

# ***LCR 2018/D1 - Purchaser's obligation to pay an amount for GST on taxable supplies of certain real property***

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This document has been finalised by LCR 2018/4.



## **Purchaser’s obligation to pay an amount for GST on taxable supplies of certain real property**

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### **Relying on this draft Ruling**

This Law Companion Ruling is a draft for consultation purposes only. When the final ruling issues, it will have the following preamble:

*This Ruling describes how the Commissioner will apply the law in Schedule 5 of [Treasury Laws Amendment \(2018 Measures No. 1\) Act 2018](#).*

*If you rely on this Ruling in good faith, you will not have to pay any underpaid tax, penalties or interest in respect of matters covered by the Ruling if it does not correctly state how a relevant provision applies to you.*

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<b>Table of Contents</b>	<b>Paragraph</b>
What this draft Ruling is about	1
Date of effect	5
Purchaser liability for certain taxable supplies of new residential premises	10
Purchaser liability for taxable supplies of certain potential residential land	11
<i>Potential residential land</i>	15
<i>Property subdivision plan</i>	24
Determining kinds of supplies to which the payment liability does not apply	27
When the amount of tax must be paid	29
<i>Deposits</i>	31
<i>Instalment Contracts</i>	35
Amount to be paid	36
Notification requirements	46
Penalties for vendors and purchasers	54
Amounts incorrectly paid to the ATO by the purchaser	61
<i>Examples</i>	63
<i>Example 1 - New residential premises with purchaser payment</i>	64
<i>Example 2 - Potential residential land with purchaser payment</i>	66
<i>Example 3 - Potential residential land with no notification and no purchaser payment</i>	68
<i>Example 4 - Instalment contract sale with first payment a deposit</i>	70

<i>Example 5 - Instalment contract sale with first payment not a deposit</i>	73
<i>Example 6 - Section 14-250 only partly applies</i>	75
<b>Your comments</b>	<b>77</b>

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### **What this draft Ruling is about**

1. Schedule 5 of *Treasury Laws Amendment (2018 Measures No. 1) Act 2018* (the Act) introduces provisions that require a purchaser of certain types of real property to make a payment to the Commissioner that represents the GST payable by the vendor. As a consequence, the purchaser then does not have a liability to the vendor for that amount.
2. Subject to certain exclusions a purchaser's liability arises on taxable supplies by way of sale or long-term lease of certain new residential premises, or certain potential residential land that is included in a property subdivision plan.
3. The vendor will then be entitled to a credit for the amount paid to the Commissioner by the purchaser. The credit arises when the vendor's net amount is assessed on its GST return.
4. This draft Ruling explains:
  - the date from which the new measures will apply
  - the types of supplies for which a liability will arise for purchasers
  - when a purchaser is required to pay
  - the amount the purchaser is required to pay
  - the requirement for a vendor to provide a notice to the purchaser, and
  - the penalties that may apply to vendors and purchasers.

### **Date of effect**

5. It is proposed that this draft Ruling will be finalised as a public ruling, effective from 1 July 2018.
6. The Act applies to supplies for which any of the consideration is first provided on or after 1 July 2018. It applies whether a contract for the supply was entered into before, on or after commencement of the measure.
7. The Act contains an exception to this rule so that, if a contract for a supply was entered into before 1 July 2018, the purchaser will not be required to make a payment to the Commissioner on the supply if consideration for the supply is first provided before 1 July 2020.
8. Where the parties enter into a contract for the sale of land through an exchange of contracts, the Commissioner will accept that the contract was entered into prior to 1 July 2018 if the contracts were exchanged between the parties prior to 1 July 2018. Where a contract is entered into by the purchaser and vendor in turn executing two copies of the contract, the Commissioner will accept that the contracts were entered into prior to 1 July 2018 if the vendor communicated their execution of the contract to the buyer prior to 1 July 2018. The measures will not apply to these contracts provided the consideration for the supply is first provided before 1 July 2020.

9. A contract for the sale of property is not entered into before 1 July 2018 if there is only an option in the nature of an irrevocable offer to purchase or sell the property granted before that date. In those cases it will be necessary to look at the date at which the option is exercised.

