



Foreign Resident Capital Gains Withholding and ATO Clearance Certificates

From 1 January 2025, all Sellers, whether an individual or non-individual company or trust, must provide an Australian Taxation Office Clearance Certificate to the Buyer, failing which, the Buyer is responsible to ensure that 15% of the purchase price is paid to the Australian Taxation Office at settlement.

This requirement has been in place for some time however, it was only required for sales over \$750,000.00. It is now required for the sale or disposal of all Australian real property.

However, there are certain transactions which are exempt from this requirement which include:

- Transfers under the Family Law Act;
- Mortgagee Sales;
- Deceased Estate transfer to a beneficiary, surviving joint tenant or personal representative;
- Bare Trust to Super Fund Transfers.

Failure to provide the Clearance Certificate to the Buyer prior to the Settlement Date will require the Buyer to retain 15% of the purchase price and pay this to the ATO at settlement. If this occurs, it is then the Sellers responsibility to obtain any refund of this amount through their next tax return. Alternatively, the Settlement Date would need to be extended pending receipt of the Clearance Certificate.

While many Clearance Certificates are received within 1 – 2 weeks, the ATO can take up to 28 days to process the application. Accordingly, as many sale contracts are for a 30 day period, it is of the utmost importance that the Clearance Certificate is ordered as quickly as possible after execution of a Contract, to avoid delays.

Further, if a Seller is a Foreign Resident for tax purposes, the Seller should provide a notice to the Buyer stating this, so that the Buyer can make arrangements to have the 15% of the purchase price for Capital Gains Tax paid to the Australian Taxation Office at settlement.

So to avoid lengthy delays in settling the sale or purchase of a property and to avoid having to claw back moneys from the ATO, you should:

- provide immediate instructions to your solicitor to obtain a Clearance Certificate on your behalf (if you are selling), or
- should confirm that your solicitor has received the Clearance Certificate from the Seller prior to settlement (if purchasing).

Thinking of selling or buying residential property. Reach out to the team who have been servicing the Sunshine Coast since 1974.

☎ 07 54390 1400

✉ enquiries@gplaw.com.au

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