

New GST withholding regime - what is it and what does it mean for you

Stephen Teale & Nadia Gheybi | August 2018 | Commercial Disputes & Transactions

Summary

As of 1 July 2018, certain purchasers of real property now have a GST 'withholding obligation' which involves withholding a part of the purchase price and paying it directly to the ATO. The change affects both purchasers and vendors of residential premises (including long-term leases over 50 years) or potential residential land.

What are the changes?

The Treasury Laws Amendment (2018 Measures No. 1) Bill 2018 (Cth) was granted royal assent on 29 March 2018. One of the key changes resulting from this legislation is the introduction of the GST withholding regime which impacts the obligations of certain purchasers and vendors.

From 1 July 2018, certain purchasers of new residential premises or potential residential land are required to withhold the GST component of the purchase price and pay it directly to the ATO. The amount payable by the purchaser is 1/11th of the contract price or if the margin scheme applies, 7% of the contract price.

The amount is due on or before the day that consideration for the purchase (other than a deposit) is first provided. In most cases, this will mean that the amount needs to be paid to the ATO on or before settlement.

It is important to note that the obligation does not create an additional payment that must be paid on top of the purchase price and purchasers are not required to register for GST simply because they have the withholding obligation.

Why the changes?

The GST withholding obligation has been introduced in an attempt to combat corporate phoenixing activity. Previously, property development companies were able to sell properties for a price that included GST and then dissolve their business entity prior to lodging their next BAS with the ATO. This would result in the property development company avoiding their duty to remit the GST.

When does it apply?

The new GST withholding obligations only apply where the sale is a "taxable supply" by the vendor. Also, the transaction must relate to either a new residential premises or potential residential land included on a property subdivision plan.

For the purposes of the GST withholding regime, new residential premises do not include commercial residential premises (such as hotels) or premises that have been created through substantial renovations.

The regime also does not apply where the potential residential land contains a building that is in use for a commercial purpose or where the potential residential land is sold to a GST registered entity for a GST creditable purpose.

Effect on vendors

The recent amendments also impact certain vendors who must meet new written notice requirements prior to completion of the sale of residential premises and potential residential land. Vendors must notify the purchaser as to whether or not they will be required to make a payment to the ATO, of the amount to be paid and by when the payment must be made, as well as other specified details.

Importantly, the vendor's notice obligations apply, even in circumstances where there is no requirement for the purchaser to withhold the GST component of the purchase price.

Implications

The new requirements under the GST withholding regime apply to contracts entered into on or after 1 July 2018. They also apply to contracts entered into before 1 July 2018 where consideration for the purchase (other than the deposit) is first provided on or after 1 July 2020.

Property developers will be particularly impacted with the GST component of a transaction now being paid out at settlement and immediately remitted, rather than being collected and eventually paid to the ATO on lodgement of their next BAS statement, affecting both their cash flow and mortgage financing arrangements.

In practice, it is likely that the purchaser will deliver a cheque to the vendor for the GST component of the settlement monies and receive a receipt for the payment as evidence of their compliance. The vendor will be required to immediately remit the GST to the ATO. Separate ATO payment arrangements will be able to be catered for as part of the electronic conveyancing process.

The standard General Conditions of Sale, in use with the prescribed form of contract of sale in Victoria, have now been updated to incorporate the requirements of the GST withholding regime.

Purchasers and vendors who are affected by these changes must ensure that they meet the new requirements to avoid facing significant penalties, which in the case of purchasers, are equal to the amount of GST that was required to be collected, and in the case of individual vendors, fines in excess of \$20,000 and for company vendors, fines in excess of \$100,000.

TurksLegal is able to assist its purchaser and vendor clients with meeting their obligations under the new GST withholding regime and in preparing and reviewing contracts of sale to ensure compliance.

For all enquiries, please contact Stephen Teale, Partner in our Melbourne office, on 03 8600 5008 or Ratnadeep Hor, Partner in our Sydney office, on 02 8257 5710.

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