

Senate Economics and Legislation Committee
Canberra

Dear Chair,

Submissions on *Treasury Laws Amendment (Reducing Pressure on Housing Affordability Measures (No.2)) Bill 2018* [Non-resident exclusion from CGT 'main residence' exemption]

1. Thank you for taking submissions.
2. My submission is in regard to the measure, to prevent 'non-residents' claiming the 'main residence' exemption, from Australian capital gains tax (in Schedule 1, Part 1 of the Bill).
3. Can I direct you to the article I wrote, on this Bill, on my Trust's website: 'Tax Technical' (www.taxtechnical.com.au). The article can be found at:
<http://taxtechnical.com.au/treasury-laws-amendment-reducing-pressure-on-housing-affordability-measures-no-2-bill-2018-cgt-changes-excluding-non-residents-from-main-residence-exemption-avoiding-double-counting-for-div/>
4. My submissions to this Committee, is about the wisdom of denying non-residents, the entire exemption, rather than pro-rating the exemption, so that it is only available, for the portion of the ownership period, that the individual is resident.
5. My editorial comment, on this Part of the Bill, carries the gist of my submission to your committee. It is as set out below.
EDITORIAL COMMENT - The way these measures are drafted, has a 'reach back' effect, in the following sense.
 - o It does not allow the non-resident, to keep the exemption, for the portion, of the ownership period, that the taxpayer was a resident.
 - o Rather, a taxpayer loses the entire exemption, if they are non-resident at the time that they dispose of the dwelling.
 - o Thus, all 'expats' would have to sell their home, before returning home, and ceasing to be resident (otherwise the gain that would, otherwise, be free of Australian CGT, will become taxable).
 - o This will also impact Australians, who depart overseas, in circumstances where they become non-resident. They might want to keep their house as a place to return to. But, they might later decide to sell the house, when it became clear they would never return (or for any number of other reasons). This could be a massive loss of exemption, all because they didn't know whether to sell their house, or not, prior to going overseas. It seems massively unfair and intrudes into the flexibility of Australians, who can't be sure of their circumstances, when leaving for overseas (for what ever reason).
6. It may be relevant to the Committee to know my qualification to make this submission. I am a lawyer who has practiced in tax law for over 30 years (and for further details, see: www.FJMtax.com).

Kind regards,

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Nationally Accredited Mediator