### **Purchaser liability for certain taxable supplies of new residential premises**

10. A purchaser may have a GST liability under section 14-250<sup>1</sup> where it purchases 'new residential premises'. The term 'new residential premises' has the meaning given by section 40-75 of the GST Act. Section 14-250, however, does not apply to a supply of new residential premises that have been created through substantial renovations. Nor does it apply to a supply of 'commercial residential premises'.<sup>2</sup> Further guidance on what 'new residential premises' are can be found in Goods and Services Tax Ruling GSTR 2003/3 *Goods and services tax: when is a sale of real property a sale of new residential premises?*. Guidance on what 'residential premises' are can be found in Goods and Services Tax Ruling GSTR 2012/5 *Goods and services tax: residential premises*.

### **Purchaser liability for taxable supplies of certain potential residential land**

11. A purchaser may also have a GST liability under section 14-250 if:

- the property is '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, and
- the purchaser is not registered for GST or does not purchase the property for a creditable purpose.

12. A purchaser who is registered and purchases potential residential land under the margin scheme is not making a creditable acquisition under section 75-20 of the GST Act. However, the purchaser may still acquire the property for a creditable purpose and therefore section 14-250 may not apply in those circumstances.

13. A purchaser will be acquiring the property for a creditable purpose if they have a creditable purpose to any extent.

14. Whether a supply is of potential residential land included in a property subdivision plan is determined at the time of settlement of the contract.

### **Potential residential land**

15. 'Potential residential land' is defined in section 195-1 of the GST Act to mean 'land that it is permissible to use for residential purposes, but that does not contain any buildings that are \*residential premises'.

16. It is permissible to use land for residential purposes if the land use and planning laws that apply to the land allow residential use of the land. It is not permissible to use land for residential purposes if the land use and planning laws that apply to the land prohibit residential use of the land. Where the land use and planning laws permit a number of uses for the land, one of which is residential use, then the land will be potential residential land.

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<sup>1</sup> All legislative references in this draft Ruling are to Schedule 1 to the *Taxation Administration Act 1953*, unless otherwise stated. References to the 'GST Act' are to the *A New Tax System (Goods and Services Tax) Act 1999*.

<sup>2</sup> Subsection 14-250(2)(a).

17. Land use and planning laws typically categorise land by zones. These define the potential uses of the land and say what the land may be used for.

18. For example, residential zonings typically allow 'dwelling use', meaning the land may be used for residential purposes. Commercial or business zoning may also permit use of land for residential purposes. Similarly, agricultural or rural zoning may allow use of land for a residential purpose like a residence on farmland. On the other hand, land may be zoned for industrial use which may prohibit, or not permit, use of the land for residential purposes.

19. Whether it is permissible to use land for residential purposes is not determined by any restrictions imposed by a land owner, for example, by way of a permitted use under a lease or covenant.

20. Land will still be land that is permissible to use for residential purposes even if the use of the land for residential purposes is subject to local government requirements, such as the grant of an approval or permit. For example, for land in a residential zone 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.

21. '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.<sup>3</sup>

22. The definition of 'potential residential land' excludes land 'that contains any buildings that are \*residential premises'. In addition section 14-250 does not apply where the land contains any building that is in use for a commercial purpose. What will be a 'building' depends on statutory purpose and context. Whether or not something is a 'building' which may satisfy subparagraph 14-250(2)(b)(ii) is a matter of fact and degree. To be a 'building' there must be a substantial structure having a roof, floor and walls which provides protection from the elements. It must be of sufficient permanence, and be installed on and integrated to the site in question. Prefabricated and transportable structures may qualify, but a common metal shed without more does not meet these requirements.

23. A building must also be 'in use for a commercial purpose'. This means that there must be a current, actual and ongoing 'use' established as a matter of fact, and that the use demonstrated is objectively 'for a commercial purpose' taking into account all the circumstances. If the building is not in use for a commercial purpose, section 14-250 may apply. Further assistance and guidance on these issues may be sought from the ATO on a case by case basis.

### **Property subdivision plan**

24. 'Property subdivision plan' is defined in section 195-1 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.

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<sup>3</sup> See *South Steyne Hotel Pty Ltd v. Commissioner of Taxation* [2009] FCA 13 at [35]-[39] and GSTR 2012/5 at paragraphs 74-75.

