





# **Treasury Laws Amendment (Reducing Pressure on Housing Affordability Measures) Act 2019**

**No. 129, 2019**

**An Act to amend the law relating to taxation and foreign acquisitions and takeovers, and for related purposes**

Note: An electronic version of this Act is available on the Federal Register of Legislation (<https://www.legislation.gov.au/>)



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**No. 129, 2019**

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**An Act to amend the law relating to taxation and foreign acquisitions and takeovers, and for related purposes**

*[Assented to 12 December 2019]*

The Parliament of Australia enacts:

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*No. 129, 2019*

*Treasury Laws Amendment (Reducing Pressure on Housing Affordability Measures) Act 2019*

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## 1 Short title

This Act is the *Treasury Laws Amendment (Reducing Pressure on Housing Affordability Measures) Act 2019*.

## 2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

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| <b>Commencement information</b>   |  |                     |
|---|--|---------------------|
| <b>Column 1</b>   | <b>Column 2</b>  | <b>Column 3</b>     |
| <b>Provisions</b>   | <b>Commencement</b>  | <b>Date/Details</b> |
| 1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table | The day this Act receives the Royal Assent.  | 12 December 2019    |
| 2. Schedules 1 and 2  | The first 1 January, 1 April, 1 July or 1 October to occur after the day this Act receives the Royal Assent. | 1 January 2020      |
| 3. Schedule 3   | The day after this Act receives the Royal Assent.  | 13 December 2019    |

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Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

## 3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## **Schedule 1—Capital gains tax changes for foreign residents**

### **Part 1—Main residence exemption**

#### *Income Tax Assessment Act 1997*

##### **1 Section 118-100**

After “this exemption”, insert “may not apply if you are a foreign resident, and”.

##### **2 At the end of section 118-105**

Add:

Note: The exemption may not be available for the main residence of a foreign resident.

##### **3 Paragraph 118-110(2)(a)**

Omit “I1, I2,”.

##### **4 At the end of section 118-110**

Add:

- (3) However, this section does not apply if, at the time the \*CGT event happens, you:
  - (a) are an \*excluded foreign resident; or
  - (b) are a foreign resident who does not satisfy the \*life events test.
- (4) You are an *excluded foreign resident*, at a particular time, if:
  - (a) you are a foreign resident at that time; and
  - (b) the continuous period ending at that time for which you have been a foreign resident is more than 6 years.
- (5) You satisfy the *life events test*, at the time a \*CGT event happens, if:
  - (a) the continuous period ending at that time for which you have been a foreign resident is 6 years or less; and

(b) you are covered by any of the following subparagraphs:

- (i) you or your \*spouse has had a \*terminal medical condition that existed at any time during that period of foreign residency;
- (ii) your \*child has had a terminal medical condition that existed at any time during that period of foreign residency, and that child was under 18 years of age at at least one such time;
- (iii) your spouse, or your child who was under 18 years of age at death, has died during that period of foreign residency;
- (iv) the CGT event happens because of a matter referred to in a paragraph of subsection 126-5(1) involving you and your spouse (or former spouse).

**5 Subsection 118-145(4) (example)**

Omit “(again renting it out), at the end of which you sell the house.”, substitute “(again renting it out). You then move back into it for 3 years, after which you sell the house.”.

**6 At the end of section 118-155**

Add:

- (5) However, this section does not apply if, just before the individual’s death, the individual was an \*excluded foreign resident.

**7 Subsection 118-170(4) (example)**

Omit “You and your spouse own”, substitute “You and your spouse (who are Australian residents) own”.

**8 Subsection 118-178(2) (at the end of example 1)**

Add “if, at the time the dwelling is sold, Susan is an Australian resident”.

**9 Subsection 118-178(2) (at the end of example 2)**

Add “if, at the time the dwelling is sold, David is an Australian resident”.

## **10 Subsection 118-185(2) (example)**

Omit “You bought a house in July 1990 and moved in immediately. In July 1993, you moved out and began to rent it. You sold it in July 2000, making (apart from this Subdivision) a capital gain of \$10,000.”, substitute “You bought a house in July 2020 and moved in immediately. In July 2023, you moved out and began to rent it. You sold it in July 2030, making (apart from this Subdivision) a capital gain of \$10,000. At the time you sold the house, you were an Australian resident.”.

## **11 At the end of section 118-185**

Add:

- (3) However, this section does not apply if, at the time the \*CGT event happens, you:
- (a) are an \*excluded foreign resident; or
  - (b) are a foreign resident who does not satisfy the \*life events test.

