

# EXPOSURE DRAFT

EXPOSURE DRAFT
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Inserts for  
**Treasury Laws Amendment (Housing  
Tax Integrity) Bill 2017: Capital gains  
tax changes for foreign residents**

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**Commencement information**

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<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>

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2. Schedule 3	The first 1 January, 1 April, 1 July or 1 October to occur after the day this Act receives the Royal Assent.	
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## Schedule 3—Capital gains tax changes for foreign residents

### Part 1—Main residence exemption

#### *Income Tax Assessment Act 1997*

##### **1 Section 118-100**

After “this exemption”, insert “may not apply if you are a foreign resident, and”.

##### **2 At the end of section 118-105**

Add:

Note: The exemption is not available for the main residence of a foreign resident.

##### **3 Paragraph 118-110(2)(a)**

Omit “I1, I2,”.

##### **4 At the end of section 118-110**

Add:

(3) However, this section does not apply if, at the time the \*CGT event happens, you are a foreign resident.

##### **5 Subsection 118-145(4) (example)**

Omit “(again renting it out), at the end of which you sell the house.”, substitute “(again renting it out). You then move back into it for 3 years, after which you sell the house.”.

##### **6 Subsection 118-170(4) (example)**

Omit “You and your spouse own”, substitute “You and your spouse (not foreign residents for taxation purposes) own”.

##### **7 Subsection 118-178(2) (at the end of example 1)**

Add “if, at the time the dwelling is sold, Susan is not a foreign resident”.

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## 8 Subsection 118-178(2) (at the end of example 2)

Add “if, at the time the dwelling is sold, David is not a foreign resident”.

## 9 Subsection 118-185(2) (example)

Omit “You bought a house in July 1990 and moved in immediately. In July 1993, you moved out and began to rent it. You sold it in July 2000, making (apart from this Subdivision) a capital gain of \$10,000.”, substitute “You bought a house in July 2020 and moved in immediately. In July 2023, you moved out and began to rent it. You sold it in July 2030, making (apart from this Subdivision) a capital gain of \$10,000. At the time you sold the house, you were not a foreign resident.”.

## 10 At the end of section 118-185

Add:

(3) However, this section does not apply if, at the time the \*CGT event happens, you are a foreign resident.

## 11 After subsection 118-195(1)

Insert:

(1A) Paragraph (c) in column 3 of item 2 of the table in subsection (1) does not apply if, at the time the \*CGT event happened, the individual was a foreign resident.

## 12 Paragraph 118-195(2)(a)

Omit “11, 12,”.

## 13 At the end of section 118-195

Add:

(3) However, this section does not apply if, just before the deceased’s death, the deceased was a foreign resident.

## 14 Subsection 118-200(2) (after paragraph (a) of the definition of *non-main residence days*)

Insert:

(aa) if the deceased acquired the ownership interest *on or after* 20 September 1985 and, just before the deceased’s death, the

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deceased was a foreign resident—the number of remaining days in the deceased’s ownership period; and

**15 After paragraph 118-200(3)(c)**

Insert:

; and (d) just before the deceased’s death, the deceased was not a foreign resident.

**16 At the end of subsection 118-200(4)**

Add:

; and (c) just before the deceased’s death, the deceased was not a foreign resident.

**17 Paragraph 118-210(5)(a)**

Omit “11, 12,”.

**18 At the end of section 118-210**

Add:

(6) However, this section does not apply if, just before the deceased’s death, the deceased was a foreign resident.

**19 At the end of subsection 118-218(1)**

Add:

; and (d) the \*principal beneficiary of the trust is not a foreign resident at the time the CGT event happens.

**20 At the end of section 118-225**

Add:

*No exemption for a foreign resident*

(5) However, this section does not apply if, just before the deceased’s death, the deceased was a foreign resident.

**21 At the end of section 118-245**

Add:

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1 *No exemption if deceased was a foreign resident*

- 2 (3) However, this section does not apply if, at the time the \*CGT event  
3 happens, you are a foreign resident.

## 4 *Income Tax (Transitional Provisions) Act 1997*

### 5 **22 Before section 118-195**

6 Insert:

#### 7 **118-110 Foreign residents**

- 8 (1) None of the provisions or amendments listed in subsection (2)  
9 apply in relation to a capital gain or capital loss you make from a  
10 CGT event if:
- 11 (a) the CGT event happens on or before 30 June 2019; and  
12 (b) you held an ownership interest in the dwelling to which the  
13 CGT event relates throughout the period:
- 14 (i) starting just before 7.30 pm (by legal time in the  
15 Australian Capital Territory) on 9 May 2017; and  
16 (ii) ending just before the CGT event happens.
- 17 (2) For the purposes of subsection (1):
- 18 (a) the provisions are the following provisions of the *Income Tax*  
19 *Assessment Act 1997*:
- 20 (i) subsections 118-110(3) and 118-185(3);  
21 (ii) subsections 118-195(1A) and (3), paragraph (aa) of the  
22 definition of *non-main residence days* in  
23 subsection 118-200(2), paragraphs 118-200(3)(d) and  
24 (4)(c) and subsection 118-210(6);  
25 (iii) paragraph 118-218(1)(d) and subsections 118-225(5)  
26 and 118-245(3); and
- 27 (b) the amendments are the amendments of paragraphs  
28 118-110(2)(a), 118-195(2)(a) and 118-210(5)(a) of that Act  
29 made by Part 1 of Schedule 3 to the *Treasury Laws*  
30 *Amendment (Housing Tax Integrity) Act 2017*.

31 Note: The amendments mentioned in paragraph (b) ensure that the main  
32 residence exemption no longer applies for CGT event I1 or I2.

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- 1 (3) For the purposes of subsection (1), treat the ownership interest in  
2 the dwelling as having been held by you during a time during  
3 which the interest was held by:  
4 (a) for the provisions listed in subparagraph (2)(a)(ii)—the  
5 deceased or the trustee of the deceased estate; or  
6 (b) for subsection 118-225(5) of the *Income Tax Assessment Act*  
7 *1997*—the trustee of the special disability trust.

## 8 **23 Application of amendments**

9 The amendments made by this Part apply in relation to CGT events  
10 happening at or after 7.30 pm, by legal time in the Australian Capital  
11 Territory, on 9 May 2017.

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1 **Part 2—Principal asset test**

2 *Income Tax Assessment Act 1997*

3 **24 Subsection 855-30(4) (table item 1)**

4 Repeal the item, substitute:

1	the sum of the *total zero	the *market value of
	participation interests	the *membership
	held by the holding	interest mentioned in
	entity and its	subsection (3)
	*associates in the	
	other entity is less	
	than 10%	

5 **25 After subsection 855-30(4)**

6 Insert:

7 (4A) For the purposes of working out the \*total participation interests  
8 held by the holding entity and its \*associates under item 1 of the  
9 table in subsection (4), take into account a particular \*direct  
10 participation interest or \*indirect participation interest held in the  
11 other entity only once if it would otherwise be counted more than  
12 once because the entity holding it is an associate of the holding  
13 entity.

14 **26 Application of amendments**

15 The amendments made by this Part apply in relation to CGT events  
16 happening at or after 7.30 pm, by legal time in the Australian Capital  
17 Territory, on 9 May 2017.