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# AUSTRALIAN TAX ADVISER

2307 : MARCH 2023

The IFX Legal Tax Team

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## IN THIS ISSUE



*Continued*

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## IN THIS ISSUE

# SECTION 1 – PROFESSIONAL DEVELOPMENTS

## THE MARGIN SCHEME

In recent weeks, this service has received several queries about the operation of GST and the margin scheme. Our team has therefore decided to explain some of the concepts surrounding this regime. It is worth noting that the margin scheme is unique to Australia, so we cannot look to other jurisdictions for guidance about the way the rules operate. Also, following several tax planning arrangements that sought to exploit the benefits of the regime, several changes were introduced[1] to curb these arrangements. The result is that the area has become somewhat more complex than it used to be.

### ¶7.1 The basic rules

Under the margin scheme, GST is calculated on the *margin* rather than the *consideration* for the supply of real estate, which typically results in a reduction of the GST liability on sale. For example, say a residence is sold for $1.1 million and is eligible for the margin scheme. Assuming the margin (being the difference between the purchase price and the selling price) is $660,000. Using the margin scheme means a reduction in the seller's GST liability of $40,000 ($100,000 – $60,000).

It isn't all 'beer and skittles' for the parties however, because if the seller *and* purchaser[2] elect to use the margin scheme, the purchaser will not be eligible to claim an input tax credit for the GST included in the purchase price. It follows therefore that this regime is only effective where the purchaser would not have been entitled to claim an input tax credit in the first place – for example, where the property is residential premises to be used for residential accommodation. In the case of such purchasers, it is highly unlikely that the purchaser would be entitled to the input tax credit anyway, so the margin scheme is an ideal vehicle to use.

It is perhaps also worth noting that the margin scheme can only be applied to sales where the sale of the property would be a taxable supply (e.g. where the seller is an entity that is either registered or required to be registered for GST). If the seller is unregistered, or the sale is an input taxed supply[3] the sale would be out-of-scope or input taxed respectively, and GST will not apply. Accordingly, the margin scheme is irrelevant in those transactions.

### ¶7.2 The 'margin'

Central to the operation of the margin scheme is the calculation of the margin. In the basic case, the margin is simply the difference between the selling price and what the seller had originally paid to acquire the property. The margin does not include any of the development costs, since these already qualify for input tax credits in

1 Applies to supplies made after 29/6/05.

2 Under s 75-5(1) of the GST Act, both parties must agree in writing to use the margin scheme.

3 Under s 40-65 of the GST Act.