



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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[Assented to 12 December 2019]

The Parliament of Australia enacts:

No. 129, 2019

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

1

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.

| Commencement information | | |
|---|--|---------------------|
| Column 1 | Column 2 | Column 3 |
| Provisions | Commencement | Date/Details |
| 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 |

Note: This table relates only to the provisions of this Act as originally enacted.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Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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:

- (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).

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

(209/19)

No. 129, 2019

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

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