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PROPERTY TAX FACTSHEET: NEW GST WITHHOLDING RULES ON RESIDENTIAL PROPERTIES

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PROPERTY TAX FACTSHEET

IF YOU'RE A PROPERTY DEVELOPER THEN YOU SHOULD KNOW ABOUT THE CHANGES TO GST WITHHOLDING RULES FOR RESIDENTIAL PROPERTY.

With effect from 1 July 2018, relevant purchasers will be required to withhold GST from the amount paid on certain purchases of real property and remit such amount directly to the Australian Taxation Office (ATO) as part of the settlement process.

It's a significant change from how GST is currently managed, where the developer collects the full proceeds of the sale and remits the GST to the ATO in their next BAS. This can occur up to three months after settlement. The reforms are aimed at preventing developers from dissolving the

business before the next BAS lodgement to avoid remitting the GST.

For some developers, the changes would have a significant impact on cash flow because the purchaser would be required to pay the GST portion to the ATO directly.

The fact that the vendor no longer receives the GST amount between settlement and BAS lodgment will reduce the cash held by the business and then may impact working capital requirements and bank covenants.

WHAT DOES THIS CHANGE APPLY TO?

The reforms apply to the sale or long-term lease of:

- New residential premises (other than those created through a substantial renovation and commercial residential premises); or
- Subdivisions of potential residential land.

HOW MUCH HAS TO BE WITHHELD?

When it comes to determining the amount that needs to be paid to the ATO this will generally be 1/11th of the contract price. However, if the margin scheme applies to the sale the purchaser needs to pay 7% of the contract price instead.

If the parties involved in the transaction are associates, then the purchaser will generally need to pay 10% of the GST-exclusive market value of the property.

For supplies between associates for nil or inadequate consideration, the withholding amount is 10% of the GST exclusive market value.

For sales made to multiple purchasers (e.g. tenants in common), each purchaser is treated as being a separate purchaser of a separate sale and the withholding amount is determined in proportion of the acquisition.

WHAT IS THE IMPACT ON THE PURCHASER?

Purchasers of properties will need to pay 1/11th of the full sale price after 1 July 2018, directly to the ATO at settlement.

The vendor must supply a notification advising that the payment is required and the amount that is to be paid.

WHAT'S THE IMPACT FOR DEVELOPERS?

From 1 July 2018, the vendor will no longer collect and remit GST on the purchase price of the residential premises.

Instead, the vendor must notify the purchaser in writing that the GST needs to be paid to the

Commissioner and advise the amount that must be paid. In general, this notification will need to include:

- the name and ABN of the entity that made the supply;
- when the purchaser is required to pay that amount to the Commissioner (generally settlement date); and
- where some or all of the consideration is not expressed as an amount of money (e.g., sale of property for cash plus another property) - the GST-inclusive market value of the consideration that is not expressed as an amount of money.

The vendor will receive a credit for the amount that has been paid by the purchaser to the ATO (if the amount was simply withheld but not paid these amounts cannot be claimed). If the vendor's net amount for the tax period is in a credit, a refund will be made.

WHAT'S THE PENALTY FOR NON-COMPLIANCE?

Failing to comply is not inconsequential. An

administrative penalty of 100 penalty units (\$21,000) applies to the vendor for the failure to give a notice to the purchaser and to the purchaser for failure to withhold.

In addition to the administrative penalty, a criminal penalty of 100 penalty units also applies to vendors for failure to give the required notice to the purchaser of their obligation to withhold.

WHAT'S THE ADMINISTRATIVE PRACTICE FROM THE ATO?

The implementation period for the new measure is extremely short but the ATO has released the online forms required for purchasers of new residential premises or potential residential land to remit part of the purchase price to the ATO.

The GST property settlement withholding notification form (form one) is used to advise the ATO that a contract has been entered into for the supply of new residential premises or potential residential land in which there is a withholding obligation. The purchaser or their representative can submit the form at any time after a contract has been entered into and prior to the date the withholding obligation is due. Usually that will

be the settlement date but if the contract is an instalment contract it will be the date the first instalment is paid.

The GST property settlement date confirmation form (form two) is used to confirm the settlement date.

The purchaser or its representative can submit form two at the time the withholding obligation becomes due, either when the first instalment is paid or at settlement, or as soon as practical thereafter.

