



The 10% deposit - is it enough?

In a landmark decision, the High Court in a unanimous 5-0 decision held that GST is payable on forfeited deposits.

Yesterday's decision by the High Court in the *Commissioner of Taxation v Reliance Carpet Co Pty Limited* not only upheld the ATO's right to charge GST on deposits but also took the significant step of ruling that GST was payable on deposits forfeited in property transactions. The decision, for many, might mean that an 11% deposit is more appropriate security for vendors in the event the contract is not completed and the deposit is forfeited.

In deciding the matter, the High Court held that despite the fact a contract did not proceed to completion, it did not necessarily prevent there being a "supply" when the contract was entered into, saying:

"One of the characteristics of the deposit was that upon its payment ... it operated as a security for the performance of the obligation of the purchaser to complete the contract and was liable to the forfeiture on that failure."

With this in its consideration, the High Court held the payment of the deposit was sufficiently in connection with a taxable supply for the purposes of s9-15(1)(a) of the *GST Act 1999 (Cth)* and that under s99-10 the GST was attributable to the tax period in which the forfeiture occurred.

In reading this decision it is important to remember that where GST is payable on a transaction and the transaction proceeds in its ordinary course, GST will become payable for the value of the transaction at the time it is concluded. In the majority of cases the deposit makes up part of the purchase price, which price in its entirety is subject to GST. It is only where a deposit is forfeited that the GST becomes payable in respect of the deposit.

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