

BFSLA Conference

Indirect Tax Round-Up 6 & 7 August 2005

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Current state of play

▶ Indirect Taxes

▶ State and Territory taxation

- ▶ Mortgages
- ▶ Sale and leaseback arrangements
- ▶ Securitisations

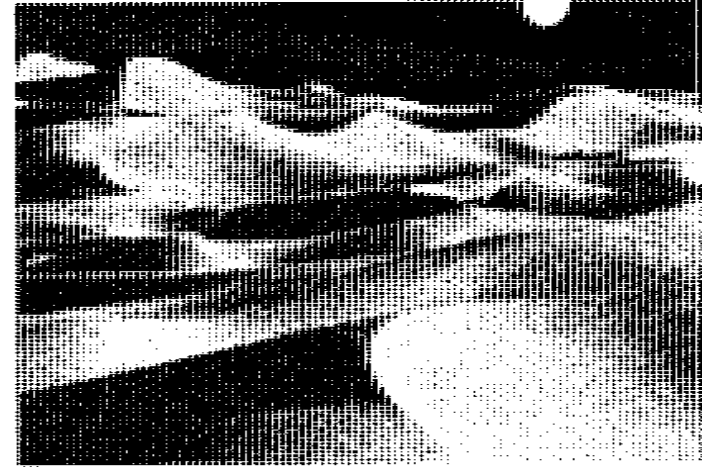
▶ GST

- ▶ Syndicated loans
- ▶ Securitisation
- ▶ RITC on legal fees
- ▶ Apportionment issues



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Changing Landscape



- ▶ Introduction of GST – developing
- ▶ Intergovernmental Agreement
- ▶ Debenture stamp duty exemptions removed
- ▶ Victorian mortgage duty abolition and other States reaction
- ▶ Queensland GAAP
- ▶ NSW refinancing exemption limited
- ▶ Other

Timetable for abolition

- ▶ 05/06 ▶ debits tax, lease duty (Qld), credit business (Qld), residential mortgage duty (SA)
- ▶ 06/07 ▶ hire duty (Vic, Qld), share duty (Qld, NT), 50% of mortgage duty (Tas), non-land transfers (ACT), lease/franchise duty (NT)
- ▶ 07/08 ▶ part mortgage duty (Qld, SA), all mortgage duty (Tas), hire duty (ACT, NT), part hire duty (SA)
- ▶ 08/09 ▶ all mortgage duty (Qld), part hire duty (SA), part mortgage duty (SA), non-land transfers (Tas)
- ▶ 09/10 ▶ part land transfers (Qld, SA), all non-land transfers (NT), lease duty (ACT), remaining hire and mortgage duty (SA)
- ▶ 10/11 ▶ remaining land transfers (Qld and SA (remaining)), share duty (ACT, SA)

Mortgage duty: where are we now?

South Australia

Duty on loan securities: "mortgage, debenture, bond, covenant or warrant of attorney".

