



# Foreign resident capital gains withholding

Find out about the foreign resident capital gains withholding (FRCGW), including who it applies to and when it applies.

## Foreign resident capital gains withholding overview

Find out what foreign resident capital gains withholding (FRCGW) is and how it applies when disposing of property.

## Australian residents and clearance certificates

Australians selling property need a clearance certificate to avoid having an amount withheld from the sale price.

## Foreign residents and variations

Foreign residents are subject to FRCGW when selling Australian real property.

## Vendor declarations

Find out when providing a vendor declaration results in a purchase not being subject to FRCGW.

## Paying the foreign resident capital gains withholding

Find out how to pay the withholding amount when foreign resident capital gains withholding (FRCGW) applies.

## Compulsory acquisition of property by government authorities

Certain Australian Government authorities can use legislation for the compulsory acquisition of property.

QC 71566

# Foreign resident capital gains withholding overview

Find out what foreign resident capital gains withholding (FRCGW) is and how it applies when disposing of property.

**Last updated** 11 April 2025

### On this page

[Rate of withholding from a property sale](#)

[Australian residency](#)

[Types of assets](#)

[Market value](#)

Foreign resident capital gains withholding (FRCGW) must be applied on all real property (property) sales, unless the vendor is:

- an Australian resident for tax purposes (Australian resident) with a valid clearance certificate issued by us at, or before settlement –


without a clearance certificate, FRCGW must be withheld from the sale proceeds by the purchaser and paid to us

- a **foreign resident** (also known as a non-resident) with a **variation** notice specifying a reduced rate of FRCGW – without a variation, the purchaser must withhold the full rate of FRCGW from the sale price and remit that amount to us to go toward payment of this liability.

**Purchasers must pay** any amount they withhold to us at, or before settlement.

The most common reasons for disposing of a property include selling and transferring to another person or entity. For more reasons see **CGT events**.

For a summary of what to do:

- visit the ATO Publication Ordering Service to download our [Selling and purchasing property – capital gains withholding](#)  factsheet
- see the factsheet in Chinese.

## Rate of withholding from a property sale

The following FRCGW rates apply to the [market value](#) of property contracts signed:

- Up to and including 31 December 2024, a rate of 12.5% applies to property valued at \$750,000 or more.
- On and after 1 January 2025, a rate of 15% applies to the value of all property.

### Example: contract signed before 1 January 2025

Jane is a foreign resident and wants to sell her apartment.

Toni decides to purchase the property, signing the sale contract on 16 December 2024 for \$1.2 million (its market value at that time).

Their settlement period is 28 days, with the settlement date 6 January 2025.

As the contract was signed **before** 1 January 2025, Toni must withhold 12.5% of \$1.2 million, that is \$150,000 and pay this to us.

**Note:** If the contract was signed after 1 January 2025, Toni would have to withhold at a rate of 15% of \$1.2 million (\$180,000) and pay this amount to us.

## Australian residency

Depending on circumstances, residency for tax purposes can change. We will confirm your residency status for foreign capital gains withholding when you apply for a clearance certificate.

### Individuals

The residency test for individuals for tax purposes is different to that for social security and immigration purposes.

Generally, an individual will be an Australian resident for tax purposes if they:

- have always lived in Australia, or came to Australia and live here permanently
- have been in Australia continuously for 6 months or more, and for most of that time worked in one job and lived at the same place
- have been in Australia for more than 6 months of the year, unless their usual home is overseas and they don't intend to live in Australia
- go overseas temporarily and don't set up a permanent home in another country
- are an overseas student who came to Australia to study and are enrolled in a course that is more than 6 months.

You can work out **your tax residency** or **work out your residency status for tax purposes**.

### Non-individuals

Different residency tests apply to non-individual entities such as companies, corporate limited partnerships and trusts.

Non-individuals can refer to **Working out your residency**.

## **Types of assets**

Taxable Australian real property requiring a clearance certificate include:

- your home
- vacant land, buildings, residential and commercial property
- mining, quarrying or prospecting rights where they are situated in Australia
- a lease over real property in Australia
- indirect Australian real property (IARP) interests, where the holder has a right to occupy land or buildings on land.

## **Other assets**

Other types of real property-related assets, such as leases, shares that are indirect real property interests (IARPI) and options in those that aren't listed on an official stock exchange are also subject to FRCGW.

See **Vendor declarations** for more info about what to do.

## **Excluded transactions**

Some transactions (due to the way they are sold or disposed of) aren't subject to FRCGW, including:

- transactions through an approved stock exchange (such as the Australian Stock Exchange) or those using a broker-operated crossing system
- transactions subject to another withholding obligation, see **List of CGT assets and exemptions**
- securities lending arrangements, as these don't cause a CGT liability
- transactions when a vendor is in external administration, or transactions from a bankrupt estate, a composition or scheme of arrangement, a debt agreement, a personal insolvency agreement, or same or similar circumstances under a foreign law.

## Market value

Usually, the market value of property is the sale price. However, if the sale price has been negotiated between the vendor and the purchaser:

- at arm's length we accept the sale price as the market value. This is the sale price before adjustments for disbursements at settlement. For example, council rates, water and sewer charges and strata levies.
- at non-arm's length, this is when the market value is different to the sale price. For example, the vendor and purchaser are related (non-arm's length), the purchaser must seek a separate expert evaluation from a professional valuer.

### Example: non-arm's length property sale by a foreign resident

Franz is a foreign resident. He inherits a farm in Australia from a relative in February 2025.

The farm has been in drought for the last 10 years and he is happy to sell the property to another relative, at below market value (a non-arm's length transaction) for \$500,000.

The purchaser organises a market valuation, which values the farm at \$800,000 (the arm's-length value).

As a foreign resident, Franz is subject to FRCGW and a rate of 15% applied to the market value of the property when the contract is signed in March 2025.

Franz is happy with this arrangement as he's not sure how long it would take to sell it at the market rate.

The purchaser must withhold \$120,000 from the property sale and pay it to us.

Market value \$800,000 × FRCGW rate of 15% = \$120,000 withholding

Sale price \$500,000 – withholding \$120,000 = \$380,000 paid to Franz.

