

UPDATE – COMMERCIAL LAW

November 2006

Freedom of Information

- In the High Court 3:2 September 2006 decision of *McKinnon v Secretary of the Department of Treasury*, it was held that the Commonwealth did not have to release documents, which were the subject of a Freedom of Information (FOI) application.
- Facts – The Australian newspaper made a FOI application for working documents in regard to tax cuts and bracket creep.
- Held – The Commonwealth government was justified in withholding release of the working papers based on the public interest exemption.
- **Comment** – The documents involved were working draft documents and NOT the final version – it is questionable if the public interest provisions under section 36(3) of the FOI Act were adversely affected.

GST and Deposits under Contracts for Sale of Land

The ATO has recently announced GST ruling 2006/2 about deposits. The general rule is that receipt of a deposit will not attract GST from a vendor (see section 99-5 GST Act). To ensure this is the case, the ATO sets out factors it will take into account including the amount of the deposit as a percentage of the purchase price (not exceeding 10% unless in special circumstances) surrounding early release of the deposit.

The exception to this is if the deposit is forfeited for failure to fulfil the performance of an obligation. In such cases, it is likely that GST is payable.

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