NSW and Tasmania

Rewrite Model 1

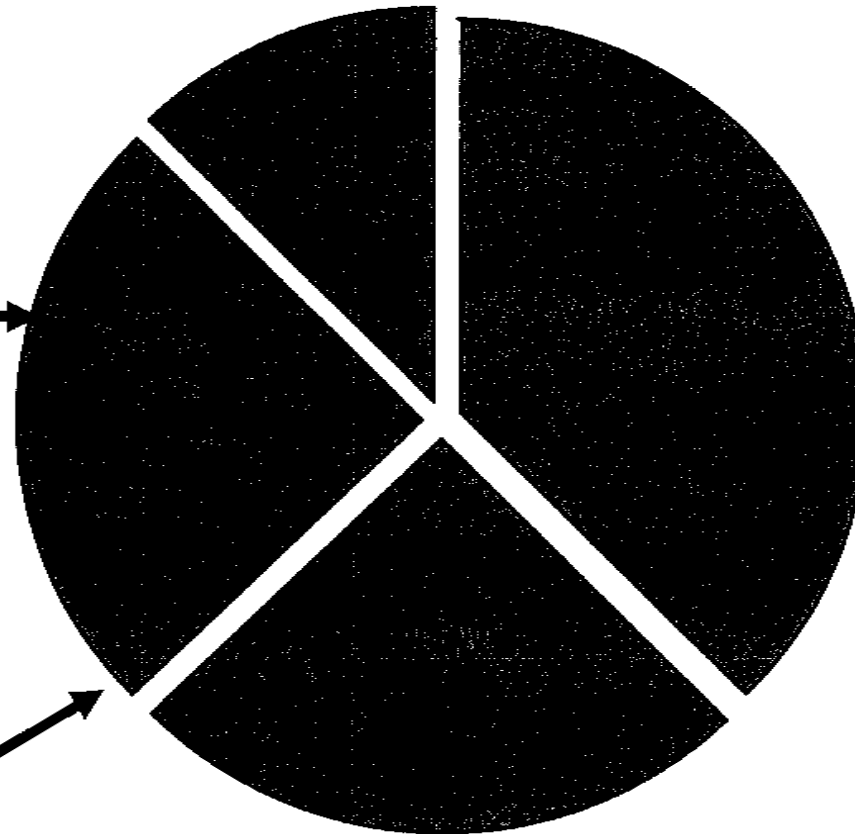
Duty on "mortgage" as defined

Queensland and Western Australia

Rewrite Model 2

Duty on "mortgage" as defined

Broader definition



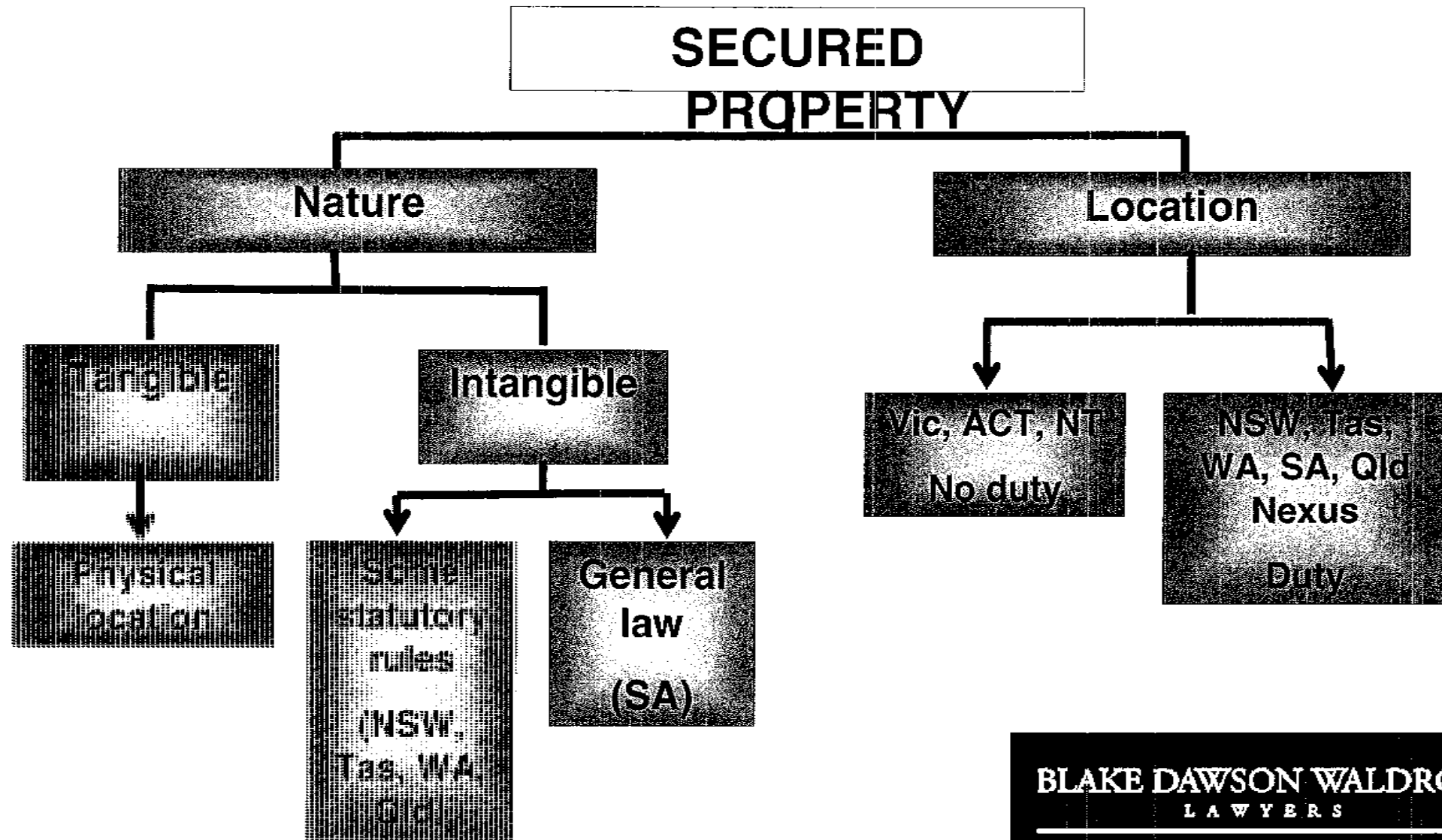
Victoria, ACT, NT

Mortgage duty not imposed.

Abolished in Victoria from 1 July 2004, so no duty on

- (a) mortgages executed on or after 1 July 2004 or
- (b) advances made on existing mortgages from 1 July 2004

Nexus



Impact of abolition of Victorian mortgage duty

Western Australia (from 1/7/2004) and Queensland (from 1/10/2004)

»Denominator = all property minus property outside Australia and in a non-taxing jurisdiction (ie, VIC, ACT, NT)

