



**WARNING:
UNINTENDED
CONSEQUENCES
AHEAD**

ATO Property Market Bombshell

The law of unintended consequences never fails to entertain.

With just two weeks direct notice to real estate agents, a massive change to property transaction regulations nationwide came into force July 1st.

All property sales of \$2m or more are subject to the new rules.

Initially intended to capture unpaid capital gains tax by foreign resident sellers, the magnitude of the administration, implementation and potential impact of this change is daunting.

In Summary

All Australian sellers of \$2m+ property will be classified as overseas investors unless and until they obtain a special Clearance Certificate from the ATO.

Failing that, the buyer becomes obligated to withhold 10 per cent of the sale price to pay to the ATO at settlement.

The tax liability rests with the buyer.

Writing in *The Australian* Robert Gottliebsen called it an ATO bombshell, having been alerted to the situation by tax barrister John Fickling.

If you purchase a property at a sale price of \$2m or more today, and from herein, you are required to withhold 10 per cent of the purchase price to remit to the ATO UNLESS the seller has provided a Clearance Certificate.

While most residents (for tax paying purposes) should be able to obtain a Clearance Certificate from the ATO, John Fickling suggested to Gottliebsen there may be substantial consequences for sellers who:

- Have not filed tax returns for many years;
- Have filed tax returns, which would indicate they could not afford such a property;
- Are selling their residential house at the same time as their neighbours to a single developer, which may give rise to a profit making scheme (such that the principal residence capital gains tax exemption may not apply to the value uplift generated by selling the properties together); or

Where the ATO has gathered information that indicates the vendor is in the business of developing property, which means that the principal residence capital gains tax exemption may not apply.

Fickling says in extreme cases action could potentially be taken by the ATO prior to the sale, to freeze the transaction.

So what types of properties do these rules apply to?

All property including, vacant land, residential property, commercial property, strata title and community tiles schemes.

How can you obtain a clearance certificate?

The ATO will only issue a clearance certificate to a vendor that is not a 'foreign person' for taxation purposes.

Any vendor that is not a foreign person can apply online for a clearance certificate from the ATO, and that certificate will remain valid for 12 months from the date of issue.

The one certificate may be used for multiple property sales within the 12-month period.

If a valid clearance certificate is provided to the purchaser prior to settlement, the purchaser is not entitled to withhold 10 per cent of the purchase price at settlement and the full sale proceeds are to be released to the vendor.

When does the clearance certificate have to be given?

Australian resident vendors must give the clearance certificate to the purchaser on or before settlement to avoid the purchaser withholding 10 per cent of the purchase price.

My recommendation is that all prospective vendors of \$2m+ property in the current financial year apply now for a Clearance Certificate and provide it to your real estate agent with your listing documentation whether you are listing next month or in 6 months.

If your \$2m+ property is already on the market, get it now.

Without it, the solicitor acting for the buyer will be obliged to withhold 10% of sale proceeds at settlement.

If you are buying property \$2m+, the tax liability rests with you, and you have only days to make the payment to the ATO. Make sure you ask the selling agent for a copy of the Clearance Certificate to be provided with the sale contract.

See the full ATO fact sheet for real estate agents here:

https://www.ato.gov.au/uploadedFiles/Content/ITD/In_detail/Other_topics/Foreign%20residents%20factsheet.pdf

FEATURED PROPERTY

Rare Commercial Opportunity - Project Parcel of 1,100 acres in the Noosa Hinterland

At 1,100 acres, this is the largest land parcel left in the Sunshine Coast Regional Council area. A 35 minute drive to Noosa, 30 minutes to the Maroochydore Airport, and just 1.5 hours drive (110km) from Brisbane, bordered by the Mary River with two water licenses, this is a spectacularly beautiful opportunity.

From the Mary River flats of fertile black soil to the gently undulating grassed paddocks, the land rises to plateaus of volcanic soil and up to steeper heavily timbered ridges, with spectacular views over the surrounding district to Mount Cooroora (Pomona), Mount Cooroy, and Mount Eewah and everything in between.

The property size and proximity to markets offers an exceptional opportunity for niche farming and is suitable for macadamia, the introduction of new crops or new high-yield exotic orchard fruit, vineyards, high quality dairy or beef cattle fattening and production, or thoroughbred horse stud.

While Belli Park is characterised by smaller agricultural holdings and lifestyle acreages, with this property's size and nearness to Noosa, Australia's favourite holiday destination; a coastline of pristine beaches just 30 minutes drive away; a surrounding hinterland already famous for its gourmet dairy, olive and fruit produce; multiple art/craft tourist centres in the surrounding hills, this is a premium tourism opportunity, and an exceptional 'project parcel'.

Seeking offers over \$10m. Contact Alex Harris 0412 635 274 to know more. Information Memorandum available.




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Sell Lease Property Pty Ltd is located at Level 36, 71 Eagle Street Brisbane Qld 4000.
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