

# EXPOSURE DRAFT

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Inserts for  
**Treasury Laws Amendment (2017  
Measures No. 9) Bill 2017: TSY/45/248  
Real property transactions**

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**Commencement information**

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<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>

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1. Schedule #	The first 1 January, 1 April, 1 July or 1 October to occur after the day this Act receives the Royal Assent.	
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## Schedule #—Payment of GST on taxable supplies of certain real property

### Part 1—Main amendments

#### *Taxation Administration Act 1953*

#### **1 At the end of Division 14 in Schedule 1**

Add:

#### **Subdivision 14-E—GST payable on taxable supplies of certain real property**

##### **Table of sections**

14-250	Recipients of certain taxable supplies of real property must pay amounts to Commissioner
14-255	Notification by suppliers of residential premises

#### **14-250 Recipients of certain taxable supplies of real property must pay amounts to Commissioner**

##### *Liability to pay an amount*

- (1) You must pay to the Commissioner an amount if you are the recipient (within the meaning of the \*GST Act) of a \*taxable supply that is, or includes, a supply to which subsection (2) applies.
- (2) This subsection applies to a supply of:
  - (a) \*new residential premises; or
  - (b) \*potential residential land that:
    - (i) is included in a \*property subdivision plan; and
    - (ii) has not previously been sold as potential residential land included in the property subdivision plan;other than a supply that is of a kind determined by the Commissioner under subsection (3), or of a kind excluded by subsection (4).
- (3) The Commissioner may, by legislative instrument, determine that subsection (2) does not apply to a kind of supply specified in the determination.

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- 1 (4) The following kinds of supply are excluded:  
2 (a) a supply by a \*member of a \*GST group to another member  
3 of the GST group;  
4 (b) a supply by the \*joint venture operator of a \*GST joint  
5 venture to another entity that:  
6 (i) is a \*participant in the joint venture; and  
7 (ii) acquired the interest, unit or lease for consumption, use  
8 or supply in the course of activities for which the joint  
9 venture was entered into.

10 *When the amount must be paid*

- 11 (5) You must pay the amount on or before:  
12 (a) the day on which any of the \*consideration for the supply  
13 (other than consideration provided as a deposit) is first  
14 provided; or  
15 (b) if a determination under subsection (6) applies—the day  
16 provided under that determination.
- 17 (6) The Commissioner may determine, by legislative instrument,  
18 circumstances in which amounts under this section are to be paid  
19 on or before the day provided under the determination. The  
20 determination may provide for amounts to be paid in instalments.

21 *The amount to be paid*

- 22 (7) The amount to be paid to the Commissioner is an amount equal to  
23  $\frac{1}{11}$  of the \*price for the supply.
- 24 (8) However, if:  
25 (a) the supply does not consist solely of one or more supplies to  
26 which subsection (2) applies; and  
27 (b) it is practicable to ascertain, at the time any of the  
28 \*consideration for the supply (other than consideration  
29 provided as a deposit) is first provided, the amount (the  
30 **reduced amount**) of the \*price for the supply that relates to  
31 supplies of that kind;  
32 the amount to be paid to the Commissioner is an amount equal to  
33  $\frac{1}{11}$  of the reduced amount.

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## 14-255 Notification by suppliers of residential premises etc.

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2 (1) You must not make a \*taxable supply of \*residential premises or of  
3 \*potential residential land to another entity unless, at least 14 days  
4 before making the supply, you have given to the other entity a  
5 written notice stating:  
6 (a) whether the other entity will be required to make a payment  
7 under section 14-250 in relation to the supply; and  
8 (b) if the other entity will be required to make such a payment in  
9 relation to the supply:  
10 (i) your name and \*ABN; and  
11 (ii) the amount that the other entity will be required to pay  
12 to the Commissioner under section 14-250 in relation to  
13 the supply; and  
14 (iii) when the other entity will be required to pay that  
15 amount; and  
16 (iv) if some or all of the \*consideration for the supply will  
17 not be expressed as an amount of \*money—the \*GST  
18 inclusive market value of so much of the consideration  
19 as will not be expressed as an amount of money; and  
20 (v) such other matters as are specified in the regulations.

