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Foreign resident capital gains withholding

Find out about the foreign resident capital gains withholding (FRCGW), including who it applies to and when it applies.

Foreign resident capital gains withholding overview

Find out what foreign resident capital gains withholding (FRCGW) is and how it applies when disposing of property.

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QC 71566

Foreign resident capital gains withholding overview

Find out what foreign resident capital gains withholding (FRCGW) is and how it applies when disposing of property.

Last updated 22 June 2026

How FRCGW works

Foreign resident capital gains withholding (FRCGW) must be applied on all real property (property) sales, unless the vendor is:

- an Australian resident for tax purposes (Australian resident) with a valid clearance certificate issued by us at, or before settlement –

without a clearance certificate, FRCGW must be withheld from the sale proceeds by the purchaser and paid to us

- a foreign resident (also known as a non-resident) with a variation notice specifying a reduced rate of FRCGW – without a variation, the purchaser must withhold the full rate of FRCGW from the sale price and remit that amount to us to go toward payment of this liability.

Purchasers must pay any amount they withhold to us at, or before settlement.

The most common reasons for disposing of a property include selling and transferring to another person or entity. For more reasons, see CGT events.

For a summary of what to do:

- watch our video to see how FRCGW works based on your circumstances

Media: who know
https://ato.vudoo.io/embed/71047202305 (**Duration:** 0:40)

- download our Selling and purchasing property – capital gains withholding (NAT 75701) factsheet from the ATO Publication Ordering Service
- see the factsheet in Chinese.

Rate of withholding from a property sale

The following FRCGW rates apply to the market value of property contracts signed:

- from 1 January 2025, a rate of 15% applies to the value of all property.
- from 1 July 2017 to 31 December 2024, a rate of 12.5% applies to property valued at $750,000 or more.
- from 1 July 2016 to 30 June 2017, a rate of 10% applies to real property valued at $2,000,000 and above.

Example: contract signed before 1 January 2025

Jane is a foreign resident and wants to sell her apartment.

Toni decides to purchase the property, signing the sale contract on 16 December 2024 for $1.2 million (its market value at that time).

Their settlement period is 28 days, with the settlement date 6 January 2025.

As the contract was signed **before** 1 January 2025, Toni must withhold 12.5% of $1.2 million ($150,000) and pay this amount to us.

Note: If the contract was signed after 1 January 2025, Toni would have to withhold at a rate of 15% of $1.2 million ($180,000) and pay this amount to us.

Market value

Usually, the market value of a property is the sale price.

However, if the sale price has been negotiated between the vendor and the purchaser at non-arm's length (for example, because the vendor and purchaser are related) then the purchaser must seek a separate expert evaluation from a professional valuer.

Australian residency

Depending on circumstances, residency for tax purposes can change. We will confirm your residency status for foreign capital gains withholding when you apply for a clearance certificate.

Individuals

The residency test for individuals for tax purposes is different to that for social security and immigration purposes.

Generally, an individual will be an Australian resident for tax purposes if they:

- have always lived in Australia, or came to Australia and live here permanently
- have been in Australia continuously for 6 months or more, and for most of that time worked in one job and lived at the same place
- have been in Australia for more than 6 months of the year, unless their usual home is overseas and they don't intend to live in Australia
- go overseas temporarily and don't set up a permanent home in another country
- are an overseas student who came to Australia to study and are enrolled in a course that is more than 6 months.

You can work out your tax residency or work out your residency status for tax purposes.

Non-individuals

Different residency tests apply to non-individual entities, such as:

- companies
- corporate limited partnerships
- trusts

Non-individuals can refer to Working out your residency.

Types of assets

Taxable Australian real property requiring a clearance certificate includes:

- your home
- vacant land, buildings, residential and commercial property
- mining, quarrying or prospecting rights where they are situated in Australia
- a lease over real property in Australia
- indirect Australian real property (IARP) interests, where the holder has a right to occupy land or buildings on land.

Other assets

Other types of real property-related assets, such as leases, shares that are indirect real property interests (IARPI) and options in those that aren't listed on an official stock exchange are also subject to FRCGW.

See Vendor declarations for more information about what to do.

Excluded transactions

Some transactions (due to the way they are sold or disposed of) aren't subject to FRCGW, including:

- transactions through an approved stock exchange (such as the Australian Stock Exchange) or those using a broker-operated crossing system
- transactions subject to another withholding obligation – see List of CGT assets and exemptions
- securities lending arrangements, as these don't cause a CGT liability
- transactions when a vendor is in external administration, or transactions from a bankrupt estate, a composition or scheme of arrangement, a debt agreement, a personal insolvency agreement, or the same or similar circumstances under a foreign law.

QC 48972

Australian residents and clearance certificates

Australians selling property need a clearance certificate to avoid having an amount withheld from the sale price.

Last updated 9 October 2026

Clearance certificates for Australian residents

Foreign resident capital gains withholding (FRCGW) must be withheld on all real property (property) sales unless the vendor is an Australian resident for tax purposes.

All Australian residents (for tax purposes) selling or disposing of Australian real property (property) **must** have a clearance certificate and give it to the purchaser at, or before settlement.

Without a clearance certificate, the purchaser must withhold up to 15% of the sale proceeds (or market value if not sold at arm's length) for foreign resident capital gains withholding (FRCGW) purposes.

Note: There are specific circumstances that are covered by a legislative instrument that don't require a clearance certificate.

Australian residency

Depending on circumstances, residency can change. We will confirm your residency status for FRCGW purposes when you apply for a clearance certificate.

Individuals

The residency test for individuals for taxation purposes is different to that for social security and immigration purposes.

Generally, an Australian resident for tax purposes is an individual who:

- has always lived in Australia or has come to Australia and lives here permanently
- has been in Australia continuously for 6 months or more, and for most of that time, worked in the one job and lives at the same place
- has been in Australia for more than 6 months of the year, unless their usual home is overseas and they don't intend to live in Australia
- goes overseas temporarily and doesn't set up a permanent home in another country
- is an overseas student in Australia to study and is enrolled in a course that is more than 6 months.

You can work out your tax residency or work out your residency status for tax purposes.

Non-individuals

Different residency tests apply to non-individual entities such as companies, corporate limited partnerships and trusts.

Non-individuals can refer to Working out your residency.

Rate of withholding from a property sale

The following FRCGW rates apply to the market value of property contracts signed:

- On and after 1 January 2025, a rate of 15% applies to the value of all property.
- From 1 July 2017 to 31 December 2024, a rate of 12.5% applies to property valued at $750,000 or more.
- From 1 July 2016 to 30 June 2017, a rate of 10% applies to real property valued at $2,000,000 and above.

Example: the importance of getting a clearance certificate early – 15% withheld from sale

Willow and Stanley are Australian residents for tax purposes. On 1 September 2024 they decide to sell their family home, their main residence. They need the funds from the sale to purchase a new residence.

They are both listed as owners of the property on the certificate of title, so both must apply for their own clearance certificate.

They find a purchaser on 8 January 2025 and sign the contract of sale, with a settlement 30 days later on 6 February.

They don’t apply for a clearance certificate until 15 January.

The property sold for $600,000, however:

- Willow's clearance certificate issued and was given to the purchaser at settlement
- Stanley was still waiting for his clearance certificate.

The sale goes through and settlement occurs. As Stanley didn't have a clearance certificate at settlement, 15% of Stanley's share of the sale proceeds ($45,000) must be withheld by the purchaser and paid to us.

Stanley must wait until his 2025 tax return is lodged and processed for a refund.

As the purchaser had received a clearance certificate from Willow, there's no withholding required on her share of the sale proceeds.

Example: the importance of getting a clearance certificate early – no withholding

Maisie and Max are Australian residents for tax purposes. On 1 September 2024 they decide to sell their family home, their main residence. They need the funds from the sale to purchase a new residence.

They are both are listed as owners of the property, so both must apply for their own clearance certificate.