Last updated July 2018. This factsheet is provided for information purposes only and is correct at the time of publishing. It should not be used in place of advice from your accountant. Please contact us on 02 9957 4033 to discuss your specific circumstances.

ABOUT US

Our Expertise

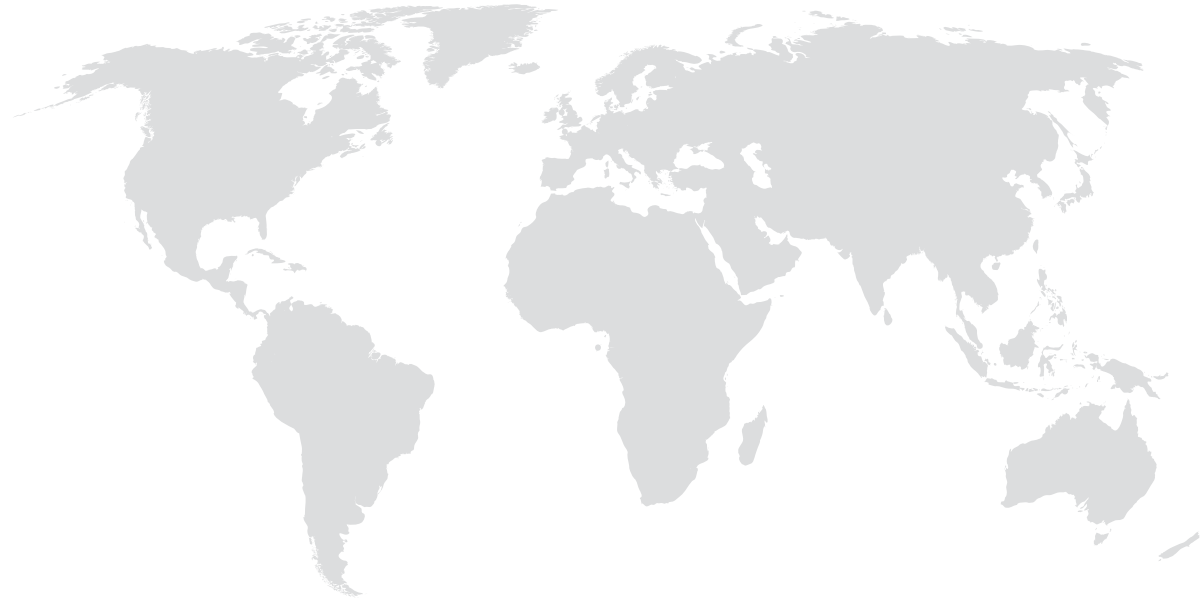
Domestically

Bates Cosgrave advises domestic and international businesses.

We provide highly personalised services across a wide range of industries with in-depth knowledge in real estate, renewable energy, import and distribution, health professionals, inbound and outbound investments, and innovative/start-up businesses.

Internationally

Although we are a boutique firm based in Sydney, we have access to a strong global network and specialise in advising cross-border transactions and global structuring.



OUR TEAM

Directors



MATT ZHOU

DIRECTOR

CA, B. COMM, M ACC, M
TAX, MINTAX, CTA

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Matt joined Bates Cosgrave in April of 2007 as a manager and was promoted to Director from 1 July 2009. Matt has a reputation for his technical expertise and experience in specialist advice to professionals including medical doctors, professional investors and family offices, multinational companies.

His diverse knowledge on International tax, expatriates tax, employee share schemes, business structuring including cross border issues, CGT and GST is formidable.

His industry knowledge is broad and includes medical services, real estate, pharmaceuticals and technology companies. As tax advisors, we must think ahead and consider not just the current situation but the future.

Good advice reflects not simply value now, but lasting value.



GLENN COSGRAVE

DIRECTOR

CA, B.COMM, FTIA

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Glenn is passionate about business improvement and works with our clients to get the fundamentals of their business right, serving as a mentor through their business journey of establishment, growth and exiting when the time is right. His approach has helped many businesses evolve from start-up to commercialisation and ultimately setting up their business in the best possible position for sale. He also specialises in tax-efficient structuring. Glenn's extensive experience as a strategic advisor ensures his clients have a clear focus for their personal and business goals, including a roadmap for future success and alignment of multidisciplinary advice to achieve best outcomes. Glenn is also a professional adviser to engineers, valuers, project managers, accountants, lawyers and high net worth individuals, with a strong portfolio of clients in import and distribution, professional advisory and innovative businesses.



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