



# CGT PRINCIPAL RESIDENCE CHANGES DEC 2019

In the May 2017 Federal Budget, the Government announced a change to exclude foreign residents from any entitlement to capital gains tax free portions on their former Australian family home if the property is sold during the period that they were living out of Australia.

This was vigorously opposed by SMATS group in association with Austcham HK who successfully argued that this would be harsh on expatriates, especially when they were forced to sell the property for unexpected reasons such as death or divorce.

In the lead up to the 2019 Federal election the old legislation lapsed on the back of both parties conceding that it was unfair to expatriates. Unfortunately, the new Morrison Liberal Government has now introduced and passed amended legislation in December 2019 that offers some concessions for "life events" but still harshly impacts expatriates that may sell a former residence while living abroad.

The new rules are explained below and there is an implementation period starting on 1st July 2020.

It is important to note that the changes will only affect you if you actually sell the property, and only if the sale occurs whilst you are living permanently out of Australia.

Circumstance	Previous Law	Impact of New Changes
You have never lived in the property and it was always rented	No capital gains tax free concession for principal residence	No change
You previously lived in the property as a tax resident before moving overseas and becoming non resident for tax purposes and don't sell the property until <b>AFTER YOU RETURN TO LIVE IN AUSTRALIA PERMANENTLY</b>	Period of time lived in the property plus up to six years of rental period is tax free as your principal residence.  You may need a valuation of the property at the time you moved overseas if you do not move back in within 6 years.	No change <b>PROVIDED</b> you ensure you have genuinely moved back to Australia as a tax resident prior to selling the property.
You previously lived in the property as a tax resident before moving overseas and becoming non-resident for tax purposes and you sell the property prior to 30th June 2020 (date of signing of contract)	The property would be capital gains tax free as your principal residence.  Note, if rented for a period before you moved in then some capital gains tax would apply.	No change if the property was originally acquired prior to 9th May 2017 and full PPR exemption applies including tax free period of up to 6 years of rental. If acquired between 9th May 2017 and 30th June 2020, and sold while living overseas then no principal residence exemption applies and the capital gain is fully taxable.
You previously lived in the property as a tax resident before moving overseas and becoming non-resident for tax purposes and you sell the property <b>AFTER</b> 1st July 2020 and <b>BEFORE</b> you return to live in Australia	The property would have been capital gains tax free on a pro rata basis for the period you lived in it plus up to six years rented.	If sold while living overseas, no capital gains tax free period applies <b>UNLESS</b> any one of the following life events occurs within 6 years of departure from Australia: <ol style="list-style-type: none"><li>You, your spouse or any children under 18 years of age have been diagnosed with a terminal illness;</li><li>You, your spouse or any children under 18 years of age dies;</li><li>The property is sold or transferred in accordance with a formal family divorce or separation agreement.</li></ol>



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Remember, in all cases you will only be entitled to the capital gains tax free residence concession if you sell the property before 30th June 2020 whilst living overseas or after return to live in Australia.

What you should do:

Situation	Action to Consider
You intend to sell your former family home sometime during the period you live overseas.	Bring forward the sale to prior to 30th June 2020 or wait until your permanent return to Australia. Get your accountant to provide an estimate of the capital gains tax cost if sold while living overseas where no concession applies so you can properly assess the merit of early or deferred sale taking into account market risk, opportunity and requirements you may have for the sale proceeds.
You want to acquire another property as a potential residence on return and sell the former family home to assist with the purchase.	Discuss lending options with your bank or finance broker to assess whether you have the capacity to purchase the new property without the need to sell the former. If possible, it would likely be more advantageous to buy the new now, whilst selling the former later once you have returned to Australia as the capital gains tax cost would be lower if the concession applies.
You do not foresee the need to sell the former family home for any reason.	Be sure to only consider selling the former family home once you have returned to Australia to live or if one of the three life events occur within 6 years of being abroad.

You should also be mindful of the 12.5% Foreign resident capital gains withholding tax retained at settlement where a property is sold by anyone living out of Australia if the property has a value over A\$750,000. This is not an actual tax, rather an in advance provision held pending the lodgement of your tax return and actual tax calculation where any overpayment is refunded or underpayment then required. It is possible to vary this at settlement if the actual tax estimate can be calculated and a formal application to reduce is made.

The impact of these changes could be very expensive in situations where you have owned and lived in the property for a considerable time before moving overseas so we strongly suggest that you seek professional assistance prior to sale and have a quick capital gains tax estimate prepared, as the tax cost may greatly impact your decision to sell or keep.

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