

September 2018

GST withholding practical examples

This bulletin contains practical examples in question and answer format of how the purchaser GST withholding provisions work. For general information about the withholding requirements see the bulletin [Some purchasers required to withhold GST from 1 July 2018](#).

Contracts signed before 1 July 2018

Question 1

Our clients purchased off the plan residential premises pursuant to a contract of sale dated 10 May 2018. The plan is awaiting registration following lodgement on 20 August 2018. Settlement is to take place 14 days after receipt of notification of registration of the plan at the titles office.

Settlement will not take place on or after 1st July 2020.

Does the vendor have to provide written notice about withholding and does the purchaser have to withhold GST?

No, the vendor doesn't have to provide written notice, and the purchaser doesn't have to withhold GST.

Both the new GST withholding requirements in section 14-250 of schedule 1, *Taxation Administration Act 1953* (Cwlth) (the schedule) and the notifications requirements in section 14-255 of the schedule do not apply to contracts entered into before 1 July 2018 so long as the first payment of consideration, other than the deposit, is paid before 1 July 2020. In the case of a cash contract, that payment occurs at settlement. So, as long as settlement occurs before 1 July 2020, the purchaser withholding obligations do not affect this particular contract in any way.

Residential premises

Question 2

Do I have to give a notification for all residential premises even if the vendor is not registered?

Yes, notification is required if the contract is entered into on or after 1 July 2018, even where:

- the residential premises are old or existing or created by substantial renovation,
- the vendor is not registered for GST.

The only exception is if the property is commercial residential premises, or potential residential land where the recipient is GST registered and acquires for a partly or fully creditable purpose.

While a notification may be required, this doesn't mean the purchaser has to withhold GST. If the vendor is not registered (or required to be registered) for GST, the supply should not be a taxable supply, and no withholding should be required.

See the definition of [commercial residential premises](#) on the ATO website and [GSTR 2012/5](#) for further information about residential premises.

Question 3

My clients are selling their:

- principal place of residence,
- investment residential unit.

They have held the properties for more than ten years.

The contracts were signed on 1 July 2018. They are not registered for GST. Do they have to give a notification and is withholding required?

Notification

Yes, the vendor has to give a vendor notification pursuant to section 14-255 of the schedule, because the notification requirements apply to all contracts entered into on or after 1 July 2018 for residential property, including existing residential owner-occupied or investor properties, except commercial residential premises. This is required regardless of whether the vendors are registered or required to be registered for GST.

A suggested notification form can be found on the LPLC website at: <https://lplc.com.au/bulletins/some-purchasers-required-to-withhold-gst-from-1-july-2018/>

There is some debate about whether the notice needs to be signed by the vendor. The ATO has informed LPLC that:

The tax law doesn't require the notice to be signed, just that it is provided in writing.

Withholding

While a notification may be required, this doesn't mean the purchaser has to withhold GST. For a GST withholding payment to be required, the supply would have to be taxable. In this case, the vendor is not registered for GST, and both properties should qualify as existing residential property that is input taxed. As such, no withholding is required.

Question 4

My clients are selling a property they bought several years ago that has a rundown house on it that is no longer habitable. They had intended to knock the house down and build their family home but their circumstances have changed and they now want to sell the property. Is notification required? If yes, is any withholding required?

Notification

Yes, notification is required unless the purchasers are registered for GST and buying the property for a partly or wholly creditable purpose.

The land is potential residential land given that the dwelling is not habitable. Vendor notification pursuant to section 14-255 of the schedule will be required, depending on the characteristics of the purchaser:

- if the purchasers are registered for GST and buying for a partly or fully creditable purpose, no notification required;
- in all other cases – notification is required.

Withholding

While a notification may be required, this doesn't mean the purchaser has to withhold GST. For a GST withholding payment to be required, the supply would have to be taxable.

In order for the supply to be taxable, it would need to be made in the course or furtherance of their enterprise. Given the vendor's proposal was to build their own home for personal use, the property was not held, and won't be sold, in the course or furtherance of an enterprise, and will not be a taxable supply.

This means that no GST is payable and there is no withholding obligation.

For more information on when a vendor is required to be registered see the answer to question 9 below.

Farm land

Question 5

My client is selling 100-hectares of farming land they have farmed for more than five years. The property is zoned 'farming' and is vacant. Under the planning scheme it is possible to build a residence on land the size of this property.

