



## GST at settlement - a guide for purchasers and their representatives

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- <https://www.ato.gov.au/Business/GST/In-detail/Your-industry/Property/GST-at-settlement---a-guide-for-purchasers-and-their-representatives/>
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## GST at settlement – a guide for purchasers and their representatives

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The following information explains GST at settlement to purchasers of certain types of property and to their representatives.

On or after 1 July 2018, if you purchase new residential premises or potential residential land you may be required to withhold an amount from the price of the supply and pay it to the Australian Taxation Office.

Your supplier is required to provide you with information to assist you comply with your withholding obligation.

You can incur penalties if you fail to pay the required withholding amount to us.

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

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

Find out about:

- [When a purchaser has a withholding obligation](#)
- [Supplier notification](#)
- [Purchaser obligations](#)
- [When the withholding amount is payable](#)
- [Paying the withholding amount](#)
- [Penalties for non-compliance](#)

See also:

- [Glossary of terms](#)
- [Transitional relief](#)

## When a purchaser has a withholding obligation

- <https://www.ato.gov.au/Business/GST/In-detail/Your-industry/Property/GST-at-settlement---a-guide-for-purchasers-and-their-representatives/?page=2>
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You will have a withholding obligation if you are the recipient of a taxable supply, by way of sale or long-term lease where you provide any consideration (for example, make a payment 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.

A supply of new residential premises or potential residential land in Australia will be a taxable supply if your supplier is registered (or required to be registered) for GST and the supply is:

- made for consideration
- made in the course or furtherance of an enterprise the supplier carries on
- not a GST-free or input taxed supply (for example a supply made as part of a GST-free supply of a going concern or of GST-free farmland)

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 do not need to register for GST because of a withholding obligation.

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

See also:

- [Payment consideration](#)
- [Long term lease](#)
- [New residential premises](#)
- [Potential residential land](#)
- [Property subdivision plan](#)
- [Transitional arrangements](#)

### Excluded supplies

You will not have a withholding obligation in respect to the following supplies of new residential premises or potential residential land for:

- 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.

See also:

- [GST definitions](#)
- [Registering for GST when dealing with property](#)
- [If acquisitions are for a creditable purpose](#)

## Supplier notification

- <https://www.ato.gov.au/Business/GST/In-detail/Your-industry/Property/GST-at-settlement---a-guide-for-purchasers-and-their-representatives/?page=3>
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Your supplier is required to provide you with a written notice containing information to help you comply with your withholding obligation if you are acquiring either:

- residential premises (new or old, not being commercial residential premises such as hotels or motels)
- potential residential land (and you are not a GST registered entity acquiring the land for a creditable purpose).

An entity can be the supplier even if another entity is the entity named on the contract or certificate of title.

The notice from your supplier should include:

- the name and ABN of the suppliers
- the amount you must pay to the ATO
- the date you must pay the withholding amount to us
- the GST-inclusive market value of that property (but only if the consideration for the supply includes property).

Note: Most standard land contracts are being updated to include the information required to discharge a supplier's notification obligation.

The supplier must provide the notice to you on or before the time they make the supply. The supplier can incorporate the notice into the contract, or provide it to you by a separate notice.

If the required information changes after your supplier has provided the notice to you then they must provide you with a new notice. For example, if there are

changes to the contract price by reason of a variation or discount you agree with the supplier that applies prior to settlement.

Note: If you believe that you may have a withholding obligation, you should raise this with your supplier. Your obligation to pay the withholding amount does not depend on whether the supplier complies with their notice requirements.

See also:

- [Residential premises](#)
- [Potential residential land](#)
- [Registered entity acquiring the land for a creditable purpose](#)

## Purchaser obligations

- <https://www.ato.gov.au/Business/GST/In-detail/Your-industry/Property/GST-at-settlement---a-guide-for-purchasers-and-their-representatives/?page=4>
- Last modified: 07 Aug 2018
- QC 56253

On this page:

- [Lodge form one](#)
- [Lodge form two](#)
- [Who can complete and submit the forms](#)
- [Withholding amount](#)

### Lodge form one

When you have a withholding obligation you must complete the *GST property settlement withholding notification* online form (form one).

Form one is used to advise us that a contract has been entered into for the supply of new residential premises or potential residential land in respect of which there is a withholding obligation.

The information you need to complete form one should be set out in the supplier's notice.

You can submit form one at any time after a contract has been entered into and prior to the date your withholding obligation is due. Usually that will be the settlement date. If the contract is an instalment contract it will be the date the first instalment (other than a deposit) is paid.

