

LCG 2016/5A1 - Addendum - Foreign resident capital gains withholding regime: the Commissioner's variation power



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Addendum

Law Companion Guideline

Foreign resident capital gains withholding regime: the Commissioner's variation power

The Addendum amends Law Companion Guideline LCG 2016/5 to reflect amendments to the foreign resident capital gains withholding (FRCGW) threshold and withholding rate pursuant to *Treasury Laws Amendment (Foreign Resident Capital Gains Withholding Payments) Act 2017* (Act No. 57 of 2017). The changes will apply to contracts entered into on or after 1 July 2017:

- for real property disposals where the contract price is \$750,000 and above (currently \$2 million)
- the FRCGW withholding tax rate will be 12.5% (currently 10%).

The existing threshold and rate will apply for any contracts that are entered into before 1 July 2017, even if they are not due to settle until after 1 July 2017.

LCG 2016/5 is amended as follows:

1. Paragraph 7

- (a) Omit the paragraph and footnote; substitute:

7. For transactions entered into on or after 1 July 2016 and before 1 July 2017, the amount payable to the Commissioner is 10% of the asset's purchase price, unless the Commissioner exercises the discretion under section 14-235 (the variation power) to vary the amount or classes of amounts.⁶ A withholding threshold of \$2 million applies.

7A. For transactions entered into on or after 1 July 2017 the withholding rate is 12.5% and the withholding threshold is \$750,000. These changes affect transactions involving TARP or indirect Australian real property interests giving rise to company title interests.^{6A}

- (b) Insert footnote 6A at the end of paragraph 7A.

^{6A} *Treasury Laws Amendment (Foreign Resident Capital Gains Withholding Payments) Act 2017* (Act No. 57 of 2017).

2. Paragraph 16

- (a) Omit '10%'; substitute '12.5%'.
(b) At the end of the last sentence insert footnote 8A:

^{8A} Applicable rate for transactions entered into on or after 1 July 2017.

3. Paragraphs 23, 27, 29, 32, 45, 57, 59 and 60

Omit all occurrences of '2016'; substitute '2017'.

4. Paragraph 31

Omit '\$2 million'; substitute '\$2.5 million'.

5. Paragraph 33

Omit '2017'; substitute '2018'.

6. Paragraph 38

(a) Omit '10%'; substitute '12.5%'.

(b) Insert footnote 10A:

^{10A} Applicable rate for transactions entered into on or after 1 July 2017.

7. Paragraph 41

Omit '\$10 million'; substitute '\$12.5 million'.

8. Paragraph 44

Omit '2010'; substitute '2011'.

9. Paragraph 46

Omit all occurrences of '2017'; substitute '2018'.

10. Paragraph 51

(a) Omit '10%'; substitute '12.5%'.

(b) Insert footnote 13A:

^{13A} Applicable rate for transactions entered into on or after 1 July 2017.

11. Paragraph 53

(a) In the first sentence, omit '2016'; substitute '2017'.

(b) In the second sentence omit '\$320,000 (10% of \$3.2 million)'; substitute '\$400,000 (12.5% of \$3.2 million)'.

(c) In the third sentence omit '\$320,000'; substitute '\$400,000'.

12. Paragraph 54

Omit from the second sentence '\$120,000'; substitute '\$200,000'.

This Addendum applies on and from 22 June 2017.

Commissioner of Taxation

26 June 2017

ATO references

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