5 March 2018

Mr Mark Fitt
Committee Secretary
Senate Standing Committees on Economics
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Parliament House
CANBERRA ACT 2600

By email: economics.sen@aph.gov.au

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Dear Mr Fitt

Treasury Laws Amendment (Reducing Pressure on Housing Affordability Measures (No.2)) Bill 2018

CPA Australia represents the diverse interests of more than 163,000 members in 125 countries and regions. We make this submission in consultation with and on behalf of our members and in the broader public interest.

In preparing this submission, CPA Australia presented on the Bill to members residing overseas, many of whom are Australian citizens. Members were very concerned that the Bill seeks to retrospectively remove the main residence exemption (MRE) from capital gains tax (CGT) for non-residents from the time the property became the taxpayer's main residence – instead of from the time they became a non-resident. Further, they are also very concerned over the impacts it would have on deceased estates.

Members advise that they are especially concerned that this change could impose significant tax bills on Australian citizens and permanent residents covering periods not only when they are non-residents for tax purposes, but also when they were tax residents, paying their Australian tax obligations.

CPA Australia shares our members' concerns. It is unreasonable to effectively penalise Australians for departing Australia for work or personal reasons by revoking their right to a CGT exemption on their family home.

As the Bill now stands, the denial of the MRE for non-residents is based on their tax residency status at the time of the CGT event (i.e. generally when a taxpayer enters into the contract to sell the dwelling), irrespective of the use of the dwelling or the taxpayer's residency status during the ownership period of the dwelling.

This Bill retrospectively changes the application of the MRE to as far back as 20 September 1985, when the CGT provisions first commenced. CPA Australia does not support the imposition of the proposed retrospective changes. The government has not put forward reasons as to why it is good public policy that the law be change retrospectively and to the detriment of taxpayers.

It is draconian to change the tax treatment of the family home post the acquisition of that home – and for some citizens that are now non-residents, it may have been their family home for more than 30 years.

Further, it will be difficult for many to substantiate changes to the cost base of their home as they would not have maintained the necessary documentation due it not being necessary or required at the time.

CPA Australia's view is that there should be a difference between a 'foreign resident' (i.e. a foreign citizen) who buys property in Australia, treats it as their main residence, but remains a non-resident for tax purposes, and an Australian citizen or permanent resident who has always lived here but has relocated overseas and becomes a non-resident, then sells the dwelling that was their home.

These issues are highlighted an article written by Robyn Jacobson FCPA, reproduced as part of this submission – see the **Attachment.**

There is also significant concern over the impact of the proposed Bill on deceased estates. For example, the proposed changes in relation to CGT concessions that apply to a principal place of residence may have significant impacts on deceased estates where the deceased is considered a non-resident as at date of death.

These proposed changes may significantly impact the CGT treatment and classification of their residence during a deceased's entire ownership period should they die whilst outside of Australia. Examples 1.6 and 1.7 in the explanatory memorandum relating to deceased estates show how the already complex area of property in deceased estates is about to become even more so.

CPA Australia also notes that these issues are expanded upon in BNR Partners submission to this inquiry. BNR Partners specialise in the taxation of estates and trusts. We recommend that the Committee also carefully consider the recommendations made in that submission.

Options to improve the Bill include:

- that persons who retain their Australian citizenship or permanent residency be excluded from Schedule 1 of the Bill – regardless of their tax residency
- the proposed regime only applies to property acquired from 9 May 2017
- the cost base of the property to be reset to its market value on the day the taxpayer becomes a non-resident so that the capital gain is calculated on the increase in value since the taxpayer ceased to be a resident
- a partial exemption for the number of days the taxpayer was a resident and lived in the dwelling as their main residence.

In stating this, our organisation is aware that the residency test is not always simple to apply, however this approach is significantly preferable than the proposed retrospective and draconian approach.

We envisage that the impact of the proposed change on supply of housing could be mixed. In the short term, there could be an increase in supply as non-residents sell their property before 30 June 2019 to take advantage of transition period.

In the medium to long-term, there could be a reduction in supply as the proposed change will encourage non-residents to hold on to their property on the expectation that they will re-establish their tax residency some point in the future on their possible return. It may also lead to an increase in demand in the medium to long-term as non-residents who sold their property prior to 1 July 2019 re-enter the property market on their possible return to Australia.

Recommendation:
The government reconsider the Bill to remove its retrospective impact or if that does not occur, the Committee not support the passage of the Bill.

If you require further information on the views expressed in this submission, please contact Gavan Ord, Manager – Business & Investment Policy, on +61 3 9606 9695 or at gavan.ord@cpaaustralia.com.au.

Yours sincerely

Stuart Dignam
General Manager, Policy & Corporate Affairs

Attachment

An Australian resident taxpayer, Ozzie, has never been a non-resident for tax purposes. He bought a dwelling in Australia on 1 July 1986 and used it as his home; it has never been rented out, and the dwelling has always been his main residence. On 30 June 2016, having decided to accept a job overseas, Ozzie reallocated offshore for an indefinite period and became a non-resident. At that time, Ozzie's home was worth $2.2 million.

Ozzie decides to stay overseas. Five years later, on 30 June 2021, he sells the dwelling that, prior to moving overseas, had been his home for 30 years. Because Ozzie is a non-resident at the time of the CGT event, he is not entitled to the MRE — at all.

Ozzie cannot:

- *claim a partial exemption for the number of days he actually lived in the dwelling;*
- *continue to treat the dwelling as his main residence after he vacates it (under the absence rule in s. 118-145) — which would otherwise allow him to continue to treat the dwelling as his main residence indefinitely if the property remains vacant or for up to six years if he rents it out; or*
- *reset/uplift the cost base of the dwelling to its market value (MV) on the date he first began to rent it, should he have decided to do so in 2016 when he departed Australia (under s. 118-192).*

This is because these concessions are contained in the MRE rules — and Ozzie is not entitled to any MRE.

Assume Ozzie paid $100,000 in 1986 to acquire the dwelling, and the property is worth $2.5 million when he sells it in 2021. Ozzie will have a taxable capital gain of $2.4 million, without access to any MRE. The best Ozzie could get is the general CGT discount, but only for the number of days he was a resident. In this case, he would be entitled to a discount of 42.85 per cent instead of the full 50 per cent discount.

If Ozzie moves back to Australia after 30 June 2019 and re-establishes himself as a resident, then sells the dwelling, he would be entitled to the MRE and could access the partial exemption, the absence rule and the reset cost base-to-MV rule as applicable. [1]

[1] See https://www.linkedin.com/pulse/draconian-retrospective-cgt-amendments-hit-parliament-robyn-jacobson/