

DLK ADVISORY

FOREIGN RESIDENTS AND MAIN RESIDENCE EXEMPTION



Laws limiting foreign residents' ability to claim the CGT main residence exemption are now in place. This means that if you're a foreign resident at the time of disposal of the property that was your main residence, you may not be entitled to an exemption and may be liable for tens of thousands in capital gains tax. Some limited exemptions apply for "life events" as well as property purchased before 7:30pm (AEST) 9 May 2017 and disposed of before 30 June 2020.

Foreign residents beware, laws have been passed to restrict your access to claim the CGT main residence exemption on the sale of your home, except in some limited circumstances. This applies to any person that is not an Australian resident for tax purposes at the time of disposal (ie when the contract is signed to sell the property).

According to the Tax Office, a person's residency status in earlier income years will not be relevant and there will be no partial CGT main residence exemption available in those circumstances. Therefore, not only are current foreign residents affected, current Australian residents that are thinking of spending time overseas either for work or other purposes may also need to factor in this change to any plans they have on selling a main residence while overseas.

For current foreign residents, fret not, as there may still be time to act. You can still claim the CGT main residence exemption if, when the CGT event happens to your property, you were a foreign resident for tax purposes for a continuous period of 6 years or less and during that time one of the following "life events" happened: you, your spouse, or your child under 18, had a terminal medical condition; your spouse, or your child under 18, died; the CGT event involved the distribution of assets between you and your spouse as a result of your divorce, separation or similar maintenance agreement.



Further, if you purchased your main residence before 7:30pm (AEST) on 9 May 2017, you may still be entitled to the exemption provided you sell your home on or before 30 June 2020, subject to satisfying other existing requirements for the exemption. If you miss the 30 June window for disposal of the property in 2020 (ie disposals from 1 July 2020), you will not be entitled to the main residence exemption unless one of the above “life events” occur within a continuous period of 6 years of becoming a foreign resident. Similarly, for properties acquired on or after 7:30pm (AEST) on 9 May 2017, the CGT main residence exemption will not apply to disposals from that date unless certain “life events” occur within a continuous period of 6 years of the individual becoming a foreign resident.

Since this law change is retrospective, the Tax Office requires foreign residents who acquired property on or after 7:30pm (AEST) on 9 May 2017 to review their positions back to the 2016-17 income year and seek amendments where necessary. Foreign residents who purchased their property before 7:30pm (AEST) on 9 May 2017 and disposed of their property after 30 June 2020 will only need to review their positions to the 2020-21 income year.

CONTACT

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