

Senate Economics Legislation Committee
ANSWERS TO QUESTIONS ON NOTICE
Treasury Portfolio

Inquiry into the Treasury Laws Amendment (Reducing Pressure on Housing Affordability Measures
(No.2)) Bill 2018 and Foreign Acquisitions and Takeovers Bill 2018
2017 - 2018

Division/Agency: Corporate and International Tax Division
Topic: Capital Gains Tax changes for Foreign Residents
Reference: Written

Question:

Can Treasury please explain whether the Capital Gains tax changes for foreign residents in the bill “Treasury Laws Amendment (Reducing Pressure on Housing Affordability No. 2) Bill 2018” will impact temporary tax residents that are also an Australian tax resident? If yes, what will the impacts be for this particular cohort?

a. Specifically, would New Zealand citizens resident in Australia be impacted?

Answer:

No. The changes to deny foreign residents access to the main residence capital gains tax exemption, contained in the Treasury Laws Amendment (Reducing Pressure on Housing Affordability No. 2) Bill 2018, will not affect temporary tax residents who meet the definition of Australian tax resident at the time they sell their main residence.

As such, New Zealand citizens that meet the definition of Australian tax resident when they sell their main residence will not be affected by the change.

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Division/Agency: Individuals and Indirect Tax Division
Topic: Capital Gains Tax Discount for Investments in Affordable Housing
Reference: Written

Question:

Regarding the additional ten percentage point capital gains tax discount for investments in affordable housing:

- a. Can Treasury explain how this ten percentage point CGT discount will provide sufficient subsidy for investments in affordable housing when the alternative use for the land could be usual private development?
- b. What level of new affordable housing supply is estimated to be created in each year over the forward estimates due to this measure?
- c. What analysis has Treasury carried out to determine the level of crowd out from this measure? That this subsidy could provide a discount for affordable housing activities that would have occurred regardless of the existence of this subsidy?

Answer:

- a. Resident individuals who elect to invest in qualifying affordable housing will receive an additional 10 percentage point discount on the associated capital gain of the dwelling. The value of this incentive will depend on individual circumstances, including the nominal capital gain on their investment and their marginal tax rate.
- b. This measure aims to create the right incentives to encourage private investment in affordable rental housing. The value of this incentive and subsequent take up of this measure will depend on individual circumstances, including the nominal capital gain on an individual's investment and marginal tax rate.
- c. The additional capital gains tax discount is one element of the Government's broader housing affordability plan which, overall, is intended to reduce pressure on housing affordability for Australians.

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2017 - 2018

Division/Agency: Corporate and International tax Division
Topic: Managed Investment Trusts
Reference: Written

Question:

Is it still the Government's position to not allow managed investment trusts to invest in build to rent schemes outside of defined affordable housing?

- a. Under what conditions are MITs allowed to invest in affordable housing?
- b. Are these conditions the same as those set out in these bills?
- c. Has Treasury been commenced any work about allowing MITs to invest in housing that is not related to affordable housing? If so, please provide details such as the date that work commenced, expected completion date and guiding instructions.

Answer:

Yes.

- a. MITs must hold affordable housing for the purpose of deriving long-term rent. If the MIT generates any other income, the income must be from eligible investment business. Should a MIT hold these affordable housing assets for less than 10 years, foreign investors will be subject to a 30 per cent final withholding rate on the proceeds of any capital gains from disposing of these assets.
- b. Yes. The conditions in relation to what constitutes affordable housing specified in Schedule 3 to the Treasury Laws Amendment (Reducing Pressure on Housing Affordability Measures (No.2)) Bill 2018 will be the same for the purposes of investing in affordable housing through MITs. However, the holding period rule for the additional CGT discount is 3 years, whereas MITs would need to hold the asset for at least 10 years for foreign investors to get a concessional withholding tax rate. Additional conditions that MITs would need to comply with are included in the response above.
- c. Treasury has provided advice on a range of issues in relation to MITs. Treasury does not discuss the nature of the advice it provides to the Government.