

7 November 2014

Commissioner of Taxation
Australian Taxation Office
PO Box 9977
Chermside QLD 4032

Attention: Patrick Giovannelli and
Rebekah Coote

Dear Patrick and Rebekah,

GSTR 2014/D4 GST and excess GST (Division 142)

Thank you for the opportunity to comment on draft GST Ruling GSTR 2014/D4 ("the Ruling").

The Property Council is the peak body representing the interests of owners and investors in Australia's \$670 billion property investment industry. The Property Council represents members across all four quadrants of property investment, debt, equity, public and private.

While the Ruling is not specific to issues and transactions in the property sector, our members remain concerned that specific references to margin scheme sales could result in commercially impractical and inequitable outcomes.

Specifically, according to the Ruling, vendors selling residential premises under the margin scheme are presumed to be "price-setters" and always pass on GST to the purchaser. This has significant implications for the industry and does not reflect commercial reality.

Rather, vendors selling new residential premises under the margin scheme are "price-takers" in a market dominated by non-taxable supplies.

This means the vendor bears the cost of any GST and the risk of a GST miscalculation. Any adjustment to GST payable (whether a refund or an increased liability), is borne by the vendor, not the purchaser.

The purchaser, especially for those acting in a private/domestic capacity with respect to residential premises, almost invariably contract for a single "all in" price.

GST, of whatever amount and however calculated, is a matter for the vendor both in terms of contractual form and commercial substance – the purchase price is fixed irrespective of the quantum of the vendor's GST liability.

The Ruling unfairly exposes property developers to increased tax regardless of whether there is any “windfall gain”.

For example, individual lots in a subdivision may fluctuate in price but the anticipated GST would have been apportioned over the whole development. GST actually paid cannot be recouped from purchasers, but under the Ruling, no refunds will be paid by the ATO. This results in more tax being paid by the developer.

The Ruling also incorrectly assumes that property prices always rise. Property prices do not always rise and there have been situations where a property could be sold for no margin or a negative margin.

In these situations, although the margin scheme may have been applied, no GST would have been passed onto a purchaser.

The problem can be easily fixed by:

- **amending the examples (particularly example 16) to make it clear that GST is not “passed on” to the purchaser, solely because the margin scheme has been applied to a sale** – the mere reference to a “GST inclusive” price does not mean that the price of the residential premises has been set with regard to GST. Rather, it is a contractual mechanism confirming that GST is a matter for the vendor, and the purchaser will not be required to pay any additional GST amount; and
- **confirming that the Commissioner’s discretion may be exercised in margin scheme situations where there is no windfall gain to the developer**, as GST is not a factor in setting prices for sales of residential premises.

The Ruling should also include examples 2.12 and 2.13 from the Explanatory Memorandum to provide greater certainty for taxpayers as to the circumstances in which the Commissioner may exercise the discretion in subsection 142-15(1) of the GST Act.

We would be pleased to talk through any issues with you in advance of the Ruling being finalised.

Please contact Belinda Ngo (on 0400 356 140) or me if you have any queries.

Yours sincerely,



Andrew Mihno
Executive Director, International and Capital Markets
Property Council of Australia
0406 45 45 49