



GST at settlement

- <https://www.ato.gov.au/Business/GST/In-detail/Your-industry/Property/GST-at-settlement/>
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- QC 55431

GST at settlement

On or after 1 July 2018, certain purchasers of new residential premises or potential residential land will be required to withhold an amount from the price of the supply for payment to us.

Note: When we refer to purchasers we are also referring to lessees under long-term leases.

The withholding amount is due on or before the day that consideration for the supply (other than a deposit) is first provided. If the contract is an instalment contract that will be the day the first instalment is paid otherwise it will be the day of settlement.

Suppliers will be required to assist their purchasers to comply by notifying them whether or not they have a withholding obligation on supplies of certain kinds of residential premises and potential residential land. Where there is a withholding obligation, the supplier must notify the purchaser of the amount they must withhold, when they must pay it to us, and of certain other particulars.

The amount a purchaser must withhold and pay to us is generally either:

- 1/11th of the contract price (for fully taxable supplies)
- 7% of the contract price (for [margin scheme](#) supplies), or
- 10% of GST exclusive market value of the supply (for supplies between associates for consideration less than GST inclusive market value).

Purchasers do not need to register for GST just because they have a withholding requirement.

Transitional arrangements apply to contracts entered into before 1 July 2018.

Find out about:

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See also:

- [How to pay](#)
- [GST property settlement online forms and instructions](#)
- [GST at settlement - a guide for purchasers and their representatives](#)
- [GST at settlement - a guide for suppliers and their representatives](#)
- [Video: GST withholding for certain taxable sales of property](#)[↗]
- ATO podcast – Tax inVoice – [Episode 4 – GST at settlement](#)
- [GST at settlement webinar](#)[↗]

Authorised by the Australian Government, Canberra

Background

The GST withholding obligation was announced in the May 2017 Federal Budget.

It is directed at non-compliance by property suppliers who sell properties for a price that includes the GST but who avoid remitting the GST by dissolving their businesses before their next BAS lodgment. This is a form of phoenixing.

Withholding obligation

- <https://www.ato.gov.au/Business/GST/In-detail/Your-industry/Property/GST-at-settlement/?page=2>
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A purchaser will have a withholding obligation if they are the recipient of a taxable supply, by sale or long term lease and they provide any consideration (other than a deposit) on or after 1 July 2018, of either:

- a new residential premises
- potential residential land included on a property subdivision plan.

Note: residential premises cease to be new residential premises if they have been used for a period of at least five years since they were constructed solely for

renting.

Transitional arrangements apply to contracts entered into before 1 July 2018.

See also:

- [Long term leases](#)
- [New residential premises](#)
- [Potential residential land](#)
- [Property subdivision plan](#)

Excluded supplies

There is no withholding obligation in respect of the following supplies of new residential premises or potential residential land:

- new commercial residential premises (for example hotels and motels)
- existing premises that have been substantially renovated
- potential residential land that contains a building that is currently in use for a commercial purpose – for example, a factory or shop being operated in an area where local zoning permits mixed use
- potential residential land supplied to a GST registered entity for a [creditable purpose](#).

Transitional arrangements for property contracts entered into before 1 July 2018

- <https://www.ato.gov.au/Business/GST/In-detail/Your-industry/Property/GST-at-settlement/?page=3>
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The new notification and withholding requirements do not apply to contracts:

- entered into before 1 July 2018
- where any consideration for the supply (other than a deposit) is provided before 1 July 2020.

There is also transitional relief for certain property development agreements (PDAs) between land owners and developers entered into prior to 1 July 2018.

Under these PDAs there may be an agreed distribution or 'waterfall' payment arrangement, which provides for how the consideration for the supply of the developed property is to be distributed amongst the land owner and other entities that have participated in the development. Typically PDAs make provision for how the supplier's GST liability is to be discharged. The transitional provisions are designed to ensure that parties to these pre-existing arrangements are not advantaged or disadvantaged by the introduction of the withholding obligation.

Important things to be aware of

- A deposit or security paid on exchange of contracts is not consideration for the supply (within the meaning of the GST law). A deposit becomes consideration when it is either released to the supplier or forfeited.
- The time when a contract is 'entered into' is based on general contract law. A contract for the sale of a property is not entered into before 1 July 2018 if there is only an option granted to buy or sell the property. In most cases it will be necessary to look at the date at which that option is exercised to work out whether the transitional arrangements apply or not.

