Australian Government

Australian Taxation Office

GST at Settlement

Urban Development Institute of Australia (WA)

Presented by Hoa Wood and Christiane Volaric, Australian Taxation Office **/ 24 May 2018**

Overview of session

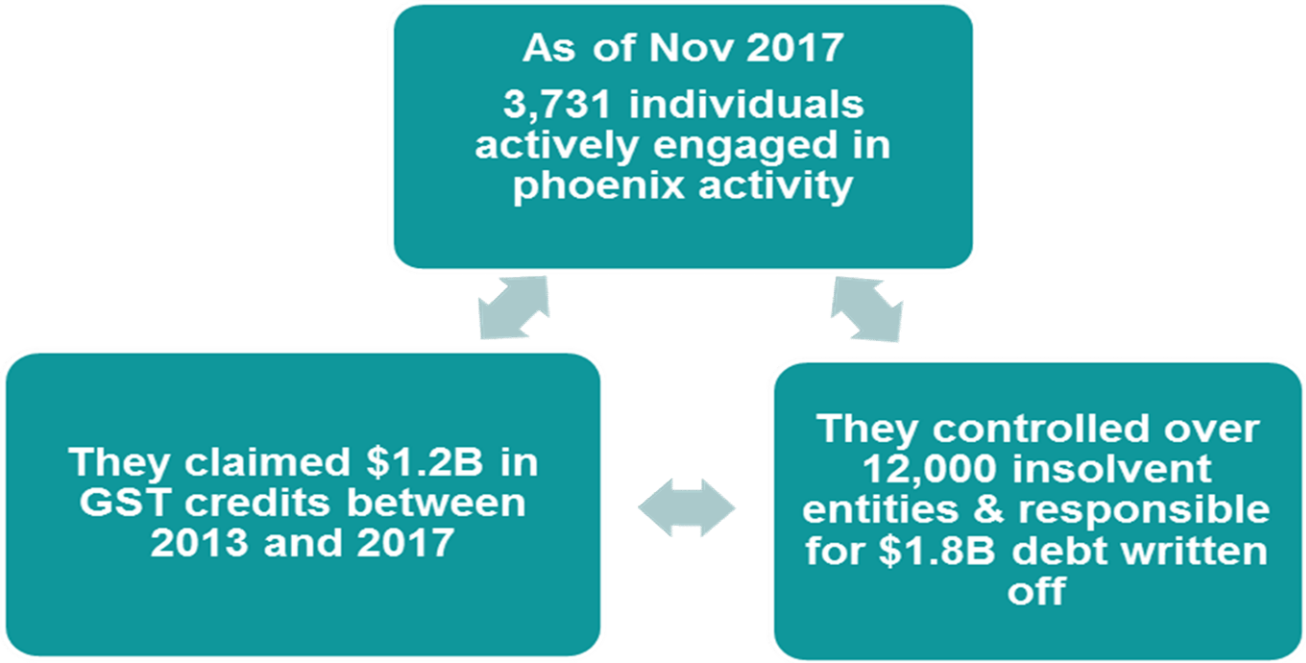
- Introduction and background
- Overview of key features of the measure
- Scope of measure
- Supplier's obligations
- Purchaser's obligations
- Transitional arrangements
- Penalties
- Example
- Further Information
- Questions

UNCLASSIFIED – GST at Settlement

Background to measure

The new measure was announced in the 2017-18 Federal Budget. It was introduced to improve the integrity of the GST system for certain property transactions.

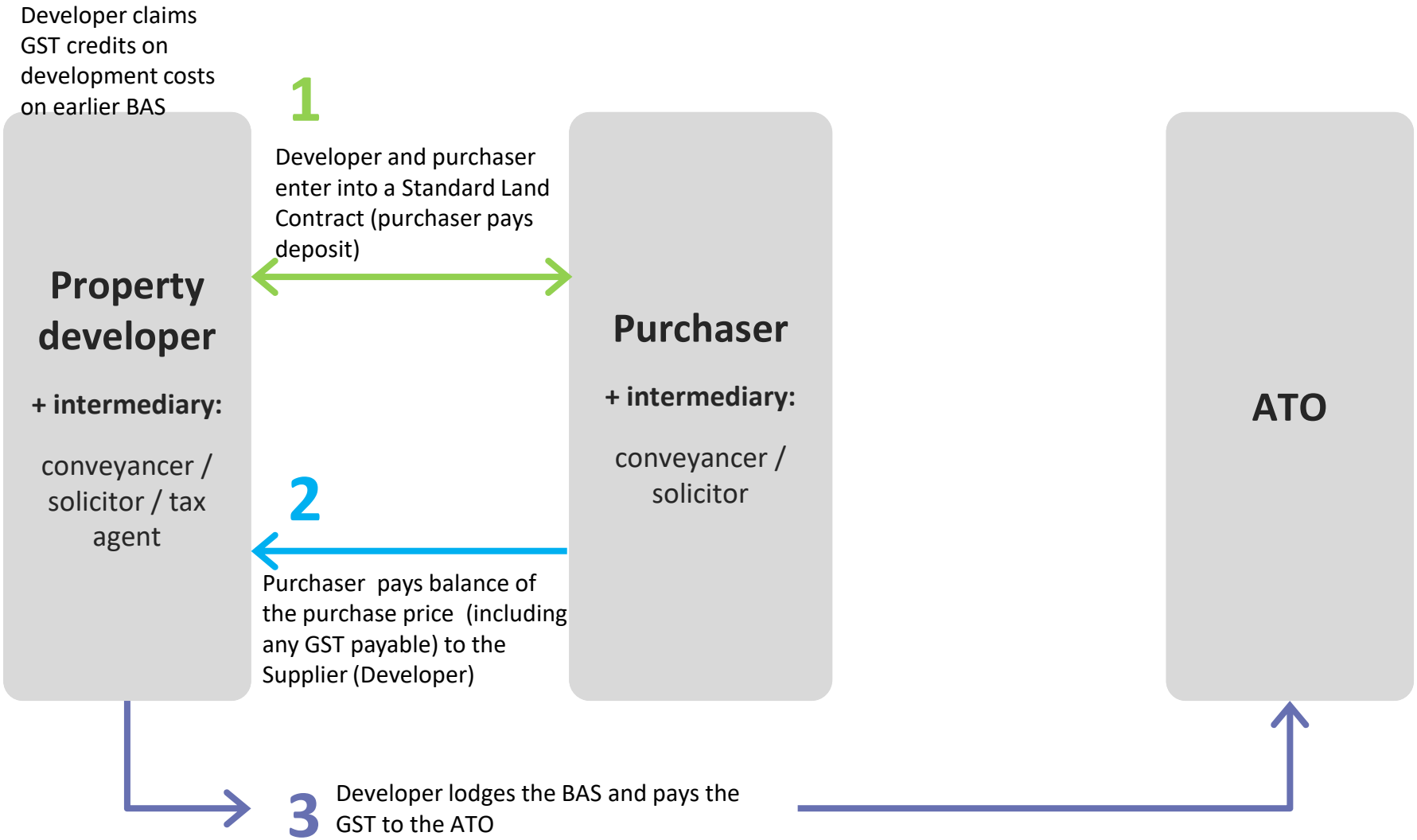
Effect of phoenix activity in property sector on GST collections



