Federal Court by Unit Trend Services Pty Ltd as security for costs be paid out of Court to the Commissioner together with accretions if any;
- (f) Unit Trend Services Pty Ltd pay to the Commissioner his costs of and incidental to the special leave application (including each appearance), to be taxed.

Part IX: Estimate of time

59 The appellant estimates that approximately 2 to 2½ hours will be required for the presentation of the appellant's oral argument.

Dated: 4 February 2013



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PART VII - ANNEXURE A

PART A

Applicable provisions of the GST Act as at 16 March 2005.

Section 165-5

165-5 When does this Division operate?

General rule

- (1) This Division operates if:
 - (a) an entity (the *avoider*) gets or got a *GST benefit from a *scheme; and
 - (b) the GST benefit is not attributable to the making, by any entity, of a choice, election, application or agreement that is expressly provided for by the *GST law, the *wine tax law or the *luxury car tax law; and
 - (c) taking account of the matters described in section 165-15, it is reasonable to conclude that either:
 - (i) an entity that (whether alone or with others) entered into or carried out the scheme, or part of the scheme, did so with the sole or dominant purpose of that entity or another entity getting a *GST benefit from the scheme; or
 - (ii) the principal effect of the scheme, or of part of the scheme, is that the avoider gets the GST benefit from the scheme directly or indirectly; and
 - (d) the scheme:
 - (i) is a scheme that has been or is entered into on or after 2 December 1998; or
 - (ii) is a scheme that has been or is carried out or commenced on or after that day (other than a scheme that was entered into before that day).

Territorial application

- (2) It does not matter whether the *scheme, or any part of the scheme, was entered into or carried out inside or outside Australia.

Section 165-1

165-1 What this Division is about

The object of this Division is to deter schemes to give entities benefits by reducing GST, increasing refunds or altering the timing of payment of GST or refunds.

If the dominant purpose or principal effect of a scheme is to give an entity such a benefit, the Commissioner may negate the benefit an entity gets from the scheme by declaring how much GST or refund would have been payable, and when it would have been payable, apart from the scheme.

This Division is aimed at artificial or contrived schemes. It is not, for example, intended to apply to:

- an exporter electing to have monthly tax periods in order to bring forward the entitlement to input tax credits; or
- a supplier of child care applying to be approved under the *A New Tax System (Family Assistance) (Administration) Act 1999* (this would make the supplies of child care GST-free); or
- a supplier choosing under section 9-25 of the *A New Tax System (Wine Equalisation Tax) Act 1999* to use the average wholesale price method for working out the taxable value of retail sales of grape wine; or
- a bank having its car fleet serviced earlier than usual, and before 1 July 2000, so that the servicing does not, at least initially, bear the GST.

Section 165-10

165-10 When does an entity get a *GST benefit* from a scheme?

- (1) An entity gets a *GST benefit* from a *scheme if:
- (a) an amount that is payable by the entity under this Act apart from this Division is, or could reasonably be expected to be, smaller than it would be apart from the scheme or a part of the scheme; or
 - (b) an amount that is payable to the entity under this Act apart from this Division is, or could reasonably be expected to be, larger than it would be apart from the scheme or a part of the scheme; or
 - (c) all or part of an amount that is payable by the entity under this Act apart from this Division is, or could reasonably be expected to be, payable later than it would have been apart from the scheme or a part of the scheme; or
 - (d) all or part of an amount that is payable to the entity under this Act apart from this Division is, or could reasonably be expected to be, payable earlier than it would have been apart from the scheme or a part of the scheme.

What is a scheme?

- (2) A *scheme* is:
- (a) any arrangement, agreement, understanding, promise or undertaking:
 - (i) whether it is express or implied; and
 - (ii) whether or not it is, or is intended to be, enforceable by legal proceedings; or
 - (b) any scheme, plan, proposal, action, course of action or course of conduct, whether unilateral or otherwise.

GST benefit can arise even if no economic alternative

- (3) An entity can get a *GST benefit from a *scheme even if the entity or entities that entered into or carried out the scheme, or a part of the scheme, could not have engaged economically in any activities:
- (a) of the kind to which this Act applies; and
 - (b) that would produce an effect equivalent (except in terms of this Act) to the effect of the scheme or part of the scheme;

other than the activities involved in entering into or carrying out the scheme or part of the scheme.

