

JUNE 2018

TECHNICAL UPDATE

GST CHANGES FROM 1 JULY 2018: GST ON LOW VALUE IMPORTED GOODS AND GST WITHHOLDING ON NEW RESIDENTIAL PROPERTY SALES

THE AUSTRALIAN GST LANDSCAPE WILL CHANGE FROM 1 JULY 2018 AND SEE OFFSHORE SUPPLIES OF LOW VALUE GOODS INTO AUSTRALIA CAUGHT WITHIN THE GST NET, IMPACTING ONLINE BUSINESSES SELLING TO AUSTRALIAN CONSUMERS.

GST WITHHOLDING ON NEW RESIDENTIAL PROPERTY SALES FROM 1 JULY 2018 MEANWHILE WILL IMPACT BUYERS, SELLERS, DEVELOPERS AND SETTLEMENT AGENTS IN A MYRIAD OF DIFFERENT WAYS.

GST ON LOW VALUE IMPORTED GOODS CHANGES FROM 1 JULY 2018

Changes

From 1 July 2018, GST will be payable by suppliers of low value goods to non-GST registered consumers. The new laws may be applicable to businesses that are based outside of Australia, sell goods (customs value of AUD\$1,000 or less) to Australian individuals (rather than business entities). The changes also capture sellers who provide personal shopping services or operate a website that facilitates the sale of goods to Australia. The change could potentially impact the following entities in the supply chain – merchants; Electronic Distribution Platform operators (in addition to the taxation of digital products and services which commenced 1 July 2017) and redeliverers. Outlined below are the broad features that apply to each potential supplier.

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Impact on entities in the supply chain

SUPPLIER TYPE	Merchants	Electronic Distribution Platform ("EDP") Operator	Redeliverers
FEATURES	Actual supplier of the goods	<p>A service can be an EDP if:</p> <ul style="list-style-type: none"> ▶ The service allows entities to make supplies available to end users; ▶ The service is delivered by means of electronic communication; and ▶ If the supplies are intangible consumer supplies, the supplies are made by means of electronic communication. <p><i>*care should be taken this has a broad application</i></p>	Assists in bringing goods to Australia by providing either an offshore mailbox service or a personal shopping service.
GST PAYABLE ON TAXABLE SUPPLIES	1/11th of the GST-inclusive price.	1/11th of the GST-inclusive price.	10% of the price of the supply.

Where a supplier sells low value goods of AUD\$75,000 or more in a rolling 12 months there will be a requirement to register for Australian GST.

ATO's compliance approach

The Australian Taxation Office (ATO) has stated that entities which fail to comply with their obligations i.e. failing to register, collect, report, or pay GST as required from 1 July 2018 will be issued an assessment for the GST liability and have penalties of 75% imposed. The ATO will take action for the recovery of the debt. The ATO will also use data matching processes to identify non-compliance from various sources of information including financial data tracking information, customs data, and information provided under information sharing agreements.

BDO COMMENT

The GST on low value imported goods changes from 1 July 2018 are a relatively major change to the Australian GST system, not only for Australian consumers, but also for overseas businesses making supplies of such goods to Australia. As a result of the changes online shoppers from importing products from its overseas e-commerce sites when the new goods and services tax regime comes into effect from 1 July 2018. For those overseas retailers who continue to sell goods to Australian consumers and make more than AUD \$75,000 per year, changes will need to be made to commercial practices, reporting requirements and internal systems.

BDO CAN ASSIST WITH:

- ▶ Determining whether there is a supply of low value goods
- ▶ Identifying which entity in the supply chain is liable for GST
- ▶ Applying any applicable exemptions
- ▶ Adequately documenting procedures and systems in place to support the above
- ▶ Reviewing the most appropriate GST registration type (limited registration vs. full registration).

GST WITHHOLDING ON NEW RESIDENTIAL PROPERTY SALES FROM 1 JULY 2018

Changes

From 1 July 2018 purchasers of newly constructed residential properties or new subdivisions must remit GST directly to the ATO as part of settlement. Many existing or soon to be formed contracts will be captured by the new regime, which applies to all contracts entered into after 1 July 2018, and entered into before 1 July 2018 where consideration (other than a deposit) is not provided until after 1 July 2020 (i.e. contracts entered before 1 July 2018 but which do not settle until after 1 July 2020). Transitional arrangements that will exclude contracts signed before 1 July 2018, as long as the transaction settles before 1 July 2020.