Franz applies for a TFN and lodges an income tax return for the year ended 30 June 2025. As Franz didn't make a capital

gain on the disposal of the farm, the \$120,000 FRCGW credit on his income tax account is refunded to him.

QC 48972

## Australian residents and clearance certificates

Australians selling property need a clearance certificate to avoid having an amount withheld from the sale price.

Last updated 28 January 2025

### On this page

[Clearance certificates for Australian residents](#)

[Rate of withholding from a property sale](#)

[Types of property](#)

[Applying for a clearance certificate](#)

[Clearance certificates in certain circumstances](#)

## Clearance certificates for Australian residents

Foreign resident capital gains withholding (FRCGW) must be withheld on all [real property](#) (property) sales unless the vendor is an Australian resident for tax purposes.

All Australian residents (for tax purposes) selling or disposing of Australian real property (property) **must** have a [clearance certificate](#) and give it to the purchaser at, or before settlement.

Without a clearance certificate, the purchaser must withhold up to 15% of the sale (or market value if not sold at arm's length) for foreign resident capital gains withholding (FRCGW) purposes.

## Australian residency

Depending on circumstances, residency can change. We will confirm your residency status when you apply for a clearance certificate.

### Individuals

The residency test for individuals for taxation purposes is different to that for social security and immigration purposes.

Generally, an Australian resident for tax purposes is an individual who:

- has always lived in Australia or has come to Australia and lives here permanently
- has been in Australia continuously for 6 months or more, and for most of that time, worked in the one job and lives at the same place
- has been in Australia for more than 6 months of the year, unless their usual home is overseas and they don't intend to live in Australia
- goes overseas temporarily and doesn't set up a permanent home in another country
- is an overseas student in Australia to study and is enrolled in a course that is more than 6 months.

You can work out **your tax residency** or **work out your residency status for tax purposes**.

### Non-individuals

Different residency tests apply to non-individual entities such as companies, corporate limited partnerships and trusts.

Non-individuals can refer to [Working out your residency](#).

## Rate of withholding from a property sale

The following FRCGW rates apply to the market value of property contracts signed:

- Up to and including 31 December 2024, a rate of 12.5% applies to property valued at \$750,000 or more.
- On and after 1 January 2025, a rate of 15% applies to the value of all property.



### **Example: the importance of getting a clearance certificate early – 15% withheld from sale**

Willow and Stanley are Australian residents for tax purposes. On 1 September 2024 they decide to sell their family home, their main residence. They need the funds from the sale to purchase a new residence.

They are both listed as owners of the property on the certificate of title, so both must apply for their own clearance certificate.

They find a purchaser on 8 January 2025 and sign the contract of sale, with a settlement 30 days later on 6 February.

They don't apply for a clearance certificate until 15 January and don't have both of their clearance certificates at, or before settlement.

The property sold for \$600,000, however:

- Willow's clearance certificate issued and was given to the purchaser
- Stanley was still waiting for his clearance certificate.

The sale goes through and settlement occurs. As Stanley didn't have a clearance certificate at settlement, 15% of Stanley's share of the sale (\$45,000) must be withheld by the purchaser and paid to us.

Stanley must wait until his 2025 tax return is lodged and processed for a refund.

As the purchaser had received a clearance certificate from Willow, there's no withholding required on her share of the sale.

### **Example: the importance of getting a clearance certificate early – no withholding**

Maisie and Max are Australian residents for tax purposes. On 1 September 2024 they decide to sell their family home, their

main residence. They need the funds from the sale to purchase a new residence.

They are both are listed as owners of the property, so both must apply for their own clearance certificate.

They apply for a clearance certificate straight away which is issued to them on 29 September 2024. The clearance certificate is valid until 28 September 2025 – 12 months from its date of issue.

A few months later, on 7 January 2025, they put their home on the market and a week later accept an offer of \$650,000 and a fast settlement.

As they had clearance certificates, which they gave to the purchaser prior to settlement, the purchaser doesn't withhold any FRCGW.

**Note:** If they didn't have their clearance certificates, 15% of the sale price (**\$97,500** – \$48,750 each) would have to be withheld by the purchaser as FRCGW and paid to us.

They would have to wait until their 2025 tax returns are lodged and processed for a refund, which could delay purchasing their new residence.

## Types of property

Taxable Australian real property requiring a clearance certificate includes:

- vacant land, buildings, residential and commercial property
- mining, quarrying or prospecting rights where the material is situated in Australia
- indirect Australian real property interests (IARPI), where the holder has a right to occupy land or buildings on land.

## Applying for a clearance certificate

In this section:

- [Clearance certificates](#)

- [Processing times](#)
- [Who can apply on your behalf](#)
- [If you don't have a clearance certificate](#)
- [Names on the clearance certificate](#)
- [Receiving your clearance certificate](#)
- [Lodging tax return for refund](#)
- [Invalid or fraudulent clearance certificates](#)

## Clearance certificates

Most clearance certificates issue within a few days, but some can take **up to 28 days** to process and issue. Apply for a clearance certificate as soon as you think about selling a property.

The vendor (or seller) is the entity that owns the legal title to the property.

An ATO-issued clearance certificate confirms the vendor's Australian residency for foreign capital gains withholding.

When selling Australian real property:

- you don't have to wait to sign a contract - apply for a clearance certificate as soon as you are thinking of selling, they are free
- each vendor **must** give their clearance certificate to the purchaser **before** the settlement date
- most clearance certificates will issue within a few days, but some can take **up to 28 days** to process and issue
- if there's no clearance certificate provided by the vendor by the settlement date, the purchaser **must** withhold an amount of FRCGW and pay it to us
- clearance certificates are valid for 12 months from their date of issue (as long as the vendor's residency status doesn't change during that time)
- if you decide not to sell, but have a clearance certificate, there's no requirement to use it.

If a vendor is a non-individual entity, for example a super fund, partnership, trust or company, see [Clearance certificates in certain circumstances](#).

In certain circumstances, the property can be looked after on behalf of another entity, for example, a trustee for a [deceased estate](#).

**Note:** When vendors don't have a valid clearance certificate from us at or before settlement, the purchaser **must** withhold a FRCGW amount from the sale.

