

GST Margin Scheme & Residential Property Development

“*Brady King v. Commissioner of Taxation (2008) FCA 81 - Taxpayer Appeals (“decision”)*”

Recently there has been significant publicity regarding this decision and importantly its potential impact on the GST margin scheme and its application to residential property development (including other stratum developments).

In summary, it was held that:

- > the margin scheme could not apply at all when the property originally acquired (a commercial office building) differs from the property ultimately being sold (158 separate residential strata titles); and
- > the taxpayer was not able to rely on a margin scheme valuation of the property it obtained during the period post exchange of contracts for the purchase but prior to completion of the purchase.

On Friday, 7 March 2008, the taxpayer appealed to the Full Federal Court seeking to overturn this decision. If the decision is upheld the ATO will have to revise its rulings and legislative intervention is likely to be necessary. In response, the ATO has issued a decision impact statement advising it will continue to administer the margin scheme consistent with its previous views and rulings until further notice.

In the interim, residential property developers should be aware that they may not be able to use the margin scheme for future developments.

We are monitoring the progress of the appeal of the decision and will communicate to you the outcome of the appeal and its impact on residential property development as soon as it is available.

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