New GST rules for property developers
GST withholding

From 1 July 2018, a GST withholding obligation will be imposed on purchaser of certain residential premises, including certain vacant land. Purchaser must withhold the ‘GST component’ of the sale price of affected land and pay it directly to the Commissioner instead of the seller. Transitional rules may apply for contracts signed prior to 1 July 2018.

**Affected Land**

Property developers will only be impacted by a GST withholding where they sell:

- newly constructed residential premises or
- potential residential land subject to subdivision plan, to affected purchasers.

The withholding rules apply to both sales and long term leases (generally, granted by government for 50 years or more).

**Rate of withholding**

The rate of withholding is fixed at 1/11th of the contract price, or 7 percent when the margin scheme applies to the sale and the purchaser is not an associate of the seller.

Purchasers must withhold these amounts from settlement funds and remit the amount directly to the ATO. So affected sellers will only ever receive the GST exclusive proceeds (or a proxy for margin scheme sales) at settlement.

The amount paid to the ATO will be credited against the seller’s GST liability in its BAS.

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**Newly constructed residential premises**

This includes ‘new residential premises’ within the meaning of the GST Act, excluding:

- premises that are treated as ‘new’ as a result of the substantial renovation of an existing building
  - e.g. a fully refurbished apartment block
- commercial residential premises.
  - e.g. a hotel

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**Potential residential land**

This is land which can be used for residential purpose but does not contain a residential dwelling, and is subject to withholding where it is:

- subject to a property subdivision plan and
- does not contain any building in use for a commercial purpose.
  - e.g. vacant land in a new land release

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**Affected purchasers**

The sale of potential residential land will only be subject to withholding if the purchaser is:

- not registered for GST
  - e.g. most individual home buyers
- not acquiring the property for a ‘creditable purpose’
  - e.g. an investor who intends to lease or sell the property as a residence
## Notification obligation

All sellers of residential premises and potential residential land are also required to issue a written notice to the purchaser before settlement unless:

- the premises are commercial residential premises or

- the purchaser is registered for GST and is acquiring the land for a creditable purpose (see discussion above).

The notice must contain the information specified in the GST Act, including the amount the purchaser must withhold and pay to the Commissioner of Taxation. Failure to issue the notice is a strict liability offence subject to penalties.

This means that in addition to land subject to the withholding, the notification obligation can apply to some land that is not affected by the GST withholding as summarised below.

<table>
<thead>
<tr>
<th>Example</th>
<th>Notification obligation?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Newly constructed residential premises • newly built homes and apartments</td>
<td>Yes</td>
</tr>
<tr>
<td>Potential residential land • vacant land in a new land release</td>
<td>Yes</td>
</tr>
<tr>
<td>Existing residential property • existing privately owned home</td>
<td>Yes</td>
</tr>
<tr>
<td>Substantially renovated residential premises • fully refurbished apartment block</td>
<td>Yes</td>
</tr>
<tr>
<td>Other vacant land • existing vacant lot not subject to a plan of subdivision</td>
<td>No</td>
</tr>
<tr>
<td>Commercial residential premises • hotel, motel, boarding house</td>
<td>No</td>
</tr>
<tr>
<td>Other • commercial • industrial • farm land (not subject to a plan of subdivision)</td>
<td>No</td>
</tr>
</tbody>
</table>