



E-alert: New Proposed GST Withholding Obligations For Residential Property Transactions

By,

Consultation legislation has recently been released by the Commonwealth Government regarding new GST obligations for property transactions involving either:

- a. the sale of “new residential premises” (such as newly built houses); or
- b. “potential residential land” (such as the subdivision of land into residential lots and the sale of home and land packages).

These changes were originally announced in the 2017 federal budget in order to strengthen compliance with the GST obligations arising from certain residential property developments. Previously, developers were failing to remit the GST component of the purchase price, despite having claimed GST credits on their construction costs.

The new obligations are a fundamental shift in the way GST is collected in respect of residential property transactions and will have a significant impact on the parties to such a transaction. There are also substantial penalties for both parties for failing to comply.

Withholding Obligation for Buyers

From 1 July 2018, buyers of “new residential premises” or “potential residential land” will be responsible for withholding and remitting 1/11th of the purchase price directly to the Australian Taxation Office (ATO). This withholding obligation is required to be satisfied by the day the consideration for the purchase (other than the deposit) is first provided, which will usually be the settlement day.

Under the draft legislation, the amount to be withheld is the adjusted purchase price. However, practical difficulties arise as this adjusted amount is unlikely to be known at the time the seller is required to issue a notice to the buyer as referred to below.

The requirement to pay 1/11th of the purchase price is not affected by the fact that the actual amount of the GST liability for the particular property transaction may be less than 1/11th of the purchase price (for example, if the supply of the property is made under the margin scheme).

A buyer that is required to make a withholding payment must notify the ATO:

- a. at least 5 days before they intend to make a payment; and
- b. on the day that a payment is made.

The failure of a buyer to withhold and remit the required amount is a strict liability offence with a potential penalty equal to the amount that was required to be remitted.

Notification Obligations for Developers

To assist buyers complying with their new withholding obligations, sellers will be strictly required to provide buyers with certain written notice. Such notice must be given to a buyer at least 14 days before making the supply of the

property (usually being the day of settlement) and must advise of the following:

- a. whether an amount is required to be withheld and remitted by the buyer to the ATO under the new rules;
- b. the name and ABN of the particular entity supplying the land;
- c. the amount to be withheld; and
- d. when the amount is required to be paid.

It is essential to note that the notification obligations will apply to the sale of any residential premises or potential residential land, compared with the new withholding obligation which only applies to **new** residential premises or **new** subdivision of potential residential land.

Where a seller does not give the required notice, they will be considered to have committed a strict liability offence, with a maximum penalty of 200 penalty units (\$42,000).

Compliance and Refunds for Developers

Sellers of such property will continue to report the amount of the GST payable in their BAS. If the GST amount has already been paid to the ATO by the buyer, a credit will be available to the seller.

Additionally, if the amount of the GST payable is less than the amount withheld (for example, where the margin scheme is applied), a net credit will be available to the seller.

As a result of the significant cash flow consequences which these changes may have on developers, a mechanism is available to apply for a refund ahead of lodging the BAS where the margin scheme is applied.

Transitional

The new withholding regime and notification requirements will apply to:

- a. contracts signed after 1 July 2018; and
- b. contracts signed prior to 1 July 2018, 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.

Moving Forward

Once the new legislation is passed, relevant developers, sellers, buyers and advisors will need to ensure that they carefully understand the new laws and the various related obligations and that they have suitably modified contracts and systems in place to ensure compliance from 1 July 2018.

Additionally, it will be necessary to prepare appropriate contracts now for off-the-plan projects where the date of settlement is likely to be after 1 July 2020.

Should you wish to discuss any matters arising out of this article, please contact the author:

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