


# ***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.<sup>6</sup> 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.<sup>6A</sup>

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

<sup>6A</sup>. *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:

<sup>8A</sup> 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:

<sup>10A</sup> 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:

<sup>13A</sup> 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'.

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**12. Paragraph 54**

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

This Addendum applies on and from 22 June 2017.

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**Commissioner of Taxation**

26 June 2017

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ATO references

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