They apply for a clearance certificate straight away which is issued to them on 29 September 2024. The clearance certificate is valid until 28 September 2025 – 12 months from its date of issue.

A few months later, on 7 January 2025, they put their home on the market and a week later accept an offer of $650,000 and a fast settlement.

As they had clearance certificates, which they gave to the purchaser prior to settlement, the purchaser doesn't withhold any FRCGW.

Note: If they didn’t have their clearance certificates, 15% of the sale price ($97,500 – $48,750 each) would have to be withheld by the purchaser as FRCGW and paid to us.

They would have to wait until their 2025 tax returns are lodged and processed for a refund, which could delay purchasing their new residence.

Types of property

Taxable Australian real property requiring a clearance certificate includes:

- your home
- vacant land, buildings, residential and commercial property
- mining, quarrying or prospecting rights where the material is situated in Australia
- indirect Australian real property interests (IARPI), where the holder has a right to occupy land or buildings on land.

Applying for a clearance certificate

In this section:

- Clearance certificates
- Who can apply
- Processing times
- If you don’t have a clearance certificate
- Names on the clearance certificate

Clearance certificates

You should lodge your application as soon as you are considering selling, as it can take up to **28 days** to process and issue a certificate.

The vendor (or seller) is the entity that owns the legal title to the property.

An ATO-issued clearance certificate confirms the vendor's Australian residency for foreign capital gains withholding.

When selling Australian real property:

- you don't have to wait to sign a contract – apply for a clearance certificate as soon as you are thinking of selling, they are free
- each vendor **must** give their clearance certificate to the purchaser **before** the settlement date
- applications for clearance certificates can take up to 28 days to process and issue

- if there's no clearance certificate provided by the vendor by the settlement date, the purchaser **must** withhold an amount of FRCGW and pay it to us
- clearance certificates are valid for 12 months from their date of issue (as long as the vendor's residency status doesn't change during that time)
- if you decide not to sell, but have a clearance certificate, there's no requirement to use it
- applications for clearance certificates are free.

If a vendor is a non-individual entity, for example a super fund, partnership, trust or company, see Clearance certificates in certain circumstances.

In certain circumstances, the property can be looked after on behalf of another entity, for example, a trustee for a deceased estate.

Note: When vendors don't have a valid clearance certificate from us at or before settlement, the purchaser **must** withhold a FRCGW amount from the sale.

Apply for a clearance certificate

If someone else is completing your clearance certificate application, see Who can apply.

For more information on how to complete the form, see Capital gains withholding clearance certificate application online form instructions – for Australian residents.

A paper form and instructions are also available. See Capital gains withholding clearance certificate application paper form instructions for more information.

The contract is longer than 12 months

There may be instances where the settlement date is after the expiry date on the vendor's clearance certificate. For example, where an off-the-plan apartment is acquired and the contract period is greater than 12 months.

The purchaser may rely on the clearance certificate as long as:

- the date it's made available to the purchaser is within the period stated on the certificate, and
- the certificate period covers some of the time the transaction is in effect; the transaction is in effect from the contract date through to the settlement date.

In relation to trusts, we accept the purchaser has fulfilled their obligation if the vendor can show that the entity on the clearance certificate is the trustee of the trust (for example, as evidenced by a copy of the trust deed).

Who can apply

Those who can apply for a clearance certificate include:

- vendors
- Australian legal practitioners and registered tax agents representing the vendor on their behalf.

Conveyancers who are not legal practitioners

Conveyancers can't apply for a clearance certificate on behalf of the vendor, but can assist them to apply by:

- giving the vendor a paper clearance certificate application (PDF, 290KB) to complete and sign, then using the information on the paper application to enter the data online (**don't** send in the paper application as this information has already been entered online)
- entering application data online with the client and printing the application for the client to sign before submitting it.

The Tax Practitioners Board (TPB) advises that conveyancers should have a declaration to make it clear they're not a registered tax agent or Australian legal practitioner and can't provide tax advice.

Remember to give your client a hard copy for their records. If you retain a copy of signed applications, keep them secure as they contain sensitive information.

Example: conveyancer assisting client to complete a clearance certificate

Jo is a conveyancer, who has an elderly Australian resident vendor who doesn't have a computer and doesn't feel confident in applying for a clearance certificate themselves.

The vendor wants a quick settlement so they can move into a retirement villa.

Jo prints a copy of the paper application form and completes it with her client giving her the necessary information. Her client signs the application.

Then while the client is still in her office, Jo keys the information on the paper application into the online application form and submits it.

For more information, see Conveyancing and the TASA on the Tax Practitioners Board website.

Processing times

Applications must be lodged at least **28 days before** settlement to ensure you have your clearance certificate in time.

Each application is processed separately, so members of a couple or group may receive them at different times.

Processing may take longer if:

- the vendor hasn't lodged income tax returns recently
- there's a change in residency status
- the names on our records don't match the names on the Certificate of Title – see Name on the clearance certificate
- the property is owned by complex entity structures and determining the residency takes longer.

If you lodge your application close to the settlement date, we **can't guarantee** it will be processed by that date.

If you don’t have a clearance certificate

If an Australian resident vendor doesn't provide a valid clearance certificate at or before settlement, the purchaser **must** withhold a FRCGW amount, even if the Australian resident vendor:

- is entitled to a clearance certificate, but didn't get one
- didn't provide their certificate to the purchaser at or before settlement.

Name on the clearance certificate

The entity that is named on the certificate of title is the entity legally required to have a clearance certificate.

There are different requirements based on the type of 'entity':

- Individuals
- Trusts and super funds
- Consolidated groups and multiple entry groups

Individuals

Clearance certificates are issued in the legal name on our system.

- The **first** and **last** names on the clearance certificate **must** match the property's certificate of title for it to be accepted by the purchaser.
- Middle names don’t need to be supplied or matched.
- A title (honorific) match isn't required. For example, it doesn't matter if Miss Susie Tan is titled 'Ms', 'Mrs', or 'Dr' Tan.

Name mismatch

If the certificate of title:

- shows your legal name, but **doesn't match** ATO systems, you need to update your legal name with us before you apply; in some circumstances this may not be required – see Proof of name change
- doesn't show your legal name, but your name on **ATO systems is correct**, you need to:
  - update your certificate of title with your correct legal name, or
  - check with your state or territory governing body to see what documentation you can provide to the purchaser to ensure they are satisfied you are the registered owner.

Proof of name change

Legal documentation is required to support a name change. The ATO doesn't accept the use of statutory declarations unless they are supported with other legal documents (for example, a marriage certificate or a change of name certificate issued from an Australian state or territory registry).

If the proof of name change is from an overseas source, you must update your name with the ATO by post.

Trusts and super funds

The entity that has legal title to the property applies for the clearance certificate. In most cases this is the trustee who applies in their own capacity as either a company or an individual.

The name on the certificate of title and clearance certificate must match.

The trustee must:

- ensure the associates' details in the Australian business register are updated and correct
- apply for the clearance certificate
- use one of either
  - the trustee's tax file number (TFN)
  - their Australian business number (ABN) as the identifier if applicable.

The clearance certificate is issued in the name that appears on our systems.

We accept the purchaser has fulfilled their obligation if the vendor can show that the entity on the clearance certificate is the trustee of the trust (for example, as evidenced by a copy of the trust deed).

Note: A change of trustee/trustees doesn't constitute a change to beneficial ownership and the assets still belong to the beneficiaries of the trust. No clearance certificate is required in this situation as no CGT event has happened.

Trustee doesn't have a TFN

If the:

- corporate trustee is a company that doesn't have a TFN, attach the details of the trust and the company's Australian company number (ACN) to the application
- trustee is an individual that doesn’t have a TFN, attach the details of the trust’s name with the application; for example, a copy of the trust deed.

This may be needed where the trust is registered in ATO systems as 'The trustee for ABC Trust' where the property title contains 'XYZ as the trustee for ABC Trust', or the clearance certificate only lists the trustee's name.

For help to complete the clearance certificate application, use the online instructions.

