



Capital gains withholding clearance certificate application paper form instructions – for Australian residents

How to complete the Foreign resident capital gains withholding clearance certificate application, paper form.

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When to use the form

Foreign resident capital gains withholding (FRCGW) applies to vendors disposing of certain taxable property under contracts entered into from 1 July 2016.

Australian resident vendors should use the *Foreign resident capital gains withholding clearance certificate application* form to notify us that FRCGW doesn't need to be withheld from the sale of taxable Australian real property assets.

It provides the details of vendors so we can establish their tax residency status.

If you are a foreign resident, do not lodge an application – if you are entitled to a **variation** to your CGT liability, lodge a variation request.

Lodging online is the preferred method and will get your certificate issued faster. You can complete the **Clearance certificate application for Australian residents** online.

Alternatively, if you can't lodge online use these instructions to lodge a **paper form (PDF, 290KB)**.

The application needs to be completed and lodged with us as early as practical to minimise the need to extend settlement dates. **It can take up to 28 days to process.** You can lodge your application any time, including prior to when a contract of sale is entered into as the certificate is valid for 12 months from the date issued.

The vendor will need to provide the purchaser with the ATO issued clearance certificate on or before the day of settlement of the sale of the asset to ensure no withholding occurs.

Each vendor must lodge their own application. Vendors who are parties to the same property transaction are not able to lodge joint applications.

Who can complete and lodge

A clearance certificate application form should be completed and lodged by Australian resident vendors who don't wish to have an amount withheld by purchasers.

The entity that has legal title to the asset, is the entity required to obtain a clearance certificate for foreign resident capital gains withholding purposes.

Where a purchaser acquires an asset through a sale or transfer, the vendors are the individuals or companies that have legal title to the asset prior to the sale or transfer.

Where the vendor of the asset is the trustee of a trust (for example, an executor of a deceased estate or a trustee of a superannuation fund) it is the trustee that applies for the clearance certificate. The trustee should apply for the clearance certificate using (as the identifier) their:

- own tax file number (TFN)
- Australian business number (ABN).

To avoid possible delays in issuing a clearance certificate, ensure:

- the [associates' details](#)  in the [Australian business register](#)  are updated with the current corporate trustee details
- where a corporate trustee does not have a TFN, attach the details of the relevant trust and the company's Australian company number (ACN) to the application.

Where a purchaser acquires an asset that has been granted (such as a lease), the vendors are the grantors of the asset.

Vendors may complete and lodge the form themselves, or have it completed and lodged on their behalf by a third party (for example, a solicitor, an accountant, or tax agent).

Conveyancers, real estate agents and others charging a fee for services can't complete the form on behalf of the vendor unless they are a legal practitioner or registered tax agent.

However, a vendor may provide a completed paper PDF version of the form to a conveyancer, real estate agent or other person charging a fee for service, who should enter the details in the online form (providing faster processing) as part of the settlement process they provide for the vendor.

How to complete the paper form

These instructions explain how to complete each section of the form, lodging your application and what happens next.

If you are unsure of how to complete the form after reading these instructions, you can phone us on **13 28 66** (Fast Key Code **4, 2**).

Form sections:

- [Section A: Vendor details](#)
- [Section B: Transaction dates](#)
- [Section C: Contact person](#)
- [Section D: Clearance certificate application questions](#)

- [Section E: Entity – Individual](#)
- [Section F: Entity – Company](#)
- [Section G: Entity – Trust](#)
- [Section H: Entity – Superannuation fund](#)
- [Section I: Declaration](#)

Section A: Vendor details

The vendor should be the entity that has legal title to the asset. If there are multiple vendors on the title, each vendor will need to apply for a separate certificate in their name.

Note:

- For trusts and superannuation funds, if the entity that has legal title to the asset is the trustee, then the trustee – in its capacity as either a company or an individual – should apply for the clearance certificate using (as the identifier)
 - their own tax file number (TFN)
 - Australian business number (ABN).
- We recommend including the Australian company number (ACN) as an attachment (if they have one).

Provide as much detail as possible. This will reduce us having to contact the nominated contact person in section **C** (if completed).

Each vendor must complete a separate application form.

Note: Mandatory fields are marked with an asterisk (*).

The vendor detail fields are:

- Tax file number (TFN) – enter the vendor's TFN. While you're not required to provide the vendor's TFN, providing your TFN assists us in identifying the vendor in our records which means that we can process the application faster.
- Australian business number (ABN) – enter the vendor's ABN. While you're not required to provide the vendor's ABN, providing your ABN assists us in identifying the vendor in our records which means that we can process the application faster.

- *Vendor's name as it appears on the title of the property
 - If an individual, include your first, other given and last name. Including the initial of your other given name is acceptable.
 - If the vendor's name has changed, you need to **update your name** on our systems before you apply for a clearance certificate. The clearance certificate issues in the legal name that we have on our systems.
- *Entity type – place an **X** in the box that represents your entity type.