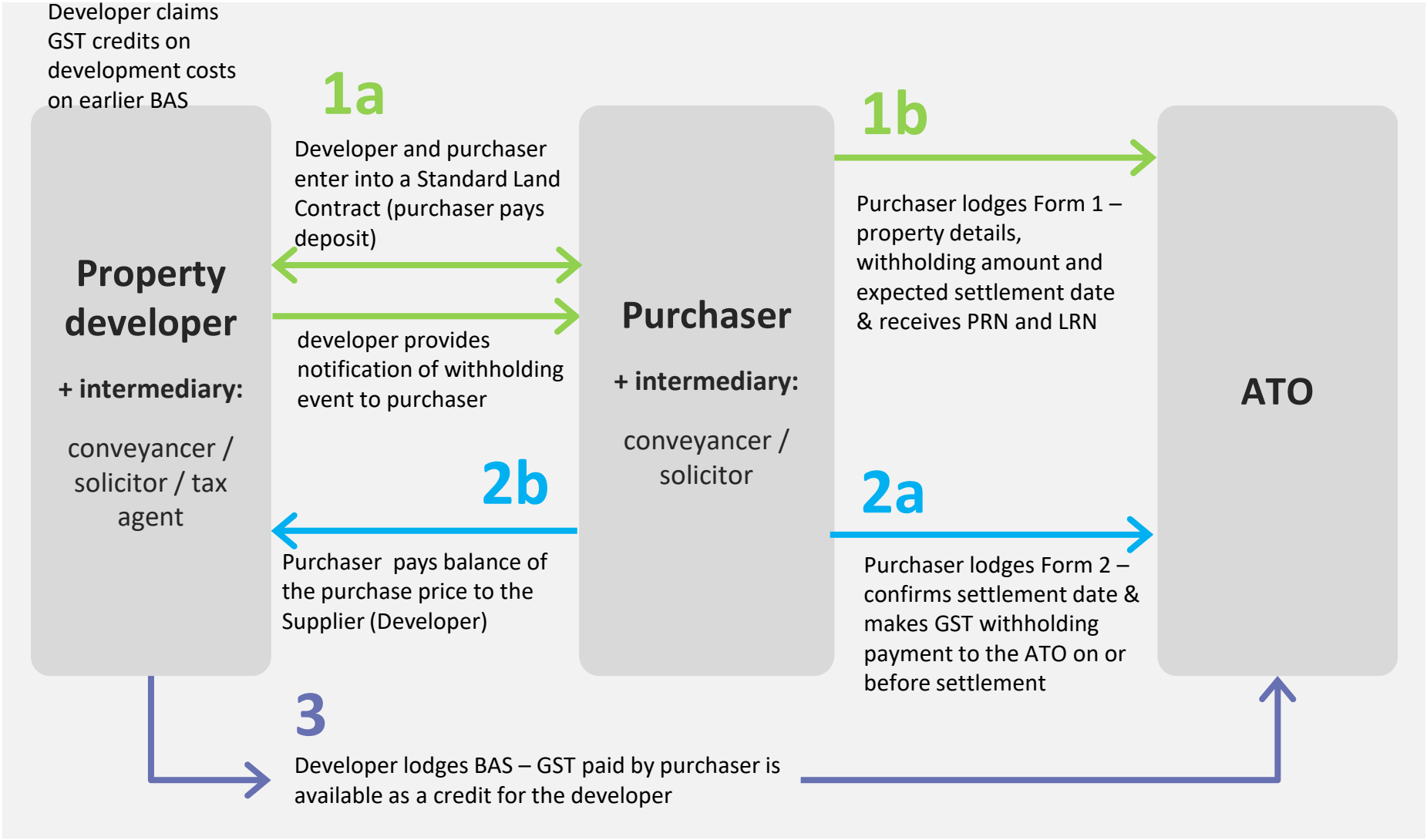
Overview of key features

- Applies to land contracts entered into before, on or after 1 July 2018
- New residential premises or potential residential land
- Purchasers to pay the GST component of the purchase price directly to the ATO instead of to the supplier
    - amends the *process* for the collection of GST
    - it does not change the amount of GST payable by suppliers
    - transfer of title is not conditional on payment of the withholding amount to the ATO by the Purchaser

Overview: how GST currently applies



Overview: new measure



Scope of the withholding obligation

Yes	No
☑ New residential premises	☒ Substantially renovated new residential premises
	☒ Commercial residential premises
☑ Potential residential land	☒ Commercial property
	☒ 'Old' residential premises
	☒ Certain business to business potential residential land transactions

UNCLASSIFIED – GST at Settlement

Withholding amount

Supply	Rate of withholding
Taxable supply of new residential premises	1/11th of the contract price
Taxable supply of potential residential land	1/11th of the contract price
Taxable supply under the margin scheme	7% of the contract price
Certain supplies to associates (e.g. for nil or reduced consideration)	10% of the GST exclusive market value

Suppliers obligations

- From 1 July 2018, Suppliers of **residential premises** or **potential residential land** must notify Purchasers whether they:
  - **are** required to withhold an amount from the purchase price and pay that amount to the ATO, or
  - **are not** required to withhold (e.g. as the supply is not taxable, or an exclusion applies)

- The notification must be in writing:
  - certain details are required to be provided in the notification
  - can be done as part of the contract of sale or separately

- The Supplier lodges their Business Activity Statement (BAS) when due and once that BAS is processed the withheld amount paid to the ATO by the Purchaser is available as a credit against the BAS net amount

Suppliers: notification requirement

Where a withholding obligation exists, the Supplier's written notice must include:

- the name and ABN of the Supplier
- the amount that the Purchaser will be required to pay to the ATO
- when the Purchaser is required to pay that amount
- the GST inclusive market value of any non-monetary consideration
- any other matters specified in the Regulations.

The new process for purchasers

Step one

- Purchaser obtains supplier's notification details from vendor that they need to withhold

Step two

- Purchaser lodges online Form 1: Anytime after entering into the contract
- GST Property settlement withholding notification
- Receives a PRN (payment reference number) and LRN (lodgement reference number)

Step three

- Purchaser lodges online Form 2: At or before settlement
- GST Property settlement date confirmation form with PRN and cheque or electronic transfer (e.g. PEXA)
- Purchaser makes payment to the ATO

Purchaser Notification (Form 1)

