Property Council of Australia
ABN 13 00847 4422

Level 1, 11 Barrack Street
Sydney NSW 2000

T. +61 2 9033 1900
E. info@propertycouncil.com.au

propertycouncil.com.au
@propertycouncil

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Ruth Hegney
Technical Director
Technical Leadership and Advice - GST
Small Business
Australian Taxation Office

By email: Ruth.Hegney@ato.gov.au

Dear Ruth

Draft Legislative Instrument 2022/D14
A New Tax System (Goods and Services Tax) Margin Scheme Valuation Requirements Determination 2022

The Property Council welcomes the opportunity to provide comments to the ATO in relation to the draft Legislative Instrument 2022/D14 (LI 2022/D14) on margin scheme valuation requirements.

Our submission focuses on the property industry's concerns regarding the retrospective nature of what is being proposed in the draft instrument, some of the practical implications for taxpayers and the transitional arrangements set out in LI 2022/D14.

Practical challenges

The introduction of a new legislative instrument in respect of margin scheme valuations presents a number of practical implications for taxpayers that have relied on the previous margin scheme determinations in obtaining valuations for their property developments. Taxpayers are not valuers. Rather, they engage valuers and rely on valuers' expertise and qualifications to obtain a relevant valuation to meet the margin scheme valuation requirements. The additional requirements of the draft instrument will likely add to the cost of seeking margin scheme valuations but do not otherwise change what is being sought in the valuation.

On receiving a valuation, the taxpayer will then use that valuation to calculate their GST liability. The introduction of the new legislative instrument in its current form would have a retrospective impact on valuations that were valid under previous rules in order to determine the GST liability for particular residential sales.

1. <u>Application of new legislative instrument</u>

LI 2022/D14 repeals prior margin scheme valuation determinations and could result in a margin scheme valuation no longer being valid where it previously met the requirements set out by the Commissioner. In order to ensure prior valuations are still compliant, a taxpayer may be required to:

- Re-engage with the valuer that conducted the prior valuation to update the validation, which will result in additional compliance costs for the taxpayer; or
- Have a different valuer undertake a new valuation to meet the new requirements, which would again lead to more compliance costs being incurred by the taxpayer.

If the Commissioner considers that a taxpayer's valuation is no longer valid as it does not meet the requirements of the new instrument, the ATO should also consider applying Method 4 of the instrument to settled sales prior to the introduction of the instrument as a way of mitigating the cost of compliance impacts on taxpayers.

2. <u>Valuers</u>

Valuers may not be available to update their original valuations to comply with LI 2022/D14. There may be a number of reasons where valuer might not be available including:

- They may not be able to update the valuation within the 3-month transition period due to current workloads;
- They may have retired and/or left the profession;
- They are no longer able to provide margin scheme valuations (the scope of the valuer's practice may have changed or their professional insurance may no longer particular aspects of work); or
- The original work papers may no longer be available.

If a new valuation is required to be obtained, taxpayers will need to get clarity on whether the GST that has been calculated on prior sales needs to be recalculated. This should not be an issue if a valuation is merely refreshed by the original valuer and the valuation does not change. However, as outlined below, issues regarding a change in the tax position of tax entities could arise where a new valuer is engaged to undertake a valuation of the relevant lot.

3. <u>Changes to the Valuation</u>

Taxpayers, and the Commissioner, have seen valuers determine different valuations for the same real property.

If a new valuation is obtained that results in a different valuation for the relevant real property, the taxpayer may be required to:

- pay the Commissioner an amount if the valuation is lower than the previously obtained valuation; or
- request a refund from the Commissioner if the valuation is higher than the previously obtained valuation.

How this determination will interact with the ATO's ruling GSTR 2006/8. In particular, paragraph 58 of GSTR 2006/8 states:

> *You cannot change the method of apportionment after sales of allotments or stratum units have been made unless the changed method is applied to calculate the margin for all the sales.*

If a new valuation is obtained to satisfy the requirements of LI 2022/D14, and that valuation has a different value, this raises further questions which the ATO should address or clarify:

- Where settlements in a project have occurred over a four-year period or longer, will the ATO or taxpayer be required to update the period outside the four years?
- If there is no change to the cost base that has been allocated to any period outside of four years, will that cost base be assumed to have been used. Will that 'used cost base' then need to be removed from the new valuation with all remaining cost base allocated to sales within the four-year period and all future sales?

Transitional arrangements

We are also concerned that the transitional arrangements set out in LI 2022/D14 won't provide enough time for impacted entities to comply with the new requirements. Taxpayers may not be able to obtain revised or new valuations within the suggested transition period. We suggest that the transition period noted in paragraph 2 be:

1. Amended to state that where a taxpayer is continuing to use a valuation that is valid under MSV 2020 which has already been used to determine the margin on past sales, then that valuation can continue to be used until sales from the relevant land have been completed; and otherwise
2. For developments where sales have not yet commenced and a new valuation is needed, the time period is increased from 3 months to 6 months before there is a need to obtain a new valuation.

We would also suggest under Method 4 that the time for a taxpayer to produce an approved valuation be increased from 8 weeks to be increased to 16 weeks. Although previous determinations had the 8-week period, increasing the period will provide a taxpayer with a more practical time period in which to comply with the ATO's request.

If you would like to discuss any aspect of this submission further, please contact Kosta Sinelnikov on 0422 168 720 and ksinelnikov@propertycouncil.com.au or myself on 0400 356 140 and bngo@propertycouncil.com.au.

Yours sincerely

Belinda Ngo
Executive Director – Capital Markets