



# CGT withholding and indirect Australian real property interests

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If your client purchases indirect Australian real property interests from a relevant foreign resident vendor, they need to withhold from the purchase price. This applies to contracts entered into from 1 July 2016.

## Indirect Australian real property interests

Indirect Australian real property (IARP) interests are membership interests in an entity that, subject to exclusions, satisfies two tests:

- [non-portfolio interest test \(/law/view/document?LocID=%22PAC%2F19970038%2F960-195%22\)](/law/view/document?LocID=%22PAC%2F19970038%2F960-195%22)
- [principal asset test \(/law/view/document?LocID=%22PAC%2F19970038%2F855-30%22\)](/law/view/document?LocID=%22PAC%2F19970038%2F855-30%22).

Membership interests include shares and units in taxable Australian real property rich (over 50%) trusts or companies.

### Excluded transactions

Transactions involving IARP interests are excluded if:

- on an approved stock exchange or crossing system
- the market value of company title interests is less than a specified value
- the vendor is in external administration.

### Exceptions

Your clients must withhold on transactions involving IARP interests unless they decide that the vendor isn't a foreign resident.

Alternatively, they can request a declaration from the vendor to confirm they are an Australian tax resident, or the membership interest isn't an IARP interest. There is no approved form, but your clients can use the [Foreign resident capital gains withholding – vendor declaration \(/uploadedFiles/Content/LB\\_I/downloads/Foreign%20resident%20capital%20gains%20withholding%20-%20vendor%20declaration.pdf\)](/uploadedFiles/Content/LB_I/downloads/Foreign%20resident%20capital%20gains%20withholding%20-%20vendor%20declaration.pdf) as a template.

Your clients should include declarations in sale agreements as contractual warranty clauses.

In the absence of a vendor declaration, they may rely on the [knowledge condition \(/law/view/document?docid=PAC/19530001/Sch1-14-210\)](/law/view/document?docid=PAC/19530001/Sch1-14-210) in determining if the vendor is a foreign resident.

### See also

- [Foreign resident capital gains withholding \(/General/Capital-gains-tax/In-detail/Calculating-a-capital-gain-or-loss/Capital-gains-withholding--Impacts-on-foreign-and-Australian-residents/\)](/General/Capital-gains-tax/In-detail/Calculating-a-capital-gain-or-loss/Capital-gains-withholding--Impacts-on-foreign-and-Australian-residents/)

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