[Apply for a clearance certificate](#)

If someone else is completing your clearance certificate application, see [Who can apply on your behalf](#).

For more information on how to complete the form, see [Capital gains withholding clearance certificate application online form instructions – for Australian residents](#).

A paper form and instructions are also available. See [Capital gains withholding clearance certificate application paper form instructions](#) for more information.

## The contract is longer than 12 months

There may be instances where the settlement date is after the expiry date on the vendor's clearance certificate. For example, where an off-the-plan apartment is acquired and the contract period is greater than 12 months.


The purchaser may rely on the clearance certificate being valid as long as the date it's made available to the purchaser is within the clearance certificate period stated on the certificate, and some of this period covers the time the transaction is entered is in effect.


## Who can apply

Those who can apply for a clearance certificate include:

- vendors
- legal practitioners
- tax agents
- conveyancers

- real estate agents
- solicitors and registered tax agents representing the vendor on their behalf.

Conveyancers, real estate agents and others charging a fee for services (but who aren't legal practitioners or registered tax agents) should give the vendor a paper application to complete and sign. The representative can use the details on the [paper clearance certificate application form](#)  to complete the online form, ensuring faster processing, as part of the settlement process.

For more information about a representative's role see [Conveyancing and the TASA](#)  on the Tax Practitioners Board website.

## Processing times

Applications must be lodged at least **28 days before** settlement to ensure you have your clearance certificate in time.

Each application is processed separately, so members of a couple or group may receive them at different times.

Processing may take longer if:

- the vendor hasn't lodged income tax returns recently
- there's a change in residency status
- the names on our records don't match the names on the Certificate of Title - see [Name on the clearance certificate](#)
- the property is owned by complex entity structures and determining the residency takes longer.

If you lodge your application close to the settlement date, we **can't guarantee** it will be processed by that date.

## If you don't have a clearance certificate

If an Australian resident vendor doesn't provide a valid clearance certificate at or before settlement, the purchaser **must** withhold a FRCGW amount, even if the Australian resident vendor:

- is entitled to a clearance certificate, but didn't get one
- didn't provide their certificate to the purchaser at or before settlement.

## Name on the clearance certificate

The **first** and **last** names on the clearance certificate **must** match the property's Certificate of Title for it to be accepted by the purchaser.

Middle names don't need to be supplied or matched.

Clearance certificates are issued in the legal name on our system. If the vendor's name has changed, **update** the vendor's name on our system **before** applying. In some circumstances, this may not be required – see [Name mismatch](#).

## Name mismatch

If the vendor's first and last names on the clearance certificate aren't the same as the Certificate of Title, supply the purchaser with both:

- the clearance certificate
- a proof of a name change (for example, a marriage certificate, or a change of name certificate, issued from an Australian state or territory registry).

If the proof of name change is from an overseas source, you must **update your name with us by post**.

We don't reissue certificates for a name mismatch in the above instances.

## Title or honorific mismatch

A title (honorific) match isn't required. For example, Susie Tan, is often known as 'Miss' Tan and 'Ms' Tan. The 'title' she uses on her clearance certificate application doesn't need to match the Certificate of Title for the property.

## Receiving your clearance certificate

Clearance certificates are sent by email (if it's included in the application).

To get their clearance certificate online, individual vendors can:

- log in to **myGov**, go to **ATO online services**
- **My profile** menu, go to **Communication**
- then **History**.

If there's no email address, the clearance certificate is posted to the vendor and their contact using the address in the application.

If you choose to communicate with us via email, be aware the internet isn't a secure environment. We can't guarantee the privacy and security of personal information.

## **Lodging a tax return to claim a credit**

If you don't provide a clearance certificate to the purchaser at, or before settlement and an amount of FRCGW was withheld, you must lodge a tax return to get that amount credited to you – even if your income was below the threshold to lodge.

1. You need a copy of the **FRCGW payment confirmation** from the purchaser as proof of the amount withheld.
2. When completing your tax return
  - declare your assessable income, including any capital gain or loss from the sale or disposal of the property, if applicable
  - claim a **Credit for foreign resident capital gains withholding amounts** taken from the sale proceeds.
3. The FRCGW amount will be refunded in full if
  - there are no tax debts
  - there's no CGT payable on the sale of the property.

A credit for the amount withheld for FRCGW applies to the income year the contract was signed. It may be months later when the vendor can lodge their tax return to declare their capital gain and claim any credit for the amount withheld. This is generally because tax returns can't be lodged before the end of the relevant income year. Any amount due to the vendor will be refunded to them after the tax return is assessed.

If the contract is signed in one income year but the purchaser pays the FRCGW in the next income year, the capital gain and claim for the credit for FRCGW amounts should be included in the income year the sale contract was signed.

## **Invalid or fraudulent clearance certificates**

We can withdraw a clearance certificate at any time if we learn a vendor is a foreign resident (also known as a non-resident).

If a purchaser, in good faith, hasn't withheld FRCGW from the purchase price, they won't be subject to a penalty for failure to withhold.

We will hold the vendor liable for making a false and misleading statement and may prosecute them.

## Clearance certificates in certain circumstances

In certain circumstances, there are different requirements for clearance certificates.


In this section:

- [Relationship breakdown](#)
- [Deceased estates](#)
- [Income tax exempt entities](#)
- [Trusts and super funds](#)
- [Mortgagee sales](#)
- [Consolidated groups and multiple entry groups](#)

### Relationship breakdown

A clearance certificate (or an FRCGW variation) isn't required when a relationship breaks down, as long as:

- the transfer of property happens under the *Family Law Act 1975* or under a relevant state, territory or foreign law
- the transferee has documentation specified in subsection 126-5(1) of the *Income Tax Assessment Act 1997* (ITAA 1997) by the time of the transfer.

For more information, see [PAYG Withholding variation for foreign resident capital gains withholding payments – marriage or relationship breakdowns](#) .

**Example: property transfer and clearance certificates in a divorce settlement**




After 10 years of marriage, Jenny and Mark decide to separate and file for divorce. Jenny is a resident and Mark is a foreign resident.

They own 2 properties:

- a house in Melbourne valued at \$3 million
- an apartment in Sydney valued at \$2 million.

