

Expats' Aussie Home Tax Free Status Remains At Risk

Q *How will the new capital gains tax changes happening in June 2019 affect property owners financially?*

A Since the May 2017 Australian Federal Budget, Australian Expats have been living under a cloud of fear that they may become taxable on their former Australian residence.

In short, the proposals only affect anyone that actually lived in their Australian property prior to relocation overseas. If you only ever rented your property then no changes are occurring.

For those that did live in the property at any stage, the current law allows a tax free entitlement for the period actually lived in the property, plus a potential further 6 years tax free whilst rented, and then calculated the taxable amount on a pro-rata basis with any other proportionate period when the property was rented being taxable.

The changes propose to make the full period of occupation taxable regardless of how long or short that may be, IF the property is sold whilst the owner is living out of Australia.

For example, if you lived in the property for 20 years in Australia then moved overseas and sold the property after leaving Australia, the entire gain on the property would be taxable, totally ignoring the many years of occupation and penalising you even if you have just been abroad for 6 months!

The proposed changes don't apply if the property is sold prior to 30th June 2019 or if the property is sold once you have returned to Australia and living there as a tax resident (but not necessarily in the same property).

SMATS has been at the front line pressing Prime Minister Scott Morrison, who was the Treasurer at the time of the announcement, through submissions and representations in collaboration with Austcham HK. We have asked that the rules not be changed as the current law is adequate to capture investment related profits and the removal of a family home tax free status for simply living abroad is extremely harsh and unjust.

This has seen a delay in the passing of the legislation with the removal of the Bill from the Senate floor late in 2018. This was done largely on the fact there was great unfairness in removing a long time entitlement being lost and the risk of a forced sale through unforeseen circumstances, such as death, divorce or financial trauma, triggering an unwanted and unplanned tax burden.

Since then, the Opposition Shadow Treasurer has formally come out to support our requested change to exclude Australian Citizens and Permanent Residence Visa Holders.

The stalling of the legislation and Opposition support to our requests is extremely encouraging, however while the Government remains in review process and the looming election in May 2019 approaches, there is great difficulty for anyone considering selling their previous property to ensure that keep the tax free status if sold prior to 30th June 2019.

Some things to consider include:

- Don't sell if you never lived in the property, as the changes don't affect you.
- Don't sell if you genuinely consider that you wouldn't sell the property until at least you have returned to live in Australia as you would not be disadvantaged.
- If you lived in the property for extended periods of times prior to moving abroad, then selling prior to 30th June 2019 is a real option for you if it was likely that:
 - o You were going to sell the property sometime soon while still living overseas,
 - o You think the law may pass
- Another option if you think that you want to keep the property long term as an investment but may want to sell it while still abroad, is to transfer the property to a Family Trust. This realises the tax free gains, retains the property in a tax effective vehicle and potentially frees up the equity for your next family home if you intend to upgrade. There is a stamp duty cost of approximately 5%, however that may be more cost effective than large Capital Gains Tax charge.

You need to carefully consider your options and try and predict your future intentions as best as possible.

Steve Douglas is the co-founder and Managing Director of Australasian Taxation Services (ATS), established in Singapore in 1995. ATS provides specialist taxation services to people of any nationality investing in Australian property, as well as Australian expatriates living overseas. Areas of specialisation include the Australian taxation aspects of property investment, as well as expatriate and migration planning.

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