25. State and Territory laws provide for registration of plans relating to subdivision of land.<sup>4</sup> These plans may be referred to as a survey plan or plan of survey, which in some jurisdictions is referred to as a deposited plan once registered. Plans like strata plans and community plans may also be registered. Broadly, a new plan is required if the division or physical description of a parcel of land is changed, for example, because of subdivision.

26. A parcel of land is 'included in a \*property subdivision plan' if it is described or identified in a registered plan of this kind. For example, if an entity is developing a parcel of land by subdividing the land into a number of smaller lots, those smaller lots will be 'included in a property subdivision plan' when the plan describing the newly subdivided lots is registered.

### **Determining kinds of supplies to which the payment liability does not apply**

27. The Commissioner may determine by legislative instrument that the requirement to make a payment does not apply to certain kinds of supplies of new residential premises or potential residential land. Where the Commissioner makes a determination the vendor will be liable to pay GST in the ordinary way.

28. It is expected that the need for any determination will emerge from the practical application of the new provisions to diverse factual circumstances across different statutory regimes. To be consistent with the statutory purpose, it would only be appropriate to exclude kinds of supplies if there is no risk of 'phoenixing'. Two situations where this might arise are under government affordable housing schemes where the purchaser may make small annual payments over many years that are not known at the time of settlement, or where certain development arrangements involve only non-monetary consideration.

### **When the amount of tax must be paid**

29. The purchaser must pay the amount of tax to the ATO on, or before, the day on which any of the consideration is first provided for the taxable supply.<sup>5</sup> In most cases this will require the purchaser to pay the GST on, or before, the day of settlement.

30. An exception to this rule exists where a supply is between associates for no consideration, in which case the payment must be made on, or before, the day on which the supply is made. The Commissioner may also determine by legislative instrument another day for payments to be made by. The determination may also provide for amounts to be paid in instalments.<sup>6</sup>

### **Deposits**

31. A purchaser will not have to pay an amount under section 14-250 at the time that they pay a genuine deposit.<sup>7</sup>

32. The purchaser will also not have an obligation to make a payment under section 14-250 if the deposit is forfeited.

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<sup>4</sup> For example, see: *Land Title Act 1994* (Qld) Division 3; *Conveyancing Act 1919* (NSW) Part 23 Division 3; *Land Titles Act 1925* (ACT) section 64; *Transfer of Land Act 1958* (Vic) sections 95 and 97; *Land Titles Act 1980* (Tas) sections 11, 17A and 162; *Real Property Act 1886* (SA) Part 19AB Division 2; *Transfer of Land Act 1893* (WA) section 166 and *Planning and Development Act 2005* (WA) section 146; *Land Title Act* (NT) Part 4 Division 3.

<sup>5</sup> Subsection 14-250(4).

<sup>6</sup> Subsection 14-250(5).

<sup>7</sup> The Commissioner explains the meaning of a genuine deposit for the purposes of Division 99 of the GST Act in Goods and Services Tax Ruling GSTR 2006/2 *Goods and services tax: deposits held as security for the performance of an obligation*.

33. If the deposit is not a genuine deposit, it will be treated as part of the consideration for the supply. This means the purchaser may be required to make a payment under section 14-250 on, or before, paying the deposit to the vendor.

34. Otherwise the obligation to make a payment under section 14-250 arises on the first payment of any consideration that is provided other than as a deposit. Provided no other consideration has been provided, the purchaser will usually have to make a payment under section 14-250 on, or before, settlement when the balance of the purchase price is paid.

### ***Instalment contracts***

35. Other than the provision of a genuine deposit, the first payment under an instalment contract will be the first day on which any of the consideration for the supply is provided. Therefore, the purchaser must make a payment under section 14-250 on, or before, the day they provide this first instalment payment.

**Amount to be paid**

36. The amount to be paid by the purchaser is generally 1/11<sup>th</sup> of the ‘contract price’. However, there are some situations where the amount will be different. These are summarised in the following table.

