



CGT Withholding Payments: How will they impact insolvency practitioners transferring property?

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New amendments to Schedule 1 of the Tax Administration Act 1953 ("the Act"), will amend the current foreign resident capital gains withholding payments regime, and apply to contracts transferring an interest in real property entered into on or after 1 July 2017.

What is the Foreign Resident Capital Gains Withholding Payments Regime?

Under the current regime, purchasers of taxable Australian real property (or an indirect taxable Australian real property interest which causes a company title interest to arise), with a market value over \$2 million, must withhold and pay 10% of the purchase price to the ATO, unless a valid clearance certificate issued by the ATO (or a valid vendor declaration declaring that for a specified time the vendor is or will be an Australian resident), is provided before settlement. Although these new rules are intended to affect non-Australian resident vendors selling real property, the regime applies to all vendors, regardless of whether they are foreign residents.

A vendor will be considered a relevant foreign resident if:

- The purchaser knows or reasonably believes that the entity is a foreign resident; or
- The purchaser does not reasonably believe that the entity is an Australian resident, and either:

o The entity has an address outside Australia, according to any record the purchaser has about the acquisition; or

o The purchaser has been authorised to provide a related financial benefit to a place outside Australia.

What are the Changes?

From 1 July 2017 the new amendments will increase the withholding rate that the purchaser must pay to the ATO from 10% to 12.5%. Further, the withholding threshold will be reduced from \$2 million to \$750,000.

The changes to the withholding threshold means that many more property transactions will be affected and purchasers of property will need to be vigilant in ensuring they obtain the ATO Clearance Certificate from a vendor or withhold the necessary amount of withholding tax from the sale.



The Exceptions

But what will the changes mean for trustees in bankruptcy, liquidators and administrators? Well, rather conveniently, the Act includes exceptions for insolvency administrations.

Under Section 14-215(g) of Schedule 1 of the Act, this regime will not apply to transactions which arise from

- The administration of a bankrupt estate;
- A composition or scheme of arrangement accepted under Division 6 of Part IV of the Bankruptcy Act;
- A debt agreement under Part IX of the Bankruptcy Act;
- A personal insolvency agreement under Part X of the Bankruptcy Act;

Further, the regime will not apply to companies which satisfy the conditions of Section 161A(1)(a) of the Corporations Act, as being in external administration, including companies that are being wound up, under administration or have executed a deed of company arrangement which has not been terminated.

We have seen many recent changes to taxation laws affecting foreign investors, however these changes impose obligations on all purchasers and vendors of real property.

It is important for insolvency practitioners to be aware of any changes to taxation laws which may affect the administration of bankrupt estates or external administrations of a company. Matthews Folbigg can provide you with specialist insolvency and property advice to assist you with your property transactions, contact us today.

If you would like more information or advice in relation to insolvency, restructuring or debt recovery law, contact Bonnie McMahon at bonniem@matthewsfolbigg.com.au or a Principal of the Matthews Folbigg Insolvency, Restructuring & Debt Recovery Group: Jeffrey Brown on (02) 9806 7446 or jeffreyb@matthewsfolbigg.com.au Stephen Mullette on (02) 9806 7459 or stephenm@matthewsfolbigg.com.au.