

Removal of the main residence exemption for Australian tax non-residents

10 December 2019

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In brief

On 5 December 2019, the Government's [*Treasury Laws Amendment \(Reducing Pressure on Housing Affordability Measures\) Bill 2019*](#) to remove the main residence capital gains tax (CGT) exemption for Australian tax non-residents was passed by Parliament.

The changes impact individuals who will be going, or who are already, overseas and who sell their Australian main residence while a tax non-resident of Australia.

There are a few limited exceptions, such as a sale of the residence as a result of a “life event” relating mainly to health and family matters where the individual has been a tax non-resident of Australia for a period of six years or less. Also, for properties already owned on 9 May 2017, the new rules will not apply until after 30 June 2020.

For more information about the changes, the importance of the Australian tax residency status at the time of the disposal and the exceptions, see [PwC's TaxTalk Alert video on this topic](#).

In detail

CGT main residence exemption

An individual's main residence is prima facie exempt from Australian CGT where it is their main residence throughout their ownership period.

A partial exemption is available if a dwelling is used to produce assessable income (for example, rental income) during the individual's ownership period. However, under an “absence rule”, an individual who does not treat any other dwelling as their main residence can treat a dwelling as their main residence for CGT purposes while they are absent for up to six years even if it is rented out, or for an unlimited period where it is not rented out.

Changes, exceptions and transitional rules

As a result of the new law, the CGT main residence exemption is no longer available unless:

- the individual is an Australian tax resident on the sale date (i.e. date of contract); or
- the individual is an Australian tax non-resident on the sale date; and
- has been an Australian tax non-resident for six years or less, prior to the date of the sale; and
- the property is sold as a result of a life event, for example:

- terminal medical condition of the individual, their spouse or their minor children;
- death of the individual's spouse or the individual's minor children; or
- divorce or separation of spouse (or former spouse).

The removal of the main residence exemption for foreign residents applies to property disposals from 19:30 (AEST) on 9 May 2017. However, for any property held as at 19:30 (AEST) on 9 May 2017, the rules do not apply to disposals until after 30 June 2020.

The takeaway

Importance of the Australian tax residency status

For individuals having an ownership interest in a dwelling, for CGT purposes, the date of sale of their interest in the dwelling, which is the time a contract for sale is entered into, is the relevant time to determine whether the individual is an Australian tax resident or an Australian tax non-resident who is subject to the new law.

What does it mean for individuals?

Individuals who will not be impacted by the changes and can continue to apply the CGT main residence exemption will be those who sell their main residence:

- on or before 30 June 2020, but only if the property was held as at 9 May 2017;
- as a result of a “life event” within six years of becoming a tax non-resident of Australia; or
- after returning to Australia and resuming Australian tax residency.

Those individuals who will be impacted by the changes and may have a capital gain/loss on the sale of the main residence will be those who:

- sell, as a tax non-resident of Australia, a property bought after 9 May 2017 (and there is no “life event”);
- sell, as a tax non-resident of Australia after 30 June 2020, a property that was held as at 9 May 2017; or
- sell after six years of becoming a tax non-resident of Australia (“life event” or not).

For those non-resident individuals who will lose the benefit of the main residence exemption, it is also worth noting:

- “Absence rule”— The new law partially abolishes the “absence rule” as Australian tax non-residents will no longer be able to benefit from this rule. However, individuals who resume Australian tax residency prior to selling their main residence may still be able to benefit from the “absence rule”.
- CGT discount — The CGT discount may apply to the gain or loss. Where the individual has had a period of foreign residency since 8 May 2012, the CGT discount may be reduced.
- Apportionment — There is no ability to apportion the main residence exemption, having regard to the number of days of ownership as an Australian tax resident or as an Australian tax non-resident.
- Cost base for CGT purposes — There will be a need to determine the cost base of the dwelling for CGT purposes. This may include the cost of improvements and certain other costs of holding the property, for example, repairs, rates, mortgage interest, etc.

Australia's CGT rules can be complex and the consequences significant. It is recommended that you consider your personal situation carefully before relying on the exemption for the family home.

Let's talk

For a deeper discussion of how these issues might affect you, please contact:

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