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### **Improving the GST on Property Transactions**

The Property Council welcomes the opportunity to provide comments on *Treasury Laws Amendment (2017 Measures No. 9) Bill 2017* (the ED).

We understand the proposed GST withholding regime is an integrity measure intended to address situations where property developers collect GST on the purchase price of a supply but dissolve their business before the GST liability is due (known as “phoenixing”).

We support the objective of the measure in seeking to reinforce the rule of law and protect competitive neutrality in the property sector and the wider economy. But the introduction of any integrity measure should be targeted to avoid causing significant disruption and creating inherent risk for the rest of the industry that is already meeting its tax obligations.

We appreciate the consultative approach Treasury has undertaken in designing the GST measure and particularly welcome the two-year transitional period for contracts entered into prior to 1 July 2018.

While we have had limited time to fully ventilate the potential impacts of the proposed GST measure given the two-week consultation period, the initial feedback from industry is that there are many policy and drafting issues that will need to be resolved before legislation can be introduced into Parliament. Our current issues log is attached.

In addition to the amendments that will need to be made to the legislation to ensure it operates as intended, we wanted to draw the following critical issues to your attention:

1. **Potential impact on residential development costs** – the proposed measures will have an adverse cash-flow impact on developers as acknowledged in the explanatory memorandum. This cash-flow impact will need to be financed, which will increase the overall cost of residential developments. This higher cost will either be borne by the developer or passed on to the purchaser.

2. **Residential settlements will depend on ATO systems functioning perfectly** – developers will need confirmation that the GST has been appropriately paid to the ATO on their behalf before they hand over legal title and finalise settlement of residential property sales.

Any disruption or failure of the ATO systems to provide payment confirmation to the developer and purchaser will hold up settlements – this will have significant impacts for developers and financiers. More importantly, it will adversely impact ordinary Australians, including first home buyers.

Given the outages that have recently occurred to ATO systems and the anticipated volumes of settlements that will take place simultaneously, significant pressure will be placed on ATO systems creating inherent risk for residential property settlements.

3. **Proposed regime could result in windfall gains for landowners participating in Project Delivery Agreements (PDAs)** – without an appropriate transitional solution for pre-existing PDAs, the GST withholding regime creates potential windfall gains to a landowner to the detriment of a developer. This could adversely impact billions of dollars of future residential stock to be delivered under PDA arrangements. We have separately provided a submission on this issue.

These adverse impacts would all be alleviated if compliant taxpayers, who are not the target of this measure, could apply to the ATO for a clearance certificate and not be subject to the GST withholding regime. This could easily be incorporated into the conveyancing process, similar to the approach that has been undertaken in relation to the CGT withholding regime.

The clearance certificate process could be based on the criteria that already apply for taxpayers to use the GST deferral scheme in the GST Act, under which taxpayers are not required to pay GST at the time goods are cleared for importation but instead such GST liability is included in their monthly BAS with their other GST liabilities. Clearance certificates or exemptions for residential property developers that meet certain criteria has also been adopted for other measures, including under the FIRB regime and state foreign investor tax surcharges.

We look forward to continuing to work with Treasury and ATO to ensure the GST regime is implemented in a practical and efficient manner. We would support extending the consultation period to provide sufficient time to ensure the legislation accords with the policy intent and does not give rise to unintended consequences.

We would welcome the opportunity to discuss these issues with you further. Please contact either Belinda Ngo (02 9033 1929) or Glenn Byres (02 9033 1952).

Yours sincerely



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