

## New Property Withholding Rules – Implications for Australian Resident Sellers

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Tax withholdings rules apply to any contract entered into for the sale of property valued at \$750,000.00 or more. Whilst withholding is only intended to apply to sellers who aren't Australian residents, Australian sellers will still need to obtain an ATO 'clearance certificate' and provide this to the purchaser as part of the withholding scheme.

The rationale behind these rules is to ensure that residents from foreign countries pay capital gains tax on the sale of residential property. Countries such as Canada, Spain, France and the USA have similar measures.

### What This Means for Buyers and Sellers of Property

Firstly, if you are selling property for less than \$750,000.00, these rules do not apply to you and you therefore do not need to apply for a clearance certificate. If, however, you are selling property above this threshold, a 12.5% withholding will be incurred unless you can demonstrate that you are an Australian resident. This is done simply by presenting a clearance certificate. If you are unable or unwilling to do this, the purchaser will be required to withhold 12.5% of the sale price and remit this to the ATO.

If a purchaser fails to withhold where required, a penalty equal to the amount that was supposed to be withheld can be imposed. Interest will also be charged on this amount.

Sellers can claim the credit for the withheld amount paid to the ATO by lodging a tax return for the relevant year.

### How you can Apply for a Clearance Certificate

An online application can be completed on the [ATO website](#). It is not a difficult form to complete and should not cause any delay or stress. Sellers can complete this form themselves, or have a third party complete and submit. CLS Legal is an example of one such third party and we are happy to assist with this. The application itself does not require payment of any fee.

We suggest that applications be made once contracts have exchanged to avoid any processing delays. You will need to ensure that the name on the clearance certificate is the same as the name that appears on the certificate of title to the property. If there is more than one property owner, all owners will need to obtain a clearance certificate. Clearance certificates are valid for 12 months from issue.

### Other Important Considerations

It is the entity that has legal title to the asset that must apply for a clearance certificate. In situations where the title of the property is in the name of a trustee, for example for purposes of a superannuation fund, it is the trustee who should apply for the clearance certificate, not the trust or superannuation fund itself.

Contact us at CLS Legal at [info@clslegal.com.au](mailto:info@clslegal.com.au) for further information regarding withholding tax, assistance with the sale or purchase of your property or if you have any questions about the contents of this document.