Section 38-325

38-325 Supply of a going concern

- (1) The *supply of a going concern is *GST-free* if:
 - (a) the supply is for *consideration; and
 - (b) the *recipient is *registered or *required to be registered; and
 - (c) the supplier and the recipient have agreed in writing that the supply is of a going concern.
- (2) A *supply of a going concern* is a supply under an arrangement under which:
 - (a) the supplier supplies to the *recipient all of the things that are necessary for the continued operation of an *enterprise; and
 - (b) the supplier carries on, or will carry on, the enterprise until the day of the supply (whether or not as a part of a larger enterprise carried on by the supplier).

Section 48-5

48-5 Approval of GST groups

- (1) The Commissioner must approve 2 or more entities as a *GST group if:
 - (a) the entities jointly apply, in the *approved form, for approval as a GST group; and
 - (b) each of the entities *satisfies the membership requirements for that GST group; and
 - (c) the application nominates one of the entities to be the *representative member for the group; and
 - (d) the entity so nominated is an *Australian resident.

A group of entities that is so approved is a *GST group*.

- (2) If 2 or more entities would *satisfy the membership requirements of that *GST group, the application need not include all those entities.

Note: Refusing an application for approval under this section is a reviewable GST decision (see Division 7 of Part VI of the *Taxation Administration Act 1953*).

Section 75-5

75-5 Choosing to apply the margin scheme

- (1) If you make a *taxable supply of *real property by:
 - (a) selling a freehold interest in land; or
 - (b) selling a *stratum unit; or
 - (c) granting or selling a *long-term lease;
 you may choose to apply the *margin scheme in working out the amount of GST on the supply.

- (2) However, you cannot choose to apply the *margin scheme if you acquired the freehold interest, *stratum unit or *long-term lease through a *taxable supply on which the GST was worked out without applying the margin scheme.

Section 75-10

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) 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.
- (3) However, if:
- the circumstances specified in an item in the second column of the table in this subsection apply to the supply; and
 - a 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 that complies with any requirements determined in writing by the Commissioner for making valuations for the purposes of this Division;

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

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)
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

Use of valuations to work out margins		
Item	When valuations may be used	Days when valuations are to be made
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
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

(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).

Note: Section 9-90 (rounding of amounts of GST) can apply to amounts of GST worked out using this section.

PART B

Later provisions of the GST Act.

Section 165-5**Amended by Act No. 145 of 2008 - Tax Laws Amendment (2008 Measures No. 5) Act 2008****Amendment****Schedule 1, Item 11: At the end of section 165-5**

Add:

Creating circumstances or states of affairs

- (3) A *GST benefit that the avoider gets or got from a *scheme is not taken, for the purposes of paragraph (1)(b), to be attributable to a choice, election, application or agreement of a kind referred to in that paragraph if:
- (a) the scheme, or part of the scheme, was entered into or carried out for the sole or dominant purpose of creating a circumstance or state of affairs; and
 - (b) the existence of the circumstance or state of affairs is necessary to enable the choice, election, application or agreement to be made.

Transitional provision**Schedule 1, Item 13: Application**

...

- (3) The amendment made by item 11 of this Schedule applies in relation to choices, elections, applications and agreements made on or after the commencement of this Schedule.¹

...

Provision as Amended (9 December 2008 – Current)**165-5 When does this Division operate?***General rule*

- (1) This Division operates if:
- (a) an entity (the *avoider*) gets or got a *GST benefit from a *scheme; and

¹ The Act commenced on the date of assent: 9 December 2008.

- (b) the GST benefit is not attributable to the making, by any entity, of a choice, election, application or agreement that is expressly provided for by the *GST law, the *wine tax law or the *luxury car tax law; and
- (c) taking account of the matters described in section 165-15, it is reasonable to conclude that either:
 - (i) an entity that (whether alone or with others) entered into or carried out the scheme, or part of the scheme, did so with the sole or dominant purpose of that entity or another entity getting a *GST benefit from the scheme; or
 - (ii) the principal effect of the scheme, or of part of the scheme, is that the avoider gets the GST benefit from the scheme directly or indirectly; and
- (d) the scheme:
 - (i) is a scheme that has been or is entered into on or after 2 December 1998; or
 - (ii) is a scheme that has been or is carried out or commenced on or after that day (other than a scheme that was entered into before that day).

Territorial application

- (2) It does not matter whether the *scheme, or any part of the scheme, was entered into or carried out inside or outside Australia.

