

## Senate Economics Legislation Committee

### ANSWERS TO QUESTIONS ON NOTICE

#### Treasury Portfolio

**Division/Agency:** Corporate and International Tax Division  
**Topic:** Treasury Laws Amendment (Foreign Resident Capital Gains Withholding Payments) Bill 2017  
**Reference:** Written  
**Senator:** Ketter, Chris

#### Question:

1. Can Treasury please reconcile the differences in revenue forecasts between what was announced in the Budget and what was outlined in the explanatory memorandum of the bill?
2. Which organisations and foreign governments has Treasury spoken to since Budget Day about this specific measure? Please provide names, date/s of meetings and the original purpose of the meeting/s.
3. Was it the original intent of the measure to include temporary tax residents who also meet the definition of an Australian tax resident in the scope of the measure?
4. If the original intent was not to include temporary tax residents who also meet the definition of an Australian tax resident, why were the revenue forecasts changed (Budget Paper 2, p. 27 vs Explanatory Memorandum, pg. 3)?

#### Answer:

1. The Bill introduces changes to expand the foreign resident capital gains tax (CGT) withholding regime by:
  - increasing the withholding rate from 10 per cent to 12.5 per cent; and
  - reducing the withholding threshold from \$2 million to \$750,000.

As explained on page 3 of the explanatory memorandum, the financial impact relates to this measure, together with associated capital gains tax changes for foreign investors that were announced as part of the 2017-18 Budget and will be included in a later Bill. These associated measures are outlined in paragraph 1.9 of the explanatory memorandum, being changes to the main residence exemption and the principal asset test.

As noted on page 3 of the explanatory memorandum, the revenue gain over the forward estimates was updated following the 2017-18 Budget announcement to reflect a minor policy change to the associated measure to ensure that Australian tax residents (including temporary tax residents that are also an Australian tax resident) can access the main residence exemption.

2. Since the Budget announcement, Treasury has liaised with a number of stakeholders with regard to the changes to the foreign resident CGT withholding regime, introduced by this Bill. In addition to answering queries from the public, Treasury has participated in discussions, including:
  - The Foreign Investment Reforms Working Group by teleconference on 12 May 2017 to answer questions on the changes to the withholding rate and threshold.

- Members of the working group include representatives from Treasury, the ATO, Chartered Accountants Australia New Zealand, Greenwoods, Deloitte, PricewaterhouseCoopers, King & Wood Mallesons, KPMG, CPA Australia, Property Council of Australia, Australian Bankers' Association, Australian Institute of Conveyancers, Real Estate Institute of Australia, Macquarie Bank, Australian Financial Markets Association, Ashurst, Holding Redlich, BDO Australia.
  - The ATO and Australian Institute of Conveyancers by teleconference on 17 May 2017.
3. This Bill introduces the measure to expand the foreign resident CGT withholding regime, which involves purchasers withholding an amount of the purchase price if they purchase property from a foreign tax resident. The withholding regime may extend to temporary tax residents in some cases by virtue of the existing law, but not as a result of this Bill.
- As outlined in the answer to question 1, a minor policy change was made to the 2017-18 Budget announcement, to ensure that Australian tax residents (including temporary tax residents that are also an Australian tax resident) can access the main residence exemption.
4. This is explained in the answer to question 1.