Australian Government

The Treasury

TAX LAWS AMENDMENT (2013 MEASURES NO. 2) BILL 2013: REMOVING CGT DISCOUNT FOR FOREIGN INDIVIDUALS

SUMMARY OF CONSULTATION PROCESS

The Government announced on 8 May 2012 that it would remove the 50 per cent discount on discount capital gains accrued after that date for non-resident individuals.

This measure was included in Tax Laws Amendment (2013 Measures No. 2) Bill 2013, which was introduced into Parliament on 29 May 2013.

Consultation process

Consultation on the draft legislation was conducted between 8 March 2013 and 5 April 2013.

A total of 160 submissions were received. Of the submissions received 130 were supporting submissions for the submission of Specialist Mortgage and Australasian Taxation Services ("SMATS") group. The SMATS submission was also accompanied by a petition signed by 2,700 petitioners, of which the majority were foreign residents. Submissions can be viewed on the Treasury website.

Summary of key issues

On the whole the submissions were not supportive of the policy. Several submissions raised concerns regarding:

- the high compliance costs that the legislation will impose, particularly on trusts;
- negative impacts on Australia's attractiveness for investment. In particular, foreign investment in real estate and mining;
- negative impacts on small business;
- negative impacts on property development industry and implications for the housing stock shortage; and
- disincentives for departing Australian residents to retain investments in Australia.

Non-residents are only subject to CGT on taxable Australian real property such as land and mining rights. These assets are immobile and produce location specific returns. A reduction in the effective tax rate (by way of the CGT discount) is not necessary to attract foreign investment in these assets. Removing the CGT discount for foreign and temporary residents will ensure a better return to Australia from gains made through foreign investment in Australian land.

Australian Government

The Treasury

Some submissions raised concerns about how the discount testing period would apply for assets held through a trust, including fixed trusts and discretionary trusts, or where the trustee pays tax on behalf of a beneficiary.

The following changes were made after consultation with industry:

- The discount testing period for a beneficiary of a fixed trust is the period between the date the beneficiary acquired its interest in the trust and the date when the capital gain was made.

- Where a trustee of a trust is taxed on behalf of an individual beneficiary the beneficiary's residency status is taken into account in determining the discount percentage applied to a capital gain attributed to the beneficiary. This approach will link the discount testing period to the time when the trust acquired the interest in the asset with the beneficiary's residence at the time between the trust's acquisition of the asset and the distribution of the capital gain.

These changes will address concerns around compliance costs for assets held through a trust.

Feedback

Feedback on the consultation process for this measure can be forwarded to consultation@treasury.gov.au. Alternatively, you can contact William Potts on (02) 62633323.

Thank you to all participants in the consultation process.