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5<sup>th</sup> March 2018

Senate Standing Committees on Economics  
PO Box 6100  
Parliament House  
Canberra ACT 2600

By Email: [economics.sen@aph.gov.au](mailto:economics.sen@aph.gov.au)

Dear Sirs,

**Submission in response to review on Treasury Laws Amendment (Reducing Pressure on Housing Affordability Measures (No.2)) Bill 2018**

Our company made a submission to the initial changes detailed in the Exposure Draft in August 2017.

It is greatly disappointing to see that Treasury has apparently chosen to disregard any justifiable comments and concerns in regard to the proposed changes.

It is with sincere hope, that this submission made to the Senate Committee can be properly considered and provide valuable information for your report so that all matters can be properly considered prior to the passing of legislation that will potentially make a change of great significance and one that is against this spirit of historical taxation policy, especially in the protocol to not make changes adversely retrospective or unjust.

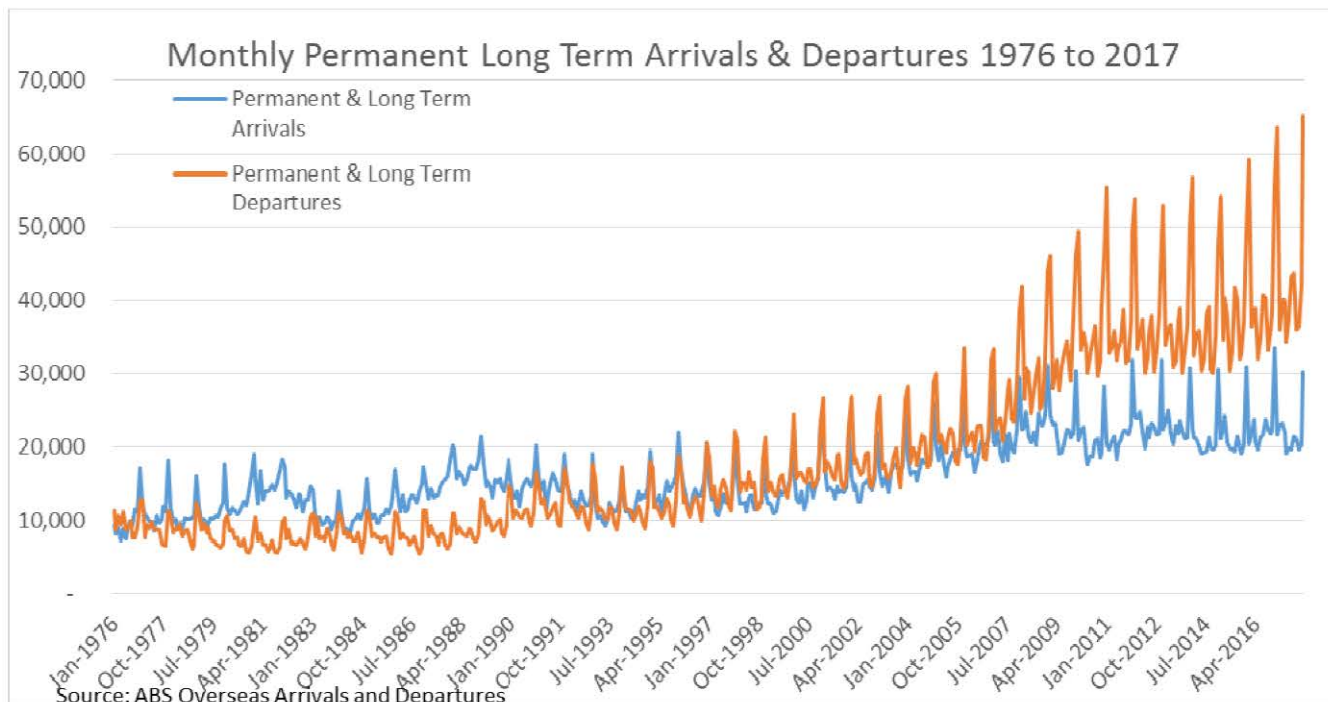
The legislation, as proposed, breaches that by:

- Unjustly changing the historical tax free status of a property that may have been the principal residence of a taxpayer for many years, solely on the basis that they may be overseas at the moment of future sale, even if that offshore period was of short duration or unfortunate circumstance.
- Unjustly changing the nature of the historical tax free status of a property that may have been the principal residence for many years, solely on the basis that if the owner passes in Australia and one of their beneficiaries happens to be living overseas at the time the estate comes into existence.

