



**Investing in Australian Real Property
Tax structuring**
投资澳洲不动产的税务考量

Inbound investment - Key messages

境外投资者 – 投资澳洲地产的关键考量

- 相比本地投资者，可能适用更低的税率：Inbound investors can often access lower Australian effective tax rates than local investors by using specific exemptions, concessions or commercial structuring.
- 管理投资信托：Managed investment trusts (**MITs**) can access 15% withholding on net rental and capital gains for investment properties, subject to meeting strict requirements, including:
 - trading trust restriction
 - widely held / closely held tests
 - investment management activities requirements.
- 股东借款的安排：Shareholder loan arrangements are often employed which can reduce tax but require careful consideration of:
 - thin capitalisation rules - limit interest deductions on debt above 60% of adjusted accounting assets
 - transfer pricing – area of increasing Australian Taxation Office focus
 - debt/equity tax classification rules
 - interest withholding tax
- 公允债务测试下更高的负债水平：The Arm's Length Debt Test may allow interest deductions on higher levels of debt by conducting an analysis to determine a 'notional amount' of debt that the entity would reasonably be expected to hold throughout the period and that independent commercial lenders would have provided on arm's length terms and conditions.

Typical investment structures

常见的投资架构

Property investment 物业收购

- Australian unit trust structures (30% tax but can be reduced by tax deferral for depreciation)
- Managed investments trusts (MIT) (tax rate of 15% / 10% reduced by tax deferral for depreciation)
- “Gearing” structures in conjunction with Australian unit trusts or MITs (10% withholding tax or 0% withholding tax on interest to foreign pension funds / sovereign wealth funds)

Property development 地产开发

- Tax consolidation structures
- “Gearing” structures in conjunction with Australian unit trusts (10% withholding tax or 0% withholding tax on interest to foreign pension funds / sovereign wealth funds)

Stapled structures 装订式架构

- Where a group has both property investment and property development activities, separate structures can be set up in parallel. Where there are multiple investors, the separate structures are often contractually ‘stapled’
- Leases of real estate assets to a stapled operating company can provide MIT benefits.
- The ATO are currently targeting certain stapled structures aimed at the re-characterisation of income from trading businesses into passive income (Tax Alert 2017/1).

