

CGT hitting home while living abroad

Most Australian homeowners are quite familiar with the Capital Gains Tax (CGT) exemption that is generally available to individuals on the sale of their main residence. However, for Australians (both citizens and permanent residents) that are currently living overseas and considered a foreign resident for tax purposes, there is currently a frustrating state of uncertainty as to how they will be taxed if they sell their home while living abroad.

Background

The 2017 Federal Budget included an announcement that the CGT main residence exemption would cease to apply as of 7.30pm on 9 May 2017 for foreign residents of Australia for tax purposes (subject to a transitional period for any properties held as at that date, which are sold by 30 June 2019).

The legislation that was subsequently drafted to introduce these measures, results in what is widely viewed as an extremely harsh outcome for many Australians that sell their family home while still living overseas and who are considered a foreign resident for tax purposes. This “unfairness” is largely due to the fact that there is no recognition of the period that the property was previously occupied by the taxpayer (when they were considered a tax resident of Australia). Therefore, the legislative change can apply on a retrospective basis to gains derived on properties acquired from as far back as 20 September 1985. For many people affected, this would be a substantial tax hit and could adversely impact on their ability to get back into the Australian property market at a similar level on returning to Australia.

Status of the legislation

The legislation to introduce the new rules has still not been passed by Parliament, despite it first being introduced into the House of Representatives back on 8 February 2018. The legislation was scheduled for debate in the Senate on 16 October 2018, however it was withdrawn from discussion by the Government, so it is now unclear how this legislation will proceed.

The fact that the legislation was withdrawn from the Senate schedule provides some hope that there will be amendments to the legislation. Part of the problem appears to be that these CGT changes were part of a wider suite of changes, that are generally aimed at reducing the pressure on housing affordability in Australia. It may be that some of the unintended consequences for Australian citizens and permanent residents in the drafting of the legislation are now being acknowledged, we just hope that it is not too late.

What could some of the amendments be?

There are a number of options in terms of possible amendments to the legislation to provide a fairer outcome for Australian taxpayers. Some possible changes were outlined in a Submission^[1] by CPA Australia to the Senate Economic Legislation Committee including:

- Excluding individuals who retain their Australian citizenship or permanent residency from the legislation;
- Exempting property that was already owned when the announcement was first made on these changes in the Federal Budget on 9 May 2017;
- Allowing a deemed market value cost base for the main residence at the time the taxpayer

- becomes a non-resident taxpayer; or
- a partial exemption is to be provided for the number of days the taxpayer was actually living in the main residence.

Another option could be to extend the “grandfathering rule” discussed below.

The urgency of the issue

The longer that this uncertainty remains, the more stressful these changes are for the many thousands of Australians currently living overseas, that would be affected by the proposed changes. This is particularly in light of the “grandfathering” rule in the proposed legislation, that will allow properties that were owned on 9 May 2017 to potentially be sold prior to 30 June 2019 and retain the CGT exemption.

If the legislation does end up being passed at some point as it is currently drafted, there may not be sufficient time for taxpayers to adequately plan their affairs to sell their home prior to 30 June 2019. This is becoming increasingly unrealistic, considering that there will only be 10 more scheduled Parliament sitting days through to the next Federal election.

Even if taxpayers are able to meet this deadline, many will now be impacted by reductions in property prices in many parts of Australia that have occurred since the Budget announcement was made. So, it could be a case of obtaining the grandfathered tax exemption but accepting a sale price in a market that may not be optimal for selling (pre 30 June 2019) or holding the property and being hit with the tax consequences. Either way, it is strongly recommended that affected taxpayers continue to monitor any developments and seek appropriate advice in relation to their specific circumstances.

[\[i\]](#) Letter from Stuart Dignam, General Manager Policy & Corporate Affairs CPA Australia, to Senate Standing Committees on Economics (dated 5 March 2018)

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