Creating circumstances or states of affairs

- (3) A *GST benefit that the avoider gets or got from a *scheme is not taken, for the purposes of paragraph (1)(b), to be attributable to a choice, election, application or agreement of a kind referred to in that paragraph if:
 - (a) the scheme, or part of the scheme, was entered into or carried out for the sole or dominant purpose of creating a circumstance or state of affairs; and
 - (b) the existence of the circumstance or state of affairs is necessary to enable the choice, election, application or agreement to be made.

Section 165-1

Amended by Act No. 39 of 2012 - Indirect Tax Laws Amendment (Assessment) Act 2012

Amendment

Schedule 4, Item 7: Section 165-1

Omit “*A New Tax System (Wine Equalisation Tax) Act 1999*”, substitute “Wine Tax Act”.

Provision as Amended (1 July 2012 to Current)

165-1 What this Division is about

The object of this Division is to deter schemes to give entities benefits by reducing GST, increasing refunds or altering the timing of payment of GST or refunds.

If the dominant purpose or principal effect of a scheme is to give an entity such a benefit, the Commissioner may negate the benefit an entity gets from the scheme by declaring how much GST or refund would have been payable, and when it would have been payable, apart from the scheme.

This Division is aimed at artificial or contrived schemes. It is not, for example, intended to apply to:

- an exporter electing to have monthly tax periods in order to bring forward the entitlement to input tax credits; or
- a supplier of child care applying to be approved under the A New Tax System (Family Assistance) (Administration) Act 1999 (this would make the supplies of child care GST-free); or
- a supplier choosing under section 9-25 of the Wine Tax Act to use the average wholesale price method for working out the taxable value of retail sales of grape wine; or
- a bank having its car fleet serviced earlier than usual, and before 1 July 2000, so that the servicing does not, at least initially, bear the GST.

Section 165-10 – No amending provisions

Section 38-325 – No amending provisions

Section 48-5

Amended by Act No 74 of 2010 - Tax Laws Amendment (2010 GST Administration Measures No. 2) Act 2010.

Amendment

Schedule 1, Item 3: Section 48-5

Repeal the section, substitute:

48-5 Formation of GST groups

- (1) Two or more entities may form a *GST group if:
- (a) each of the entities *satisfies the membership requirements of the group; and
 - (b) each of the entities agrees in writing to the formation of the group; and
 - (c) one of those entities notifies the Commissioner, in the *approved form, of the formation of the group; and
 - (d) that entity is nominated, in that notice, to be the *representative member of the group; and
 - (e) that entity is an *Australian resident.

A group of entities that is so formed is a *GST group*.

- (2) If 2 or more entities would *satisfy the membership requirements for the *GST group, the group need not include all those entities.

- (3) The formation of the *GST group takes effect from the start of the day specified in the notice under paragraph (1)(c) (whether that day is before, on or after the day on which the entities decided to form the group).

(4) However, if the notice was given to the Commissioner after the day by which the entity nominated to be the *representative member of the group is required to give to the Commissioner a *GST return for the tax period in which the day specified in the notice occurs, the formation of the *GST group takes effect from the start of:

- (a) the day specified in the notice, if that day is approved by the Commissioner under section 48-71; and
- (b) if paragraph (a) does not apply—such other day as the Commissioner approves under that section.

Transitional Provision

Schedule 1, Item 43: Transitional provisions for GST groups

GST groups in existence before commencement

(1) Subject to subitems (5) to (8), on the commencement of this item:

- (a) a GST group that existed immediately before that commencement is taken to continue in existence as if:
 - (i) it had been formed, and its formation had been notified to the Commissioner, in accordance with section 48-5 of the *A New Tax System (Goods and Services Tax) Act 1999* as amended by this Act; and
 - (ii) its formation took effect immediately after that commencement; and
- (b) the entities that were members of the group immediately before that commencement are taken, immediately after that commencement, to continue to be the members of the group; and
- (c) the entity that was the representative member of the group immediately before that commencement is taken, immediately after that commencement, to continue to be the representative member of the group.

GST groups approved, but not in existence, before commencement

(2) If, before the commencement of this item, the Commissioner approved 2 or more entities as a GST group but the approval did not take effect before that commencement, then, on the date of effect decided by the Commissioner under section 48-85 of the *A New Tax System (Goods and Services Tax) Act 1999*:

- (a) the group is taken to have been formed, and its formation is taken to have been notified to the Commissioner, in accordance with section 48-5 of that Act as amended by this Act; and
- (b) the entities that jointly applied for that approval are taken to be the members of the group; and
- (c) the entity that was nominated in the application to be the representative member of the group is taken to be the

representative member of the group.

