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## Legislative Instrument

# PAYG Withholding variation for foreign resident capital gains withholding payments – no residue after a mortgagee exercises a power of sale 2020

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I, Louise Clarke, Deputy Commissioner of Taxation, make this variation under the following provision:

- subsection 14-235(5) of Schedule 1 to the *Taxation Administration Act 1953*.

### Louise Clarke

Policy, Analysis and Legislation

Law Design and Practice

Dated: 2 September 2020

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### 1. Name of instrument

This determination is the *PAYG Withholding variation for foreign resident capital gains withholding payments – no residue after a mortgagee exercises a power of sale 2020*.

### 2. Commencement

This instrument commences on the day after its registration on the Federal Register of Legislation.

### 3. Application

This instrument applies to payments covered by section 14-200 of Schedule 1 to the *Taxation Administration Act 1953*, where, in a transaction involving the acquisition of land:

- a mortgagee exercises a power of sale;
- the residue is zero or less than zero; and
- the mortgagee provides a written declaration to the transferee that the amount to withhold is varied to nil under this instrument.

### 4. Determination

The amount to be paid by the transferee to the Commissioner in relation to the transactions covered by this instrument is varied to nil.

## 5. Definitions

**Mortgagee** – a mortgagee in relation to the land that is also an ‘authorised deposit-taking institution’ as defined in section 5 of the *Banking Act 1959*.

**Residue** – an amount worked out as the sale proceeds *less* expenses incidental to the sale and amounts payable to registered mortgagees over the asset.

**Transferee** – the person acquiring the land as a result of the transaction.

Other terms used in this legislative instrument have the same meaning as defined in the *Taxation Administration Act 1953*.

## 6. Repeals

None.