Real Estate Institute of Australia
16 Thesiger Court I PO Box 234, Deakin ACT 2600
Phone (02) 6282 4277 I Fax (02) 6285 2444
www.reia.com.au I reia@reia.com.au

REAL ESTATE INSTITUTE OF AUSTRALIA'S SUBMISSION TO THE TREASURY ON THE GST MARGIN SCHEME

BACKGROUND

The Assistant Treasurer has released for public comment a discussion paper on the implementation of the 2010 Budget measures relating to the GST margin scheme with effect from 1 July 2011.

The Real Estate Institute of Australia (REIA) is the peak national association for the real estate profession in Australia and welcomes the opportunity to provide comments on the discussion paper. The REIA's members are the State and Territory Real Estate Institutes, through which around 80% of real estate agencies are collectively represented. The real estate industry employs approximately 77,000 persons with most agencies having less than 10 employees. The REIA represents an important element of the broader property and construction sector which together makes a significant contribution to Australia's social climate and economic development. Property contributes $300 billion annually in economic activity.

PURPOSE

The Real Estate Institute of Australia's provides both general and specific comments on the restructure of the margin scheme provisions and technical amendments and proposes further amendments.

PRINCIPLES BASED APPROACH

The REIA notes that none of the submissions to the Treasury review of the GST margin scheme ("the scheme") supported the proposition of replacing the existing scheme with a set of principles. The REIA supports the position taken in the submissions, as moving to a principles based approach creates more uncertainty and, in that, more disputes and higher costs associated with their resolution. The REIA believes that the scheme should be more prescriptive rather than broad principles. A notable example is the area of "approved valuations".

APPROVED VALUATION

The area of the margin scheme where most disputes have arisen has been in regard to valuations. Whilst the Government proposes to implement an amendment to allow an approved valuation to be used for the purpose of calculating the margin for subdivided land it does not define or prescribe what an approved valuation is. If this was to be done a large number of disputes may be eliminated with associated resource savings.

The legislation defines an approved valuation as one which is in accordance to the Taxation Commissioners determination. Yet the Commissioner has made numerous determinations in this regard since the scheme was introduced in 2000. Thus contributing to unnecessary complexity and ensuing disputes.

A definition of approved valuation would include reference to the background and qualifications of the person(s) to undertake the valuation and would, for example, require that they are a qualified real estate professional such as a valuer.

The REIA recommends that an "approved valuation" for the purpose of the GST margin scheme is prescribed in the legislation.

PROVISION TO REALISE NEGATIVE MARGINS

Currently the margin scheme provides for the situation where a capital appreciation has occurred. There is, however, no provision for any capital depreciation.

Whilst a "negative margin" is not a regular occurrence it does occur where, for example, land has been acquired at the top of a price cycle or when local councils have varied the permitted land use of the subject land or adjoining land. In these situations if the initial purchaser subsequently utilises the margin scheme on its sales, part of the value of the land before 1 July 2000 will be subject to GST.

If a "negative margin" arises the supplier should be able to claim a credit for GST.

The REIA recommends that a provision is made in the GST margin scheme for a "negative margin".

TAX LAW PARTNERSHIPS

"Tax law partnerships" (TLPs) are defined as a partnership for income tax purposes but is not recognised as a partnership at law or as a legal entity. That is, it is deemed to be an entity for the purpose of income tax. TLPs are also seen as an entity for GST purposes.

Difficulties arise, however, in the practical application. Whilst TLPs are treated as an entity for GST purposes they are effectively ignored for income tax purposes as the ATO's practice is to not require a TLP to submit partnership returns. The difficulties arise regularly and on common transactions, for example where one of two co-owners (A, say) of a block of land sells their share to a third party (C,say); legally it is a sale from A to C but for GST purposes a number of permutations may arise including the original owner who doesn't sell their share.

These difficulties and associated uncertainty and efficiency losses could be erased by changing the definition of partnerships for GST purposes to cover only general law partnerships.

The REIA recommends that the definition of partnerships for GST purposes be amended to cover only general law partnerships.

SUMMARY

Whilst the REIA is supportive of the intent of the proposed changes to the GST margin scheme to clarify the law and simplify compliance it believes that further amendments would greatly improve the operation of the margin scheme and ***recommends:***

- ***that an "approved valuation" for the purpose of the GST margin scheme is prescribed in the legislation***
- ***that a provision is made in the GST margin scheme for a "negative margin"***
- ***that the definition of partnerships for GST purposes be amended to cover only general law partnerships.***

PREPARED BY

Secretariat
Real Estate Institute of Australia

January 2011