

# GMS Flash Alert

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## Australia - Parliament Passes Legislation Denying Foreign Residents Main Residence CGT Exemption

On 5 December 2019, Australia's *Treasury Laws Amendment (Reducing Pressure on Housing Affordability Measures) Bill 2019* passed the Senate without amendment and is now awaiting Royal Assent before being enacted. This bill contains provisions that will remove the Capital Gains Tax (CGT) exemption relating to a main residence for foreign residents, unless the foreign resident satisfies certain transitional provisions, or the foreign resident has been a foreign resident for six years or less and a particular 'life event' occurs during that period of foreign residency.<sup>1</sup>

This bill replaces the previous *Treasury Laws Amendment (Reducing Pressure on Housing Affordability Measures No.2) Bill 2018* which lapsed at the end of Parliament in July 2019.

For a more in-depth discussion of the new provisions impacting access to the main residence CGT exemption, please see GMS [Flash Alert 2019-164](#), 25 October 2019.

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### WHY THIS MATTERS

The legislation is awaiting Royal Assent. Once enacted, it will re-introduce the controversial 2017-18 Australian Federal Budget measure to remove access to the CGT main residence exemption for individuals who are not resident for Australian tax purposes at the time of entering into the contract for sale of the property.

Despite intense lobbying by expat groups, the revamped legislation will still apply to Australian citizens or permanent residents who dispose of their Australian main residence while a foreign resident, e.g., while working overseas on secondment.

The new legislation will also apply to foreign nationals who buy a home in Australia to live in while working in the country, which they then sell after returning to their home country. Furthermore, it will impact Australians who

ordinarily live overseas and have their main residence overseas, but who come to reside in Australia for a temporary period.

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## Transitional Provisions and Foreign Residents

Revised transitional provisions will allow foreign residents to still access the CGT main residence exemption provided the CGT event occurs on or before 30 June 2020, and the ownership interest in the residence was held throughout the period starting just before 7:30pm (by legal time in the Australian Capital Territory) on 9 May 2017 and ending just before the CGT event occurs.

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### KPMG NOTE

Employers should communicate these changes to their employees who are undertaking an overseas secondment so that they can plan accordingly and not be caught out unnecessarily paying Australian CGT on their main residence. Planning might entail, depending on the individual's situation, deferring commencement of the secondment. Employers should also consider the impacts this legislation will have on their population of Australian-outbound employees who have already localised overseas, or may localise overseas at some point in the future, as they may not have the flexibility to resume Australian tax residency prior to selling their Australian main residence.

Employers of expatriate workers (both into and out of Australia) should examine how or whether their assignment policies would address this legislative change, and what the cost implications for the employer might be. Even where the assignment policy or tax equalisation policy makes it clear that any tax arising from the sale of a personal asset is for the employee's sole account, it would be worthwhile reminding employees of this and encourage them to seek their own professional advice.

Any expatriate employees who are currently foreign resident and considering selling their main residence should obtain specific taxation advice based on their personal facts and circumstances.

Those foreign residents who are no longer able to access the CGT main residence exemption will need to include any associated capital gain or loss from the sale of their main residence in their Australian tax returns, with consideration given to any CGT discount that may be available. This includes individuals who acquired a main residence that is within the scope of Australian CGT on or after 10 May 2017, and have since disposed of it while foreign residents. These individuals may need to request an amendment to a prior year's tax return to include the resulting capital gain or loss.

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### FOOTNOTE:

1 For the *Treasury Laws Amendment (Reducing Pressure on Housing Affordability Measures) Bill 2019*, click [here](#).

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