

LCG 2016/7A1 - Addendum - Foreign resident capital gains withholding regime: options

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Addendum

Law Companion Guideline

Foreign resident capital gains withholding regime: options

This Addendum amends Law Companion Guideline LCG 2016/7 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 2016/7 is amended as follows:

1. Table of Contents

Omit:

Example 2 – Property with market value less than \$2 million

Substitute:

Example 2 – Property with market value less than the withholding threshold

2. Paragraph 6

- (a) Omit the words 'If the withholding obligation arises, the purchaser must withhold from the vendor, and pay to the Commissioner, an amount equal to 10% of:'; substitute 'If the withholding obligation arises from a transaction entered into on or after 1 July 2017, the purchaser must withhold from the vendor, and pay to the Commissioner, an amount equal to 12.5% of:'.
- (b) Insert new paragraph:
- 6A. For transactions entered into on or after 1 July 2016 and before 1 July 2017, the withholding rate is 10%.^{8A}

- (c) Insert footnote 8A at the end of paragraph 6A.

^{8A} As well as an increase to the withholding rate, the withholding threshold was reduced from \$2 million to \$750,000: Treasury Laws Amendment (Foreign Resident Capital Gains Withholding Payments) Act 2017.

3. Paragraph 8

- (a) Omit all occurrences of '10%'; substitute '12.5%'.
(b) At the end of footnote 10, insert 'Applicable withholding threshold for transactions entered into on or after 1 July 2017.'

4. Paragraph 12

- (a) Omit all occurrences of '\$2 million'; substitute '\$750,000'.
(b) At the end of footnote 13, insert 'Applicable withholding threshold for transactions entered into on or after 1 July 2017.'
(c) Insert footnote 13A:
^{13A} Applicable withholding threshold for transactions entered into on or after 1 July 2017.
(d) At the end of footnote 14, insert 'Applicable rate for transactions entered into on or after 1 July 2017.'

5. Paragraph 13

- (a) Omit '10%'; substitute '12.5%'.
(b) At the end of footnote 16, insert 'Although it specifies the existing 10% withholding rate, the intent is still applicable.'

6. Paragraph 15

- (a) Omit all occurrences of '\$2 million'; substitute '\$750,000'.
(b) At the end of footnotes 17 and 18, insert 'Applicable withholding threshold for transactions entered into on or after 1 July 2017.'

- (c) After the paragraph, insert:

15A. If a purchaser acquires an option before 1 July 2017 the purchaser will be subject to a withholding rate of 10%. However, if the option is acquired on or after 1 July 2017 then a withholding rate of 12.5% will apply to the option's cost base at the time of the acquisition.

15B. If the purchaser subsequently exercises the option before 1 July 2017 then a withholding rate of 10% will apply to the asset – if the asset is TARP, or indirect Australian real property interests giving rise to company title interests, it only applies where the purchase price is \$2 million or more.

15C. If the purchaser subsequently exercises the option on or after 1 July 2017, a withholding rate of 12.5% will apply – if the asset is TARP, or indirect Australian real property interests giving rise to company title interests, it only applies where the purchase price of the asset is \$750,000 or more.

7. Paragraphs 21, 27, 30, 33 and 62

Omit '2017'; substitute '2018'.

8. Paragraph 22

Omit '\$3 million (being 10% of \$30 million)'; substitute '\$3.75 million (being 12.5% of \$30 million)'.

9. Paragraph 23

- (a) Omit the heading; substitute '**Example 2 – Property with market value less than the withholding threshold**'.
- (b) Omit '2016'; substitute '2017'.
- (c) Omit '\$1.5 million'; substitute '\$600,000'.

10. Paragraph 25

Omit '\$50 (being 10% of \$500)'; substitute '\$62.50 (being 12.5% of \$500)'.

11. Paragraph 26

- (a) Omit '2017'; substitute '2018'.
- (b) Omit '\$1.5 million'; substitute '\$600,000'.
- (c) Omit '\$2 million'; substitute '\$750,000'.

12. Paragraphs 31 and 65

Omit '2018'; substitute '2019'.

13. Paragraph 32

- (a) Omit '10%'; substitute '12.5%'.
- (b) Omit '\$6.5 million (being 10% of \$65 million)'; substitute '\$8.125 million (being 12.5% of \$65 million)'.

14. Paragraph 37

Omit '\$1,000 (being 10% of \$10,000)'; substitute '\$1,250 (being 12.5% of \$10,000)'.

15. Paragraph 41

Omit '\$300,000 (being 10% of \$3 million)'; substitute '\$375,000 (being 12.5% of \$3 million)'.

LCG 2016/7

16. Paragraphs 42 and 56

- (a) Omit '2017'; substitute '2018'.
- (b) Omit '\$2 million'; substitute '\$750,000'.

17. Paragraphs 43, 54 and 60

Omit '\$2 million'; substitute '\$750,000'.

18. Paragraphs 45, 53 and 59

Omit '\$1,000 (being 10% of \$10,000)'; substitute '\$1,250 (being 12.5% of \$10,000)'.

19. Paragraph 47

Omit '\$2 million (being the \$1.99 million)'; substitute '\$750,000 (being the \$740,000)'.

20. Paragraph 48

Omit the paragraph; substitute:

- 48. *Goanna Co withholds from \$740,000 (being \$750,000 less the \$10,000 that was paid for the option) and remits \$92,500 (being 12.5% of \$740,000) to the Commissioner on the day of settlement.*

21. Paragraph 64

Omit '\$10 (being 10% of \$100)'; substitute '\$12.50 (being 12.5% of \$100)'.

This Addendum applies on and from 22 June 2017.

Commissioner of Taxation

26 June 2017

ATO references

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