



Monthly Information Newsletter – Tax & Super

March 2020

Selling taxable Australian property? Need a clearance certificate from the ATO?

If an Australian resident is considering selling property, they should apply for an ATO clearance certificate. If a property vendor does not apply for a clearance certificate and present it to the purchaser, the purchaser is required to withhold 12.5% of the purchase price for CGT purposes on properties that have a market value of \$750,000 or more.

The legislation, which applies from 1 July 2017, aims to make sure foreign resident property vendors meet any capital gains tax obligations. So, to a large degree the certificate documents that the vendor is not a relevant foreign resident.

The withholding obligation is in regard to “taxable Australian real property”, or an indirect Australian real property interest that provides company title interests, with a market value of \$750,000 and above, unless the seller provides a clearance certificate from the ATO.

A clearance certificate is valid for 12 months from the date issued, so the vendor may be able to use it for multiple disposals of real property or indirect Australian real property company title interests that occur within that period. The vendor does not have to reapply for a clearance certificate each time they dispose of a property, as long as the clearance certificate is valid.

Market value

In many if not most cases, the ATO will accept that the market value of a property will be the purchase price. Where the purchase price has been negotiated between the vendor and the purchaser, acting at arm’s length, the ATO will accept the purchase price as a proxy for market value.

There could however be circumstances where the market value is different to the stated purchase price (for example, where the vendor and purchaser are related parties and did not deal with each other at arm’s length). In such cases, the ATO may not accept the purchase price as a proxy for market value and the purchaser will need to seek a separate expert evaluation.

Note: If the purchase price is used as a proxy for market value, the market value is the purchase price before adjustment for any disbursements at settlement (for example, council rates, water and sewer charges and strata levies). Therefore, the \$750,000 threshold test is applied to the purchase price before adjustment for disbursements.

The paper trail

Taxpayers selling property should complete and lodge the form with the ATO as early as possible — in a lot of instances it can take 28 days to process. The certificate should be provided to the purchaser on or before the day of settlement to ensure no withholding takes place.

And note that each vendor should lodge their own application, as there is no provision to allow for the lodgement of joint applications. All parties on the Certificate of Title will require a clearance certificate. For example, joint tenants or tenants in common will need to fill out a form each. It is the vendor’s responsibility to provide the purchaser with the clearance certificate and ensure it’s valid.

Once a certificate has been lodged, the ATO says it cannot speed up the process time as it generally processes requests based on the time they are received. After processing an application, the ATO will notify you of the outcome and contact you for more information if required. Note that the ATO has the discretion to withdraw a clearance certificate at any time if it obtains further information to indicate that the seller is indeed a foreign resident. No withholding, and therefore no clearance certificate, is required for property acquired from a deceased estate.

If you have an upcoming settlement, lodge your application today or ask for our help.

DISCLAIMER

All information provided in this article is of a general nature only and is not personal financial or investment advice. Also, changes in legislation may occur frequently. We recommend that our formal advice be obtained before acting on the basis of this information.

Our liability may be limited by a scheme approved under Professional Standards Legislation.