Example 1: Transitional arrangements apply

On 11 May 2018, Rachael enters into a contract to purchase a new home unit from developer WatsonHomeCo for a contract price of \$650,000. Rachael pays a 10% deposit of \$65,000. The supply is not subject to the margin scheme.

Settlement occurred on 31 May 2019, at which time the balance of the contract price (\$585,000) was paid to WatsonHomeCo.

The transitional rules apply to the contract and, as a result, WatsonHomeCo is not required to give a notice about the withholding requirements to Rachael, and Rachael is not required to withhold an amount.

WatsonHomeCo will disclose their GST liability on the supply to us when they lodge their next BAS in July 2019.

Example 2: Transitional arrangements do not apply

Assume the same facts in example 1, except settlement occurs on 2 July 2020. The transitional rules would not apply.

WatsonHomeCo would be required to notify Rachael that she has to withhold \$59,090 (1/11th of \$650,000) and pay it to us at settlement.

Rachael would be required to lodge two online forms to us.

At settlement, on 2 July 2020, Rachael withholds and remits \$59,090 to us and pays WatsonHomeCo the balance of the contract price being \$525,910.

When WatsonHomeCo lodge their next BAS, the withheld amount of \$59,090 is credited against their GST liability on the supply.

Example 3: Transitional arrangements apply

Ben enters into a contract with Canny Developments on 22 June 2018 to purchase a new apartment for \$750,000 and pays a deposit of \$75,000. The margin scheme is not used.

Following delays in completing the development, settlement takes place on 15 March 2020 at which time Ben pays the balance of the contract price and releases the deposit.

Since the consideration paid under the contract (other than the deposit) is paid within the transitional period, Canny Developments is not required to give a notice about the withholding requirements to Ben and he is not required to withhold an amount.

Ben pays the purchase price to Canny Developments and Canny Developments discloses its GST liability on the supply to us at the time it lodges its next BAS.

Example 4: Transitional arrangements do not apply

Assume the same facts in example 3; except completion of the project and settlement is delayed by a further six months.

The first consideration paid under the contract (other than the deposit) therefore occurs on 15 September 2020.

As the first payment is made after 1 July 2020, Canny Developments will be required to provide Ben with a written notification that a withholding obligation applies. The notification must also state that the withholding amount is \$68,181 (1/11th of \$750,000) and that it must be paid to us at settlement.

Ben will be required to lodge two online forms to us. On settlement, Ben pays the withheld amount of \$68,181 directly to us to be credited to Canny Developments when it lodges its next BAS.

How the measure will work from 1 July 2018

- <https://www.ato.gov.au/Business/GST/In-detail/Your-industry/Property/GST-at-settlement/?page=4>
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Step 1: Supplier notification

Unless the purchaser has been notified in writing as to whether or not there is a requirement to withhold, a supplier must not supply, by sale or long-term lease, either:

- residential premises (new or old, not being commercial residential premises such as hotels or motels), or
- potential residential land to a purchaser who is not a registered entity acquiring the land for a creditable purpose.

If the purchaser does have a withholding obligation then the supplier must notify the purchaser of:

- the amount they must withhold
- when they must pay it to us
- certain other particulars such as the supplier's name and ABN.

See also:

- [Long term leases](#)
- [New residential premises](#)
- [Potential residential land](#)
- [Registered entity acquiring land for a creditable purpose](#)

Step 2: Lodge form one

If there is a withholding obligation then there are two online notification forms which the purchaser or their representative is required to submit:

- Form one is the [GST property settlement withholding notification](#)
- Form two is the [GST property settlement date confirmation](#)

Note: A purchaser can authorise a representative to lodge one or both forms on their behalf by providing the representative with a signed declaration.

Form one: GST property settlement withholding notification online form is the first form that is required to be lodged with us.

The form can be lodged at any time after the contract has been entered into and up until the due date for payment of the withholding amount.

Once the form is submitted an online confirmation screen will be displayed. A confirmation email will be issued automatically to the purchaser's (or their representative's) email address (if provided), or can be printed from the screen. The confirmation will provide a unique payment reference number (PRN) and a lodgment

reference number (LRN).

The PRN and LRN will be used to lodge the second form and the PRN will also be used to make the payment.

