



# Tax and Superannuation for Australian Ex-Pats

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# Selling your Australian home, while you're overseas

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There are many people who have moved overseas and own their “main residence” who believe that their home is not subject to any taxes.

What I am about to tell you is that may not necessarily be the case!



Your 'main residence'  
(your home) is generally exempt  
from capital gains tax (CGT)



# *What is a 'main residence' for tax purposes?*

Generally, a dwelling is considered to be your main residence if:

- you and your family live in it
- your personal belongings are in it
- it's the address your mail is delivered to
- it's your address on the electoral roll, and
- services such as gas and power are connected



## Moving out of your main residence...

Currently, if you move out of your main residence, you can **choose** to have that home remain as your ‘main residence’ for tax purposes. Even if you rent it out! This is called the temporary absence exemption.

You can do this for:

- Up to 6 years if you rent it out (the “6 year rule”)
- Indefinitely if it is not rented out



# The six year rule

- The exemption from capital gains can apply for a period of up to six years from when your family home was first rented out
- The exemption from capital gains only applies where there is no other property nominated as your main residence during this period
- If you return to live in Australia before this six year period is up and take up residence again, then the six year rule can start again from the date it next becomes income producing



# Budget 2017-18

## Reducing Pressure on Housing Affordability

In every budget, there are winners and losers, but sadly Aussie expats and non-resident Australians living and working overseas were the clear losers in this budget!

For several years now we have witnessed the introduction of legislation targeted towards expats and foreign residents.

The 2017-18 budget continues that focus with further changes that will have a significantly negative impact on non-residents, particularly those who own a main residence back in Australia.



# *Removal of the main residence exemption for foreign residents*

- Stops foreign residents from claiming the exemption
- Applies from Budget night 9 May 2017
- Foreign residents that hold property on Budget night can continue to claim the exemption until 30 June 2019
- **The reform has still not been read or passed by parliament.**



## *Case Study: Jon Snow*

In July 2015, Jon & Dany, moved from their home in Sydney to Bangkok.

Since moving, they have rented out their property and continued to treat their Sydney home as their main residence.

On 4 September 2019 while remaining a non-resident, they exchange contracts to sell their Sydney home.

What would Jon & Dany's tax implications be under the current law and then under the proposed changes?



## *Current Law*

Currently, Jon & Dany could apply the absence rule for up to 6 years to treat the property as their main residence.

As the current law allows for foreign residents to apply the exemption, no tax will be payable on the sale.



## *Proposed Law*

As Jon & Dany were foreign residents at the time of the sale they are:

**NOT** entitled to the main residence exemption!

This means they will have to pay Capital Gains Tax (CGT) on their gain.

This outcome is not affected by:

- Previously using the dwelling as their main residence or;
- The absence rule



# *Proposed Law = A Significant Negative Impact for Australian Expats*

- Denies foreign residents access to the CGT main residence exemption from 9 May 2017.
- Existing properties held prior to this date will be grandfathered until 30 June 2019.
- No account will be taken of the 6 years rule unless the owner was a tax resident of Australia at the time of sale.
- There is no apportionment of the main residence exemption, either based on days of ownership over the whole period as an Australian resident or as a non-resident.
- The proposed CGT main residence exemption removal applies on an “all or nothing” basis.



# *Proposed Law = Tax Implications*

- Will there would still be some access to a pro rata of the main residence exemption?
- Will that part of the gain relating to the the non-resident period be subject to CGT? Will the 50% discount apply to any of the gain?
- In the extreme it could mean that an Australian expat who has been overseas for say five years, and rented out their main residence on the presumption that the “6 year rule would apply” would lose the entire CGT exemption if the sale was not effected prior to 30 June 2019.
- A more equitable approach would result in there being a deemed disposal and reacquisition of foreign owned properties on 1 July 2019 at market value.
- If foreign ownership of property is maintained after this date, market valuations would be required to exempt (to some extent) any gain accrued to this date. CGT would apply in relation to the capital gains accruing after that date.



# What to do next?

- It will even more important now for Australian expats to obtain tax advice before disposing of any assets.
- The **timing** of any sale in the future will be crucial as will an individual's tax residence or non-residence status.
- It is possible that some expats may be better placed selling properties with large capital gains prior to June 30, 2019 – particularly if they have little or no intention of returning to Australia, for example if they intended to retire overseas.
- Foreign residents may wish to keep detailed records of non-deductible costs associated with their main residence to help maximise their cost base for the calculation of their capital gain.
- For Australian residents considering taking up employment opportunities overseas, careful planning is required to ensure that the impact on tax residency is fully considered and understood.



# What are the investment benefits of becoming a non-resident?

## Resident tax rates 2017–18

Taxable income	Tax on this income
0 – \$18,200	Nil
\$18,201 – \$37,000	19c for each \$1 over \$18,200
\$37,001 – \$87,000	\$3,572 plus 32.5c for each \$1 over \$37,000
\$87,001 – \$180,000	\$19,822 plus 37c for each \$1 over \$87,000
\$180,001 and over	\$54,232 plus 45c for each \$1 over \$180,000

The above rates do not include the Medicare levy of 2%.

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## Foreign resident tax rates 2017–18

Taxable income	Tax on this income
0 – \$87,000	32.5c for each \$1
\$87,001 – \$180,000	\$28,275 plus 37c for each \$1 over \$87,000
\$180,001 and over	\$62,685 plus 45c for each \$1 over \$180,000

Foreign residents are not required to pay the Medicare levy.