## **12 After paragraph 118-195(1)(b)**

Insert:

- ; and (c) the deceased was not an \*excluded foreign resident just before the deceased’s death.

## **13 After subsection 118-195(1)**

Insert:

- (1A) For the purposes of a provision of this Subdivision that applies the table in subsection (1):
- (a) disregard paragraphs (a) and (b) in column 3 of item 2 of the table if, just before the deceased’s death, the deceased was an \*excluded foreign resident; and
  - (b) disregard paragraph (c) in column 3 of item 2 of the table if, at the time the relevant \*CGT event happened, the individual was an excluded foreign resident.

Note: The other provisions that apply the table include paragraph 118-192(3)(b), subsection 118-200(2), paragraph 118-225(3)(c) and section 118-260.

**14 Paragraph 118-195(2)(a)**

Omit “I1, I2,”.

**15 Subsection 118-200(2) (after paragraph (a) of the definition of *non-main residence days*)**

Insert:

- (aa) if the deceased acquired the ownership interest *on or after* 20 September 1985 and, just before the deceased’s death, the deceased was an \*excluded foreign resident—the number of remaining days in the deceased’s ownership period; and

**16 After paragraph 118-200(3)(c)**

Insert:

- ; and (d) the deceased was not an \*excluded foreign resident just before the deceased’s death.

**17 At the end of subsection 118-200(4)**

Add:

- ; and (c) the deceased was not an \*excluded foreign resident just before the deceased’s death.

**18 At the end of section 118-205**

Add:

- (4) Add to the component *non-main residence days* in the formula the number of days in the period applicable under subsection (2) that the \*dwelling was the main residence of an individual who:
- (a) owned the dwelling; and
  - (b) was an \*excluded foreign resident;
- just before the individual’s death.

**19 Paragraph 118-210(5)(a)**

Omit “I1, I2,”.

**20 At the end of section 118-210**

Add:

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- (6) However, this section does not apply if, just before the deceased's death, the deceased was an \*excluded foreign resident.

**21 Section 118-215 (note)**

Omit "Note", substitute "Note 1".

**22 At the end of section 118-215**

Add:

Note 2: The exemptions may not apply if the principal beneficiary of the trust is a foreign resident.

**23 At the end of subsection 118-218(1)**

Add:

Note: This section may not apply if the principal beneficiary of the trust is a foreign resident (see subsection (5)).

**24 At the end of section 118-218**

Add:

- (5) Despite subsection (1), this section does not apply if, at the time the \*CGT event happens, the \*principal beneficiary of the trust:
- (a) is an \*excluded foreign resident; or
  - (b) is a foreign resident who does not satisfy the \*life events test.

**25 At the end of section 118-225**

Add:

- (5) However, subsection (2) does not apply if, just before the deceased's death, the deceased was an \*excluded foreign resident.

**26 After paragraph 118-227(1)(c)**

Insert:

and (ca) the deceased was not an \*excluded foreign resident just before the deceased's death;

**27 Section 118-240 (note)**

Omit "Note", substitute "Note 1".

**28 At the end of section 118-240**

Add:

Note 2: The exemption may not apply at all if you are a foreign resident.

**29 At the end of section 118-245**

Add:

*No exemption if you are an excluded foreign resident*

- (3) However, this section does not apply if, at the time the \*CGT event happens, you:
- (a) are an \*excluded foreign resident; or
  - (b) are a foreign resident who does not satisfy the \*life events test.

**30 Subsection 128-15(4) (cell at table item 3, column headed “For this kind of CGT asset:”)**

Repeal the cell, substitute:

A \*dwelling that was your main residence just before you died if:

- (a) the dwelling was not then being used for the \*purpose of producing assessable income; and
- (b) you were not then an \*excluded foreign resident

**31 Subsection 995-1(1)**

Insert:

*excluded foreign resident* has the meaning given by subsection 118-110(4).

*life events test* has the meaning given by subsection 118-110(5).

## ***Income Tax (Transitional Provisions) Act 1997***

### **32 Before section 118-195**

Insert:

#### **118-110 Foreign residents**

- (1) None of the amendments made by Part 1 of Schedule 1 to the *Treasury Laws Amendment (Reducing Pressure on Housing Affordability Measures) Act 2019* apply in relation to a capital gain or capital loss you make from a CGT event if:
  - (a) the CGT event happens on or before 30 June 2020; and
  - (b) you held an ownership interest in the dwelling to which the CGT event relates throughout the period:
    - (i) starting just before 7.30 pm, by legal time in the Australian Capital Territory, on 9 May 2017; and
    - (ii) ending just before the CGT event happens.
- (2) For the purposes of paragraph (1)(b), treat the ownership interest in the dwelling as having been held by you during a time during which the interest was held by:
  - (a) in relation to sections 118-195 to 118-210 of the *Income Tax Assessment Act 1997*—the deceased or the trustee of the deceased estate; or
  - (b) in relation to sections 118-215 to 118-230 of that Act—the trustee of the special disability trust.

### **33 Application of amendments**

The amendments made by this Part apply in relation to CGT events happening at or after 7.30 pm, by legal time in the Australian Capital Territory, on 9 May 2017.

## Part 2—Principal asset test

### *Income Tax Assessment Act 1997*

#### **34 Subsection 855-30(4) (table item 1)**

Repeal the item, substitute:

- |   |   |      |   |
|---|---|------|---|
| 1 | the sum of the *total participation interests held by the holding entity and its *associates in the other entity is less than 10% | zero | the *market value of the *membership interest mentioned in subsection (3) |
|---|---|------|---|

#### **35 After subsection 855-30(4)**

Insert:

- (4A) For the purposes of working out the \*total participation interests held by the holding entity and its \*associates under item 1 of the table in subsection (4), take into account:
- (a) a particular \*direct participation interest; or
  - (b) a particular \*indirect participation interest;
- held in the other entity only once if it would otherwise be counted more than once because the entity holding it is an associate of the holding entity.

#### **36 Application of amendments**

The amendments made by this Part apply in relation to CGT events happening at or after 7.30 pm, by legal time in the Australian Capital Territory, on 9 May 2017.

## **Schedule 2—Additional capital gains discount for affordable housing**

### *Income Tax Assessment Act 1997*

#### **1 At the end of section 115-100**

Add:

- ; or (e) the percentage resulting from section 115-125 if that section applies to the gain.

#### **2 At the end of Subdivision 115-B**

Add:

#### **115-125 Investors disposing of property used for affordable housing**

##### *Object*

- (1) The object of this section is to increase the discount percentage to the extent that the \*discount capital gain relates to a \*dwelling used to \*provide affordable housing.

##### *When this section applies*

- (2) This section applies to a \*discount capital gain if:
  - (a) you are an individual; and
  - (b) either:
    - (i) you make the discount capital gain from a \*CGT event happening in relation to a \*CGT asset that is your \*ownership interest in a \*dwelling; or
    - (ii) because of section 115-215, Division 102 applies to you as if you had made the discount capital gain for a \*capital gain of a trust covered by subsection (3); and
  - (c) where subparagraph (b)(ii) applies—the trust’s capital gain was made directly, or indirectly through one or more entities that are all covered by subsection (3), from a CGT event happening in relation to a CGT asset that is an ownership interest in a dwelling; and

- (d) the dwelling was used to \*provide affordable housing on at least 1095 days:
- (i) before the CGT event; and
  - (ii) during your, or the relevant trustee's or partner's, \*ownership period of that dwelling; and
  - (iii) on or after 1 January 2018.

The days mentioned in paragraph (d) need not be consecutive.

Note: 1095 days is the same as 3 years.

- (3) This subsection covers the following:
- (a) a trust, other than a \*superannuation fund or a public unit trust (within the meaning of section 102P of the *Income Tax Assessment Act 1936*);
  - (b) a \*managed investment trust;
  - (c) a partnership.

*Discount percentage*

- (4) The percentage resulting from this section is the sum of:
- (a) the \*discount percentage that would apply to the \*discount capital gain apart from this section; and
  - (b) the result (expressed as a percentage) of subsection (5).
- (5) Work out the following:

$$\frac{\text{*Discount percentage that would apply to the *discount capital gain apart from this section}}{5} \times \frac{\text{Affordable housing days}}{\text{Total ownership days}}$$

where:

***affordable housing days*** means the number of days during that \*ownership period (see paragraph (2)(d)) of the \*dwelling, and on or after 1 January 2018, on which:

- (a) the dwelling was used to \*provide affordable housing; and
- (b) you were neither a foreign resident nor a \*temporary resident.

