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20th November 2017

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

Dear Sir / Madam

RE: WITHHOLDING 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. Note that in the submission we reference the relevant clauses in the EM.

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.

General comments regarding the measures:

- Unduly weighted against the property developer making the taxable supply
- Unfairly penalises legitimate long-standing property developers with excellent compliance history who are targeted with this legislation because of a few which 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
- The bulk of residential property sales are of 'greenfield' projects and 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 cheque will be banked 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.
- Significant cash flow imposition
- We then also have the issue of the ATO taking the refunds at the end of the periods and attributing them to debts owed by the entity.
- Delays by the recipient of the supply unduly penalise the taxpayer making the taxable supply
- The compliance is weighted to the property developer making the taxable supply
- Proposes to replace a small number of non-complying property developers with an upwards of 100,000 purchasers of residential property 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

We request that Treasury pursue an alternative course of action to address the non-compliance by a few phoenix operators. These draft measures unfairly target property developers with good compliance history. A better system needs to be developed in consultation with the property industry.

Yours faithfully

TRASK LAND CORPORATION PTY LTD

A handwritten signature in black ink, appearing to read 'M Fox', written over the printed name.

Matthew Fox
Chief Financial Officer