»benefit of abolition "absorbed"

»Queensland re-assessment if Vic refund

Tasmania

»Denominator = all property minus property outside Australia and in a Territory (ACT, NT)

(ie no change)

South Australia

»Denominator = all property

»(ie no change)

New South Wales

»Denominator = all property minus property outside Australia (from September 2004)

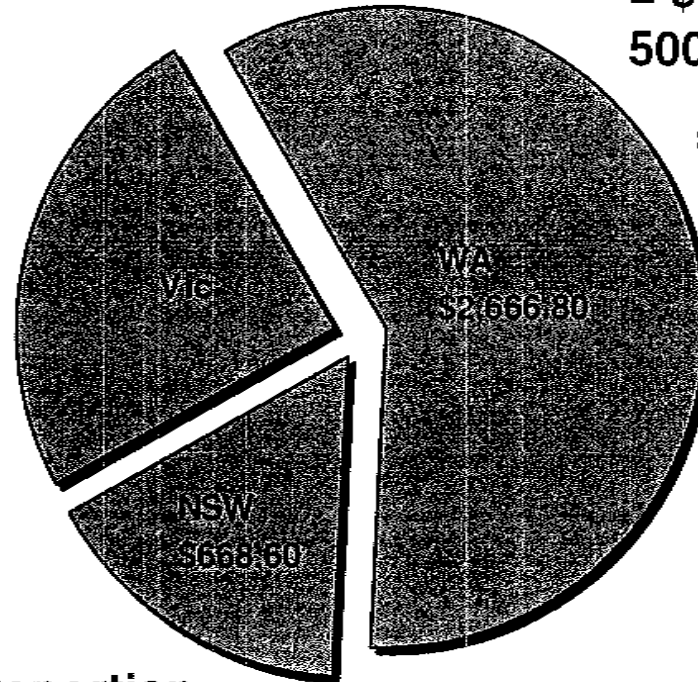
Example

Advance: \$1m

Secured property:

- ✓ Vic \$500,000
- ✓ WA \$400,000
- ✓ NSW \$200,000
- ✓ USA \$700,000

Total = \$1,800,000



WA proportion

$$= \$400,000 / (\$1.8m - 500,000 - 700,000)$$

$$= 66\% \times \$1m$$

$$= \$666,666$$

Total duty = \$3,335.40
(0.4% x \$1m = \$4,000)

