



# NEWSLETTER

## Coode & Corry Solicitors

### GST-THE NIGHTMARE CONTINUES

**T**he GST was supposed to be a simple form of tax and there were even suggestions that it would replace some other taxes, such as stamp duty and might even eventually replace income tax, etc because it was such a simple system.

However most people who have had anything to do with the GST have found it to be a confusing and complicated tax that, at times, defies all logic.

Not only has stamp duty remained in place but when calculating the stamp duty payable on a property the state government adds the GST to the price and then charges stamp duty on the total of the price and the GST.

So instead of getting rid of stamp duty we now have to pay both stamp duty and GST and the stamp duty is paid not only on the price but also on the GST amount—ie a tax on a tax.

In regard to real estate sales we see that GST has become payable on situations that were thought to be exempt. For example where you are selling a residential property which is rented out the sale is generally free of GST because the sale of residential properties are input taxed.

However if the purchaser is unable to complete the transaction

(perhaps because they could not obtain finance) then the deposit will be forfeited by the purchaser to the vendor.

The vendor will then be



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required to pay 1/11th of the deposit as GST. If the deposit was \$50,000 then the GST payable is \$4,545.45.

Accordingly a deposit in a GST free transaction can attract GST. We recommend that anyone involved in a sale should check their position with their accountant.

### STAMP DUTY TRAP

**A**n example of the traps that you can fall into in regard to stamp duty (“S/D”) is the power given to the Office of State Revenue (

“OSR”) by section 25 of the Duties Act (NSW) to “aggregate” separate transactions and treat them as a single transaction for the purpose of calculating stamp duty.

The effect usually is to increase the S/D payable. For example if you are

buying two properties for say \$300,000 each then you would pay S/D of \$8,990 on each property ie, total of \$17,980, whereas if the two transactions are treated as one aggregated transaction for \$600,000 then S/D is \$22,490.

Clearly it is worthwhile to take whatever legitimate steps are available to try and have the transactions treated as separate ones by the OSR. The type of factors looked at by the OSR include:

1. Were the properties bought at public auction
2. How is the loan structured
3. When did you lodge any DA
4. Are the separate contracts interdependent
5. Is there an Option Agreement

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## DEALING WITH SUPERANNUATION IN A FAMILY LAW CASE

There are usually several different ways that transactions can be structured. If you organize things properly from the outset then it is possible to reduce the likelihood of being caught up in any unintended consequences such as aggregated stamp duty .

If you are thinking of buying more than one property you should obtain advice before proceeding to make any firm commitments. The OSR can aggregate transactions that have occurred within 12 months of each other if the transactions are otherwise capable of being “aggregated” so simply allowing some time to pass between each transaction will not avoid aggregation.

Bruce Coode can assist you with any inquiries in regard to aggregation of stamp duty.

**T**he Family Law Act was recently changed so that superannuation is included in the assets to be distributed when a couple separate. Previously all the court could do was to take the super into account in some general way when deciding what to do with the parties other assets.

Now the court can either make orders splitting up the superannuation between the parties , or it can order that when the superannuation becomes payable in the future that the trustee of the superannuation fund is not able to pay out any money until the matter comes back before the court for the court to decide how the money should then be distributed.

In order to work out how the superannuation fund will be dealt with by the court it is now necessary to identify the type of fund involved and to then apply the appropriate rules/tests under the Superannuation Regulations 2001.

These new laws apply to virtually all types of superannuation funds. Once the type of fund has been established the interest of each party in it needs to be valued.

This can apply to say a fund in its’ accumulation stage or a fund which has already commenced ( or is about to commence ) paying out a pension .

Once the underlying value of the fund is established the court will then be able to either split the capital amount , or the income stream ( or a combination ) up between the parties.

The court can alternatively alter the split up that would have otherwise occurred in regard to the assets other than the superannuation asset in order to deal with the overall property settlement. Stephen Corry can assist you with any inquiries you have in regard to superannuation and family law.

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