Consolidated groups and multiple entry groups

A member of a consolidated group or multiple entry groups that purchases an asset to which holding applies from another member of the group is still required to comply with the withholding obligation.

We issue a clearance certificate to the head company or provisional head company of the group, which includes the members of the group as an attachment.

We rely on the group membership information as recorded on our systems. If group membership has changed, it's up to the head company to notify us of these changes before making a clearance certificate application.

Alternatively, subsidiary entities can, in their own right, apply for a clearance certificate and have one issued in their own name.

Clearance certificates in certain circumstances

In certain circumstances, there are different requirements for clearance certificates.

In this section:

- Relationship breakdown
- Transferring property

- Mortgagee sales
- Deceased estates
- Income tax exempt entities

Relationship breakdown

There are circumstances where a clearance certificate (or an FRCGW variation) isn't required when a relationship breaks down. LI 2026/38 Taxation Administration (PAYG Withholding Variation for Foreign Resident Capital Gains Withholding Payments) Legislative Instrument 2026 varies the withholding amount to nil where:

- the transfer of property happens under the *Family Law Act 1975* or under a relevant state, territory or foreign law
- the transfer is from one former spouse to another
- the transferee has documentation in accordance with subsection 126-5(1) of the *Income Tax Assessment Act 1997* (ITAA 1997) by the time of the transfer.

For more information, see When the relationship breakdown rollover applies.

Transferring the certificate of title according to a court order will provide certainty of legal ownership and avoid potential withholding if any of the title holders are uncontactable in the event of a future property sale.

When a property is transferred or sold to a third party under a marriage or relationship breakdown settlement (not a court order or equivalent agreement under the *Family Law Act 1975*), all vendors on the certificate of title should seek a:

- clearance certificate if a resident
- variation if a foreign resident.

Example: marriage breakdown under a court order or formal agreement

After 10 years of marriage, Ivy and Joe decide to separate and file for divorce in the Family Court of Australia. Apart from other assets, they own a house in Melbourne valued at $2 million,

which was their family home. Joe is from the UK and returned there following the divorce.

The court makes a financial order under Part VIII of the *Family Law Act 1975* that Ivy will keep the Melbourne house. Five years later Ivy decides to sell the home.

To determine if FRCGW is payable, the purchaser needs a clearance certificate from those listed on the certificate of title.

Court order

Once the court made the financial order, Ivy transferred the Melbourne property to her name.

Ivy doesn't need a clearance certificate from her ex-spouse for the transfer of the property title from joint tenants to her name. The court order means that a relationship breakdown rollover under subdivision 126-A of the *Income Tax Assessment Act 1997* applies and hence no withholding is required.

When Ivy sells the property, she applies for a clearance certificate and gives it to the purchaser before settlement.

Ivy is the sole title holder and providing the clearance certificate to the purchaser before settlement means the purchaser isn't required to withhold any amounts to pay to the ATO.

When the property's certificate of title isn't updated

If Ivy hadn't transferred the property to her name to be the single title holder, there would still be 2 names on the certificate of title.

The purchaser is required to withhold 15% of each title holders share unless they receive a clearance certificate for each of them, or a variation if either of them are a foreign resident.

Ivy provides a clearance certificate.

Joe remains overseas and is uncontactable.

The purchaser has no choice but to withhold 15% of Joe's share (as joint tenants) and pay it to the ATO. In this instance this amount is $150,000 which can only be claimed as a credit when Joe lodges his tax return for the year the contract of sale was signed.

Ivy writes to the ATO and provides the court documents as evidence that she's entitled to the $150,000 credit amount.

The ATO considers the facts and evidence and determines Ivy is entitled to the credit and allocates it according to the court order.

The amount has already been paid to the ATO. Ivy must lodge her tax return to claim the credit.

Example: marriage breakdown where there is no court order or formal agreement

After 12 years of marriage, Sophie and Daniel separate. They don't obtain a court order or enter into a formal agreement about their property settlement.

They own a house in Melbourne valued at $1.8 million, which is registered in both their names as joint tenants.

They agree privately that Sophie will keep the property. Daniel moves overseas and becomes a foreign resident for tax purposes.

Sophie does not transfer the property into her sole name, so both names remain on the certificate of title.

Sophie later decides to sell the property.

To determine if FRCGW applies, the purchaser must rely on the names listed on the certificate of title at the time of sale.

At settlement, Sophie provides a clearance certificate, however, Daniel does not provide a clearance certificate as he is overseas and is not considered to be an Australian resident for tax purposes.

The purchaser is required to withhold 15% of Daniel's share of the sale price and pay this amount to the ATO.

This amount can only be claimed as a credit when Daniel lodges his tax return for the income year the contract of sale was signed.

Example: marriage breakdown where there is no court order or formal agreement and the property is transferred before sale to a third party

Using the previous example, with a private agreement in place between Sophie and Daniel, Sophie ensures the property is transferred into her name before Daniel goes overseas.

Daniel applies for and is issued a clearance certificate from the ATO.

Sophie and Daniel obtain a market valuation from a professional valuer, to determine the value of the property at the time of transfer.

The market value at the time of transfer will be used to determine any CGT implications and stamp duty.

Sophie later decides to sell the property.

To determine if FRCGW applies, the purchaser must rely on the name/s listed on the certificate of title at the time of sale.

At settlement, Sophie provides a clearance certificate. As she is listed on the certificate of title as the sole owner of the property, the purchaser is not required to withhold the 15%.

For more information, see Transferring property to family or friends.

Transferring property

Transferring property from one entity to another entity is a capital gains event. This includes family transfers.

This means the transferor needs either a clearance certificate or a variation to avoid withholding applying.

The withholding amount needs to be based on the market value of the property at the time of the transfer. The independent market valuation should be done by a qualified valuations expert for Australian tax purposes.

Mortgagee sales

When you borrow funds (mortgagor) from a mortgagee (a creditor, such as a bank) and aren't able to repay the loan, the mortgagee can force the sale of the property.

There are 3 situations where this commonly applies:

1. The mortgagor keeps the title to the sale while the mortgagee orders the property be sold but hasn't repossessed the title to the property.
    - The mortgagor must get a clearance certificate. Without a clearance certificate, FRCGW would apply to the sale, unless the mortgagee applies and receives a variation notice.
    - The mortgagor remains the legal owner of the property. They must apply for a clearance certificate and ensure it is provided to the final purchaser. If the mortgagor doesn't cooperate with the mortgagee, the mortgagee (as a creditor) can apply for a variation notice to have the withholding reduced to the amount owed (if the sale proceeds don't cover the residual mortgage).
2. The mortgagee takes possession of the property and sells it, but there's no transfer of title from mortgagor to mortgagee.
    - The mortgagee can apply for a variation notice to have the withholding reduced (if the sale proceeds don't cover the residual mortgage).
3. Foreclosure, when the mortgagee repossesses and takes the title to the property. FRCGW may apply when the transfer of title is made from the mortgagor to the mortgagee (generally, a sale of the property at market value).
    - The transfer of title from the mortgagee to the final purchaser. If the mortgagor doesn't cooperate with the mortgagee, the mortgagee (as a creditor) can apply for a variation notice to have the withholding reduced (if the sale proceeds don't cover the residual mortgage).

However, if the mortgagee is an Australian Deposit-taking Institution (such as an Australian bank), in some circumstances, the rate of withholding is varied to 0%. For more detail, see LI 2026/38.

Deceased estates

Executor of the will is an Australian resident

When the executor or trustee (legal representative) of a deceased estate is selling or disposing of a property, there are some circumstances when a clearance certificate or withholding **isn't** required. LI 2026/38 varies the withholding amount to nil in the following circumstances:

- a beneficiary of the will acquires the property (regardless of their residency)
- a surviving joint tenant acquires the property
- the property is transferred to the legal representative.

The operation of the Instrument extends to circumstances where assets pass to beneficiaries of a testamentary trust.

