Australian Government

KEY FACT SHEET

Changes to the capital gains tax rules for foreign residents

The Government is strengthening the capital gains tax rules for foreign residents. This will send a clear message to foreign residents that if they wish to acquire Australian property, they will have to comply with our capital gains tax rules.

The Government will stop foreign residents from claiming the main residence capital gains tax exemption when they sell property in Australia.

The Government has also bolstered the foreign resident capital gains tax withholding regime from 1 July 2017 by increasing the withholding rate (from 10 per cent to 12.5 per cent) and increasing the number of foreign residents caught by the regime, by reducing the value of properties subject to the rules (from $2 million or more to $750,000 or more). These changes will reduce the risk that foreign residents fail to pay a capital gains tax liability they owe in Australia.

When will foreign residents lose access to the main residence exemption?

Once the legislation comes into effect, the main residence exemption will not be available for properties acquired on or after 7.30pm (AEST) on 9 May 2017, where the seller of the main residence is a foreign resident for tax purposes at the time of sale.

For properties acquired before 7.30pm (AEST) on 9 May 2017, the main residence exemption will be available to foreign residents until 30 June 2019.

Will the main residence exemption still be available for Australian residents?

Yes, anyone who is an Australian tax resident at the time of selling their main residence will not be affected by the change.

Australian residents will not be affected even if they become a foreign resident while owning their main residence, as long as they re-establish Australian tax residency and are an Australian tax resident at the time of sale of their main residence.

Will temporary residents, such as New Zealanders, be affected?

Temporary residents will not be affected if they are Australian residents. This includes New Zealanders that are considered temporary residents because they are living in Australia on a special category visa.

What is the foreign resident capital gains tax withholding regime?

The foreign resident capital gains tax withholding regime requires purchasers of certain Australian property that has a market value of $750,000 (reduced from $2 million) or more to withhold 12.5 per cent (increased from 10 per cent) of the purchase price and pay it to the Tax Commissioner, if they purchase the asset from a foreign resident.

It is a non-final withholding tax, so the foreign resident seller will receive a final tax assessment when they lodge an income tax return.

When did the expanded withholding regime come into effect?

The changes to the regime apply to new acquisitions on or after 1 July 2017. This means that contracts exchanged before 1 July 2017 will not be affected by the changes, even if the parties are not due to settle until after 1 July 2017.

Further information

Further information is available on the ATO website.