

19 May 2020



The Hon Josh Frydenberg MP

The Treasurer

Parliament House

Canberra ACT 2600

AUSTRALIA

Dear Treasurer

Re: Financial Relief Assistance to Australians Living and Working in ASEAN

We write on behalf of Australian individuals and companies who live and work outside of Australia, and in particular, in the ASEAN region.

COVID-19 is having a critical social and economic impact across the world. We appreciate the relief and stimulus packages that have been offered domestically to business and individuals in Australia, and write to inform you of several issues being faced by the Australian expatriate community throughout ASEAN.

We would like to highlight the following items and ask for your consideration, in light of the impact of the COVID-19 pandemic on Australians who have been living and working abroad:

1. The Treasury Laws Amendment (Reducing Pressure on Housing Affordability Measures No. 2) Bill 2019

As you are aware this Act removes the main residence exemption for foreign residents (which includes Australians) for tax purposes. It requires non-resident Australians to sell their family home (removing the main residence exemption) prior to 30 June 2020 or be liable to pay Capital Gains Tax from the date of purchase of the home should they subsequently sell the property while living overseas.

On 24 March 2020 Prime Minister Morrison announced that real estate auctions and open house inspections would be restricted. Furthermore, the government-imposed quarantine requirements of 14 days for all Australian citizens returning to Australia has stopped sellers from being able to meet with real estate agents and prepare their property for the sale process.

Potential buyers have been unable to inspect properties due to travel and social distancing restrictions.

The original legislative intent of reducing pressure on affordable housing is not as relevant in a COVID-19 state and an additional burden is placed on those attempting to sell their houses during a time of recession and for many to be able to satisfactorily meet this deadline is not going to be possible. For many Australians working overseas their house in Australia has been part of their superannuation for the future.

Further to this we consider that this legislation is punitive as it imposes a retroactive tax on those who undertook the purchase of a house before being assigned to work outside of Australia.

Requests:

- Please consider the financial burden on Australians living overseas in selling their houses to meet the prescribed date during this economic recession and times of enforced social distancing measures and extend the 30 June 2020 date to 30 June 2021.
- Please consider the grandfathering arrangements in this legislation and the removal of a benefit by imposing retroactive taxes if the home is not sold by 30 June 2020.

2. Australian Tax Office: Tax residency for tax purposes

The COVID-19 pandemic has also had implications for non-Australian residents temporarily in Australia who may be forced to stay longer than they originally intended as a result of the pandemic.

On 23 April 2020 the ATO website was updated to state that tax residency for tax purposes could change as a result of a foreign resident returning to Australia due to COVID-19. The ATO accepts that working in Australia for less than three months will not result in the individual being assessed for Australian tax. The three months may potentially be extended further under a double taxation agreement depending on the country where the individual ordinarily resides.

The ATO website further states that if a resident returns temporarily for “some weeks or months because of COVID-19”, then they will not become an Australian resident for tax purposes as long as they usually live overseas permanently and intend to return there as soon as you are able to. We are concerned about the tax residency implications if that person ends up staying in Australia for a longer duration due to the pandemic and is not able to return to their country of residency for an unspecified period.

Request: We would like to request further details on the tax residency situation where the person remains in Australia beyond the 3 month threshold and any tax relief that can be provided to those Australians who were living overseas who have been encouraged by the Australian Government to return to Australia as a result of the COVID-19 pandemic.

3. Superannuation obligations

The ATO guidance is currently silent on whether superannuation payments would need to be paid on behalf of Australian foreign residents for the first 3 months after their return to Australia. Where that foreign resident remains in Australia beyond the three-month threshold the ATO has currently indicated that an Australian employer may have STP reporting, PAYGW, Fringe Benefits Tax and superannuation guarantee obligations.

Request: Please clarify the three-month time frame, and any updates on requirements for employers to pay these obligations if the three-month time frame is exceeded.

We note the critical importance that Australian expatriates play overseas. This considerably assists the Australian government in its relationships across the region. Across ASEAN Australian business- people provide considerable assistance and input to the relevant Australian Embassy/High Commission on not just business and trade, but a range of other issues. The Australian government has, for many years, encouraged Australians to work overseas, to be able to understand how business is done and to cultivate long standing relationships that benefit Australia now and into the future.

We believe that COVID-19 has created "a special set of circumstances" for Australian expatriates living and working overseas and we urge that the above and any other relief measures be considered.

Please do consider the above and contact us further with further queries.

Yours sincerely



Chau Ta
President of AustCham ASEAN

Cc: Minister for Trade, Tourism and Investment, Sen. Hon Simon Birmingham
Minister for Finance, Sen. Hon Mathias Cormann
Minister for Foreign Affairs, Sen. Hon Marise Payne

This letter is supported by the following Australian Chambers and Business Councils throughout ASEAN:

