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The Treasury

MISCELLANEOUS AMENDMENTS TO THE TAXATION LAWS

SUMMARY OF CONSULTATION PROCESS

On 15 August 2012, via the release of draft legislation and draft explanatory memoranda, the Government indicated its intention to make particular miscellaneous amendments to the taxation laws and superannuation regulations, including amendments to the income tax, fringe benefits tax, goods and services tax (GST) and tax administration legislation. This gives effect to the Government's long-standing commitment to uphold the integrity of the taxation system.

This measure was included in Tax Laws Amendment (2012 Measures No. 6) Bill 2012, which was introduced into Parliament on 29 November 2012.

Consultation process

Public consultation on most of the draft legislation and draft explanatory memorandum was conducted between 15 August and 12 September 2012. Two formal submissions were received in response to the proposed GST and subdivided land amendments.

Submissions are available on the [Treasury website](#).

Summary of key issues

Key issues

Stakeholders welcomed the proposed GST and subdivided land amendments, but argued that they should apply retrospectively to give taxpayers both certainty and legislative protection against the assessment of any additional GST liability.

Concerns were also raised about whether or not the proposed amendments appropriately or adequately addressed situations where the interest in the real property that the taxpayer sells is different to the interest in the real property that the taxpayer originally acquired. In addition, submissions stated that neither the current section 75-15 of the *A New Tax System (Goods and Services Tax) Act 1999*, nor the proposed amendment, clearly address a scenario where adjoining titles are acquired and amalgamated prior to being subdivided.

Response

Retrospective application of the amendments is considered unnecessary as the Commissioner of Taxation would not seek to disturb the GST treatment of taxable supplies of subdivided land made prior to the application date of the amendments where taxpayers have relied upon and calculated their GST liability consistent with the approach set out in GSTR 2006/8. The Treasury has been advised that the issue relating to the change in the form of title between that sold and that acquired is appropriately clarified by the Full Federal Court's decision in *Brady King Pty Ltd v Federal Commissioner of Taxation* [2008] FCAFC 118. The Full Court unanimously determined that there



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did not have to be a strict identity in juridical terms between what the taxpayer acquired and what it supplied.

Similarly, Treasury has been advised that the proposed new section 75-15 sufficiently addresses the situation of where separate pieces of real property are acquired and amalgamated prior to being subdivided.

Feedback

Feedback on the consultation process for this measure can be forwarded to consultation@treasury.gov.au. Alternatively, you can contact Jamie Roberts on (02) 6263 3109.

Thank you to all participants in the consultation process.