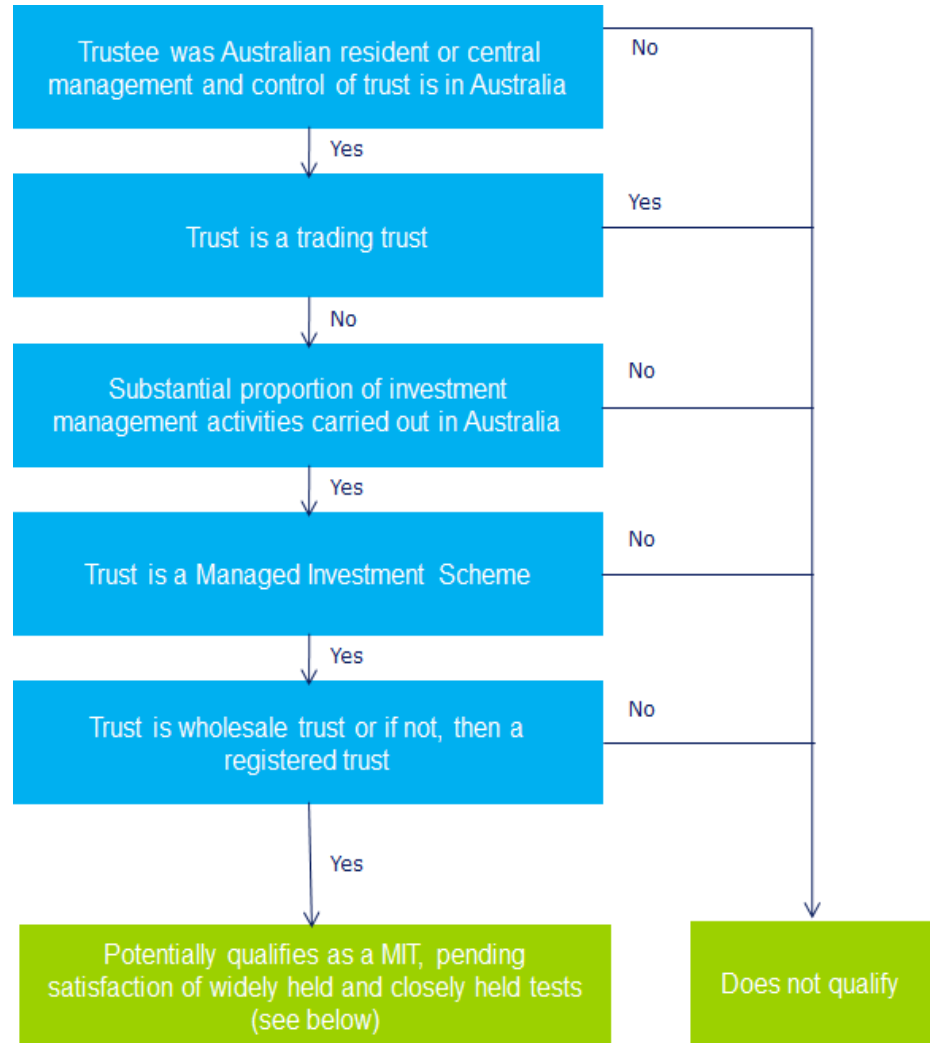
Tax structuring 税务架构

Managed Investment Trust – requirements 管理投资信托 – 条件

- Available for investments generating “passive” returns (e.g. rental from real property or interest income)
- 15% withholding tax (final) on applicable distributions
- 10% withholding tax applies for MITs holding only energy efficient buildings constructed after 1 July 2012
- Applies to net rental and taxable capital gains (Taxable Australian Real Property (**TARP**))
- Disposal of units in MIT may be subject to non-resident CGT if a 10% or greater interest is held
- Australian fund must meet MIT requirements – different requirements if registered or unregistered (see below)
- Investors must be resident in eligible Exchange of Information (**EOI**) jurisdictions (including Singapore and China but not Hong Kong) to benefit from 15%/10% WHT rate
- Where an investor is not resident in an EOI country 30% WHT applies.

Qualification criteria

需满足条件



Tax structuring 税务架构

Managed Investment Trust – requirements 管理投资信托 – 条件

Widely held requirements – 广泛持有条件

Entity type	Summary	Wholesale client licence requirement	Closely held test (disqualifying)
Wholesale trust* and registered	<ul style="list-style-type: none"> 25 or more members or one or more qualifying entities with more than 25% and no entity that is not a qualifying entity has more than 60% 	Yes	<ul style="list-style-type: none"> 10 or fewer with 75% or more Foreign individual with 10% or more
Wholesale trust* and <u>not</u> registered	<ul style="list-style-type: none"> 25 or more members 	Yes	<ul style="list-style-type: none"> 10 or fewer with 75% or more Foreign individual with 10% or more
<u>Not</u> a wholesale trust and registered	<ul style="list-style-type: none"> Listed or 50 or more members or One or more qualifying entities with more than 25% and no entity that is not a qualifying entity has more than 60% 	No	<ul style="list-style-type: none"> 20 or fewer with 75% or more Foreign individual with 10% or more