The prospective purchaser has stated they intend to carry on a farming business after settlement. My client is registered for GST and the proposed purchaser is not. Do I have to give a supplier's notification and is withholding required?

Notification

Yes, the vendor has to give a vendor notification because while this land is potential residential land, the purchaser isn't registered for GST and isn't acquiring for partly or fully creditable purpose.

A suggested notification form can be found on the LPLC website at: <https://lplc.com.au/bulletins/some-purchasers-required-to-withhold-gst-from-1-july-2018/>

There is some debate about whether the notice needs to be signed by the vendor. The ATO has informed LPLC that:

The tax law doesn't require the notice to be signed, just that it is provided in writing.

Withholding

While a notification may be required, this doesn't mean the purchaser has to withhold GST. For a GST withholding payment to be required, the supply would have to be taxable.

Land used for a 'farming business' where the purchaser intends to carry on the farming business should qualify for the farming business exemption as GST-free under section 38-480 of the GST Act. As such, the supply should not be taxable, and no withholding obligations should arise.

Question 6

My client is selling a 30-hectare lot of farming land they have farmed for more than five years. The property is zoned 'farming' and is vacant (no buildings on it at all). Under the planning scheme you have apply for a permit to build a residence on farming land below 80-hectares.

The prospective purchaser has not said whether they intend to carry on a farming business after settlement. My client is registered for GST but I don't know about the proposed purchaser. Do I have to give a supplier's notification and is withholding required?

Notification

It's unclear whether vendor notification is required, because we don't know enough about the purchaser's characteristics and intentions with the property.

Vendor notification pursuant to section 14-255 of the schedule will be required if:

- the land is potential residential land;
- the purchaser is not registered for GST or is buying the land for a non-creditable purpose.

The property contains no buildings that are residential, but a residence could be built on the property, subject to a permit.

It is arguable that this land is potential residential land because the ATO ruling [LCR 2018/4](#) says:

28. Land will still be permissible to use for residential purposes even if that use is subject to local government requirements, such as obtaining approval or a permit. For example, it may be necessary to obtain local government development approval before a particular dwelling can be constructed. Despite the requirement for development approval, the residential zoned land is still land that is permissible to use for residential purposes.

29. 'Residential purposes' is not defined in the GST Act. It covers potential use of land for a residence or for residential accommodation. While 'residence' may suggest permanent or long-term occupation, 'residential accommodation' means living accommodation which does not require any degree of permanence of occupation.

As such, the question of whether notification is required will come down to whether the purchaser is registered for GST, and whether it is acquiring the property for a creditable purpose.

The vendor should make further enquiries with the potential purchaser to determine if they are registered for GST and what they intend to do with the land. If no further information is forthcoming, or there is any doubt, it is safer to issue a vendor notification.

A suggested notification form can be found on the LPLC website at:

<https://lplc.com.au/bulletins/some-purchasers-required-to-withhold-gst-from-1-july-2018/>

There is some debate about whether the notice needs to be signed by the vendor.

The ATO has informed LPLC that:

The tax law doesn't require the notice to be signed, just that it is provided in writing.

Withholding

While a notification may be required, this doesn't mean the purchaser has to withhold GST. For a GST withholding payment to be required, the supply would have to be taxable, and not be excluded because of the potential residential land requirements.

If the purchaser also intends to farm the property, the farming business exemption can be applied under section 38-480 of the GST Act so no GST is payable therefore no withholding is required, regardless of whether the purchaser is registered for GST. The vendor can rely either on written correspondence from the purchaser or a statement in the relevant contract regarding whether the purchaser intends to farm the property. See [LCR 2018/4](#).

If the vendor determines that the farming business exemption can't apply, and the sale is otherwise taxable, then whether a withholding obligation arises will depend on whether all the requirements in respect of potential residential land in section 14-250(2) of the schedule apply. Relevantly, a withholding obligation will arise if:

- the property qualifies as potential residential land
- the property is included in a property subdivision plan
- the property does not contain any building that is in use for a commercial purpose
- the purchaser is not registered for GST or acquires the property for a non-creditable purpose.

Question 7

The vendor purchased 200-hectares of separate crown allotments and applied to rezone all from rural to permit homes on separate allotments. My client is buying one vacant crown allotment. The vendor says they are not registered for GST and there is an existing title so no GST and no withholding. Is this right?

