



THE LAW SOCIETY  
OF NEW SOUTH WALES

Our ref: Prop:BLC:RHgl1840947

25 March 2020

Ms Thang Luong  
Policy Officer  
Australian Taxation Office

By email: [thang.luong@ato.gov.au](mailto:thang.luong@ato.gov.au)

Dear Madam,

**Draft Variation 2020/D1 Taxation Administration PAYG Withholding for Foreign Resident Capital Gains - No Residue after a Mortgagee Exercises a Power of Sale Variation 2020 ("Draft Variation")**

The Law Society of NSW appreciates the opportunity to comment on the Draft Variation. The Law Society's Property Law and Business Law Committees have contributed to this submission.

We support the Draft Variation and note that it will reduce the compliance costs of mortgagees exercising powers of sale and provide clarity for purchasers involved in those transactions.

Paragraphs 3 and 4 of the Draft Variation use the expression "varied to nil". Our understanding is that a variation under the legislation more generally is usually framed in terms of a percentage. We request that the phrase "varied to nil" be replaced with the phrase "varied to nil or 0.00 percent" in paragraphs 3 and 4. We also note that clause 31.5 of the NSW Contract for the sale and purchase of land 2019 edition (and several prior editions) use the terminology "a variation to 0.00 percent".

Similarly, we request that the various references to "nil" in paragraphs 3, 7 and 19 of the Draft Explanatory Statement be replaced with the phrase "nil or 0.00 percent" for consistency.

We support the Draft Explanatory Statement which will be of assistance to practitioners and industry generally. We note that paragraph 10 states:

The 'residue' in this context is the amount remaining after expenses incidental to the sale and amounts payable to registered mortgagees over the asset are taken out of the sale proceeds. The expenses incidental to the sale include amounts that are ordinarily payable during the conveyancing process such as adjustments for council rates, land rates, water rates, legal fees and conveyancing fees.

We query whether the reference to "land rates" should be replaced with a reference to "land tax".

Thank you for the opportunity to comment on the Draft variation and Explanatory Statement.  
Any questions in relation to this submission should be directed to Gabrielle Lea, Policy Lawyer  
on 9926 0375 or email: [gabrielle.lea@lawsociety.com.au](mailto:gabrielle.lea@lawsociety.com.au).

Yours faithfully,

A handwritten signature in blue ink, appearing to read 'R Harvey', with a long horizontal flourish extending to the right.

Richard Harvey  
**President**