



Thursday, 8th November 2017

Mr Wayne Poels
Deputy Executive Director
Office of Best Practice Regulation
Department of the Prime Minister and Cabinet
1 National Circuit
BARTON ACT 2600
Email: helpdesk-obpr@pmc.gov.au

Dear Mr Poels

REGULATION IMPACT STATEMENT – FINAL ASSESSMENT SECOND PASS

I have attached a Regulation Impact Statement (RIS) prepared for a proposal to require GST to be paid directly to the ATO on the sale of new residential properties.

I believe the RIS meets best practice requirements and is consistent with the ten principles for Australian Government policy makers.

In particular, the RIS addresses the seven questions:

- *What is the problem?* – There is a repeated and growing pattern of businesses not remitting to the Australian Taxation Office (ATO) the GST which should be paid on the sale of new residential premises and sub-divisions. This failure to remit can be due to businesses failing to budget to meet GST obligations; or intentionally being dissolved before the relevant Business Activity Statement (BAS) is lodged (when the GST would normally be due). Sustained compliance action by the ATO has not been effective.
- *Why is government action needed?* – Under current law, there can be a significant time lag between when a business receives an amount for GST in the purchase price of a property, and when the business is required to remit that amount to the ATO. Even if the time lag is not significant, the amounts involved are very large and businesses or developers have been able to obtain input credits during the period in which the property is being developed. This creates an environment in which non-compliance can occur, and the nature of residential property development means that non-compliance is difficult to track.
- *What policy options are you considering?* – Three options were considered. Option 1 is to require purchasers to remit the GST on the sale to the ATO at the time of settlement, as part of the conveyancing process, with corresponding credits for the vendors against their tax liabilities; Option 2 is to increase funding to the ATO for targeted enforcement activity; Option 3 is no change to existing strategies.

- *What is the likely net benefit?* – Option 1 provides a systemic solution to the problem and is estimated to deliver additional GST revenue for the States and Territories, but does mean an increase in regulatory costs of an estimated \$4 million per year. Option 2 would obviously increase departmental costs; and neither Option 2 nor Option 3 would provide a systematic solution to the tax avoidance (or phoenix) arrangements occurring in the industry.
- *Who have you consulted?* – Consultations have occurred with State and Territory Governments and a range of entities, including property developers, law societies, conveyancers, Housing Associations, and banking, accounting and taxation bodies.
- *What is the best option from those you have considered?* – Option 1 gives the greatest net benefit to the community and is a way of dealing with the tax avoidance that has been occurring in the industry.
- *How will you implement and evaluate your chosen option?* – Changes to legislation are required, which are anticipated to be relatively straightforward. As with GST generally, the ATO will administer the legislation if enacted. The ATO will provide guidance and advice to taxpayers and other stakeholders to help them prepare for the new rules. The ATO has considerable experience with this area of GST law, as well as the operation of withholding systems across the taxation system.

I am also satisfied the RIS addresses the concerns raised in your letter of 6th November 2017. Specifically, we have:

- Included additional information about regulatory impacts for purchasers; service providers (e.g. conveyancers); and property developers.
- Strengthened the analysis to clarify the impacts of the different options and in particular, their effectiveness in addressing the regulatory failure which provides the opportunity for non-compliance to occur.
- Provided details about the compliance cost assessment and how affected entities will experience the change, the magnitude of the regulatory impacts, and how these were quantified.

I note that regulatory cost estimates have been agreed with your office.

It is for these reasons that, as noted above, I believe that the RIS is now best practice, consistent with the Australian Government Guide to Regulation. I therefore submit the RIS to the Office of Best Practice Regulation for formal second-pass assessment.

Yours sincerely



Julia Neville
Assistant Commissioner – Revenue Analysis Branch
Policy Analysis and Legislation
Australian Taxation Office