GST groups applied for, but not approved, before commencement

(3) If:

- (a) before the commencement of this item, 2 or more entities applied, in accordance with section 48-5 of the *A New Tax System (Goods and Services Tax) Act 1999*, for approval of a GST group; and
 - (b) the application did not contain a request (however described) for the Commissioner to decide under section 48-85 of that Act, as a date of effect of approval of the group, a date occurring before the date of that commencement; and
 - (c) the Commissioner did not approve the group as a GST group, and did not refuse the application, before that commencement;
- then, on the date of effect specified in the application:
- (d) the group is taken to be formed, and its formation is taken to have been notified to the Commissioner, in accordance with section 48-5 of that Act as amended by this Act; and
 - (e) the entities that jointly applied for that approval are taken to be the members of the group; and
 - (f) the entity that was nominated in the application to be the representative member of the group is taken to be the representative member of the group.

(4) If:

- (a) before the commencement of this item, 2 or more entities applied, in accordance with section 48-5 of the *A New Tax System (Goods and Services Tax) Act 1999*, for approval of a GST group; and
 - (b) the application contained a request (however described) for the Commissioner to decide under section 48-85 of that Act, as a date of effect of approval of the group, a date occurring before the date of that commencement; and
 - (c) the Commissioner did not approve the group as a GST group, and did not refuse the application, before that commencement;
- then:
- (d) an application is taken to have been made to the Commissioner, under section 48-71 of that Act as amended by this Act, for the Commissioner to approve that date of effect as the day on which the formation of the GST group took effect; and
 - (e) if the Commissioner decides, under that section as so amended, to approve that day or another day—then, on that day or on that other day:
 - (i) the group is taken to have been formed, and its formation is taken to have been notified to the Commissioner, in accordance with section 48-5 of that Act as so amended; and
 - (ii) the entities that jointly applied for approval of the group

are taken to be the members of the group; and
 (iii) the entity that was nominated, in the application for approval of the group, to be the representative member of the group is taken to be the representative member of the group.

Changes to participation etc. in GST joint ventures applied for, but not approved, before commencement

(5) If:

(a) before the commencement of this item, the joint venture operator of a GST joint venture applied, in accordance with section 51-70 of the *A New Tax System (Goods and Services Tax) Act 1999*, for the Commissioner to:

(i) approve another entity as an additional participant in the joint venture; or

(ii) revoke the approval of one of the participants in the joint venture as a participant in the joint venture; or

(iii) approve another entity that satisfies the requirements of paragraphs 51-10(c) and (f) of that Act as the joint venture operator of the joint venture; and

(b) the application did not contain a request (however described) for the Commissioner to decide under section 51-85 of that Act, as a date of effect of the approval or revocation, a date occurring before the date of that commencement; and

(c) the Commissioner:

(i) did not give the approval, or revoke the approval, as requested in the application; and

(ii) did not refuse the application;

before that commencement, the joint venture is taken to continue in existence as if:

(d) the Commissioner has been notified, in accordance with section 51-70 of that Act as amended by this Act, that the corresponding action referred to in paragraph 51-70(1)(a), (b) or (c) of that Act as so amended has been taken; and

(e) the action took effect on the date of effect specified in the application.

(6) If:

(a) before the commencement of this item, the joint venture operator of a GST joint venture applied, in accordance with section 51-70 of the *A New Tax System (Goods and Services Tax) Act 1999*, for the Commissioner to:

(i) approve another entity as an additional participant in the joint venture; or

(ii) revoke the approval of one of the participants in the joint venture as a participant in the joint venture; or

(iii) approve another entity that satisfies the requirements of paragraphs 51-10(c) and (f) of that Act as the joint venture operator of the joint venture; and

(b) the application contained a request (however described) for

the Commissioner to decide under section 51-85 of that Act, as a date of effect of the approval or revocation, a date occurring before the date of that commencement; and

(c) the Commissioner:

(i) did not give the approval, or revoke the approval, as requested in the application; and

(ii) did not refuse the application; before that commencement;

then:

(d) an application is taken to have been made to the Commissioner, under section 51-75 of that Act as amended by this Act, for the Commissioner to approve that date of effect as the day on which the approval or revocation took effect; and

(e) if the Commissioner decides, under that section as so amended, to approve that day or another day—then, on that day or on that other day, the joint venture is taken to continue in existence as if:

(i) the Commissioner has been notified, in accordance with section 51-70 of that Act as so amended, that the corresponding action referred to in paragraph 51-70(1)(a), (b) or (c) of that Act as so amended has been taken; and

(ii) the action took effect on that day.

