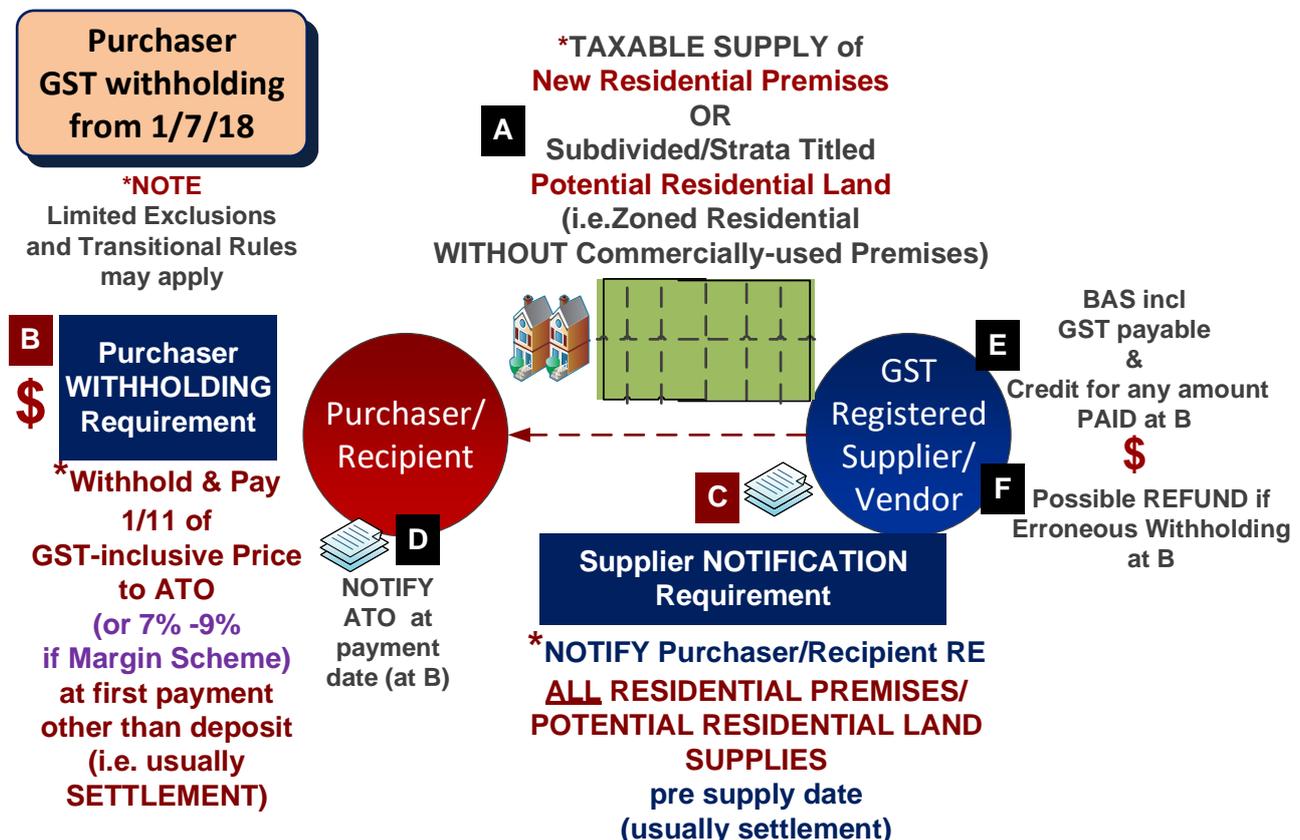


Residential Property GST Withholding and Notification from 1 July 2018

On **7 February 2018**, the [*Treasury Laws Amendment \(2018 Measures No. 1\) Bill 2018*](#) (**Bill**) was introduced into Federal Parliament to implement the following new requirements, for residential property supplies made from 1 July 2018 (subject to some transitional rules):

- a **purchaser GST withholding requirement** (see **A and B below**) for purchasers/recipients of a taxable supplies of most new residential premises and potential residential land (as defined in the *A New Tax System (Goods and Services Tax) Act 1999 (GSTA 1999)* – see details below) to withhold an amount representing the supplier’s GST–; and
- a **supplier notification requirement** (see **C below**) for suppliers of all residential premises and potential residential land (as broadly defined in the *GSTA 1999* and regardless of whether or not GST actually applies to the supply) to provide written notification to the purchaser/recipient before the supply is made (i.e. settlement date) which provides the following information:
 - whether or not a withholding payment is required by the purchaser/recipient under the above purchaser GST withholding requirement; and
 - where such a withholding payment is required, additional details such as the supplier’s name and ABN together with specified timing and amount details regarding the withholding payment.



