Institute of Chartered Accountants Australia

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Dear Brenda

Exposure Draft – GST Margin Scheme and subdivided land

The Institute of Chartered Accountants in Australia (the Institute) welcomes the opportunity to make a submission in relation to the Exposure Draft legislation on GST margin scheme and subdivided land (**the ED**).

The Institute is the professional body for Chartered Accountants in Australia and members operating throughout the world. Representing more than 70,000 current and future professionals and business leaders, the Institute has a pivotal role in upholding financial integrity in society. Members strive to uphold the profession's commitment to ethics and quality in everything they do, alongside an unwavering dedication to act in the public interest.

The ED was released for consultation on 15 August 2012 and seeks to ensure that taxpayers are able to use the consideration method, the valuation method, or the GST-inclusive market value method, whichever is appropriate, when calculating the margin on a taxable supply of subdivided land.

The Institute welcomes the amendment to s 75-15 of the *A New Tax System (Goods and Services Tax) Act 1999* to improve the legislative support for the margin scheme calculations. Where the calculation of the margin under s 75-10(2) is subject to s 75-10(3) or s 75-11, the apportionment provided by s 75-15 needs to be able to be applied to a relevant valuation of the interest, unit or lease in question in addition to the consideration for their acquisition.

General comments

The Institute requests Treasury to consider the following matters regarding the existing s 75-15 and the proposed substitute.

1. Change in the form of title between that sold and that acquired

In the Institute's view, neither the existing nor proposed s 75-15 clearly and conclusively addresses a change in the form of title between that sold and that acquired, for example, from freehold to strata title or from freehold to leasehold. It is a well established principle of property law that strata title and leasehold interests are a form of title with a separate identity to of freehold interests. Our concern is with the expression in s 75-15 and the proposed s 75-15(1) being ‘relates only to part of the land or premises in which you acquired an interest.’ A stratum unit or leasehold interest supplied ‘from’ an original freehold interest is not part of nor does it relate to part of the original freehold interest but rather to the whole of it. The word ‘part’ suggests a smaller slice, a component or a constituent which in our view may not have legal standing where an entirely different identity of real property interest is supplied

2. Adjoining titles acquired and amalgamated, then subdivided

Similarly, neither the existing nor the proposed s 75-15 clearly and conclusively addresses the common scenario where adjoining titles were acquired and amalgamated, then subdivided into ‘parts.’ The interest sold could have formed part of two or more titles acquired. The provision needs to be flexible enough to deal with this scenario and clear enough to demonstrate that it is covered. If nothing else, we recommend an example be included in the Explanatory Material (**EM**) demonstrating how s 75-15 applies in the amalgamation/subdivision scenario.

3. Changing the commencement date

Clause 1.13 in the proposed EM alludes to the fact that the Commissioner has allowed taxpayers to calculate the margin using the corresponding proportion of an approved valuation or GST inclusive market value where applicable. The Institute recognises that the Commissioner has administered the provision practically and fairly when it has so done. The corollary is that a taxpayer who may have self-assessed their margin scheme liability by applying a black letter law interpretation of s 75-15 in ignorance of the Commissioner’s administrative policy has suffered an injustice. In our view, consideration should be given to changing the commencement date of the proposed change to 1 July 2000 and allowing the payment of refunds for overpaid GST in applicable circumstances.

Related Matters

We respectfully remind Treasury that the proposed change was one of two announced in 2010. The other proposal was for reform and restructure of the margin scheme provisions. Treasury issued a discussion paper seeking business and professional feedback on both proposals. In respect of the other proposal we understand that no professional body or industry association agreed with Treasury’s preferred approach. As a consequence, the government did not proceed with any of the considered proposals.

It is the opinion of the Institute that the margin scheme is causing considerable difficulties in practice both for the property industry and for advisors. In many areas it is extremely complex and difficult to apply. In some areas it does not appear to achieve its aims, is inconsistent, results in tax being applied to private gains, or causes embedded tax in business to business transactions.

The Institute requests that Treasury reconsider its decision to abandon fundamental reforms to the margin scheme. However, we recommend that the first step in the path to reform be a rethinking of the purpose and structure of a ‘margin scheme’ in the context of a value added tax. It is only when the purpose of applying a value added tax on appreciating assets and the place of a margin scheme in that model is clearly understood that the form and detail of particular margin scheme legislation can be considered. The Institute is convinced that the margin scheme will need to be substantially reformed at some stage. We invite Treasury to reconsider those reforms now than at some point in the future when its current problems will be magnified.

If you have any questions regarding the contents of this submission, please do not hesitate to contact me on (02) 9290 5609.

Yours sincerely

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