### 21 *Strict liability offence*

- 22 (2) You must not fail to give a notice required under subsection (1).

23 Penalty: 100 penalty units.

- 24 (3) An offence against subsection (2) is a strict liability offence.

25 Note: For strict liability, see section 6.1 of the Criminal Code.

### 26 *Administrative penalty*

- 27 (4) You are liable to pay the Commissioner a penalty of 100 penalty  
28 units if you fail to give a notice required under subsection (1).

29 Note: Division 298 contains machinery provisions for administrative  
30 penalties.

- 31 (5) However, you are not liable to a penalty for failing to meet the  
32 requirements of paragraph (1)(b) in relation to a supply of  
33 \*residential premises if, at the time you gave the notice, you  
34 reasonably believed that the premises were not \*new residential  
35 premises.

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## 2 At the end of section 16-30 in Schedule 1

Add:

- (2) However, this section does not apply in relation to a failure to pay an amount to the Commissioner as required by Subdivision 14-E if:
- (a) the amount relates to a \*taxable supply of \*new residential premises; and
  - (b) at the time \*consideration for the supply (other than consideration provided as a deposit) is first provided, the entity reasonably believes the premises not to be new residential premises.

## 3 At the end of Subdivision 18-A in Schedule 1

Add:

### Entitlement to credit: taxable supply of real property

#### 18-60 Credit—payment relating to taxable supply of real property

- (1) An entity is entitled to a credit in a \*tax period if:
- (a) the entity made a \*taxable supply to which subsection 14-250(2) applies; and
  - (b) the supply was attributable, under the \*GST Act, to that tax period; and
  - (c) an assessment has been made of the entity's \*net amount for that tax period; and
  - (d) another entity made a payment under section 14-250 in relation to the supply.
- (2) The amount of the credit is an amount equal to:
- (a) the amount of the payment mentioned in paragraph (1)(d); or
  - (b) if the supply was attributable to more than one \*tax period—the portion of that payment that corresponds to the extent to which the supply is attributable to the tax period mentioned in subsection (1).

## 4 At the end of Subdivision 18-B in Schedule 1

Add:

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## 18-85 Refund by Commissioner of amount withheld from payment in respect of taxable supply of real property

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- 3 (1) An entity (the *recipient*) may apply in writing, in the \*approved  
4 form, to the Commissioner for the refund of an amount if:  
5 (a) another entity (the *payer*) has made a payment under  
6 section 14-250, or purportedly under that section, in relation  
7 to a \*taxable supply by the recipient; and  
8 (b) either or both of the following apply:  
9 (i) the \*margin scheme applies to the supply, and the  
10 supply is not attributable, under the GST Act, to a \*tax  
11 period that is a calendar month;  
12 (ii) the payment, or part of the payment, was made in error.
- 13 (2) The application must be made no later than 14 days before the day  
14 on which \*GST is payable on the supply.
- 15 (3) The amount of the refund that the recipient may apply for is:  
16 (a) if subparagraph (1)(b)(i) applies—an amount equal to the  
17 difference between the amount of the payment and the  
18 amount of \*GST on the supply; or  
19 (b) if subparagraph (1)(b)(ii) applies—an amount equal to the  
20 amount of the payment, or the part of the payment that was  
21 made in error, as the case requires.
- 22 (4) The Commissioner must refund the amount under subsection (3) if  
23 the Commissioner is satisfied that paragraphs (1)(a) and (b) apply  
24 and that it would be fair and reasonable to refund the amount,  
25 having regard to:  
26 (a) the circumstances that gave rise to the obligation (if any) to  
27 make the payment under section 14-250; and  
28 (b) the nature of the applicable matter mentioned in  
29 paragraph (1)(b); and  
30 (c) the nature and extent of any information provided in the  
31 application in the \*approved form; and  
32 (d) the likely accuracy of the information; and  
33 (e) the likelihood that the information is affected by:  
34 (i) fraud or evasion; or  
35 (ii) intentional disregard of a taxation law; or  
36 (iii) recklessness as to the operation of a taxation law; and

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- 1 (f) whether an \*approved valuation of the real property (within  
2 the meaning of the \*GST Act) to which the supply relates has  
3 been conducted; and  
4 (g) any other matter the Commissioner considers relevant.

