



## GST CHANGES ON NEW RESIDENTIAL PREMISES AND SUBDIVISIONS

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The Federal Government has recently released draft legislation that will shift responsibility for paying GST on new residential premises from developers to purchasers. The proposed legislation is being introduced to target 'phoenix operators', who collect GST from purchasers but then become bankrupt before remitting this GST to the Australian Tax Office ("ATO"). These unfortunate scenarios arise as developers are currently only obligated to pay the GST collected from customers to the ATO in the ordinary course of their business. From 1 July 2018 (providing the legislation is passed), purchasers will be required to retain the GST portion of the purchase price and pay this directly to the ATO.

### AFFECTED TRANSACTIONS

The changes to the withholding process will apply to:

- New residential premises; and
- 'Potential residential land'.

New residential premises include any residential premises that have been created through significant renovation, construction, or replacement of demolished premises, and have not previously been sold.

'Potential residential land' is drafted broadly to include any land which is legally possible to be used for residential purposes and on which no residential premises currently exist (i.e. newly subdivided residential zoned land).

### WITHHOLDING AND REMITTANCE PROCESS

The changes will see the collection and remittance of GST on affected transactions operate as follows:

- Developers must issue a withholding notice to purchasers 14 days prior to settlement;
- Purchasers are then required to pay the withheld GST amount (1/11th of the purchase price) to the ATO on or before the date the purchase price is paid;
- The developer then reports to the ATO with the GST amounts paid and will either receive a credit for the amount paid or a refund if it exceeds the actual liability.

Developers will also have new obligations to provide information to purchasers to enable them to determine whether the withholding applies (for example, to notify that the premises are 'new').

### IMPACT ON INDUSTRY

The new withholding regime will apply to transactions where the purchase price (excluding deposits) is paid on or after the 1 July 2018 with a two year transitional period for contracts entered into prior to 2018.

The changes to the withholding and remittance process will have a significant impact on developers cash flow

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margins as they may potentially have to wait up to three months after the transaction to recover any excess amounts owing to them.

From a buyer's viewpoint, these new obligations will greatly increase the complexity and risk of what should be a simple purchase of a new home.

For further information regarding these proposed changes, please contact **Paul O'Dea** of ClarkeKann's Property and Projects team.

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