<i>If:</i>	<i>Then the amount to be paid by the purchaser is:</i>
None of the following circumstances in this table apply (that is, the <b>general rule</b> )	1/11 <sup>th</sup> of the ‘contract price’ or ‘price’ <sup>8</sup>
The <b>margin scheme</b> applies to the supply <sup>9</sup>	7% of the ‘contract price’ or ‘price’ <sup>10</sup>
The supply is between <b>associates</b> and is without consideration or is for consideration that is less than the GST-inclusive market value of the supply <sup>11</sup>	10% of the GST-exclusive market value of the supply <sup>12</sup>
(a) The supply is only <b>partly a supply of new residential premises or potential residential land to which section 14-250 applies</b> , and  (b) it is practicable to ascertain the portion of the consideration that relates to the supply of new residential premises or potential residential land to which section 14-250 applies when consideration is first provided	A ‘reduced amount’ which is the proportion that relates to the supply to which section 14-250 applies of the amount otherwise determined in the relevant circumstance of this table
There are <b>multiple recipients</b> (not joint tenants)	For each recipient, the proportion of the supply that is deemed to be made to them of the amount otherwise determined in the relevant circumstance of this table <sup>13</sup>

37. The law simplifies the calculation of the amount to be paid by a purchaser in some circumstances by avoiding the need for the parties to take into account certain ‘normal adjustments’. If the contract between the parties states the price, and that amount is only subject to the ‘normal adjustments that apply on completion of transactions of that kind’, the amount to be paid will be a proportion of this ‘contract price’, as set out in the table in paragraph 36 of this draft Ruling. In other words, the purchaser does not need to take into account the adjustments in working out the amount they are required to pay.

38. For the calculation to be based on the ‘contract price’, it is necessary that the contract specify an amount that is the price for the supply, with ‘price’ taking its meaning from section 9-75 of the GST Act. Price is a GST-inclusive amount. If a contract specifies a GST-exclusive amount but it is clear from the contract that GST is to be added to the amount, it is accepted that the contract ‘specifies an amount that is the price’, which is the GST-inclusive amount.

<sup>8</sup> Paragraph 14–250(6)(b) and subsection 14–250(7).

<sup>9</sup> The requirements of the margin scheme are set out in Division 75 of the GST Act. Generally, the supplier and purchaser must have agreed in writing that the margin scheme is to apply on or before making the supply.

<sup>10</sup> Paragraph 14–250(6)(a) and subsection 14–250(7). This percentage may be varied to a percentage between 7% and 9% by the Minister making a legislative determination under subsection 14–250(8).

<sup>11</sup> There are special rules for determining the value of a taxable supply between associates in Division 72 of the GST Act. The amount the purchaser is required to pay under section 14–250 reflects the operation of the special rules in the GST Act.

<sup>12</sup> Subsection 14–250(9).

<sup>13</sup> Subsection 14–250(11).

39. The phrase ‘normal adjustments that apply on completion of transactions of that kind’ refers to the kinds of settlement adjustments which usually apply to sales of real property, for example, rates, taxes and water adjustments calculated to the date of settlement.<sup>14</sup> It is accepted that these normal adjustments include those provided for under the standard form contracts for the sale of land prepared by the law societies or institutes and real estate institutes in Australia. Where the parties negotiate a change to the price before completion (including by way of variation or discount) these adjustments are not considered ‘normal adjustments that apply on completion of transactions of that kind’.

40. If there is not an amount stated in the contract that is the ‘price’, the amount to be paid under section 14-250 will be a proportion of the ‘price’ as defined in the GST Act (GST-inclusive). This includes all monetary and non-monetary consideration for the supply.

41. For example, a sale of an operating retirement village including new residential premises may specify an amount in the contract which in certain circumstances may not be the ‘price’ of the supply. This is because the ‘price’ also includes a ‘repayment benefit’ that may not be included in the amount stated in the contract.<sup>15</sup> The amount the purchaser is required to pay in these circumstances will be 1/11<sup>th</sup> of the price including the repayment benefit, not only 1/11<sup>th</sup> of the amount stated in the contract (although this example may also be a case where it is necessary to consider whether the supply is only partly a supply to which section 14-250 applies).

42. If a supply is only partly a supply to which section 14-250 applies, the parties should take all reasonable steps to apportion the consideration for the supply.<sup>16</sup>

43. An amount paid as consideration for an option to acquire new residential premises or potential residential land is not consideration for the supply to which section 14-250 applies. An amount of this nature does not need to be taken into account in determining the amount payable by the purchaser.<sup>17</sup>

44. Where there are multiple purchasers, each is deemed to be the recipient of a separate proportional supply. Each purchaser is required to pay a proportional amount for their proportional supply.<sup>18</sup> For example, two individuals acquiring a property as tenants in common in equal shares will each be required to pay 50% of 1/11<sup>th</sup> of the contract price. Joint tenants are treated as a single purchaser and are jointly and severally liable.