This proposed legislation is submitted as being a measure tackling “foreign investors” and purported to assist in “reducing pressure on housing affordability”, however the legislation as submitted is far more likely to affect ordinary Australians that may have chosen, willingly or on forced assignment, to take up a position overseas for a period of time.

This is of particular concern given we live in an era of great mobility, so the impact of these changes will be far greater than the Government may consider.

The below table shows that since 2007, the level of long term departures each month has become substantially higher than arrivals peaking at 256,240 net departures in the 12 months to 31<sup>st</sup> December 2017.



This trend is a reflection of the high incoming migration into Australia over the past decade, stronger global economy since the GFC, acceptance of Australian talent on the international business stage and continuing push of Australian companies into international markets.

As such, the proposed changes will impact more than just taxation policy, but could adversely impact movement of talent, regard and respect of Australian citizens and businesses and trade opportunities.

The Senate Committee should be considering the merit and appropriateness of this legislation with great seriousness.

### Need for Change?

If this legislation is genuinely proposed to tackle foreign investors (rather than Australian's living abroad) then one would question its necessity.

Under current legislation, foreign nationals that invest in Australian property are fully taxable on any gains arising from the sale of their property interests.

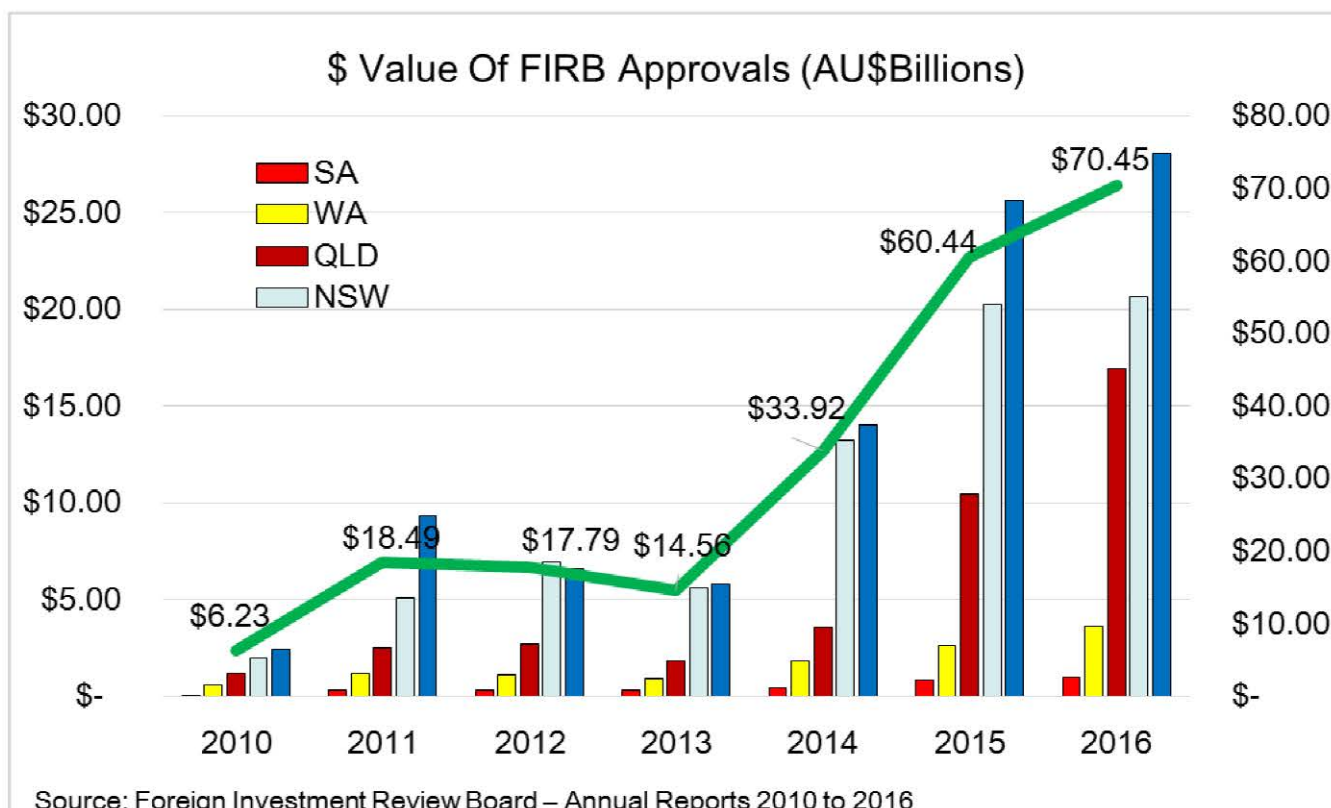
A true "foreign investor" would not be entitled to any concessions under the Principal Residence Exemption, as they have not lived in Australia. Only if they had lived in Australia, in their own property with appropriate visa and as an Australian tax resident, would they be able to claim any CGT Exemption.