When clearance certificates are required

If the property is sold or transferred to anyone not listed in LI 2026/38, the legal representative **must** have a clearance certificate (on behalf of the deceased).

Without one, the purchaser or whoever acquires the property is required to withhold 15% of the sale price and remit it to us.

When completing a clearance certificate application, the legal representative must:

- enter the 'entity type' as **trustee** in the Vendor details section – this ensures the clearance certificate will show 'as trustee for'
- include the deceased vendor's name according to the name on the property title; there is no need to have ‘as executor for’ on the application.

Example: deceased vendor passes property in the will

When Judy died, her will provides for her house to be left to her son, John.

Because there is a will in place, the executor for Judy's estate arranges the transfer of her property to John.

The legislative instrument has varied the withholding to nil in respect of an acquisition of a CGT asset.

There is no need for a clearance certificate and FRCGW doesn't apply.

The executor retains a copy of her will for their records.

Example: deceased estate sells property to someone else

Lei has died and her will states that her house is to be sold and the proceeds of the sale are to go to her favourite charity.

The property title was transferred from Lei to the legal personal representative (LPR).

The legislative instrument has varied the withholding to nil in respect of an acquisition of a CGT asset.

No clearance certificate is required and FRCGW doesn't apply.

The LPR is arranging the sale of the property.

When her LPR applies for a clearance certificate, it's not necessary to include 'as executor for' or 'as legal representative for' on the clearance certificate.

The LPR applies for the clearance certificate in their own capacity as either a company or individual and when the property sells, it is not subject to FRCGW.

Executor of a will is a foreign resident

If the executor of the will is a foreign resident, FRCGW is applicable on the sale of the property.

The foreign resident's legal personal representative can apply for a variation of the withholding amount if the withholding amount is more than the Australian tax liability on the sale of the asset.

For more information see Foreign residents and variations.

Income tax exempt entities

A clearance certificate isn't required when a vendor provides evidence they're an income tax exempt entity, provided they have both of the

following:

- a private ruling issued by us confirming its income tax exemption valid for the income year of the transaction
- documents showing it's a registered charity under item 1.1 of section 50-5 of the ITAA 1997.

For more information, see LI 2026/38.

If you're a non-charitable not-for-profit (NFP) with an active Australian business number (ABN) and are required to lodge a NFP self-review return each year to confirm your eligibility to self-assess as income tax exempt, you will still need to apply for a clearance certificate so that the FRCGW is not withheld.

Excluded transactions

The law excludes certain transactions from the obligation to withhold. The vendor will need to determine their income tax or capital gains tax obligations when completing their income tax return.

Transactions on an approved stock exchange

The nature of these transactions makes it impossible for a purchaser to determine the identity and residency status of the vendor.

Transactions on a crossing system

A crossing system (also known as a ‘dark pool’) is a system that enables trading off-market, although the trades are typically reported to the market immediately after they take place.

As with transactions that occur on an approved stock exchange, it may not be possible for a purchaser to determine the identity and residency status of the vendor.

Securities lending arrangements

A ‘securities lending arrangement’ is an arrangement where a holder of securities agrees to provide its securities to a borrower for a specified period of time, with an associated agreement by the borrower to return equivalent securities at the end of the agreed period. These arrangements are typically entered into for purposes such as short-selling or hedging.

External administration and bankruptcy

The vendor is in external administration or transactions arising from the administration of a:

- bankrupt estate
- composition or scheme of arrangement
- debt agreement
- personal insolvency agreement, or
- same or similar circumstances under a foreign law.

Example: bankruptcy appointment before settlement

Jordan owns a residential property and is declared bankrupt on 10 June. A bankruptcy trustee is formally appointed on the same day. Jordan's property sale is already underway and is scheduled to settle on 25 June.

Because the trustee was appointed before the date of settlement, this sale is an excluded transaction under section 14-215 of the *Taxation Administration Act 1953*.

This means the purchaser does not need to withhold any FRCGW amount.

Jordan's trustee can demonstrate that withholding does not apply by giving the purchaser:

- a copy of the Consent to Act as Trustee form
- the trustee's written notice confirming Jordan's bankruptcy
- a link to the relevant ATO guidance on this website
- any Australian Financial Security Authority (AFSA) documentation showing the appointment date.

This allows the purchaser to proceed without withholding.

Before settlement Jordan or their trustee may choose to:

- provide the evidence above

- apply for a clearance certificate provided that title of the property is in the name of 'Jordan' as the legal owner or the bankruptcy trustee, or
- apply for a variation to reduce withholding to 0%.

If the purchaser withholds an amount anyway, Jordan or Jordan's trustee can apply for a refund under section 18–70 of the *Taxation Administration Act 1953* but it will only be allowed if the relevant conditions are satisfied under the law.

As the sale took place late in June (just before the end of the financial year), Jordan or Jordan's trustee has another option – to claim the withheld amount as a credit in an income tax return for that financial year.

Any tax liability resulting from the sale can be reduced by the credit.

Receiving your clearance certificate

Clearance certificates are sent by email (if it's included in the application).

To get their clearance certificate online, individual vendors can also view their clearance certificate by doing this:

1. Log in to **myGov,** go to **ATO online services.**
2. From the **My profile** menu, go to **Communication.**
3. Go to **History**.

If there's no email address, the clearance certificate is posted to the vendor and their contact using the address in the application.

If you choose to communicate with us via email, be aware the internet isn't a secure environment. We can't guarantee the privacy and security of personal information.

Invalid or fraudulent clearance certificates

We can withdraw a clearance certificate at any time if we learn a vendor is a foreign resident (also known as a non-resident).

If a purchaser, in good faith, hasn't withheld FRCGW from the purchase price, they won't be subject to a penalty for failure to withhold.

We will hold the vendor liable for making a false and misleading statement and may prosecute them.

Lodging a tax return to claim a credit

If you don't provide a clearance certificate to the purchaser at or before settlement and an amount of FRCGW was withheld, you must lodge a tax return to get that amount credited to you – even if your income was below the threshold to lodge.

Note: The following instruction also applies to beneficiaries of deceased estates when an amount has been withheld.

1. You need a copy of the FRCGW payment confirmation from the purchaser as proof of the amount withheld.
2. When completing your tax return:
    - declare your assessable income, including any capital gain or loss from the sale or disposal of the property, if applicable
    - claim the amount withheld from sale proceeds as a **Credit for foreign resident capital gains withholding amounts** at the correct label – unlike other withholding credits, this amount is not pre-filled.
3. The FRCGW amount will be refunded in full if:
    - there are no tax debts
    - there's no CGT payable on the sale of the property.

You claim this credit in your tax return for the income year the sale contract was signed, not the date of settlement. For example, if the contract was signed in June 2026 and settlement is August 2026, you claim the credit in your **2025–2026** tax return.

It may be months later when the vendor can lodge their tax return to declare their capital gain and claim any credit for the amount withheld. This is generally because tax returns can't be lodged before the end of the relevant income year. Any amount due to the vendor will be refunded to them after the tax return is assessed.

If the contract is signed in one income year but the purchaser pays the FRCGW to us in the next income year, the capital gain and claim for the credit for FRCGW amounts should be included in the income year the sale contract was signed.

The credit can only be applied to the vendor for whom the amount was withheld. If the vendor is a trust, the credit can only be applied to the relevant beneficiary. Credits are allocated according to each vendor's legal interest in the property or other CGT asset at the time of disposal.

The allocation of credits can't be adjusted because of:

- court orders or other arrangements affecting how sale proceeds are distributed after settlement
- events that occur after the disposal of the asset.

Deceased estates and lodging a tax return to claim a credit

Legal representative

When an amount has been withheld on a deceased estate, the legal representative may lodge a Trust return on behalf of the estate.

Claim the credit at the **Capital gains** section under **Credit for foreign resident capital gains withholding amounts.**

1. The legal representative needs a copy of the FRCGW payment confirmation from the purchaser as proof of the amount withheld.
2. When completing your tax return
    - declare your assessable income, including any capital gain or loss from the sale or disposal of the property, if applicable
    - in the **Capital gains** section, claim a **Credit for foreign resident capital gains withholding amounts.**
3. The FRCGW amount will be refunded in full to the deceased estate if
    - there are no tax debts for the estate
    - there’s no CGT payable on the sale of the property.

