



THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref: PLC:BMgl060824

6 August 2024

International Tax Unit
Corporate and International Tax Division
Treasury
Langton Cres
Parkes ACT 2600

By email: MNETaxIntegrity@treasury.gov.au

Dear Sir/Madam,

Improving the foreign resident capital gains withholding tax regime

Thank you for the opportunity to provide feedback on the *Improving the foreign resident capital gains withholding tax regime* consultation. The Law Society's Property Law Committee contributed to this submission.

We note the Government announced the following two changes to the foreign resident capital gains withholding tax (FRCGWT) regime as part of the 2023–24 Mid-Year Economic and Fiscal Outlook:

- increasing the FRCGW rate from 12.5 per cent to 15 per cent for relevant assets; and
- removing the current \$750,000 threshold below which the withholding does not apply, for transactions involving taxable real property (or an indirect real property interest, through company title).

While we appreciate the rationale for these changes is improving the tax integrity of the FRCGWT regime, we are concerned about the practical impacts of removing the current \$750,000 threshold on the conveyancing process for property sales at the lower end of the market. Removing the current threshold will bring small conveyances of properties in the regions, especially in remote rural communities, into the FRCGWT regime, which may not be efficient from a revenue generation perspective, given the additional administrative impost. We also query the extent of foreign ownership at the lower end of the property market.

In practical terms, the proposed removal of the threshold will result in all vendors of real property needing to either attach a clearance certificate obtained from the Australian Taxation Office (ATO) to the sale contract, or provide a clearance certificate before settlement, to avoid the withholding obligation. This additional administrative impost may result in delays in the conveyancing process and potential increased conveyancing costs.

We are also concerned that, by removing the threshold, the volume of requests to the ATO for clearance certificates will increase significantly. Unless additional resources are provided to support this increased volume, parties to a conveyancing transaction may experience delays.

We also anticipate that, for certain vendors who do not lodge tax returns, such as aged pensioners, there will be difficulties in obtaining a clearance certificate in a timely manner.

We note that when the FRCGWT regime was first introduced on 1 July 2016, the threshold was \$2 million. On 1 July 2017, the threshold was reduced to the current \$750,000. We suggest that the current threshold of \$750,000 is appropriate, but if it is not to be maintained, consideration should be given to further reducing the threshold, rather than removing it. This would appropriately quarantine property sales at the lower end of the market from the FRCGWT regime, while still improving the integrity of the measure.

Thank you for the opportunity to provide feedback. Please contact Gabrielle Lea, Senior Policy Lawyer, on (02) 9926 0375 or gabrielle.lea@lawsociety.com.au if you have any questions in relation to this letter.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Brett McGrath', with a stylized flourish at the end.

Brett McGrath
President