An online confirmation screen will be displayed once the form is submitted. You can print this from the screen. A confirmation email will also be issued automatically to the email address you or your representative has provided to us (if any). The confirmation will provide a unique payment reference number (PRN) and a lodgment

reference number (LRN). You must keep this.

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

See also:

- [GST property settlement online forms and instructions](#)

## Lodge form two

You must complete a *GST property settlement date confirmation* online form (form two) once your withholding obligation becomes due.

This is either:

- when the first instalment is paid
- at settlement
- as soon as practical thereafter.

Form two is used to confirm the settlement date. You must include the PRN and LRN you received when you lodged form one.

If for some reason the contract is not completed, or if it is an instalment contract and you do not pay the first instalment, then you are not required to lodge form two. You also do not have to cancel form one if it has been lodged.

See also:

- [GST property settlement online forms and instructions](#)

## Who can complete and submit the forms

A purchaser can authorise a representative to submit the forms on their behalf by giving them a signed declaration. Depending on the state or territory the property is located in, the purchaser's representative can include either a:

- conveyancer
- solicitor.

Note: Conveyancers are not able to provide GST advice to their clients unless they are Registered Tax or BAS Agents.

You can find more information about registered tax agents and BAS agents on the Tax Practitioner Board website.

See also:

- [Declaration](#)
- [GST property settlement online forms and instructions](#)
- [Tax Practitioner Board](#)<sup>127</sup>

## Withholding amount

Your supplier should notify you of the withholding amount by issuing the required notice.

The amount you must withhold and pay to the ATO is generally either:

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

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 settlement. Normal settlement day adjustments should be disregarded (for example, adjustments to reflect apportionment of council rates or water rates).

If, however, the contract includes non-monetary consideration (for example, land swaps) the withholding amount is calculated as a proportion of the monetary consideration (including GST), plus the GST inclusive market value of the non-monetary consideration.

This is the 'price for the supply' in GST law.

Find out about:

- [GST and the margin scheme](#)

### **Multiple properties in one transaction**

If you are acquiring multiple supplies of different kinds under a single contract for an unapportioned amount (for example, a supply that is partly a supply of new residential premises and partly a supply of commercial premises) you and your supplier should determine a reasonable apportionment of the amount so as to determine the proportion that relates to the supply to which the withholding obligation applies.

If it is not practical to apportion the price, then the withholding amount should be based on the total price for the supply.

### **Multiple suppliers**

If you are acquiring the property from more than one supplier your suppliers should notify you of each supplier's proportionate share of the withholding amount.

This will ensure we correctly apply the withheld amount you pay us to each of your supplier's net GST amounts when they lodge their relevant business activity statements (BAS).

If your suppliers don't notify you of their respective shares of the withholding amount then you may allocate them equal shares.

### **Multiple purchasers**

If you are acquiring the property with other purchasers a separate withholding

amount should be calculated for each purchaser depending on the way in which you intend to hold the property.

Tenants in common – allows two or more purchasers to have an ownership interest in a property. Each owner has the right to deal with their interest separately. On the death or dissolution of an owner, the interest in the property does not automatically pass to the remaining owners. The total of the interests in the property must add up to 100%.

If you are purchasing as tenants in common, you should treat each purchaser as a separate recipient. The withholding amount for each purchaser should be based on their proportionate ownership interest.

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#### Example 1: Multiple purchasers as tenants in common

In this example there are three purchasers acquiring property under a standard land contract as tenants in common.

Purchaser A is acquiring 25%, Purchaser B is acquiring 25% and Purchaser C is acquiring 50% of the property. The following applies:

- for purchaser A the withholding amount =  $25\% \times \text{contract price} \times \text{withholding rate}$
- for purchaser B, the withholding amount =  $25\% \times \text{contract price} \times \text{withholding rate}$
- for purchaser C, the withholding amount =  $50\% \times \text{contract price} \times \text{withholding rate}$ .

Each purchaser must withhold in proportion to their percentage of the total contract price and the supplier is required to notify them accordingly.

Joint tenants – each owner has an undivided 100% interest in the property and if an owner dies or corporate owner dissolves, the interest in the property passes to the remaining joint tenant(s).

If you are purchasing as joint tenants, you will be jointly responsible for the withholding amount.

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#### Example 2: Multiple purchasers as joint tenants

Where there are three purchasers acquiring property under a standard land contract as joint tenants the withholding amount is worked out as follows:

Withholding amount =  $100\% \times \text{contract price} \times \text{withholding rate}$ .

