

Media Release

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DEVIL IS IN THE DETAIL WHEN APPLYING THE MARGIN SCHEME TO PROPERTY SALES

The margin scheme is more technically complex than it appears, making it one of the most fertile areas in GST that may be exposed to future litigations, according to Brisbane professional services firm BDO Kendalls.

BDO Kendalls partner, Eddie Chung, says there are a number of myths circulating about the margin scheme, which allows the GST on the sale of a property to be calculated on the 'margin' rather than the sale price.

"For instance, the margin scheme cannot be used in every property sale," Mr Chung says.

"Generally, the margin scheme can only be used if the property was originally bought under the margin scheme or on a GST-free or input taxed basis.

"The margin scheme may also be used if the property was purchased before 1 July 2000, which was when GST was first introduced."

Mr Chung says that although under the original legislation, the decision to use the margin scheme was solely the choice of the seller, this is no longer the case.

"Given some of the practical issues of giving sellers the sole discretion in applying the margin scheme, the current law requires that a written agreement be made between the seller and purchaser, generally on or before settlement," Mr Chung says.

Mr Chung says another common myth surrounding the margin scheme is that the 'margin' is simply the sale price less all the costs incurred in relation to the property.

"If the property was originally bought before 1 July 2000, the margin is generally calculated as the sale price less the market value of the property at 1 July 2000," Mr Chung says.

"In other words, any capital gain on the property before 1 July 2000 is not counted and the original cost of the property is irrelevant.

"If the property was originally bought after 1 July 2000, the margin is generally calculated as the sale price less the original cost of the property.

“When determining the original cost, it is important not to include costs that were incurred for services obtained to buy the property such as legal costs, as well as the stamp duty incurred on the purchase.

“Also, the GST-inclusive cost of the property must be used and any costs incurred to develop the property must not be counted.”

Mr Chung says it should not be presumed that a purchaser will always prefer to apply the margin scheme.

“It will really depend on a number of factors, as the GST law specifically prevents the purchaser from claiming the GST back on a property purchase to which the margin scheme applies,” Mr Chung says.

“In other words, if the purchaser is a private person who is not registered for GST, they may prefer to apply the margin scheme to minimise the GST on the purchase because they are not entitled to claim back any GST.

“On the other hand, if the purchaser is registered or required to be registered for GST and is buying the property in the course of carrying on their enterprise, whether they prefer to use the margin scheme will depend on who they will be on-selling the property to in future.

“If the purchaser intends to on-sell the property to registered parties in future, they may prefer to pay GST on 1/11th of the purchase price, rather than apply the margin scheme and this will ensure that they will be entitled to claim back the GST on the purchase.

“However, if the purchaser intends to on-sell the property to private unregistered parties in future, they may prefer to buy the property under the margin scheme to ensure that they can on-sell the property under the margin scheme in future.”

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