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NEW SOUTH WALES ABORIGINAL LAND COUNCIL

Sale of properties and GST - use of the margin scheme

This fact sheet was prepared by the New South Wales Aboriginal Land Council (**NSWALC**) for Local Aboriginal Land Councils (**LALCS**) and is intended to be a guide for LALCS dealing with the sale of properties and GST treatment in New South Wales, in particular the use of the margin scheme to reduce GST liability.

Please note: While all care has been taken in the preparation of this document, the information it contains is a guide only and is not a substitute for tax or legal advice. LALCs should seek their own independent advice in relation to sale of property and GST matters, in particular whether the margin scheme is available and is the best GST outcome. This document is current as at April 2017.

LALCS and the ownership and sale of property

Under s 36 of the *Aboriginal Land Rights Act* 1983 (**ALRA**), Aboriginal Land Councils may be granted Crown land that is not lawfully used or occupied, or needed for residential purposes or essential public purposes Aboriginal Land Councils can also acquire land through other mechanisms, including purchasing land on the market. Aboriginal Land Councils are able to deal with, hold, manage, sell, and use their lands in the same way as any other landowner, subject to compliance with the ALRA.

Is the sale of land subject to GST?

Most LALCs will be considered to be carrying on business when they sell properties they own. This means that LALCs will generally need to be registered to pay GST, and that GST must usually be paid on the sale. Normally this amount is calculated as one-eleventh of the sale price of the property.

What is a margin scheme?

If a LALC is registered for GST, it may be able to use the margin scheme to calculate the amount of GST payable on the sale of a freehold interest in land, stratum unit, or long-term lease. The margin scheme is a mechanism found in Division 75 of the *New Tax System (GST) Act* 1999 which provides an alternative way for vendors (including LALCS) to calculate the GST payable on sales of property. The margin is normally calculated to be the difference between:

- The sale price of the property and the amount you paid for the property; or
- The sale price of the property and an appropriate property valuation.[1]

[1] https://www.ato.gov.au/General/Property/Property-used-in-running-a-business/Selling-commercial-premises/Margin-scheme/

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Benefits of the margin scheme

The two main benefits to LALCS as a result of using a margin scheme include:

1. Reduced GST liability; and
2. Maximised net proceeds after GST.

Important Considerations

It is important to note that the margin scheme **only** applies in working out the amount of GST on a taxable supply of real property that is made when selling a property, and **only if** the parties to the sale agree in writing to apply the margin scheme. The easiest way for parties to agree to adopt a margin scheme is by checking the relevant box on the front page of a standard NSW Contract for the Sale of Land.

In certain sales, the margin scheme cannot be used, e.g. if a LALC originally purchased the land under a contract where full GST applied. Given that LALCs do not purchase land granted to them under the ALRA, LALCs should particularly consider whether the application of the margin scheme to that land will be beneficial.

Methods

There are two different methods that can be used when applying the margin scheme: the **consideration** method and the **valuation** method.

The consideration method (which uses the actual purchase price of the property) can be used regardless of when the LALC purchased the property to be sold. The valuation method (which uses an approved valuation of the property) can generally only be used to work out the margin if the property concerned was originally purchased before 1 July 2000.

Consideration Method

<u>Example 1: Sale using the consideration method for property purchased **before 1 July 2000**</u>

A LALC sells a property for $330,000 including GST on 1 August 2016. It had purchased the property on 20 June 2000 for $110,000. The Contract for sale specifies that the margin scheme will apply to the sale.

GST payable without using the margin scheme	**GST payable using the margin scheme**
The LALC pays GST at 1/11th of $330,000. GST payable is $30,000.	The LALC only has to pay GST at 1/11th of $220,000, which is the sale price of the property minus the purchase price of the property ($330,000-$110,000). GST payable is $20,000.00.

By applying the margin scheme via the consideration method, the LALC was able to save $10,000. (Note that if the LALC had purchased the property a considerable time before 1 July 2000 or it became registered a considerable time after 1 July 2000, the LALC may benefit more using the valuation method (see Example 3 below) to calculate GST instead of the consideration method).