They agree that Jenny will keep the Melbourne house and Mark will take the Sydney apartment and file consent orders for these transfers, which are granted by the court.

Jenny, an Australian resident, needs to apply for a clearance certificate for the transfer of her interest in the Sydney apartment to Mark, to ensure withholding doesn't apply.

As Mark is a foreign resident, he can't get a clearance certificate. However, he qualifies for [CGT roll-over relief](#)  as the transfer is due to their marriage breakdown, which ensures a 0% rate for withholding applies. Mark doesn't need a variation notice.

For more information, see **PAYG Withholding variation for foreign resident capital gains withholding payments – marriage or relationship breakdowns**.


## Mortgagee sales

When you borrow funds (mortgagor) from a mortgagee (a creditor, such as a bank) and aren't able to repay the loan, the mortgagee can force the sale of the property.

There are 3 situations where this commonly applies:

1. The mortgagor keeps the title to the sale while the mortgagee orders the property be sold but hasn't repossessed the title to the property.
  - The mortgagor must get a clearance certificate. Without a clearance certificate, FRCGW would apply to the sale, unless the mortgagee applies and receives a **variation notice**.
2. The mortgagee takes possession of the property and sells it, but there's no transfer of title from mortgagor to mortgagee.

- The mortgagee can apply for a **variation notice** to have the withholding reduced.
3. Foreclosure, when the mortgagee repossesses and takes the title to the property. FRCGW may apply when the transfer of title is made from the mortgagor to the mortgagee (generally, a sale of the property at market value).
- The transfer of title from the mortgagee to the final purchaser.

However, if the mortgagee is an Australian Deposit-taking Institution (such as an Australian bank), in some circumstances, the rate of withholding is varied to 0%. For more detail, see [PAYG Withholding variation for foreign resident capital gains withholding payments – no residue after a mortgagee exercises a power of sale 2020](#) .

## Deceased estates

When the executor or trustee (legal representative) of a deceased estate is selling or disposing of a property, there are some circumstances when a clearance certificate or FRCGW **isn't** required:

- a beneficiary of the will acquires the property (regardless of their residency)
- a surviving joint tenant acquires the property
- the property is transferred to the legal representative.

If the property is sold or transferred to anyone else, the legal representative **must** have a clearance certificate, otherwise whoever acquires the property will be required to withhold to FRCGW on their behalf and remit it to us.

When completing a clearance certificate application, the legal representative must include the deceased vendor's name according to the name on the property title. They don't need to have 'as executor for' on the application.

### Example: deceased vendor passes property in the will

When Judy died, her will provides for her house to be left to her son, John.

Because there is a will in place, the executor for Judy's estate arranges the transfer of her property to John.

There is no need for a clearance certificate and FRCGW doesn't apply.

The executor retains a copy of her will for their records.

### **Example: deceased estate sells property to someone else**


Lei has died and her will states that her house is to be sold and the proceeds of the sale are to go to her favourite charity.

The property title was transferred from Lei to the legal personal representative (LPR). No clearance certificate is required.

The LPR is arranging the sale of the property.

When her LPR applies for a clearance certificate, it's not necessary to include 'as executor for' or 'as legal representative for' on the clearance certificate.

The LPR applies for the clearance certificate in their own capacity as either a company or individual and when the property sells, it is not subject to FRCGW.

For further information, see [PAYG Withholding variation for foreign resident capital gains withholding payments – deceased estates and legal personal representatives](#) .

### **Executor of a will is a foreign resident**

If the executor of the will is a foreign resident, FRCGW is applicable on the sale of the property.

They can apply for a variation of the withholding amount if:


- they're not entitled to a clearance certificate
- the withholding amount is more than the Australian tax liability on the sale of the asset.

See Foreign residents and variations for more information.

## Income tax exempt entities

A clearance certificate isn't required when a vendor provides evidence they're an income tax exempt entity, provided they have:

- a private ruling issued by us confirming its income tax exemption valid for the income year of the transaction
- documents showing it's a registered charity under item 1.1 of section 50-5 of the ITAA 1997.


For more information, see [PAYG Withholding variation for foreign resident capital gains withholding payments – income tax exempt entities](#) .

## Trusts and super funds

The entity that has legal title to the property applies for the clearance certificate. In most cases this is the trustee who applies **in their own capacity as either a company or an individual**.

The name on the Certificate of Title and clearance certificate must match.

The trustee must:

- ensure the [associates' details](#)  in the Australian business register are updated and correct
- apply for the clearance certificate
- use one of either
  - the trustee's tax file number (TFN)
  - their Australian business number as the identifier if applicable.

The clearance certificate is issued in the name that appears on our systems.

## Trustee doesn't have a TFN

If the:

- corporate trustee is a company that doesn't have a TFN, attach the details of the trust and the company's Australian company number (ACN) to the application

- trustee is an individual that doesn't have a TFN, attach the details of the trust's name with the application. For example, a copy of the trust deed.

For example, this may be needed where the trust is registered in ATO systems as 'The trustee for ABC Trust' where the property title contains 'XYZ as the trustee for ABC Trust', or the clearance certificate only lists the trustee's name.

For assistance in completing the clearance certificate application, use the online instructions.

## **Consolidated groups and multiple entry groups**

### **Withholding and intra-group transactions**

A member of a consolidated group or multiple entry groups that purchases from another member of the group an asset to which the withholding applies is still required to comply with the withholding obligation.

### **Entity obtaining the clearance certificate**

We issue a clearance certificate to the head company or provisional head company of the group, which includes the members of the group as an attachment.

We rely on the group membership information as recorded on our systems. If **group membership has changed**, it's up to the head company to notify us of these changes before making a clearance certificate request.

Alternatively, subsidiary entities can, in their own right, apply for a clearance certificate and have one issued in their own name.

QC 103607

## **Foreign residents and variations**

Foreign residents are subject to FRCGW when selling Australian real property.

## On this page

[Foreign residents selling Australian property](#)

[Rate of withholding from a property sale](#)

[When to apply for a variation notice](#)

[Apply for a variation](#)

[Calculate a reduced rate of withholding](#)

[Multiple vendors](#)

[Foreign resident tax returns](#)

## Foreign residents selling Australian property

Foreign residents (also known as non-residents) are subject to the full rate of foreign resident capital gains withholding (FRCGW).