Otherwise, the gains from the property are subject to full Capital Gains Tax without the 50% tax free concession afforded to Australian resident taxpayers if the property is owned more than 12 months.

Australia has been enjoying a surge in foreign investor activity in recent years.

As can be seen in the below table, investment has surged from A\$6.23bn in 2010 to A\$70.45bn in 2016. This investment has been primarily focused in Victoria, NSW & Queensland and has elevated the economic activity in this states substantially.

At the same time, the State Governments have introduced additional Foreign Buyers Duties of 7% Victoria, 8% NSW and 3% in Queensland. Furthermore each of these states has increased the Land Tax cost to foreign owners in recent time. The combination of both is worth billions of dollars to each State in additional revenues.



It is rationally expected that a slowdown of the above activity may occur due to a number of economic factors including:

- Tightening of China financial controls expected to slow down buyer activity,
- Natural slowdown in Australian markets as optimism of future profit potential wanes,
- Higher entry costs being a deterrent to potential buyers,
- Increased awareness of higher taxation treatment of foreign investors.

Nonetheless, the level of activity is profound with 42,205 approvals for acquisitions by foreign investors in 2016, well up from the 4,400 in 2010.

When discussing the issue of affordability, this remains the most effective weapon – supply!

Without additional supply, the additional demand pressure from population increase shall logically have the control and push prices ever higher.