45. A purchaser must make a payment even though the consideration for the supply is made up of non-monetary consideration, whether wholly or in part.

### **Notification requirements**

46. A vendor of residential premises or potential residential land must give a written notice to the purchaser before making the supply.<sup>19</sup> The notice must state whether the purchaser is required to make a payment under section 14-250 in relation to the supply.

<sup>14</sup> Note that for GST purposes these types of settlement adjustments are taken into account by the supplier in determining the consideration for the supply: Goods and Services Tax Determination GSTD 2006/3 *Goods and services tax: are settlement adjustments taken into account to determine the consideration for the supply or acquisition of real property?*

<sup>15</sup> See Goods and Services Tax Ruling GSTR 2011/1 *Goods and services tax: development, lease and disposal of a retirement village tenanted under a 'loan-lease' arrangement.*

<sup>16</sup> For guidance on apportioning a supply see Goods and Services Tax Ruling GSTR 2001/8 *Goods and services tax: Apportioning the consideration for a supply that includes taxable and non-taxable parts.*

<sup>17</sup> See Goods and Services Tax Determination GSTD 2014/2 *Goods and services tax: where real property is acquired following the exercise of a call option, does the call option fee form part of the consideration for the acquisition for the purposes of subsection 75-10(2) of the A New Tax System (Goods and Services Tax) Act 1999?*

<sup>18</sup> Subsection 14-250(11).

<sup>19</sup> Subsection 14-255(1).

47. This applies to all vendors of residential premises and potential residential land, not only those who are registered or required to be registered for GST. If the vendor is not registered or required to be registered for GST, they will simply be able to state that the purchaser is not required to make a payment.

48. This notice is not required for a supply of commercial residential premises. Nor is it required for a supply of potential residential land where the purchaser is registered for GST and is acquiring the property for a creditable purpose to any extent.<sup>20</sup> This means that a vendor of potential residential land will need to know whether the purchaser is registered for GST and acquiring the land for a creditable purpose. The vendor can check whether the purchaser is registered for GST by searching the Australian Business Register (<https://abr.business.gov.au/>) and can rely on a copy of the search on the day of the supply as evidence that the purchaser was registered. The vendor can rely either on written correspondence from the purchaser or a statement in the relevant contract regarding whether the purchaser is acquiring the land for a creditable purpose.

49. If the purchaser is required to make a payment, the vendor's notice must also state:

- the vendor's name and ABN
- the amount to be paid by the purchaser under section 14-250
- when the amount must be paid by the purchaser (for example, when the consideration is first provided at settlement)
- the GST inclusive market value of any non-monetary consideration, and
- any other matters specified in the regulations.

50. The vendor may give this notice as part of the contract for sale, in which case it should be easy to identify as a notice for the purpose of section 14-255. Alternatively it may be given as a separate document.

51. The vendor may need to determine certain things when giving the notice, for example, whether the land will be 'new residential premises' or 'potential residential land' at the time of settlement.

52. If a contract allows for a purchaser to be substituted for another purchaser, or if a purchaser is a nominee, the Commissioner will accept that the notification requirements have been met if the notice is provided to the entity listed on the transfer documents and is based on information they have about the recipient's registration and creditable purpose which they reasonably believe is correct.

53. Even if a vendor fails to comply with the notification requirements, the purchaser is still obliged to make a payment under section 14-250.<sup>21</sup>

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<sup>20</sup> Subsection 14-255(2). 'Creditable purpose' is defined in section 195-1 of the GST Act and relevantly has the meaning given by section 11-15 of the GST Act.

<sup>21</sup> Subsection 14-255(3).

