

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 vendors who are 'foreign persons'. However, it will impact all property transactions valued \$750,000 and over, irrespective of whether the vendor 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 vendor and pay that amount to the ATO. Following settlement, the vendor 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 vendors 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.

How can your clients obtain a clearance certificate?

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

Any vendor 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 vendor.

How do Australian residents obtain a clearance certificate?

A vendor who is an Australian resident can obtain a clearance certificate by making an application on ato.gov.au/FRCGW (hyper link).

If the vendor 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 vendors 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 vendor 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 vendor 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.

What does this mean for agents?

Australian resident vendor/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 vendor 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 vendor 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.

Foreign resident vendors

- If the purchase price is \$750,000 or above and the vendor 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 on the [ATO fact sheet for real estate agents](#).

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