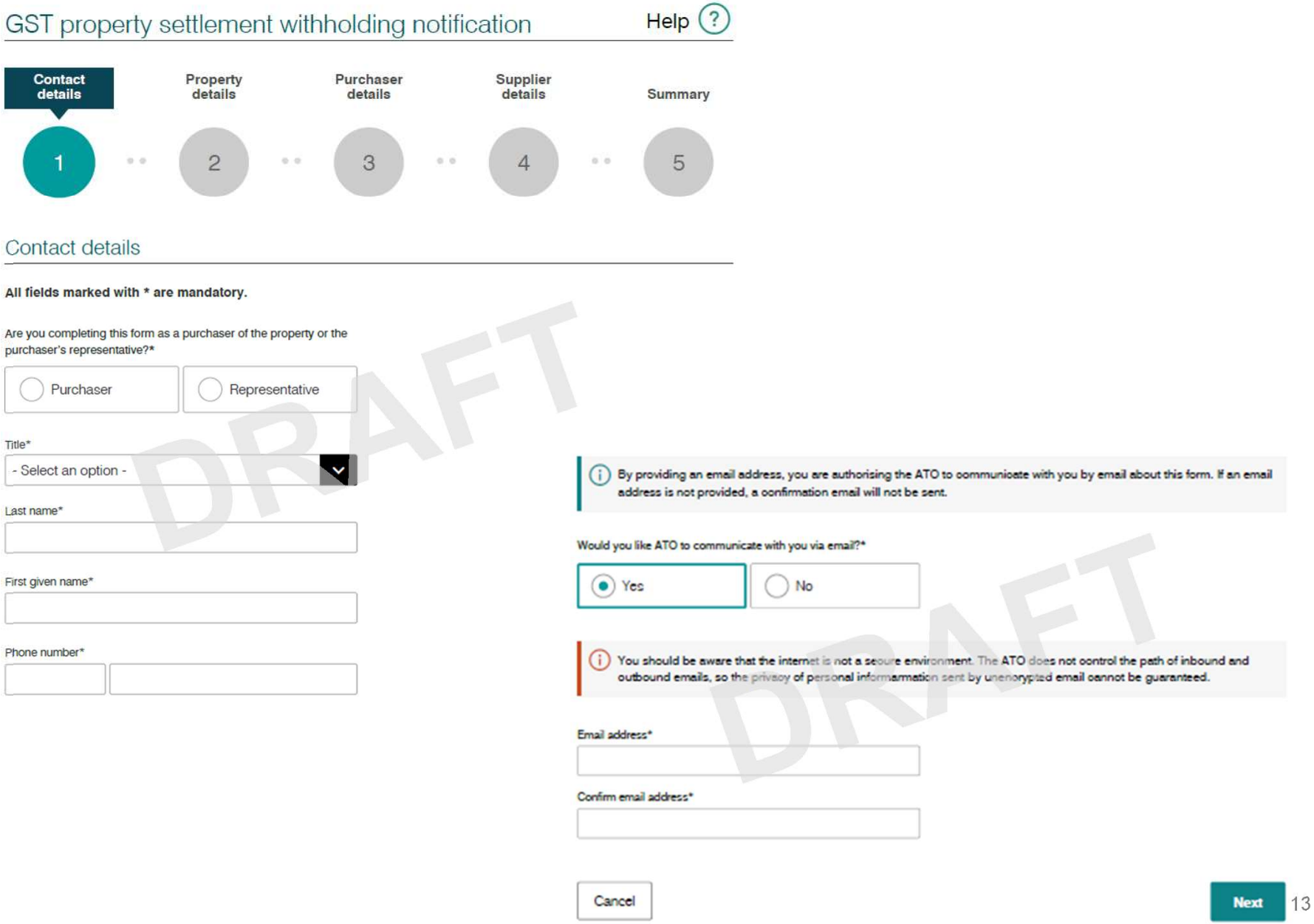
Form 1: *GST property settlement withholding notification*

Form 1 needs to be completed and lodged online to the ATO prior to settlement – either by the Purchaser, or their representative.

Complete Form 1 as early as possible to ensure that the Purchaser is provided with the unique **payment reference number** (PRN) and the **lodgement reference number** (LRN) before settlement.

Only one PRN and LRN is issued by the ATO per Form 1, even if there are multiple purchasers listed in the form.

Completing Notification Form 1



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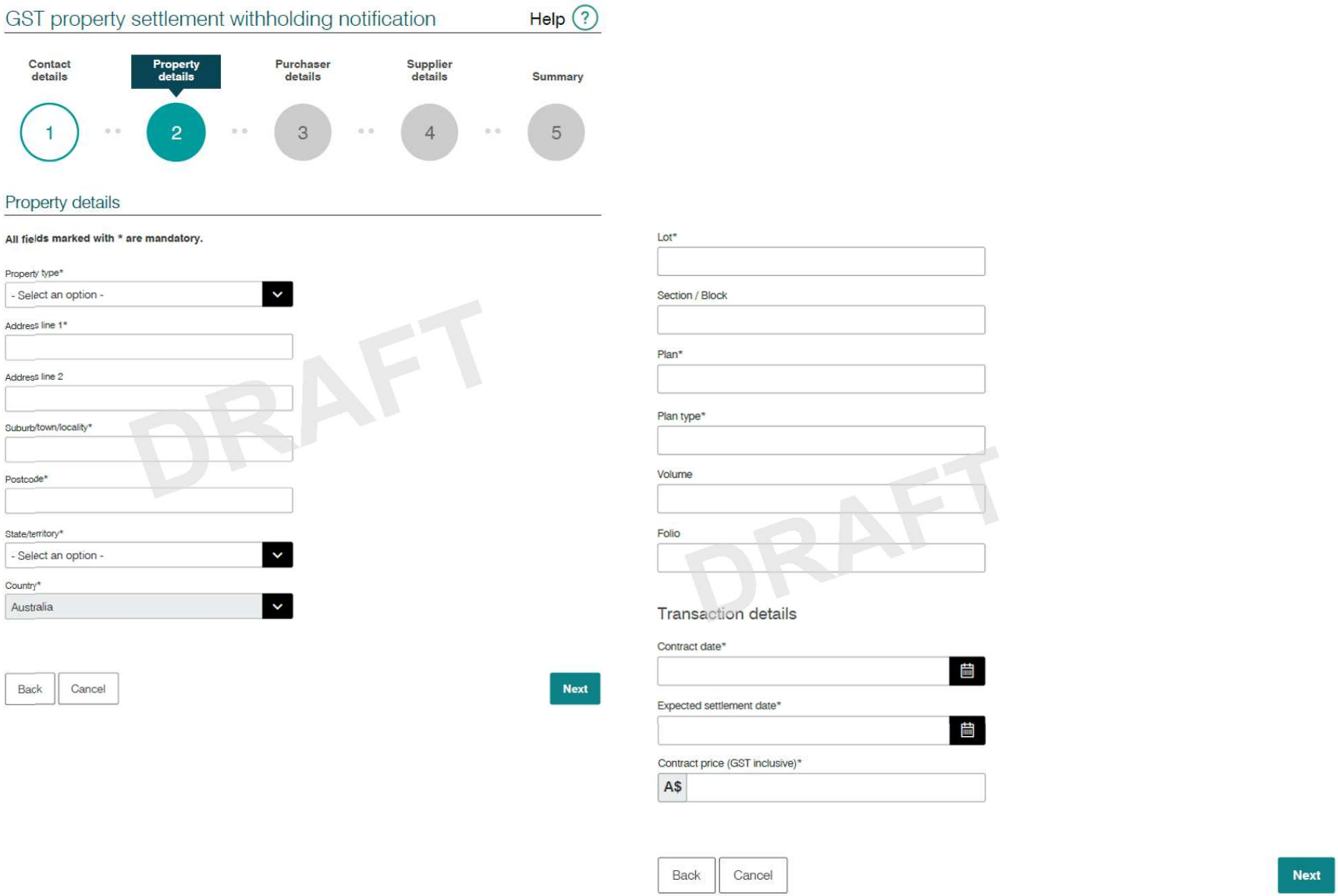
Completing Notification Form 1



