

CLEARANCE CERTIFICATES & FOREIGN RESIDENT GAINS WITHHOLDING TAX

When selling or buying, the Government now requires proof of whether or not you are an Australian or Foreign resident for tax purposes.

Newly introduced rules for foreign resident capital gains withholding tax now applies to the vendor's selling the property under contracts entered into from 1 July 2017 where the contract price/market value is \$750,000 and above. The withholding tax rate is now 12.5%. Previously this withholding tax only applied on properties worth \$2 million or more and the rate was previously 10%. The lower rate and higher threshold apply to contracts entered into from 1 July 2016 but before 1 July 2017.

In order to avoid payment of this tax, vendors must provide the purchaser with a clearance certificate on or before the settlement where the property for sale has a market value of \$750,000.00 or above. Where a clearance certificate is provided, the purchaser is not required to withhold an amount from the purchase price.

A clearance certificate must be valid at the time it is provided to the purchaser. Clearance certificates are valid for 12 months, and can be used by the same vendor for the sale of multiple properties while valid.

Who can obtain a clearance certificate?

Only a vendor who is an Australian resident* can be granted a clearance certificate by the ATO.

* Note: Residency status for tax purposes is not the same as that for immigration purposes, or for the Foreign Investment Review Board (FIRB). If you are unsure, seek professional advice.

In order to assist vendors, the ATO has set out some simple ways to for you to answer accurately as to whether you are a foreign resident for tax purposes on their website here: <https://www.ato.gov.au/Individuals/International-tax-for-individuals/Work-out-your-tax-residency/>

If the vendor fails to provide the clearance certificate by settlement, the purchaser is required to withhold 12.5% of the purchase price and pay this to the ATO. This means Australian resident vendors of real property with a market value of \$750,000.00 or above must apply for a clearance certificate to ensure no funds are withheld from their sale proceeds.

An Australian resident vendor may apply to the ATO for a clearance certificate at any time when considering the disposal of real property. This can be before the property is listed for sale.

To obtain a clearance certificate, a vendor who is an Australian resident (or their representative) must complete an online 'Clearance certificate application for Australian residents' form. This forms are available on [ATO CLEARANCE CERTIFICATE](#).

Variation applications

Where the vendor is not entitled to a clearance certificate, but believes a withholding of 12.5% is inappropriate, they can apply to the ATO for a variation.

Reasons for a variation could include:

- a foreign resident not making a capital gain on the transaction (for example, because they will make a capital loss or a CGT rollover applies)
- a foreign resident not otherwise having an income tax liability (for example, because of carried-forward capital losses or tax losses)
- a scenario where there are multiple vendors, only one of which is a foreign resident.

A variation application can be made using the 'Variation application for foreign residents and other parties' form. In the majority of cases (where the ATO has all the required information and the application is successful), the notice of variation will be provided within 28 days. The notice of variation should be shown to the purchaser before settlement to ensure the reduced withholding rate applies.

This information sheet is meant as a guide only and you should satisfy yourself as to the requirements in your matter consider discussing the circumstances with an accountant or the information line for the Australian Taxation Office.