## **Penalties for vendors and purchasers**

54. A vendor may have a penalty imposed for failure to give the notice required by section 14-255. There are two types of penalty. First, a strict liability offence applies under subsection 14-255(4). There is a defence for this penalty if the vendor's failure to give the notice is a mistake of fact. Second, an administrative penalty applies under subsection 14-255(6). The administrative penalty will not apply for a failure to meet the additional notification requirements under paragraph 14-255(1)(b) that apply if a purchaser is required to make a payment, if the vendor reasonably believed they were not required to meet those requirements. The administrative penalty will not be payable if a prosecution is instituted for the strict liability offence.<sup>22</sup>

55. A purchaser may have an administrative penalty imposed for failure to pay the amount required by section 14-250. The penalty is equal to the amount that the purchaser was required to pay under section 14-250. There are two specific circumstances where the penalty will not apply.

56. The penalty for failure to pay the amount required will not apply if:

- the purchaser received a taxable supply of new residential premises (other than commercial residential premises)
- the purchaser was given a notice under section 14-255 either:
  - stating that the premises are not new residential premises, or
  - indicating that they were not required to pay an amount under section 14-250 in relation to the supply
- at the time the purchaser first provides consideration for the supply, there was nothing in the contract for the supply or any other circumstances relating to the supply that made it unreasonable for the purchaser to believe that the statement or indication was correct.

57. The requirement under section 14-255 is for the vendor to indicate whether the purchaser will be required to make a payment under section 14-250 in relation to the supply. As part of giving this notice the vendor might also state that the premises are not new residential premises. In this situation, a purchaser may consider the indication or statement in light of the contract and circumstances relating to the supply.

58. It would be unreasonable for a purchaser to believe the correctness of a notice indicating they do not have to make a payment under section 14-250 if it is clear that the vendor is making a taxable supply of new residential premises. For example, if a purchaser enters into an 'off-the-plan' contract for newly constructed premises from a developer who is registered for GST, and there is a statement in the contract that the purchaser does not have to make a payment under section 14-250 because the premises are not new residential premises.

59. The penalty for failure to pay the amount required will also not apply if the purchaser gives the vendor a bank cheque payable to the Commissioner for the amount the purchaser is required to pay, on or before the day consideration is first provided.<sup>23</sup> This ensures that a purchaser is protected from penalty if the vendor fails to send the bank cheque to the ATO. A purchaser should keep evidence that they provided the bank cheque to the vendor. Suitable evidence includes a photocopy of the cheque, the purchaser's direction to pay the bank cheque to the ATO and correspondence from the vendor showing receipt of the bank cheque.

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<sup>22</sup> Section 8ZE of the *Taxation Administration Act 1953*.

<sup>23</sup> A purchaser is not required to give the supplier a bank cheque made out to the Commissioner as part of satisfying the payment obligation. Alternatively, the payment may be made directly to the ATO. The purchaser's liability to make the payment under section 14-250 remains until the payment is made to the ATO, even if a bank cheque has been provided to the supplier.

60. A vendor is entitled to a credit under section 18-60 if another entity makes a payment under section 14-250 in relation to the supply. If the vendor sends the bank cheque to the ATO this will still be a payment made by the purchaser. The bank cheque is being sent by the vendor at the direction of the purchaser. The vendor is merely acting as an agent for the purchaser in giving the bank cheque, which is given to discharge to the purchaser's liability. It will only give rise to a credit for the vendor under section 18-60 after being received by the ATO for the purchaser's liability. The bank cheque is not the vendor's money and cannot be used to meet the vendor's other liabilities to the Commissioner.

#### **Amounts incorrectly paid to the ATO by the purchaser**

61. Generally, if a purchaser incorrectly pays an amount to the ATO in purported compliance with section 14-250, the vendor may apply to the Commissioner for a refund under section 18-85 in the approved form. This must be done no later than 14 days before GST must be paid on the supply. If a refund is made, no credit is available under section 18-60 to the vendor.

62. The Commissioner is only required to refund an amount to a vendor under section 18-85 if satisfied that it would be fair and reasonable to do so. The Commissioner is unlikely to be satisfied that it is fair and reasonable to refund an amount to the vendor if a purchaser incorrectly made a payment in respect of a non-taxable supply. The vendor will not be entitled to a credit but the purchaser may be entitled to a refund. The Commissioner will consider repayment requests by purchasers on a case by case basis.

#### **Examples**

63. The Explanatory Memorandum to the Treasury Laws Amendment (2018 Measures No. 1) Bill 2018 contains examples which demonstrate the intended application of the law. The examples that follow address some further aspects of the law.