Examples of qualifying investors

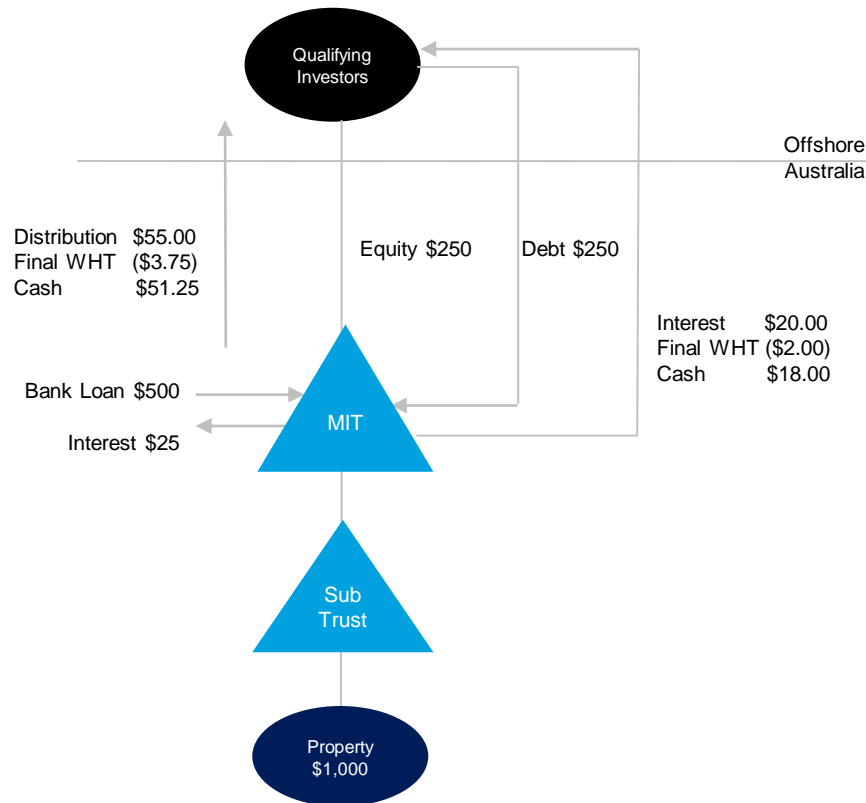
合格投资者举例

Type	Special requirement
Life insurance company	Registered under the Life Insurance Act in Australia or regulated under foreign law
Pension fund	50 or more members
Recognised foreign collective investment vehicle	50 or more members Ruling may be required
Sovereign wealth fund (including wholly owned subsidiaries)	
Interposed company or limited partnership	Wholly owned by qualifying investors (disregarding GP interest of less than 5%)

* Not required to be registered, no more than 20 retail clients and retail clients no more than 10%

Managed Investment Trust – example

管理投资信托 – 举例



- Sub Trust acquires \$1,000 property
- 50% bank debt funding at 5% p.a. (interest \$25 p.a.)
- 25% internal loan funding at 8% p.a. (interest \$20 p.a.). Assuming arm's length debt of 75%
- Tax depreciation of \$30 p.a.
- Rent of \$100 p.a.

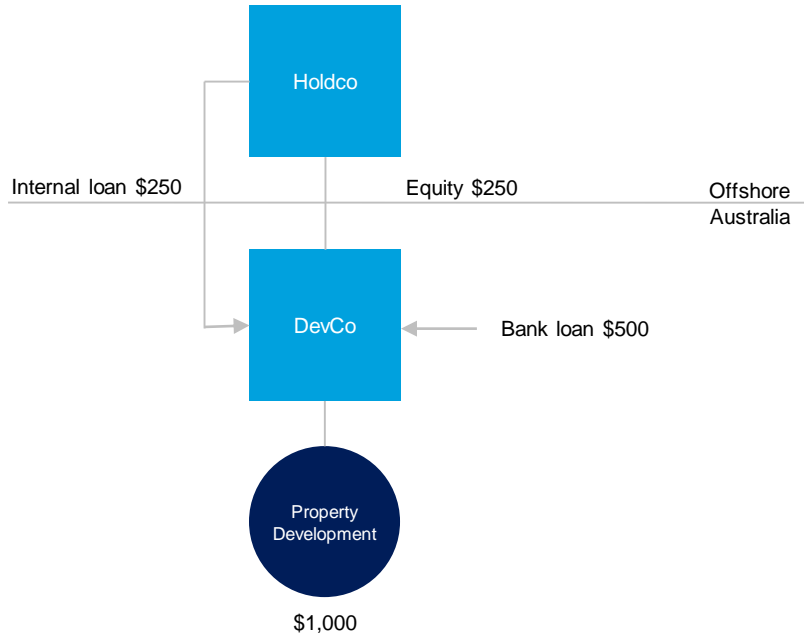
Rental income	100.00
Interest expense – bank	(25.00)
Interest (internal loan)	20.00
WHT @10%	(2.00)
Distributable cash (pre-tax)	55.00
Depreciation	(30.00)
Taxable distribution	25.00
WHT @15%	(3.75)
Distributable cash (post-tax)	51.25

- Tax deferred distribution of \$40 not subject to WHT (but reduces CGT cost base of units and property)
- Overall effective Australian cash tax rate of 7.7% (5.75/75) during holding period
- Gain on a sale of the property subject to 15% withholding tax. Clawback of previous tax deferred distributions.