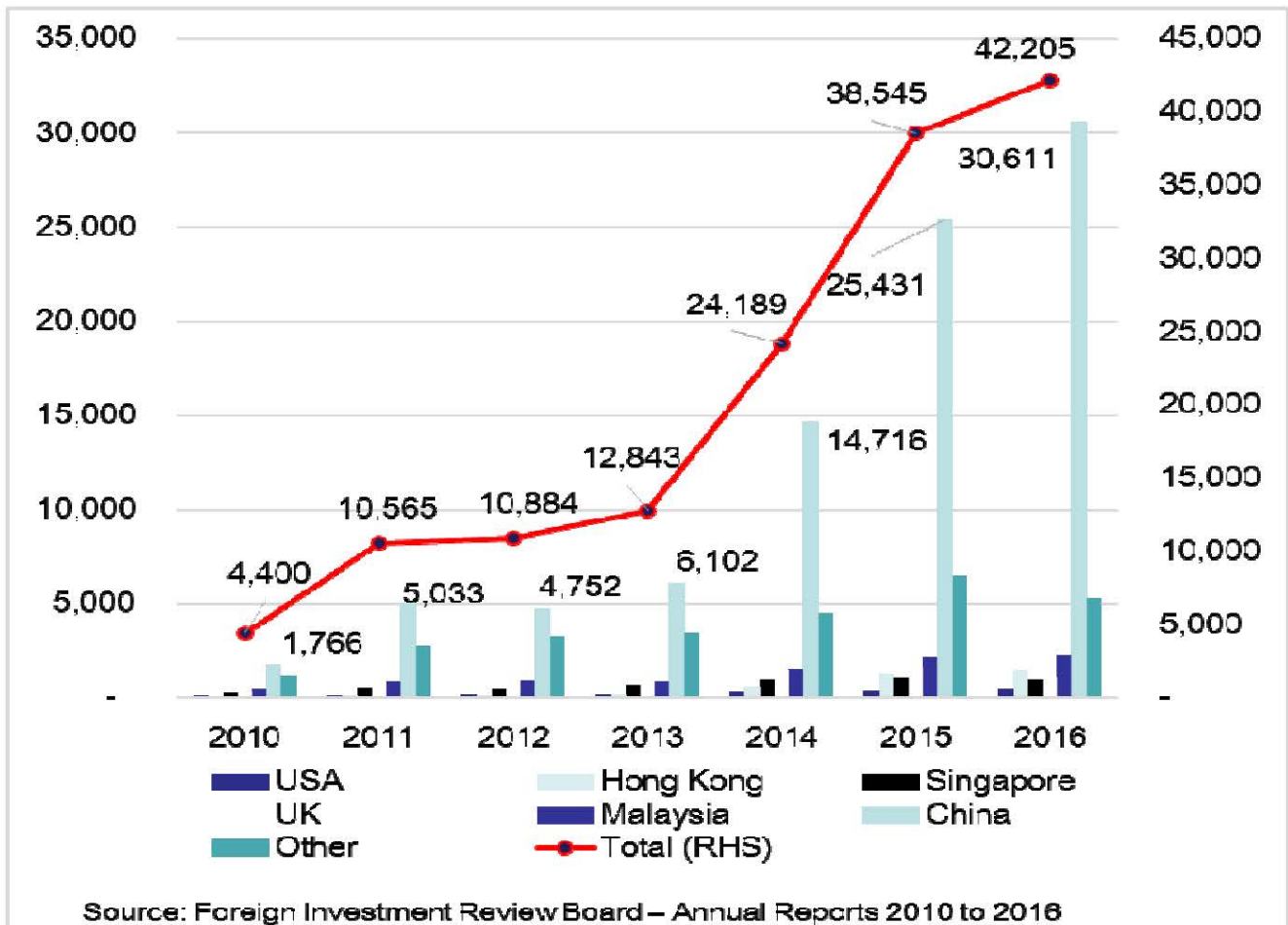
Foreign activity is critical in filling the demand/supply gap and keeping housing affordable.

On a Federal level, the Government also introduced a Foreign Buyer fee of A\$5,000 (scaled up for higher value purchases) in November 2015. On 2016 activity levels, this is worth over A\$200m a year in revenue.

Integrity issues have already been implemented to ensure this foreign activity remains a positive influence in the property market including:

- Strengthening of the FIRB policing and monitoring practices in association with the ATO, and
- Introduction of the 12.5% Withholding Tax for properties sold by offshore owners.

The below table summarises the increase in activity since 2010 and shows the dominance of Chinese based buyers.



The above graph does not include any Australian expatriate activity as that is not required to seek approval or recording where a property is acquired by an Australian citizen or Permanent Resident Visa holder.

Given the current law will have all of these past foreign buyers pay capital gains tax in full, it should be clear that our tax regime is sufficiently protecting Australian interests in regard to foreign investment.

### Current Principal Residence Exemption Foreign Entitlement

Under current laws, the only group of “Foreign Investors” that would be entitled to a Principal Residence Exemption would be:

- Australian Citizens and Permanent Residents that have owned and lived in their property prior to departure,
- Any person (including foreign nationals) inheriting an Australian residence from someone living in Australia at the time of passing,
- Any foreign national that had held a temporary visa and had lived in their own home for a period of tax residency in Australia prior to returning overseas. This would include retirees and students.

