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# Government Crackdown on Developers avoiding/deferring GST payments

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To reduce non-payment of GST, the Federal Government announced in the 2017-18 Budget that the responsibility for the payment of GST will shift from developers to purchasers.

The reason for the change can be found in the ATO submission to the 2015 Senate Inquiry into “Insolvency in the Australian construction industry”. The ATO identified 3,355 individuals controlling over 13,000 entities had engaged in non-compliance with GST laws. As a result, over \$2 billion in debt was written off. To date, the ATO’s compliance activities have proven to be inadequate as the problem usually emerges well after the property transaction has finalised.

Currently, GST is included in the purchase price of a new residential premises and the developer is required to remit GST to the ATO in the next BAS. This allows opportunities for non-compliance – such as “phoenixing”. In phoenixing, it is likely that Phoenix entities have received significant GST refunds during construction and then collect GST on settlements of sales. The entity then goes into liquidation before paying the ATO. Later the developer business continues to operate through a new entity.

**The Federal Government has now introduced legislation which will require purchasers of new residential property to withhold 1/11th of the purchase price and pay this to the ATO.**

As a result, the developer will then receive a credit for this GST through their BAS lodgement process. This will remove the time-lag in GST payments and limit the chance for tax avoidance.

This new GST requirement will apply as follows:

- It will only apply to new residential premises and new subdivisions of potential residential land. Generally, this will mean new residential premises where they have not been previously sold as residential premises, have been created through substantial renovations of a building or have been built to replace demolished premises on the same land.

- The payment of GST will be required on or before the date of settlement. This does not include the deposit. In the case of instalment payments for example, the GST amount withheld will be from the first instalment made.
- Where payment is required, the supplier (vendor) of the property is required to provide a notification to purchasers to assist them in complying with their obligations. It is likely this will be included in the sale contract. This notice will need to adhere to strict requirements and may lead to a non-compliance offence if not followed correctly.
- To assist in the application of this new law, the government will





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implement a transition period. This means that the legislation will only apply to contracts entered into after 1 July 2018. Where a contract was entered into before 1 July 2018 and the first consideration is applied before 1 July 2020, this transaction will not be subject to the new legislation.



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There are significant consequences for developers who will have to prepare new vendor contracts to comply with the new law, deal with their financier on apportionment of settlement proceeds and deal with the cash flow effect of not having the use of the GST for 1 to 3 or more months if not normally remitted on time as part of standard business practice.

This new legislation applies from 1 July 2018 and developers need to prepare as a matter of urgency.



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Our property and tax experts are able to assist you in understanding and adapting to the new regime and can work with you to ensure compliance and avoid any potential penalties.

Please contact Rolf Koops or Denis Hall for further information.

*Disclaimer:*

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