Step 3: Lodge form two and pay

Form two: GST property settlement date confirmation online form is to be lodged on or before the date of settlement. The purchaser or their representative must notify us (using the PRN and LRN) confirming property settlement date. This form is to confirm that settlement has occurred.

Payment can be made using the PRN, the purchaser will pay the withheld amount directly to us. The purchaser will receive an email confirmation once the payment is processed in their withholding account, as proof of payment for their records.

When we have processed the purchaser's withholding payment, we will notify the supplier by email of the GST property credit amount and the related property settlement. This is subject to the supplier having recorded an email address for their activity statement account.

A supplier can update their details online:

- using our [online services for individuals and sole traders](#) (you will need a myGov account linked to the ATO)
- through our [Business Portal](#)²⁷.

Step 4: Business activity statement (BAS)

The fact that a purchaser has a withholding obligation does not alter the supplier's obligation to lodge their Business activity statement (BAS) and report their GST liability (if any) in respect of the supply.

Once the supplier has lodged its BAS, the supplier will receive a credit for the amount the purchaser has withheld and paid to us.

Examples of withholding at settlement

Example: Withholding at settlement – new residential premises

BuildCo has developed an apartment block and is making taxable sales of new residential premises. The margin scheme does not apply.

On 14 September 2018, Kath enters into a contract for the purchase of a new apartment from BuildCo for a contract price of \$900,000 and pays a 10% deposit of \$90,000. As the margin scheme does not apply, Kath has a withholding obligation of 1/11th of \$900,000 (\$81,818).

Kath authorises her conveyancer to lodge the withholding forms on her behalf by providing her with a signed declaration.

The contract of sale incorporates the withholding notification that BuildCo is required to be provided to Kath. Kath's conveyancer uses the information in the notification to complete the GST property settlement withholding notification (Form one) online and she obtains a PRN and LRN.

Settlement occurs on 25 November 2018. At settlement, Kath's conveyancer:

- lodges the GST property settlement date confirmation (Form two) using the PRN and LRN
- pays the balance of the apartment purchase price to BuildCo of \$728,182 (\$900,000 less \$90,000 deposit less \$81,818 GST)
- pays the withheld amount of \$81,818 to us electronically.

BuildCo lodges their quarterly October to December business activity statement (BAS) reporting the full sale price at Label G1 and the GST payable at Label 1A. When the BAS is processed, BuildCo receives a credit of \$81,818 representing the amount withheld and remitted by Kath.

Example: Withholding at settlement – potential residential land

On 10 September 2018, LandCo discovers that the local council has recently made changes to its by-laws to allow for smaller lots in the area. To take advantage of the by-law change, LandCo purchases a vacant block of land with the intention of subdividing it into two lots. The block is zoned to allow residential use and does not contain any buildings.

LandCo registers the plan of subdivision and proceeds to make taxable supplies of both lots of vacant land.

On 25 September Landco enters into a contract to sell one of the lots to Nick for \$770,000 and Nick pays a 10% deposit of \$77,000 with the balance due at settlement. As the sale is not under the margin scheme and Nick is not carrying on an enterprise, Nick has a withholding obligation of \$70,000 (1/11th of \$770,000).

LandCo incorporates its withholding notification into the contract. This information enables Nick's solicitor to complete the GST property settlement withholding notification (Form one) online and obtain a PRN and LRN. Nick has provided his solicitor with a signed declaration authorising him to lodge the withholding forms on his behalf.

Settlement occurs on 21 November 2018. At settlement, Nick's solicitor:

- lodges the GST property settlement date confirmation (Form two) using the PRN and LRN

- pays the balance of the purchase price to BuildCo of \$623,000 (\$770,000 less \$77,000 deposit less \$70,000 GST)
- pays the withheld amount of \$70,000 to us using BPAY.

LandCo lodges their quarterly October to December Business activity statement (BAS) reporting the full sale price at Label G1 and the GST payable at Label 1A. When the BAS is processed, LandCo receives a \$70,000 credit for the amount withheld and remitted by Nick.

When the contract doesn't settle

- <https://www.ato.gov.au/Business/GST/In-detail/Your-industry/Property/GST-at-settlement/?page=5>
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If for some reason the contract does not settle, there is no obligation on the purchaser to withhold or lodge the second form – GST property settlement date confirmation online form.

