THE TAX INSTITUTE

11 September 2012

General Manager
Indirect, Philanthropy and Resource Tax Division
The Treasury
Langton Crescent
PARKES ACT 2600
Attn: Mr Rob Dalla-Costa

By email: marginscheme@treasury.gov.au

Dear Mr Dalla-Costa

Tax Laws Amendment (2012 Measures No. 5) Bill 2012: GST Margin Scheme and Subdivided Land – Exposure Draft

The Tax Institute is pleased to have the opportunity to make a submission to the Treasury in relation to the GST Margin Scheme and Subdivided Land – Exposure Draft (**Exposure Draft**).

Summary

The amendments proposed under the Exposure Draft appropriately address the current anomaly between the *A New Tax System (Goods and Services Tax) Act 1999* (**GST Act**) and the Commissioner's practice in relation to the method to use in calculating the margin for subdivided land, with the exception of one issue.

The proposed amendments do not apply to taxable supplies made prior to the commencement date of the relevant Schedule of the Exposure Draft legislation that will contain the amendments (**Schedule**). Therefore, any taxable supplies made prior to the commencement date of the Schedule would not enjoy the same legislative protection as taxable supplies made on or after the commencement date of the Schedule.

As the terms of section 75-15 as contained in the Exposure Draft are now clear and reflective of the way this provision has always been interpreted and applied in practice by the Commissioner, in our view, the legislative protection should therefore also be afforded to taxable supplies made both before and on or after the commencement date of the Schedule.

Discussion

The purpose of amending section 75-15 is to remove doubt as to the use of certain valuation methods to determine the margin for a taxable supply of subdivided land, such that the new section 75-15 as contained in the Exposure Draft is clear on its terms.

In this regard, the Exposure Draft purports to replace the current section 75-15 of the GST Act so as to allow an approved valuation of real property to be used to calculate the margin for subdivided land. The Explanatory Memorandum to the Exposure Draft (**EM**) provides that, as a matter of administrative practice, the Commissioner has allowed taxpayers to use a corresponding proportion of an approved valuation or GST-inclusive market value, where applicable, to determine the margin for a taxable supply of subdivided land.

In our previous submission to Treasury made in respect of the Discussion Paper "Implementation of the recommendations of Treasury's review of the GST margin scheme", we noted that the amendment proposed to be made to clarify that an approved valuation could be used to calculate the margin for subdivided land was in fact a "clarification" of the law and not a "change" in the law. Once given effect, this clarification would mean that section 75-15 would now explicitly state that an approved valuation could be used. This would be in line with the Commissioner's current interpretation of and practice in applying this provision.

Under Clause 3 of the Exposure Draft, the amendments only apply to taxable supplies made on or after the start of the first quarterly tax period starting on or after the commencement of the Schedule. The Schedule will commence on the date the Act receives Royal Assent. In their current form, the amendments do not have retrospective application. Therefore, while they provide legislative conformity with the Commissioner's administrative practice in relation to determining the margin for any future taxable supply of subdivided land, they fail to achieve the same degree of certainty for taxable supplies made prior to the commencement date of the Schedule. If the amendment also applied retrospectively, this would ensure both certain and consistent treatment for taxable supplies made both before and on or after the commencement of the Schedule.

In our view, it would be more appropriate if the amendments proposed in the Exposure Draft also apply to taxable supplies made prior to the commencement date of the Schedule, that is retrospectively, giving certainty to taxpayers and providing them with legislative protection against the assessment of any additional GST liability. This would give legislative effect to the way the Commissioner has already been interpreting and applying section 75-15 in practice and would remove doubt about the correct application of section 75-15 to taxable supplies made prior to the amendment coming into effect, thus also providing the necessary certainty and legislative protection to taxpayers who have relied on section 75-15 in the past.

Recommendation

We recommend that Clause 3 of the Exposure Draft be amended to allow for the amendments to be applicable to taxable supplies made both before and on or after the commencement of the Schedule.

If you would like to discuss any of the above, please contact either me or Tax Counsel, Stephanie Caredes, on 02 8223 0011.

Yours sincerely

Ken Schurgott
President