***total ownership days*** means the number of days during that \*ownership period (see paragraph (2)(d)) of the \*dwelling, less the number of days after 8 May 2012 during that ownership period that you were a foreign resident or a \*temporary resident.

### **3 Application of amendments**

Section 115-125 of the *Income Tax Assessment Act 1997* (as added by this Schedule) applies in relation to CGT events happening on or after 1 January 2018.

## Schedule 3—Near-new dwelling interests

### Part 1—Amendments

#### *Foreign Acquisitions and Takeovers Act 1975*

##### 1 Section 4

Insert:

*near-new dwelling acquisition* has the meaning given by subsection 113(4A).

*near-new dwelling interest* has the same meaning as in regulations made for the purposes of section 63 (exemption certificates provided for by the regulations).

*residential land (near-new dwelling interests) certificate* has the same meaning as in regulations made for the purposes of section 63 (exemption certificates provided for by the regulations).

##### 2 Subsection 113(1) (cell at table item 1, column 2)

Repeal the cell, substitute:

- (a) when the application is made; and
- (b) for a person who is given an exemption certificate under section 57 or a residential land (near-new dwelling interests) certificate—at the end of each 6 month period covered by subsection (2) or (2A).

##### 3 Subsection 113(2) (heading)

Repeal the heading, substitute:

*6 monthly fees for developers*

##### 4 Subsection 113(2)

After “section 57”, insert “(the *section 57 certificate*)”.

**5 After subsection 113(2)**

Insert:

- (2A) A person (the *developer*) who is given a residential land (near-new dwelling interests) certificate must pay a fee for a 6 month period if there were one or more near-new dwelling acquisitions covered by the certificate during the period.

**6 Paragraph 113(3)(a)**

Omit “certificate”, substitute “section 57 certificate or the residential land (near-new dwelling interests) certificate (whichever is applicable)”.

**7 Paragraph 113(3)(b)**

Omit “each”, substitute “any”.

**8 Subsection 113(4)**

Omit “the exemption certificate”, substitute “the section 57 certificate”.

**9 After subsection 113(4)**

Insert:

- (4A) A *near-new dwelling acquisition* is an acquisition by a foreign person of a near-new dwelling interest that is covered by the residential land (near-new dwelling interests) certificate given to the developer.

**10 Paragraph 115C(3)(b)**

Omit “(within the meaning of the *Foreign Acquisitions and Takeovers Regulation 2015*)”.

## Part 2—Application and transitional provisions

### 11 Application of amendments—general

Subject to item 12 of this Schedule, the amendments of the *Foreign Acquisitions and Takeovers Act 1975* made by Part 1 of this Schedule apply in relation to a near-new dwelling acquisition occurring on or after 1 July 2017.

Note: For the meaning of *near-new dwelling acquisition*, see subsection 113(4A) of the *Foreign Acquisitions and Takeovers Act 1975*, as amended by Part 1 of this Schedule.

### 12 Transitional—certificate given before commencement

- (1) This item applies in relation to a near-new dwelling acquisition if the acquisition:
  - (a) occurred on or after 1 July 2017; and
  - (b) is covered by a residential land (near-new dwelling interests) certificate that was given to a person (the *developer*) before the day this item commenced.
- (2) The *transitional fee period* is the period:
  - (a) starting immediately after the developer was given the certificate; and
  - (b) ending at the end of the first reporting period that ends after 30 days following the day this item commenced.
- (3) A *reporting period* is a 6 month period for the developer, within the meaning of subsection 113(3) of the *Foreign Acquisitions and Takeovers Act 1975*, as amended by Part 1 of this Schedule.
- (4) Paragraph (b) of item 1 of the table in subsection 113(1) of the *Foreign Acquisitions and Takeovers Act 1975*, as amended by Part 1 of this Schedule, has effect as if the paragraph required the developer to pay a fee in relation to the certificate at the end of the transitional fee period.
- (5) Subsection 113(2A) of the *Foreign Acquisitions and Takeovers Act 1975*, as amended by Part 1 of this Schedule, has effect as if the reference in that subsection to a 6 month period were a reference to the transitional fee period or any subsequent 6 month period (disregarding the definition of *6 month period* in subsection 113(3) of that Act).

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*[Minister's second reading speech made in—  
House of Representatives on 23 October 2019  
Senate on 27 November 2019]*

(209/19)

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*No. 129, 2019*

*Treasury Laws Amendment (Reducing Pressure on Housing  
Affordability Measures) Act 2019*

*17*