

GST Withholding Regime

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From 1 July 2018, where a vendor sells or supplies by way of a long term lease:

- 1 new residential premises (other than those created through a substantial renovation or commercial premises); or
- 2 potential residential land (i.e. residential zoned vacant land);

the purchaser is obligated to withhold GST and remit that GST directly to the ATO.



When the Purchaser is required to withhold the GST

The purchaser's obligation to withhold and remit the GST will generally arise at settlement.

The amount to be withheld

The purchaser must withhold 1/11th of the contract price. If the margin scheme applies, the purchaser must withhold 7% of the contract price regardless of the actual margin liability. Any reconciliation required will take place via the vendor's next Business Activity Statement.

The contract price is the price set for the supply in the contract, not taking into account any potential adjustments such as amounts for land tax, council rates and water rates.

Date of effect

The new law affects:

- all contracts entered into after 1 July 2018; and
- contracts entered into before 1 July 2018 if they settle after 1 July 2020.

How the GST is actually withheld

The new laws allow the purchaser to satisfy its obligations to remit the GST by:

- payment direct to the ATO;
- providing a bank cheque made out to ATO to the vendor at settlement or at the time the first instalment is paid; or
- as electronic settlements become more prominent, if parties use PEXA, both parties can authorise PEXA to distribute the amount for GST to the ATO as part of directions for settlement funds.

Vendor's notification obligation

To help purchasers meet their compliance burdens, vendors must notify purchasers in writing of whether GST is to be withheld. The written notice must contain prescribed details, including whether the purchaser must make a withholding payment, the supplier's name, the supplier's ABN, the amount to be withheld and the payment date.

Unlike the withholding obligation, this notification is required to be made by vendors in respect of sales of all residential premises (not just **new** premises) or potential residential land with limited exceptions.

Penalties

There are penalties for both the vendor and purchaser for failing to comply with their obligations under the new regime.

If the purchaser fails to withhold and pay the required amount to the ATO, the purchaser will be liable to a penalty equal to the amount of the GST payable (unless it has reasonably relied on notification by the vendor).

The requirement to notify the purchaser is a strict liability offence, and a court may impose a maximum penalty of 100 penalty units for individuals (\$21,000) or 500 penalty units (\$105,000) for corporations.

For further information on the GST withholding regime, please contact us at property@ballaratlawyers.com.au or on 5303 0281.

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