

Foreign Residents cannot get a CGT exempt home

If you are a foreign resident for tax purposes when you sell your Australian home, you cannot claim the usual capital gains tax exemption on it. This applies no matter how long you lived in the home. It applies even if you were only a foreign resident for a short time before the sale.

And there is no apportionment. It is an all or nothing thing. And what's more your capital gain will not be entitled to a full CGT 50% discount (under the current rules). Rather, you will only get an apportionment for the time you were a resident.

And to make matters worse you will be taxed on the gain at higher foreign resident tax rates.

Oh, and because the home is real property in Australia, it will be easy for the ATO to chase things up and capture the sale transaction through its data matching processes and matching that with, say, your new foreign address.



This information has been prepared without taking into account your objectives, financial situation or needs. Because of this, you should, before acting on this information, consider its appropriateness, having regard to your objectives, financial situation or needs.

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So, it's important to get things right if you are going to become a foreign resident and you intend to sell your home. And don't forget, the time of the sale is when you make the contract of sale (ie exchange contracts) and not when you settle on the sale.

However, there are several important exceptions to this rule

The first, involve where a person has been a foreign resident for less than 6 years and they sell the home because of serious illness or a death in the immediately family (as such "life event" exceptions are strictly defined in the legislation).

There is also another important "life event" exception and that is where there is a marriage or relationship breakdown within 6 years of becoming a foreign resident and the CGT rollover for this relationship breakdown would be available.

But even in this case, the exception operates on a narrow basis.

It only applies if one of the spouse's interests in the home is transferred to the other spouse and, further, this transaction would be entitled to the

CGT rollover under the relevant means set out in the legislation.

However, it must be stressed that this exception does not apply if there is a marriage or relationship breakdown and the former home is sold to a 3rd party as part of the settlement of matters. This is simply because the CGT rollover would not apply in this case, as it only applies to appropriate transfer of assets between the spouses – and not to third parties!

So, it's a big trap to be aware of – especially in circumstances where say a separating spouse leaves the country to start a new life without yet dealing with the former matrimonial home.

If you find yourself in this type of situation, please speak to us before you head overseas – so something can be arranged before you become a foreign resident. It may be too late otherwise.

Likewise, come and speak to us if you are unsure what your residency status will become – as this is the crucial variable