Senate Standing Committees on Economics
PO Box 6100
Parliament House
Canberra ACT 2600

[redacted]

27th February 2017

Dear Senators

I am writing a submission in regards to the Treasury Laws Amendment Housing Affordability Measures (2) Bill 2018 and in relation to Part 1 of the Bill which relates to Capital gains tax changes for foreign residents.

I previously made a submission to the public consultation process that was conducted in August 2017 when the bill was drafted. The basis of my submission today includes a considerable portion of what I submitted in August primarily because the draft and final bill have not altered significantly so my comments and concerns remain relevant.

I am an Australian born citizen who in May 2017 became an overseas resident by commencing a new role in New Zealand that at this point in time is considered permanent. I took on my new role in New Zealand to further my skill base – I work in Supply Chain Management – which is a skill shortage occupation in both Australia and New Zealand. The company I work for is a NZX Listed company and I cannot perform my role in Australia.

I made the decision to move based on the fact I could keep my house in Australia as a viable investment. Whilst I have no immediate plans or a timeline to return to Australia I do have parents in their early 70's who should they need care in the future then I intend to return to Australia to assist in providing that care.

As there could be a potential need to return to Australia I find in the present market it would be foolish to sell my Sydney based property as I would be unlikely to be able to re-enter the property market if I needed to return to Australia in the future.

There is also a sentimental value attached to my home. It is my first and only house that I have owned anywhere in the world. It is not fancy – merely a 3 bedroom 1 bathroom Western suburbs property in Sydney– however I have put a lot of love into it and it holds special memories for me and my family and I don't feel emotionally ready to part with it yet.

When we made the decision to keep our house and rent it out- we were careful about the type of tenant we chose to rent to-, we picked a young couple, who currently cannot afford their own home and as they have pets struggle to find affordable accommodation with those pets. We wanted to ease that burden for someone and provide a nice comfortable house at a reasonable rent that would allow them to keep their pets. We look after our tenants as this is our home and we want them to look after our house for if/ when we return. Our property is not negatively geared, and even though we have a small mortgage we estimate we will pay approx. $4000-$5000 in tax on this property this year.

With the new proposed laws I feel as an Australian Citizen I am been overly punished for wanting to take an opportunity to work overseas whilst also having the Australian dream of owning an investment property in the country I was born and raised in and more so in been able to keep the property that I have worked very hard to own.

I understand the law only applies if I sell the property as a foreign tax resident so to avoid losing the main residence exemption I would need to return to Australia and resume tax residency before I was able to sell the property.

I wish life was that simple and easy but as we know circumstances can change very easily and there are no guarantees that I would not be in a position (financial, marital, Death of my husband or compulsory acquisition etc.) whereby I would not be forced to sell the property whilst based overseas.

The circumstances above and the taxing of the capital gain at a rate of 45% would be bearable – if it applied from the date I rented the property (i.e. the period in which it was my main residence is exempt). However the law proposed indicates that the CGT will actually be calculation on the gain I made from the date I acquired the property.

So in my case I purchased my property in 2004 for $500 000, the property was recently valued at $1 140 000, if I was to sell the property post June 2019 and say I got $1 300 000 for the property.

Under the current law- the main residence exemption applies until I rented it when it was valued at $1140000- I would then be liable for CGT on the $160 000 if I then rented it resulting in CGT of approximately $72 000.

Under the proposed law it appears I would lose the main residence exemption completely and my Capital gain would then be $800 000 resulting in a CGT of $360 000 – effectively I would lose $290 000 ($1 140 000 minus $500000) of the capital gain I have accumulated to date.

The difference in capital gains between the 2 scenarios is $288 000 or an expectation that I would pay 5 times the tax under the proposed law than under the current law because I have moved overseas.

Whilst the simple solution is to sell the property or retain it indefinitely until I return to Australia – in the event the property is compulsorily acquired or my husband dies whilst we are based overseas then the new law is applied and I would again pay 5 times the capital gain than if he had died in Australia or the property was acquired when I lived in Australia.

When this law was proposed in the budget it indicated it was to make housing more affordable and reduce the desire for “foreign investors” to invest in Australia as they are seen to be driving up property prices.

Except that is not what the law is doing – it is actually targeting Australian Citizens who take the opportunity to move overseas (the majority of which do so for work opportunities) and removing all of the gain they have made on their properties since acquisition of the property.

I cannot think of a more punishing and discouraging law to Australian expats. Compared to Australian based residents, I am discriminated against in a number of ways for deciding to keep my house whilst I work overseas.