That is because there is no withholding obligation if the supplier has not made a taxable supply of the property.

If the first form – GST property settlement withholding notification has already been lodged, the purchaser, or their representative, doesn't need to cancel this form.

No additional payment on top of the agreed purchase price

- <https://www.ato.gov.au/Business/GST/In-detail/Your-industry/Property/GST-at-settlement/?page=6>
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The obligation on the purchaser to withhold an amount and pay it to us isn't an additional payment on top of the agreed purchase price.

The purchaser is taken to have paid the supplier the amount that they withhold and remit to us.

Information for suppliers and their representatives

- <https://www.ato.gov.au/Business/GST/In-detail/Your-industry/Property/GST-at-settlement/?page=7>
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Unless the purchaser has been notified in writing as to whether or not there is a requirement to withhold, a supplier must not supply, by sale or long-term lease, either:

- residential premises (new or old, not being commercial residential premises such as hotels or motels), or
- potential residential land to a purchaser who is not a registered entity acquiring the land for a creditable purpose

If the purchaser does have a withholding obligation then the supplier must notify the purchaser of:

- the amount they must withhold
- when they must pay it to us
- certain other particulars such as the supplier's name and ABN.

You may incorporate the notification in the contract of sale or lease, or you can provide it to the purchaser in a separate notice.

If you are unsure of the correct GST treatment of the supply you are making, it is recommended you seek advice from us, or your tax professional to avoid unintended consequences.

Conveyancers and real estate agents are not able to provide GST advice unless they are registered tax or BAS agents.

See also:

- [GST at settlement - a guide for suppliers and their representatives](#)
- [Long term leases](#)
- [New residential premises](#)
- [Potential residential land](#)
- [Registered entity acquiring land for a creditable purpose](#)

Information for purchasers and their representatives

- <https://www.ato.gov.au/Business/GST/In-detail/Your-industry/Property/GST-at-settlement/?page=8>
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You will have a withholding obligation if you are the recipient of a taxable supply, by sale or long-term lease of either new residential premises, or potential residential land included on a property subdivision plan and you provide any of the consideration (other than a deposit) on or after 1 July 2018.

There are exclusions to the withholding obligations.

Note: residential premises cease to be new residential premises if they have been used solely for renting for a period of at least five years since they were constructed.

You will be required to withhold an amount from the price and pay the amount to us.

Your conveyancer or solicitor should be able to assist you gather the information you require to:

- submit Form one: [GST property settlement withholding notification](#) online prior to settlement to obtain a PRN and LRN
- submit Form two: [GST property settlement date confirmation](#) online to confirm settlement has taken place
- pay the withholding amount to us.

If you are unsure of the correct GST treatment of the supply, it is recommended you seek advice from us, or your tax professional to avoid unintended consequences.

Conveyancers are not able to provide GST advice unless they are a registered tax or BAS agent.

If you authorise a representative to lodge the forms on your behalf then you are required to provide them with a signed declaration.

See also:

- [GST property settlement online forms and instructions](#)
- [How to pay](#)
- [GST at settlement - a guide for purchasers and their representatives](#)
- [Long term leases](#)
- [New residential premises](#)
- [Potential residential land](#)
- [Property subdivision plan](#)

Glossary

- <https://www.ato.gov.au/Business/GST/In-detail/Your-industry/Property/GST-at-settlement/?page=9>
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Residential premises

- At its simplest, residential premises are premises containing basic living facilities that are fit for human occupation as residential accommodation.
- The sale, or [long term lease](#), of residential premises is input taxed except for two specific classifications of residential premises
 - new residential premises (for example, houses, apartments and villas)
 - commercial residential premises (for example, hotels, motels and hostels).
- if residential premises are input taxed it means that you don't charge GST if you sell it, and you can't claim back GST if you buy it, even if registered for GST.

See also:

- [Residential premises](#)

New residential premises

New residential premises are residential premises where any of the following apply to the premises:

- they have not previously been sold (or subject to a long term lease) as residential premises
- they have been created through substantial renovations (but note new residential premises of this kind are excluded from the withholding obligation)
- they are new buildings which have been built to replace demolished buildings on the same land.

Note: residential premises cease to be new residential premises if they have been used solely for renting for a period of at least five years since they were constructed.

See also:

- [New residential premises](#)

Potential residential land

Potential residential land is land that it is permissible to be used for residential purposes but does not contain any buildings that are residential premises (for example houses and strata units).

