

ASK THE EXPERT

New Property Sale Withholding Tax



Q *I have heard there is a new tax when you sell your Australian property?*

A There isn't any new taxes on Australian property, however there was some legislation passed on the 22nd February 2016 that now allows the Australian Government to collect a Withholding Tax of 10% of the purchase price on the sale of properties over A\$2 million when they are owned by Foreign Residents.

Although the law has now been passed, the commencement date for the Withholding Tax is for any contracts signed after the 1st July 2016.

This withholding tax is collected from the purchaser at settlement and paid to the Australian Taxation Office (ATO) pending the lodgement of the sellers income tax return.

If the Capital Gains Tax applicable to the sale is less than the 10% withheld, then a refund will be provided and if it is more the balance will become payable.

The introduction of this Withholding Tax is designed to ensure better compliance from property owners living overseas, that traditionally have been a bit tardy in properly attending to their taxation obligations.

For anyone living out of Australia that owns an Australian property that is collecting any rental whatsoever, or may have sold or transferred the property during a tax year, it is a legal requirement to lodge an Australian Income Tax return and report the activity.

Even if your ownership costs are greater than the rental or if you sell the property for less than you bought it for, you still need to lodge a return to ensure the ATO have full knowledge and understand that no tax may be payable so they don't devote resources to checking on you. Failure to lodge a return will lead to an A\$850 fine per year not lodged, per person that required to lodge, and all persons registered on the title must lodge.

The new withholding tax will be create a bit of an administration burden on sellers, as even though the Withholding Tax only applies to owners that are living out of Australia, the way the system is being administered means that all Australian property owners that sell for more than the A\$2 million threshold will need to seek out a "Clearance Certificate" confirming that they do not require the Withholding Tax to be retained from the purchase funds.

For any owner living in Australia this will be fairly automatic as long as they can confirm their residency in Australia.

If a seller does not have a Clearance Certificate, then every buyer of property over the A\$2 million value will need to hold back funds from settlement. The certificate should be a simple online application and is estimated to take 10-14 days to arrange.

For overseas owners selling their property, the Withholding Tax will be kept and remitted to the ATO so there will be some urgency to actually lodge your tax return to confirm how much the actual tax may be and get a refund if applicable.

Although the A\$2 million threshold seems high, the recent surge in Sydney property prices will mean that this change may have a larger impact there than other Australian cities.

It is important to remember that this is not an additional tax, rather a method to ensure compliance and enforce the current tax system.

Contact us at tax@smats.net with any specific question you may have or to get our professional team to assist you with your Australian Taxation requirements.

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