Tax residency changes ‘would hurt us in Hong Kong’

Proposed moves to crack down on tax residency will hit many Australians in Hong Kong and deter foreign investment, chamber of commerce chair Josephine Orgill has warned.

By GLENDA KORPORAAL

Jo Orgill, chair of AustCham Hong Kong
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Proposed federal government moves to crack down on tax residency will hit many Australians in Hong Kong and deter foreign investment, Australian Chamber of Commerce Hong Kong chair Josephine Orgill has warned.

In an interview with the Australian, the newly elected chair said the proposed new laws, originally announced by the Morrison government in the 2021-22 budget, would make it a lot more difficult for Australians to live in Hong Kong. The government is currently considering responses to a consultation process on the proposed new tax regime, which ended on September 22.

There are some 100,000 Australians living in Hong Kong, one of the world's major financial capitals, which is also seen as a key gateway to doing business with China. "Australians living in Hong Kong are uniquely impacted by the proposals as there is no double tax treaty," Ms Orgill said.

At the moment, anyone who spends 183 days a year in Australia is deemed to be a resident for tax purposes if they also meet other criteria such as having longer term plans to stay in the country.

The proposed changes would introduce stricter criteria for the application of the 183-day residency test. But the more radical change is that Australian tax residency could apply to anyone who spends more than 45 days in the country, if they have specific ties to Australia including family, business, or other assets.

Australians living overseas in other countries that have double tax treaties will be able to offset some of the tax paid in Australia with the tax authorities where they live. But, as there is no double tax treaty with Hong Kong, where the maximum tax rate is 17 per cent, Australians living there now risk being drawn into the Australian tax regime.

"This creates a deterrence for Australians who want to be based in Hong Kong as there are no protections from a double tax treaty," Ms Orgill said. "It will make it harder for businesses to recruit Australians to Hong Kong."

She said it would also deter foreigners from wanting to invest in Australia as they could be easily caught by the new, stricter 45-day residency provision if they spent time in Australia working on their investments.

"It will also make it harder for Australia to attract new talent from overseas because of the stricter rules proposed for when they cease to be a tax resident," Ms Orgill said.

She said there were also concerns that the provisions could also deter Australian and other businesses in Hong Kong from sending staff to Australia on secondments or short-term assignments, as has been regularly the case in the past, for fear they would be caught by the tax changes.

Hong Kong has traditionally been a key city for Australian expats, including those working in finance, the law, hospitality, and trade between Australia and the region. The Chamber has more than 900 members including more than 230 companies operating in Hong Kong.

These include Australian companies doing business in Hong Kong, such as the Commonwealth Bank, ANZ, the National Australia Bank, Telstra, Leighton, and the University of Wollongong, as well as Hong Kong companies doing business with Australia, such as CK Infrastructure, CLP (China Light and Power) and Chow Tai Fook Enterprises.

Ms Orgill said she knew of people and companies in Hong Kong who were reconsidering plans to make new investments in Australia for fear they could get caught by the changes. "As it seems to be written, even having a bank account in Australia could bring you within the rules," she said.

Ms Orgill said many Australians living in Hong Kong, as well as others in Hong Kong with a strong interest in Australia, played a key role in Australia's broader ties with the region, particularly China, where political relations had been strained for many years under the previous government. "Hong Kong has a unique combination of being a good place to work and live and also having a strong connection with China, which is Australia's largest trading partner," she said.

"It is important for Australia to have a presence in Hong Kong as the gateway to China.

"The proposals will have a significant adverse impact on the role and influence of Australians in the region at a critical time when relations with China are improving."

While Ms Orgill agreed that Australia needed to have a diverse trade strategy, "you can't diminish the importance of the size of the China market and how it complements the Australian economy".

She said the recent visit to China by Prime Minister Albanese was "hugely welcomed" by Australians doing business in China.

The proposed changes follow a report from the Board of Taxation in 2019 making recommendations to "modernise" Australia's rules on residency for tax purposes. The Albanese government has not indicated how it intends to act on the proposed changes.

Releasing the discussion paper on the proposed changes in July, Treasury said: "The details of the framework outlined in the paper have not received government approval and are not yet law. The paper is merely a guide as to how the framework might operate."

The Albanese government is now studying the submissions, including one from the chamber in Hong Kong, one of the largest offshore Australian chambers of commerce in the world.

Ms Orgill, who is a partner in hedge fund advisory firm HFL Advisors and a long-time Hong Kong resident, said the proposed tax residency rule changes were "at the top of the agenda for the chamber".

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Glenda Korporaal is a senior writer and columnist, and former associate editor (business) at The Australian. She has covered business and finance in Australia and around the world for more than thirty years. She has worked in Sydney, Canberra, Washington, New York, London, Hong Kong and Singapore and has interviewed many of Australia's top business executives. Her career has included stints as deputy editor of the Australian Financial Review and business editor for The Bulletin magazine.