Revocation of approval of GST joint ventures applied for, but revocation not approved, before commencement

(7) If:

(a) before the commencement of this item, the joint venture operator of a GST joint venture applied, in accordance with section 51-75 of the *A New Tax System (Goods and Services Tax) Act 1999*, for the Commissioner to revoke the approval of the joint venture as a GST joint venture; and

(b) the application did not contain a request (however described) for the Commissioner to decide under section 51-85 of that Act, as a date of effect of the revocation, a date occurring before the date of that commencement; and

(c) the Commissioner did not revoke the approval as requested in the application, and did not refuse the application, before that commencement;

then, on the date of effect specified in the application, the GST joint venture is taken to be dissolved as if the Commissioner has been notified, in accordance with section 51-70 of that Act as amended by this Act, that the action referred to in paragraph 51-70(1)(d) of that Act as so amended has been taken.

(8) If:

(a) before the commencement of this item, the joint venture operator of a GST joint venture applied, in accordance with section 51-75 of the *A New Tax System (Goods and Services Tax) Act 1999*, for the Commissioner to revoke the approval of the joint venture as a GST joint venture; and

- (b) the application contained a request (however described) for the Commissioner to decide under section 51-85 of that Act, as a date of effect of the revocation, a date occurring before the date of that commencement; and
 - (c) the Commissioner did not revoke the approval as requested in the application, and did not refuse the application, before that commencement;
- then:
- (d) an application is taken to have been made to the Commissioner, under section 51-75 of that Act as amended by this Act, for the Commissioner to approve that date of effect as the day on which the revocation took effect; and
 - (e) if the Commissioner decides, under that section as so amended, to approve that day or another day—then, on that day or on that other day, the joint venture is taken to be dissolved as if:
 - (i) the Commissioner has been notified, in accordance with section 51-70 of that Act as amended by this Act, that the action referred to in paragraph 51-70(1)(d) of that Act as so amended has been taken; and
 - (ii) the action took effect on that day.

Provision as Amended (5 October 2012 to Current)

Section 48-5

- (1) Two or more entities may form a *GST group if:
 - (a) each of the entities *satisfies the membership requirements of the group and;
 - (b) each of the entities agrees in writing to the formation of the group; and
 - (c) one of those entities notifies the Commissioner, in the *approved form, of the formation of the group; and
 - (d) that entity is nominated, in that notice, to be the *representative member of the group; and
 - (e) that entity is an *Australian resident.

A group of entities that is so formed is a *GST group*.
- (2) If 2 or more entities would *satisfy the membership requirements for the *GST group, the group need not include all those entities.
- (3) The formation of the *GST group takes effect from the start of the day specified in the notice under paragraph (1)(c) (whether that day is before, on or after the day on which the entities decided to form the group).
- (4) However, if the notice was given to the Commissioner after the day by which the entity nominated to be the *representative member of the group is required to give to the Commissioner a *GST return for the tax period in which the day specified in the notice occurs, the formation of the *GST group takes effect from the start of:
 - (a) the day specified in the notice, if that day is approved by the

Commissioner under section 48-71; and
 (b) if paragraph (a) does not apply—such other day as the
 Commissioner approves under that section.

Section 75-5 [Heading to s 75-5]

Amended by Act No 78 of 2005 – Tax Laws Amendment (2005 Measures No. 2) Act 2005

Amendment

Schedule 6, Item 9: Section 75-5 (heading)

Repeal the heading, substitute:

75-5 Applying the margin scheme

Section 75-5

Amended by Act No 78 of 2005 – Tax Laws Amendment (2005 Measures No. 2) Act 2005

Amendment

Schedule 6, Item 10: Subsection 75-5(1)

Repeal the subsection, substitute:

(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;

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.

Note: Refusing to allow, or allowing, a further period within which to make an agreement is a reviewable GST decision (see Division 7 of Part VI of the *Taxation Administration Act 1953*).

Schedule 6, Item 11: Subsection 75-5(2)

Repeal the subsection, substitute:

(2) However, the *margin scheme does not apply if you acquired the entire freehold interest, *stratum unit or *long-term lease through a supply that was *ineligible for the margin scheme.