##### ***Example 1 – New residential premises with purchaser payment***

64. *Scott enters into a contract to purchase a house from Property Co for \$770,000. Scott is not registered for GST and the sale is not made under the margin scheme. Scott pays a 10% deposit with the balance due at settlement. Property Co notifies Scott in the contract that he is required to pay \$70,000 (1/11<sup>th</sup> of the contract price) on or before the day of settlement to the ATO.*

65. *Scott pays \$70,000 to the ATO and notifies the ATO of the payment. Scott is not required to pay Property Co the \$70,000 despite the contract stating that the price is \$770,000 including GST. Property Co will get a credit for \$70,000 when it lodges its activity statement for the tax period.*

##### ***Example 2 – Potential residential land with purchaser payment***

66. *Development Co discovers that the local council has recently changed its by-laws to allow for smaller lots in the area. To take advantage of the by-law change, Development Co purchases a vacant block of land, that is zoned to allow residential use, and that does not contain any buildings, with the intention to subdivide it into two lots. They carry out their plan, have the plan of subdivision registered, and proceed to make taxable supplies of both lots of vacant land.*

67. *Development Co enters into a contract with Emma to sell one lot for \$350,000. The sale is not under the margin scheme. Emma is not carrying on an enterprise. Emma pays a 10% deposit with the balance due at settlement. The contract of sale includes the required notice advising Emma of the requirement to make a payment to the ATO of an amount under section 14-250. Development Co also informs Emma that she will be required to make a payment of \$31,818 to the ATO, which is 1/11<sup>th</sup> of the contract price of \$350,000, on or before settlement takes place.*

**Example 3 – Potential residential land with no notification and no purchaser payment**

68. *Assume the same facts as Example 2. Development Co then enters into a contract with Razer Property Group to sell the other subdivided lot of vacant land for \$330,000. Razer Property Group is registered for GST, carrying on an enterprise and acquiring the land for a creditable purpose and provides warranties confirming each of these things in the contract.*

69. *Development Co does not need to notify Razer Property Group. This is because the land is potential residential land and Razer Property Group is registered for GST and acquiring the land for a creditable purpose. Razer Property Group does not make a payment under section 14-250 when purchasing this property.*

**Example 4 – Instalment contract sale with first payment a deposit**

70. *Hillside Co enters into a contract with Farm Co to buy vacant land. Both entities are registered for GST and the land is potential residential land. Hillside Co plans to construct residential premises on the land and make them available for rent (not for a creditable purpose).*

71. *The contract price is \$33 million, which is inclusive of GST, and is payable as follows: a deposit of \$3 million is payable on entry into the contract with the balance to be paid in quarterly instalments of \$6 million. Hillside Co has been notified by Farm Co that they will be required to make a payment of 1/11<sup>th</sup> of \$33 million, which is \$3 million, to the ATO.*

72. *Hillside Co is not required to make any payment to the ATO when it pays the deposit of \$3 million to Farm Co. However, when Hillside Co pays the first instalment (of five instalment payments due under the contract) of \$6 million, Hillside Co is also required to pay \$3 million to the ATO. This is because this is the time when Hillside Co has first provided any consideration to Farm Co.*

**Example 5 – Instalment contract sale with first payment not a deposit**

73. *Assume the same facts from Example 4, except that \$15 million is to be paid at entry into the contract with the balance to be paid in three semi-annual instalments of \$6 million.*

74. *The first payment is a part-payment of the instalment contract and Hillside Co is required to pay \$3 million to the ATO and \$12 million to Farm Co.<sup>24</sup>*

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<sup>24</sup> Section 16–20 discharges the purchaser from liability to pay the supplier for the amount paid to the Commissioner.

**Example 6 – Section 14-250 only partly applies**

75. *Fisher Property Holdings Pty Ltd constructs a new building comprising both residential and commercial premises. On completion of the construction they sell the building to Abby with payment due at settlement. The supplies of both the commercial premises and new residential premises are taxable supplies.*

76. *The contract of sale for the new premises includes the required written notification providing the relevant details to allow Abby to make a payment to the ATO. In particular, the amount of the contract price that is for the new residential premises has been determined by the parties and the amount that Abby is required to pay is expressed in the notification. Abby makes payment of 1/11<sup>th</sup> of the proportion of the contract price which is for the supply of new residential premises to the ATO.*

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**Commissioner of Taxation**

26 April 2018

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## **Your comments**

77. You are invited to comment on this draft Ruling including the proposed date of effect. Please forward your comments to the contact officer by the due date.