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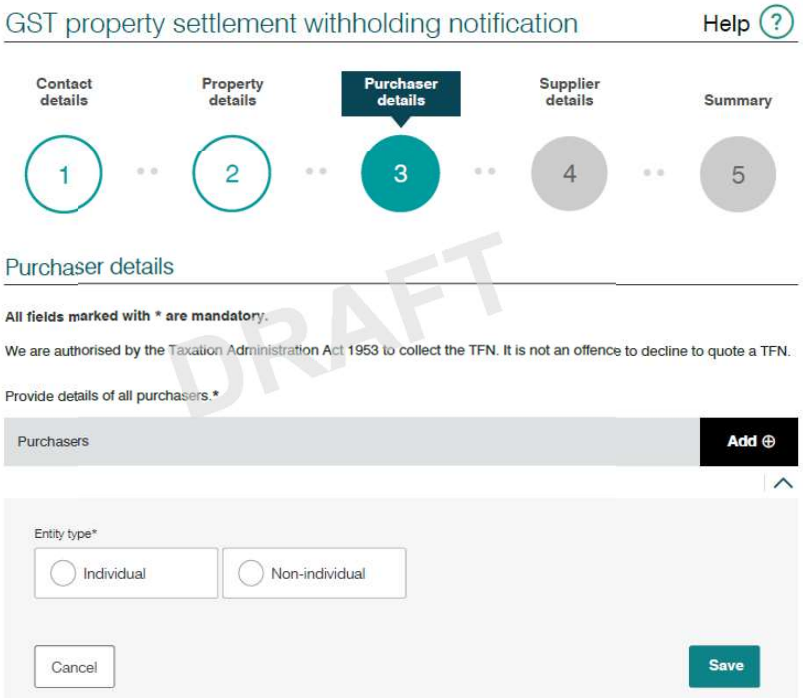

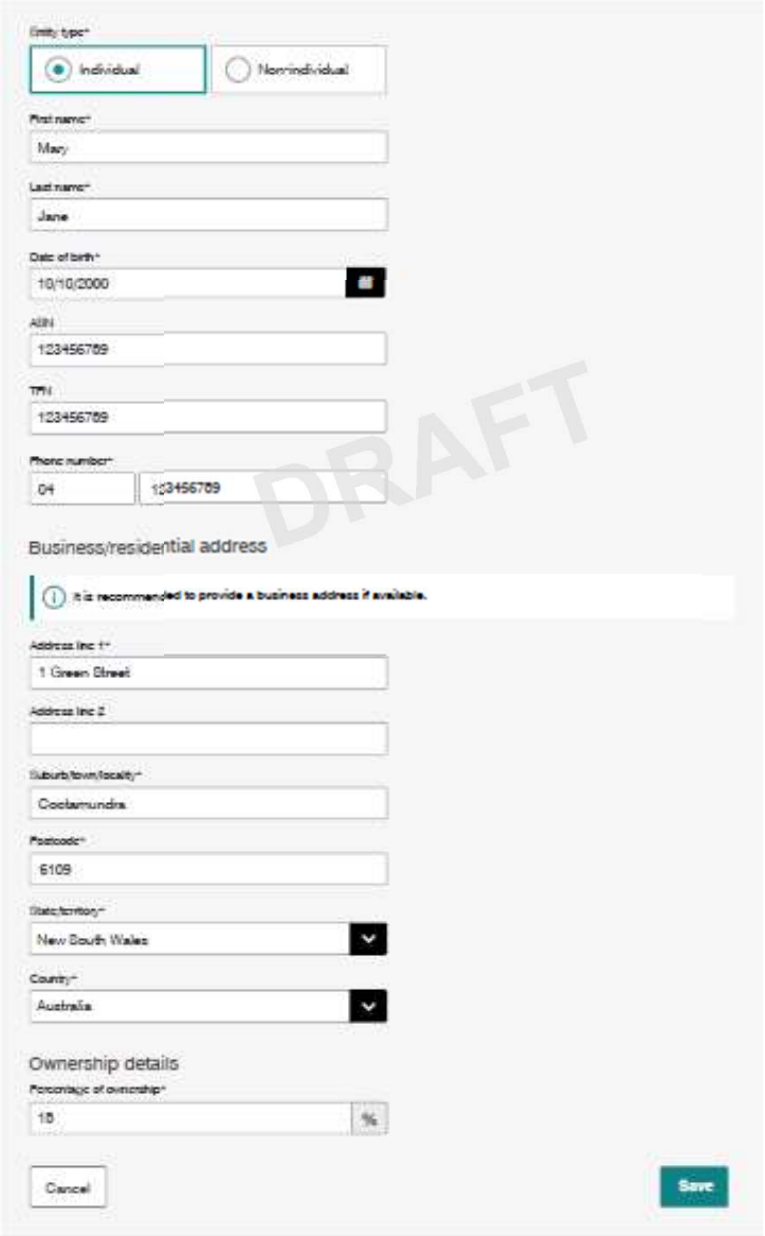

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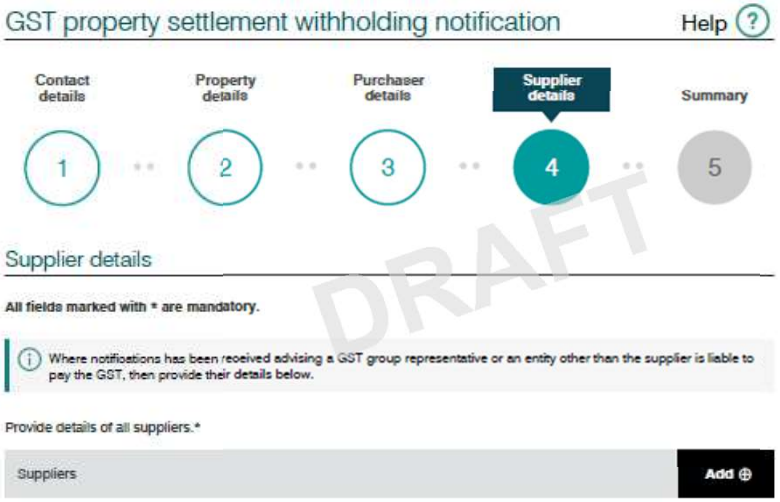

