



## AUSTRALIA'S NEW FOREIGN RESIDENT WITHHOLDING REGIME

From 1 July 2016, buyers of certain types of interests in Australian real property from “relevant foreign residents” must withhold and remit to the ATO 10% of the purchase price\* on or before the date that the buyer becomes the owner of the interest in the property.

The *Tax and Superannuation Laws Amendment (2015 Measures No. 6) Act 2016* has introduced this regime into the *Taxation Administration Act 1953* (Cth), with an aim to increase the collection of capital gains tax from foreign residents.

### WHAT TYPES OF TRANSACTIONS DOES THIS REGIME APPLY TO?

The regime applies to the purchase of:

- (a) direct interests in Australian real property, which includes leases over Australian real property and mining, quarrying or prospecting rights in relation to minerals, petroleum or quarry materials situated in Australia;
- (b) indirect interests in Australian real property, being the acquisition of interests of 10% or more in an entity whose underlying value is principally derived from Australian real property; and
- (c) rights and options in relation to subparagraphs (a) and (b) above.

### RELEVANT FOREIGN RESIDENTS

Under the new regime, a seller will be considered a “relevant foreign resident” unless:

- (a) for transactions relating to the purchase of direct interests in Australian real property and indirect interests in Australian real property that give rise to a right to occupy – the buyer receives a **clearance certificate** from the seller; and
- (b) for transactions relating to the purchase of indirect interests in Australian real property that do not give rise to a right to occupy and rights and options to acquire direct or indirect interests in Australian real property:
  - (i) the seller makes a **declaration** of its Australian residency when the transaction is entered into and the buyer does not know the declaration to be false; or
  - (ii) the purchaser does not know or have reason to believe that the seller is a foreign resident.

### EXCLUDED TRANSACTIONS

- (a) Certain transactions where the market value of the Australian real property is **less than \$2 million**;
- (b) Transactions on an approved stock exchange or that are conducted using a crossing system;
- (c) Transactions to which another withholding obligation applies;
- (d) Security lending arrangements; and
- (d) Transactions where the seller is subject to insolvency or bankruptcy proceedings.

### PENALTIES

If the buyer fails to comply with its withholding obligations, the buyer is liable to the ATO for the full amount of the withholding payment plus interest.

\*subject to a variation of that amount by the ATO upon application by the buyer, seller or another eligible entity.

### Contact our Principals

If you have any queries or would like further information regarding the regime and how it affects you, please give us a call.

Michael Swift  
Property & Agribusiness  
+61 8 9216 7155  
mswift@allionlegal.com

Philip Lucas  
Corporate  
+61 8 9216 7171  
plucas@allionlegal.com

Stuart Mengler  
Energy & Resources  
+61 8 9216 7105  
smenlger@allionlegal.com

Stephen Byrne  
Projects & Infrastructure  
+61 2 8075 1400  
sbyrne@allionlegal.com

Jon Cane  
Corporate  
+61 2 8075 1720  
jcane@allionlegal.com

David Walker  
Energy & Resources  
+61 2 8075 1710  
dwalker@allionlegal.com

These materials have been developed for the purposes of general information only. They do not constitute specific legal advice on particular issues and should not be relied on for that purpose. © Allion Legal 2016. No part of this publication may be copied or reproduced without written prior consent or as permitted by law.