

Australian Institute of Conveyancers

The Peak Body supporting the Conveyancing Profession Nationally

Suite 335, 1 Queens Road, Melbourne Vic 3004 | www.aicnational.com.au

AIC
AUSTRALIAN
INSTITUTE OF
CONVEYANCERS

Australian Institute of Conveyancers Incorporated
Suite 335
StKilda Road Towers
1 Queens Road
Melbourne Victoria 3004

June 10, 2017

Attention: Mr Mark Fitt
Senate Standing Committees on Economics
PO Box 6100
Parliament House
Canberra ACT 2600

By email: economics.sen@aph.gov.au

Dear Mark

Treasury Laws Amendment (Foreign Resident Capital Gains Withholding Payments) Bill 2017

The Australian Institute of Conveyancers (AIC National) is the peak body representing licensed and registered conveyancers nationally.

AIC National appreciates the opportunity to provide this submission on behalf of our members, and fully supports the submission of the E-conveyancing Group, (ECG) a collaborative of AIC National and the Law Council of Australia.

Prior to the implementation of the FRCGW measure on July 1, 2016, AIC National was advised that a regulation was put in place which restricted the completion of the forms associated with the FRCGW measure. After consultation with Treasury, an exemption was provided until December 2017 for the payment form only allowing Conveyancers to complete the form as part of the process of achieving a successful settlement of their clients contract. This exemption was made to allow the Australian Tax Office (ATO) and the Tax Practitioners Board (TPB) an appropriate timeframe to rework the questions on the form to ensure a breach of the Tax Agents Services Act (TASA).

With the threshold set at \$2M the impact on the process of conveyancers appeared to be minimal and relatively isolated in regularity with the exception of inner Sydney and Melbourne. The 2017 changes will broaden significantly the reach of the measure, and it is now likely that all members will be captured, and the proportions of regularity will increase dramatically in certain areas. The new threshold of \$750K will take this number of applications for clearance certificates from the ATO's purported tens of thousands, well into the hundreds of thousands based on property transactions for the past year. The Real Estate Institute of Australia provided data that indicates in NSW alone 60% of transactions will be captured. AIC National is

looking for assurance that the ATO is staffed adequately to support this change in workload to maintain an acceptable time frame and not disrupt property settlements.

The evolution of the Clearance Certificate was resultant of a long consultation period with the ECG, ATO and Treasury during 2015 and 2016. It was designed as a vehicle to provide certainty to the Vendor selling a property that the terms of their contract would be met in full, and to alert the Purchaser that they did not have a withholding obligation. It protected the rights of the consumer and their chosen representative to meet the terms of the sale contract as it was intended. Under the \$2M threshold the compliance burden was outweighed by the certainty it provided.

The ATO provided the following process options to AIC National for their members at the time of implementation:

For all contracts where the purchase price exceeds \$2 Million, a conveyancer acting for the vendor must:

- 1. Provide the client with a link to the ATO website and request that they complete the application form electronically for a Clearance Certificate. This will be sent in the post to the Vendor in hard copy. It will only be emailed if that non mandatory field is completed. Once received, this is provided to the Purchaser to notify them that there is no withholding obligation.*
- 2. If the client requires assistance in completing the form they will need to consult a Tax Agent. Even if a conveyancer prints out the form, the client completes and signs the copy, there will be a breach of the Tax Agents Act if they then enter that information into the online form on behalf of their client.*
- 3. If the client cannot prove that they are exempt from the withholding tax, they can apply for a variation to the 10% by completing the online Variation form. This must be completed by the client or their Tax Agent. Conveyancers even if they are aware that there is no capital gain on the property cannot complete or lodge this form on their clients behalf for withholdi*

For all contracts where the purchase price exceeds \$2 Million, a conveyancer acting for the purchaser must:

- 1. Advise the client that they will have an obligation to pay 10% of the purchase price to the commissioner unless a clearance certificate or variation notification is received prior to settlement. Failure to do so will result in a penalty for the purchaser.*
- 2. If withholding is required the exemption will allow the conveyancer to complete the payment notification form to receive the barcode for payment at Australia Post, accompanying form for a payment which is being posted, or an eft code for electronic payments.*

The above process when acting for the Vendor was revised to allow a Conveyancer to enter in the Name, Address and Date of Birth online from the information on a printed form which had been completed by their client, providing that the original was retained as evidence. This could not include the Tax File Number (TFN) which is the key identifier to expedite the automated process of issuing the clearance certificate.

A Solicitor or Lawyer is able to complete the form on behalf of their client, due to the following exemption in the TASA:

It is an offence to provide a tax agent service for a fee (with some exceptions eg a BAS service) if you are not a registered tax agent (s50-5 TASA)

However, if you provide the service as a legal service (s50-5(1)(e), it is not an offence unless:

you are prohibited under a legal practice law from providing the service; or

*the service consists of preparing or lodging a tax return or a statement in the nature of a return**

(unless such a return/statement is prepared/lodged in the course of acting for a deceased estate or as a legal personal representative).

The TPB did suggest that they may be prepared to regulate a licence for conveyancers to act as Tax Agents, providing they were able to qualify to a prescribed education process.

AIC National, through their member divisions active in six states and territory, has reach to approximately 1800 members who with minimal exceptions are small business owners or their employees. The new threshold of the measure disadvantages conveyancers in the market place, exposes them to significant risk of not being able to meet their obligations to their clients and increases red tape and the compliance burden which cannot be passed on to their client.

With the announcement on budget night of the changes, AIC National has a very limited timeframe to ensure that all members receive the training and resources required. There is grave concern that this is not enough time to ensure effective implementation amidst the confusion of the restrictions placed upon them.

AIC National would support a delay of a minimum of six months beyond the July 1, 2017 date to ensure:

- a. The compliance cost on small business is fully considered
- b. A resolution to the restrictions of completing the forms is achieved
- c. A thorough cost benefit analysis based on the ATO data from the first year of the measure be undertaken.
- d. There are measures in place for a course to be undertaken for conveyancer's to be authorised tax agents for the sole purpose of completing required forms to facilitate the lodgement of forms.
- e. ATO provides an assurance of an acceptable timeframe of issuing a clearance certificate considering manual processes will be required to process all applications lodged by conveyancers if the current restrictions remain.

AIC National would be pleased to engage with the Committee and other stakeholders as we have in the past to further discuss this submission on the provided contact detail.

Yours faithfully

[REDACTED]
Santina Taranto

President
[REDACTED]