Shareholder loan – example

股东借款 – 举例

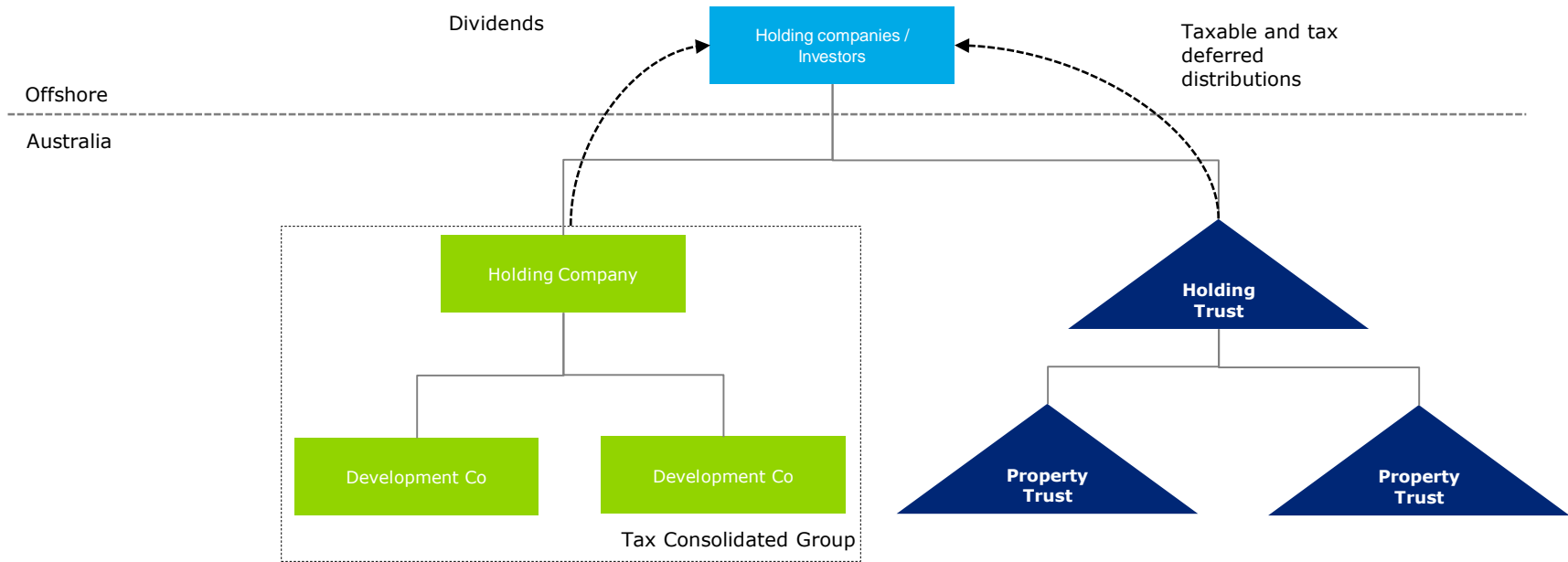
- DevCo acquires \$1,000 property and develops over 4 years with sales proceeds of \$1,500
- 50% bank debt funding
- 25% internal loan funding at 12% p.a.
- Assuming arm's length debt of 75%



Cost of Development	1,000
Sales Proceeds after 4 years	1,500
Bank Debt (50% of cost)	500
Equity (25% of cost)	250
Internal loan (25% of cost)	250
Interest rate for internal loan	12%
Internal loan Term	4
Interest earned on Internal Loan over Term	154
<u>Australian tax calculations</u>	
Sale Proceeds	1,500
Cost	<u>1,000</u>
Net Income	500
<i>Interest to Hold Co</i>	154
WHT (@10%)	(15)
Taxable income	346
Corporate Tax (@30%)	(104)
<i>Dividend to Hold Co</i>	242
Effective tax rate	24%

