LCR 2016/7A3 - Addendum - Foreign resident capital gains withholding regime: options

Addendum
Law Companion Ruling
Foreign resident capital gains withholding regime: options

This Addendum is a public ruling for the purposes of the *Taxation Administration Act 1953*. It amends Law Companion Ruling LCR 2016/7 to reflect amendments made by the *Treasury Laws Amendment (2024 Tax and Other Measures No. 1) Act 2024*.

LCR 2016/7 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.

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Omit 'Put & call'; substitute 'Put and call'.

3. Paragraph 1

Omit footnote 1.

4. Paragraph 2

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

Specifically, it discusses when a purchaser is required to pay an amount to the Commissioner under section 14-200 of the *Taxation Administration Act 1953* where the purchaser becomes the owner of:

- an option to acquire 'taxable Australian real property'[2] (TARP) or an 'indirect Australian real property interest'[3], or
- TARP or an indirect Australian real property interest as a result of exercising an option.

(b) After the paragraph, insert new paragraph 2A:

2A. All legislative references in this Ruling are to Schedule 1 of the *Taxation Administration Act 1953*, unless otherwise indicated.

5. Paragraph 3

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

This Ruling applies to acquisitions where the vendor of the asset is a relevant foreign resident[3A] and the transaction was entered into on or after 1 July 2016, including acquisitions of:

- options to acquire TARP or indirect Australian real property interests, or
- TARP or indirect Australian real property interests as a result of exercising an option.

(b) After 'relevant foreign resident', insert new footnote 3A:

[3A] Section 14-210 sets out whether the vendor is a foreign resident for the purposes of the withholding obligation.

(c) Omit footnote 4.

6. Paragraph 6

(a) Omit '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'; substitute 'If the withholding obligation arises from a transaction entered into on or after 1 January 2025, the purchaser must withhold from the vendor, and pay to the Commissioner, an amount equal to 15% (with no threshold applied)[7A] of'.

(b) After '(with no threshold applied)', insert new footnote 7A:

[7A] *Treasury Laws Amendment (2024 Tax and Other Measures No. 1) Act 2024*.

7. Paragraph 6A

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

For transactions entered into on or after 1 July 2016 and before 1 July 2017, the withholding rate was 10% with the withholding threshold of $2 million.

(b) After the paragraph, insert new paragraph 6B:

6B. For transactions entered into on or after 1 July 2017 and before 1 January 2025, the withholding rate increased to 12.5%.[8A]

(c) At the end of new paragraph 6B, insert new footnote 8A:

[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*.

8. Paragraph 8

(a) Omit all occurrences of '12.5%'; substitute '15%'.

(b) In footnote 10, omit '1 July 2017'; substitute '1 January 2025'.

9. Paragraph 12

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

The withholding obligation did not apply to acquisitions of TARP, or indirect Australian real property interests that resulted in company title interests[12], provided the market value of the asset was below the applicable threshold.[13] Options, however, were not subject to any threshold. A purchaser that paid an option fee to a vendor who was a relevant foreign resident, must withhold, even if the underlying asset had a market value below the applicable threshold (see Example 2 of this Ruling).[14]

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

Paragraph 14-215(1)(a).

(c) Omit footnote 13A.

(d) In footnote 14, omit '1 July 2017'; substitute '1 January 2025'.

10. Paragraph 13

Omit '12.5%'; substitute '15%'.

11. Paragraph 15A

Omit the wording of the paragraph; substitute:

If a purchaser acquired an option before 1 January 2025, the purchaser was subject to a withholding rate of 12.5%. However, if the option was acquired on or after 1 January 2025, a withholding rate of 15% will apply to the option's cost base at the time of the acquisition.

12. Paragraph 15B

Omit the wording of the paragraph; substitute:

If the purchaser subsequently exercised the option before 1 January 2025, a withholding rate of 12.5% 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 $750,000 or more.

13. Paragraph 15C

Omit the wording of the paragraph; substitute:

If the purchaser subsequently exercises the option on or after 1 January 2025, a withholding rate of 15% will apply if the asset is TARP, or indirect Australian real property interests giving rise to company title interests, irrespective of the property value.

14. Paragraph 16

Omit the wording of footnote 19; substitute:

> Refer to Law Companion Ruling LCR 2016/6 *Foreign resident capital gains withholding regime: amount payable to the Commissioner*. For further guidance on market valuation, refer to Market valuation of assets.

15. Paragraph 21

Omit '*$30-million*'; substitute '*$30 million*'.

16. Paragraph 26

(a) After '*In March 2018*', insert a comma.

(b) After '$*750,000*', insert '*threshold*'.

17. Paragraph 27

After '*1 January 2018*', insert a comma.

18. Paragraph 30

After '*In October 2018*', insert a comma.

19. Paragraph 33

Omit '*2018*'; substitute '*2025*'.

20. Paragraph 37

Omit '*$1,250 (being $12.5% of $10,000)*'; substitute '*$1,500 (being $15% of $10,000)*'.

21. Paragraph 38

Omit '*2017*'; substitute '*2025,*'.

22. Paragraph 41

Omit '*$375,000 (being $12.5% of $3 million)*'; substitute '*$450,000 (being $15% of $3 million)*'.

23. Paragraph 42

(a) In the heading, omit '***&***'; substitute '***and***'.

(b) Omit '*2018*'; substitute '*2025*'.

24. Paragraph 45

Omit '*$1,250 (being 12.5% of $10,000)*'; substitute '*$1,500 (being 15% of $10,000)*'.

25. Paragraph 46

Omit '*2018*'; substitute '*2025,*'.

26. Paragraph 48

Omit '*$92,500 (being 12.5% of $740,000)*'; substitute '*$111,000 (being 15% of $740,000)*'.

27. Paragraph 50

Omit '*2018*'; substitute '*2025*'.

28. Paragraph 53

Omit '*$1,250 (being 12.5% of $10,000)*'; substitute '*$1,500 (being 15% of $10,000)*'.

29. Paragraph 56

Omit '*2018*'; substitute '*2025*'.

30. Paragraph 59

Omit '*$1,250 (being 12.5% of $10,000)*'; substitute '*$1,500 (being 15% of $10,000)*'.

This Addendum applies from1 January 2025.

Commissioner of Taxation
29 July 2026

ATO references

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