



CGT Withholding on real estate transactions

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MARCH 2016

Recent legislative amendments are designed to ensure foreign residents are liable to pay tax on capital gains on certain real estate transactions.

The amendments impose a 10% tax withholding requirement on Australian real property valued at over **\$2 million** that is purchased from non-resident vendors for contracts entered into from **1 July 2016**.

The legislative amendments are drafted on the basis that the vendor is a non-resident which means that resident vendors may be required to obtain a clearance certificate from the tax commissioner to escape the 10% withholding by the purchaser.

The Act introduces a new regime imposing withholding obligations on the purchasers of certain Australian real property transactions and is designed to assist in the collection of the capital gains tax (CGT) liabilities of foreign residents.

A purchaser that acquires certain Australian assets from a vendor that is a foreign resident must pay 10% of the purchase price to the Commissioner. The purchaser may withhold this amount from the vendor.

The withholding amount is 10% of the purchase price, excluding any adjustments to the purchase, but includes and GST and non-monetary consideration.

The obligation will apply to the acquisition of an asset that is:

- a direct or indirect interest in taxable Australian real property (TARP);

- an indirect Australian real property interest, or
- an option or right to acquire such property or such an interest.

The following acquisitions will be exempted from the withholding obligations:

- transactions involving TARP and certain indirect Australian real property interests valued less than **\$2 million**;
- a transaction conducted through an approved stock exchange or a broker-operated crossing system;
- an arrangement already subject to an existing withholding obligation;
- a securities lending arrangement; or
- transactions involving vendors who are subject to formal insolvency or bankruptcy proceedings.

The withholding obligation will not be imposed where the vendor obtains a clearance certificate from the Commissioner or where the vendor has made a declaration about their residency status or the nature of the interest in their asset.

The amendments apply in relation to acquisitions made on or after 1 July 2016.

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Contracts which will be signed after **1 July 2016** may prudently now need special conditions reflecting the new regime warranties or declarations as to:

(a) residency from the seller; and

(b) a condition precedent to allow the seller to obtain a clearance certificate from the Commissioner.

ClarkeKann are available to assist with any query you have regarding the amendments.

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