



## **Foreign Resident Capital Gains Withholding Payments - All Purchasers Beware**

By Kevin Pai

From 1 July 2016, purchasers of Australian real “property” **over \$2 million** may be required to withhold 10% of the purchase price and pay it to the Australian Taxation Office (ATO). The onus is on the purchaser to pay the 10% to the ATO if a clearance certificate is not provided by the vendor.

### **Excluded assets**

There are some assets that are not subject to the withholding. These include:

- taxable Australian real property with a market value of less than \$2 million
- an indirect Australian real property interest that provides a company title interest with a market value of less than \$2 million
- transactions conducted through an approved stock exchange or a crossing system
- transactions subject to another withholding obligation
- securities lending arrangements
- transactions where the vendor is in external administration or transactions arising from the administration of a bankrupt estate, a composition or scheme of arrangement, a debt agreement, a personal insolvency agreement, or same or similar circumstances under a foreign law.

The key implications for transactions going forward for **'Australian tax residents'**

1. Only an Australian resident entity can obtain a clearance certificate.
2. A clearance certificate must be provided before settlement.
3. Issuing of a clearance certificate is free and will take between 14-28 days.
4. A clearance certificate is valid for 12 months from the date it issues, so the vender may 're-use' the clearance certificate for multiple disposals within the 12 month period.
5. In a transaction of multiple assets, if the combined value exceeds \$2 million, a clearance certificate will be needed.

The key implications for transactions going forward for **'foreign tax residents'**

1. 'Foreign tax resident' - residency status 'for tax purposes' is not the same as that used for immigration purposes.
2. A 10% non-final withholding will be incurred for transactions not excluded by definition.
3. The withholding is not final and the vendor may claim a credit depending on their Australian tax obligations.
4. [check over here](#). If the 10% withholding amount impedes on the transaction, a variation can be applied to the ATO.
5. Whether the foreign resident is registered for GST may affect the amount of withholding required. Information contained in this article has been gathered and summarised from the ATO website, for more information please see:  
<https://www.ato.gov.au/General/Capital-gains-tax/In-detail/Calculating-a-capital-gain-or-loss/Foreign-resident-capital-gains-withholding/>