

Alert

TAX

Foreign Resident CGT Withholding – Important Changes

By Briony Hutchens

The foreign resident CGT withholding tax rules have been in effect since 1 July 2016. A more detailed analysis of these rules can be found in our previous article here: <http://www.dwfoxtucker.com.au/2016/12/foreign-resident-cgt-withholding-not-just-foreign-residents/>.

In summary, the rules operate to require purchasers of certain assets to withhold and remit to the ATO on or before settlement a portion of the purchase price unless the vendor satisfies certain requirements to verify that they were an Australian resident at the time that the transaction was entered into.

Where the asset being acquired is a direct interest in Australian real property, the regime currently only applies if the market value of the property was \$2M or more. The Government has announced as part of the 2017-18 Budget that this threshold will be reduced to \$750,000 from 1 July 2017, significantly expanding the application of the provisions.

In addition, the Government has announced an increase in the amount required to be withheld from 10% to 12.5%.

As the operation of the rules is based on the time that a transaction is entered into, which in most cases will be the time that a contract is

executed, it is expected that the changes will only be applicable to contracts entered into on or after 1 July 2017. If a contract is entered into prior to 1 July 2017 but settles on or after that date, it is expected that the existing \$2M threshold and 10% withholding rate will apply.

The impact of the reduced threshold is significant, with the majority of land transactions now likely to be subject to these rules. From a practical perspective, the changes mean that if you enter into a contract to sell property worth \$750,000 or more on or after 1 July 2017, you will have to obtain a clearance certificate from the ATO verifying that you are an Australian resident to prevent an amount being withheld at settlement. If you are purchasing property worth \$750,000 or more, then you will need to ensure that you obtain a valid clearance certificate from the vendor prior to settlement, otherwise you will need to withhold 12.5% of the purchase price at settlement and remit it to the ATO.

Penalties apply if a purchaser fails to withhold or doesn't pay the amount withheld by the date required.

Given the significant consequences of failing to comply, both vendors and purchasers will need to review their settlement procedures to ensure compliance with these rules.



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