NSW duty picks up overseas proportion

WA duty picks up overseas and Victorian proportion

NSW proportion

$$= \$200,000 / (\$1.8m - \$700,000)$$

$$= 18.18\% \times \$1m$$

$$= \$181,818$$

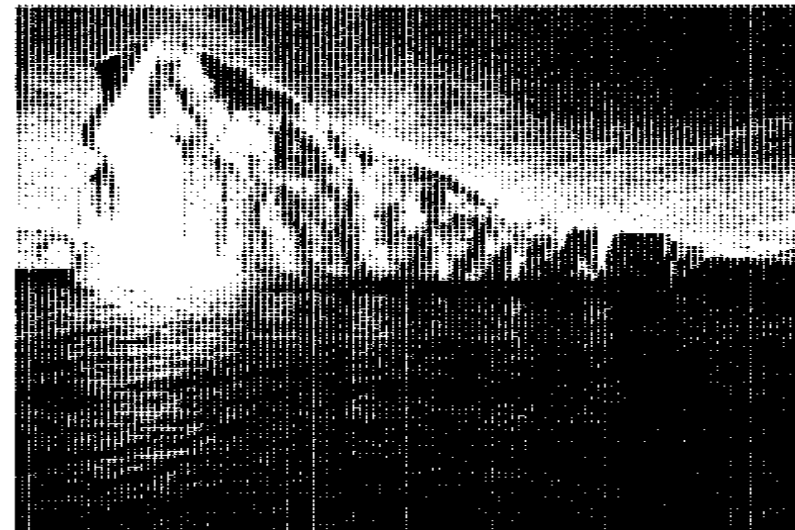
Traps

- ▶ Mortgage package provisions and "de-packaging"
- ▶ Limited and unlimited securities
- ▶ "Specifically identified property" (Qld, WA)



Tips

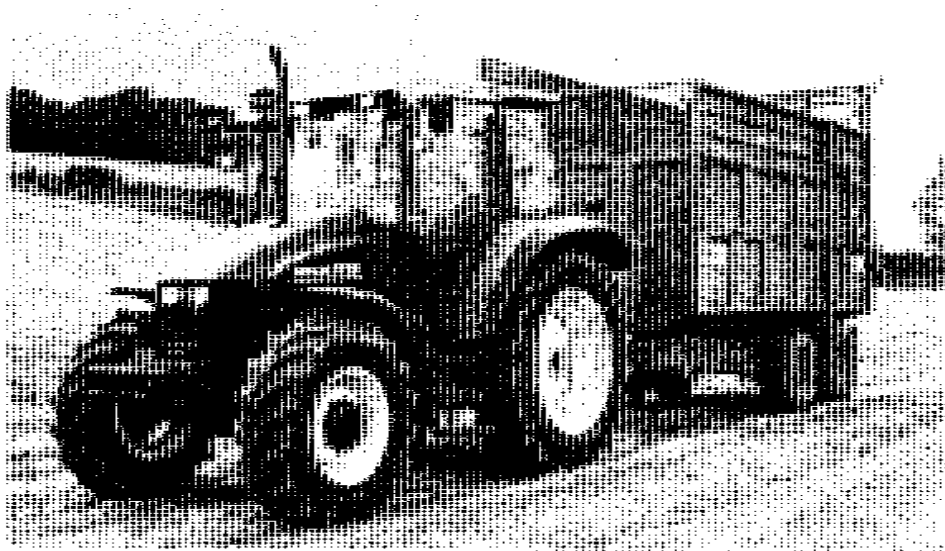
- ▶ Old debentures – "re-use and recycle"
- ▶ Future acquired property
- ▶ No advances



