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22nd May 2012

The Hon Wayne Swan MP
Federal Member for Lilley, Deputy Prime Minister and Treasurer
PO Box 182
Nundah
Queensland 4012

Open Letter by email to ministerial@treasury.gov.au

Dear Sir,

RE **Capital Gains Tax Changes to Non-Resident Taxpayers**

I am sending you this open letter to seek your consideration, and hopeful acceptance, of our request to cancel the proposed change announced in the 2012 Federal Budget to remove the Capital Gains Tax Concession for Non-Resident taxpayers.

I have done this as an open letter to seek the support on this request from all political parties, independent MP's and the greater public as this matter is of such significant importance.

This may seem an unusual request; however we feel strongly that the proposed change could come with a devastating effect on the Australian economy and as such, believe whole heartedly that a rethink on this change is not only warranted but essential.

This minor revenue item, not worthy of a mention in your Budget Speech, expects to raise A$55m over four years but may end up costing the Government billions in revenues at a time when every cent is needed to achieve your expected future surpluses.

By way of introduction, our firm is a Registered Tax Agent specializing in Foreign Investor and Australian Expatriate taxation affairs having begun operations in Singapore in 1995. Since then we have helped thousands of clients to understand and comply with their Australian obligations.

Over the years we have helped Australia by educating many that would have remained non-lodgers and ensured they understood the need to report and pay all legally due taxes when investing in Australia. The level of misinformation we have found since inception and through to today remains alarming and we are committed to improve this every day.

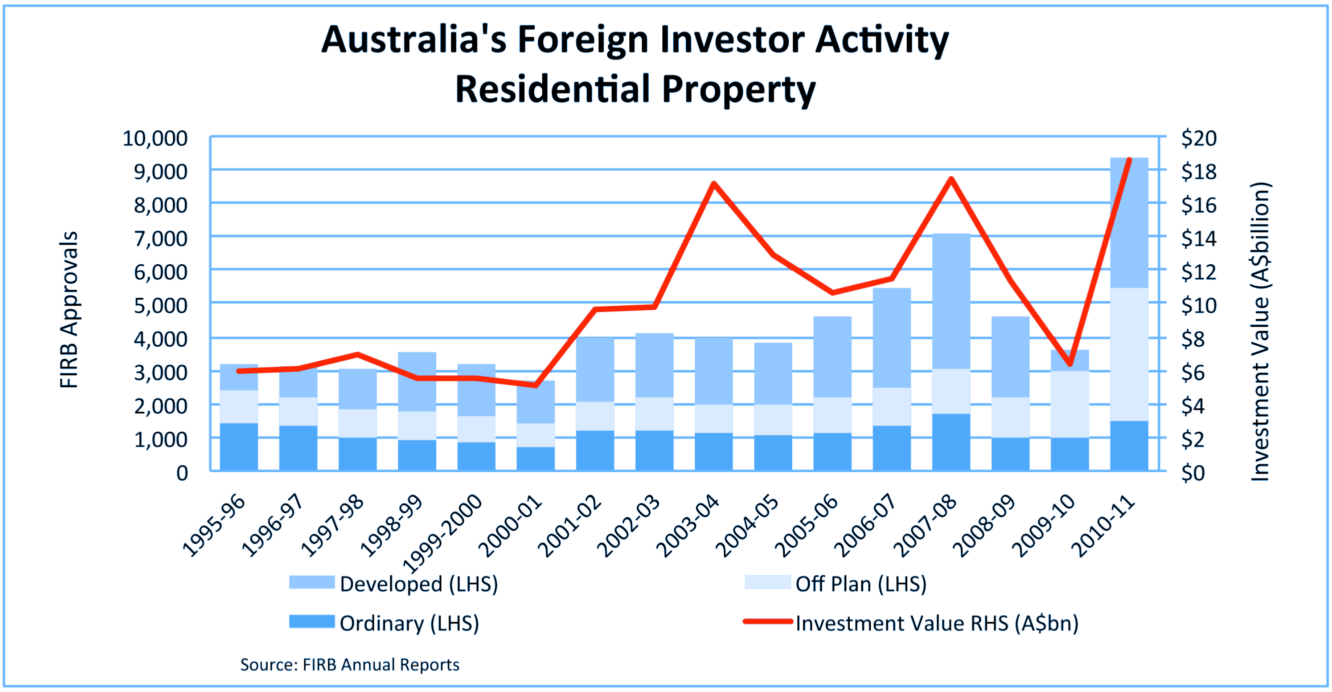
Due to our long and continuing involvement with so many people affected by this change, we feel well placed to voice their views in an attempt to ensure you understand the true ramifications of this proposed change.

Our request to cancel this change is not simply about an objection to a greater tax impost, rather some very key aspects that may not have been fully considered when the review process was undertaken. We hope this letter serves as a catalyst to enable a more detailed debate on the impact of this change.

Revenue to Australia

The proposed change budgets for an additional revenue of A$55m over the next four years, not a significant sum in the full context of the budget. The main group affected by this change are overseas based Australian landlords and property owners as the act of owning real property remains taxable in Australia regardless of tax residency.