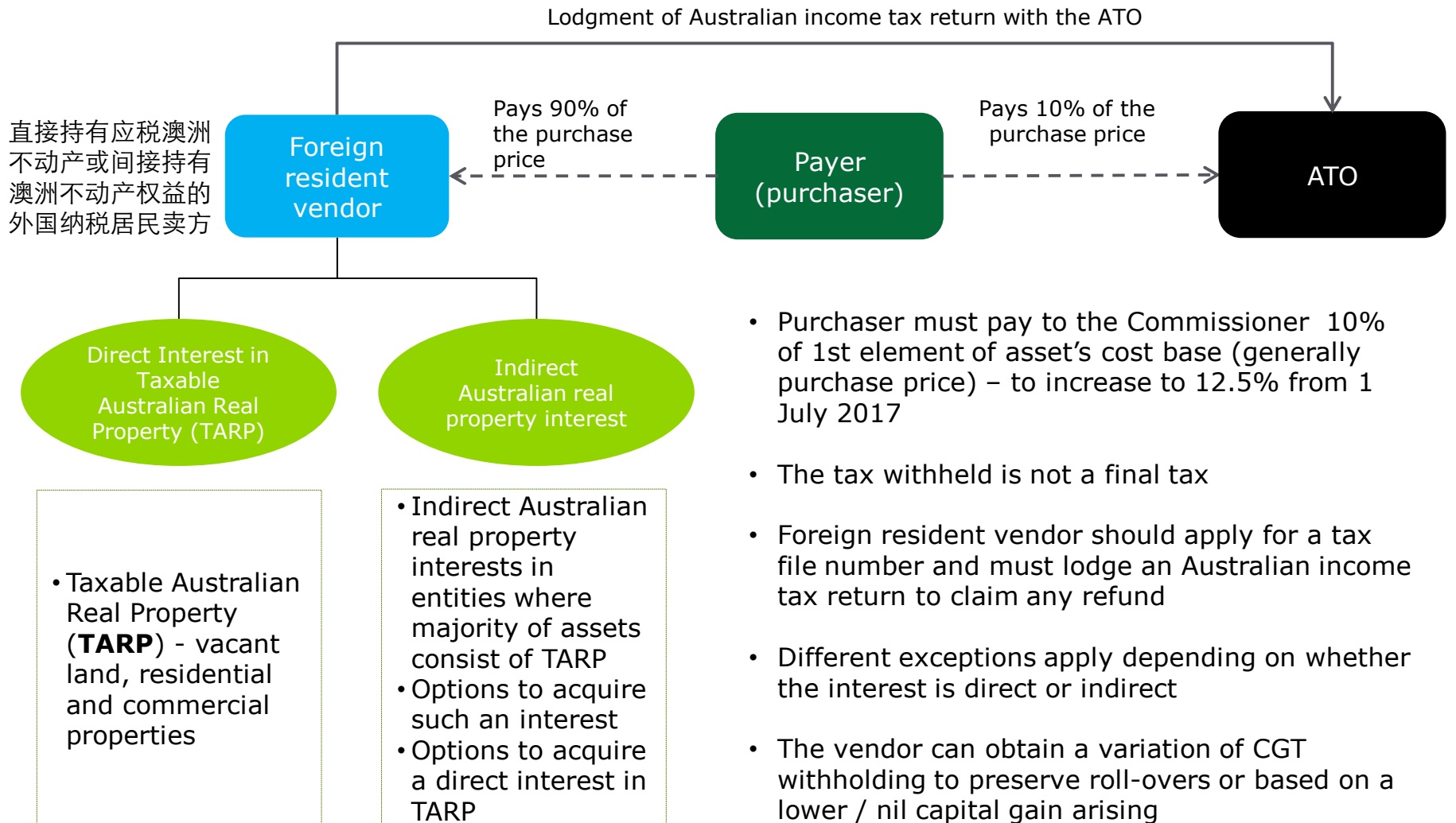
Tax structuring 税务架构

Stapled structure 装订式架构



Foreign resident CGT withholding regime - Snapshot

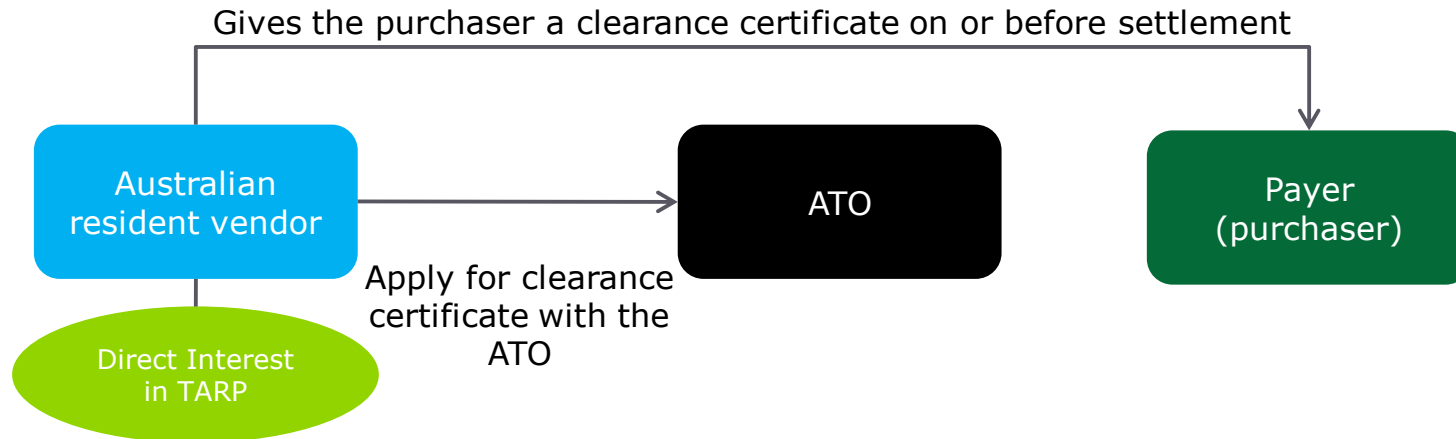
外国纳税居民资本利得税代扣代缴规定 - 概览



Foreign resident CGT withholding regime

Rules for direct interests in TARP

外国纳税居民资本利得税代扣代缴 – 对直接持有应税澳洲不动产的规定



Vendors:

- Applies to sales over the \$2m threshold (to be reduced to \$750,000 from 1 July 2017)
- All vendors disposing of direct interests in TARP will be taken to be foreign residents, unless the vendor gives the purchaser a clearance certificate on or before settlement
- Australian resident vendors must therefore apply to the Commissioner for a clearance certificate
- The clearance certificate is valid for 12 months from the date of issue

