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

Dear Sir/Madam

### **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.

1. We refer to clause 1.4 of the EM and note that the ATO states that tackling the non-compliance with GST laws within the property development industry is labour intensive, costly to undertake and sustain.

We note that this submission purports to transfer this labour intensive and costly process to the majority of tax payers that are currently managing their tax affairs correctly. We object to the Treasury Laws Amendment (2017 Measures No.9) Bill 2017 based on the points as submitted below:

2. Clause 1.9 states that where an entity makes a taxable supply of new residential premises or a new subdivision of potential residential land, the purchaser will be required to make a payment of 1/11<sup>th</sup> of the consideration directly to the ATO. We note that this is detrimental to clients within this industry and causes a cash flow issue that clients in other industries are not subject to.
3. Clause 1.10 notes the following requirements for the Vendor:

Suppliers of residential premises or potential residential land must provide an entity that receives the supply with a notification 14 days before making the supply.

In order to provide the required information there is a substantial administrative burden on suppliers of residential premises or land to track the time-frame for reporting and to provide the appropriate information. Currently a supplier of residential land remits GST in the month or quarter which it is due with set dates as per the ATO lodgement program to report this information. Under the suggested Bill a supplier of residential land will need to provide notification to purchasers on numerous different dates in order to meet the 14 day notification period requirements.

This reporting requirement imposes a substantial additional tracking and reporting requirement on vendors.

Clause 1.10 notes the following further requirement for the Vendor:

Where a supply of residential premises is made under the margin scheme, the supplier may apply to the ATO for a refund of a portion of the amount withheld by the purchaser.

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This clause causes a cash flow impediment to taxpayers who are fulfilling their tax obligations correctly. Under the suggested method as per the EM the ATO is overpaid and then the vendor incurs additional time and funds to request a refund.

We note that the process of requesting a refund from the ATO is a further administrative burden to the taxpayer and an additional impost to their cash flow. We note that both the time and the cost to deal with the ATO in relation to the request of refunds and providing all necessary information can be substantial. For the majority of clients, the process of requesting refunds and liaising with the ATO is undertaken by the external Accountant imposing an additional level of cost to the vendor.

4. We refer to clause 1.18 and note that where consideration under a contract is paid by instalments, the intention is that the purchaser will instead have to make a payment by the end of the day that they make the first instalment payment. This clause imposes additional complexity and further reporting time frames that the vendor is required to schedule into their obligations.
5. We refer to clause 1.23 where the EM states that having a fixed amount of 1/11<sup>th</sup> of the purchase price simplifies compliance for purchasers. Although this may simplify the compliance for the purchaser we note that this is not the case for the vendors. They still have the onus to provide the required information as per the EM. This information being additional to their current reporting requirements.
6. We refer to clause 1.24 in relation to single contracts that may be for a composite supply which includes a taxable supply to which the withholding obligation applies. The requirement to determine at the time of consideration the split of the supply places a further administration burden and cost on the vendor. In some cases the vendor will again not be able to do this without assistance from their external accountant imposing a further cost each time a supply is entered into that is caught by this clause.
7. We refer to clause 1.27, 1.28 and 1.30 and note the additional work imposed on the vendor in order to comply with these time frames including tracking their dates in relation to provision of the information and providing the information in the correct format.
8. We refer to clause 1.31 and 1.36 and note that a vendor could be liable for penalties for failing to give the required notice in writing to the purchaser. We note for clients in the business of property development and subdivision with numerous settlements taking place the EM imposes a substantial additional amount of work and increases their potential to be liable for a penalty despite their best efforts to comply with the legislation.

The non-compliance by some within the Industry has resulted in substantial additional reporting requirements for all taxpayers in the industry which can result in a potential penalty being imposed if reporting dates are accidentally missed. Those vendors already complying with the GST & Tax reporting requirements will continue to do so but at a substantially increased cost under the proposed changes.

9. We refer to clauses 1.43, 1.44 and 1.45 and note that these clauses force the vendor to undertake more detailed reconciliations of their GST liability on an on-going basis in order to reconcile their GST. Again this is a further cost to the vendor, an added layer of complexity and potentially requires additional liaising with the ATO in relation to confirmation of credits to ensure GST is reported and reconciled accurately.
10. Under Clause 1.48 we note that the vendor will suffer a cash-flow impact from the proposed rules both from the withholding requirement and also the impact from remitting 1/11<sup>th</sup> in cases where this is not required as a result of the margin scheme ( per clause 1.49). The further complication of applying for a refund of the amount of GST under the margin scheme imposes both additional administrative and financial burdens as referred to above. The process of liaising with the ATO in relation to these types of matters, can be incredibly time consuming and frustrating.

Again it is the Vendor's external accountant that would be liaising with the ATO in relation to the application for the refund which would result in additional increased costs.

11. Clause 1.50 imposes a further obligation on the vendor to apply for refunds in an instance where a purchaser has withheld in error. Again the process of dealing with the ATO in relation to an event like this is time consuming, costly and impacts cash flow.
12. Clients within the property development industry that are currently fulfilling their taxation obligations are being substantially discriminated against by the potential introduction of the Bill. The current costs to the ATO as a result of the additional labour required to follow up non compliers is being forced onto the balance of clients within this Industry who are complying with their requirements.
13. We note that clients in other industries are not suffering an impact to their cash flow as a result of having GST remitted directly to the ATO. The administrative and cash flow impacts will need to be passed on to the end user and consequently will have a bearing on future land prices and housing affordability which is already a major issue for many Australians.

We suggest that Treasury considers an option whereby those with a good compliance history aren't affected by the actions of others:

- Well established Property Developers with a good tax history can apply for an exemption to this regime each year.
- Once an exemption is granted, the developer provides the exemption notice to the purchaser prior to settlement so that settlement can take place without remitting the GST directly to the ATO.
- Exemptions be made available on line so purchasers can clearly see that they are buying from a well-established and reputable company with an exemption.

We hereby object to the terms of the Exposure Draft Treasury Laws Amendment (2017 Measures No.9) Bill and request that Treasury pursue a course of action to tackle the non-compliers that is not to the detriment of those complying with their taxation obligations.

Regards



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DIRECTOR