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## Investment income

- Only pay tax on investment income that has source in Australia
- Withholding tax is final tax
- Deductions cannot offset withholding tax payable

### Source of income

### Australian tax

Franked dividends	Nil
Unfranked dividends	30% withholding
Royalties	30% withholding
Interest	10% withholding
Rental income	Assessable income

*If DTA with Australia these rates may be reduced*



## Capital gains tax

- Once individual stops being resident of Australia - no effect on investor's taxable Australian property (8 May 2012).
- For other assets, for example equities, potential deemed disposal.
- Choice available to investor:
  - Pay tax on gain accrued to that point
  - Not pay tax at this point but leave future accruing gain within Australian tax system
- Choice between paying sooner or paying more.



## Capital gains tax

- Should the client pay CGT at time become non-resident or defer gain?
  - **Consideration to time expected to be non-resident and market movement**
  - **Existing unrealised capital losses**
- Should client re-weight portfolio in favour of non-taxable Australian assets i.e. shares?



**What happens to my Australian super accounts when I move/work overseas?**

**Are there any benefits of maintaining or growing my Australian based investments, including superannuation?**



## Superannuation

- Eligibility to contribute same as that for residents
- Concessional Contributions \$25,000 pa
  - Use contributions to offset assessable income or capital gains
- Non-Concessional Contributions \$100,000 pa
- Employers generally able to claim tax deduction for contributions made to super

*Note: All employer contributions assessable to the fund regardless of whether employer is resident or non-resident.*



# Superannuation

Accessing super entitlements

Ordinary preservation rules apply

Taxation of super benefits

Same tax treatment for non-residents as for Australian residents, for example tax-free if over 60 (excluding TTR pensions - following the May 2017 budget)

\* Need to check DTA and individual obtain specialist tax advice for treatment in home country



## Taxation of income stream

- Australian super income stream paid to non-resident taxed at either non-resident rates or in accordance with DTA with relevant country
- Subject to DTA non-residents may be able to receive income stream from Australia:
  - Income tax free where over 60 or pension contains tax free component
  - 15% pension tax offset where between preservation age and 59

**Remember – pension earnings will also be tax free**



# Issues and considerations

Even where no intention of returning or ever living in Australia is it worthwhile commencing or continuing income stream?

- In most instances will result in no tax being payable for recipient where aged 60 or over

Is Australia the new tax haven for seniors around the world?



# When planning to return to Australia what do I need to do?

# Issues and considerations

Should assets be realised prior to returning to Australia and becoming a resident again?

- Less assessable income in Australia may result in less CGT on sale of taxable Australian property
- No CGT payable on realisation of non-taxable assets where CGT paid when become non-resident or acquired while non-resident



But wait...

There's more bad news!



# Travel expenses – No longer deductible!

From 1 July 2017:

- Travel expenditure incurred in relation to residential rental properties will no longer be deductible.
- What has brought about this change? – It's an integrity issue.
- What are the types of travel expenses included?
- What are the types of travel that the legislation is designed to catch?
- Does not prevent investors from engaging third parties.
- The new measures do not apply to excluded entities.



# What is an excluded entity?

An excluded entity is a:

- corporate tax entity
- superannuation plan that is not a self-managed superannuation fund
- public unit trust
- managed investment trust
- unit trust or a partnership, all of the members of which are entities of a type listed above



# Case Study

Barney who lives in Bangkok owns a residential property in Sydney which he currently rents out. During the 2018 financial year Barney was required to travel to the property to repair damages caused by his tenants. He incurred travel costs for airfares, accommodation and meals during his stay in Sydney.

As the investment is a residential property and the expense was incurred after 30 June 2017, Barney therefore cannot claim the travel expense.

What this means for expats is that airfares and other costs to travel back to Australia to inspect their properties will no longer be available from 1<sup>st</sup> July 2017.



# Other issues impacting foreign residents

- Many expats who retain properties in Australia will be impacted by the expansion of the foreign resident capital gain withholding tax regime (“FRCGW”)
- So what is this regime all about?



# Foreign Resident CGT Withholding Tax (FRCGW)

- From 1 July 2017 there has been a change to both the withholding rate and the withholding threshold that apply on the sale of Australian Property.
- So when does it apply?
- When does it not apply?
- What is a clearance certificate?
- What is a variation certificate?
- What are the situations where a variation certificate may be available?

# When does a non-resident need to lodge an Australian Tax Return?

Generally speaking, you will only be taxed on your Australian-sourced income and will only need to complete a tax return if you earn the following types of income:

- Income from Australian employment (where those activities are carried out in Australia)
- Income from rent on Australian property
- Capital gains on taxable Australian property
- Pensions or annuities from Australia, unless you are eligible for an exemption under a tax treaty
  
- Interest income (that has not had non-resident withholding tax deducted)
- Unfranked dividends (that has not had non-resident withholding tax deducted)
- Royalties (that has not had non-resident withholding tax deducted)

Just to clarify, Australian-sourced income streams on which tax has already been withheld, such as interest, dividends or royalties, will not require the completion of a tax return.

# Warning – Notify the ATO if Return Not Necessary

- If you don't generate any income sourced from Australia, then as a non-resident, your tax agent can lodge a "Return Not Necessary" on your behalf. This will notify the ATO that you have not generated any income upon which Australian income tax is payable and by doing so, you will satisfy your lodgement obligations for that financial year.
- It's easy to assume that you do not need to do anything whilst you're living and working overseas as an expat however nothing could be further from the truth!
- Since you have a tax file number, if you do nothing, the ATO will by default, expect you to lodge a tax return, and failure to do so can result in late lodgement penalties of up to \$900 per return, so it's a good idea to keep up to date!



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