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| **EXPOSURE DRAFT** |

Inserts for

Treasury Laws Amendment (Measures for Consultation) Bill 2021: Exempting granny flat arrangements from CGT

| Commencement information |
| --- |
| Column 1 | Column 2 | Column 3 |
| Provisions | Commencement | Date/Details |
| 1.  |  |  |
| 2. Schedule # | The first 1 July to occur after the day this Act receives the Royal Assent. |  |
| 3.  |  |  |

Schedule #—Exempting granny flat arrangements from CGT

Income Tax Assessment Act 1997

1 After Division 134

Insert:

Division 137—Granny flat arrangements

Table of Subdivisions

137‑A—When CGT events do not happen

Subdivision 137‑A—When CGT events do not happen

Guide to Subdivision 137‑A

137‑1 What this Subdivision is about

A CGT event does not happen when certain granny flat arrangements are entered into, varied or terminated.

Table of sections

Operative provisions

137‑10 Meaning of key terms

137‑15 CGT event does not happen when a certain kind of granny flat arrangement is entered into

137‑20 CGT event does not happen when a certain kind of granny flat arrangement is varied

137‑25 CGT event does not happen when a certain kind of granny flat arrangement is terminated

Operative provisions

137‑10 Meaning of key terms

 (1) An individual holds a ***granny flat interest*** in a \*dwelling under an \*arrangement if the individual has a right to occupy the dwelling for life that has been conferred by the arrangement.

 (2) An individual is ***eligible for a granny flat interest*** at a particular time if:

 (a) the individual reached \*pension age at or before that time; or

 (b) the individual:

 (i) needs, because of a disability, assistance to carry out most day‑to‑day activities; and

 (ii) is likely to continue to need that assistance, because of that disability, for at least 12 months after that time.

 (3) This Subdivision applies:

 (a) to a \*dwelling’s \*adjacent land in a corresponding way to the way Subdivision 118‑B applies to the adjacent land; or

 (b) to an \*adjacent structure of a flat or home unit in a corresponding way to the way Subdivision 118‑B applies to the adjacent structure.

Note: Subsections 118‑120(1) and (5) provide that Subdivision 118‑B (about main residences) applies to adjacent land and adjacent structures as if they were a dwelling.

137‑15 CGT event does not happen when a certain kind of granny flat arrangement is entered into

 A \*CGT event does not happen, to the extent it relates to creating a \*granny flat interest in a \*dwelling under an \*arrangement by entering into the arrangement at a particular time (the ***start time***), if:

 (a) the individual who holds, or who is to hold, the granny flat interest under the arrangement is \*eligible for a granny flat interest at the start time; and

 (b) another individual:

 (i) holds an \*ownership interest in the dwelling at the start time; or

 (ii) agrees, under the arrangement, to \*acquire an ownership interest in a dwelling that is to be the dwelling in which the first‑mentioned individual is to hold the granny flat interest; and

 (c) at the start time, both individuals are parties to the arrangement; and

 (d) the arrangement:

 (i) is in writing; and

 (ii) indicates an intention for the parties to the arrangement to be legally bound by it; and

 (e) the arrangement is not of a commercial nature.

137‑20 CGT event does not happen when a certain kind of granny flat arrangement is varied

 A \*CGT event does not happen, to the extent it relates to creating or varying a \*granny flat interest in a \*dwelling under an \*arrangement by varying the arrangement at a particular time (the ***variation time***), if:

 (a) the individual who holds, or who is to hold, the granny flat interest under the arrangement (as varied) is \*eligible for a granny flat interest at the variation time; and

 (b) another individual:

 (i) holds an \*ownership interest in the dwelling at the variation time; or

 (ii) agrees, under the arrangement (as varied), to \*acquire an ownership interest in a dwelling that is to be the dwelling in which the first‑mentioned individual is to hold the granny flat interest; and

 (c) at the variation time, both individuals are parties to the arrangement (as varied); and

 (d) the arrangement (as varied):

 (i) is in writing; and

 (ii) indicates an intention for the parties to the arrangement to be legally bound by it; and

 (e) the arrangement (as varied) is not of a commercial nature.

137‑25 CGT event does not happen when a certain kind of granny flat arrangement is terminated

 A \*CGT event does not happen, to the extent that it relates to terminating a \*granny flat interest in a \*dwelling under an \*arrangement by terminating the arrangement, if:

 (a) section 137‑15 applied so that a CGT event did not happen when the arrangement was entered into; or

 (b) section 137‑20 applied so that a CGT event did not happen when the arrangement was varied.

2 Subsection 995‑1(1)

Insert:

***eligible for a granny flat interest*** has the meaning given by subsection 137‑10(2).

***granny flat interest*** has the meaning given by subsection 137‑10(1).

Income Tax (Transitional Provisions) Act 1997

3 After Division 136

Insert:

Division 137—Granny flat arrangements

Table of Subdivisions

137‑A—Granny flat arrangements

Subdivision 137‑A—Granny flat arrangements

Table of sections

Operative provisions

137‑10 Applicable CGT events

Operative provisions

137‑10 Applicable CGT events

 Division 137 of the *Income Tax Assessment Act 1997* applies in relation to events:

 (a) that happen on or after the commencement of that Division; and

 (b) that, apart from that Division, would be CGT events;

(whether the arrangements to which the events relate were entered into before, on or after that commencement).