



Law Council
OF AUSTRALIA

Office of the President

2 November 2018

The Miscellaneous Amendments Coordinator
Law Design Office
The Treasury
Langton Crescent
PARKES ACT 2600

By email: MiscAmendments@treasury.gov.au

Dear Sir/Madam

Miscellaneous amendments to Treasury portfolio laws 2018

1. The Law Council welcomes the opportunity to provide this submission to the Treasury regarding the Exposure Draft of the *Treasury Laws Amendment (Measures for a later sitting) Bill 2018: Miscellaneous amendments (Draft Bill)*.
2. The Law Council is grateful for the assistance of its National Electronic Conveyancing System Committee in the preparation of this submission.
3. The Law Council is broadly supportive for the proposed changes in the Draft Bill relating to the Goods and Services Tax (**GST**) at settlement scheme (**the GST at settlement scheme**), including the changes regarding:
 - notification by suppliers of residential premises;
 - refund by Commissioner of amount withheld from payment in respect of a supply of real property; and
 - machinery provisions applying to administrative penalties under Subdivision 14-E.
4. However, there is one issue related to the GST at settlement scheme that, in the view of the Law Council, should be addressed in the final Bill.
5. The Law Council submits that Subdivision 14E of Schedule 1 of the *Taxation Administration Act 1953* (Cth) (**TAA**) should be amended to clearly provide that a purchaser can rely on a statement by a vendor as to the entity that is the GST paying entity. The Law Council is concerned that an innocent purchaser could remain liable for failing to withhold the GST amount, or liable for paying the GST amount again where it has been paid to the credit of the wrong entity – even if it is nominated by the vendor or another third party with whom the purchaser has no contractual or other relationship.

6. It should be noted that the very nature of the GST at settlement scheme is contrary to the essential principles of a value-added tax such as the GST, as the recipient of the benefit of the value-added is the vendor, rather than the purchaser, yet it is the purchaser who may be liable to pay the amount to the Australian Tax Office (**ATO**). The GST amount to be withheld in these transactions is often significant, and therefore, the Law Council submits that care should be taken not to create a liability on an innocent party who is not normally liable to pay the GST and who is given incorrect information.
7. The Law Council notes that the 'foreign resident capital gains withholding' (**FRCGW**) scheme, which operates in a similar manner to the GST at settlement scheme, affords some protection to a person who receives false information. As part of the FRCGW scheme, section 14-210(3)(b) of Schedule 1 of the TAA affords the grantee under a real property option some limited protection, in that the grantee can rely on the declaration provided that, when they were given the declaration, they did not know the declaration to be false.
8. There is no analogue in the GST at settlement scheme dealing with the information the vendor provides. In the Law Council's view, the discrepancy between the two schemes is unnecessary and the two should be aligned.
9. The Law Council would be pleased to discuss, or expand on, any aspect of this submission. Please contact Murray Hawkins, Director, Regulatory Policy and Research on (02) 6246 3734 or at murray.hawkins@lawcouncil.asn.au, in the first instance.

Yours sincerely



Morry Bailes
President