When there is a trust or superannuation fund involved, select 'trustee' as the entity type where the trustee has legal title to the asset.

- The entity that has legal title to the asset is the entity required to obtain a clearance certificate.
- If the entity type of the vendor is an individual, then provide the individual's *date of birth.
- If the entity type of the vendor is a trust, then provide the name of your trustee.
- If the entity type is 'other', then provide a description of the type of entity you are.
- Email address of the vendor – the vendor's email address. By providing an email address you are authorising us to respond to you by email. If you don't provide an email address, it may take longer to receive the clearance certificate as we will mail it to you.
- Phone number of the vendor – enter the vendor's phone number with area code and country code (if the country is not Australia). Don't include brackets () or spaces in your entry. Providing a phone number will ensure we can easily contact you if we require additional information to process your clearance certificate.
- *Address of vendor – enter the vendor's address, including the suburb/town/locality, State/territory, postcode and the country.

Note: Providing a contact email address and phone number will help to avoid unnecessary delays. We will contact you if we need to clarify any details during the application process.

If you choose to communicate with us via email, be aware that the internet is not a secure environment and we cannot guarantee the privacy and security of personal information.

Section B: Transaction dates

- Contract date or possible contract date – this is the date as shown on the contract of sale. If no contract is yet signed, you can enter an anticipated date.
- Expected settlement date of the asset – enter the expected date of settlement for the sale, or when you expect it to settle.

Section C: Contact person

If you're submitting the application as the vendor's representative, you must provide your contact details. This allows us to contact you to resolve any issues and process the form faster.

We will provide the contact person with a copy of the clearance certificate application decision at the same time we provide it to the vendor.

If you're a conveyancer who is not a legal practitioner or tax agent, you can be the contact for the purposes of the form. We would expect you to relay our questions to the vendor.

The vendor can provide you with answers which you can communicate to us. Alternatively, you may ask us to contact the vendor directly for further questions.

The contact detail fields are:

- Title – select the title of the contact person from the list provided.
- First name – the first name of the contact person.
- Other given names – other given names of the contact person.
- *Last name – the last name of the contact person.
- Email address – the email address for the contact person. By providing an email address, you are authorising us to respond to you by email. If you don't provide an email address, it may take longer to receive the clearance certificate as we will mail it to you.
- Phone number – the contact person's phone number with area code and country code (if the country is not Australia). Don't include

brackets () or spaces in your entry. Providing a phone number will ensure we can easily contact you if we require additional information to process the clearance certificate.

- Address – enter the contact's address, including the suburb/town/locality, State/territory, postcode and the country.

Note: You must provide either a contact phone number or email address. Providing both will help to avoid unnecessary delays. We will contact you if we need to clarify any details during the application process.

If you choose to communicate with us via email, be aware that the internet is not a secure environment and we cannot guarantee the privacy and security of personal information.

Section D: Clearance certificate application questions

All 3 questions in this section must be completed by the vendor. Your answers will determine what other sections you need to answer.

Answer these 3 questions:

1. *Has your residency status changed since your last tax return or will it change before you sell the asset? – Select one of the following
 - 'Yes' if the vendor's residency status has changed since lodging their last tax return or will change before the property is sold
 - 'No' if the vendor's residency status hasn't changed since lodging their last tax return or won't change before the property is sold
 - If you answer 'Yes' to this question then you will need to complete either Section **E**, **F**, **G** or **H** depending upon your entity status.
2. *Have you lodged an Australian tax return for the last 2 years? – Select one of the following
 - 'Yes' if the vendor has lodged both tax returns for the last 2 years for which the due date has passed
 - 'No' if the vendor has not lodged both their Australian tax returns for the last 2 years, and the due date for lodging returns for those years of income has passed

- If you answer 'No' to this question then you will need to complete either Section **E**, **F**, **G** or **H**, depending upon your entity status.

3. *Are you holding the property on behalf of a foreign resident or on behalf of other entities that include a foreign resident? – Select one of the following

- 'Yes' if the vendor holds the property on behalf of a foreign resident, or on behalf of other entities that include a foreign resident
- 'No' if the vendor doesn't hold the property on behalf of a foreign resident, or on behalf of other entities that include a foreign resident.

Note: You must answer 'Yes' to this question if you intend to use the same clearance certificate for multiple properties, any of which you hold on behalf of a foreign resident or on behalf of other entities that include a foreign resident.

If you answered 'No' to question 1 or 'Yes' to question 2 then proceed to Section I: Declaration. You do not need to complete any of sections **E**, **F**, **G** or **H**.

Section E: Entity – Individual

This section must be completed if the vendor is an individual and has answered **either**:

- 'Yes' to 'Has your residency status changed since your last tax return or will it change before you sell the asset?'
- 'No' to 'Have you lodged an Australian tax return for the last 2 years?'

