



20 November 2017

Manager  
Indirect Taxes and Not-for-profit Unit  
Individuals and Indirect Tax Division  
The Treasury  
Langton Crescent  
**PARKES ACT 2600**

By email: [GSTProperty@Treasury.gov.au](mailto:GSTProperty@Treasury.gov.au)

Dear Sir/Madam

**GST FROM PROPERTY TRANSACTIONS**

We refer to the Explanatory Material ("EM") attached to the Exposure Draft Treasury Laws Amendment (2017 Measures No.9) Bill regarding withholding GST on property transactions and make the following submission.

Our practice represents a number of private company property developers. We make the following submission with regards to the measures contained in the GST and real property transactions Exposure Draft (ED) Bill and EM.

At the centre of this proposal is the clear transfer of the costly process of tackling non-compliance with the GST law in the property development industry from the ATO to the taxpayer.

Our general comments regarding the measures are as follows:

- The compliance obligation is weighted against the property developer making the taxable supply.
- Unfairly penalises property developers with excellent compliance history who are targeted with this legislation because of a very small sector of the industry who are doing the wrong thing.
- Creates an additional administrative burden on the property industry taxpayer making the supply.
- No other industry group is denied the normal cash flow operations with regards to GST.
- Significant cash flow imposition on the supply of Land/House and Land packages where the Margin Scheme applies.
- There is significant administrative and accounting burden on operations. Not only ensuring another payment to be made at settlement and with the correct details but also the additional accounting and data entry processes to ensure this is reconciled.
- There will also be significant timing issues particularly around End of Month as payments will not be received and attributed to accounts in the same periods etc.

- Conveyancing costs, particularly agents attending settlement, will increase. Notices will have to be prepared and processes implemented to ensure they are given to purchaser 14 days in advance.
- Further cashflow consideration where the ATO may allocate refunds at the end of the periods to other debts owed by the entity.
- Delays by the recipient of the supply unduly penalise the taxpayer making the taxable supply
- Proposes to replace a small number of non-complying property developers with a significantly greater number of unknown, unregistered parties who are not familiar with the complexities of tax compliance obligations who must remit payments to the ATO.
- To circumvent this, property developers alongside their legal or conveyance agents will need to procure payment and ensure the payment is remitted to the ATO, something they likely have no control over.
- Current contracts afoot and standardised contracts for the conveyance of residential land do not contemplate the proposed legislation and offer no comfort to the vendor that moneys will be remitted to the ATO in a timely manner.
- The process is administratively cumbersome and costly for the property developer vendors.
- The process is administratively cumbersome and costly to the ATO.

#### **Specific comments:**

##### Sec 14.255

- i. The Section requires the taxpayer making the taxable supply to provide notifications to the 'other entity'. Referring to sub section (1)(b)(iii) it is beyond the taxpayer making the supply's personal knowledge to know this information.
- ii. The exposure draft does not contemplate the event of land becoming 'potential residential land' between the delivery of the 14 days notice and settlement. A potential solution is to allow for the notice to be amended up to the time of making the supply where the status of the land has changed

#### **Exposure Draft and Explanatory Memorandum**

1. Item 1.13 Explanatory Memo and Section 14-250 2 (a) (b) of Act Exposure Draft  
The definition of Potential Residential Land in Section 195-1 does not correctly encompass the commercial reality of land use.

"potential residential land " means land that it is permissible to use for residential purposes, but that does not contain any buildings that are \*residential premises. The definition includes any land that has been zoned for residential use under a law of a State or Territory, however this does not in itself ensure the land subject to the taxable supply is subsequently approved by the council for such use. We would recommend that the definition better encompass the commercial realities and suggest that a land title that is subject to a planning instrument by the local authority as per the Planning Act (QLD reference) better reflects the 'potential residential land' concept.

2. Item 1.44 Explanatory Memo and Section 18-60 1 (d) of Act Exposure Draft  
The entity will be entitled to a credit in a tax period only if another entity made a payment under section 14-250 in relation to the supply. The Taxpayer making the supply will be denied a credit during a period if the ATO has not received payment from settlement and attributed to the taxpayers ABN account. This often takes several days even with electronic payments. This will create a significant administrative burden reconciling these accounts each month along with even further cashflow consequences.

### **Recommendation**

We suggest the consideration of an option for the ATO to allow Property Developers with a good tax compliance history to apply for approval for GST to be remitted by the developer in the conventional manner, and that this approval is notified to the recipient and the recipient is relieved of their withholding obligation.

Kind regards

*Vicca Accountants*

### **Vicca Accountants**

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