Residential Property GST Withholding and Notification from 1 July 2018

Note:

- While the above GST withholding and notification requirements generally apply to supplies made/settlement dates from 1 July 2018, in practice the above obligations will usually not apply if the contract is entered into pre-1 July 2018 (subject to specific transitional rule requirements being satisfied).
- It should be noted that the Bill also provides for very limited defences and exceptions to the withholding and notification requirements together with future Legislative Instruments which may impact operation of the Bill. These detailed issues are beyond the scope of this summary Tax Astute Snapshot document.

Important:

- The purchaser withholding requirement (see B above) will generally apply to supplies, via sale or long-term lease, by GST Registered suppliers/sellers of the following assets to purchasers with no Input Tax Credit (ITC) entitlement (usually GST unregistered purchasers):
 - “*new residential premises*” (generally the first sale of newly built residential premises which are not new due to substantial renovations and not commercial residential premises such as a hotel – subject to detailed conditions in existing s 40-75 GSTA 1999); or
 - “*potential residential land*” which broadly is zoned residential and sold for the first time as part of a registered “property subdivision plan” (including strata title subdivisions) and does not contain any building in use for a commercial purpose at the time of supply,
- The supplier notification requirement will instead apply to every supply of residential premises (both new and existing) and potential residential land (with only minor exceptions at the time of writing for commercial residential premises or supplies made to GST Registered purchasers for a creditable purpose). This requirement will therefore apply to virtually every supply of residential premises or land, including supplies made by GST unregistered suppliers (e.g. private individuals) and input-taxed supplies of existing residential premises.
- Substantial penalties may apply to any purchaser or supplier in breach of the withholding or notification requirement respectively (see below for further details).

Residential Property GST Withholding and Notification from 1 July 2018

Purchaser Notification Issues and Penalties (see B and D above)

Where the above purchaser withholding requirement applies, the purchaser will need to withhold one of the following amounts no later than the date when the first payment (which is not a deposit) is made:

- **1/11 of the GST-inclusive contract price** (or 'price' as defined in the GSTA 1999 if no price is stated in the contract) in **most cases**; or
- **7%** (or up to a maximum 9% if another rate is provided for in a future Ministerial Determination) of the **GST-inclusive price** if the **margin scheme** applies; or
- **10% x the GST inclusive market value** of the asset if the **supply is made between associates for non-market value consideration**.

Note:

- **The Bill provides that payment of the above withholding obligation by the purchaser to the ATO will reduce the amount payable by the purchaser to the supplier/vendor under the sale contract (i.e. statutory provisions will override contract terms in this case).**
- **As illustrated at D above, the purchaser must notify the ATO (by lodging an approved form) prior to the due date for paying the GST withholding amount (i.e. prior to the first payment date – usually settlement date).**

Important:

- **The purchaser withholding requirement will most commonly apply to GST unregistered purchasers of new residential premises or land which are taxable supplies subject to GST. GST-registered purchasers of such assets will generally make a creditable acquisition which entitles them to an input tax credit (ITC) and will not be subject to a GST withholding obligation in such cases.**
- **If the withholding requirement at D above is not satisfied, the purchaser will become liable to pay the entire withholding amount as a penalty due to the ATO, together with a likely General Interest Charge (GIC) obligation. These penalties are currently subject only to minor exceptions which may apply where either:**
 - **the purchaser was incorrectly notified that there was no requirement to withhold; or**
 - **a bank cheque for the withholding amount (made payable to the Commissioner) was provided to the supplier on or before the withholding due date.**

Residential Property GST Withholding and Notification from 1 July 2018

GST Registered Supplier/Vendor Business Activity Statement (BAS) Issues after Purchaser GST Withholding (see E and F above)

For GST Registered Suppliers/Vendors making a taxable supply of new residential premises/potential residential to any purchaser/recipient subject to the purchaser GST withholding requirement (see above) the effect on the supplier's BAS will be as follows:

- The supplier will be entitled to a credit for the GST amount paid by the purchaser to the ATO (either directly or by bank cheque made payable to the ATO and provided to the vendor at settlement) in their next BAS; and
- The supplier may apply claim a GST refund in advance of their next BAS (subject to ATO discretion and specific eligibility requirements) for a purchaser GST withholding amount which was withheld in error (e.g. in relation to substantially renovated premises or separate supplies of building services which are not subject to the purchaser GST withholding requirement).