FRCGW is applied to the sale price (or **market value** if non-arm's length) when selling Australian real property (property), unless there is a [variation notice](#) that reduces the rate.

A foreign resident may claim a credit for the withheld FRCGW by declaring the capital gain (or loss) and lodging a tax return at the end of the income year the sale contract was signed. They may receive a refund if the FRCGW amount exceeds the amount of tax payable on their tax assessment.

## Rate of withholding from a property sale

The following FRCGW rates apply to the market value of property contracts signed:

- Up to and including 31 December 2024, a rate of 12.5% applies to property valued at \$750,000 or more.
- On and after 1 January 2025, a rate of 15% applies to the value of all property.

## When to apply for a variation notice

Vendors can apply for a variation to the FRCGW rate when **both** the following apply:

- they're not entitled to a clearance certificate
- the rate of 15% is too high when considering their estimated Australian tax liability on the sale of the asset.

Reasons for a variation include:

- there's no capital gain on the transaction (for example, because of a capital loss or a **CGT roll-over**)
- there is a reduced income tax liability, or tax losses (for example, **capital losses** can be used to reduce any capital gains)
- a creditor of the vendor has a mortgage or other security interest over the property and the proceeds of the sale at settlement won't cover the amount to be withheld and discharge the debt the property secures
- if a creditor acquires legal title to the property (becomes the purchaser) due to foreclosure and its security would be reduced by withholding.

Purchasers must withhold the full rate of **FRCGW** when there's no clearance certificate or variation provided to them at, or before settlement.

## Foreign residents and the main residence exemption

Foreign residents can't claim the CGT main residence exemption, unless the **life events test** applies.

## Apply for a variation

Variations take up to **28 days** to process.

To apply for a variation of the withholding rate, you should:

1. lodge an application as soon as the contract is signed
2. include the sales contract with the application

3. provide the variation notice to the purchaser at, or **before** settlement to ensure the reduced withholding rate applies.

When multiple vendors own a property, each vendor needs to apply for their own variation.

[Apply for a variation](#)

For help, see [instructions to complete an application for a variation](#).

A paper application and instructions are also available. See [Foreign resident capital gains withholding rate variation paper application](#).

## Receiving your notice of variation

Variation notices are sent to the email address provided in the application or, if there's no email address, mailed to the vendor and the applicant's addresses provided.

If you choose to communicate with us via email, be aware the internet isn't a secure environment. We can't guarantee the privacy and security of personal information.

## Calculate a reduced rate of withholding

The varied withholding rate we approve depends on the information provided in the application.

Vendors can calculate the reduced rate of withholding that should apply to them based on their information.

It's the vendor's responsibility to give the purchaser a valid variation notice by the settlement date.

Refer to [cost base of assets](#) to help work out any capital gains or losses.

## Multiple vendors

If there are multiple vendors selling or disposing of a property, each vendor has a responsibility to provide their own clearance certificate or variation depending on their **tax residency**.



See [multiple vendor examples](#) to determine how much withholding would apply in different circumstances.

## Foreign resident tax returns

Foreign residents may need to apply for a **tax file number** (TFN) before lodging an income tax return with us.

To claim a credit for the FRCGW amount, the vendor must have a copy of the Payment Confirmation from the purchaser.

When completing a tax return:

- declare assessable income, including any capital gain or loss from the disposal of the asset
- claim a **Credit for foreign resident capital gains withholding amounts** taken from the sale proceeds.

The FRCGW amount will be refunded in full if:

- there are no tax debts
- there's no CGT payable on the sale of the property
- there's no tax payable on any other Australian sourced income.

The income year of the tax return is the year the sale contract was signed (not the date of settlement).

A credit for the amount withheld for FRCGW applies to the income year the contract was signed. It may take time before the foreign resident can lodge their tax return to declare the capital gain and claim any credit for the amount withheld. This is generally because tax returns can't be lodged before the end of the relevant income year. Any amount due will be refunded after the tax return is assessed.

If the contract is signed in one income year but the purchaser pays the FRCGW in the next income year, the capital gain and claim for the credit for FRCGW amounts should be included in the income year the sale contract was signed.

In certain circumstances, an early tax return may be lodged with us. If a foreign resident vendor isn't eligible to lodge an early tax return, they must wait until the end of the income year.

# Vendor declarations

Find out when providing a vendor declaration results in a purchase not being subject to FRCGW.

**Published** 20 December 2024

## On this page

[About vendor declarations](#)

[Indirect Australian real property \(IARP\) Interests](#)

[Vendors](#)

[Vendor residency declaration](#)

[Non-IARP interest declaration](#)

[When to provide a declaration](#)

[Valid declarations](#)

[How to make a declaration](#)

[Multiple vendors](#)

## About vendor declarations

When selling assets other than taxable Australian real property, the vendor may provide the purchaser with a vendor declaration to specify foreign resident capital gains withholding (FRCGW) isn't required.

Where the asset is taxable Australian real property, Australian residents for tax purposes will need to get a **clearance certificate** from the ATO to avoid FRCGW from applying.

There are 2 types of vendor declarations:

- [residency declaration](#)

- [not an indirect Australian real property \(IARP\) interest](#) declaration.

**Australian resident vendors** can avoid the requirement of the purchaser to withhold 15% for assets other than taxable Australian real property by providing the purchaser with a vendor declaration to specify withholding isn't required on the acquisition of the asset.

**Foreign resident vendors** may provide a declaration that a membership interest is not an IARP interest and therefore not subject to withholding.

## Indirect Australian real property (IARP) Interests

A membership interest is shares and units in a company or trust, including options or rights to acquire the shares or units.

The membership interest is an IARP interest if it satisfies 2 tests:

- non-portfolio interest test
- principal asset test.

## Vendors

The vendor is the entity that is the legal owner of the asset, even where the asset is held on behalf of another entity. For example, the trustee or custodian who holds the legal title on behalf of beneficiaries.

## Vendor residency declaration

Where the asset is not taxable Australian real property, and the purchaser believes the vendor may be a foreign resident, they can request the vendor provide a declaration confirming their Australian tax residency.