Note: If you acquired part of the interest, unit or lease through a supply that was ineligible for the margin scheme, you may have an increasing adjustment: see section 75-22.

(3) A supply is *ineligible for the margin scheme* if:

- (a) it is a *taxable supply on which the GST was worked out without applying the *margin scheme; or
- (b) it is a supply of a thing you acquired by *inheriting it from a deceased person, and the deceased person had acquired all of it through a supply that was ineligible for the margin scheme;

or

- (c) it is a supply in relation to which all of the following apply:
- (i) you were a *member of a *GST group at the time you acquired the interest, unit or lease in question;
 - (ii) the entity from whom you acquired it was a member of the GST group at that time;
 - (iii) the last supply of the interest, unit or lease by an entity who was not (at the time of that supply) a member of the GST group to an entity who was (at that time) such a member was a supply that was ineligible for the margin scheme; or
- (d) it is a supply in relation to which both of the following apply:
- (i) you acquired the interest, unit or lease from the *joint venture operator of a *GST joint venture at a time when you were a *participant in the joint venture;
 - (ii) the joint venture operator had acquired the interest, unit or lease through a supply that was ineligible for the margin scheme.

(4) A reference in paragraph (3)(b), (c) or (d) to a supply that was ineligible for the margin scheme is a reference to a supply:

- (a) that was ineligible for the margin scheme because of one or more previous applications of subsection (3); or
- (b) that would have been ineligible for the margin scheme for that reason if subsection (3) had been in force at all relevant times.

Provision as Amended (1 July 2005 to 18 July 2005)

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 by:
- (a) selling a freehold interest in land; or
 - (b) selling a *stratum unit; or
 - (c) granting or selling a *long-term lease;
- 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.

Note: Refusing to allow, or allowing, a further period within which to make an agreement is a reviewable GST decision (see Division 7 of Part VI of the *Taxation Administration Act 1953*).

- (2) However, the *margin scheme does not apply if you acquired the entire freehold interest, *stratum unit or *long-term lease through a supply that was *ineligible for the margin scheme.

Note: If you acquired part of the interest, unit or lease through a supply that was ineligible for the margin scheme, you may have an increasing adjustment: see section 75-22.

- (3) A supply is *ineligible for the margin scheme* if:

- (a) it is a *taxable supply on which the GST was worked out without applying the *margin scheme; or
 - (b) it is a supply of a thing you acquired by *inheriting it from a deceased person, and the deceased person had acquired all of it through a supply that was ineligible for the margin scheme; or
 - (c) it is a supply in relation to which all of the following apply:
 - (i) you were a *member of a *GST group at the time you acquired the interest, unit or lease in question;
 - (ii) the entity from whom you acquired it was a member of the GST group at that time;
 - (iii) the last supply of the interest, unit or lease by an entity who was not (at the time of that supply) a member of the GST group to an entity who was (at that time) such a member was a supply that was ineligible for the margin scheme; or
 - (d) it is a supply in relation to which both of the following apply:
 - (i) you acquired the interest, unit or lease from the *joint venture operator of a *GST joint venture at a time when you were a *participant in the joint venture;
 - (ii) the joint venture operator had acquired the interest, unit or lease through a supply that was ineligible for the margin scheme.
- (4) A reference in paragraph (3)(b), (c) or (d) to a supply that was ineligible for the margin scheme is a reference to a supply:
- (a) that was ineligible for the margin scheme because of one or more previous applications of subsection (3); or
 - (b) that would have been ineligible for the margin scheme for that reason if subsection (3) had been in force at all relevant times.

Amended by Act No. 145 of 2008 - Tax Laws Amendment (2008 Measures No. 5) Act 2008

Amendment

Schedule 1, Item 1: After subsection 75-5(1A)

Insert:

(1B) A supply that you make to your *associate is taken for the purposes of subsection (1) to be a sale to your associate whether or not the supply is for *consideration.