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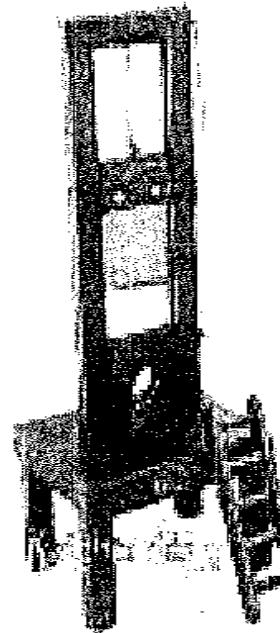
Rental/hire of goods duty

- ▶ The Mainland
- ▶ Current rates range from
 - ▶ 0.43% in Queensland
 - ▶ 1.8% in Northern Territory

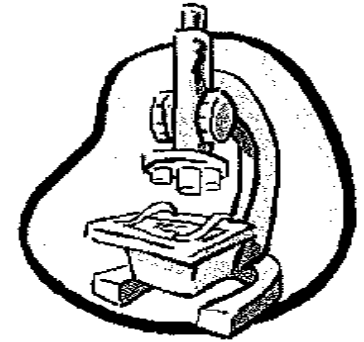


Rental/hire of goods duty

- ▶ Scheduled abolition:
 - ▶ from 1 January 2007 in Vic and Qld;
 - ▶ from 1 July 2007 in ACT and NT;
 - ▶ phasing out in SA 1 July 2007 to 1 July 2009
 - ▶ Applicable in NSW and WA (review?)



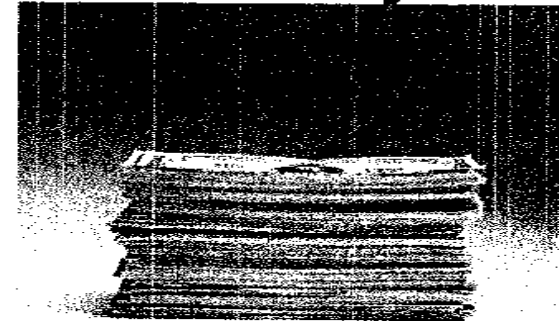
Current Issues



- ▶ Hire charges – includes payments which are an "incident of the hire" (cf in relation to use of goods)
- ▶ Termination payments – exemption for payments "in consequence of transfer"
- ▶ Exemptions – eg. Cth, incidental to service
- ▶ Nexus still an issue, especially for SA and NT where double-nexus can arise

Queensland credit business duty

- ▶ Credit business duty
 - ▶ Loan to Queensland resident
 - ▶ + mortgage duty for secured loan?
 - ▶ nexus issues – OSR resolution
 - ▶ Discount transaction
 - ▶ Credit arrangement
- ▶ Duty payable by credit provider
- ▶ To go 1 Jan 2006



Debits tax



1 January 2002

- ▶ NSW abolished debits tax

1 July 2005

- ▶ Abolition in all remaining jurisdictions

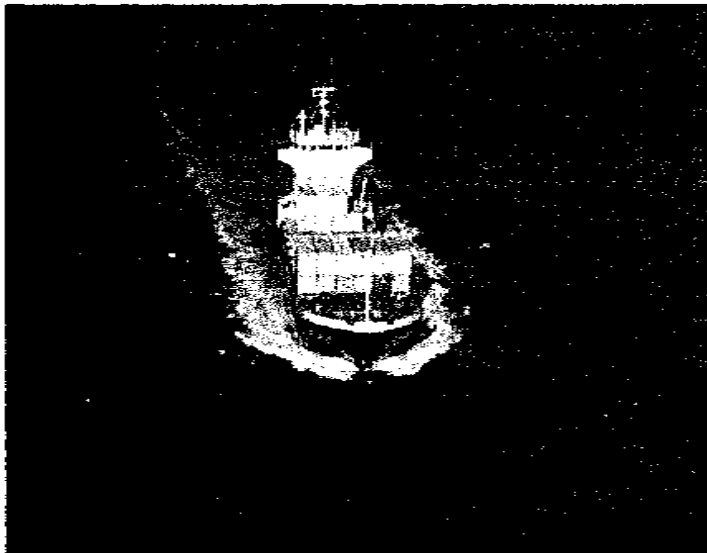
Credit card duty

- ▶ Queensland
 - ▶ abolished: 1 August 2004
- ▶ Tasmania
 - ▶ currently still applies
 - ▶ abolition from 1 July 2005