QC 103607

Foreign residents capital gains withholding variations

Check who can apply for a FRCGW variation when selling Australian property.

Last updated 9 October 2026

Foreign residents selling Australian property

Foreign residents (also known as non-residents) are subject to the full rate of foreign resident capital gains withholding (FRCGW).

FRCGW is applied to the sale price (or market value if non-arm's length) when selling Australian real property (property), unless there is a variation notice that reduces the rate.

A foreign resident may claim a credit for the withheld FRCGW by declaring the capital gain (or loss) and lodging a tax return at the end of the income year the sale contract was signed. They may receive a refund if the FRCGW amount exceeds the amount of tax payable on their tax assessment.

Rate of withholding from a property sale

The following FRCGW rates apply to the market value of property contracts signed:

- From 1 January 2025, a rate of 15% applies to the value of all property.
- From 1 July 2017 to 31 December 2024, a rate of 12.5% applies to property valued at $750,000 or more.
- From 1 July 2016 to 30 June 2017, a rate of 10% applies to real property valued at $2,000,000 and above.

When to apply for a variation notice

Vendors can apply for a variation to the FRCGW rate when **both** the following apply:

- they're not entitled to a clearance certificate
- the rate of 15% is too high when considering their estimated Australian tax liability on the sale of the asset.

Reasons why **foreign residents** may apply for a variation include:

- there's no capital gain on the transaction (for example, because of a capital loss or a CGT roll-over)
- there is a reduced income tax liability, or tax losses (for example, capital losses can be used to reduce any capital gains) and a rate between 0% and 15% is applicable.

Reasons why **Australian residents** (who may not be the vendor) can apply for a variation include:

- the property is being sold because of a Family Law settlement to a third party
- a creditor of the vendor has a mortgage or other security interest over the property and the proceeds of the sale at settlement won't cover the amount to be withheld and discharge the debt the property secures
- a creditor acquires legal title to the property (becomes the purchaser) due to foreclosure and its security would be reduced by withholding.

Purchasers must withhold the full rate of FRCGW when there's no clearance certificate or variation provided to them at or before settlement.

For more detail, see LI 2026/38 Taxation Administration (PAYG Withholding Variation for Foreign Resident Capital Gains Withholding Payments) Legislative Instrument 2026.

Foreign residents and the main residence exemption

Foreign residents can't claim the CGT main residence exemption, unless the life events test applies.

Mortgagee sales

Where the mortgagee exercises their right to the sale of the property they can apply for a variation. This is where the proceeds from the sale of the property will not cover the liability where the FRCGW amount is required to be paid; see Mortgagee sales.

If you are an Australian deposit-taking institution (such as an Australian bank), in some circumstances, the rate of withholding is varied to 0%. For more detail, see LI 2026/38.

Apply for a variation

Variations take up to **28 days** to process.

To be eligible for a variation, foreign residents (where applicable) need all Australian tax affairs up to date. This means:

- if the property was used to generate income, you must lodge an income tax return declaring your rental income; all due tax returns must be lodged
- you have paid all due tax debts with the ATO.

To apply for a variation of the withholding rate:

1. Lodge an application as soon as the contract is signed.
2. You **must** include the sales contract with the application (and purchase contract if available).
3. You should also include with the application
    - a statement showing your calculations and how you calculated your new withholding rate
    - other relevant documentation relating to your application
        - if a deceased estate, a copy of the will, death certificate and probate documents if applicable
        - any Family law court documents showing the property transfer judgment, see Relationship breakdown.
4. Wait for your variation notice to be issued.
5. Provide the variation notice to the purchaser at or **before** settlement to ensure the reduced withholding rate applies.

When multiple vendors own a property, each vendor needs to apply for their own variation.

Apply for a variation

For help, see instructions to complete an application for a variation.

A paper application and instructions are also available. See Foreign resident capital gains withholding rate variation paper application.

Who can apply

Those who can apply for a variation notice include:

- vendors
- Australian legal practitioners and registered tax agents representing the vendor on their behalf
- creditors who are owed a debt payable by a vendor
- purchasers.

Conveyancers should advise each vendor to apply for their own online variation notice themselves, or to seek professional legal and tax advice.

Receiving your notice of variation

Variation notices are sent to the email address provided in the application or, if there's no email address, mailed to the vendor and the applicant's addresses provided.

If you choose to communicate with us via email, be aware the internet isn't a secure environment. We can't guarantee the privacy and security of personal information.

Calculate a reduced rate of withholding

The varied withholding rate we approve depends on the information provided in the application.

Vendors can calculate the reduced rate of withholding that should apply to them based on their information.

It's the vendor's responsibility to give the purchaser a valid variation notice by the settlement date.

Refer to cost base of assets to help work out any capital gains or losses.

Multiple vendors

If there are multiple vendors selling or disposing of a property, each vendor has a responsibility to provide their own clearance certificate or variation depending on their tax residency.

See multiple vendor examples to determine how much withholding would apply in different circumstances.

Foreign resident tax returns

Foreign residents may need to apply for a tax file number (TFN) before lodging an income tax return with us.

To claim a credit for the FRCGW amount, the vendor must have a copy of the Payment Confirmation from the purchaser.

When completing a tax return:

- declare assessable income, including any capital gain or loss from the disposal of the asset
- claim the amount withheld from sale proceeds as a **Credit for foreign resident capital gains withholding amounts** at the correct label, (unlike other withholding credits, this amount is not pre-filled).

The FRCGW amount will be refunded in full if there's no:

- tax debts
- CGT payable on the sale of the property
- tax payable on any other Australian sourced income.

The income year of the tax return is the year the sale contract was signed (not the date of settlement).

A credit for the amount withheld for FRCGW applies to the income year the contract was signed. It may take time before the foreign resident can lodge their tax return to declare the capital gain and claim any credit for the amount withheld. This is generally because tax returns

can't be lodged before the end of the relevant income year. Any amount due will be refunded after the tax return is assessed.

If the contract is signed in one income year but the purchaser pays the FRCGW in the next income year, the capital gain and claim for the credit for FRCGW amounts should be included in the income year the sale contract was signed.

In certain circumstances, an early tax return may be lodged with us. If a foreign resident vendor isn't eligible to lodge an early tax return, they must wait until the end of the income year.

The credit can only be applied to the vendor for whom the amount was withheld. If the vendor is a trust, the credit can only be applied to the relevant beneficiary. Credits are allocated according to each vendor's legal interest in the asset at the time of disposal.

The allocation of credits can't be adjusted because of:

- court orders or other arrangements affecting how sale proceeds are distributed after settlement
- events that occur after the disposal of the asset.

QC 103608

Vendor declarations

Find out when providing a declaration means a purchase is not subject to foreign resident capital gains withholding.

Last updated 1 October 2026

About vendor declarations

When selling assets other than taxable Australian real property, the vendor may provide the purchaser with a vendor declaration to specify that foreign resident capital gains withholding (FRCGW) is not required.

Where the asset is taxable Australian real property, Australian residents for tax purposes will need to get a clearance certificate from

us to avoid FRCGW applying.

There are 2 types of vendor declarations:

- Residency declaration
- Non-indirect Australian real property interests (IARPI) declaration

Vendors

The vendor is the entity that is the legal owner of the asset, even where the asset is held on behalf of another entity. For example, the trustee or custodian who holds the legal title on behalf of beneficiaries.

Residency declaration

Where the vendor is an Australian resident, they can provide a declaration to the purchaser stating they're an Australian resident for tax purposes for a specific period.

Purchaser can rely on a residency declaration

Where a vendor provides a valid residency declaration, the purchaser won't be obliged to withhold, unless the:

- asset is taxable Australian real property or a company title interest (in which case the vendor needs to provide a clearance certificate instead)
- purchaser knows, or could reasonably be expected to know, that the residency declaration is false at any time from when they receive the declaration to immediately before they become the owner of the asset.

