

NEWS ALERT 28.06.18

BEWARE

the new GST withholding regime

There are a number of unanswered questions surrounding the new GST withholding regime for sales of new or “potential residential land” which comes into effect on 1 July 2018.



One issue of concern is the confusion over what transactions are impacted by the regime. This is particularly the case with the lack of clarity on what exactly is “potential residential land”. There is also uncertainty about a seller’s eligibility for a refund where the GST amount has been incorrectly withheld by a buyer and paid to the ATO.

Here, partner Mark Lyons and lawyer Luke Hefferan take a look at some of the issues and recommend what steps you should take next.

BACKGROUND

In April this year, lawyer Luke Hefferan reported on the notice requirements for developers and how GST is to be collected and paid following settlements for contracts entered into after 1 July 2018, or for contracts entered into before 1 July 2018 which settle after 1 July 2020 ([click here](#)).

To date, the ATO has provided limited guidance about the implementation of these changes and the Law Companion Ruling (LCR) prepared by the ATO is still in draft.

POTENTIAL RESIDENTIAL LAND

The draft LCR considers property is not “potential residential land” where the land—

- contains an existing residential or commercial building which is currently in use (and whether something is a ‘building’ is a matter of fact and degree), or
- is vacant and is prohibited from being used as residential land by planning laws. However, land which is zoned to permit residential use, even if it is subject to local government requirements such as the grant or an approval or permit, will not be exempt from a requirement to withhold GST.

REFUND OF INCORRECTLY HELD GST

The explanatory memorandum released by the government confirms a supplier may apply for a refund, separate to the usual BAS process, for any payment of GST to the ATO made in error by the purchaser. However, the draft LCR contradicts this position and

indicates “the Commissioner is unlikely ... to refund any amount to the vendor if a purchaser incorrectly made a payment in respect of a non-taxable supply. The vendor will not be entitled to a credit but the purchaser may be entitled to a refund.”

These are just a small sample of the ambiguities which are unlikely to be resolved before the new regime commences on 1 July 2018. Currently, the property industry is grappling with how to best deal with these uncertainties until clarification is provided.

WHAT STEPS SHOULD YOU TAKE?

We recommend you seek specific legal and tax advice before entering into any contract potentially impacted by the new regime.

If you have any queries about the new GST withholding requirements and how it affects transactions entered into after 1 July 2018, please contact a member of our Real Estate team.



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