

Joint Committee on Public Accounts and Audit

Inquiry into Foreign Investment Obligations in Residential Real Estate - Inquiry based on Auditor-General's report 48 (2017-18)

ANSWERS TO QUESTIONS ON NOTICE

Australian Taxation Office

28 NOVEMBER 2018

Department/Agency: ATO

Question: 6

Topic: Forced disposals post-regime

Question:

Can you take on notice and give us information as to all of the forced disposals in the post-regime, what you consider the purchase price, the disposal price and whether there was any penalty imposed in affect by retaining the capital gain.

Answer:

Civil penalties introduced on 1 December 2015 can require a foreign person to pay a penalty where they acquired property in breach of the foreign investment laws. The maximum penalty that can be imposed depends on the particular circumstances of the breach and can include, where section 95 or 96 of the *Foreign Acquisitions and Takeovers Act 1975* (the Act) apply, an amount equivalent to the capital gain made on disposal of the property.

Prior to 1 December 2015, only criminal penalties applied, which did not include a mechanism to retain the capital gain.

Where a foreign person has acquired a property in breach of the foreign investment laws, the ATO can require that person to divest their property, including by issuing a formal disposal order. In response to ATO compliance action, 36 properties acquired after 1 December 2015 have been divested by foreign persons. Sale price information is has so far been obtained* for 20 cases, which shows:

- the collective divestment value of these properties totals \$22.97 million
- records indicate that these properties were collectively purchased for \$22.90 million
- records indicate that 10 properties made a gain on sale and 10 made a loss
- for those properties which recorded a gain on sale, the overall total of capital gains for those properties was \$1.13 million
- the highest capital gain was \$338,500; the largest capital loss was (-)\$500,000.

The ATO has not yet sought a court-imposed civil penalty for a contravention of the Act, including to recover a capital gain amount made by a foreign person who has been forced to dispose of their property.

* Property sale information may not be available where a foreign person divests of their interest to an associate, which is permitted under the Act in certain circumstances, or where a disposal order has been issued but the time period to dispose has not yet elapsed.