Taxation Administration (PAYG Withholding Variation for Foreign Resident Capital Gains Withholding Payments) Legislative Instrument 2026

I, Will Day, Deputy Commissioner of Taxation, make the following instrument.

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Deputy Commissioner of Taxation

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1 Name

This instrument is the *Taxation Administration (PAYG Withholding Variation for Foreign Resident Capital Gains Withholding Payments) Legislative Instrument 2026*.

2 Commencement

This instrument commences on the day after it is registered on the Federal Register of Legislation.

3 Authority

This instrument is made under subsection 14-235(5) in Schedule 1 to the *Taxation Administration Act 1953*.

4 Definitions

Note: A number of expressions used in this instrument have the same meaning as in Schedule 1 to the Act. Expressions in Schedule 1 to the Act have the same meaning as in the ITAA 1997 (see section 3AA of the Act). The following expressions are relevantly defined in section 995-1 of the ITAA 1997:

(a) acquire;
(b) Commissioner
(c) CGT asset;
(d) foreign resident;
(e) registered charity;
(f) spouse.

In this instrument:

Act means the *Taxation Administration Act 1953*.

clearance certificate means a certificate that is issued by the Commissioner under section 14-220 in Schedule 1 to the Act.

ITAA 1997 means the *Income Tax Assessment Act 1997*.

non-IARPI declaration means a declaration that is made by an entity under subsection 14-225(2) in Schedule 1 to the Act.

notice of variation means a notice that is given by the Commissioner under subsection 14-235(2) in Schedule 1 to the Act.

relevant foreign resident means an entity to which subsection 14-210(1) in Schedule 1 to the Act applies.

residency declaration means a declaration that is made by an entity under subsection 14-225(1) in Schedule 1 to the Act

residue, in relation to the sale of a CGT asset, means the amount worked out as follows:

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Step 1: Work out the amount of the proceeds from the sale of the CGT asset.

Step 2: Add the expenses incidental to the sale of the CGT asset and amounts payable to registered mortgagees of the CGT asset.

Step 3: Subtract the amount calculated in step 2 from the amount worked out in step 1.

specified exempt entity means an entity that is:

(a) registered on the Australian Business Register with an entity type of:
 (i) Commonwealth Government Entity; or
 (ii) Local Government Entity; or
 (iii) State Government Entity; or
 (iv) Territory Government Entity; or

(b) a registered charity that provides documentation showing that they are endorsed under Subdivision 50-B of the ITAA 1997 as being exempt from income tax.

specified mortgagee, in relation to a CGT asset, means an entity:

(a) that is an authorised deposit-taking institution within the meaning of section 5 of the *Banking Act 1959*; and

(b) to which the CGT asset is mortgaged.

5 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

6 Variation for acquisitions from multiple vendors

(1) The amount that the owner of a CGT asset must pay to the Commissioner under section 14-200 or 14-205 in Schedule 1 to the Act, in relation to the acquisition of the asset, is varied to the amount worked out under subsection (2) if:

(a) the CGT asset is acquired from more than one entity; and

(b) at least one of the entities is a relevant foreign resident; and

(c) at least one (but not all) of the entities has provided the owner of the CGT asset with a clearance certificate, a non-IARPI declaration, a residency declaration or a notice of variation that has effect at, or is for a period that covers, the time of the acquisition.

(2) The amount to be paid to the Commissioner is the sum of the following amounts:

(a) for each entity from which the CGT asset is acquired that has not provided a document referred to in paragraph (1)(c) – the amount which would be required to be paid to the Commissioner under paragraph 14-200(3)(a) or 14-205(4)(b) of Schedule 1 to the Act multiplied by the entity's percentage interest in the CGT asset just before the time of the acquisition referred to in subsection (1); and

(b) for each entity from which the CGT asset is acquired that has provided a notice of a variation that is in force at the time of the acquisition – the varied amount stated in the notice of variation; and

(c) for each other entity from which the CGT asset is acquired – nil.

(3) In working out an entity's percentage interest for the purposes of paragraph (2)(a), if the CGT asset is acquired from multiple entities as joint tenants, each entity is to be treated as holding an equal percentage interest in the CGT asset.

7 Variation for acquisitions resulting from death

The amount that must be paid to the Commissioner under section 14-200 in Schedule 1 to the Act, in relation to the acquisition of a CGT asset, is varied to nil if that acquisition is of a kind to which sections 128-15, 128-25, or 128-50 of the ITAA 1997 applies.

8 Variation for acquisitions from income tax exempt entities

The amount that the owner of a CGT asset must pay to the Commissioner under section 14-200 in Schedule 1 to the Act, in relation to the acquisition of the asset, is varied to nil if the asset is acquired from a specified exempt entity.

9 Variation for acquisitions resulting from marriage or relationship breakdowns

The amount that the owner of a CGT asset must pay to the Commissioner under section 14-200 in Schedule 1 to the Act, in relation to the acquisition of the asset from a spouse or former spouse, is varied to nil if:

(a) the CGT asset is acquired because of the matters referred to in the paragraphs in subsection 126-5(1) of the ITAA 1997; and

(b) the owner has a copy of the documents in relation to those matters.

10 Variation for acquisitions resulting from mortgagee sales

The amount that the owner of a CGT asset must pay to the Commissioner under section 14-200 in Schedule 1 to the Act, in relation to the acquisition of the asset, is varied to nil if:

(a) the CGT asset is real property of a kind mentioned in paragraph 855-20(a) of the ITAA 1997; and

(b) the acquisition happens as result of a specified mortgagee exercising its power of sale over the CGT asset; and

(c) the residue from the proceeds of the sale of the CGT asset is no greater than zero; and

(d) the owner receives written notification from the specified mortgagee that they are not required to pay, in relation to the acquisition, an amount to the Commissioner under section 14-200 in Schedule 1 to the Act because the conditions in the preceding paragraphs of this section are satisfied.

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Schedule 1—Repeals

PAYG Withholding variation for foreign resident capital gains withholding payments - acquisitions from multiple entities

1 The whole of the instrument

Repeal the instrument

PAYG Withholding variation for foreign resident capital gains withholding payments - deceased estates and legal personal representatives

2 The whole of the instrument

Repeal the instrument

PAYG Withholding variation for foreign resident capital gains withholding payments - income tax exempt entities

3 The whole of the instrument

Repeal the instrument

PAYG Withholding variation for foreign resident capital gains withholding payments - marriage or relationship breakdowns

4 The whole of the instrument

Repeal the instrument

PAYG Withholding variation for foreign resident capital gains withholding payments - no residue after a mortgagee exercises a power of sale 2020

5 The whole of the instrument

Repeal the instrument

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