The changes will capture sales and 'long-term leases' of 'new residential premises' as well as 'potential residential land' included in a 'property subdivision plan' that does not contain a building used for commercial purposes. There are exclusions for 'commercial residential premises', 'new residential premises' that have been created through 'substantial renovations', and some specific types of 'potential residential land'. Importantly, while the withholding obligations extend predominantly to 'new residential premises' and 'potential residential land', the notification requirements (discussed below) extend to any 'residential premises'. Under the new regime:

- ▶ Purchasers of new residential property transactions will be required to withhold 1/11th of the purchase price and pay this to the ATO
- ▶ The developer will receive a credit for this GST through the normal GST business activity statement lodgement
- ▶ A reduced withholding tax rate of 7% can be used where the margin scheme has been applied
- ▶ Developers will now be required to provide purchasers with information that assists them in determining whether the withholding applies
- ▶ Special transitional provisions are included for project delivery agreements.

Implications for stakeholders

The loss of use of the GST at settlement will have implications for the cash flow of property developers and financiers. If developers elect to use the margin scheme, the amount required to be paid by the purchaser may be greater than the actual GST liability of the developer and they need to wait until the end of the reporting period to receive a refund. The new regime does not impact the usual GST reporting process but does add additional administrative complexity of identifying 'credits' processed by the ATO (i.e. withholding payments made to the ATO by purchasers) when lodging each BAS, to ensure that tax liabilities are met. Sellers must also be careful in identifying if the property is a taxable sale of 'new residential premises' or 'potential residential land' and thus subject to the withholding rules. A supplier must provide a notice in writing to the buyer before selling any residential premises or potential residential land stating whether the buyer needs to withhold GST or not. The supplier's notice may either be in the contract for sale, or in a separate document. A failure by the supplier to provide the notice will not affect a buyer's obligation to withhold an amount if the property is a taxable sale of new residential premises or potential residential land. Whilst developers will be most greatly impacted by the changes there are also obligations for buyers. If a buyer is required to withhold, the supplier must provide their name and ABN; the amount that must be withheld and when it is due to be paid to the ATO. Buyers must also make a payment to the ATO on or before the day which settlement occurs. Forms that need to be lodged and instructions were made available on the ATO website here on 1 June 2018.

ATO penalties

A failure by the supplier to notify the purchaser regarding GST withholding is a strict liability offence, with a maximum fine that can be imposed by a court of 100 penalty units (currently, \$21,000) for individuals or 500 penalty units (currently, \$105,000) for corporations. Alternatively, the ATO may impose an administrative penalty of 100 penalty units (\$21,000). Failure by the purchaser to withhold the GST withholding and remit it to the ATO gives rise to an administrative penalty under existing provisions (equal to 100% of the amount to be withheld). The penalty will not apply if the purchaser has relied on a notification from the supplier (provided reliance is reasonable), or if the purchaser has provided the supplier with a bank cheque for the GST withholding that is payable to the ATO.

On 26 April the ATO published draft Law Companion Guide [LCR 2018/D1 – Purchaser's obligation to pay an amount for GST on taxable supplies of certain real property](#) which sets out the Commissioner's view on how the new GST withholding provisions are to apply. The draft ruling discusses the effective date of the requirements, the types of supplies affected, when a purchaser is required to make the payment and how much, the requirement for the vendor to provide a notice to the purchaser and applicable penalties for failing to comply with the requirements. It also contains six useful examples:

1. New residential premises with purchaser payment
2. Potential residential land with purchaser payment
3. Potential residential land with no notification and no purchaser payment
4. Instalment contract sale with first payment a deposit
5. Instalment contract sale with first payment not a deposit
6. Where section 14-250 only partly applies.

LCR 2018/D1 has yet to be finalised but when it is the guide will operate as a public ruling with effect from 1 July 2018.

BDO COMMENT

These changes are a significant change in the way in which the GST system operates. They will place burdens on ordinary people not otherwise part of the GST reporting system and levy harsh penalties for non-compliance. All contracts of sale, long term leases and development agreement entered into after 1 July 2018 should be reviewed to determine obligations under the new rules, noting that there is a two-year transitional period for contracts entered into before 1 July 2018 and which settle before 1 July 2020 which could particularly impact off the plan sales.

BDO CAN ASSIST WITH:

- ▶ Factoring in the consequences of the changes into the projected cash flow analysis for developments to avoid significant financial consequences for developers
- ▶ Reviewing payment waterfalls contained in property development agreements used to fund the discharge of a party's GST liability, as these may no longer be necessary due to purchasers having already withheld GST from vendors, thereby resulting in inadvertent windfall gains
- ▶ Assisting suppliers with seeking warranties when selling potential residential land to GST registered entities to ensure that acquisitions are for creditable purposes and not for personal or domestic use
- ▶ Assessing instalment contracts to ensure parties comply with their new obligations and including new seller's warranties to contracts for the sale of real estate other than new residential premises and potential residential land, to provide buyers with the comfort that they have no withholding obligation.

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