

Deborah Robinson
Director, New Measures and Government Relations
Public Groups and International
Australian Tax Office

By email only: Deborah.Robinson@ato.gov.au

Dear Ms Robinson

Draft Legislative Instrument relating to variations for foreign resident capital gains withholding payments – acquisitions from multiple entities

I refer to your email of 31 May 2016, Thank you for providing the Law Institute of Victoria (LIV) with the opportunity to be consulted and provide feedback on the abovementioned draft instrument and in relation to the foreign resident tax withholding changes more generally.

Feedback

The LIV welcomes this draft instrument. While it would have been preferable to include this provision in the legislation, we consider this draft instrument is a sensible way of relieving the ATO of unnecessary administration and making it easier, quicker and cheaper for practitioners to assist their clients comply with the new regime.

Our members have raised a concern with respect to point 4 “Determination” which reads:

“The amount to be paid to the Commissioner in relation to transactions covered by this instrument is varied as follows:

For each entity that has not provided a clearance certificate, declaration or notice of variation, withhold an amount equal to the amount which would be required to be paid to the Commissioner under subsection 14-200(3) or subsection 14-205(4) of Schedule 1 to the Taxation Administration Act 1953, multiplied by the entity’s percentage interest in the relevant CGT asset....”

Some of our members consider the above wording may benefit from further clarification, particularly since many practitioners reviewing the explanatory statement and legislative instrument may not be taxation lawyers. For example, does “*percentage interest in the relevant CGT asset*” mean ownership percentage (i.e. if a party is a tenant in common as to ½ share, then 50%) or the entity’s percentage interest in the equity in the relevant CGT asset?

Further clarification about this could be incorporated into the Explanatory Statement.

Further Class Variations Sought

The LIV and the profession generally are pleased that steps are being taken to enable variations to be issued for specific classes of conveyancing transactions.

The LIV considers this draft instrument will go some way to reducing red-tape, delay and costs for transactions in which there are multiple vendors. However, the LIV encourages the Deputy Commissioner to issue legislative instruments to also vary the following classes of transactions:

- transactions attracting roll-over relief;
- transactions required to give effect to orders made by a Court;
- all or some transactions which are disregarded for capital gains tax purposes (e.g. main residences, transfers relating to family law matters etc.); and
- transactions where a secured creditor has an interest in the subject property and where all of the proceeds of sale are required to extinguish the vendor's liability to the secured creditor.

Please contact Mollie Tregillis at mtregillis@liv.asn.au or Sarah Bright at sbright@liv.asn.au if you have any queries in relation to this letter.

We look forward to hearing from you.

Sincerely yours,



Steven Sapountsis

President of the Law Institute of Victoria