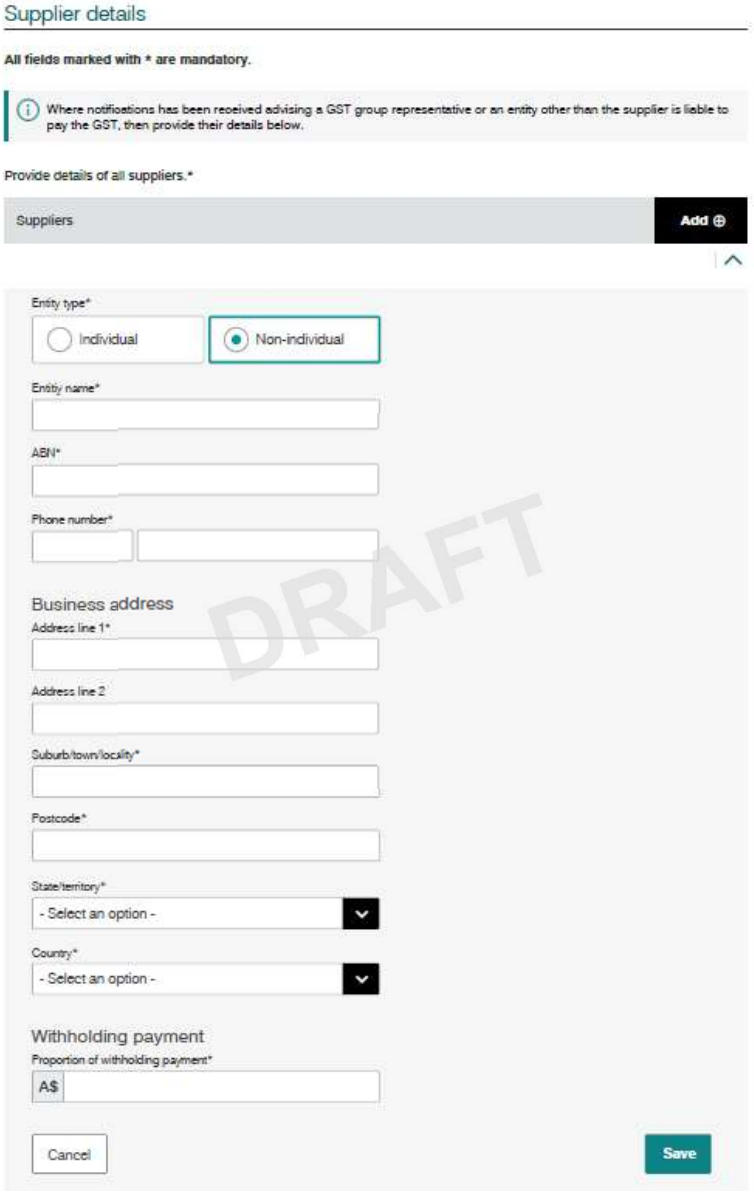

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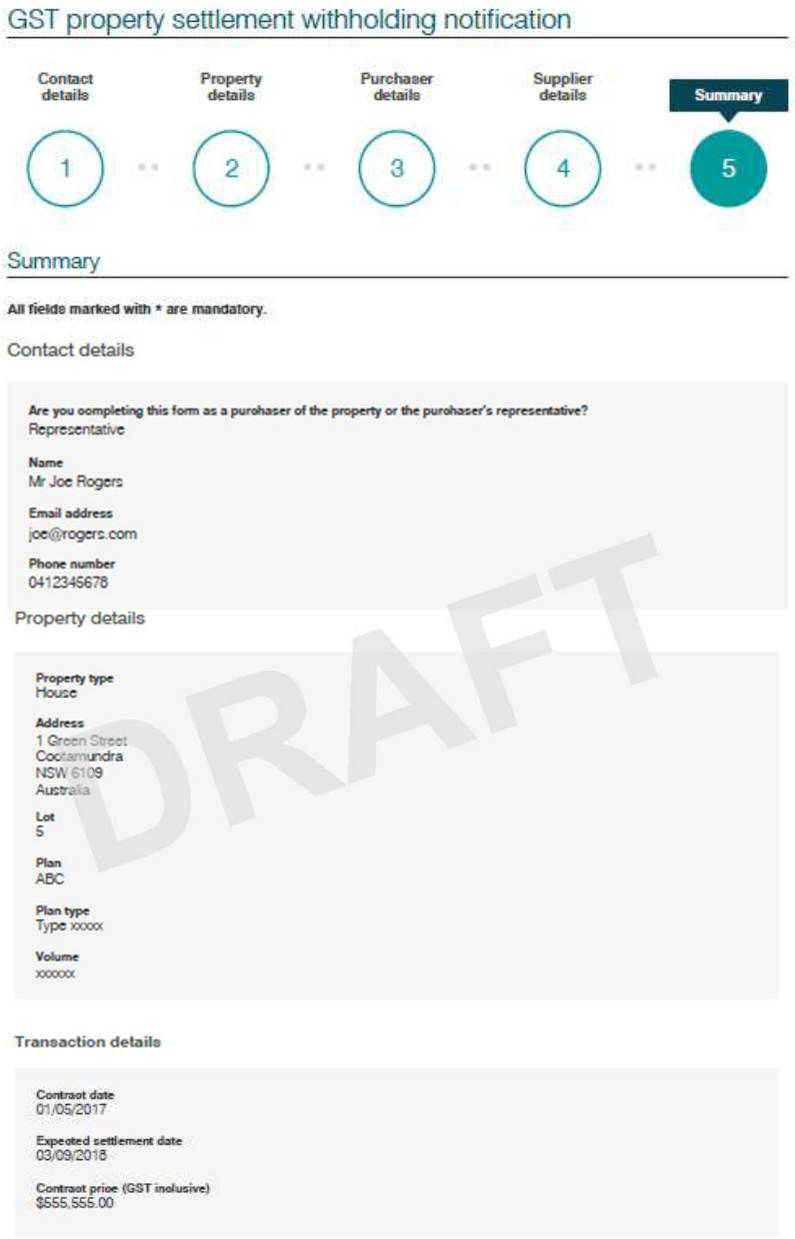

GST property settlement withholding notification

Contact details · Property details · Purchaser details · Supplier details · Summary

1 · 2 · 3 · 4 · 5

Summary

All fields marked with * are mandatory.

Contact details

Are you completing this form as a purchaser of the property or the purchaser's representative?
Representative

Name
Mr Joe Rogers

Email address
joe@rogers.com

Phone number
0412345678

Property details

Property type
House

Address
1 Green Street
Cootamundra
NSW 6109
Australia

Lot
5

Plan
ABC

Plan type
Type xxxxx

Volume
xxxxx

Transaction details

Contract date
01/05/2017

Expected settlement date
03/09/2018

Contract price (GST inclusive)
$555,555.00

Purchaser details

Purchasers

Name	Ownership
John Smith	22%
Crackers and Co Pty Ltd	60%
Mary Jane	18%

Supplier details

Suppliers

Name	Withholding payment
Jordan Graeme	$3,000.00
Rocks Co	$8,000.00
UMB	$24,000.00

