



1 February 2011

The General Manager
Indirect Tax Division
The Treasury
Langton Crescent
PARKES NSW 2600

By email: marginscheme@treasury.gov.au

Dear Sir or Madam,

Review of the Margin Scheme – Comments on Treasury Discussion Paper

Thank you for the opportunity to respond to the discussion paper *Implementation of the Recommendations of Treasury's Review of the GST Margin Scheme* dated 10 December 2010.

This submission has been prepared by the Taxation Committee of the Business Law Section of the Law Council of Australia (**Committee**). The submission has been endorsed by the Business Law Section.

The Committee's view is that further consideration needs to be given to the proposed amendment to section 75-15 of the *A New Tax System (Goods and Services Tax) Act 1999 (GST Act)*.

In particular, Treasury should consider whether the proposed amendments will apply retrospectively with effect from 1 July 2000.

The 2005 amendments to the margin scheme had the unfortunate effect of increasing the scheme's complexity as a result of the amended provisions applying only to "supplies made" on or after 17 March 2005.

As there are no time of supplies rules in the GST Act, the 2005 amendments led to disputes between taxpayers and the Commissioner of Taxation (**Commissioner**) regarding the meaning of when supplies were "made". For example, it remains unclear whether options to purchase property agreed before 17 March 2005 are covered by the amended provisions. Similarly, it remains unclear whether contracts entered into before 17 March 2005 and settling on or after 17 March 2005 are "made" under the old provisions or the amended provisions.

The Committee's view is that, to promote certainty, section 75-15 should be amended retrospectively from 1 July 2000.

The number of taxpayers that could be adversely affected by the amendments would be limited broadly to those that acquired property that decreased in value between the time of purchase and 1 July 2000 and only where the Commissioner obtained an approved valuation of the taxpayer's property as of 1 July 2000.

An approved valuation is a precondition for applying the valuation method under section 75-10(3)(b). The legislation effectively allows for a taxpayer to use the consideration method for properties acquired before 1 July 2000 by not obtaining an approved valuation. However, there is nothing in section 75-10(3) to prevent the Commissioner from obtaining an approved valuation to be used as the acquisition cost instead of the consideration.

Taxpayers who have relied on section 75-15 to use the consideration method need to be protected from the Commissioner seeking to substitute an approved valuation for the consideration. Treasury should include a provision with the effect that an approved valuation obtained by the Commissioner cannot be used to determine the acquisition cost where the taxpayer had applied the consideration method under section 75-10(2).

This issue is not limited to taxpayers applying the margin scheme to subdivided land under section 75-15. It is equally relevant to taxpayers calculating their acquisition cost under the consideration method under the general rules in section 75-10(2).

Yours faithfully

A handwritten signature in black ink, appearing to read 'W Grant', written in a cursive style.

Bill Grant
Secretary-General