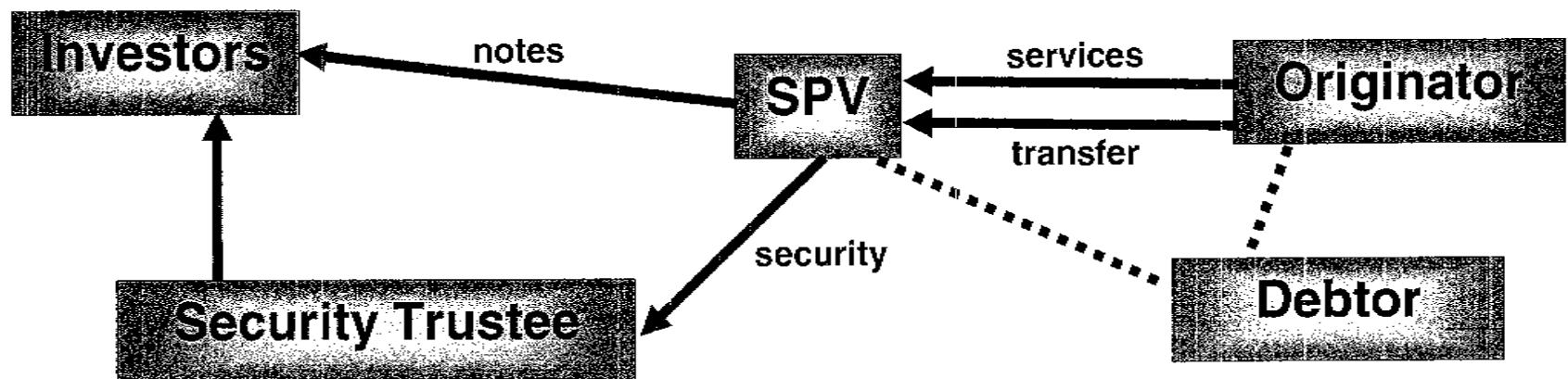
Transfer duty

- ▶ Sale and leaseback arrangements
 - ▶ Nature and location of relevant property at the relevant time
 - ▶ Specific exemptions, eg. ships
 - ▶ Abolition of transfer duty for non realty



Transfer duty

- ▶ Securitisation – typical scenario
 - ▶ Transfer of debt, security, underlying property to SPV
 - ▶ Issue of securities (eg, loan notes) by SPV
 - ▶ Provision of security by SPV to security trustee

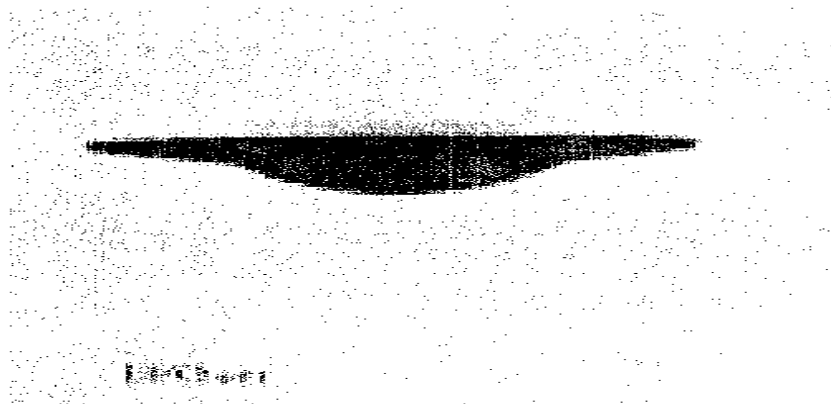


Transfer duty

- ▶ What is being transferred? Debt, security, underlying property?
 - ▶ Nature and location of property
 - ▶ Dutiable property?
 - ▶ Exemptions?
 - ▶ Form?
- ▶ Issue of loan notes – no duty
- ▶ SPV Security – mortgage duty issues