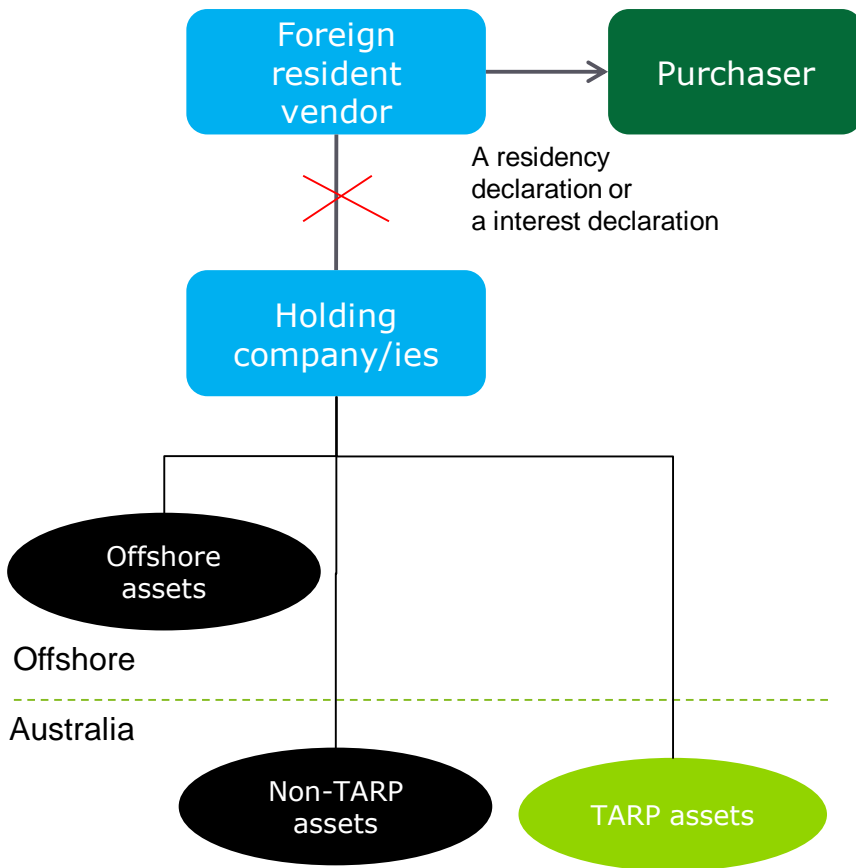
Purchaser

- Purchaser is entitled to rely on clearance certificate and no longer has an obligation to withhold
- Purchaser needs to ensure name of the vendor on the certificate matches the name on the certificate of the title
- Purchaser needs to ensure the date of settlement falls within the clearance certificate period
- If vendor does not provide a clearance certificate, purchaser must withhold, provided one of the other exclusions does not apply to the transaction

Foreign resident CGT withholding regime

Rules for indirect interests

外国纳税居民资本利得税代扣代缴 – 对间接持有应税澳洲不动产的规定



Indirect Australian real property (Taxable Australian Property (**TAP**)) where:

- over \$2m threshold (to be reduced to \$750,000 from 1 July 2017)
- foreign resident holds non portfolio (>10%) membership interest in an entity; and
- that interest satisfies the principal asset test (i.e. land rich entity - broadly where more than 50% of the value of the entity relates to real property in Australia on a “look through” basis)

Purchaser has to work out whether the vendor is a relevant foreign resident:

- using the knowledge condition; or
- the vendor can provide:
 - a residency declaration to say they are an Australian tax resident; or
 - an interest declaration (valid for six months from date of making) to say the interest is not TAP