Withholding

Withholding under section 14-250 of the schedule, only applies to taxable supplies where it is the supply of:

- potential residential land if:
 - it is included in a property subdivision plan
 - it does not include a building in use for a commercial purpose,
 - the recipient is not GST-registered or acquires the property for a non-creditable purpose.

Property subdivision plan is defined in section 195 of the GST Act to mean a plan:

- (a) for the division of [real property](#) and
- (b) that is [registered](#) (however described) under an [Australian law](#).

Note: Examples are strata title plans and plans to subdivide land.

A crown allotment is not part of a plan of subdivision therefore one of the criteria for withholding is not met and no withholding is required.

Notification

The vendor still has a vendor notification obligation even if the property is not in a subdivision plan. Notification is required if the contract is entered on or after 1 July 2018, where the property is:

- residential premises including old, existing or created by substantial renovation
- land permissible for use for residential purposes that contain no buildings that are residential premises.

The only exception is if the property is commercial residential premises, or potential residential land where the recipient is GST registered and acquires for a partly or fully creditable purpose.

Vendor registration

Question 8

The vendor purchased 200-hectares of land on a property subdivision plan and applied to subdivide and rezone all from rural to permit homes on separate lots. My client is buying one vacant lot to build their own home. The vendor says they are not registered for GST and there is an existing title so no GST and no withholding. Is this right?

Although the vendor is not registered for GST, the activity associated with acquiring property for sale, preparing it for sale, and selling it, is an enterprise and the land will be considered trading stock.

In this situation, section 188-25 of the GST Act does not quarantine the proceeds of sale from turnover for purposes of the registration turnover threshold.

This means it is likely that the vendor is required to be registered, as the turnover will be more than \$75,000, and the supply will be taxable.

If the vendor is required to be registered for GST then the sale of vacant land will attract a GST liability.

This land is vacant potential residential land in a property subdivision plan and withholding is required under section 14-250 of the schedule unless the purchaser is registered for GST and acquires for a creditable purpose, even a partly creditable purpose. That is not the case here as the purchasers are buying to build a home, therefore withholding is required.

A compliant vendor notification is also required under section 14-255 of the schedule for the same reasons.

Question 9

I am acting for the purchaser of vacant residential land from a superannuation fund. The vendor's representative says the vendor is not registered for GST nor required to be therefore there is no withholding. Am I entitled to rely on the vendor's representatives assurances?

The purchaser should not rely on the vendor's assurances that no withholding is required as there is no exoneration available to a purchaser for failure to withhold in the case of potential residential land.

The purchaser will be required to withhold under section 14-250 of the schedule if:

- the vendor is registered or required to be registered
- the purchaser is not registered for GST or acquiring the property for a non-creditable purpose;
- the property is included in a property subdivision plan.

You can search whether the relevant vendor entity is registered for GST at:

<http://www.abr.business.gov.au/>.

Determining whether the vendor is required to be registered is the most difficult issue. As a starting point you should determine if the property is being held by a bare trust or the superfund trustees.

You might remind the vendor's practitioner of the requirements for registration.

- An entity's enterprise includes any and all activities of a business nature, even though quite diverse and unrelated in nature. It is not a requirement that the enterprise be one relating to dealings in land and is not judged on a property by property basis. GST turnover consists of current GST turnover and projected GST turnover and includes turnover from all sources other than salaries and input taxed turnover.
- If an entity's GST turnover is at or above the turnover threshold of \$75,000, the entity is required to be registered.
- Section 188-25 of the GST Act excludes the proceeds of realisation of a capital asset from projected GST turnover, so avoiding the situation where the proceeds of sale would otherwise trigger a requirement to be registered and a liability for GST.
- Whether the land is a capital asset or not depends on the vendor's purpose in acquiring the land. If their intention was to acquire it for later resale, then it is trading stock. Its value when marked for sale would form part of projected GST turnover and, presumably, take the client's turnover over the registration threshold.

If it is unclear whether the vendor is required to be registered you could:

- request a warranty and indemnity on this point. If the purchaser chooses to request a warranty and indemnity they need to understand the risks and costs of relying on them
- use the [complex form process](#) at the ATO;
- notify the vendor that you intend to withhold at settlement and then lodge the first of the [two recipient online notification forms](#) and this may result in the issue being addressed.