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1 **Part 2—Other amendments**

2 *A New Tax System (Goods and Services Tax) Act 1999*

3 **5 At the end of section 33-1**

4 Add:

5 Note 4: For taxable supplies of new residential premises or potential  
6 residential land, section 14-250 in Schedule 1 to the *Taxation*  
7 *Administration Act 1953* may require the recipient to pay to the  
8 Commissioner an amount representing the GST on the supply, and the  
9 supplier is then entitled to a credit for that payment under  
10 section 18-60 in that Schedule.

11 **6 At the end of subsection 40-65(2)**

12 Add:

13 Note: For sales of residential premises that are new residential premises, the  
14 recipient of the supply must pay an amount representing the GST on  
15 the supply to the Commissioner under section 14-250 in Schedule 1 to  
16 the *Taxation Administration Act 1953*, and the supplier is entitled to a  
17 credit for that payment under section 18-60 in that Schedule.

18 *Income Tax Assessment Act 1997*

19 **7 Subsection 995-1(1) (paragraph (b) of the definition of**  
20 ***amount required to be withheld*)**

21 Omit “or \*capital proceeds”, substitute “, \*capital proceeds or \*taxable  
22 supply”.

23 **8 Subsection 995-1(1) (paragraph (b) of the definition of**  
24 ***amount withheld*)**

25 Omit “or \*capital proceeds”, substitute “, \*capital proceeds or \*taxable  
26 supply”.

27 **9 Subsection 995-1(1)**

28 Insert:

29 *approved valuation* has the same meaning as in the \*GST Act.

30 *consideration*, for a \*taxable supply, has the same meaning as in  
31 the \*GST Act.



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1 *margin scheme* has the same meaning as in the \*GST Act.

2 *money*, in relation to the \*consideration for a \*taxable supply, has  
3 the same meaning as in the \*GST Act.

4 *potential residential land* has the same meaning as in the \*GST  
5 Act.

6 *price*, for a \*taxable supply, has the same meaning as in the \*GST  
7 Act.

8 *property subdivision plan* has the same meaning as in the \*GST  
9 Act.

10 **10 Subsection 995-1(1) (paragraph (c) of the definition of**  
11 ***withholding payment*) (first occurring)**

12 Omit “or the \*capital proceeds”, substitute “the \*capital proceeds or a  
13 \*taxable supply”.

14 **11 Subsection 995-1(1) (at the end of the definition of**  
15 ***withholding payment*) (second occurring)**

16 Add:

17 ; or (e) the \*taxable supply in respect of which Subdivision 14-E in  
18 that Schedule requires an amount to be paid to the  
19 Commissioner.

20 ***Taxation Administration Act 1953***

21 **12 Division 14 in Schedule 1 (heading)**

22 Repeal the heading, substitute:

23 **Division 14—Benefits, gains and taxable supplies for which**  
24 **amounts must be paid to the Commissioner**

25 **13 Paragraph 14-215(1)(d) in Schedule 1**

26 After “withheld”, insert “(other than under Subdivision 14-E)”.

27 **14 Section 16-30 in Schedule 1**

28 Before “An entity”, insert “(1)”.

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**15 Subsection 16-70(3) in Schedule 1**

Omit “or 14-D”, substitute “, 14-D or 14-E”.

**16 Paragraph 16-140(1)(b) in Schedule 1**

Omit “Division 14”, substitute “Subdivision 14-A, 14-B, 14-C or 14-D”.

**17 Paragraph 16-140(2)(b) in Schedule 1**

Omit “Division 12A, 13 or 14”, substitute “Division 12A or 13 or Subdivision 14-A, 14-B, 14-C or 14-D”.

