


LCG 2016/6A1 - Addendum - Foreign resident capital gains withholding regime: amount payable to the Commissioner

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Addendum

Law Companion Guideline

Foreign resident capital gains withholding regime: amount payable to the Commissioner

This Addendum amends Law Companion Guideline LCG 2016/6 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 2016/6 is amended as follows:

1. Paragraph 7

- (a) Insert after the first sentence '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 variation power under section 14-235.^{5A} For transactions entered into on or after 1 July 2017, the withholding rate increases to 12.5%.^{5B}'.

- (b) Insert footnote 5A at the end of the second sentence.

^{5A} Subsection 14-235(2) allows the Commissioner to vary a particular amount payable by a specific purchaser, while subsection 14-235(5) allows the Commissioner to vary the amount payable by a class of purchasers (a class of amounts).

- (c) Insert footnote 5B at the end of the third sentence.

^{5B} The withholding threshold also reduces from \$2 million to \$750,000 for transactions entered into on or after 1 July 2017. *Treasury Laws Amendment (Foreign Resident Capital Gains Withholding Payments) Act 2017*.

2. Paragraph 8

Omit '10%'; substitute '12.5%'.

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3. Footnote 6

Insert at end of the footnote insert 'Applicable rate for transactions entered into on or after 1 July 2017.'

4. Paragraph 23

Omit '\$400,000'; substitute '\$500,000'.

5. Paragraphs 21, 23, 24, 28, 29, 34, 35, 36 and 41

Omit '2016'; substitute '2017'.

6. Paragraph 25

Omit the paragraph; substitute:

25. *The contract sets out total consideration of \$4 million with a settlement date of 30 September 2017. Relic Co obtains an independent valuation of the assets at the time of sale which sets out the following values:*

- (a) *Land \$1.9 million*
- (b) *Commercial building \$1.8 million*
- (c) *Plant and equipment \$0.3 million.*

7. Paragraph 27

Omit the paragraph; substitute:

27. *The total market value of the assets in the independent valuation report is equal to the contract price (\$4 million). Relic Co apportions the contract price between the assets according to the market value of each asset. The first element of Relic Co's cost base of the land and commercial building is \$3.7 million. All the conditions for the application of subsection 14-200(1) are met, so Relic Co withholds and remits \$462,500 to the Commissioner on 30 September 2017.*

8. Paragraph 34

Omit '\$760,000'; substitute '\$950,000'.

9. Paragraph 41

Omit '\$880,000'; substitute '\$1.1 million'.

This Addendum applies on and from 22 June 2017.

Commissioner of Taxation

26 June 2017

ATO references

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