1. At the present time I already pay a proportionally higher rate of tax on any income I earn from rent as I am considered a non-resident.
2. Due to changes in 2012 by the ALP I will pay approximately 45c in the dollar on any capital gains made whilst I am overseas as I am not entitled to the capital gains discount. This rate is double that of Australian based tax residents and is the second highest capital gains tax rate in the world.

3. I now lose the ability to have my only property in the world exempt from capital gains. Under the proposed changes I will be liable for capital gains from the time I owned it. There is no other similar circumstance in Australia in regards to property and this leads to a double dipping process. It should also be noted there are no other similar circumstances anywhere in the world whereby residents are charged capital gains for the time they resided in their properties.

4. **Double dipping process:** As a former Australian tax resident – I have already paid my fair share of tax for the last 25 years as an Australian tax payer. As my home was my main residence I have not been entitled to claim it as a tax deduction during that period and the gain I have made during this period is the same as all residents who have a main residence. Capital gains is not usually taxed on a main residence as the gain offsets interest payments, depreciation, capital improvements, Insurance, rates and maintenance (unlike investment properties none of these expenses are currently tax deductible on a main residence). A capital gain also needs to account for inflation- which means when I sell it I will be able to acquire a similar property as the one just sold. The idea is the capital gain should offset these expenses/ inflation effects – hence why Capital Gains is not taxed on a main residence

    1. By not allowing an apportionment of the main residence exemption to be applied for the period I owned the property and then having to pay CGT on the gain I made since acquisition – effectively the Australian government will be performing a double take on tax – they will already have taxed me as a resident and then will tax me at "non-resident tax rates" for the period of a capital gain when I was technically a "tax resident" in my case this would be the gain achieved between 2004 and 2017.

5. **Allow for offset of expenses incurred on the property to date.** The alternative to the double dipping process would be to allow me to offset against the capital gain all of my expenses since I acquired the property – interest, depreciation, capital improvements, maintenance. However given this is a **retrospective law** that is now been applied – I did not have the foresight over the last 13 years to

    1. Tailor my interest payments on the loan – so that I could maximise this as an expense. Like most home owners I used offset loans etc. to minimise interest repayments.

    2. Whilst I have receipts for capital improvements I would not have retained proof of maintenance costs, insurance, rates etc. for the property for the last 13 years.

6. **Disadvantage compared to property investors:** Because I did not have this foresight that the government would change the law and I would move overseas, unlike "investment property owners" I would be at a disadvantage in been able to claim expenses associated with the property so that I could get the CGT calculation correct.

7. **Housing affordability :**The law will not necessarily free up housing for "low income earners" or families. Whilst we would sell before June 2019 rather than risk – "needing" to sell whilst overseas and having to pay the punitive CGT (technically yes creating one more house on the market) many expats would hold onto their properties.

    Secondly as advised by my property manager- many expats (including ourselves) place long term tenants in their properties on fixed tenancies. In the event we sell – we would need to sell to an investor who would be willing to pick up the fixed term tenants. In my case this means my house which is positively geared and my only house would likely be sold to an investor who will negatively gear the property and possibly owns multiple investment properties.

In this scenario there would be no net gain to housing stock or affordability and for the Australian tax payer less revenue generated on the income from the property.

The additional downside of this law coming to fruition is we would probably not return to Australia – the costs of stamp duty and the cost of entry back into the market would be prohibitive. For Australia again a burden would be placed on taxpayers- firstly for the potential care of my elderly parents, secondly in lost tax revenue from my future income and thirdly one less "skilled" employee.

This proposal has an impact which deters me from investing in my own country the same way that **every other Australian citizen** is entitled to.

If I was forced to sell my property whilst overseas then I will lose a substantial portion of the gain I have made on a property to date when it was my main residence.

Effectively I am been punished for taking an opportunity to work overseas

- Conversely If I had chosen to stay in Australia and worked interstate for 4-5 years then the cost to me would be $0 (as the house would remain exempt as my main residence for 6 years).
- If I bought another property, rented my current property and stayed in Australia and then sold my current property for $1 300 000 - the CGT would be less than $50 000 as I would have been entitled to the CGT discount and the main residence exemption would apply until the day I rented the property.

Based on the implementation of this law – you are effectively applying to Australian citizens the current FIRB rule where foreigners must sell their existing properties when they leave Australia, because to not do so will result in hundreds of thousands of dollars in taxes. This is a clear signal from the Australian government that they do not want anybody based overseas to own Australian property including Australian Citizens.

I propose that the law be revised and that either the following occurs

1. The **apportionment of the main residence exemption be allowed to remain for the period of time the owner of the property was an Australian tax resident**. This would prevent the double dipping of tax.
    a. I believe if this option was chosen then the process would only require through the use of market valuations a calculation of the Capital gains that was achieved whilst the person was a non-resident.

I look forward to your response.

Regards

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