

New Tax Regime Targets Foreign Investors of Australian Property

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In an attempt to encourage interaction between foreign residents and the Australian Tax Office (ATO), on 1 July 2016 the Australian federal government introduced a number of changes in respect of the purchase and sale of Australian property by foreigners. Foreign residents in Australia are already liable to pay tax on the capital gains made when they sell property. Previously, this depended on voluntary compliance by the seller. However, following a number of reports from the ATO of poor compliance, the federal government has introduced a new system of mandatory withholdings at the time of sale of the property.

Under the new regime, all buyers



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of an interest in Australian land with a market value of \$2 million or more have a duty to withhold 10% of the purchase price from the seller and pay it to the ATO, unless the seller obtains an ATO clearance certificate. If the withholding applies, the seller then must pay any capital gains tax liability beyond the 10%, or contact the ATO for a refund if their capital gains tax liability was less than 10%. Either the seller or the buyer may also apply to the ATO for a variation to the 10% withholding.

If a buyer fails to withhold the tax, then they are liable to pay penalties

to the ATO up to the value that should have been withheld.

In addition to these changes by the federal government, the state of New South Wales has also recently introduced an additional duty surcharge of 4% of the purchase price (in addition to the current duty) for all foreign purchases of residential real estate.



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