



## **GST: Margin scheme case - Brady King Pty Ltd v FCT – taxpayer wins! - August 2008**

In a decision handed down by the Full Federal Court in *Brady King Pty Ltd v FCT* [2008] FCAFC 118 on 26 June 2008, the Full Federal Court allowed Brady King Pty Ltd's ("**Brady King**") appeal against an earlier first instance decision to hold that the margin scheme for the supply of the stratum units in question was to be calculated under section 75-10(3) of the A New Tax System (Goods and Services Tax) Act 1999 ("**GST Act**").

By way of background, on 22 May 2000, Brady King entered into a contract to purchase an office building at 270 King St, Melbourne. It planned to refurbish and develop the building by constructing and selling apartments. Between April and November 2001, the units were sold off the plan. Brady King applied section 75-10(3) of the GST Act to determine its GST liability on the sale of the units (eg using a valuation of the property as at 1 July 2000 as the basis for calculating the liability to GST under the margin scheme on the sale of the units). However, the Commissioner issued assessments calculating GST under section 75-10(2) of the GST Act (being the consideration method).

At first instance in the Federal Court, Middleton J (in *Brady King Pty Ltd v FCT* [2008] FCA 81) held that Brady King was not entitled to calculate its GST liability pursuant to section 75-10(3) of the GST Act. It said the margin scheme would only apply when the same property being acquired was subsequently sold. Thus, it held that the units sold were not the same property because an office building was initially acquired (and subsequently refurbished and developed into apartments).

However, the Full Federal Court agreed with the argument put by both the Commissioner and Brady King that Middleton J was wrong in holding that, for the purpose of section 75-10(3) of the GST Act, "there had to be a strict identity in juridical terms between what the taxpayer acquired and what it supplied". The Full Court was of the view that the beneficial purpose of the margin scheme would be frustrated if "such a commonplace transaction as the present one were held to be outside section 75-10(3)".

The Full Federal Court considered that, before the commencement of GST on 1 July 2000, Brady King acquired or held each unit in the sense that it held the property from which that unit was later carved out. The Full Court also considered that, although the High Court's reasoning in *FCT v Reliance Carpet Co Pty Ltd* [2008] HCA 22 was not directly on point, that reasoning was "more consistent" with Brady King's case.

The Full Federal Court therefore concluded in favour of Brady King and held that the margin scheme for the supply of the units should be calculated under section 75-10(3) of the GST Act and suggested that item 1 or 3 of the table to that subsection applies (eg a valuation of the property as at 1 July 2000 was relevant in determining the margin to which GST was payable on the sale of the units). It therefore remitted the matter to the trial judge for determination of the margin in accordance with the law.

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