LCR 2016/5A3 - Addendum - Foreign resident capital gains withholding regime: the Commissioner's variation power

Addendum

Law Companion Ruling

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

This Addendum is a public ruling for the purposes of the *Taxation Administration Act 1953*. It amends Law Companion Ruling LCR 2016/5 to reflect amendments made by the *Treasury Laws Amendment (2024 Tax and Other Measures No. 1) Act 2024*.

LCR 2016/5 is amended as follows:

1. Preamble

Omit the preamble; substitute:

> **Relying on this Ruling**
>
> This publication is a public ruling for the purposes of the *Taxation Administration Act 1953*.
>
> If this Ruling applies to you, and you correctly rely on it in good faith, we will apply the law to you in the way set out in this Ruling. That is, you will not pay any more tax or penalties or interest in respect of the matters covered by this Ruling.

2. Paragraph 2

Omit footnote 1.

3. Paragraph 4

(a) After 'subsection 14-235(5)', insert 'of Schedule 1 to the *Taxation Administration Act 1953*'.

(b) After the paragraph, insert new paragraph 4A:

> 4A. All legislative references in this Ruling are to Schedule 1 of the *Taxation Administration Act 1953*, unless otherwise indicated.

4. Paragraph 5

(a) Omit the wording of the paragraph (excluding footnotes 2 and 3); substitute:

> This Ruling applies to acquisitions of the following assets where the vendor of the asset is a relevant foreign resident[1A] and the transaction was entered into on or after 1 July 2016:
>
> - 'taxable Australian real property' (TARP)[2]
> - an 'indirect Australian real property interest'[3], or
> - an option or right to acquire such property or interest.

(b) After ‘where the vendor of the asset is a relevant foreign resident’, insert new footnote 1A:

[1A] Section 14-210 sets out whether the vendor is a foreign resident for the purposes of the withholding obligation.

(c) Omit footnote 4.

5. Paragraph 6

Omit ‘purchasers of certain types of capital gains tax assets (CGT assets)’; substitute ‘a purchaser of a certain type of CGT asset’.

6. Paragraph 7

Omit the wording of the paragraph (excluding footnote 6); substitute:

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

7. Paragraph 7A

(a) Omit the wording of the paragraph; substitute:

The withholding rate increased to 12.5% and the withholding threshold reduced to $750,000 for transactions entered into on or after 1 July 2017 and before 1 January 2025. These changes affected transactions involving TARP or indirect Australian real property interests giving rise to company title interests.[6A]

(b) Omit the wording of footnote 6A; substitute:

Treasury Laws Amendment (Foreign Resident Capital Gains Withholding Payments) Act 2017.

(c) After the paragraph, insert new paragraph 7B:

7B. For transactions entered into on or after 1 January 2025, the withholding rate is 15% and applies to all property values (with no threshold).[6B]

(d) At the end of new paragraph 7B, insert new footnote 6B:

[6B] *Treasury Laws Amendment (2024 Tax and Other Measures No. 1) Act 2024*.

8. Paragraph 16

(a) Omit ‘12.5%’; substitute ‘15%’.

(b) Omit the wording of footnote 8A; substitute:

Applicable rate for transactions entered into on or after 1 January 2025.

9. Paragraph 18

Omit ‘CGT roll-over’; substitute ‘capital gains tax (CGT) roll-over’.

10. Paragraph 21

Omit the wording of footnote 10; substitute:

> The vendor will need to demonstrate that it satisfies the continuity of ownership test, or same or similar business test under Division 165 of the ITAA 1997.

11. Paragraph 28

Omit '*Gallant Company Ltd*'; substitute '*Gallant Company Co*'.

12. Paragraph 29

(a) Omit '*2017*'; substitute '*2025*'.

(b) Omit all instances of '*Gallant Company Ltd*'; substitute '*Gallant Company Co*'.

13. Paragraph 30

Omit '*ITAA 1997*'; substitute '*Income Tax Assessment Act 1997 (ITAA 1997)*'.

14. Paragraph 31

(a) Omit '*Space Limited*'; substitute '*Space Co*'.

(b) Omit all instances of '*Gallant Company Ltd*'; substitute '*Gallant Company Co*'.

(c) Omit '*$2.5 million*'; substitute '*$3 million*'.

(d) After '*Nebula Co at settlement*', omit the comma.

15. Paragraph 38

(a) Omit '*12.5%*'; substitute '*15%*'.

(b) Omit the wording of footnote 10A; substitute:

> Applicable rate for transactions entered into on or after 1 January 2025.

16. Paragraph 41

Omit '*$12.5 million*'; substitute '*$15 million*'.

17. Paragraph 51

(a) Omit '12.5%'; substitute '15%'.

(b) Omit the wording of footnote 13A; substitute:

> Applicable rate for transactions entered into on or after 1 January 2025.

18. Paragraph 53

(a) Omit '*In December 2017*'; substitute '*In December 2025*'.

(b) Omit '*$400,000 (12.5% of $3.2 million)*'; substitute '*$480,000 (15% of $3.2 million)*'.

(c) Omit '*$400,000 is accounted for, the net proceeds remaining at settlement, $2.8 million*'; substitute '*$480,000 is accounted for, the net proceeds remaining at settlement, $2.72 million*'.

19. Paragraph 54

Omit '*will fall $200,000*'; substitute '*will fall $280,000*'.

20. Paragraph 64

Omit the wording of footnote 14; substitute:

> For further guidance on market valuation, refer to Market valuation of assets.

This Addendum applies from 1 January 2025.

Commissioner of Taxation
29 July 2026

ATO references

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