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<u>Example 2: Sale using the consideration method for property purchased **on or after 1 July 2000**</u>

A LALC sells a property for $550,000 including GST on 1 August 2016. The contract for sale states that the margin scheme will apply. On 1 December 2002 the LALC had purchased the property for $150,000 from a vendor who was not registered for GST.

GST payable without using the margin scheme	**GST payable using the margin scheme**
The LALC pays GST at 1/11th of $550,000. GST payable is $50,000.	The LALC only has to pay GST at 1/11th of $400,000, which is the sale price of the property minus the purchase price of the property ($550,000-$150,000). GST payable is $36,363.63.

By applying the margin scheme via the consideration method, the LALC was able to save $13,636.37.

Valuation Method

<u>Example 3: Sale using the valuation method for property originally purchased before 1 July 2000</u>

A LALC sells a property for $550,000, including GST on 1 August 2016. The contract for sale of the property states that the margin scheme will apply. The LALC had originally purchased the property in 1998 for $170,000.

GST payable without using the margin scheme	**GST payable using the margin scheme**
The LALC pays GST at 1/11th of $550,000. GST payable is $50,000.	The LALC obtains a valuation as at the date it was required to be registered or was registered for GST, usually 1 July 2000 for most LALCs valuing the property at $300,000. The LALC only has to pay GST at 1/11th of $250,000 (the difference between the property sale price and valuation price, not the difference between the sale price and purchase price). GST payable is $22,727.27.

By applying the margin scheme via the valuation method, the LALC was able to save $27,272.73.

If the LALC had used the consideration method (see example 1 above) instead of the valuation method, the LALC would have paid GST at 1/11th of $380,000 (the difference between the sale price of $550,000 and the purchase price of $170,000). GST payable is $34,545.45.

If the LALC had used the consideration method, the LALC would have saved $15,454.55 but there is more savings to be had, using the valuation method. Therefore it is also important which method a LALC uses to calculate the margin.

What should LALCS consider?

LALCS need to carefully consider the following:

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- When and how the property concerned was purchased, as requirements vary according to whether you purchased your property before 1 July 2000, on or after 1 July 2000, or on or after 9 December 2008[2].
- Whether the sale of the property concerned is taxable/ subject to GST, as requirements vary depending on whether the sale was made on or after 17 March 2005[3] or on or after 29 June 2005[4].
- Whether the parties to the sale have agreed in writing to a margin scheme.
- Whether a property valuation is required. Generally, an approved valuation will only be required if a LALC has owned the property prior to 1 July 2000.

Before a LALC sells property, it is very important that it obtain legal and tax advice on whether it:

- **is liable to pay GST on the sale of the property;**
- **can apply the margin scheme; and**
- **should use the valuation method or the consideration method in calculating the margin so as to maximise its net proceeds of sale.**

Further Information

For more information on the sale of properties, GST treatment and the margin scheme, please consult:

Australian Taxation Office (ATO)
Phone: 13 28 66
Indigenous helpline: 13 10 30
Website: www.ato.gov.au generally and www.ato.gov.au/General/Property/In-detail/GST/GST-and-the-margin-scheme/ for more detailed information on GST and the margin scheme.

New South Wales Aboriginal Land Council Land and Property Unit (NSWALC)
Phone: 02 9689 4444
Website: www.alc.org.au

[2] This date relates to how the margin is calculated where you purchased the property as a GST free going concern, GST free farm land concessions or as an associate for no payment and therefore may not be relevant for LALCs but LALCs should keep this date in mind and raise with their legal and tax advisors.
3 From this date, the eligibility to use the margin scheme on the sale of properties changed. LALCs should keep this date in mind and raise with their legal and tax advisors.
4 Where parties intend to use the margin scheme on a sale of property after this date, the parties need to agree in writing before the "supply" of the property so parties should have it elected on the contract for sale.

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