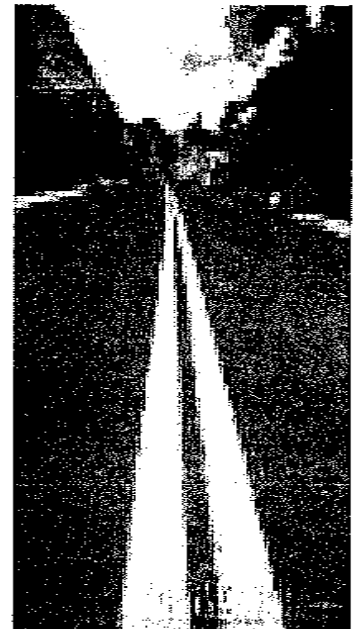
GST – The Truth is still out there

- ▶ Line between taxable and input taxed supplies
 - ▶ in what capacity is a supply being made
- ▶ Relating acquisitions to supplies
 - ▶ connection and degree of connection
- ▶ RITCs/reduced credit acquisitions



Capacity – Syndicated loans

- ▶ Drawing the line between "Arranging", "Lending" and "Agency"
- ▶ GST on services
 - ▶ arranging – taxable
 - ▶ lending – input taxed
 - ▶ agency- taxable



Capacity – Syndicated loans

- ▶ But do the labels match the service?
- ▶ Pre v. Post-signing syndication
 - ▶ is there any "arranging"?
 - ▶ who pays participation fees?



Capacity – Syndicated loans

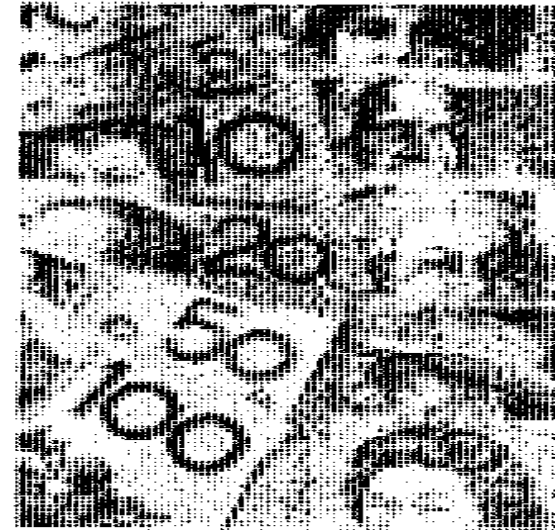
- ▶ Agency capacity
 - ▶ Agent for who?
 - ▶ Who claims credits, who seeks reimbursement?



Securitisation

▶ Servicer Fees

- ▶ Is there always a separate supply?
- ▶ Mere term of the assignment of receivables?
- ▶ Division 72 – is servicer an associate?
- ▶ GST Grouping – commercial impediment



Securitisation

- ▶ RITCs for servicer fees
 - ▶ Delinquent debts only?
- ▶ Originator/Servicer capacity
 - ▶ Apportionment of expenses for creditable v. non creditable purposes

Legal fees - loans

- ▶ Who is the client?
 - ▶ Lender
 - ▶ Borrower
 - ▶ Agent
 - ▶ own capacity
 - ▶ as agent for lenders
- ▶ Can the services be procured by borrower or agent?



Legal fees - loans

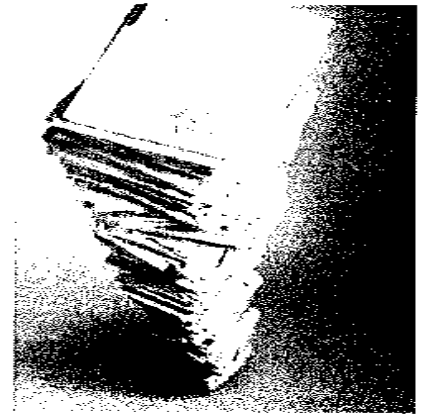
- ▶ If lender is client
 - ▶ Are services ITC eligible?
 - ▶ Are services RITC eligible?
- ▶ Do the services relate to a taxable or GST-free supply by the lender?
 - ▶ If yes – full ITC
 - ▶ If no – RITC?