Non-IARPI declaration

A vendor may provide the purchaser with a non-indirect Australian real property interests (IARPI) declaration, confirming either:

- the membership interests they're disposing of are not IARPI
- membership interests that are the subject of a relevant option or right are not IARPI.

Purchaser can rely on a non-IARPI declaration

Where a vendor provides a valid non-IARPI declaration, there won't be an obligation for the purchaser to withhold. This is unless the purchaser knows, or could reasonably be expected to know, that the non-IARPI declaration is false at any time from when they receive the non-IARPI declaration to immediately before they become the owner of the asset.

If the transaction and related transactions are valued at **$50 million or more**, the vendor needs to notify us of the non-IARPI declaration and declare to the purchaser in writing they have done so. Refer to Notification of non-IARPI declaration: form and instructions for how to notify us using the approved form.

If the vendor doesn't notify us and notify the purchaser they have done so in writing, then the purchaser cannot rely on the non-IARPI declaration, and they may need to withhold.

Typically, the vendor is required to notify us of a non-IARPI declaration at least 28 days before settlement.

Knowing or suspecting a declaration is false

As a purchaser who receives a residency or non-IARPI declaration, you're treated as knowing, or reasonably being expected to know, the declaration is false if any of the following apply. This is at any time from when you receive the declaration to just before you become the owner of the asset.

- You have knowledge or information that the declaration is false.
- You are a party to creating the false declaration.
- You find or come across information that indicates the declaration could be false.

It's expected that a purchaser will complete the checks normally done as part of a sale. This will include verifying a declaration is correct if you come across information that indicates the declaration could be false.

When to provide a declaration

The vendor must provide the declaration to the purchaser before the settlement date. If the vendor does not provide the purchaser the declaration in time, the purchaser may need to withhold 15% from the purchase price.

Valid declarations

A vendor's declaration is only valid:

- for 6 months from the date it is signed by the vendor
- for the listed vendor and specified period on the declaration
- if the name of the vendor on the declaration matches the name of the owner of the asset (unless proof of name change is provided)
- where the settlement date falls within the specified period that the declaration covers.

If the declaration doesn't meet these conditions, the declaration is not valid and the purchaser may be required to withhold 15% of the purchase price.

The specified period may start retrospectively but cannot exceed 6 months from the date the declaration is signed by the vendor.

It is the vendor's responsibility to provide the purchaser with a declaration and ensure the settlement date is within the 6-month validity period of the declaration.

How to make a declaration

The declaration must be made in writing.

There is no specific format required for a vendor declaration. However, you may use the Foreign resident capital gains withholding – vendor declaration (PDF, 222KB) template.

Penalties

A vendor may be subject to a penalty if they make a false or misleading:

- declaration to the purchaser
- statement to us when they notify us of their non-IARPI declaration

- statement to the purchaser that they've notified us of their non-IARPI declaration.

The amount of the penalty varies depending on the severity of the offence, and will be:

- 120 penalty units where the vendor has knowingly made a false or misleading declaration
- 80 penalty units where the vendor has recklessly made a false or misleading declaration
- 40 penalty units where the declaration is false or misleading as a result of the vendor failing to take reasonable care.

Purchasers who rely on a declaration that is not valid, or where the declaration cannot be relied on, may be subject to a failure to withhold penalty. The penalty is equal to the amount that should have been withheld (15% of the purchase price).

Multiple vendors

A declaration is only valid for the vendor listed on the declaration.

If an asset is acquired from multiple vendors, each vendor needs to provide the purchaser with their own declaration to avoid the withholding obligation.

Where some of the vendors have not provided a declaration (or clearance certificate), withholding will apply to those vendors at the proportion of their ownership in the asset.

QC 103609

Foreign vendor notification of non-IARPI declarations

Learn the notification requirements for non-indirect Australian real property interest (non-IARPI) vendor declarations.

Published 1 October 2026

When to notify us of a non-IARPI declaration

Foreign vendors need to notify us of a non-indirect Australian real property interest (non-IARPI) vendor declaration using the approved notification of non-IARPI declaration form, if both of the following apply:

- You are providing a purchaser with a non-IARPI declaration.
- The combined value of the assets subject to the transaction, and any related transactions, is **$50 million or more**.

You will need to notify us using the approved form either:

- at least 28 days before settlement, if the period between entering the contract and settlement is over 31 days
- as soon as reasonably possible if the period between entering the contract and settlement is less than 31 days.

You will then need to declare to the purchaser, in writing, that you have notified us, before they can:

- rely on your non-IARPI declaration
- not withhold under the foreign resident capital gains withholding (FRCGW) rules.

You do not need to notify us if the value of the transaction and related transactions is less than $50 million.

How to notify us of a non-IARPI declaration

To notify us of a non-IARPI declaration, you must:

1. Complete the notification using the approved form.
2. Email the form to nonIARPInotification@ato.gov.au.

For your notification to be valid and to receive an acknowledgment, you must:

- fill out the form completely and correctly in accordance with the instructions
- send it to the above email address.

To fill out the form you will need information about the:

- vendor
- purchaser
- entity whose shares or units you're selling (the test entity)
- details of your interests or assets
- basis for making a declaration that the membership interests are not IARPI.

We will send you an acknowledgment that you've lodged after we receive your form. You can use this acknowledgment to inform the purchaser that you have notified us.

If you're providing non-IARPI declarations to multiple purchasers, you must complete an approved form for each purchaser.

Related transactions

Transactions are considered related when they would be considered a single transaction that has been split into smaller transactions. These are usually executed around the same time (but not necessarily on the same day). For example, a sale is done over time in instalments, or a transaction is broken down into multiple parcels of shares.

When purchasers can rely on a non-IARPI declaration

You need to ensure you meet all the requirements on this page so a purchaser can rely on your non-IARPI declaration where the transaction and related transactions are valued over $50 million. Otherwise, they may need to withhold 15% from the transaction under the FRCGW rules.

Penalties

For the vendor

You may be subject to a penalty if you make a false or misleading statement either to:

- us when you notify us of your non-IARPI declaration
- the purchaser that you've notified us of your non-IARPI declaration.

The amount of the penalty varies depending on the severity of the offence.

For the purchaser

A purchaser may be subject to a failure to withhold penalty if they rely on your non-IARPI declaration for a transaction that's $50 million or more (including related transactions). This is where either:

- You haven't declared to them that you've notified us in writing before settlement of the non-IARPI declaration and the date you notified us.
- The date you notified us was less than 28 days from settlement and the period between the contract signing and settlement was 31 or more days.

The penalty is equal to the amount that should have been withheld (15% of the purchase price).

Example 1: single transaction

You're a foreign resident selling your shares in an Australian company. The:

- sale is $75 million
- sale contract is signed on 13 September 2027
- settlement is on 28 October 2027
- period between the contract signing and settlement is 45 days.

You determine that your shares are non-IARPI. You provide a non-IARPI declaration to the purchaser, so they don't withhold from the purchase price.

As your transaction is over $50 million, you also:

- notify us of the non-IARPI declaration by completing and sending us the approved form on or before 30 September 2027
- declare to the purchaser in writing that you've notified us of the non-IARP interest declaration and the date you notified us, before settlement on 28 October 2027.

Example 2: multiple transactions

You're a foreign resident selling your shares in an Australian company. You sign a contract on 3 March 2027 to sell the shares in the following lots to Example XYZ company:

- Tranche A: 50,000 shares for $30 million, with settlement on 30 April 2027
- Tranche B: 50,000 shares for $30 million, with settlement on 30 May 2027.

You determine the shares are non-IARPI and you provide ABC company with a non-IARPI declaration.