**18 Section 16-150 in Schedule 1**

Before “An entity”, insert “(1)”.

**19 Paragraph 16-150(b) in Schedule 1**

Omit “or capital proceeds”, substitute “, capital proceeds or taxable supplies of certain real property”.

**20 At the end of section 16-150 in Schedule 1**

Add:

(2) Without limiting subsection (1), if:

(a) the amount is payable under Subdivision 14-E (about payments in respect of taxable supplies of certain real property); and

(b) the entity gives notice that, apart from this subsection, would comply with the requirements of this section;

the entity is taken not to have given notice under this section unless it has also notified the Commissioner on or before the day occurring 5 days earlier than the day on which the amount is due to be paid. The notification must be in the \*approved form and lodged with the Commissioner.

**21 Subsection 18-10(1) in Schedule 1**

Repeal the subsection, substitute:

(1) The rules set out in sections 18-15, 18-20 and 18-25 do not apply to an \*amount withheld from a \*withholding payment that is covered by:

(a) Subdivision 12-F (Dividend, interest and royalty payments);  
or

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- 1 (b) Subdivision 12-FA (Departing Australia superannuation  
2 payments); or  
3 (c) Subdivision 12-FC (Seasonal Labour Mobility Program); or  
4 (d) section 12-320 (about mining payments); or  
5 (e) Subdivision 12-H (Distributions of withholding MIT  
6 income); or  
7 (f) Division 13 (Alienated personal services payments); or  
8 (g) Subdivision 14-E (GST payable on taxable supplies of  
9 certain real property).

10 **22 Subparagraph 18-65(1)(a)(ii) in Schedule 1**

11 Omit “Subdivision 14-D”, substitute “Subdivisions 14-D and 14-E”.

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## 1 Part 3—Application of amendments

### 2 23 General rule

3 The amendments made by this Schedule apply in relation to supplies for  
4 which any of the consideration (other than consideration provided as a  
5 deposit) is first provided on or after 1 July 2018, whether a contract for  
6 the supply was entered into before, on or after the commencement of  
7 this Schedule.

### 8 24 Existing contracts

9 Despite item 23, if a contract for a supply was entered into before 1 July  
10 2018:

- 11 (a) the amendments made by this Schedule do not apply in  
12 relation to the supply if consideration for the supply (other  
13 than consideration provided as a deposit) is first provided  
14 before 1 July 2020; and  
15 (b) section 14-255 in Schedule 1 to the *Taxation Administration*  
16 *Act 1953* as amended by this Schedule does not apply in  
17 relation to the supply if consideration for the supply (other  
18 than consideration provided as a deposit) is first provided on  
19 or after 1 July 2020.

20 Note: In proceedings for an offence against subsection 14-255(2) in Schedule 1 to the  
21 *Taxation Administration Act 1953* as amended by this Schedule, the defendant bears an  
22 evidential burden in relation to the matter in paragraph (b) of this item (see  
23 subsection 13.3(3) of the *Criminal Code*).

### 24 25 Existing property development arrangements

25 If:

- 26 (a) an arrangement entered into before 1 July 2018 between:  
27 (i) the entity (the **supplier**) making a taxable supply that is,  
28 or includes, a supply to which subsection 14-250(2) in  
29 Schedule 1 to the *Taxation Administration Act 1953* as  
30 amended by this Schedule applies; and  
31 (ii) one or more entities (not including a recipient of the  
32 taxable supply);  
33 deals with the distribution, between the parties to the  
34 arrangement, of the consideration for the taxable supply; and  
35 (b) under the arrangement, an amount (the **GST liability amount**)  
36 is to be distributed to the supplier for the payment of the  
37 supplier's liability to GST for the taxable supply; and
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1 (c) were that amount to be distributed under the arrangement, the  
2 parties would not be in the same position as they would be if  
3 an amount were not payable, under section 14-250 in that  
4 Schedule as so amended, in relation to the taxable supply;  
5 the parties to the arrangement are discharged from all liability to pay the  
6 GST liability amount to the supplier.