Schedule 1, Item 2: At the end of subsection 75-5(3)

Add:

; or (e) it is a supply in relation to which all of the following apply:

- (i) you acquired the interest, unit or lease from an entity as, or as part of, a *supply of a going concern to you that was *GST-free under Subdivision 38-J;
- (ii) the entity was *registered or *required to be registered, at the time of the acquisition;
- (iii) the entity had acquired the entire interest, unit or lease through a taxable supply on which the GST was worked out without applying the margin scheme; or

- (f) it is a supply in relation to which all of the following apply:
- (i) you acquired the interest, unit or lease from an entity as, or as part of, a supply to you that was GST-free under Subdivision 38-O;
 - (ii) the entity was registered or required to be registered, at the time of the acquisition;
 - (iii) the entity had acquired the entire interest, unit or lease through a taxable supply on which the GST was worked out without applying the margin scheme; or
- (g) it is a supply in relation to which all of the following apply:
- (i) you acquired the interest, unit or lease from an entity who was your *associate, and who was registered or required to be registered, at the time of the acquisition;
 - (ii) the acquisition from your associate was without *consideration;
 - (iii) the supply by your associate was not a taxable supply;
 - (iv) your associate made the supply in the course or furtherance of an *enterprise that your associate *carried on;
 - (v) your associate had acquired the entire interest, unit or lease through a taxable supply on which the GST was worked out without applying the margin scheme.

Schedule 1, Item 3: After subsection 75-5(3)

Insert:

(3A) Subparagraphs (3)(g)(iii) and (iv) do not apply if the acquisition from your *associate was not by means of a supply by your associate.

Schedule 1, Item 4: After subsection 75-11(4)

Insert:

Margin for supply of real property acquired as a GST-free going concern or as GST-free farm land

(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
- (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
- (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.

Margin for supply of real property acquired from 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:
- (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

(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 *registered or *required to be registered on a day earlier than 1 July 2000.

Provision as Amended (9 December 2008 to Current)

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 by:

(a) selling a freehold interest in land; or

(b) selling a *stratum unit; or

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

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.

Note: Refusing to allow, or allowing, a further period within which to make an agreement is a reviewable GST decision (see Subdivision 110-F in Schedule 1 to the *Taxation Administration Act 1953*).

(1B) A supply that you make to your *associate is taken for the purposes of subsection (1) to be a sale to your associate whether or not the supply is for *consideration.

(2) However, the *margin scheme does not apply if you acquired the entire freehold interest, *stratum unit or *long-term lease through a supply that was *ineligible for the margin scheme.

Note: If you acquired part of the interest, unit or lease through a supply that was ineligible for the margin scheme, you may have an increasing adjustment: see section 75-22.

(3) A supply is *ineligible for the margin scheme* if:

- (a) it is a *taxable supply on which the GST was worked out without applying the *margin scheme; or
 - (b) it is a supply of a thing you acquired by *inheriting it from a deceased person, and the deceased person had acquired all of it through a supply that was ineligible for the margin scheme; or
 - (c) it is a supply in relation to which all of the following apply:
 - (i) you were a *member of a *GST group at the time you acquired the interest, unit or lease in question;
 - (ii) the entity from whom you acquired it was a member of the GST group at that time;
 - (iii) the last supply of the interest, unit or lease by an entity who was not (at the time of that supply) a member of the GST group to an entity who was (at that time) such a member was a supply that was ineligible for the margin scheme; or
 - (d) it is a supply in relation to which both of the following apply:
 - (i) you acquired the interest, unit or lease from the *joint venture operator of a *GST joint venture at a time when you were a *participant in the joint venture;
 - (ii) the joint venture operator had acquired the interest, unit or lease through a supply that was ineligible for the margin scheme; or
 - (e) it is a supply in relation to which all of the following apply:
 - (i) you acquired the interest, unit or lease from an entity as, or as part of, a *supply of a going concern to you that was *GST-free under Subdivision 38-J;
 - (ii) the entity was *registered or *required to be registered, at the time of the acquisition;
 - (iii) the entity had acquired the entire interest, unit or lease through a taxable supply on which the GST was worked out without applying the margin scheme; or
 - (f) it is a supply in relation to which all of the following apply:
 - (i) you acquired the interest, unit or lease from an entity as, or as part of, a supply to you that was GST-free under Subdivision 38-O;
 - (ii) the entity was registered or required to be registered, at the time of the acquisition;
 - (iii) the entity had acquired the entire interest, unit or lease through a taxable supply on which the GST was worked out without applying the margin scheme; or
 - (g) it is a supply in relation to which all of the following apply:
 - (i) you acquired the interest, unit or lease from an entity who was your *associate, and who was registered or required to be registered, at the time of the acquisition;
 - (ii) the acquisition from your associate was without *consideration;
 - (iii) the supply by your associate was not a taxable supply;
 - (iv) your associate made the supply in the course or furtherance of an *enterprise that your associate *carried on;
 - (v) your associate had acquired the entire interest, unit or lease through a taxable supply on which the GST was worked out without applying the margin scheme.
- (3A) Subparagraphs (3)(g)(iii) and (iv) do not apply if the acquisition from your *associate was not by means of a supply by your associate.
- (4) A reference in paragraph (3)(b), (c) or (d) to a supply that was ineligible for the margin scheme is a reference to a supply:
- (a) that was ineligible for the margin scheme because of one or more previous applications of subsection (3); or
 - (b) that would have been ineligible for the margin scheme for that reason if subsection (3) had been in force at all relevant times.

