



THE LAW SOCIETY
OF NEW SOUTH WALES

Our Ref: JC:lb:1295105
Direct Line: 9926 0202

30 July 2009

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

Dear Sir,

Consultation Paper on the Review of the Margin Scheme

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

The Committee has the responsibility of considering and dealing with any matters relating to property law and advising the Council of the Law Society on all issues relevant to that area of practice. The members of the Committee are senior property law practitioners and experts. Many of them advise clients of the GST implications of various property transactions.

General Comments

The Committee notes that Treasury has invited public comment on whether the margin scheme is meeting its objectives and what improvements would streamline its application and further reduce compliance costs while maintaining the integrity of the GST.

The Consultation Paper notes that the application of GST to real property transactions, in particular, the margin scheme, was raised at most of the consultation sessions which the Board of Taxation held as part of its Review of the Legal Framework for the Administration of the GST. It further states that submissions raised concerns about the complexity of the legislative provisions, the compliance burden arising from the current provisions and the scheme's failure to meet its objectives in all circumstances.

The Committee notes that examples are given in the Consultation Paper where the application of the margin scheme provisions results in outcomes that are inconsistent with the stated policy intention. Examples are also given of circumstances demonstrating that the current legislative and administrative application of the margin scheme is, in some transactions, adding to the complexity and costs of compliance. In view of this information, the Committee does not propose commenting further in relation to the specific questions numbered 1 to 3 in the Consultation Paper.

Preferred Option

The Consultation Paper canvasses three (3) options aimed at simplifying the existing legislative framework, removing unnecessary complexity and uncertainty while achieving the same policy outcomes and maintaining the integrity of the GST base. The Committee's preferred option is Option 2:

“Option 2: Replace the margin scheme with a notional input tax credit regime”.

The Committee suggests that Option 2 appears to be the simplest from a legal and accounting point of view. It appears to be the easiest to calculate and is shown to be revenue neutral in the examples given in the Consultation Paper.

The Committee suggests that option 1 will not promote certainty and that option 3 will not result in any substantial reduction in the problematic areas of complexity and costs of compliance.

The Committee comments on the specific questions in the Consultation Paper relating to this option as follows:

7: What are the advantages and disadvantages of replacing the margin scheme with a notional input tax credit regime?

The regime will provide simplicity and clarity. This regime also dispenses with the need for valuations. It is noted in the Consultation Paper that both taxpayers and the Tax Office identified the issue of valuations for the margin scheme as leading to significant disputation and additional compliance costs.

The Committee did not identify any disadvantages with this regime.

8: What modifications (if any) need to be made to the regime to address the matters discuss above, in particular revenue integrity issues, and any other matters?

This area is not within the area of expertise of the Committee.

9: What transitional rules do you think would be required?

It would be necessary to preserve the GST position in relation to:

- contracts entered into prior to the commencement of the provision, and
- contracts entered into on or after the commencement of the provision pursuant to rights or options granted before commencement.

The Committee considered that the transitional provisions could be modelled on those contained in the *Tax Laws Amendment (2005 Measures No.2) Act 2005*.

Conclusion

The Committee appreciates the opportunity to comment on the options discussed in the Consultation Paper and applauds the aim of Treasury to reduce the complexity of the GST margin scheme legislative provisions to aid in the efficiency of its operation.

If you wish to discuss the matters raised in this submission, please contact Ms Liza Booth, Executive Member of the Committee via telephone on (02) 9926 0202 or email Liza.Booth@lawsociety.com.au .

Yours faithfully

A handwritten signature in black ink, appearing to read 'Joseph Catanzariti', with a large, sweeping flourish extending to the right.

Joseph Catanzariti
President