Entity type
Non-individual

Entity name
UMB

ABN
123456789

Phone number
031235678

Address
1 Green Street
Cootamundra
NSW 6109
Australia

Proportion of withholding payment
$24,000.00

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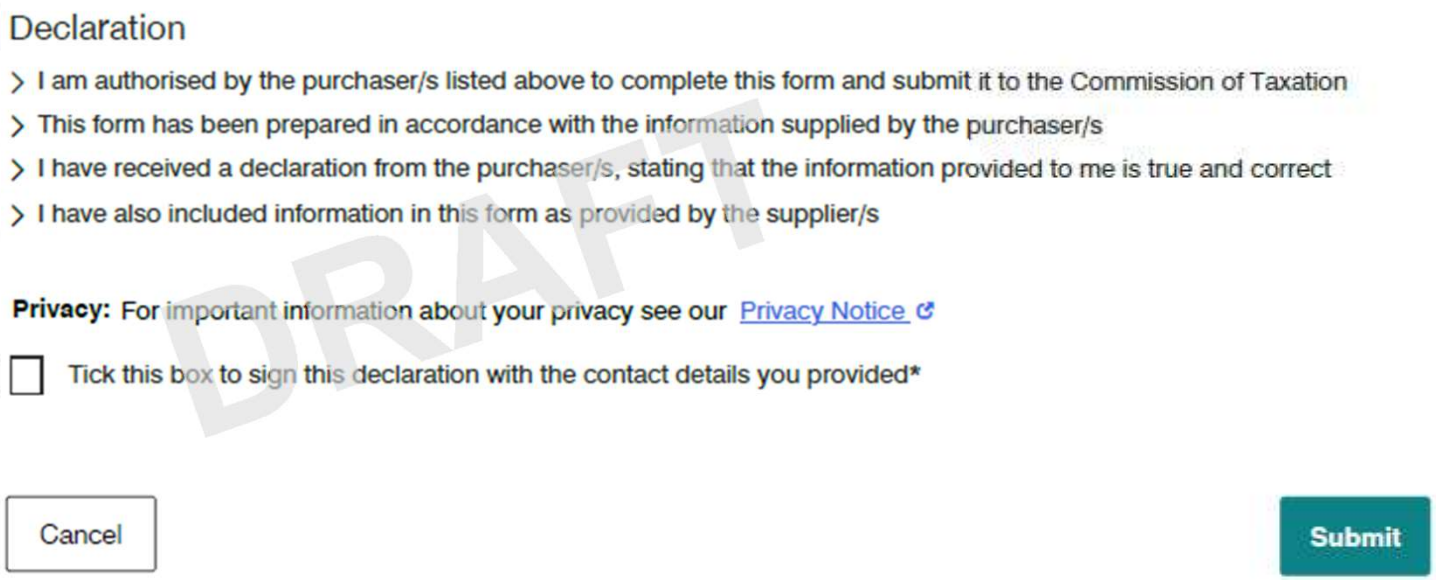
Completing Notification Form 1

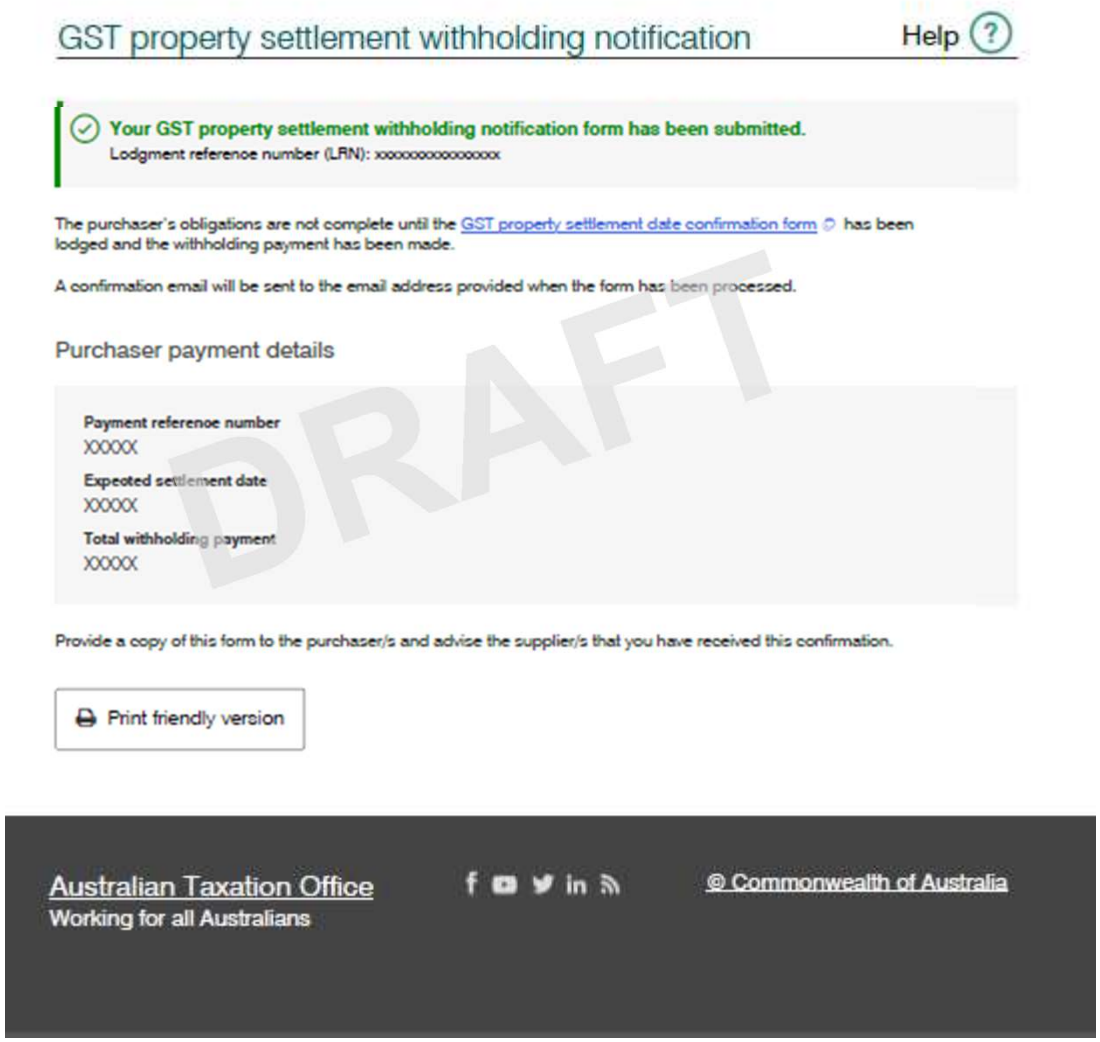
Purchaser representative declaration



NB: the declaration must be read and agreed before the form is submitted

Completing Notification Form 1

Purchaser representative confirmation



GST property settlement withholding notification

Help

Your GST property settlement withholding notification form has been submitted.
Lodgment reference number (LRN): xxxxxxxxxxxxxx

The purchaser's obligations are not complete until the GST property settlement date confirmation form has been lodged and the withholding payment has been made.

A confirmation email will be sent to the email address provided when the form has been processed.

Purchaser payment details

Payment reference number
XXXX

Expected settlement date
XXXX

Total withholding payment
XXXX

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Provide a copy of this form to the purchaser/s and advise the supplier/s that you have received this confirmation.

Print friendly version

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Purchaser confirmation (Form 2)

Form 2: *GST property settlement date confirmation*

On or before settlement complete Form 2 using the unique LRN and PRN provided by the ATO.

Where two or more Purchasers are included in the same purchase transaction, they can choose to make one payment or separate payments using the same LRN and PRN.

If for any reason the sale of the property does not proceed and settlement does not take place there is no obligation for the Purchaser to withhold any amount and lodge Form 2.

Completing confirmation Form 2

GST property settlement date confirmation

All fields marked with * are mandatory.

