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YOUR KNOWLEDGE

Buying or Selling Property? The 1 July Tax Problem You Didn't Know You Had

New rules to prevent foreign residents avoiding tax when they sell Australian property will affect everyone buying or selling property with a market value of \$2 million or more from 1 July 2016. Many transactions involving shares in a company or units in a trust will also be caught.

From 1 July, a 10% withholding tax will apply when foreign residents sell certain types of Australian property. However, if you are selling Australian property, the new rules assume you are a non-resident unless you have a clearance certificate from the ATO. Without this clearance certificate, the purchaser can withhold 10% of the purchase price and pay this to the ATO. For purchasers, if you do not withhold the tax and do not have a clearance certificate, you are liable for the tax (on a \$2 million property, that's \$200,000).

You can probably already see the problem here. Until everyone gets used to this new system there are likely to be quite a few issues where property contracts don't mention the withholding tax, no clearance certificate is provided, and no tax is withheld on settlement.

The good news is that the withholding tax does not apply to real property that has a market value of less than \$2 million. This exclusion can apply to residential dwellings, commercial premises, vacant land, strata title units, easements and leasehold interests as long as they are below the \$2 million market value threshold.

What 'property' is affected by the new rules?

The new withholding rules capture:

- Taxable Australian real property – such as residential property, commercial property, land etc., situated in Australia as well as certain mining, quarrying or prospecting rights;
- Indirect Australian real property interests (i.e., shares in a company or units in a trust where certain conditions are met). This is generally where most of the value of the company or trust relates to real property holdings in Australia; and

- Options or rights relating to the points above.

I'm selling a property what do I need to do?

If you are selling real property affected by the new rules after 1 July and that property is likely to have a market value of \$2 million or more, you need to apply for a clearance certificate from the ATO. Without this certificate, the purchaser of your property must assume you are a foreign resident and will be permitted to withhold 10% of the purchase price and remit it to the ATO.

When a certificate is issued by the ATO it remains valid for 12 months. The ATO has been developing an automated process for issuing a clearance certificate. The vendor (or an agent) will be able to complete an online application form. In straightforward cases the ATO expects that certificates will be issued within a matter of days.

I'm buying a property what do I need to do?

If you are buying real property affected by the new rules after 1 July and that property has a market value of \$2 million or more, you need to ensure that you receive the clearance certificate from the vendor before settlement occurs. While the tax rules allow you to withhold 10% of the purchase price if the clearance certificate is not provided, it might also be a good idea to have this built into the sale contract to avoid any uncertainty.

If the sale proceeds and you don't have a clearance certificate and have not withheld the tax, the tax liability rests with you, the purchaser.

Buying or selling indirect property interests – shares in a company or unit trust

If you are buying or selling shares in a company or units in a trust then a withholding obligation can also be triggered, even if the company or trust does not hold any real property interests in Australia.

In these circumstances the vendor can make a declaration to the purchaser confirming that they are an Australian resident to ensure that the withholding tax does not apply. In general you would expect to see

these declarations in the sale agreements as warranties.

Can we vary the withholding tax?

The Commissioner has the power to vary the amount that is payable under these rules.

If the Commissioner agrees to vary the amount, it is only effective if it is provided to the purchaser before settlement occurs.

Warning on Super Contributions

The 2016-17 Federal Budget announcements on superannuation have caused a lot of concern. These include:

- A \$500,000 lifetime non-concessional contributions cap from Budget night
- A reduction in the annual concessional contribution cap from 1 July 2017 to \$25,000
- The removal of the tax exemption on earnings supporting transition to retirement income streams (TRIS) from 1 July 2017
- The extension of the 30% super contributions tax on high income earners
- Tax free super balances capped at \$1.6m from 1 July 2017

Many clients have asked, what should we be doing? The main area to be mindful of is the \$500,000 lifetime cap on non-concessional contributions as what you do now may have a lasting and potentially detrimental impact.

Under the current rules, you can use the 'bring forward rule' and contribute up to \$540,000 across a 3 year period to your super fund. Anyone utilising these rules in the current year may find that the proposed rules, if they come into effect, will radically change their position, retrospectively.

It's really important that anyone contemplating making large contributions to super or utilising the 'bring forward rule' get advice first.

Politicians and Housing

I doubt politicians really give a damn about housing affordability. Governments at all levels treat housing as a cash cow, they appear to care about the cost, but then they take actions that cause costs to rise and affordability to reduce.

That means the cost of housing keeps rising. Who to blame? It's easy to point to foreign investors and negatively-g geared investors, although this has been allowed since the 60's. Don't blame high tax levels though for the practice!

Both Victoria and NSW have introduced new taxes to slug foreign buyers, as well as surcharges on land tax and stamp duty. Is Queensland to follow?

So, various governments introduce new charges or increase old ones and milk both investors and occupiers. If investors are truly the cause of high prices in the capitals, it would be better to ban them rather than Governments take advantage of the situation and impose some new charges.

Housing is the one industry driving the economy at the moment. New charges don't help affordability, and deterring investors makes it likely many projects will not be built. The reduction in supply is also likely to cause prices to rise.

So the politicians have not thought the property changes through, and protect their votes by blaming an unpopular minority.

Ransomware

You get an email from Australia Post, or a Court, the ATO and you open it: your computer is frozen. What happens (super simple terms) is you released a virus by opening the attachment and it goes through everything which is connected. Dropbox backups in the Cloud, etc., the virus locks them all.

You are required to send money, usually Bitcoin, and then the crooks will allow you access again. Perhaps! But you can lose all your data and have to start again.

It is a serious risk, and increasing. You can insure (won't get your data back), improve your back-up procedures, instal virus protectors, and be super careful.

If you're doubtful of an email you receive, don't open it but hit 'reply'. If it bounces, delete the email.

If you need a connection to a great IT person, please call me.

Quote of the month

"A genuine leader is not a searcher for consensus but a moulder of consensus."

Martin Luther King, Jr.



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