As the transactions are related and the total is over $50 million, you need to:

- For tranche A
  - give us notification of the non-IARPI declaration by completing and sending us the approved form on or before 2 April 2027
  - declare to the purchaser in writing, before settlement on 30 April 2027, that you've notified us of the non-IARP interest declaration and the date you notified us.
- For tranche B
  - give us notification of the non-IARPI declaration by completing and sending us the approved form on or before 2 May 2027
  - declare to the purchaser in writing before settlement on 30 May 2027 that you've notified us of the non-IARP

interest declaration and the date you notified us.

QC 108125

Paying the foreign resident capital gains withholding

Find out how to pay the withholding amount when foreign resident capital gains withholding (FRCGW) applies.

Last updated 9 October 2026

Purchasing real property in Australia

Foreign resident capital gains withholding (FRCGW) is a tax and applies to vendors selling or disposing of certain taxable property.

If you are purchasing real property (property) in Australia, you may have to withhold an amount from the sale price (or its market value, if not at arm's length) and pay it to us, instead of paying the whole amount to the vendor at settlement.

If the vendor:

- **Provides a clearance certificate** – this means you **don't** need to withhold for FRCGW. The sale price is paid to the vendor.
- **Provides a variation notice** from us – this means you must withhold an amount from the sale price at the rate specified by us. The variation notice advises you of the rate, for example 0% to 14.99%. The remainder of the sale price is paid to the vendor.
- **Doesn't provide a clearance certificate or a variation** – this means you **must** withhold the FRCGW at the full rate and pay it to us.

For more information see:

- Australian residents and clearance certificates
- Foreign residents and variations

Rate of withholding from a property sale

The following FRCGW rates apply to the market value of property contracts signed:

- on and after 1 January 2025, a rate of 15% applies to the value of all property.
- from 1 July 2017 to 31 December 2024, a rate of 12.5% applies to property valued at $750,000 or more.
- from 1 July 2016 to 30 June 2017, a rate of 10% applies to real property valued at $2,000,000 and above.

Purchasers can rely on a clearance certificate or variation notice

When you receive a clearance certificate from a vendor, you don't need to withhold.

When you receive a variation notice or a class variation applies, you need to withhold at the rate specified.

For a clearance certificate or variation notice to be valid, the first and last names on the clearance certificate **must** match the property's Certificate of Title, or other asset ownership documentation (proof of name change should have been provided to us at the time of applying)

- middle names don’t need to be supplied or match
- a title (honorific) match isn't required, for example 'Miss', 'Ms'.

The purchaser may rely on the clearance certificate as long as:

- the date it's made available to the purchaser is within the period stated on the certificate, and
- the certificate period covers some of the time the transaction is in effect; the transaction is in effect from the contract date through until the settlement date.

In relation to trusts, we accept the purchaser has fulfilled their obligation if the vendor can show that the entity on the clearance certificate is the trustee of the trust (for example, as evidenced by a copy of the trust deed).

For a variation notice

- the asset is the one specified in the sale contract
- the sale price of the asset (or its market value, if not at arm's length) must not exceed the maximum sale price specified in that variation. For example, if the variation states $1 million and the final sale price is $1.1 million, then the variation doesn't apply and withholding must be applied at the full rate.

If you think a clearance certificate isn't valid

If the clearance certificate or the vendor variation notice **isn't** valid (for example names don't match), the purchaser must withhold an amount of FRCGW at the applicable rate from the sale price.

If a purchaser needs to check if a clearance certificate or variation is valid, phone us on **13 28 66** (Fast Key Code **4 2**).

For a:

- clearance certificate, provide the following
  - the number from the 'Our reference field' at the top of the certificate
  - the vendor's name, as it appears on the clearance certificate
- variation notice, have the following information ready
  - BET number from the 'Our reference' field at the top of the notice
  - vendor's name, varied rate and applicable asset details as they appear on the notice.

When purchasers must withhold and pay

If you purchase Australian real property and the vendor doesn't provide a valid clearance certificate or variation notice, you must withhold an amount from the sale price (or market value) and pay it to us at settlement. There are some circumstances when a clearance certificate or variation notice isn't needed.

For more information, see Clearance certificates in certain circumstances.

The withholding amount is calculated on the sale price (or market value) before any adjustments for disbursements (for example, council rates, water and sewer charges and strata levies).

There are penalties and interest that apply if the purchaser either doesn't withhold when they are required to do so at settlement, or if they fail to pay this amount to us on the day of settlement.

If there's more than one vendor, see Multiple vendors.

Goods and services tax (GST)

For some transactions, it may be necessary to determine if the purchase price needs to be adjusted for GST in determining the price on which the withholding is applied.

Where a purchaser isn't registered for GST or the supply of the asset isn't a taxable supply (for example, because the vendor isn't registered for GST or the supply is input taxed), or the purchaser isn't entitled to any input tax credit, the GST inclusive purchase price payable by the purchaser may be used in determining how much withholding is required. Where the purchaser is registered for GST and the transaction is a taxable supply, and the purchaser is entitled to an input tax credit, the GST inclusive purchase price less the input tax credit may be used by the purchaser in determining how much withholding is required.

The sale of existing residential premises (but not commercial residential premises or new residential premises) is input taxed and therefore not a taxable supply. Where the asset is shares (for example company title interests), the supply of shares is input taxed and therefore not a taxable supply. The purchase price can't be used as a proxy for market value if the purchaser has paid a premium, or the parties have not dealt with each other at arm's length.

An exception – the margin scheme

If the margin scheme is used, a purchaser cannot claim input tax credits on that acquisition, even if they are registered for GST and intend to use the purchased property for a creditable purpose. In these instances, a GST registered purchaser should calculate the 15% withholding by using the GST inclusive price, the same as non-registered purchasers.

Paying FRCGW

Follow these steps to pay FRCGW.

1. Complete an online Purchaser Payment Notification (PPN) form. You will be issued with a **payment reference number** (PRN). You need this to pay the withheld amount at settlement. If there are multiple purchasers, lodge **either:**
    - one form if there are 10 or less purchasers
    - additional forms if there are more than 10 purchasers.
2. Once processed, you will get:
    - a payment reference number (**PRN**) – only **one** PRN is issued, ensure you **keep this safe**
    - a link to a PDF downloadable **payment slip** and **barcode** to use at Australia Post, print the downloadable barcode to avoid keying errors.
3. **Before** settlement, check the *Purchaser payment notification form* and contact us if there are changes to the settlement date on the form.
4. Use the PRN, payment slip and barcode to pay the withholding at settlement. See How to pay.

For more information, see Foreign resident capital gains withholding purchaser payment notification online form and instructions.

Instructions for the Foreign resident capital gains withholding purchaser payment notification paper form are also available.

How to pay

Use the **PRN, payment slip and barcode** to pay the withholding on, or before, becoming the owner of the property.

If there are 2 or more purchasers, use **the same** PRN or payment slip, even if paying at different times.

All payments must be made in Australian dollars.

The safest and easiest payment methods are:

- BPAY®
- electronic funds transfer

- e-conveyancing – reduces the manual processes and paperwork with property settlement. If your conveyancing occurs by e-conveyancing, you or your representative will electronically transfer funds to the platform and the withholding payment will be made directly to us. If you are a
  - purchaser – contact your conveyancer or solicitor for payment options by e-conveyancing
  - purchaser's representative – contact your state or territory law society or the Australian Institute of Conveyancers who can provide further information.

A full list of payment options is available at Paying the ATO.

Proof of payment

A receipt from either Australia Post or us is proof of payment and provides confirmation that the purchaser has fulfilled their FRCGW obligations.

A payment confirmation email or letter will be sent to the nominated contact on the purchaser payment notification form.

Confirmation for vendor

At settlement, give a copy of the payment confirmation to the vendor, so they have the information they need to complete their tax return.

Multiple purchasers

When there's more than one purchaser, they must withhold an amount according to their percentage of ownership.

Only one PRN is issued per Purchaser payment notification (PPN) form, even if multiple purchasers are entered on the form.

Where there are multiple purchasers, you can use the PRN or payment slip to make one payment of the total amount owing or a separate payment for each purchaser.

