

Update on changes to GST property transactions

February 2018

Changes to GST withholding provisions for new residential premises and land subdivisions – legislation Introduced!

On 6 November 2017 Australian Treasury released an Exposure Draft outlining how the Australian Taxation Office (ATO) intends to change the process for the collection of GST on the sale of new residential premises (new houses or apartments) and new residential land subdivisions (house and land packages).

During the subsequent consultation period, numerous submissions were received from industry groups regarding suggested amendments to the proposed new rules. As a result, on 7 February 2018 the Commonwealth Government introduced legislation into Parliament that contained several significant changes to how the GST collection provisions will operate.

Why the change to the legislation?

As outlined in our Tax Alert issued in November 2017, in the May 2017 Federal Budget the Government confirmed that they would introduce a number of measures to target alleged “Phoenix” activity in the residential property industry. Specifically, the ATO has identified that some developers have been failing to remit GST collected on the sale on new residential properties despite having claimed GST credits on the construction costs incurred.

What was the announcement?

From 1 July 2018, purchasers of “new residential premises” or “potential residential land included in a property subdivision plan” will be required to withhold an amount of GST from the purchase price and remit it directly to the ATO. This is a significant change from the current position where developers are able to receive the GST inclusive sale proceeds, and hold onto the GST component until they lodge their applicable Business Activity Statement (BAS).

What are the changes?

The most significant changes from the Exposure Draft are:

- The amount withheld is 1/11th of the contract price to give certainty to vendors and purchasers, rather than being applied to the amount after settlement adjustments
- When the margin scheme applies, the default amount withheld is a set rate of 7% of the contract price:
 - This is a significant positive change from the original rules, where the amount withheld under the margin scheme was to be 1/11th of the contract price and a rapid refund process was intended to provide some relief to vendors – this rapid refund process is no longer required
 - It is noted that the ATO have the power to impose a higher withholding rate than 7%, but it cannot exceed 9%
- Where there are multiple purchasers, the supply will be treated as separate supplies to each purchaser, and each purchaser will be required to withhold the appropriate portion of the price
- Importantly, instead of the 14 day notice requirements originally proposed, there is no time limit on vendors to give the required notice and it is expected that it will be sufficient to do so within the contract of sale
 - Failure to provide the notice is a strict liability offence with fines (per transaction) of up to \$21,000 for individuals and \$105,000 for companies
- A transitional rule ensuring that contracts entered into before 1 July 2018 will not be impacted by the new provisions, as long as the consideration for the supply (other than the deposit) is first provided before 1 July 2020

Importantly, the measures require that the withholding amount must be paid on or before the day on which any consideration for the supply (other than as a deposit) is first provided. Usually, this will be at settlement, however for contracts payable by instalments, the obligation to pay will be triggered at the time of the first instalment.

What sales does the legislation apply to?

New residential premises

- The updated provisions ensure that “substantially renovated premises”(considered to be “new residential premises” for GST purposes) are excluded from the withholding requirement

Potential residential land included in a property subdivision plan

- Defined as “land that it is permissible to use for residential purposes, but does not contain any buildings that are residential premises”
- Land which contains any building that is in use for a commercial purpose is excluded
- Does not apply to a supply of land where the purchaser is registered for GST, and they acquire the land for a creditable purposes

How is this likely to impact me?

Assuming the measures are finalised as drafted, they will apply from 1 July 2018. This leaves limited time for developers, conveyancers, and other affected stakeholders to change standard form contracts and systems.

While the updated rules have improved the cash flow impact of sales under the margin scheme, developers will still be affected by not having access to the GST component of the sale from settlement time until they lodge their Business Activity Statement (BAS). This will need to be factored into working capital requirements, and may impact on the ability to meet short term banking covenants.

What's next?

It is likely that the legislation will proceed without further amendment. It is also likely that the ATO will give practical guidance on the application of the new regime prior to the 1 July 2018 start date, including how to correctly report GST on applicable BAS.

If you would like further information on how these changes may impact you, please contact your Fordham Partner.

The logo for Fordham, featuring the word "fordham" in a lowercase, sans-serif font. A blue horizontal line is drawn across the middle of the letters, with the line extending to the left and curving upwards.

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Melbourne Level 35, Rialto South Tower, 525 Collins Street, Melbourne VIC 3000 **+61 3 9611 6611**

Sydney Level 18, Angel Place, 123 Pitt Street, Sydney NSW 2000 **+61 2 9229 9000**

Brisbane Level 15, Central Plaza 1, 345 Queen Street, Brisbane QLD 4000 **+61 7 3834 5656**

Perth Level 29, Exchange Plaza, 2 The Esplanade, Perth WA 6000 **+61 8 9224 4400**

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