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**The Hon. Josh Frydenberg MP**
Treasurer
PO Box 6022
House of Representatives
Parliament House

25 November 2019

By email: josh.frydenberg.mp@aph.gov.au

**Dear Treasurer,**

**SUBMISSION ON PROPOSED CHANGES TO MAIN RESIDENCE EXEMPTION IN TAX LAWS AMENDMENT (REDUCING PRESSURE ON HOUSING AFFORDABILITY) BILL 2019**

We refer to the proposed amendments restricting the ability of foreign residents (and the trustees and beneficiaries of the estates of deceased foreign residents) to apply the CGT main residence exemption (MRE) which are contained in Part 1 of Schedule 1 of the Treasury Laws Amendment (Reducing Pressure on Housing Affordability Measures) Bill 2019 (the Bill).

We also refer to our submission dated 5 March 2018 in relation to the Senate Economics Legislation Committee's review of earlier amendments proposing a broader denial of the MRE to foreign residents (and the trustees and beneficiaries of the estates of deceased foreign residents) as set out in Treasury Laws Amendment (Reducing Pressure on Housing Affordability Measures No.2) Bill 2018 (the former Bill) which lapsed when Parliament was prorogued on 11 April 2019.

BNR Partners has specialised in the taxation of deceased Estates since 2000. We provide advice and other tax compliance services to legal practitioners and licenced trustee companies involved in the administration of deceased estates and testamentary trusts all around Australia. We handle in excess of 5,000 estate matters annually. Our firm was named as the mid-size accountancy firm of the year at the 14th Annual Global Private Client awards of the Society of Tax and Estate Practitioners (STEP) in London in September 2019.

As an overarching comment we welcome the limits placed on the denial of the MRE for foreign resident individuals and the deceased estates of foreign residents included in the Bill which are more measured and better targeted than the blanket denial of the exemption as set out in the former Bill.

In particular, we acknowledge that the proposed provisions denying a trustee or beneficiary of a deceased estate access to the MRE have been limited to circumstances where the deceased had been a foreign resident just before the time of their death for a continuous period of more than 6 years.

This restriction on the removal of the MRE essentially accords with the terms of paragraph 19 of our submission in relation to the former Bill which recommended that the estate of a deceased foreign resident be entitled to continue to apply the 6-year absentee rule as set out in section 118-145 of the ITAA (1997).

We also make the following general comments in relation to the proposed amendments contained in the Bill:

1. The proposed amendments do not replicate the provisions of section 118-145(2) which provide that the maximum period that an individual can treat a dwelling used for the purpose of producing assessable income as a main residence be capped to 6 years as there is no reference to the dwelling being used for such a purpose under the continuous 6 year residency period proposed in the Bill.

   Accordingly, it would appear that there are now two discrete 6-year limitation periods that need to be considered in determining whether the MRE exemption is available in respect of such deceased estates rather than a single 6-year absentee rule under section 118-145 which may cause confusion for taxpayers and advisers in determining the availability of the exemption.

   We believe it may therefore be prudent to determine whether there is a need for a separate 6-year limitation period under proposed sections 118-195(1)(c) and 118-110(4) in addition to the commonly understood 6-year absentee rule under section 118-145(2).

2. As set out in paragraph 18 of our submission in relation to the former Bill we also suggested that expatriate taxpayers working overseas should continue to be able to apply the 6-year absentee rule under section 118-145 of the ITAA (1997).

   We continue to strongly support this view on the basis that there should not be any differentiation between the eligibility of an Australian citizen working overseas as an expatriate foreign resident to claim the MRE from than that of the estate of such a person if they prematurely died whilst a foreign resident.

   In making this contention we reiterate our long-standing view that Australian citizens should not be deterred from accepting overseas secondments which enhance their expertise and skills and the significant benefits their increased experience and talents may offer the Australian economy on their return to work in Australia especially in an increasingly competitive international labour market.

   Accordingly, we do not believe that the application of the proposed 6 year exemption for expatriate Australian taxpayers should be limited to the exceptional circumstances listed under the life events test as set out in proposed section 118-110(5)(b), and that such expatriates should be able to retain access to the MRE throughout their secondment in all circumstances provided the term of such employment overseas is not more than 6 years.

3. We are concerned from both a pragmatic and equitable perspective that individuals who are a foreign resident (or the trustee or beneficiary of their deceased estate) who are not eligible to claim the MRE under the proposed amendments will have difficulty in correctly calculating the cost base of the dwelling that was their main residence during their period of occupation in Australia.

Given the general public perception that any capital gain on a taxpayer's main residence is typically exempt under the MRE there is a significant risk that a taxpayer liable for CGT under the proposed changes may not be able to produce adequate documentation to substantiate all the expenses that might otherwise eligible to be included in the cost base of such a dwelling.

This lack of supporting evidence would not only extend to the purchase price of the property but also to eligible incidental costs on the acquisition and disposal of the dwelling and particularly asset holding costs

(e.g. interest, land tax and council rates) incurred throughout their ownership of the dwelling when it was not used for an income producing purpose.

Accordingly, consistent with the view expressed in paragraph 20 of our submission in relation to the former Bill we believe that such affected taxpayers should obtain a cost base equivalent to the market value of the dwelling as at the time an individual ceases to use the dwelling as their main residence in Australia.

In our view resetting the cost base of the property to its market value on the date of the taxpayer becomes a non-resident strikes an appropriate balance between protecting the revenue whilst also relieving such a taxpayer from the enormous compliance burden of trying to reconstruct all their eligible cost base entitlements which becomes increasingly more difficult the greater the effluxion of time.

Such a treatment would ensure that a capital gain is only calculated on any increase in value of the property from the date the relevant individual ceased to be an Australian resident, and is broadly consistent with the methodology applied under other provisions under the MRE such as section 118-192 of the ITAA (1997).

Should you require any further details on the above submission please do not hesitate either myself or Mark Morris Senior Tax Counsel of our office.

Yours sincerely

Ian Raspin – FCPA, CTA, TEP
Managing Director
**BNR Partners**

cc: The Hon. Michael Sukkar MP Assistant Treasurer
The Hon. Jim Chalmers MP Shadow Treasurer
The Hon. Stephen Jones MP Shadow Assistant Treasurer