

CGT AND FOREIGN RESIDENTS: REMINDER



Foreign residents are reminded that they are no longer entitled to any main residence exemption for disposals of property unless one of the life events tests are satisfied. Previously, where a foreign resident sold their main residence before 30 June 2020, they could apply the main residence exemption to reduce the capital gain to nil and ignore any capital losses.

To meet the life events test and have a main residence exempt from CGT, both of the following need to be satisfied:

- the individual was considered to be a foreign resident for tax purposes for a continuous period of six years or less; and
- during that period, one of the following occurred:
 - the foreign resident, their spouse, or their child under 18 had a terminal medical condition;
 - the spouse of the foreign resident or their child under 18 passed away; or
 - the CGT event occurred due to a formal agreement following the breakdown of a marriage or relationship.

It must be noted that in addition to the above criteria, the general requirements for the main residence exemption also need to be satisfied. This includes having the dwelling be the home of the foreign resident, their partner, and other dependents for the whole ownership period, not using the dwelling to produce income or run a business, and if dwelling is on land of two hectares or less.

Where the conditions of the life events test and other general conditions are met, the foreign resident is able to claim the main residence exemption and use that exemption as the reason to vary the capital gains withholding that would otherwise apply to the sale of their residence.

If a foreign resident does not meet the life events test conditions and sells a property even if it is their main residence, no exemptions can be applied. However, they may be able to apply a 50% CGT discount under certain circumstances.

The 50% CGT discount can be applied to part of a capital gain when a foreign resident sells any Australian property if either of the following applies:

- the asset was acquired on or before 8 May 2012; or
- the foreign resident had a period of Australian residency after 8 May 2012.

In instances where either of the above conditions are met, the 50% CGT discount must be pro-rated for the number of days the foreign resident was an Australian resident after 8 May 2012. This is achieved by calculating the total number of residency days divided by the overall ownership days in the ownership period and calculating it as a percentage.

Any properties purchased after 8 May 2012 by a foreign resident that remains a foreign or temporary resident for the entirety of the ownership will not be entitled to any CGT discount when sold. For any foreign residents who want to avoid selling their property and triggering CGT provisions, it should be noted that these rules also apply when a foreign resident for tax purposes passes away. The rules will apply to legal personal representatives, trustees and beneficiaries of the deceased estate, surviving joint tenants, or any special disability trusts.

CONTACT

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