

# Summary of 2017 Federal Budget

12 May 2017

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**This year's Federal budget handed down by Treasurer, Scott Morrison, was, to a large extent, a political budget. Haunted by budgets past, including proposed legislation being blocked by a hostile Senate, the Treasurer handed down a budget that corrects Australia's course towards a return to a budget surplus, while at the same time providing the maximum chance of having the changes passed in the Senate.**

**From a tax perspective there was virtually no tax reform contained in the budget; but rather a series of tweaks and fairly minor structural changes, some of which, as seen below, may have major practical implications (rather than raising significant further revenue). Some of the more important measures that caught our eye were as follows.**

## **The disallowance of travel expenses in relation to rental properties**

One of the major pillars upon which our tax system is built is that expenditure incurred in gaining or producing assessable income is allowed as a tax deduction. Until 7.30pm on Tuesday 9 May 2017, such travel to and from rental properties in order to undertake maintenance works, inspect the property etc were tax deductible. However, the Government has announced that such expenditure will no longer be tax deductible after budget night. The announcement is scant on detail and it remains to be seen exactly how far this principle will be taken.

## **CGT discount for affordable housing**

Although the 60% CGT discount for qualified affordable housing is a clever initiative (the current CGT discount is 50% where an asset is held for more than 12 months), incentivising investment into the housing sector, a number of conditions need to be satisfied. One is that the investment must be rented out to investors at a below market rent. We question whether this is practical, given that this would need to be taken into consideration by the investor to determine whether the investment is economically worthwhile in the first place on that basis.

## **GST on sales of new residential premises by developers**

It is proposed that, instead of the current situation (where the developer pays the GST as and when residential premises are sold as new housing stock to purchasers), the purchaser will now pay and remit the GST on the sale to the ATO, instead of the property developer/vendor. This is a substantial shift in mechanics regarding how the GST is dealt with, meaning there will need to be discussion between vendor and purchaser, prior to settlement, as to the exact amount of GST to be remitted by the purchaser at settlement. For example, where the developer is applying the margin scheme, the GST will not equate to 10% of the sale price, it will instead be something less than that.

Furthermore, having the purchaser calculate and pay the GST may reveal sensitive pricing information from the vendor's perspective (i.e. divulging what the "margin" is for the developer). It will also impose an additional burden on the purchaser having to deal with making the payment to the ATO (although it is acknowledged that in the majority of cases this would be taken care of by the purchaser's solicitor on the sale). The change in mechanics may also require changes to standard as well as bespoke contractual documentation regarding the obligation to pay the GST. We would recommend property developer clients seek early assistance from their legal advisers in relation to this measure.

## **Foreign resident capital gains tax withholding**

Currently, if a transfer of Australian property from the owner to a purchaser involves a property worth \$2 million or more, the purchaser must obtain (on or before settlement) an ATO clearance certificate that the vendor has obtained from the ATO. If the purchaser does not obtain the clearance certificate, then it must withhold 10% of the purchase price and pay that amount to the ATO. The budget announcement will revise this measure so that any property purchase in excess of \$750,000.00 will now be subject to these measures. This means that many more property transactions will be subject to these measures, instead of only applying to “top end” property transactions.

Furthermore, the proposed withholding rate is to increase to 12.5%. The measure, as it currently applies, has already caused concern in relation to property related transactions since it was introduced in 2016. Given the proposed “widening of the net”, we foresee that a number of property related transactions will become complicated due to these provisions. In the vast majority of property transactions, if an ATO clearance certificate is able to be obtained from the ATO early on in the transaction, then generally no issues arise. However, given the proposed broadening of the measures, it remains to be seen whether the ATO will be able to cope with the increased volume of requests for clearance certificates. Where complications arise (and deadlines loom) there will be a propensity for the purchaser to do the prudent thing and withhold.

## **Removal of principal place of residence exemption for non-tax residents**

It is proposed that the capital gains tax exemption, in relation to the sale of the principal place of residence for foreign residents (for tax purposes), be removed. Prior to budget night, it was possible for non-tax residents to sell the house they own in Australia for a gain, and pay no tax in relation to that gain. As of budget night, this will change. Foreign tax residents will no longer be able to claim the principal place of residence capital gains tax exemption. Importantly, the proposed measure also extends to temporary tax residents of Australia. “Temporary” tax residents are, generally, those that come to Australia on certain temporary visa classes. These include New Zealand citizens, who are able to reside in Australia. Accordingly, unless the legislation, when it appears, carves out these New Zealand residents, they will not be able to claim the CGT exemption if they were to sell their principal place of residence in Australia. The budget announcement does not give any indication whether this was an intended consequence of the measure or not.

For more information or discussion, please contact HopgoodGanim Lawyers’ [Taxation](#) team.

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