They may also request the vendor to provide a declaration if the knowledge condition is met.

When a vendor provides a declaration stating they are an Australian tax resident, the purchaser won't treat them as a foreign resident.

The vendor may voluntarily provide a declaration to the purchaser without being asked.

## **Purchaser can rely on the declaration**

The purchaser can rely on a residency declaration supplied by the vendor when acquiring assets that aren't Australian real property.

When a purchaser receives a vendor declaration, they won't withhold any amounts unless they know the declaration is false.

## **Knowledge condition**

The knowledge condition is relevant to purchases of:

- IARP interests (other than company title interests)
- options and rights to acquire indirect Australian real property interests.

The knowledge condition is satisfied when the purchaser either:

- knows or has reasonable grounds to believe the vendor is a foreign resident
- doesn't reasonably believe the vendor is an Australian resident and either
  - has a record about the acquisition indicating the vendor has an address outside Australia
  - is authorised to provide a financial benefit (for example, make a payment) to a place outside Australia (whether to the vendor or to anybody else).

## **Evidence for the knowledge condition**

When applying the knowledge condition, a purchaser must rely on information they're aware of, or have access to, when making the decision – for example, a share registry of the entity.

The purchaser can rely on the share registry no earlier than the date of the offer acceptance.

Purchasers who aren't comfortable determining whether the knowledge condition is satisfied may seek a vendor declaration to confirm the vendor isn't a foreign resident.

If a vendor fails to provide the declaration, the purchaser may take this as confirmation that the vendor is a foreign resident.

## **Non-IARP interest declaration**

A vendor may provide the purchaser with a declaration confirming either:

- the membership interests they are disposing of are not IARP interests
- the option to purchase membership interests they are disposing of are not IARP interests.

## **Purchaser can rely on the declaration**

Where a valid non-IARP interest declaration is provided, there won't be an obligation for the purchaser to withhold. A declaration may be relied on unless the purchaser knows the declaration is false.

## **When to provide a declaration**

The vendor must provide the declaration to the purchaser before the settlement date. If the vendor does not provide the purchaser the declaration in time the purchaser will need to withhold 15% from the purchase price.

## **Valid declarations**

A vendor's declaration is only valid:

- for 6 months from the date it's signed by the vendor
- for the listed vendor and specified period on the declaration
- if the name of the vendor on the declaration matches the name of the owner of the asset (unless proof of name change is provided)
- where the settlement date falls within the specified period the declaration covers.


If the declaration doesn't meet the above conditions, the declaration is not valid and the purchaser is required to withhold 15% of the purchase price.

The specified period may start retrospectively but can't exceed 6 months from the date the declaration is signed by the vendor.

It's the vendor's responsibility to provide the purchaser with a declaration and ensure the settlement date is within the 6-month validity period of the declaration.

## How to make a declaration

The declaration must be made in writing.

There is no approved form that can be completed by the vendor for a declaration. However, you may use download the [Foreign resident capital gains withholding – vendor declaration \(PDF, 222KB\)](#)  template.

## False vendor declarations

A purchaser can rely on the declaration unless they know it to be false when they are given the declaration.

Purchasers are treated as knowing a vendor declaration is false where they have specific knowledge of this fact. A purchaser will have this knowledge when they are a party to the fraud committed by the vendor, or when they have other information that indicates the declaration is false.

The fact the purchaser may have reasonable grounds to doubt the accuracy of the declaration doesn't, of itself, and without further information, mean the purchaser knows the declaration is false.

## Penalties

A vendor that makes a false or misleading declaration may be subject to paying a penalty. The **amount of the penalty** varies depending on the severity of the offence.

The penalty is:

- 120 penalty units where the vendor has knowingly made a false or misleading declaration
- 80 penalty units where the vendor has recklessly made a false or misleading declaration

- 40 penalty units where the declaration is false or misleading as a result of the vendor failing to take reasonable care.

## Multiple vendors

A declaration is only valid for the vendor listed on the declaration.

If an asset is acquired from multiple vendors, each vendor needs to provide the purchaser with their own declaration, to avoid the withholding obligation.

Where some of the vendors have not provided a declaration (or clearance certificate), withholding will apply to those vendors at the proportion of their ownership in the asset.

QC 103609

## Paying the foreign resident capital gains withholding

Find out how to pay the withholding amount when foreign resident capital gains withholding (FRCGW) applies.

**Last updated** 1 April 2025

### On this page

[Purchasing real property in Australia](#)

[Rate of withholding from a property sale](#)

[Purchasers can rely on a clearance certificate or variation notice](#)

[When purchasers must withhold and pay](#)

[Paying FRCGW](#)

[How to pay](#)

[Multiple purchasers](#)

[Multiple vendors](#)

[Mortgagee sales](#)

[Compulsory acquisitions by government authorities](#)

[Cancelling a payment](#)

[General interest charge](#)

[Penalty for failing to withhold](#)

## Purchasing real property in Australia

Foreign resident capital gains withholding (FRCGW) is a tax and applies to vendors selling or disposing of certain taxable property.

If you are purchasing **real property** (property) in Australia, you may have to withhold an amount from the sale price (or its **market value**, if not at arm's length) and pay it to us, instead of paying the whole amount to the vendor at settlement.

If the vendor:

- **Provides a clearance certificate** – this means you **don't** need to withhold for FRCGW. The sale price is paid to the vendor.
- **Provides a variation notice** from us – this means you must withhold an amount from the sale price at the rate specified by us. The variation notice advises you of the rate, for example 0% to 14.99%. The remainder of the sale price is paid to the vendor.
- **Doesn't provide a clearance certificate or a variation** – this means you **must** withhold the FRCGW at the full rate and pay it to us.

For more information see:

- Australian residents and clearance certificates
- Foreign residents and variations.



## Rate of withholding from a property sale

The following FRCGW rates apply to the market value of property contracts signed:

- up to and including 31 December 2024, a rate of 12.5% applies to property valued at \$750,000 or more
- on and after 1 January 2025, a rate of 15% applies to the value of all property.

## Purchasers can rely on a clearance certificate or variation notice

When you receive a clearance certificate from a vendor, you don't need to withhold.

