



**Submission to The Treasury**  
**on**  
**Implementation of the Recommendations of Treasury's**  
**Review of the GST Margin Scheme**

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Master Builders Australia Ltd

ABN 68 137 130 182

*building australia*



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## **1 INTRODUCTION**

- 1.1 This submission is made by Master Builders Australia Limited (Master Builders).
- 1.2 Master Builders is Australia's peak building and construction industry association, federated on a national basis in 1890. Master Builders' members are the nine Master Builder State and Territory associations.
- 1.3 Over the past 120 years the association has grown to represent over 30,000 businesses nationwide. Master Builders is the only industry body that represents all three building and construction sectors: residential, commercial and engineering.

## **2 OVERVIEW**

- 2.1 The Treasury is seeking comments on proposed implementation measures for changes to improve the administration of the GST law as it relates to the margin scheme.
- 2.2 In this submission Master Builders outlines in principle support for the measures relating to the GST margin scheme provisions.
- 2.3 Changes designed to clarify the law, simplify compliance for taxpayers and reduce the potential for disputes between taxpayers and the ATO should benefit small and medium sized businesses in the building industry.

## **3 BACKGROUND**

- 3.1 Master Builders is responding to a request from the Assistant Treasurer, the Hon Bill Shorten MP, for comments on a discussion paper concerning proposed changes to improve the administration of the GST law as it relates to the margin scheme. This legislation will implement measures announced in the 2010-11 Budget that are intended to clarify and simplify the current provisions with effect from 1 July 2012.
- 3.2 On 11 May 2010, the Government announced its response to Treasury's review of the GST margin scheme. The Government canvassed publicly a range of options aimed at achieving the desired policy outcomes underlying

the existing margin scheme in a simpler and more efficient way. There was a general consensus that specific concerns with the margin scheme could be addressed through further amendments to the existing legislative framework.

- 3.3 It was the Government's view that in order to address industry's concerns within the existing legislative framework, additional rules would be required to, amongst other things, provide for decreasing adjustments in certain instances, new valuations dates and, potentially, new methods for working out cost bases in certain scenarios. Each of these rules was likely to increase complexity for taxpayers, tax practitioners and the ATO. They would involve significant additional revenue costs.
- 3.4 The current policy contains a number of trade-offs where what might appear to be the desirable policy outcome in relation to the amount of tax collected is foregone in favour of simplicity and integrity considerations. Addressing these 'gaps' would not necessarily have lead to a more effective regime but rather an unwinding of existing trade-offs, for example such that the objective of collecting the 'right amount' of tax in the relevant instances is placed ahead of simplicity and integrity considerations.
- 3.5 In weighing up these factors the Government decided that the costs and risks to revenue integrity associated with addressing these gaps would outweigh the potential benefits, result in more rather than less complex legislation and place additional information needs on taxpayers which may be commercially difficult to obtain.
- 3.6 However, the Government agreed to:
- restructure the margin scheme provisions to give prominence to the core provisions with exceptions set out separately and to insert objects clauses for the key provisions so that the intention is clear; and
  - implement a minor technical amendment, effective from 1 July 2012, to remove an anomaly to allow an approved valuation of the land to be used for the purposes of calculating the margin on subdivided land.

## **4 DETAILED NATURE OF THE REFORMS**

- 4.1 The key objective of the Government's reforms to the GST margin scheme is to clarify the law and simplify compliance for taxpayers and the ATO.
- 4.2 The changes to restructure the margin scheme provisions and implement a technical amendment are not expected to have any impact on revenue but provide an opportunity to address the additional complexity that has arisen from legislative changes made to address risks to revenue that had arisen since July 2000. Simplifying the interaction with the law by having the core provisions up front in the legislation should benefit enterprises that have limited resources with which to seek professional advice on the application of the margin scheme to their transactions.
- 4.3 The Treasury is suggesting that the proposed structure could be made more effective by: placing the sections that capture the core provisions of the margin scheme at the front of Division 75 under Subdivision A; revisit the existing non-operative theme statement to expand it to cover the entire division; and renumber the sections of Division 75 to align with any new subdivisions.
- 4.4 To simplify the rules for the application of the margin scheme in particular circumstances and to avoid the extensive repetition of the current layout, it is suggested that: the provisions containing rules for the application of the margin scheme in particular circumstances for calculating the margin could be placed together behind the core rules under Subdivision B of Division 75; and section 75-11 could be restructured.
- 4.5 The new structure of Division 75, with adjustments at the end, would allow taxpayers to first confirm that their supply of real property is eligible for the margin scheme, before calculating the margin on the supply, and finally determining whether any adjustments to the GST liability were required.
- 4.6 The Government has decided to also implement a minor technical amendment to remove an anomaly to allow an approved valuation of the land to be used for the purposes of calculating the margin scheme.

- 4.7 It is proposed that an approved valuation of the land or premises can be used to calculate the margin on subdivided land for the purposes of the GST margin scheme.
- 4.8 The principle confirms the ATO view of the law set out at paragraphs 126 to 129 of the ATO ruling, GSTR 2006/8. In addition, it is consistent with paragraphs 66 to 69 of GSTR 2006/7, which deal with circumstances where the real property is acquired before 1 July 2000. The ATO view is that if the real property was not in existence at the valuation date but is part of the real property that was in existence at that date, a valuation of the real property in existence at the valuation date is made and it is apportioned on a fair and reasonable basis to ascertain the valuation that relates to the real property that is supplied.

## 5 COMMENTS

- 5.1 The new structure should give prominence to the core provisions of the margin scheme provisions, and the technical amendment will allow an approved valuation of the premises to be used to calculate the margin on subdivided land (currently, only the consideration method may be used).
- 5.2 The core provisions of the margin scheme are the fundamental propositions and concepts with which all valid margin scheme transactions necessarily have a nexus. Without the operation of the core provisions, the policy intent behind the margin scheme would not be realised and the scheme itself could not operate.
- 5.3 It would appear that there would be some benefit from placing core provisions at the front of Division 75 and distinctly set out in their own Subdivision. The benefits would be in the form of clarity and certainty in the operation of the margin scheme, thereby assisting taxpayers' compliance with the GST law. The current structure of the provisions dealing with supplies in particular circumstances is complex, leading to significant compliance issues. The new structure will aid compliance by making the calculation of the margin in the circumstances set out easier to follow.

## **6 CONCLUSION**

- 6.1 Master Builders supports efforts to deliver clarity and simplicity in dealing with the GST margin scheme provisions. The reforms have the potential to limit disputes and reduce the tax burden, particularly for small businesses operating in the building and construction industry.
- 6.2 Master Builders therefore offers in principle support for the measures.