

NOVEMBER 2017

TAX ALERT:

RESIDENTIAL PROPERTY PURCHASERS TO PAY GST DIRECTLY TO ATO AFTER 1 JULY 2018

Introduction

The Government has recently released Exposure Draft legislation in relation to proposed new GST rules that will require Purchasers, of new residential premises or new residential subdivisions, to remit the GST on the purchase price directly to the Australian Taxation Office (ATO).

These new rules are proposed to be effective from 1 July 2018, with some transitional concessions.

Why are these new rules being proposed?

The purpose of these new rules is to shift the onus of remitting GST on property transactions away from property developers over to the Purchasers, in order to reduce the time by which the ATO will receive the payment of GST on property transactions and an attempt to eliminate instances of GST evasion.

It is important to note that the proposed rules explained below are at exposure draft stage until 20 November 2017 and are subject to change.

Key details

The following table is a summary of the key details of the proposed new GST rules.

<p>When will the new rules apply?</p>	<p>The new rules are proposed to apply from 1 July 2018.</p> <p>An exception applies where the contract for the supply is entered into before 1 July 2018, and the consideration for the supply is provided before 1 July 2020.</p>
<p>What property transactions will be affected?</p>	<p>The new rules will apply to supplies of “new residential premises” or “new subdivisions of potential residential land”.</p> <p>“New residential premises” is defined for GST purposes as being premises which have not previously been sold as residential premises, have been created through substantially renovating a building, or have been built to replace demolished premises on the same land.</p> <p>“New subdivisions of potential residential land” is not a defined GST term, but is intended to cover house & land packages where a Purchaser may receive a taxable supply of vacant land, which is the subject of a future property subdivision plan.</p>



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<p>When does a Purchaser withhold GST?</p>	<p>The Purchaser must pay 1/11th of the purchase price, directly to the ATO, on or before the day any of the consideration for the purchase is first provided (ie. settlement date). This does not include consideration provided as a deposit.</p> <p>Where consideration under a contract is paid by instalments, the intention is that the Purchaser will have to make a payment of 1/11th of the full purchase price to the ATO, by the end of the day that they make the first instalment payment.</p>
<p>What notifications are Vendors required to make?</p>	<p>To help Purchasers comply with the obligation to withhold GST, the new rules introduce a “notification regime” which require Vendors, at least 14 days before making any supply of residential premises or potential residential land, to provide to the Purchaser a written notice stating the following:</p> <ul style="list-style-type: none"> • Whether the Purchaser will be required to remit the GST directly to the ATO under the new rules; • If the Purchaser is required to withhold the GST: <ul style="list-style-type: none"> ○ the Vendor's name and ABN; ○ the amount of GST that the Purchaser will be required to pay to the ATO; ○ the time at which the Purchaser is required to pay that amount; and ○ if some or all of the consideration will not be expressed as an amount of money, the GST inclusive market value that amount. <p>The proposed Vendor notification regime will not apply to contracts entered into before 1 July 2018.</p> <p><i>NOTE: the notification regime will apply to all property transactions over residential land or potential residential land, compared with the new withholding obligation which only applies to new residential land and subdivisions.</i></p>
<p>Consequences for Vendor failing to notify?</p>	<p>Non-compliance by Vendors will result in a strict liability offence and penalty (currently \$21,000) and an administrative penalty may also be imposed (also currently \$21,000).</p>
<p>What notifications are Purchasers required to make?</p>	<p>The new rules require that if a Purchaser must withhold GST, the ATO must be notified of this at least five days prior to the withholding payment (ie. at least five days prior to settlement).</p> <p>The ATO must also be notified a second time by the Purchaser on the settlement date when the withheld amount is paid.</p>
<p>Consequences for Purchaser failing to withhold GST?</p>	<p>A Purchaser may be liable for an administrative penalty, unless they reasonably believe that a withholding obligation did not apply because it was not new residential premises.</p>



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Withholding input tax credits (**ITCs**) for the Vendor?

A Vendor will be entitled to an ITC for the amount paid by the Purchaser to the ATO (in the tax period to which the supply relates).

NOTE: the availability of the ITC is contingent on payment being made to the ATO by the Purchaser.

If the margin scheme applies, or an amount was withheld and paid to the ATO in error, a Vendor can apply for a refund from the ATO. The application must be made in writing and submitted no later than 14 days before the relevant BAS is due for lodgement.

Conclusion

These new rules propose further obligations on the Purchaser of residential properties. Therefore it is critically important that any taxpayers planning to purchase property become familiar with these new rules.

While these new rules apply to contracts signed after 1 July 2018, they also apply to contracts signed prior to that date where the purchase price is not paid before 1 July 2020. This effectively provides a two year transition window for current off-the-plan sales.

These new rules significantly change the process for accounting for GST on property transactions and impose various new obligations on both Vendors and Purchasers.

Once the legislation is finalised, property developers will need to ensure that they have contracts and systems in place to ensure compliance from 1 July 2018.

Please do not hesitate to contact your Lowe Lippmann Relationship Partner if you wish to discuss any of these matters further.



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