If the entity type of the vendor is an individual then the following information must be provided:

- *Are you migrating and settling in Australia or have been settled in Australia? Select 'Yes' or 'No'.

Note: Answer 'Yes' if you have lived in Australia for the past 3 years, and you have not lodged or have not been required to lodge an income tax return in the last 2 years, for example, an aged pensioner.

Immigrants must hold a current permanent residence visa, issued by the Department of Home Affairs, and intend to reside permanently in Australia. New Zealanders do not need a permanent residency visa, however they must intend to reside permanently in Australia.

- If you answer 'Yes' to this question, then go straight to Question 3. Otherwise continue to Question 2.
- *Are you an Australian returning to live in Australia?
 - *If you answered 'Yes' to Question 2, answer the following questions
 - *What is your main purpose for being in Australia? – select your main reasons for being in Australia
 - *Have you stayed or intend to stay in a particular place continuously for 6 months or more?
 - *Where do you live in Australia? – select where you live in Australia
 - *Do you have a spouse and/or dependent children?
 - *Where are your spouse and/or dependent children? – select where your spouse/dependent is living
 - *Where do you hold the majority of your assets? – select Australia or overseas
 - *Are you a member of any clubs, churches, community groups or organisations in Australia?
 - *If you answered 'No' to Question 2, answer the following questions
 - *Have you stayed or do you intend to stay in Australia for 6 months or more?
 - *Do you have social or economic ties to a country other than Australia?
- *Have you been in Australia, either continuously or intermittently, for 183 days or more in the current income year?
 - If you answered 'Yes' at Question 3, answer the following question.

- *Is your usual place of abode outside of Australia? If you answer 'Yes' to this question then you may answer the following question
- Do you intend to take up residence in Australia?

Section F: Entity – Company

This section must be completed if the vendor is a company and has answered either:

- 'Yes' to 'Has your residency status changed since your last tax return or will it change before you sell the asset?'
- 'No' to 'Have you lodged an Australian tax return for the last 2 years?'
- *Is the company incorporated in Australia? If you answer 'Yes', then proceed to Section I. If you answer 'No', then complete the following questions
 - *Is any of the property of the company situated in Australia?
 - *Does the company carry on business in Australia?
 - *Is the company's central management and control in Australia?
 - *Is the company's voting power controlled by shareholders who are resident in Australia?

Section G: Entity – Trust

This section must be completed if the property title shows the trust fund name without any reference to a trustee and the vendor has answered either:

- 'Yes' to 'Has your residency status changed since your last tax return or will it change before you sell the asset?'
- 'No' to 'Have you lodged a tax return in the last 2 years?'

This section requires a 'Yes' or 'No' answer to establish residency status of the trust

- *Is this a unit trust? If you answer 'Yes' complete all of the following questions
 - *Is any of the property of the trust situated in Australia?
 - *Does the trust carry on a business in Australia?

- *Is the trust's central management and control in Australia?
- *Do Australian residents hold more than 50% of the beneficial interests in the income or property of the trust?
- *Is this a unit trust? If you answer 'No' complete all of the following questions
 - *Is the trustee of the trust an Australian resident?
 - *Is the trust's central management and control in Australia?

Section H: Entity – Superannuation fund

This section must be completed if the property title shows the superannuation fund name without any reference to a trustee and the vendor has answered either:

- 'Yes' to 'Has your residency status changed since your last tax return or will it change before you sell the asset?'
- 'No' to 'Have you lodged a tax return in the last 2 years?'

This section requires a 'Yes' or 'No' answer to the following questions to establish residency status of the super fund:

- *Is the entity an Australian superannuation fund?
- *Was the fund established in Australia or is any asset of the fund situated in Australia?
- *Is the funds central management and control in Australia?
- *Does the fund have any members who were either
 - a contributor of the fund at that time
 - an individual on whose behalf contributions have been made? (This is unless the individual is a foreign resident who is not a contributor at the time, and the contributions are for payments when they were an Australian resident.)
- *Do either of the following apply
 - At least 50% of the total market value of the fund's assets attributable to superannuation interests held by active members is attributable to Australian residents?

- At least 50% of the sum of the amounts that would be payable to or in respect of active members if they voluntarily ceased to be members is attributable to Australian residents?

Section I: Declaration

*Complete the declaration section of the form.

Lodging your application

Lodge your application with us by faxing it or mailing as outlined on the form.

You should keep a copy of the form.

What happens next

We will process your application and notify you of the outcome. If you don't provide an email address, we will mail the clearance certificate to your contact postal address. If required, we will contact you to resolve or clarify any information.

Individual vendors can obtain a copy of their clearance certificate outcome online. Visit myGov and go to ATO online services. Then, under the **My profile** menu, go to **Communication** and then **History**.

If we approve a clearance certificate, you will need to provide a copy to the purchaser on or before settlement.

QC 48979

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