

DECEMBER 2019

**TAX ALERT:  
REMOVAL OF THE CGT MAIN RESIDENCE EXEMPTION FOR  
FOREIGN RESIDENTS PASSED BY PARLIAMENT**

***Introduction***

The Federal Government has revived its plan to remove access to the capital gains tax (CGT) main residence exemption for non-residents, a controversial move that will directly impact both expat Australians (living overseas for an extended period) and foreign tax residents.

***Background***

As part of the 2017-18 Federal Budget announcements, the Government announced that it would remove the concession allowing non-resident taxpayers to claim the CGT main residence exemption, to fully (or partially) exempt any capital gains main on the sale of their nominated main residence.

The proposed measures were introduced into Parliament during 2017-18, but did not progress into law, and now in November 2019 the Government has re-introduced these proposed changes to the CGT rules, but in a modified form.

The revised rules are contained within the *Treasury Laws Amendment (Reducing Pressure on Housing Affordability Measures) Bill 2019*, which passed both Houses of Parliament on 5 December 2019 and is now awaiting Royal Assent.

***CGT main residence laws – Current form***

Currently, individuals are generally not subject to CGT on the sale of the dwelling they treat as their main residence. If the home was your main residence for only part of the ownership period, or if the dwelling was used to produce income (for example, you use part of the home as business premises or rented out the property), then a partial exemption may be available.

In addition, if you move out of your dwelling and you don't claim another property as your CGT main residence, then you may continue to treat the dwelling as your CGT main residence for up to six years if you rent it out and derived rental income (**the 6 year absence rule**), or indefinitely if you do not rent it out and derive no income.

The main residence exemption is currently available to individuals who are residents, non-residents, and temporary residents for tax purposes.



A member of  
**The International Accounting Group**  
worldwide network of independent accounting firms

Level 7 616 St Kilda Road Melbourne  
Victoria Australia 3004  
( PO Box 130 St Kilda Vic 3182 )  
T 61 (03) 9525 3777  
F 61 (03) 9537 1104  
E [office@lowelippmann.com.au](mailto:office@lowelippmann.com.au)  
W [www.lowelippmann.com.au](http://www.lowelippmann.com.au)

### ***The proposed legislation – Timing issues***

The proposed changes would apply from the 2017-18 Federal Budget announcement date (ie. 9 May 2017), which could impact the CGT treatment in relation to some properties that have already been sold.

However, a transitional rule would allow CGT events happening up to 30 June 2020 to be dealt with under the existing CGT main residence exemption, provided the property was held continuously from before 9 May 2017 until the CGT event (ie. sale contract date).

In other words, if you held a property from 9 May 2017 up until the sale date, the existing rules should continue to apply the CGT main residence exemption.

Now that the measures have passed both Houses of Parliament and awaits Royal Assent, the impact is that most individuals who are non-residents at the time of signing any sale contract to sell their family home after 30 June 2020 will be ineligible for the full (or even partial) CGT main residence exemption. It is irrelevant that the individual may have been living in their family home as an Australian tax resident previously, even as far back as since late 1985.

### ***The proposed legislation – Exception for expat Australians***

When specifically considering expat Australians (living overseas for an extended period), there is a proposed exception to the revived new rules, relevant in those circumstances where the individual taxpayer has been a non-resident for less than 6 years and a specific “life event” occurred during the period of their foreign residency.

The term “life event” includes the following specific events:

- Terminal medical conditions suffered by the individual taxpayer (or certain family members);
- The death of the individual taxpayer (or certain family members); or
- A marriage/de facto relationship breakdown (i.e. divorce or separation).

### ***The proposed legislation – Impact for non-resident individuals***

For non-resident individuals (ie. foreign tax residents), there may be a significant flow-on impact if the legislation passes Parliament in its proposed current form, as:

- They will likely miss out on a full or partial exemption under the main residence rules;
- They will generally be taxed at non-resident rates (ie. having no, or only partial, access to tax-free threshold);
- The CGT general discount percentage could be reduced to less than 50%;
- The CGT main residence cost base reset rules, which sometimes apply to provide an “uplift” in the cost base of the property to its market value at the time it is first rented out, are unlikely to apply; and



A member of  
**The International Accounting Group**  
worldwide network of independent accounting firms

Level 7 616 St Kilda Road Melbourne  
Victoria Australia 3004  
( PO Box 130 St Kilda Vic 3182 )  
T 61 (03) 9525 3777  
F 61 (03) 9537 1104  
E [office@lowelippmann.com.au](mailto:office@lowelippmann.com.au)  
W [www.lowelippmann.com.au](http://www.lowelippmann.com.au)

- The foreign resident capital gains withholding rules (**FRCGW**) could impact on the cash flow position of a non-resident vendor. The FRCGW rules apply to non-resident vendors disposing of Australian real property after 1 July 2016 with a sale price in excess of \$750,000. The purchaser is required (by law) to withhold 12.5% of the total purchase price and remit it to the ATO directly, unless the vendor provides a clearance certificate.

### ***Conclusion***

It is important to note that the existing CGT main residence “6 year absence rule” (e.g. where a taxpayer rents out their family home for a period less than six years, while perhaps living overseas) will not be available for expat Australians or non-residents after the transitional period ends on 30 June 2020.

Given the limited circumstances where expat Australians or non-resident may be exempt from the proposed new changes, we recommend that current foreign residents (or Australian tax residents who anticipate becoming foreign residents) may wish to take advantage of the CGT main residence exemption before the transitional period ends on 30 June 2020.

***Please do not hesitate to contact your Lowe Lippmann Relationship Partner if you wish to discuss any of these matters further.***



A member of  
**The International Accounting Group**  
worldwide network of independent accounting firms

Level 7 616 St Kilda Road Melbourne  
Victoria Australia 3004  
( PO Box 130 St Kilda Vic 3182 )  
T 61 (03) 9525 3777  
F 61 (03) 9537 1104  
E [office@lowelippmann.com.au](mailto:office@lowelippmann.com.au)  
W [www.lowelippmann.com.au](http://www.lowelippmann.com.au)