



THE LAW SOCIETY  
OF NEW SOUTH WALES

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9 March 2012

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

Email: [gstpolicyconsultations@treasury.gov.au](mailto:gstpolicyconsultations@treasury.gov.au)

Dear Sir/ Madam,

**GST and the Sale of a Corporation's Property by a Mortgagee or Chargee –  
Exposure Draft**

I am writing to you at the request of the Law Society's Property Law Committee ("Committee").

The Committee advises the Council of the Law Society on developments in the area of property law and is comprised of experienced and specialist practitioners drawn from the ranks of the Society's members who act for various stakeholders in the conveyancing process.

The Committee has considered the Exposure Draft Bill and Explanatory Memorandum setting out details of the proposed amendment to *A New Tax System (Goods and Services Tax) Act 1999* ("GST Act").

It is noted that there is currently an overlap between Division 105 and Division 58 of the GST Act which has created uncertainty for entities engaged in mortgage lending as the two Divisions contain substantial differences in terms of registration and reporting requirements, which are a primary cause of uncertainty.


The Committee notes that the Australian Taxation Office ("ATO") has adopted an interpretative approach under which the more specific provision will prevail over the general provision (ATO -ID 2010/224). Division 105 is a more specific provision than Division 58 in its application to mortgagees in possession or control of a corporation's property and the ATO consequently allows mortgagees in possession or control of property of corporations to continue to report and account for their GST obligations under the requirements imposed by Division 105. The Committee believes the uncertainty is best addressed by amending the GST Act.

The Committee notes that the amendment was canvassed in a Consultation Paper in June 2011. The approach suggested in that Consultation Paper was to locate the proposed amendment within the Dictionary to the GST Act. The Committee considered that a preferable alternative approach was to amend one of the two relevant Divisions (Division 58 and Division 105) in the GST Act, and conveyed that suggestion to Treasury by letter dated 6 July 2011.

The Committee notes that the Exposure Draft Bill adopts the alternative approach by adding a new section 58-95 to the GST Act, and including a cross-reference within Division 105 by way of a note to section 105-1. The Committee supports the proposed amendment.

The Committee appreciates the opportunity to comment on the Exposure Draft Bill and Explanatory Memorandum and applauds the aim of Treasury to ensure that the provisions dealing with the GST treatment of property in possession or control of the mortgagee or chargee operate as intended and reduce compliance costs, particularly for entities in the mortgage lending sector.

Yours faithfully

A handwritten signature in black ink, appearing to read "Justin Dowd", with a stylized flourish at the end.

Justin Dowd  
**President**