



THE LAW SOCIETY  
OF NEW SOUTH WALES

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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 treatment of property in possession of a mortgagee – Consultation Paper**

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

The Committee has reviewed the measure described in the consultation paper as designed to prospectively amend the GST law to ensure it achieves the intended policy objective in relation to the taxation of supplies of property of particular types of incapacitated entities.

**Issue**

The Committee considered the proposal that section 195-1 of the *A New Tax System (Goods and Services Tax) Act 2000* (GST Act) be amended to expressly provide that Division 105 operate to the exclusion of Division 58 where a mortgagee in possession or control sells the property of a corporation.

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.

## **Proposed amendment**

The Government has announced that it will amend the GST law to ensure that the provisions dealing with the GST treatment of property in possession or control of a mortgagee operate as intended. It is proposed to give effect to this decision by amending section 195-1 of the GST Act to expressly provide that Division 105 operate to the exclusion of Division 58 where a mortgagee in possession or control sells the property of a corporation.

## **Focus question**

The consultation paper poses a focus question:

"Is there an alternative way to better achieve the Government's policy objective of a representative of an incapacitated entity being liable for GST for supplies of property in their possession or control belonging to a corporation?"

## **Alternative amendment**

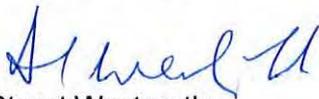
The Committee agrees with the proposal to amend the GST Act to make Division 105 the overriding governing provision for the reasons set out in the consultation paper.

The Committee questions whether this is best achieved by an amendment within section 195-1, an already lengthy Dictionary. The Committee suggests that it would be preferable to include the operative provision within either Division 58 or Division 105.

## **Conclusion**

The Committee appreciates the opportunity to comment on the proposal in the consultation paper, 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 operate as intended and reduce compliance costs, particularly for entities in the mortgage lending sector.

Yours faithfully



Stuart Westgarth  
**President**