Section 75-10**Amended by Act No. 78 of 2005 - Tax Laws Amendment (2005 Measures No. 2) Act 2005****Amendment****Schedule 6, Item 12: Subsection 75-10(2)**

Omit "The *margin*", substitute "Subject to subsection (3) and section 75-11, the *margin*".

Schedule 6, Item 13: Subsection 75-10(3)

Omit "However", substitute "Subject to section 75-11".

Schedule 6, Item 14: Paragraph 75-10(3)(b)

Omit "a valuation", substitute "an *approved valuation".

Schedule 6, Item 15: Paragraph 75-10(3)(b)

Omit "that complies with any requirements determined in writing by the Commissioner for making valuations for the purposes of this Division".

Provision as Amended (1 July 2005 to Current)**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 $\frac{1}{11}$ 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.
- (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.

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

Use of valuations to work out margins		
Item	When valuations may be used	Days when valuations are to be made
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)
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
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

(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).

Note: Section 9-90 (rounding of amounts of GST) can apply to amounts of GST worked out using this section.

Section 75-11 (not in force at the applicable time)

Amended by Act No. 78 of 2005 - Tax Laws Amendment (2005 Measures No. 2) Act 2005

Amendment

Schedule 6, Item 16: After section 75-10

Insert:

75-11 Margins for supplies of real property in particular circumstances

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
 - (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.

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:
- (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 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 for supply of real property acquired from deceased estate

(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

(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.

(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.

Margin for supply of real property acquired from 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.
- (8) Subsection (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 subsection (7) in the same way that it affects the operation of Division 72.

Provision as Amended (1 July 2005 to 18 July 2005)

75-11 Margins for supplies of real property in particular circumstances

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

(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.

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:

- (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 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 for supply of real property acquired from deceased estate

(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

- (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.

(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.

Margin for supply of real property acquired from 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.

(8) Subsection (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 subsection (7) in the same way that it affects the operation of Division 72.

Amended by Act No. 58 of 2006 – Tax Laws Amendment (2006 Measures No. 2) Act 2006 (Cth)

Amendment

Schedule 7, Item 2: Paragraph 75-11(2A)(e)

Omit “value of interest”, substitute “value of the interest”.

Provision as Amended (22 June 2006 to 30 June 2006)

75-11 Margins for supplies of real property in particular circumstances

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
 - (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.

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:

- (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 for supply of real property acquired from deceased estate

(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
- (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.

(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.

Margin for supply of real property acquired from 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.

(8) Subsection (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 subsection (7) in the same way that it affects the operation of Division 72.

Amended by Act No. 145 of 2008 - Tax Laws Amendment (2008 Measures No. 5) Act 2008

Amendment

Schedule 1, Item 4: After subsection 75-11(4)

Insert:

Margin for supply of real property acquired as a GST-free going concern or as GST-free farm land

(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
- (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
- (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.

Margin for supply of real property acquired from 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:
- (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

(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 *registered or *required to be registered on a day earlier than 1 July 2000.

Item 5: Subsection 75-11(7) (heading)

Repeal the heading.

Item 6: Subsection 75-11(8)

Omit “Subsection (7)”, substitute “Subsection (6) or (7)”.

Item 7: Subsection 75-11(8)

Omit “subsection (7)”, substitute “that subsection”.

Provision as Amended (9 December 2008 to Current)

75-11 Margins for supplies of real property in particular circumstances

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

- (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.

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:

- (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 for supply of real property acquired from deceased estate

(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

- (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.

(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.

Margin for supply of real property acquired as a GST-free going concern or as GST-free farm land

(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
- (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
- (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.

Margin for supply of real property acquired from 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:
- (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
 - (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 *registered or *required to be registered on a day earlier than 1 July 2000.
- (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.
- (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.