

22 February 2008

Mr Michael Carmody
Commissioner
Australian Tax Office
PO Box 9990
CANBERRA ACT 2600

Dear Mr Carmody

Re: Court decision on the GST margin scheme

We are writing to you about the effect of *Brady King Pty Ltd v Commissioner of Taxation* [2008] FCA 81 on the GST margin scheme.

In the decision, the Federal Court held that a taxpayer was not entitled to use the valuation method. The primary reason for the decision was that the strata title had not been issued at 1 July 2000. The Court also concluded that, in any case, it was necessary for a "legal interest" in the relevant property to be held at the valuation date. Because the contract was not complete on 1 July 2000 the developer did not hold a "legal interest" at that time, just an "equitable interest".

The effect of this decision – if applied more generally - may be that developers would be unable to use the valuation method in calculating the margin for unit developments where the strata titles had not been issued at the valuation date. The decision may also mean that developers would not be able to use the margin scheme at all for unit developments.

We appreciate that the Tax Office disagreed with the court's reasoning. The logic applied by the Court is contrary to the Tax Office's longstanding practice in relation to the margin scheme provisions, as reflected in its public rulings.

We support the decision Tax Office's decision to hold off revising its current rulings in relation to the issues addressed by the Federal Court if an appeal is made. **However we are concerned that if the taxpayer does not appeal, rulings may be revised inline with this decision by this single judge of the Federal Court.**

We are also concerned that if the full court upholds the reasoning of the *Brady King Pty Ltd* decision **developers will not be able to rely on the margin scheme** for unit developments and possibly other subdivisions, such as land subdivisions where the title to the lots supplied may not have issued at the valuation date.

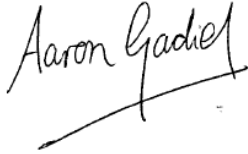
This will plunge the industry into chaos. The development pipeline is a long one. Developers have often acquired land many years in advance of the land's final registration as strata titled property or subdivision. Developers have, in good faith, been relying on tax office rulings that make it clear that the margin scheme is available for these developments. Without the scheme, many projects would not be feasible. In those circumstances, developers – had they known that the margin scheme was unavailable - would not have acquired the relevant land in the first place.

In the event that there is no appeal, or there is an appeal and the full court or the Federal Court does not uphold the ruling, **we ask that the legislation be urgently enacted to ensure that the margin scheme continues to be available** for developments involving the registration of strata title and subdivisions.

We will contact your office shortly to seek a meeting on this matter.

Yours sincerely

Urban Taskforce Australia

A handwritten signature in black ink, reading "Aaron Gadiel". The signature is fluid and cursive, with a long horizontal stroke extending from the end of the name.

Aaron Gadiel
Chief Executive Officer