



## THE TAX INSTITUTE

15 August 2017

Ms Ronita Ram  
Cross-Border Taxation Unit  
Corporate and International Tax Division  
The Treasury

By email: [frcgt@treasury.gov.au](mailto:frcgt@treasury.gov.au)

Dear Ms Ram

### ***Housing tax integrity – capital gains tax changes for foreign residents***

The Tax Institute refers to the Treasury Laws Amendment (Housing Tax Integrity) Bill 2017 (**Bill**) and the exposure draft explanatory material in relation to the Bill (**Explanatory Memorandum**). We welcome this opportunity to provide a submission to Treasury.

Broadly, the Bill and Explanatory Memorandum introduce amendments that remove the entitlement to the CGT main residence exemption for foreign residents that have dwellings that qualify as their main residence.

### **Policy issues**

In our opinion, the policy behind this measure appears to be somewhat confused. The measure is said to be a housing tax integrity measure that is designed to prevent foreign residents from being entitled to the CGT main residence exemption. Further, the measure is said to reduce the pressure on housing affordability.

We agree that the measure does prevent foreign residents from accessing the CGT main residence exemption. However, it will also prevent Australian citizens who have been Australian residents for tax purposes for years from using the CGT main residence exemption if they are foreign residents at the time the CGT event (eg the sale of the property) occurs. In our opinion, there is no legitimate policy reason for denying Australian citizens the CGT main residence exemption in these circumstances.

We request that the Government clearly explain what abuse they are trying to prevent with this integrity measure. This should be clearly articulated in the Explanatory Memorandum. If the Government has integrity concerns about Australian tax residents using the CGT main residence exemption at any time when they are foreign residents, this should be articulated and explained.

We query “who” this legislation is aimed at. As currently drafted, the measure has the potential to penalise Australian citizens who would otherwise be entitled to the CGT main residence exemption. Amongst others, it seems for example that this measure has the potential to affect Australians who have lived here for, say, 50 years but take an overseas secondment for the last couple of years of their career. We do not support any measures that would totally deny the CGT main residence exemption in these circumstances.

If the real purpose of the measure is to deter foreign residents from acquiring residential property in Australia, this should be stated and the measures should be drafted to achieve that purpose. Similarly, if the concern is really about foreign residents claiming the CGT main residence exemption when they are not in fact living in the residence or the country, this should be addressed in another way.

Finally, in our opinion, this measure has nothing to do with housing affordability despite the claims in the Explanatory Memorandum. It may, in fact, have the opposite effect. For example, if Australian citizens hold property they may otherwise sell during periods where they become foreign residents, there is potential to decrease the property supply and increase property prices.

### **Drafting issues**

The Tax Institute does not support the measure in its current form, as the measure has the potential to produce unfair and arbitrary results.

At a minimum, the measure needs to be redrafted so that taxpayers are only taxed on capital gains made in relation to their main residence proportionately. That is, based on the period (ie number of days) of non-residency as a fraction of the entire ownership period. In this case, taxpayers would be entitled to the CGT main residence exemption for any period when they are Australian tax residents provided the other conditions of the exemption are met.

This measure is going to increase the compliance burden on taxpayers. Record keeping will become necessary for every home owner. Home owners will have to carefully track all items that will go to the cost base of the home in case they happen to become a foreign resident at some point in the future.

To reduce the compliance burden associated with the onerous record keeping requirements, consideration should be given to a provision that allows for record keeping concessions until a taxpayer becomes a foreign resident. For example, determination of the market value at the time the taxpayer becomes a foreign resident (and deem this to be the cost base at that time) and only require records in relation to subsequent cost base changes.

This is consistent with the current approach when a property in relation to which a taxpayer was entitled to the CGT main residence exemption is subsequently used for income producing purposes. In this situation, the taxpayer needs a market valuation at

the time the property ceased to be their main residence. Any future capital gain or loss in relation to the property is then apportioned based on the period for which the property was the taxpayer's main residence.

If you would like to discuss, please contact either me or Tax Counsel, Angie Ananda, on 02 8223 0011.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Matthew Pawson', with a stylized, flowing script.

**Matthew Pawson**  
President