78. A compendium of comments is prepared for the consideration of the relevant Public Advice and Guidance Panel or relevant tax officers. An edited version (names and identifying information removed) of the compendium of comments will also be prepared to:

- provide responses to persons providing comments
- be published on the ATO website at [www.ato.gov.au](http://www.ato.gov.au)

Please advise if you do not want your comments included in the edited version of the compendium.

**Due date:** **25 May 2018**

Contact officer details have been removed following publication of the final ruling.

**References**

ATOlaw topic(s)	<p>Goods and services tax ~~ Property ~~ Premises ~~ New residential premises</p> <p>Goods and services tax ~~ Property ~~ Other</p> <p>Goods and services tax ~~ Taxation Administration Act 1953 ~~ Other</p> <p>Withholding tax ~~ Other</p>
Legislative references	<p>ANTS(GST)A 1999</p> <p>ANTS(GST)A 1999 9-75</p> <p>ANTS(GST)A 1999 11-15</p> <p>ANTS(GST)A 1999 40-75</p> <p>ANTS(GST)A 1999 Div 72</p> <p>ANTS(GST)A 1999 Div 75</p> <p>ANTS(GST)A 1999 75–10(2)</p> <p>ANTS(GST)A 1999 75-20</p> <p>ANTS(GST)A 1999 Div 99</p> <p>ANTS(GST)A 1999 195-1</p> <p>TAA 1953</p> <p>TAA 1953 8ZE</p> <p>TAA 1953 Sch 1</p> <p>TAA 1953 14-250</p> <p>TAA 1953 14-250(2)(a)</p> <p>TAA 1953 14-250(2)(b)(ii)</p> <p>TAA 1953 14-250(4)</p> <p>TAA 1953 14-250(5)</p> <p>TAA 1953 14-250(6)(a)</p> <p>TAA 1953 14-250(6)(b)</p> <p>TAA 1953 14-250(7)</p> <p>TAA 1953 14-250(8)</p> <p>TAA 1953 14-250(9)</p> <p>TAA 1953 14-250(11)</p> <p>TAA 1953 14-255</p> <p>TAA 1953 14-255(1)</p> <p>TAA 1953 14-255(1)(b)</p> <p>TAA 1953 14-255(2)</p> <p>TAA 1953 14–255(3)</p> <p>TAA 1953 14-255(4)</p> <p>TAA 1953 14-255(6)</p> <p>TAA 1953 16-20</p> <p>TAA 1953 18-60</p> <p>TAA 1953 18-85</p> <p>Treasury Laws Amendment (2018 Measures No. 1) Act 2018</p> <p>Treasury Laws Amendment (2018 Measures No. 1) Act 2018 Sch 5</p> <p>Land Title Act 1994 (Qld) Div 3</p> <p>Conveyancing Act 1919 (NSW) Pt 23 Div 3</p> <p>Land Titles Act 1925 (ACT) 64</p> <p>Transfer of Land Act 1958 (Vic) 95 and 97</p>

	Land Titles Act 1980 (Tas) 11, 17A and 162 Real Property Act 1886 (SA) Pt 19AB Div 2 Transfer of Land Act 1893 (WA) 166 Planning and Development Act 2005 (WA) 146 Land Title Act (NT) Pt 4 Div 3
Related Rulings/Determinations	GSTR 2001/8 GSTR 2003/3 GSTR 2006/2 GSTR 2011/1 GSTR 2012/5 GSTD 2006/3 GSTD 2014/2
Case references	South Steyne Hotel Pty Ltd v. Federal Commissioner of Taxation [2009] FCA 13; 2009 ATC 20-090; (2009) 71 ATR 228; [2010] ALMD 2788; [2010] ALMD 2789
Other references	Explanatory Memorandum to the Treasury Laws Amendment (2018 Measures No. 1) Bill 2018
ATO references	1-D4MLK70
BSL	ITX

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