Legal fees - loans

- ▶ Item 14 of GST Regulation 70-5.02(2)
 - ▶ Must be part of "loan application, management and processing services".
 - ▶ Can legal advisers be providing this?
 - ▶ Item 17 – Debt Recovery Services



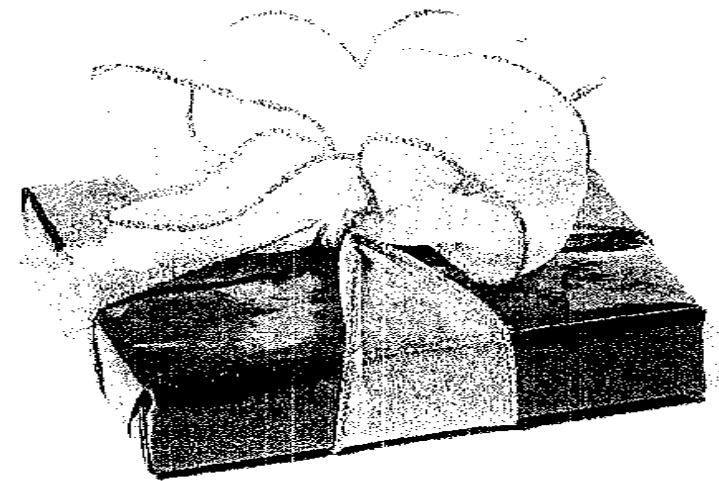
Legal fees - loans



- ▶ Item 14(b)
 - ▶ Settlement and discharge of loans, including document preparation
 - ▶ GSTR 2004/1 – par 385
 - ▶ Does not extend to legal advice
 - ▶ Compare ABA "blue book" prior to GSTR 2004/1
 - ▶ Compare to analysis of other items such as 14(f) – property title searches

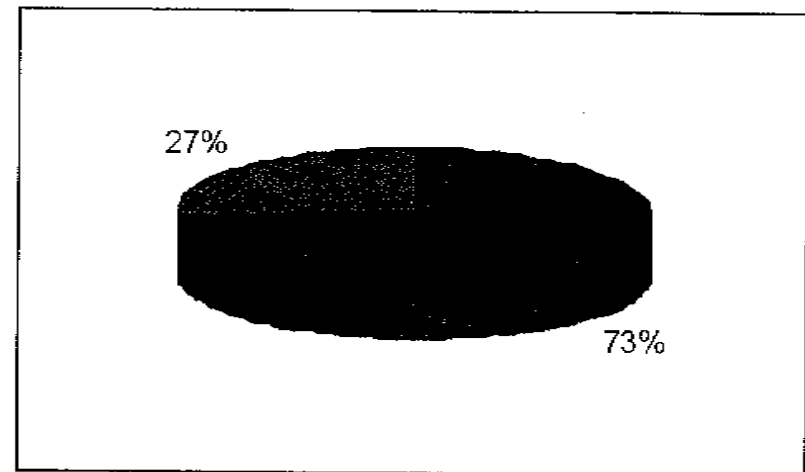
Legal fees - loans

- ▶ So:
 - ▶ Reconsider who acquires
 - ▶ Possibility of "wrapping" document preparation
- ▶ But:
 - ▶ Division 165?



Apportionment

- ▶ Apportionment remains a practical issue
 - ▶ Degree of "connection"
- ▶ Methodology in GSTR 2000/22
 - ▶ Direct v. indirect
 - ▶ Revenue basis?
 - ▶ S.11 – 15(5)



Apportionment – Hire Purchase

- ▶ Disclosed credit
- ▶ Mixed supply of taxable "sale" and input taxed "credit"
- ▶ How to identify extent of creditable purpose?
 - ▶ Revenue basis?
 - ▶ Time basis?
 - ▶ Profit basis?
 - ▶ Compare to leasing