Stamp Duty – Foreign Purchaser Surcharge

印花稅 – 外国納稅居民附加稅

- Stamp duty surcharges for foreign/absentee purchasers introduced in NSW (4%, 8% from 1 July 2017), Victoria (7%) and Queensland (3%). Applies to transfer duty (direct investments) and landholder duty (indirect investments through landholding entities).
- “Foreign person”:
 - NSW $\geq 20\%$ test
 - Victoria and Queensland 50% test

State / Territory (Capital city)	Maximum Rate
New South Wales (Sydney)	5.5% 9.5% or 11%* (foreign) 13.5% or 15%** (foreign from 1 July 2017)
Victoria (Melbourne)	5.5% 12.5% (foreign)
Queensland (Brisbane)	5.75% 8.75% (foreign)
Western Australia (Perth)	5.15%
Australian Capital Territory (Canberra)	5.09%
South Australia (Adelaide)	5.5%

*Federal vacant landlord charges announced where residential properties are vacant for 6 months in a year equal to Foreign Investment Review Board (**FIRB**) application fee (typically \$10,000 - \$20,000)

* For “premium” properties over \$3m (including development sites)

** Excludes development sites

Land Tax – Foreign Purchaser Surcharge

土地税 – 外国纳税居民附加税

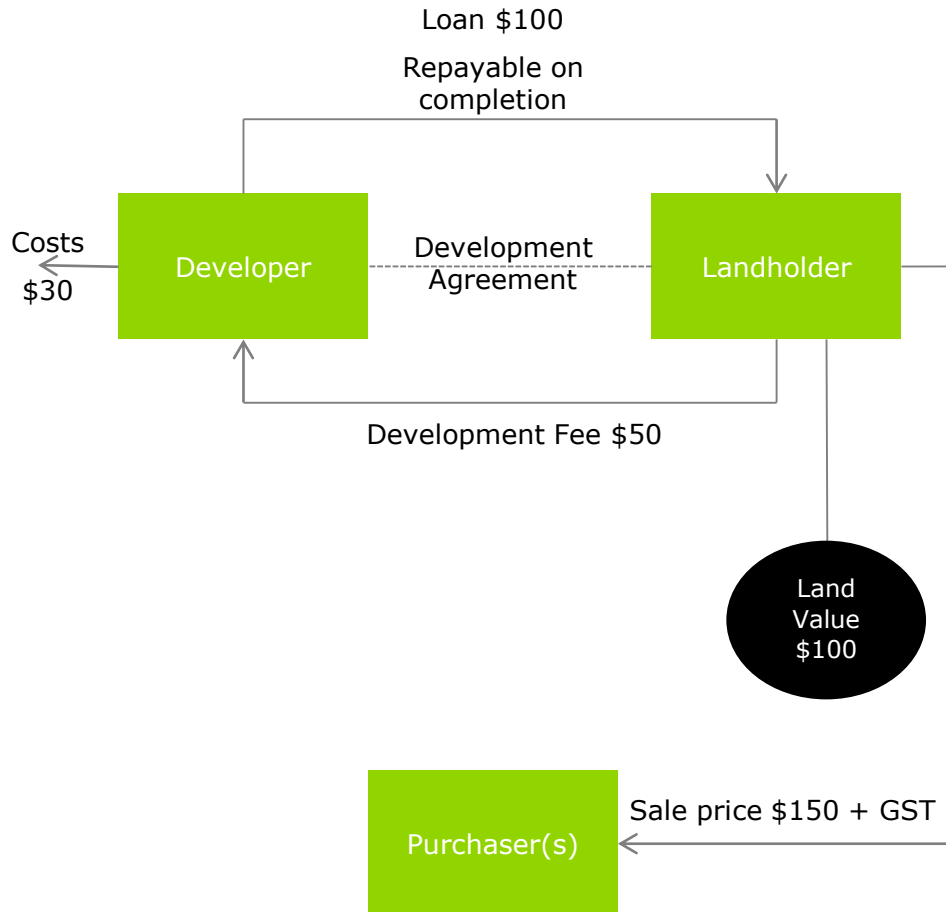
- Broadly, land tax is payable on land which has an unimproved value (determined by the Valuer-General) above the respective land tax thresholds.