When you receive a variation notice, you need to withhold at the rate specified.

For a clearance certificate or variation notice to be valid, check all of the following that apply are satisfied.

- The first and last names on the clearance certificate **must** match the property's Certificate of Title, or other asset ownership documentation (proof of name change should have been provided to us at the time of applying) – see Name mismatch
  - middle names don't need to be supplied or match
  - a title (honorific) match isn't required, for example 'Miss', 'Ms'.
- The settlement date must be on or before the expiry date of the clearance certificate or variation notice.
- For a variation notice
  - the asset is the one specified in the sale contract
  - the sale price of the asset (or its market value, if not at arm's length) must not exceed the maximum sale price specified in that variation. For example, if the variation states \$1 million and the final sale price is \$1.1 million, then the variation doesn't apply and withholding must be applied at the full rate.

## If you think a clearance certificate isn't valid

If the clearance certificate or the vendor variation notice **isn't** valid (for example names don't match), the purchaser must withhold an amount of FRCGW at the applicable rate from the sale price.

If a purchaser needs to check if a clearance certificate or variation is valid, phone us on **13 28 66** (Fast Key Code **4 2**).

For a:

- clearance certificate, provide the following
  - the number from the 'Our reference field' at the top of the certificate
  - the vendor's name, as it appears on the clearance certificate
- variation notice, have the following information ready
  - BET number from the 'Our reference' field at the top of the notice
  - vendor's name, varied rate and applicable asset details as they appear on the notice.

## When purchasers must withhold and pay

If you purchase Australian real property and the vendor doesn't provide a valid clearance certificate or variation notice, you must withhold an amount from the sale price (or market value) and pay it to us at settlement.

The withholding amount is calculated on the sale price (or **market value**) before any adjustments for disbursements (for example, council rates, water and sewer charges and strata levies).

There are [penalties](#) and interest that apply if the purchaser either doesn't withhold when they are required to do so at settlement, or if they fail to pay this amount to us on the day of settlement.

If there's more than one vendor, see [Multiple vendors](#).

## Paying FRCGW

Follow these steps to pay FRCGW.

1. Complete an online Foreign resident capital gains withholding Purchaser Payment Notification form as early as possible. You will be issued with a **payment reference number** (PRN). You need this

to pay the withheld amount at settlement. If there are multiple purchasers, lodge **either**

- one form if there are 10 or less purchasers
- additional forms if there are more than 10 purchasers.

2. Once processed, you will get

- a payment reference number (**PRN**) – only **one** PRN is issued, ensure you **keep this safe**
- a link to a PDF downloadable **payment slip** and **barcode** to use at Australia Post, print the downloadable barcode to avoid keying errors.

3. **Before** settlement, check the *Purchaser payment notification form* and **contact us** if there are changes to the settlement date on the form.

4. Use the PRN, payment slip and barcode to pay the withholding at settlement. See [How to pay](#).

For more information, see **Foreign resident capital gains withholding purchaser payment notification online form and instructions**.

Instructions for the Foreign resident capital gains withholding purchaser payment notification paper form are also available.

## How to pay

Use the **PRN, payment slip and barcode** to pay the withholding on, or before, becoming the owner of the property.

If there are 2 or more purchasers, use **the same** PRN or payment slip, even if paying at different times.

All payments must be made in Australian dollars.

The safest and easiest payment methods are:

- BPAY®
- electronic funds transfer.

Payment can also be made in person at **Australia Post** using a cheque (**note:** large withholders must pay the subdivision 14-D withholding amount by non-electronic means).

A full list of payment options is available at [Paying the ATO](#).

## **Proof of payment**

A receipt from either Australia Post or us is proof of payment and provides confirmation that the purchaser has fulfilled their FRCGW obligations.

A payment confirmation email or letter will be sent to the nominated contact on the purchaser payment notification form.

## **Confirmation for vendor**

At settlement, give a copy of the payment confirmation to the vendor, so they have the information they need to complete their tax return.

## **Multiple purchasers**

When there's more than one purchaser, they must withhold an amount according to their percentage of ownership.

Only one PRN is issued per Purchaser payment notification (PPN) form, even if multiple purchasers are entered on the form.

Where there are multiple purchasers, you can use the PRN or payment slip to make one payment of the total amount owing or a separate payment for each purchaser.

You may provide one payment together with the details on how to apportion this amount.

### **Example: multiple purchasers**

Sal is purchasing a commercial property jointly with another entity for a total property sale price of \$1 million.

Sal's share of the acquisition is 40% (\$400,000).

Sal and each other purchaser receives a different payment reference number (unless all purchasers have lodged one form), and a specified amount or rate to be paid using the online form.

Sal and the other entity can provide one payment together with the details on how to apportion this amount.

## Multiple vendors

If there are multiple vendors selling or disposing of a property, each vendor must provide their own clearance certificate or variation notice.

The following examples will help you work out the rate of withholding from a property sale when there is more than one vendor.

### Example: joint owners, but only one vendor is an Australian resident

Zac and Jen are selling a jointly owned property and sign a contract on 1 February 2025. For tax purposes, Zac is a foreign resident and Jen is an Australian resident.

The purchaser:

- has to withhold 15% of the full sale price for Zac's portion
- needs to see Jen's clearance certificate.

The property has a market value of \$1 million and Zac's share is \$500,000.

The purchaser must withhold 15% of \$500,000, (\$75,000) and pay it to us at settlement.

### Example: foreign resident vendor provides a variation

Continuing the above example, Zac calculates the tax on his capital gain from the sale of the property is \$25,000. He is eligible to apply for a variation to reduce the withholding rate down to 5%.

Zac lodges the variation with us and includes the sales contract with his application. Zac receives a variation notice confirming his withholding rate is 5%.

Zac provides his variation notice to the purchaser, who can rely on it and withhold 5% of \$500,000, (\$25,000) and pay it to us at settlement. The purchaser gives Zac a copy of the payment receipt.

### **Example: multiple foreign resident vendors**

Kim is purchasing a property on 11 January 2025 for \$1.3 million but hasn't received any clearance certificates from the 3 vendors.

On the settlement day, Kim doesn't have clearance certificates for any of the 3 vendors, so she must withhold 15% of the sale price (\$195,000).