You may provide one payment together with the details on how to apportion this amount.

Example: multiple purchasers

Sal is purchasing a commercial property jointly with another entity for a total property sale price of $1 million.

Sal's share of the acquisition is 40% ($400,000).

Sal and each other purchaser receives a different payment reference number (unless all purchasers have lodged one form), and a specified amount or rate to be paid using the online form.

Sal and the other entity can provide one payment together with the details on how to apportion this amount.

Multiple vendors

If there are multiple vendors selling or disposing of a property, each vendor must provide their own clearance certificate or variation notice.

The following examples will help you work out the rate of withholding from a property sale when there is more than one vendor.

Example: joint owners, but only one vendor is an Australian resident

Zac and Jen are selling a jointly owned property and sign a contract on 1 February 2025. For tax purposes, Zac is a foreign resident and Jen is an Australian resident.

The purchaser:

- has to withhold 15% of the full sale price for Zac's portion
- needs to see Jen's clearance certificate.

The property has a market value of $1 million and Zac's share is $500,000.

The purchaser must withhold 15% of $500,000, ($75,000) and pay it to us at settlement.

Example: foreign resident vendor provides a variation

Continuing the above example, Zac calculates the tax on his capital gain from the sale of the property is $25,000. He is eligible to apply for a variation to reduce the withholding rate down to 5%.

Zac lodges the variation with us and includes the sales contract with his application. Zac receives a variation notice confirming his withholding rate is 5%.

Zac provides his variation notice to the purchaser, who can rely on it and withhold 5% of $500,000, ($25,000) and pay it to us at settlement. The purchaser gives Zac a copy of the payment receipt.

Example: multiple foreign resident vendors

Kim is purchasing a property on 11 January 2025 for $1.3 million but hasn't received any clearance certificates from the 3 vendors.

On the settlement day, Kim doesn't have clearance certificates for any of the 3 vendors, so she must withhold 15% of the sale price ($195,000).

The withholding amount is based on each vendor's share of the purchase price. For example, if there are 3 vendors who own an equal share of the property, Kim must withhold $65,000 for each vendor.

For more detail, see LI 2026/38 Taxation Administration (PAYG Withholding Variation for Foreign Resident Capital Gains Withholding Payments) Legislative Instrument 2026.

Mortgagee sales

When a creditor (such as a bank) requires a mortgagor to sell the property, there are 3 common situations.

1. The mortgagor keeps the title to the sale while the mortgagee orders the property be sold but hasn't repossessed the title to the property.
    - If there's no clearance certificate, you must withhold an amount from the sale.
    - If there's a variation notice, withhold the rate specified in the notice.
2. The mortgagee takes possession of the property and sells it, but there's no transfer of title from mortgagor to mortgagee.
    - The mortgagee can apply for a variation notice to have the withholding reduced. You must withhold at the rate on the variation notice from the sale price.
    - Complete the Purchaser Payment Notification with the **mortgagor** (title holder and not the entity on the contract) details and not the mortgagee details at the 'Vendor details' tab. If the mortgagee or the representative of the mortgagee has provided a variation notice issued from the ATO, provide the variation reference number from this notice at the field 'Foreign resident withholding variation notice number'.
3. Foreclosure, when the mortgagee repossesses and takes the title to the property. FRCGW may apply when
    - the transfer of title from the mortgagor to the mortgagee (generally, a sale of the property at market value)
    - the transfer of title from the mortgagee to the final purchaser.

However, if the mortgagee is an Australian Deposit-taking Institution (such as an Australian bank), in some circumstances, the rate of withholding is varied to 0%. For more detail, see LI 2026/38.

Compulsory acquisitions by government authorities

Certain Australian Government authorities can exercise powers under state and territory legislation for the compulsory acquisition of property. Generally, a property is acquired, and ownership of the

property passes, on the date that the acquisition is published in the relevant government gazette.

To find out more, refer to Compulsory acquisition of property by government authorities.

Cancelling a payment

If you have lodged a PPN in error or received a valid clearance certificate or variation notice by the settlement date, you can cancel your lodged PPN by contacting us on **13 28 66** (Fast Key Code **4 2**).

General interest charge

If the purchaser withholds but fails to pay FRCGW when they become the owner of the asset, general interest charge (GIC) is imposed.

GIC accrues from the date of settlement.

Penalty for failing to withhold

Purchasers failing to withhold and pay FRCGW at, or before the settlement date may be subject to a penalty equal to 10 penalty units or the FRCGW amount they failed to withhold.

They will receive written notice about their liability to pay the penalty and the reasons for the imposition of the penalty.

A purchaser may also be subject to the general interest charge on any penalty amounts not paid by the due date.

QC 103610

Compulsory acquisition of property by government authorities

Certain Australian Government authorities can use legislation for the compulsory acquisition of property.

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Certain Australian Government authorities can exercise powers under state and territory legislation for the compulsory acquisition of property. Generally, a property is acquired and ownership of the property passes, on the date that the acquisition is published in the relevant government gazette.

For a compulsory acquisition, issues arise around:

- determining whether there's an obligation to withhold
- working out the withholding amount to be paid on or before the day the acquisition is published in the gazette.

For example, the market value of the property being acquired may be the subject of a dispute at the time the acquisition is published.

Payment of withholding tax

Under section 14-200 of Schedule 1 to the *Tax Administration Act 1953*, the Australian Government authority must pay the foreign resident capital gains withholding tax on or before the date that the authority became the property's owner.

Deferral of payment

Subsection 255-10(2A) of Schedule 1 of the *Taxation Administration Act 1953* allows the Commissioner to defer the time for payment of tax-related liabilities due (including withholding tax) and payable by a class of taxpayers.

The Commissioner:

- defers the payment by publishing a notice on our website
- can defer the time for payment whether or not the liability has already arisen.

Notice

Until further notice, the Commissioner of Taxation has deferred the time the foreign resident capital gains withholding tax liabilities of an Australian Government authority are due and payable.

The exercise of the compulsory acquisition power is authorised under one or more of the following Acts:

- *Acquisition of Land Act 1967* (Queensland)
- *Land Acquisition (Just Terms Compensation) Act 1991* (New South Wales)
- *Land Acquisition Act 1969* (South Australia)
- *The Land Acquisition and Compensation Act 1986* (Victoria)
- *Land Acquisition Act 1993* (Tasmania)
- *Land Administration Act 1997* (Western Australia)
- *Land Acquisition Act 1994* (Australian Capital Territory)
- *Land Acquisition Act 1978* (Northern Territory)
- *Land Acquisition Act 1989* (Commonwealth of Australia).

For an Australian Government authority that is exercising its compulsory acquisition powers under one or more of the above Acts in relation to a compulsory acquisition, the due date for payment of the foreign resident capital gains withholding tax is deferred to the earlier of:

- 14 days after agreement or final determination of the compensation payable
- 14 days after agreement to pay an advance amount of compensation.

We'll accept the government authority as meeting its obligation for the purposes of the withholding if it receives a valid clearance certificate from the vendor by the earlier of:

- 14 days after agreement or final determination of the compensation payable
- 14 days after agreement to pay an advance amount of compensation.

In terms of the amount of withholding, it will be based on the compensation amount paid that is equivalent to the first element of the

CGT asset cost base (the taxable Australian real property subject to the gazettal).

The government authority will establish a market value break-up of the payment related to the property, and only withholding on that amount. This is because a compensation amount could include a value for disturbance and professional expenses or other assets other than the property.

QC 104038

Our commitment to you

We are committed to providing you with accurate, consistent and clear information to help you understand your rights and entitlements and meet your obligations.

If you follow our information and it turns out to be incorrect, or it is misleading and you make a mistake as a result, we will take that into account when determining what action, if any, we should take.

Some of the information on this website applies to a specific financial year. This is clearly marked. Make sure you have the information for the right year before making decisions based on that information.

If you feel that our information does not fully cover your circumstances, or you are unsure how it applies to you, contact us or seek professional advice.

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