State / Territory (Capital city)	Maximum Rate
New South Wales (Sydney)	2.0% 2.75% (foreign residential) 4% (foreign residential from 1 July 2017)
Victoria (Melbourne)	2.25% 3.75% (foreign commercial and residential, discretionary exemption)
South Australia (Adelaide)	3.7%
Queensland (Brisbane)	2.00%
Western Australia (Perth)	2.67%
Tasmania (Hobart)	1.5%
Northern Territory (Darwin)	N/A
Australian Capital Territory (Canberra)	1.23%

- Discretionary exemption applies in Victoria – but this more aimed at the commercial and industrial area and requires the business to make a significant contribution to the Victorian economy.

Property Development Agreements (PDAs)

物业开发协议



- Owner retains legal ownership / developer controls development process
- Potential deferral of tax for landholder
- Accelerated deductions and potential stamp duty efficiencies for developer (as no commercial need to transfer property)
- Becoming more prevalent among government authorities
- Mezzanine debt structures as variant to PDA
 - Debt for tax purposes
 - Attractive for non-resident investors
 - Potential cash flow benefits

Contacts

联系我们



Max Persson 麦竣贤

Real Estate Tax Leader
Head of NSW China Service Group
Partner

不动产团队税务领导合伙人
新南威尔士州中国服务小组合伙人
Tel: +61 (0) 2 9322 7583
mpersson@deloitte.com.au



Mimi Song 宋词元

Income Tax
Senior Manager
所得税团队高级经理

Tel: +61 (0) 2 9322 7894
Mobile: +61 (0) 4051 636 623
mimisong@deloitte.com.au



Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee, and its network of member firms, each of which is a legally separate and independent entity. Please see www.deloitte.com/au/about for a detailed description of the legal structure of Deloitte Touche Tohmatsu Limited and its member firms.

About Deloitte

Deloitte provides audit, tax, consulting, and financial advisory services to public and private clients spanning multiple industries. With a globally connected network of member firms in more than 150 countries, Deloitte brings world-class capabilities and high-quality service to clients, delivering the insights they need to address their most complex business challenges. Deloitte's approximately 200,000 professionals are committed to becoming the standard of excellence.

About Deloitte Australia

In Australia, the member firm is the Australian partnership of Deloitte Touche Tohmatsu. As one of Australia's leading professional services firms, Deloitte Touche Tohmatsu and its affiliates provide audit, tax, consulting, and financial advisory services through approximately 6000 people across the country. Focused on the creation of value and growth, and known as an employer of choice for innovative human resources programs, we are dedicated to helping our clients and our people excel. For more information, please visit our web site at www.deloitte.com.au.

Liability limited by a scheme approved under Professional Standards Legislation.

Member of Deloitte Touche Tohmatsu Limited

© 2017 Deloitte Touche Tohmatsu