



DAVIS LAWYERS

Legal Insights

GST WITHHOLDING LAW REQUIREMENTS

Withhold GST at Settlement

Certain purchasers of new residential premises will be required to withhold GST at Settlement and remit money to the Australian Taxation Office (“**ATO**”).

The provisions were introduced to address non-compliance by property suppliers who would sell new residential land inclusive of GST but then not remit the GST to the ATO. Some would then dissolve their businesses before their next Business Activity Statement (“**BAS**”) lodgement, leaving an ATO shortfall.

When do the provisions apply?

The new withholding law provisions apply to contracts dated on or after 1 July 2018 where the sale is of new residential premises or potential residential land.

When the provisions do not apply:

- Commercial property
- New commercial residential premises (eg., hotels, boarding houses and caravan parks);
- New residential premises created through substantial renovations;
- Residential premises that are no longer new because they have previously been sold or have been continuously and solely rented for more than 5 years
- Potential residential land supplied to a GST registered entity for a creditable purpose;
- If the contract does not settle.

The Seller, as Supplier, has an obligation to notify the purchaser if they will be required to make a withholding law payment in the Contract of Sale. The Seller will also need to advise the purchaser of the supply details and amount to be withheld, for the purchaser or their representative to lodge the necessary ATO Forms 1 and 2.

GST Withholding Amount

The GST Withholding Amount will be either:

- (a) 11% of the purchase price for fully taxable supplies; or

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(b) 7% of the purchase price where the margin scheme applies.

If there are multiple Suppliers, then the specific amount for each seller will need to be noted for their proportion of the GST liability.

Process for Payment

Payment will typically be made at Settlement where the purchaser would provide a cheque, as directed by the Seller, for the GST withholding amount. The Seller will then pay this directly to the ATO.

The purchaser's withholding obligation and GST payment does not impact the Supplier's obligation to lodge its BAS and report their GST liability in relation to the supply. Once the BAS is lodged, a Supplier will receive a credit for the amount the purchaser withheld and paid to the ATO.

If the GST withholding amount is not paid to the ATO there may be administrative penalties and general interest charges imposed.

If you are selling a property and are not sure whether the sale will be subject to the withholding law provisions or if the margin scheme may be applicable, we recommend you contact our office or seek advice from the ATO or your tax professional.

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