

THE FOREIGN RESIDENT CAPITAL GAINS WITHHOLDING REGIME

Background

The Australian Tax Office (ATO) has a withholding regime that attempts to ensure people, who are deemed foreign residents, and sell property are paying their capital gains tax obligations prior to the proceeds from the sale being moved off-shore.

What property sales are affected?

All transactions where the purchase price is \$750,000 or more.

What do sellers have to do prior to settlement?

- Sellers (individuals and companies) must apply to the ATO for a Clearance Certificate.
- Give the Clearance Certificate to the buyer and their conveyancer/settlement agent prior to settlement.

What does the ATO do?

- The ATO will determine if the seller is deemed a foreign resident.
- The ATO should issue a Clearance Certificate to all applicants who are not foreign residents.

Please note: REIWA understands that there may be delays in the ATO issuing a Clearance Certificate if there are outstanding taxation returns or other unresolved matters with the ATO.

What does the buyer do if a Clearance Certificate is received prior to settlement?

- The buyer will give the Clearance Certificate to their conveyancer / settlement agent.
- The buyer, at settlement, will not withhold any money.

What does the buyer do if a Clearance Certificate is not received prior to settlement?

- The buyer will notify their conveyancer / settlement agent that a Clearance Certificate was not received.
- The buyer at settlement must withhold 12.5 per cent of the purchase price.
- The buyer at settlement must pay the 12.5 per cent of the purchase price to the ATO.

What does the seller do if they are not issued with a Clearance Certificate and the ATO receives 12.5 per cent?

When the seller submits their tax return, the ATO will assess any capital gains tax liability.

Can the seller delay settlement if the Clearance Certificate has not been received?

Only through agreement between the buyer and the seller.

How to apply?

To apply for a Clearance Certificate or for more information, visit: www.ato.gov.au and search for: *Impacts on foreign and Australian residents*.