The withholding amount is based on each vendor's share of the purchase price. For example, if there are 3 vendors who own an equal share of the property, Kim must withhold \$65,000 for each vendor.

## **Mortgagee sales**

When a creditor (such as a bank) requires a mortgagor to sell the property, there are 3 common situations.

1. The mortgagor keeps the title to the sale while the mortgagee orders the property be sold but hasn't repossessed the title to the property.
  - If there's no clearance certificate, you must withhold an amount from the sale.
  - If there's a variation notice, withhold the rate specified in the notice.

2. The mortgagee takes possession of the property and sells it, but there's no transfer of title from mortgagor to mortgagee.
  - The mortgagee can apply for a **variation notice** to have the withholding reduced. You must withhold the rate on the variation notice from the sale price.
3. Foreclosure, when the mortgagee repossesses and takes the title to the property. FRCGW may apply when
  - the transfer of title from the mortgagor to the mortgagee (generally, a sale of the property at market value)
  - the transfer of title from the mortgagee to the final purchaser.

However, if the mortgagee is an Australian Deposit-taking Institution (such as an Australian bank), in some circumstances, the rate of withholding is varied to 0%. For more detail, see [PAYG Withholding variation for foreign resident capital gains withholding payments – no residue after a mortgagee exercises a power of sale 2020](#) .

## **Compulsory acquisitions by government authorities**

Certain Australian Government authorities can exercise powers under state and territory legislation for the compulsory acquisition of property. Generally, a property is acquired, and ownership of the property passes, on the date that the acquisition is published in the relevant government gazette.

To find out more, refer to [Compulsory acquisition of property by government authorities](#).

## **Cancelling a payment**

If you have lodged a PPN in error or received a valid clearance certificate or variation notice by the settlement date, you can cancel your lodged PPN by contacting us on **13 28 66** (Fast Key Code **4 2**).

## **General interest charge**

If the purchaser withholds but fails to pay FRCGW when they become the owner of the asset, **general interest charge (GIC)** is imposed.

GIC accrues from the date of settlement.

## Penalty for failing to withhold

Purchasers failing to withhold and pay FRCGW at, or before the settlement date may be subject to a penalty equal to 10 penalty units or the FRCGW amount they failed to withhold.

They will receive written notice about their liability to pay the penalty and the reasons for the imposition of the penalty.

A purchaser may also be subject to the **general interest charge** on any penalty amounts not paid by the due date.

QC 103610

## Compulsory acquisition of property by government authorities

Certain Australian Government authorities can use legislation for the compulsory acquisition of property.

**Published** 1 April 2025

### On this page

[Payment of withholding tax](#)

[Deferral of payment](#)

[Notice](#)

Certain Australian Government authorities can exercise powers under state and territory legislation for the compulsory acquisition of property. Generally, a property is acquired and ownership of the



property passes, on the date that the acquisition is published in the relevant government gazette.

For a compulsory acquisition, issues arise around:

- determining whether there's an obligation to withhold
- working out the withholding amount to be paid on or before the day the acquisition is published in the gazette.

For example, the market value of the property being acquired may be the subject of a dispute at the time the acquisition is published.

## Payment of withholding tax

Under section 14-200 of Schedule 1 to the *Tax Administration Act 1953*, the Australian Government authority must pay the foreign resident capital gains withholding tax on or before the date that the authority became the property's owner.

## Deferral of payment

Subsection 255-10(2A) of Schedule 1 of the *Taxation Administration Act 1953* allows the Commissioner to defer the time for payment of tax-related liabilities due (including withholding tax) and payable by a class of taxpayers.

The Commissioner:

- defers the payment by publishing a notice on our website
- can defer the time for payment whether or not the liability has already arisen.

## Notice

Until further notice, the Commissioner of Taxation has deferred the time the foreign resident capital gains withholding tax liabilities of an Australian Government authority are due and payable.

The exercise of the compulsory acquisition power is authorised under one or more of the following Acts:

- *Acquisition of Land Act 1967* (Queensland)

- *Land Acquisition (Just Terms Compensation) Act 1991* (New South Wales)
- *Land Acquisition Act 1969* (South Australia)
- *The Land Acquisition and Compensation Act 1986* (Victoria)
- *Land Acquisition Act 1993* (Tasmania)
- *Land Administration Act 1997* (Western Australia)
- *Land Acquisition Act 1994* (Australian Capital Territory)
- *Land Acquisition Act 1978* (Northern Territory)
- *Land Acquisition Act 1989* (Commonwealth of Australia).

For an Australian Government authority that is exercising its compulsory acquisition powers under one or more of the above Acts in relation to a compulsory acquisition, the due date for payment of the foreign resident capital gains withholding tax is deferred to the earlier of:

- 14 days after agreement or final determination of the compensation payable
- 14 days after agreement to pay an advance amount of compensation.

We'll accept the government authority as meeting its obligation for the purposes of the withholding if it receives a valid clearance certificate from the vendor by the earlier of:

- 14 days after agreement or final determination of the compensation payable
- 14 days after agreement to pay an advance amount of compensation.

In terms of the amount of withholding, it will be based on the compensation amount paid that is equivalent to the first element of the CGT asset cost base (the taxable Australian real property subject to the gazettal).

The government authority will establish a market value break-up of the payment related to the property, and only withholding on that amount. This is because a compensation amount could include a value for

disturbance and professional expenses or other assets other than the property.

QC 104038

## **Our commitment to you**

We are committed to providing you with accurate, consistent and clear information to help you understand your rights and entitlements and meet your obligations.

If you follow our information and it turns out to be incorrect, or it is misleading and you make a mistake as a result, we will take that into account when determining what action, if any, we should take.

Some of the information on this website applies to a specific financial year. This is clearly marked. Make sure you have the information for the right year before making decisions based on that information.

If you feel that our information does not fully cover your circumstances, or you are unsure how it applies to you, contact us or seek professional advice.

## **Copyright notice**

© Australian Taxation Office for the Commonwealth of Australia

You are free to copy, adapt, modify, transmit and distribute this material as you wish (but not in any way that suggests the ATO or the Commonwealth endorses you or any of your services or products).