



THE LAW SOCIETY  
OF NEW SOUTH WALES

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25 February 2011

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

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

Dear Sir,

### **GST Treatment of new residential premises – Consultation Paper**

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

The Committee has considered the issues for review in the Consultation Paper and comments on the proposals using the numbering and headings set out in the Consultation Paper.

#### **Proposal 1**

*Residential premises constructed pursuant to a development lease arrangement.*

The Committee supports this proposal but considers that the amendments should apply retrospectively from 27 January 2011, being the date of the Government announcement of the proposed changes.

#### **Proposal 2**

*Strata titling of a long-term leasehold interest in newly constructed residential premises.*

The Committee supports this proposal.

#### **Proposal 3**

*Subdivision or strata titling of a freehold interest in residential premises (other than new residential premises).*

The Consultation Paper states at page 4:

"It is further proposed to amend the *GST Act* from 1 July 2000 to ensure that any change in the property title arrangements of real property comprising residential premises (other than new residential premises), such as the subdivision of surrounding land or registration of a strata plan title over residential premises (other than new residential premises), would not result in the premises once again becoming new residential premises and being subject to GST if they are subsequently sold.

This outcome could be achieved by amending section 40-75 of the *GST Act* to provide that the subdivision or strata titling of residential premises that have previously been sold or the subject of a long-term lease, on its own, will not result in new residential premises pursuant to paragraph 40-75(1)(a)".

The Committee questions the view expressed at paragraph 15 of the Consultation Paper, namely that "the Court's decision in *Gloxinia* casts some doubt over this view and under the current law the subdivision or strata titling of residential premises (other than new residential premises) may result in the creation of new residential premises under paragraph 40-75(1)(a)".

The author appears to suggest that *Gloxinia*<sup>1</sup> somehow casts doubt on the Full Court's reasoning in *Brady King Pty Ltd v Commissioner of Taxation [2008] FCAFC 118*. The Committee can see nothing in the reasoning of the Court in *Gloxinia* which would lead to that conclusion. The Committee considers that this issue was not relevant to the decision in *Gloxinia* and that the clear language of the section left the Court with no alternative.

#### **Proposal 4**

##### *Alternative approach*

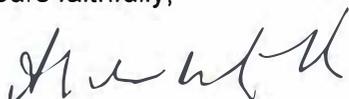
The Committee is generally opposed to such wholesale change and considers that the issue does not merit it. The insertion of the concept of "end user" could have significant consequences especially as it is proposed that the principle would apply retrospectively from 1 July 2000 (despite the safeguard provided by transitional provisions).

In addition, if it were pursued, the phrase "any change in the property title arrangements of real property" is extraordinarily wide and vague and should be avoided on this basis.

#### **Conclusion**

The Committee appreciates the opportunity to comment on the proposals in the Consultation Paper.

Yours faithfully,



**Stuart Westgarth**  
President

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<sup>1</sup> *Commissioner of Taxation v Gloxinia Investments (Trustee) [2010] FCAFC 46*