

New tax rules for properties \$750,000 and above

From 1 July 2017, new tax rules will apply on any property transaction where the market value of the property is \$750,000 and above.

Although the new laws are aimed at foreign residents, real estate agents must be aware that these new laws also impact Australian residents selling properties above this value.

Summary

The new laws require a purchaser to withhold 12.5 per cent of the purchase price of real property valued at \$750,000 or more and to pay that amount to the Australian Taxation Office (ATO) on settlement unless the seller obtains a clearance certificate.

The new laws will start on 1 July 2017 and are aimed at sellers who are 'foreign persons'. However, it will impact all property transactions valued \$750,000 and over, irrespective of whether the seller is a foreign person or not.

For any sale contract entered into on or after 1 July 2017 where the purchase price is \$750,000 or greater, the purchaser has a statutory obligation to withhold 12.5 per cent of the purchase price at settlement from the seller and pay that amount to the ATO. Following settlement, the seller applies for a tax credit in relation to the amount withheld by the ATO for the capital gains liability arising from the transaction.

This means that Australian resident sellers who are selling property with a market value of \$750,000 or above will need to apply for a clearance certificate from the ATO to ensure that their sale proceeds are not withheld.

The REIQ is advising all agents to get their clients to apply as soon as possible to avoid risk of delay.

What does this mean for agents?

Australian resident seller/s

- If you are appointed to sell a property and you consider its market value to be \$750,000 or more then you should advise your client to apply for a clearance certificate from the ATO as soon as practicable to avoid 12.5 per cent of the purchase price being withheld at settlement.
- If you are unsure about the ultimate purchase price but there is some prospect that it may sell for \$750,000 or above (for example, it is being sold at auction and the purchase price is unknown or it is being sold by expression of interest) you should advise your seller to apply for a clearance certificate from the ATO as soon as practicable to avoid 12.5 per cent of the purchase price being withheld at settlement.

How can your clients obtain a clearance certificate?

The ATO will only issue a clearance certificate to a seller that is not a 'foreign person' for taxation purposes.

Any seller that is not a foreign person can apply online for a clearance certificate from the ATO, and that certificate will remain valid for 12 months from the date of issue. The certificate may be used for multiple property sales within the 12-month period.

If a valid clearance certificate is provided to the purchaser prior to settlement, the purchaser is not entitled to withhold 12.5 per cent of the purchase price at settlement and the full sale proceeds are to be released to the seller.

How do Australian residents obtain a clearance certificate?

A seller who is an Australian resident can obtain a clearance certificate by making an application here: https://www.ato.gov.au/FRWT_Certificate.aspx

If the seller is automatically assessed as an Australian resident, a clearance certificate will be issued within days of the application however, the process may take longer for more complex applications.

When does the clearance certificate have to be given?

Australian resident sellers must give the clearance certificate to the purchaser on or before settlement occurs to avoid the purchaser withholding 12.5 per cent of the purchase price.

What if my client is a foreign person?

Where the seller is a 'foreign person', the purchaser must retain 12.5 per cent of the purchase price and pay that to the ATO at settlement, unless the seller provides a valid 'Variation Notice' in which case the purchaser must remit the amount stated in the notice.

When will the new laws apply?

The new laws will apply to sale contracts (for \$750,000 and above) entered into on or after 1 July 2017.

What types of properties do these rules apply to?

All property including, vacant land, residential property, commercial property, strata title and community titles schemes.

Foreign resident sellers

If the purchase price is \$750,000 or above and the seller is a foreign resident, you should advise them that 12.5 per cent of the purchase price will be withheld at settlement by the purchaser and provided to the ATO.

Will the REIQ amend its contracts?

Yes, all REIQ property sale contracts (residential and commercial) will be amended to include provisions which reflect the above new tax rules.

Where can I find more information?

You can find more information here:

<https://www.ato.gov.au/general/new-legislation/in-detail/direct-taxes/income-tax-on-capital-gains/foreign-resident-capital-gains-withholding-payments/>

DISCLAIMER: The information contained in this fact sheet is provided for general information purposes only. The information should not be used or relied on as a substitute for legal advice. If you require legal advice concerning a specific fact or situation, you should seek independent legal advice. REIQ accepts no liability or responsibility for any loss occurring as a result of anyone acting or refraining from acting on the basis of the information contained herein. Whilst REIQ has taken all reasonable measures to ensure that the information contained in this fact sheet is correct, REIQ gives no warranty and accepts no responsibility for the accuracy or the completeness of the information.