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6 March 2018

Senate Standing Committees on Economics
PO Box 6100
Parliament House
Canberra ACT 2600
By email to: economics.sen@aph.gov.au

Dear Members of the Committee,

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

First, let me apologise for my late submission and request that you nonetheless consider it in your deliberations, even though it is a day late. As an Australian citizen living overseas and travelling frequently for work, it is not always easy to be aware of and keep to the tight timeframes for submissions on bills under consideration. I made the mistake of initially thinking that 23 March was the submission date; only today have I realised that that is your report date.

My submission relates to the above-name Bill, and in particular to the proposed changes to the Main Residence exemption under the capital gains tax (CGT). I urge you to consider not applying these rules to non-resident Australian citizens and to ask yourselves:

- whether the intention of the Bill can really be really met if the changes are applied to non-resident Australian citizens; and

- whether there might be unintended consequences for the superannuation and pension systems if the changes are applied to Australian citizens who, while living abroad, ultimately intend to return to Australia.

Australians are travellers and it is not unusual for an Australian to live overseas for a number of years, particularly towards the end of their career. My own circumstances (simplified given the public nature of this process) are illustrative of the unfairness of the proposed rules.

- I purchased my home – a modest two bedroom, one bathroom unit in Sydney – in 1998 and lived in it continuously as my Main Residence between 1998 and 2014, a period of 16 years.

- In 2014, my husband (a non-resident foreign citizen) took a position with an international organisation in a third country and we agreed that we would live there for 10-15 years and then come back to Australia – and to the unit in Sydney – subject, of course, to him applying for and receiving permission to migrate, which we have no reason to expect would be denied.

- The unit in Sydney was my first home and I lived in it for longer than I have lived anywhere. It is my intended place of retirement. It has both sentimental value to me and value as my future home.

- When I left Australia, the law allowed me to rent the apartment for six years without losing my CGT exemption. Thereafter, if I continued to rent it, CGT would apply to the gain *from the time it was first rented* – without any discount. **The absence of any discount is already a sufficient 'penalty' for being a non-resident** and does not apply to those who take advantage of the six-year rule while living somewhere else in Australia. Alternatively, after the six years I could choose to leave the apartment vacant (hardly desirable from a financial perspective) or allow a family member to live in it (thus enabling, for example, nieces or nephews to save for their own homes).

- If the Bill is enacted in its current form, I will have no choice but to sell the apartment, even though that is not what I want to do. While the law in its current form does allow the right to the Main Residence exemption to be regained on returning the Australia, it is too great a legislative risk is to rely on that provision. A government that would retrospectively remove a citizen's right to be exempt from CGT on the increase in value of her Main Residence during the entire period of occupation as a Main Residence could easily decide to retrospectively remove the right to regain that treatment on returning. Moreover, there is no way of being sure that I will not die while absent. Accidents and illnesses can happen to anyone.

- In my case, the forced sale will come at a time when the market is already slowing and prices are falling, and when a major construction is happening next to my apartment, thus decreasing the likely sale price and increasing the sense of unfairness at being forced to sell.

- Since 2014, my apartment has been rented continuously to a good tenant who is happy to have somewhere to live. Forcing me to sell my apartment will not increase the availability of housing stock for renters, and given the location and size of my property, will not make space for a struggling family.

- It should not be forgotten that the CGT discount replaced the former indexation system. The capital gain on a Sydney apartment is partly due to the change in value of money over time and only partly a real 'gain'. What is more, for a person forced to sell her home, the CGT simply confiscates some of her property and reduces her capacity to re-enter the market on returning to Australia.

- Consider a property such as my apartment, which was bought for $375,000 in 1998. The Reserve Bank of Australia says that $375,000 of 1998 money was worth $589,960 in 2014 (based, of course, on the price of a basket of goods and services, not on property prices).[1] So if I am now to be taxed on the face value of the gain during my period of occupation between 1998 and 2014, well over $200,000 of the capital gain is purely attributable to inflation.

- Moreover, in fact the likely value of the apartment in 2014 was around $1,200,000. So if I sell the apartment for that amount after the new rules come into effect and

[1] https://www.rba.gov.au/calculator/annualDecimal.html

while I am a non-resident, I will first lose about $25-30,000 for real estate agents' fees and selling costs (presuming a 2% fee plus extra for advertising). If we presume that I can add $220,000 to the cost base for interest, improvements, and the selling costs, the total capital gain attributable to the period during which the unit was my main residence will be $605,000. **This would be taxable in full without any discount.** At my current marginal tax rate, about $90,000 would be taxed at 37% and the rest would be taxed at 45%. The total tax take would be around $265,000 or 44% of the face value of the gain.

- To be clear, this means that even though for all of the 16 years I lived in the apartment it was my Main Residence and was, in theory, generating a gain that I could expect would not be taxed, suddenly the proposed Bill will mean that the Australian government will take 44% of that gain. *How is this just?*

- Moreover, when I return to Australia in another 10 years or so, even supposing that a miracle has occurred and this bill has completely halted the rise in prices, so that a similar apartment would cost me only $1,200,000, I would have approximately $290,000 less with which to buy a replacement apartment ($265,000 paid in CGT and $25,000 selling costs). I would also have to factor in around $51,000 for stamp duty. If property values have increased, the shortfall will be even less.

- The result will be that I will have gone from being an Australian citizen retiring in her own home, to someone who needs to find an extra $340,000 (probably a lot more if property prices continue to rise) just to get back to where she would have been if the law had not changed.

- Where would this money come from? There is only one possible source: my superannuation. So apart from the unfairness of a policy that retrospectively punishes citizens by taxing their homes if they choose to live overseas for a while, the policy is also short-sighted because what is gained in tax will be lost in having, in all likelihood, to pay a pension or part-pension that I might not otherwise have needed.

I don't think that I am alone in being in these circumstances. There are other people who have made submissions to a similar effect, and submissions on the Exposure Draft Bill were also critical of this aspect.

In my view, the changes should not be applied to Australian citizens.

The proposed changes should only apply to non-resident, non-citizens. There is support for such an approach if you compare the proposed rules with the stamp duty surcharges of the Australian States. Of those I have researched, all exclude Australian citizens from the notion of a foreign person.[2] Furthermore, relevant New Zealand citizens should also be excluded, as they are from the operation of the foreign buyer surcharge in the States. [3]

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[2] For NSW stamp duty, Australian citizens and NZ citizens on sub-class 444 visas are not foreign persons (http://www.revenue.nsw.gov.au/taxes/spd); Similar rules apply in Victoria (https://www.sro.vic.gov.au/foreignpurchaser#Foreign) and Queensland (https://www.pwc.com.au/tax/taxtalk/assets/alerts/stamp-duty-surcharge-qld-15jun16.pdf). South Australia also excludes permanent residents from being foreign persons (https://www.revenuesa.sa.gov.au/taxes-and-duties/foreign-ownership-surcharge).

[3] New Zealanders who came to Australia before 2001, or who were in Australia on sub-class 444 visas while they lived in the home as a Main Residence, should be treated in the same way as Australian citizens.

The existing law – which precludes non-residents from claiming the CGT discount – is already a sufficient penalty. **Most non-resident citizens who are away for more than six years and renting out their former residences already have to pay CGT on the full, undiscounted gain from the time they started to rent out the residence**. There is no need for a further penalty, and the possible future negative impacts on their superannuation position should not be overlooked.

Thank you for taking this submission into account in your deliberations. I would request that you keep my personal details confidential when publishing this submission.

Best regards,

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