Have you completed the GST property settlement withholding notification form?*

- (•) Yes
- ( ) No

Are you submitting this form as a purchaser of the property or the purchaser's representative?*

- ( ) Purchaser
- ( ) Representative

Have the purchaser and/or supplier details changed since the GST withholding notification form has been lodged?*

- ( ) Yes
- ( ) No

Cancel

Submit

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Completing confirmation Form 2

Contact details

Title*

- Select an option -

Last name*

First given name*

Phone number*

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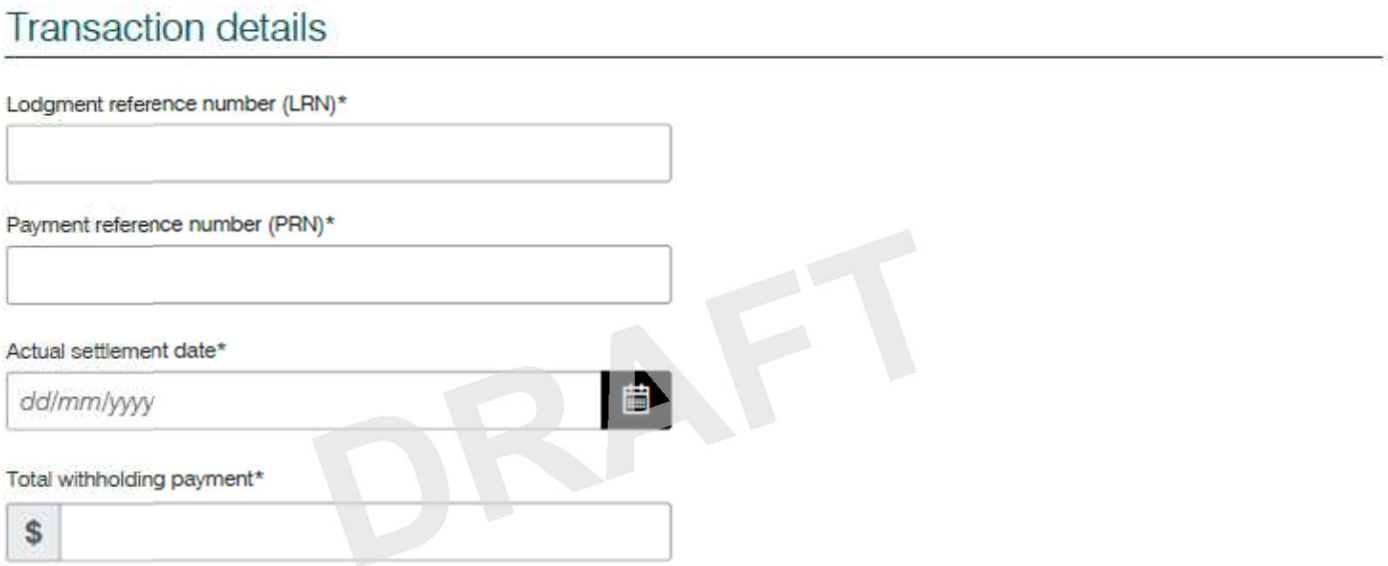
By providing an email address, you are authorising the ATO to communicate with you by email about this form. If an email address is not provided, a confirmation email will not be sent advising payment has been received by the ATO.

