

GST and Residential Property Transactions

The responsibility for remitting Goods and Services Tax (GST) to the Australian Taxation Office (ATO) generally falls on the party making a 'taxable supply'. In a property transaction, this has traditionally meant the vendor or developer (supplier), unless the contract provides otherwise.

From 1 July 2018 purchasers of 'new' residential property must deduct the GST from the purchase price of the property and remit this directly to the ATO on or prior to completion.

These reforms are designed to strengthen compliance with GST obligations and specifically address concerns involving some property developers making taxable supplies and failing to remit the GST collected on those sales to the ATO.

The changes are implemented through the *Taxation Administration Act 1953* (Cth) which operates Australia-wide and therefore potentially affects all purchasers, vendors / developers of residential property.

What types of transactions are affected?

The reforms apply to 'new residential premises' or 'potential residential land'. Property that is 'new residential premises' means property that:

- has not previously been sold as residential premises; or
- has been created through substantial renovation of a building; or
- has been built to replace demolished premises.

'Potential residential land' is land that is *permissible* to be used for residential purposes but does not contain any buildings that are residential premises (i.e. houses or strata units). Inclusion of the term 'permissible' means that if the local government zoning allows a mixture of residential and commercial use, then that land is still considered 'potential residential land'.

For the most part, the reforms essentially apply to all off-the-plan residential property purchases and vacant land in a new subdivision.

The changes commenced on 1 July 2018 and affect all relevant contracts, however contracts entered before 1 July 2018 are excluded *if* the purchase price is paid before 1 July 2020.

What do purchasers of new residential property need to do?

If you have entered or enter a contract for new residential property which is caught by the provisions you will need to withhold and pay the relevant GST from the contract price to the ATO on or before 'supply' (which in most cases will be the settlement date).

Generally, the GST amount will be:

- 1/11th of the contract price; or
- 7% of the contract price if the margin scheme applies.

Vendors / developers will need to provide written notice of their GST obligations and, if GST is payable, this component must be withheld from the contract price and remitted to the ATO. The contract price does not include settlement adjustments such as council and water rates.

Submitting GST withholding payments

Two ATO on-line forms are used to facilitate the remittance process:

- Form 1 – GST property settlement withholding notification
- Form 2 – GST property settlement date confirmation

Each form provides details of the contact person, the property, the GST withholding amount and the parties to the transaction (purchaser and vendor / developer).

Purchasers are responsible for submitting these forms which can be completed by their conveyancer or lawyer who will make the necessary arrangements to withhold the GST component and remit the amount to the ATO on behalf of the vendor / developer at settlement.

Forms are submitted after the contract has been entered into and a vendor / developer gives written notification to the purchaser that a GST amount must be withheld from the contract price. The first form advises the ATO of the transaction and pending GST requirement and generates a unique payment reference number. The second form confirms the settlement date and is submitted at the time of settlement when payment has been made to the ATO.

What do vendors / developers need to do?

Vendors / developers must not sell residential premises or potential residential land without written notification to a purchaser about the requirement to withhold and remit GST from the contract price. If there is no requirement to withhold GST this must be clearly stated on the notice.

If a GST amount is required to be held, the notice must include the supplier's ABN details, the correct entity for payment of the GST, the settlement date and the amount payable.

The notification may form part of the contract for sale or be provided separately.

The GST is paid direct to the ATO by the purchaser on settlement and applied as a credit towards the supplier's GST account.

The supplier then reports the GST withheld on its next Business Activity Statement (BAS) and will be entitled to a refund if the amount paid exceeds the actual GST liability for the relevant period.

Consequences for vendors / developers

The regime has significant implications on vendors / developers who should ensure processes are in place to deal with the changes.

- Existing contracts should be reviewed to determine if they will fall within the provisions and therefore require the appropriate notification (for example, contracts that are already on foot but will not settle until after 1 July 2020).
- New and pro-forma contracts should be reviewed and amended in line with the provisions and, where relevant, include positive obligations for purchasers to remit the GST to the ATO, noting that credits will not be able to be claimed unless / until the GST component has been remitted.
- Failure to notify a purchaser in accordance with the regime is a strict liability offence and developers face penalties of up to (currently) \$21,000 for individuals and \$105,000 for corporations. Consequently, systems should be updated to ensure the inclusion of the appropriate notices for the supply of residential land.
- The provisions effectively prevent developers from interim access to the GST component of a settled contract, which was previously available until the BAS was lodged and assessed for the relevant period. This could impact available working capital and developers may need to review their cashflow requirements to manage the provisions.

Conclusion

The reforms are aimed at improving the integrity of the property development industry and ensuring suppliers comply with their tax obligations. They add additional steps to the conveyancing process for residential property transactions, however can be managed through appropriate processes and systems.

If you or someone you know wants more information or needs help or advice, please contact us on (03) 9459 5764 or email admin@rtllegal.com.au.