

# ***Bill proposes new GST obligations for parties to residential property transactions***

8 February 2018

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## ***In brief***

On 7 February 2018, the Treasury Laws Amendment (2018 Measures No. 1) Bill 2018 (the Bill) was introduced into the House of Representatives. Schedule 5 of the Bill includes the proposed changes in respect of the goods and services tax (GST) on real property transactions that were previously announced in the 2017-18 Federal Budget. The Bill confirms that the intended commencement date of the proposed measures remains as 1 July 2018.

In summary, from 1 July 2018, purchasers of ‘new residential premises’ or ‘potential residential land included in a property subdivision plan’ will be required to withhold and remit to the Australian Taxation Office (ATO) an amount on account of GST. Suppliers will then apply a withholding tax credit to offset the GST liability that continues to be reported in the supplier’s Business Activity Statement (BAS).

PwC’s analysis of the proposed law, as originally set out in Exposure Draft law released last year, is summarised in a [TaxTalk Alert](#), which was published on 8 November 2017. The Bill that is now before Parliament contains a number of changes to the exposure draft legislation which will impact the administration of the measures, including:

- the withholding requirement for purchases of ‘potential residential land included in a property subdivision plan’ only applies to purchasers who are not registered for GST or who acquire the land for ‘non-creditable’ purposes;
- a new 7 per cent default rate of withholding has been introduced for applicable transactions where the GST has been calculated under the margin scheme;
- the withholding amount is calculated on the price specified in the contract (excluding settlement adjustments) or, if no price is specified, the GST exclusive market value; and
- the notification requirements have been relaxed such that vendors are no longer obliged to notify purchasers of their withholding requirement 14 days prior to settlement and purchasers are no longer required to notify the Commissioner of Taxation of their intention to withhold five days prior to settlement.

## ***In detail***

The proposed measures impose an obligation on certain purchasers of ‘new residential premises’ or ‘potential residential land included in a property subdivision plan’ to withhold and remit an amount on account of GST on certain supplies of real property.

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## ***Key observations***

The changes represent a fundamental shift in the way GST is collected in respect of residential property transactions. If the Bill is passed in its current form, and with the currently proposed commencement date on 1 July 2018, there will be a very short period in which suppliers can prepare for the changes prior to implementation. Suppliers should therefore start to consider the potential implications, including:

- the impact on cash flow;
- changes to distribution of settlement proceeds between parties to a development arrangement (including development arrangements in place prior to 1 July 2018); and
- the level of ATO engagement given the likely increase in refunds where the withheld amount exceeds the GST payable (e.g. under the margin scheme), which may increase the importance of seeking a private binding ruling to confirm the GST treatment.

There is substantial detail yet to be released by the ATO in relation to the specific administrative processes required to give effect to the new laws, including:

- the process to be followed by purchasers to remit GST and provide the requisite notifications to the Commissioner;
- the manner in which suppliers will be required to report GST liabilities and withholding credit entitlements on their BASs;
- the mechanism for seeking refunds in respect of amounts withheld in error; and
- any impact on subsequent refunds of any excess GST, given the uncertain interaction between the refund mechanism under Division 142 of the GST legislation and the new withholding requirements.

Given the potential implications for non-compliance are substantial, suppliers, purchasers, advisors, conveyancers and agents will need to ensure they are aware of the new laws and the associated administrative processes (once confirmed) to ensure all obligations are met.

## ***Summary of amendments to proposed legislation***

Following feedback received by Treasury on the Exposure Draft legislation, the Bill contains amendments to the scope of the withholding regime, the amount to be withheld and also administrative mechanisms regarding the withholding regime. The amendments are detailed below.

### *Clarification of scope*

The scope of the proposed legislation has been amended to:

- exclude 'commercial residential premises' (e.g. hotels) or premises created through substantial renovations of a building from the type of 'new residential premises' covered;
- exclude 'potential residential land' included in a plan of subdivision sold to registered purchasers or purchasers who acquire the land for a creditable purposes. This imposes an additional obligation for suppliers of 'potential residential land' to seek confirmation of whether any registered purchasers are acquiring the land for non-creditable purposes;
- include sales between group and GST joint venture members (the exclusion in the Exposure Draft legislation has been removed); and

- treat multiple recipients of a particular supply as separate recipients of separate supplies for the purpose of the withholding provisions.

#### *Clarification of the amount to be withheld*

The Bill clarifies the following in relation to the withholding of GST amounts applicable to residential property transactions:

- the withholding rate is set by default at 7 per cent (or such other rate between 7 per cent and 9 per cent as may be determined by the Minister) for supplies made under the margin scheme. The withholding amount continues to be 1/11th of the price where the margin scheme is not applicable. As a result of this change, the previously announced refund mechanism for transactions under the margin scheme no longer applies;
- the withholding applies to the price specified in a contract (excluding settlement adjustments) or if no such price is specified, the price as defined for GST purposes (i.e. total consideration); and
- for supplies between associates for nil or inadequate consideration, the withholding amount is 10 per cent of the GST exclusive market value.

#### *Clarification of administrative issues*

The Bill clarifies a number of administrative processes associated with a residential property transaction, including that:

- the supplier is required to give the recipient notice to withhold before the making of the supply (i.e. before settlement) and the 14 day notice period no longer applies. The requirements of the notice itself are unchanged, and the notice must specify confirmation of whether the purchaser is required to make the GST payment, the amount payable, the timing of payment and the GST-inclusive market value of any non-monetary consideration for the supply;
- in the absence of a legislative determination made by the Commissioner, a purchaser that is required to make a withholding payment must notify the Commissioner of the amount of the withholding on or before the day on which the amount is due to be paid (i.e. at settlement) and the five day before settlement notice period no longer applies; and
- the administrative penalty of 100 penalty units for failure to withhold does not apply where, at settlement, the purchaser gives the vendor a bank cheque in the name of the Commissioner for the withholding amount.

### ***The takeaway***

The changes proposed by the Bill represent a fundamental shift in the way GST is collected in respect of residential property transactions. Given the potential implications for non-compliance with the new requirements are substantial, suppliers, purchasers, advisors, conveyancers and agents are encouraged to consider the potential implications now, and ensure they are aware of their new obligations.

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## ***Let's talk***

For a deeper discussion of how these issues might affect your business, please contact:

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