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NEGATIVE GEARING/CAPITAL GAINS TAX

Headline Statement

- The Government is committed to supporting hardworking Australians who wish to invest and provide for their future and for their families.

Key Points

- The Government is improving taxpayer confidence in the tax arrangements for residential investment properties.
- In the 2018-19 Budget, the Government announced that it would deny deductions for expenses associated with holding vacant land, where the land is not being used to carry on a business.
  - This addresses integrity concerns that some taxpayers are claiming deductions for expenses related to holding vacant land where the land is not genuinely held to earn assessable income.
- The Government has also disallowed deductions for travel expenses from 1 July 2017 and, for properties bought after 9 May 2017, limited plant and equipment depreciation deductions to only those expenses directly incurred by investors.
- In relation to capital gains tax (CGT), from 1 January 2018 resident individuals investing in qualifying affordable housing will be able to obtain a CGT discount of up to 60 per cent.
  - This measure is expected to be debated in the Spring 2018 sittings.

Policy Commitments

- The Government announced measures in the 2017-18 Budget to improve taxpayer confidence in tax arrangements for residential investment properties.
  - The measures include disallowing deductions for travel expenses for residential investment properties from 1 July 2017, and for properties bought after 9 May 2017, limiting plant and equipment depreciation deductions to assets not previously used.
  - Legislation giving effect to these measures received Royal Assent on 30 November 2017.

Contact Officer:
Name: Marisa Purvis-Smith
Division: Individuals and Indirect Tax Division
Telephone: +61 2 6263 3998
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- The measures for plant and equipment and travel deductions relating to residential investment property apply to both positively and negatively geared investors.

- As part of the 2017-18 Budget, the Government also announced it would provide tax incentives to increase private and institutional investment in affordable housing.

  - From 1 January 2018, resident individuals investing in qualifying affordable housing either directly or through managed investment trusts will be able to obtain a capital gains tax (CGT) discount of up to 60 per cent.

    - Qualifying affordable housing will need to be managed through a registered community housing provider, consistent with state and territory housing policies, and provided as affordable housing for at least three years.

    - Legislation giving effect to this measure was introduced on 8 February 2018 and is expected to be debated in the Spring 2018 sittings.

Background

Negative gearing

- A property is said to be 'negatively geared' if it is purchased with debt and the return on investment (rental income) is less than the cost of owning the investment (including interest on borrowings and allowable deductions such as depreciation and maintenance).
  - When this occurs, the investor can apply their net loss against their other income and reduce their taxable income.
- The practice of negative gearing is based on the general deduction principle that allows taxpayers to deduct, from their assessable income, any expenses incurred in generating or producing that income.
  - Negative gearing is not limited to property – it can also apply to other assets such as shares.
- A taxpayer may be willing to negatively gear because they expect the investment property, once sold, will generate a large enough capital gain to offset their prior "loss".

Capital Gains Tax (CGT)

- Unlike other forms of income (which are generally taxed at their full value), capital gains are taxed concessionally.
  - For individuals, only 50 per cent of the net capital gain is subject to income tax for assets held longer than 12 months. This is referred to as the CGT discount. In addition, the family home is exempt from CGT.
- The concessional taxation of capital gains increases the attractiveness of capital assets from a tax perspective.
  - Having said that, tax is only one of many factors that affect the investment decisions of individuals.

Release of FOI documents: ALP policy on negative gearing and capital gains tax

- On 5 January 2018, Treasury released documents under FOI relating to negative gearing tax deductions and CGT policies.
  - This followed the appeal decision by the Australian Information Commissioner (AIC) that providing access to this information would not, on balance, be contrary to the public interest.
- Mr Dan Conifer of the ABC News appealed to the AIC on 25 July 2016, in relation to the FOI decision by Treasury on 17 June 2016 to deny him access to documents sought on negative gearing and CGT. This included a request for access to documents prepared by Treasury on the Australian Labor Party's proposed policies in these areas.
  - Apart from a small amount of material in a Question Time Brief regarding a report by Mr Ben Philips, all other material in scope of the FOI request was exempted at the time under three FOI law provisions: Cabinet, business affairs and deliberative.

- In its decision dated 8 December 2017, the AIC held that in relation to the applicant's FOI request: "the material that the Department found to be exempt under s 47C of the FOI Act (deliberative) is conditionally exempt.
    - However, giving the applicant access to this material at this time would not, on balance, be contrary to the public interest. Accordingly, this material is not exempt."
- In its advice, Treasury explicitly says that “the ALP policies could introduce some downward pressure on property prices in the short term, particularly if the commencement of the policy coincides with a weaker housing market.”

Commentary from Treasurer Frydenberg: 7 October 2018

- “In its determination to drive property prices further down, Labor is taking to the next election a policy to limit negative gearing to only newly constructed housing and to cut the capital gains tax discount on assets that are held for longer than 12 months from 50 to 25 per cent. This will punish not just the 1.3 million people with negatively geared properties but everyone with equity in their home, as when they eventually sell their property they will do so in a market with fewer potential buyers. This ignores the real risks that Labor’s policy poses to stability of the housing market, the value of the No 1 household asset and the adverse impact it could have on Australia’s credit rating and economic growth.”

House prices

- National dwelling prices have moderated following several years of very strong growth. National median house prices have fallen by 0.9 per cent through the year to September 2018.

APRA Measures

- The Government is also ensuring that the Australian Prudential Regulation Authority (APRA) is able to respond flexibly to financial and housing market developments that pose a risk to financial stability—this includes passing legislation to give APRA new reserve powers over the provision of credit by non-bank-lenders when their activity is materially contributing to risks of instability in the Australian financial system.
- Government action must be responsive to evolving conditions in housing markets and this is why the Government has passed legislation to make it clear that APRA has the ability to use geographically-based restrictions on the provision of credit where APRA considers it appropriate.
- The Government supports the macroprudential measures announced by APRA in recent years, regarding mortgage lending standards and higher risk lending such as investor and interest-only home loan lending. In April 2018, APRA announced plans to remove the investor loan growth benchmark and replace it with more permanent measures to strengthen lending standards, noting that lending growth had moderated and lending standards had been lifted.
    - APRA’s decision to place a 10 per cent benchmark limit on the growth in bank lending to investors and clamp down on interest-only loans has had the desired impact. From a high of 10.8 per cent in mid-2015, growth in housing loans to investors has slowed to 1.5 per cent as at July 2018.