Important:

- **The proposed changes represent a significant cash flow disadvantage for GST Registered suppliers of new residential premises and land with affected vendors/suppliers ranging from large property developer businesses through to individuals who may have an enterprise of developing on a small scale (e.g. a family subdividing and developing their back garden). Even a previously proposed refund option for suppliers/vendors using the GST Margin Scheme has been removed, replaced only with a slightly lower rate of withholding (i.e. an expected 7% at the time of writing).**
- **Vendor/Suppliers should take care to ensure that the GST withholding amount has in fact been paid by the purchaser to the ATO (either directly at settlement or via bank cheque (payable to the ATO and provided to the supplier/vendor on settlement). If the purchaser has withheld the amount from the vendor/supplier, but not in fact paid the ATO, the supplier will remain liable to pay GST on the supply in their next BAS.**

Residential Property GST Withholding and Notification from 1 July 2018

Supplier/Vendor Notification Issues and Penalties – ALL residential property supplies (see C above)

Subject only to very limited exceptions (e.g. for commercial residential premises or taxable supplies to GST Registered purchasers entitled to an ITC) for every supply of new and existing residential premises or potential residential land (see details at commencement of this Tax Astute Snapshot document) all suppliers/vendors must provide written notification to the purchaser (generally via the sale contract) which states:

- whether or not a withholding payment is required by the purchaser/recipient under the above purchaser GST withholding requirement; and
- where such a withholding payment is required, additional details such as the supplier's name and ABN together with specified timing, amount and payment details regarding the withholding payment.

Important:

Subject to any exceptions which may apply, failure to withhold by any supplier/vendor (GST Registered or otherwise) will result in them committing a strict liability and/or administrative offence which is subject to penalties of up to the following maximum amounts:

- **\$105,000 (500 penalty units) for company supplier/vendor; or**
- **\$21,000 (100 penalty units) for all other vendors (e.g. individuals, trusts, super funds etc.).**

In practice, this notification requirement will need to be incorporated into virtually every residential property sale agreement signed from 1 July 2018 to prevent application of the above penalties to private and business residential property vendors alike.

Summary Issues

- The above requirements are proposed to apply to supplies made on or after 1 July 2018. While this start date would generally encompass every residential property settlements occurring from 1 July 2018, transitional exceptions may be available where a contract is entered prior to 1 July 2018, subject to meeting specific transitional rule requirements (a full analysis of which is beyond the scope of this summary Tax Astute Snapshot document.
- As explained above, both the purchaser withholding obligation and the supplier/vendor notification obligation may affect both GST registered and unregistered (e.g. private) purchasers and vendors, with potentially substantial penalties for non-compliance.
- It will be important for conveyancers and professional tax advisers to have a detailed understanding of the new GST withholding requirements to ensure vendor and purchaser obligations and risks under the new regime are appropriately managed.

Residential Property GST Withholding and Notification from 1 July 2018

Important:

Where the new residential property illustrated above is valued at \geq \$750K (GST-exclusive) the purchaser may also be required to make a separate 12.5% withholding payment to the ATO under the existing asset withholding tax provisions. See our related Tax Astute Snapshot at <http://www.taxastute.com.au/asset-withholding-tax-changes-from-1-july-2017/>.

WANT MORE DETAILS?

In addition to details available at www.taxastute.com.au, Tax Astute clients receive more information and specific details, questions and answers underlying the brief snapshot summary (e.g. mixed supply issues, joint tenancy vs tenants in common treatment, transitional rules, exceptions, developer distribution agreements, house and land package treatment and other specific eligibility requirements) above as a part of their:

- Tax Astute training session;
- Tax Astute reference notes; and
- detailed multimedia recording.

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