If the Government seeks to improve the fairness of the tax regime in regard to denying a Principal Residence Exemption, then it would be most logical to aim squarely at those that are not Australian Citizens or Permanent Residents.

It is questionable whether there is sufficient financial, moral, ethical or legal justification to make the current changes that deny historical rights to anyone that has a period of residence in their home that would rightfully entitle them to enjoy the Capital Gains Tax Free status on their family home. An important and sacred consideration of the Australian Taxation system.

It should be reminded that this group is already penalised through the loss of the 50% tax free exemption afforded to assets held more than 12 months, removed

This is particularly offensive when considered that an Australian resident that invests in property overseas, such as Singapore, would be entitled to a 50% discount on any capital gains on the Singapore property, where an Australian expatriate investing in an Australian property in his home country does not receive the same reduction.

Nonetheless, the changes proposed are so unjust and unfair that they would act to distort and discriminate and should not be considered in current form.

Any proposal that contends that just because you are an Australian undertaking a period of overseas occupation, that you and your parents inheritance should be disadvantaged solely on the basis of your location, seems untenable and could also be considered a breach of their economic human rights.

This injustice is best highlighted by the fact that the proposed legislation intends to:

- Have an Australian's home become fully taxable even if they had lived in it for over 20 years, just because they may have moved overseas a month before the sale of the property was transacted, and
- Have an Australian parents home become taxable even after many years of occupation, just because their sole heir may be living overseas on short term assignment at the time of their passing.

Is there anyone who could honestly consider this to be fair?

There is no official number of Australians living overseas, with estimates ranging from 290,200<sup>1</sup> to 858,866<sup>2</sup>.

We net departures having escalated in the past decade, this number could be substantially higher.

There is no statistical evidence to confirm how many of this group own a property that they have lived in prior to departure, but our firm has extensive experience in this area and our best estimate would be 10% to 20%.

These properties are almost always released into the rental pool during the period of overseas assignment, further reducing pressure on the property market and providing valuable homes for families.

The impact of these changes would not achieve the desired result in reducing affordability pressures, as it would be unlikely that any expatriate would consider selling their previous residence while living overseas, instead waiting longer to sell on eventual return to Australia and therefor maintain all rights under the Principal Residence Exemption, even if all changes are passed.

This would have a detrimental impact on the supply of this stock as many expatriates do currently sell their previous residences while overseas for a variety of reasons including upgrading, divestment and convenience. When this stock is returned to the market it provides an important quantity of quality family accommodation for the market to absorb.

If it is the desire to provide Australians with an advantage in the market over "foreigners" then the proposed rules should be amended to maintain current Principal Residence Exemptions for Australian Citizens and Permanent Resident Visa holders in regard to both the areas of personal sale or inheritance.

### **Economic Merit**

The proposed changes seem to take no value in to the sizeable value of foreign investment into Australian property nor do they recognise the essential role of foreign investors and expatriates into providing value supply into the market that is helping affordability.

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<sup>1</sup> Australian Social Trends, 2006

<sup>2</sup> Southern Cross Group DFAT Analysis 2002

The direct economic benefit is substantial in both fiscal investment and government revenues and is a direct employment creator in the construction, house goods, and property services sector. It is fair to say that without the recent uplift in foreign investor activity, and that the Australian economy would not have been enjoying its current level of success and the timing of this was a major factor in absorbing the reduction in mining investment in the economy.

Given the value of this, perhaps we should be looking at ways to further encourage this activity rather than simply increase the taxation implications.

The intangible element of discriminating against Australians that are finding their way on the global corporate stage should not be underestimated.

This valuable international economic link should be encouraged and supported, rather than discouraged and discriminated against, so as to build the strongest ties between Australia and the rest of the world.

Our current and future business leaders, scientists, entrepreneurs and social pioneers all benefit from time abroad. We should not be providing any deterrent to them, yet the removal of their time of residency prior to departure, would seem a poor message to send to all current and future expatriates.