Would you like ATO to communicate with you via email?*

Yes

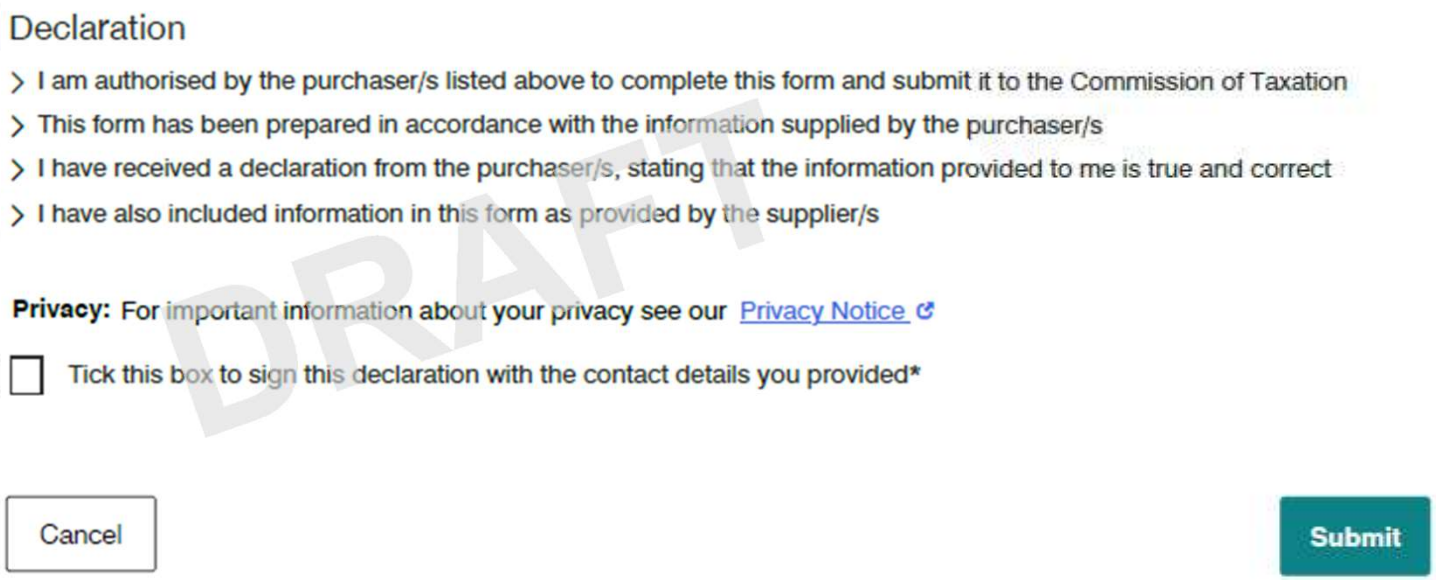
No

Completing confirmation Form 2



Completing confirmation Form 2

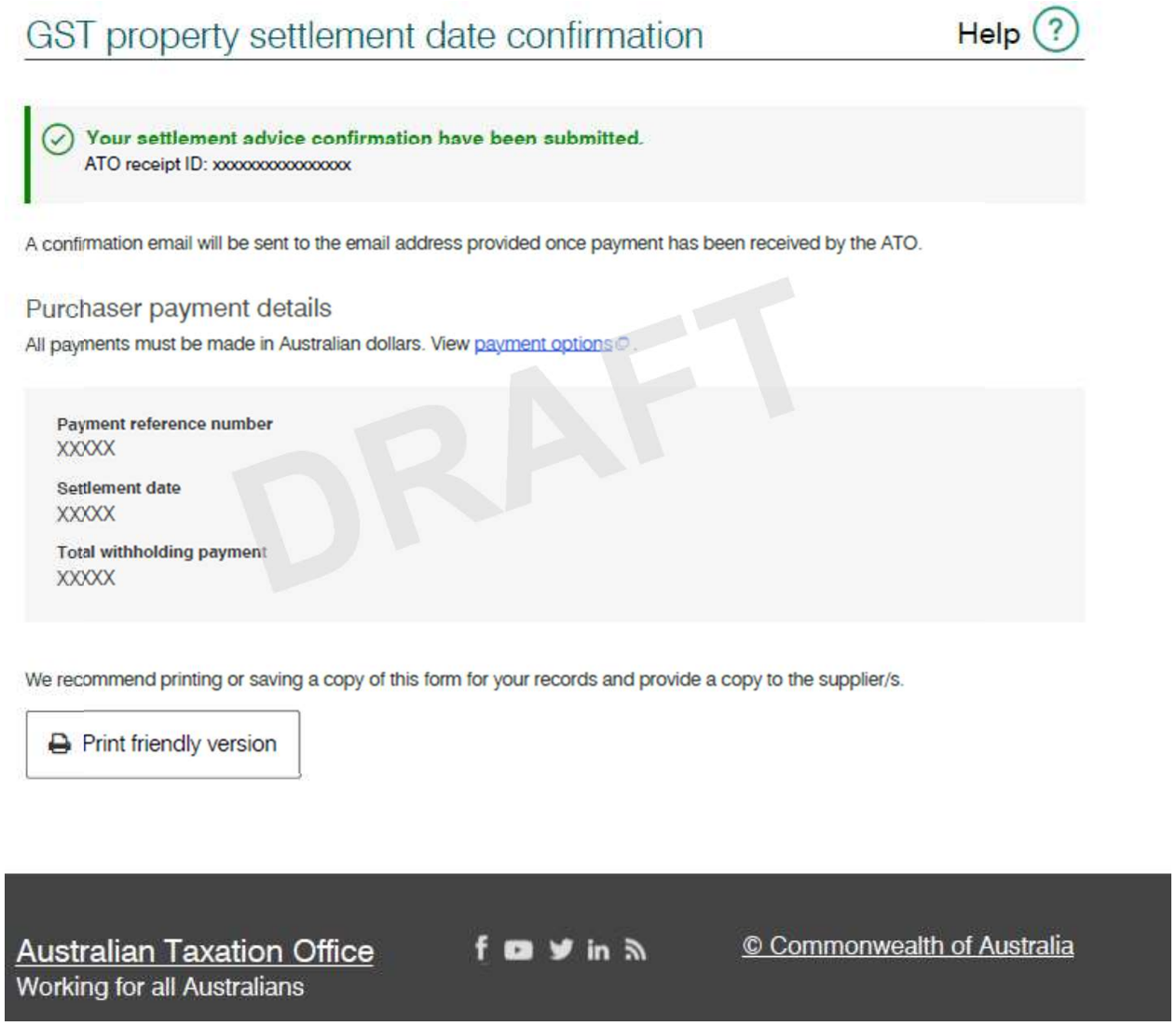
Purchaser representative declaration



NB: the declaration must be read and agreed before the form is submitted

Completing confirmation Form 2

Purchaser representative confirmation



GST property settlement date confirmation

Help

Your settlement advice confirmation have been submitted.
ATO receipt ID: xxxxxxxxxxxxxxx

A confirmation email will be sent to the email address provided once payment has been received by the ATO.

Purchaser payment details

All payments must be made in Australian dollars. View payment options

DRAFT

Payment reference number
XXXXX

Settlement date
XXXXX

Total withholding payment
XXXXX

We recommend printing or saving a copy of this form for your records and provide a copy to the supplier/s.

Print friendly version

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Paying the ATO

The Purchaser must pay the required amount to the ATO on or before the day of settlement.

The payment options are:

- E-conveyancing
- Other electronic options
- Cheque (i.e. Bank cheque)
- Other payment methods available on ato.gov.au

Once the payment has been received, an email notification will be sent to the purchaser and the supplier and/or their representative.

Transitional arrangements

- There will be a two-year transitional arrangement that will exclude contracts entered into before 1 July 2018, where payment (other than a deposit) is made before 1 July 2020.
- TAA 1953: Division 14, Part 3 – Application of amendments
  - Section 26: general rule
  - Section 27: existing contracts
  - Section 28: existing property development arrangements.
- The transitional arrangements provide certainty for contracts that have already been entered into.

Supplier's penalties

A Supplier who fails to give the required notice in writing to the Purchaser, may incur two types of penalty:

1. failure to give the required Notice is a strict liability offence with a penalty of 100 penalty units which may be prosecuted before the Court

2. failure to notify the Purchaser of the required details also incurs an administrative of penalty of 100 penalty units (which is not applied if the strict liability offence is prosecuted)

Where a corporation is convicted of the offence, the penalty that the Court may impose is 5 times the maximum penalty that the Court can impose for the offence.

(NB: 1 penalty unit = $210)

Purchaser's penalties

A Purchaser that fails to pay the withheld amount as required may be liable to pay the Commissioner a penalty **which is equal to that amount.**

This penalty will not apply if:

- the Purchaser was given a notice by the Supplier either stating that the premises are not new residential premises, or indicating that they were not required to withhold and pay an amount to the ATO, and

- 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 notice was correct.

Worked example:
Standard Land Contract

14/09/18

- Kath makes an offer to buy a new apartment from BuildCo for $900,000 and BuildCo accepts
- Kath engages her conveyancer to review the Standard Land Contract with her and handle the purchase process
- Kath pays a 10% deposit of $90,000 on contract exchange
- The required details for the **Supplier's Notification** are in the Sale Contract from BuildCo and the amount to be withheld is $81,818 (i.e. 1/11th of the contract price)

14/9/18 to 25/11/18

- Kath's conveyancer prepares requisitions, undertakes searches, prepares the transfer document, etc. while liaising with BuildCo's conveyancer in the lead-up to settlement
- Kath will need to withhold an amount of $81,818 and pay it to the ATO on or before settlement so she requests her conveyancer to lodge **Purchaser Notification Form 1** with the ATO to obtain an **LRN & PRN**

settlement 26/11/18

- On day of settlement Kath's conveyancer goes through the normal settlement process with BuildCo's conveyancer.
- The balance of the contract price (less the deposit and Kath's withheld amount of $81,818) is paid to BuildCo
- Kath's $81,818 is paid to the ATO using e-conveyancing and she lodges **Purchaser Confirmation Form 2**
- ATO emails a Purchaser payment receipt to the email address supplied

28/01/19

BuildCo:

- lodges their October-December 2018 quarterly BAS
- reports the sale at Label G1
- Reports GST payable at label 1A
- When BAS is processed receives a credit of $81,818 against the net amount reported in the 2018 October- December Quarterly BAS

Additional information

- A Draft Law Companion Ruling LCR 2018/D1 (published on 26 April), feedback due 25 May 2018
- Podcast on ATO's podcast channel Tax InVoice (search on QC54552)
- Animated video on ATOtv (tv.ato.gov.au) – GST withholding for certain taxable sales of property
- Recording of Webinar on 17 May 2018 will be available soon
- Presentations at seminars around the country
- Articles in industry publications
- Bulk email to property developers in June 2018
- The GST at settlement page on www.ato.gov.au (QC55431) and the GST and property page (QC21960).
- Webpages coming soon:
  - A guide for supplier and purchasers
  - Forms instruction page with a forms example.

Questions?

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