## When the withholding amount is payable

- <https://www.ato.gov.au/Business/GST/In-detail/Your-industry/Property/GST-at-settlement---a-guide-for-purchasers-and-their-representatives/?page=5>
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You will be required to pay the withholding amount to us on or before the day the consideration for the supply (other than consideration provided as a deposit) is first provided under the contract.

Under a standard land contract the withholding amount is payable to us on the day of settlement.

Under an instalment contract the withholding amount is payable to us on the day the first instalment (other than a deposit) is paid.

If, however, you're an associate of the supplier and you acquire the property for no consideration, you will be required to pay the withholding amount to us on or before the day on which you receive the supply.

The due dates are intended to align the tax period in which the withholding amount is payable to the tax period in which your supplier will be liable to pay the GST on the supply.

### Deposits versus instalments

Under the GST law a deposit is not regarded as consideration for the supply until it is either:

- released to the supplier at settlement
- forfeited.

A typical example of a deposit is the 10% of the contract price paid by a purchaser to a supplier's real estate agent under a standard land contract.

Knowing whether a payment is or isn't a deposit is also important for determining whether contracts entered into before 1 July 2018 are eligible for transitional relief.

See also:

- [Transitional arrangements](#)

## Paying the withholding amount

- <https://www.ato.gov.au/Business/GST/In-detail/Your-industry/Property/GST-at-settlement---a-guide-for-purchasers-and-their-representatives/?page=6>
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- QC 56253

## How to pay

If you are acquiring the property as a tenant in common you may pay your share of the withholding amount to the ATO separately or together with the other purchasers. Each purchaser must use the same PRN.

Next steps:

- [How to pay](#)

## Once payment has been received

Once we have received and processed your payment, we will send an email to the address listed on your *GST property settlement withholding notification*.

Payment of the withholding amount to us will discharge you from your contractual obligation to pay your supplier the withholding amount as part of the consideration for the supply.

## What happens if the supplier has provided the incorrect amount to withhold in the written notification?

If you have concerns about the accuracy of the amount of withholding notified to you by the supplier, seek confirmation from your supplier of the correct amount to withhold before withholding and making a payment.

## If the incorrect amount is paid to the ATO

If you have underpaid the withholding amount you will need to pay the balance of the amount to us as soon as you detect the error, using the PRN received when you lodged the *GST property settlement withholding notification* form.

A general interest charge (GIC) may apply to amounts that are paid late.

If you have overpaid the withholding amount your supplier may be entitled to a refund. In exceptional cases a purchaser may be entitled to the refund rather than the supplier (for example, if the overpayment relates to a non-taxable supply and the supplier has already received all they were entitled to under the contract).

## Supplier your agent for payment of withholding amount

Rather than pay the withholding amount to us directly you may agree to give the supplier a bank cheque made out to the Commissioner of Taxation for your supplier to give to us.

In those circumstances your supplier will be acting as your agent. You must provide your supplier with your GST withholding slip and payment reference number (PRN).

You will not be discharged from your withholding obligation until your supplier has given us the cheque, although you will be protected from penalties.

See also:

- [How to pay](#)
- [GST withholding slip \(PDF 63.4KB\)](#) 

Example: Payment by bank cheque at settlement

On 15 September 2018, James enters into a contract with ABC Company Pty Ltd (ABC) for the purchase of new residential premises. ABC notifies James that a withholding obligation applies to the supply.

James completes the GST property settlement withholding notification (Form 1) online and obtains a PRN and lodgment reference number (LRN).

Settlement occurs on 25 November 2018. At settlement, James lodges the GST property settlement date confirmation (Form 2) using the PRN and LRN.

At settlement, instead of paying the withholding amount directly to us, James provides ABC with a bank cheque made out to the Commissioner of Taxation together with a payment slip including the PRN.

ABC mails the cheque and payment slip to the ATO. James will be discharged from his withholding obligation when we have received and processed the cheque. Once ABC has lodged its Business Activity Statement (BAS) it will receive a credit for the withholding amount.

If the credit is greater than the BAS net amount for the period, ABC will receive a refund of the difference (subject to our normal refund processes).

## Penalties for non-compliance

- <https://www.ato.gov.au/Business/GST/In-detail/Your-industry/Property/GST-at-settlement---a-guide-for-purchasers-and-their-representatives/?page=7>
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- QC 56253

Administrative penalties will apply if you fail to pay the withholding amount to us. A penalty may not be applied if you:

- relied on a notice from your supplier and it was reasonable for you to do so in all the circumstances, or
- gave your supplier a bank cheque payable to the Commissioner of Taxation for the withholding amount (you should keep records of this).

General interest charges (GIC) may also apply.

## 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](#)<sup>☞</sup>.

## 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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