Local government zoning may permit a mixture of residential or commercial use but that is still considered potential residential land.

Supplier

The supplier is the entity(s) that is taken to have made the supply for the purposes of the GST law. This may or may not be the vendor under the contract or the registered proprietor on the certificate of title.

Purchaser

The purchaser is the entity(s) that is taken to be the recipient of the supply for the purposes of the GST law.

If the supply is a sale it is the entity that is buying the property or, if the supply is a long-term lease, it is the entity that is leasing the property.

Purchaser's or supplier's representative

Depending on which State or Territory the property is located in, the purchaser's or supplier's representative for the conveyancing process can include a:

- licenced conveyancer
- solicitor

Note: Some jurisdictions may allow DIY conveyancing.

Contract price

In most cases, the contract price is the GST inclusive price of the supply as listed in the contract. The contract price may be varied by the parties before completion.

The contract price is normally used for calculating the amount a purchaser needs to withhold from the supplier and remit to us. Using the contract price for this calculation provides certainty. Normal settlement day adjustments can be disregarded (for example, disbursements paid to reflect apportionment of council rates, water rates, etc).

Price of the supply

The price of the supply is usually the contract price but in certain circumstances the price of the supply may also include non-monetary consideration (for example, land swaps).

If that is the case, the amount to be withheld by the purchaser needs to be calculated using the total consideration for the supply, and not just the monetary amount listed as the contract price.

There are special rules for calculating the withholding amount where the contract is between associates and the contract price is less than the GST inclusive market value of the property.

Long term leases

Long term lease means a supply by way of lease, hire, or licence (including a renewal or extension of a lease, hire or licence) for at least 50 years if:

- at the time of the lease, hire or licence, or the renewal or extension of the lease, hire or licence, it was reasonable to expect that it would continue for at least 50 years
- unless the supplier is an [Australian government agency](#) – the terms of the lease, hire or licence, or the renewal or extension of the lease, hire or licence, as they apply to the [recipient](#) are substantially the same as those under which

the supplier held the premises.

Property subdivision plan

A property subdivision plan means a plan for the division of real property that has been registered under an Australian law. For example, strata plans, community plans or subdivision plans registered with the relevant State or Territory Land Title Office.

Registered entity acquiring land for a creditable purpose

An entity will acquire property for a creditable purpose if they are registered for GST and they acquire it, to any extent, in carrying on an enterprise and the acquisition is not related to making input taxed supplies or of a private or domestic nature.

Note, a purchaser under the margin scheme may acquire property for a creditable purpose although it isn't a creditable acquisition.

You can check whether an entity is registered for GST by searching the [Australian Business Register](#)²³. You can rely on a copy of the search on a relevant date.

You can rely either on written correspondence from an entity, or a statement in the relevant contract, as to whether the entity is acquiring the land for a creditable purpose.

More information

- <https://www.ato.gov.au/Business/GST/In-detail/Your-industry/Property/GST-at-settlement/?page=10>
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Law companion rulings

[Law companion ruling LCR 2018/4](#) describes how we apply the law.

Legislation

On 29 March 2018 the [Treasury Laws Amendment \(2018 Measures No. 1\) Bill 2018](#) received royal assent.

Online forms and instructions, how to pay and guides

The following information is available to help you meet your obligations:

- [GST property settlement online forms and instructions](#)
- [How to pay](#)
- [GST at settlement - a guide for purchasers and their representatives](#)

- [GST at settlement - a guide for suppliers and their representatives](#)
- [GST and property](#)
- [GST and the margin scheme](#)

Feedback

We are open to feedback or improvements in relation to website guides for suppliers and their representatives and purchasers and their representatives. Consultation is open until Friday 7 September 2018 via [Let's talk](#)^{EQ}.

Our commitment to you

We are committed to providing you with accurate, consistent and clear information to help you understand your rights and entitlements and meet your obligations.

If you follow our information and it turns out to be incorrect, or it is misleading and you make a mistake as a result, we will take that into account when determining what action, if any, we should take.

Some of the information on this website applies to a specific financial year. This is clearly marked. Make sure you have the information for the right year before making decisions based on that information.

If you feel that our information does not fully cover your circumstances, or you are unsure how it applies to you, contact us or seek professional advice.

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