
New GST obligations for parties to residential property transactions: exposure draft released

8 November 2017

In brief

Treasury has released the Exposure Draft legislation with respect to proposed changes in respect of Goods and Services Tax (GST) on real property transactions. The changes are in respect of measures previously announced in the 2017 Federal budget.

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 1/11th of the purchase consideration to the Australian Taxation Office (ATO). Suppliers then apply a withholding tax credit to offset the GST liability that continues to be reported in the supplier’s Business Activity Statement (BAS).

The changes represent a fundamental shift in the way GST is collected in respect of residential property transactions, and will have a significant impact on cashflows for suppliers of residential premises. There are also substantial penalties that can apply to the vendor and/or the purchaser for failing to comply.

The changes are due to commence on 1 July 2018. However, transitional rules will apply with respect to contracts executed prior to 30 June 2018, where consideration is to be provided by 30 June 2020. There is a two week consultation period, with all submissions due by 20 November 2017.

In detail

Purchasers to pay 1/11th GST on residential property acquisitions

The proposed changes impose an obligation on purchasers of ‘new residential premises’ or ‘potential residential land included in a property subdivision plan’ to withhold and remit 1/11th of the total price of the supply of residential premises. This is irrespective of the fact that the actual amount of GST payable by the vendor may be less than 1/11th of the total price (for example, if the supply is made under the margin scheme).

Where a withholding obligations arises, the purchaser is required to pay the amount withheld to the Commissioner on or before the day that consideration for the supply (other than a deposit) is first provided. In most cases, this will be at the time of settlement.

Where a single price is paid for a transaction that consists of residential property and other supplies, the withholding obligation is imposed on the entire amount of consideration, unless it is possible to clearly ascertain the proportion of the consideration applicable to the residential property.

A purchaser that is required to make a withholding payment must notify the Commissioner at least 5 days before they intend to make a payment. The purchaser must also notify the Commissioner on the day that a payment is made.

Failing to withhold is a strict liability offence with a potential penalty equal to the amount that was required to be withheld.

Vendor's GST obligations

The entity that makes the taxable supply of real property will continue to report the amount of GST payable in its BAS. However, a credit will apply in respect of the amount that has already been paid to the Commissioner by the purchaser. If the amount of GST payable is less than the amount withheld (for example, where the margin scheme is applied), a net credit will be available.

In recognition of the cashflow impacts on suppliers of real property, there is a mechanism to apply for a refund ahead of lodging the BAS where the margin scheme is applied. However, this refund mechanism is not available if the entity has monthly tax periods.

A refund can also be sought in instances where GST has been withheld in error.

Vendor's obligation to notify purchaser of withholding obligation

A strict obligation will be imposed on the supplier to notify a purchaser of whether they are required to make a withholding payment in respect of a supply of new residential premises or potential residential land at least 14 days before making the supply. The vendor is required to notify the purchaser whether they will be 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 circumstances where a supplier fails to give the required notice in writing to a purchaser, they will be considered to have committed a strict liability offence, with a maximum penalty of 200 penalty units (\$42,000).

The takeaway

Despite the credit and refund mechanisms that exist in the proposed law, the changes represent a fundamental shift in the way GST is collected in respect of residential property transactions and will have a significant impact on cashflows for suppliers of residential property.

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.

There is substantial detail that is 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 the 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; and

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- The mechanism for seeking refunds in respect of amounts withheld in error, or supplies made under the margin scheme.

There will no doubt be submissions from affected parties with respect to the proposed laws, and potentially amendments made before the proposed changes are submitted to parliament. However, given the short consultation period and the proposed 1 July 2018 commencement date, it is likely a bill will be before parliament before the end of the 2017 calendar year.

Let's talk

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

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