### **Compatibility with Human Rights**

The changes proposed would seem to be in breach of the requirements under International Covenant on Economic, Social and Cultural Rights, with particular reference to:

*Part II, Article 2, Item 2. The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.*

It could be strongly argued that the proposed legislation is providing an extreme discrimination against any Australian working overseas.

To deny them the right to taxation equality and deprivation of previously enshrined rights recognising their period of private home occupation is a clear discrimination based on social origin and property.

The proposal to exclude Australian Citizens and Permanent Residents would ensure that no breach of human rights would occur.

### **Summation**

The proposed changes would seem to have minimal impact in assisting with the affordability issues faced in the Australian property markets.

We strongly recommend to the committee to seek changes to the legislation as presented as below:

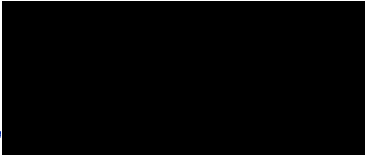
- Ensure that the Principal Residence Exemption remains in the current form where the property is owned by an Australian citizen or Permanent Resident Visa Holder, even when living abroad at the time of sale. This ensures a protection of their human rights, fairness and equality for all Australians.
- If the above is not possible, make amendments that protect all past period of occupation in a taxpayers family home so it shall remain covered by the Principal Residence exemption regardless of their location at time of sale.
- Protect the right of any Australian resident to enjoy the full Principal Residence exemption on their family home when they pass away and provide an inheritance to anyone, Australian or not, living anywhere in the world, thus protecting the parents human rights to enjoy tax fairness and equality on the taxation of their family home.
- If the above is not possible, provide that the Principal Residence exemption applies to any beneficiary that is an Australian citizen or Permanent Resident Visa holder.

- Not to provide further detriment or confusion to foreign investors in Australia that provide substantial and valuable economic activity and essential supply that continues to moderate the property market and support affordability.

In support of our submission, we have attached a petition signed by 1,357 individuals that agree with our contentions and share our concerns over the proposed changes.

We remain available to provide further information or assistance as required and welcome the opportunity to meet with the committee if deemed appropriate to share our 23 years of experience in directly dealing with Australian expatriate and foreign investor tax issues.

Regards



Steve Douglas  
Executive Chairman  
SIMATS Group  
Australasian Taxation Services  
Registered Australian Tax Agent



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## PETITION ON HOUSING TAX INTEGRITY ISSUES CAPITAL GAINS TA ON FOREIGN RESIDENTS

As at 5<sup>th</sup> March 2018: Total Signatories' Count 1,357

The attached names have joined our petition by making this undertaking:

We hope that our participation in this petition demonstrates to the Australian Government the important value we place on the role of Australian Expatriates in:

- ◆ Supporting the Australian property market;
- ◆ Improving the supply of housing for Australia's growing population;
- ◆ Creating and maintaining valuable employment and economic activity in the Property & Construction industries; and
- ◆ Promoting Australia on the international stage in business and commerce through the advancement of our individuals in the global corporate world.

We feel it only fair that Australian Expatriates are not adversely disadvantaged for living overseas and should maintain their rightful entitlement to any Capital Gains Tax Concession relating to periods of ownership of a property that has been used as their principal residence and family home.

We further submit that:

- ◆ The current legislation is more than adequate in this regard and there is no need to make any changes in this regard;
- ◆ It should be noted that as expatriates we are currently paying more than our fair share of Capital Gains Tax as we are no longer entitled to the 50% Capital Gains Tax concession for any period of overseas residency, so we are already dramatically disadvantaged to Australian residents;
- ◆ Just because we have taken the opportunity to expand our skills and careers through a period of overseas employment, should not mean that we lose any rights as Citizens or Permanent Residents in regard to the tax status of our family home; and
- ◆ Being an expatriate has significant economic benefit to Australia through trade opportunities, global reputation, enhanced skills that will return to Australia eventually and significant ongoing investment as the vast majority of expatriates continue to acquire property and investment assets in Australia and repatriate significant financial resources, adding great value to the Australian economy and national wealth.