

---

The Parliament of the Commonwealth of Australia

# Advisory Report on the Tax Laws Amendment (2011 Measures No. 9) Bill 2011

House of Representatives  
Standing Committee on Economics

February 2012  
Canberra

---

© Commonwealth of Australia 2012

ISBN 978-0-642-79617-2 (Printed version)

ISBN 978-0-642-79618-9 (HTML version)

Cover image courtesy of *Thinkstock*.

This work is licensed under the Creative Commons Attribution-NonCommercial-NoDerivs 3.0 Australia License.



The details of this licence are available on the Creative Commons website:  
<http://creativecommons.org/licenses/by-nc-nd/3.0/au/>.



## Chair's foreword

The Tax Laws Amendment (2011 Measures No. 9) Bill 2011 is similar to other tax amendment bills in that it has a package of measures designed to fine tune or improve the tax law. During the inquiry, some of the measures received express endorsement in submissions. For example, the Australian Institute of Superannuation Trustees and the Association of Superannuation Funds of Australia supported the provisions on the electronic portability form. This will be a system whereby super fund members will be able to electronically request the consolidation of their super through the Australian Taxation Office (ATO). It will assist individuals who are reunited with their superannuation funds in consolidating the different amounts.

Some measures did not receive comment from stakeholders, but are beneficial to taxpayers and should be supported. For example, under current law, taxpayers can obtain a capital gains tax (CGT) roll-over for a capital gain or loss that arises from their interest in a company or trust because of the demerger of an entity from the group of which the company or trust is the head entity. However, this is not available where the head entity is a corporation sole or complying superannuation entity. Schedule 2(2) of the Bill makes this roll-over available for these types of bodies.

The Goods and Services Tax (GST) and hire purchase amendments remove a tax-induced distortion between chattel mortgage and hire purchase. Under current law, chattel mortgage is more attractive because the GST input tax credits are up front for small businesses that use cash accounting for GST, whereas they are only available on a payment basis under hire purchase. Small businesses now rarely use hire purchase for this reason, despite its other advantages over chattel mortgage.

The Bill also reduces compliance costs for small business by increasing the financial acquisitions threshold from \$50,000 to \$150,000. If a small business makes financial acquisitions below this amount, then it is outside the financial supply regime and can claim input tax credits for its financial supplies. Increasing this threshold takes more small businesses outside the financial supply regime and allows more businesses to claim input tax credits on their financial supplies.

The amendments for GST and new residential premises will reverse the effect of the court case *Gloxinia Investments*, which found that, where a particular combination of strata titles and leases were involved, newly constructed residential premises were not subject to GST. The Bill will re-affirm the policy intent that newly constructed homes should be subject to GST. They will also protect the revenue that funds Government services that assist the whole community.

The Bill comprises measures that are important refinements to the tax system.

The Institute of Chartered Accountants in Australia (ICAA) was the only stakeholder to raise concerns about the Bill. These applied to the provisions to enable businesses acquiring assets through hire purchase to obtain their GST input tax credits up front and the provisions to reverse the effect of the recent court decision of *Gloxinia Investments*. The ICAA's concerns related to whether the provisions would implement the policy intent, rather than the policy itself.

Despite the ICAA's comments, there are several reasons why the provisions in the Bill are the best available solution. For example, in relation to hire purchase, the ATO believes it has sufficient legislative basis for its interpretation and there have been no court actions disputing them. Further, in consultations in the review of GST and financial supply, stakeholders rejected the more fundamental reforms of the GST implied by ICAA's submission. Finally, the equipment finance industry itself is 'delighted' with the proposal.

In relation to GST for new residential premises, the ICAA has again suggested a wider reform than that supported in consultations. Treasury has noted that there is a risk of further court action in this area if the Bill proceeds, but this is part of bedding down what is still a relatively new tax.

After scrutinising Treasury and the ICAA, and noting the many positive measures in the Bill, the committee is of the view that it should proceed unamended.

I would like to thank the organisations that assisted the committee during the inquiry through submissions or participating in the hearing in Canberra. I also thank my colleagues on the committee for their contribution to the report.

Julie Owens MP  
Chair



# Contents

Chair's foreword .....	iii
Membership of the Committee .....	vii
Terms of reference .....	viii
List of abbreviations .....	ix
Recommendation .....	x


## **THE REPORT**

<b>1 Introduction .....</b>	<b>1</b>
Referral of the Bill .....	1
Contents and structure of the Bill .....	2
Policy background .....	4
GST on financial supply .....	4
Gloxinia Investments case .....	6
Support for the passage of the Bill.....	8
Schedule 1 – electronic portability of superannuation .....	8
Schedule 3 – GST and financial supply .....	9
Committee objectives and scope .....	10
Conduct of the inquiry.....	10
<b>2 Analysis of the Bill .....</b>	<b>11</b>
Schedule 3(3) – the GST treatment of hire purchase .....	11

Background.....	11
Analysis.....	12
Conclusion .....	14
<b>Schedule 4: GST on new residential premises.....</b>	<b>14</b>
Background.....	14
Analysis.....	15
Conclusion .....	16
Overall conclusion .....	17

## **APPENDICES**

Appendix A – Submissions.....	19
Appendix B – Hearings and witnesses .....	21
Appendix C – List of advisory reports .....	23



## Membership of the Committee

Chair	Ms Julie Owens MP
Deputy Chair	Ms Kelly O'Dwyer MP
Members	Mr Scott Buchholz MP Mr Stephen Jones MP Dr Andrew Leigh MP Mr Tony Smith MP Mr Craig Thomson MP

## Committee Secretariat

Secretary	Mr Stephen Boyd
Inquiry Secretary	Mr David Monk
Research Officer	Dr Phillip Hilton
Administrative Officer	Ms Natasha Petrović



## Terms of reference

On 24 November 2011 the Selection Committee requested the Committee to inquire into and report on the Tax Laws Amendment (2011 Measures No. 9) Bill 2011.

Under Standing Order 222(e), the House is taken to have adopted the Selection Committee's reports when they are presented.





## List of abbreviations

AELA	Australian Equipment Lessors Association
AFC	Australian Finance Conference
AIST	Australian Institute of Superannuation Trustees
ASFA	Association of Superannuation Funds of Australia
ATO	Australian Taxation Office
CGT	Capital gains tax
Commissioner	Commissioner of Taxation
DGR	Deductible gift recipient
GST	Goods and services tax
GST Act	<i>A New Tax System (Goods and Services Tax) Act 1999</i>
ICAA	Institute of Chartered Accountants in Australia
ITAA 1997	<i>Income Tax Assessment Act 1997</i>
ITAA 1936	<i>Income Tax Assessment Act 1936</i>
RITC	Reduced input tax credit
TFN	Tax file number



# Recommendation

## 2 Analysis of the Bill

### Recommendation 1

That the House pass the Tax Laws Amendment (2011 Measures No. 9) Bill 2011 as proposed.