As can be seen in the below chart, Foreign Investor activity peaked in 2010-11 to achieve a record investment value of A$18.64bn from 9,375 applications for the residential property sector. This was a sharp uplift from the post GFC result of A$6.32bn value from just 3,623 applications.



It is important to note that these figures only show non-Australian purchase activity, as any overseas based buyer holding an Australian Citizenship or Permanent Residency Visa is not required to seek consent and their investment activity is in addition to the amounts reported by the Foreign Investment Review Board. It is difficult to quantify this, however we estimate this to be greater than the foreign investor activity.

Even though the level of activity of foreign investment is a small percentage of the overall Australian property market, it is an important element in maintaining a stable and growing market as foreigners must acquire newly constructed property.

Global Competitiveness

Investor activity is very much sentiment driven and the Australian property investment market gained great acceptance for its stability during the GFC which attracted much positive attention.

This positive image is already coming under pressure from below average growth and slight decline in values over the past year as well as the lure of heavily discounted alternative property markets around the globe.

As such a proposal to increase the potential tax cost of investing in Australia and the resultant diminished return may well deal a significant body blow to investor confidence and shift investment capital into higher risk markets at the expense of Australia.

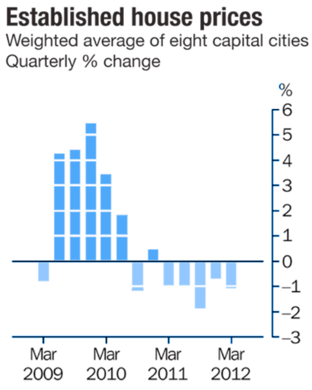
Property markets around the world have been hard hit with many recording significant declines in values since the Global Financial Crisis.

Australia has held firm to date and built a reputation as a safe harbour. This was a key factor that led to the increase in foreign investment in 2010-11.

In the past year Australian property values fell in every Australian city due to interest rate pressures and low buyer activity. This will bring into question our safe heaven tag and test investor resolve in the future.

Established house prices	Dec Qtr 11 to Mar Qtr 12 % change	Mar Qtr 11 to Mar Qtr 12 % change
Weighted average of eight capital cities	**-1.1**	**-4.5**
Sydney	-1.8	-4.6
Melbourne	-2.2	-6.6
Brisbane	0.4	-3.7
Adelaide	-0.9	-3.8
Perth	1.1	-1.7
Hobart	-2.7	-6.7
Darwin	4.4	3.5
Canberra	1.2	-0.5

Source: ABS House Price Indexes March 2012



Source: ABS House Price Indexes March 2012

The lower values of other global investment choices may combine with the negativity of this proposed tax change to make investors consider a higher risk option outside of Australia that could well prove to be a financial mistake compared to the safety and stability of Australian property ownership.

It may be difficult to attract those investors back to Australian shores, especially if they have suffered losses in other markets diminishing their confidence and capacity to invest.

Australia may offer the safest property investment market, but we still need and want a sensible level of foreign investment on an ongoing basis to underpin our construction industry and property market.

An adverse impact on foreign investment in Australia will affect many areas including:

Tax Revenue

The A$18.64bn of foreign investment in our residential property market is all in newly constructed property which creates enormous wealth for our community.

Approximately A$1.5bn of this amount is the GST collection on these sales which is critical at a time when GST revenues seem to be contracting. This significant annual sum would be under threat from this change and a resultant lower level of activity.

Being new property sales, the construction industry benefits greatly with job growth and retention for the many thousands of workers required to bring these properties to completion. This in turn flows through to higher income tax collections for the Federal Government.

If you see fit to cancel this change to the Capital Gains Tax rules affecting foreign investors, perhaps one alternative maybe to introduce a Foreign Purchasers Fee which may cover the lost revenue proposed.

A fee of between A$500-A$1,000 per application could easily be administered through the existing FIRB regime when the application is made. This could result in additional revenues of between A$2m and A$9m per year depending on activity levels.

A modest fee would not have an adverse impact on buyer confidence and may potentially raise even more revenue annually than the current proposed changes which still require the property to be sold at some unknown future time and at an unknown profit in order to achieve a gain subject to tax.

Economic Stimulus

The injection of A$18.64bn of foreign investment into the community is a vital economic boost all over Australia wherever a property may be acquired.

It supports important industry and in many cases the participation of foreign investors is critical to achieve the level of presales for a project to secure financing in this difficult economic climate.

Without these foreign sales many projects would not be able to move from concept to reality.

Housing Supply

Australia's ever increasing population continues to put pressure on housing supply Australia wide.

The simple fact that well over 90% of all foreign investors offer their property for rent ensures an important and constant supply of additional accommodation units to help meet the demands of the market.

The rental collected is usually insufficient to cover the property holding costs and modest level of finance, so the main motivation is the promise of stable and steady capital growth.

If this is the be taxed at a higher level, then this may become a disincentive and any resulting decline in foreign investor activity could put even more pressure on the new housing supply to the detriment of the entire economy.

Global Reputation

Australia already has a poor reputation as a high tax country even though recent Governments have worked hard to bring our tax inflows to more internationally competitive levels.

Our company has worked tirelessly for almost two decades to improve this perception and build greater awareness and confidence in Australia's tax system as fair and reasonable. This has boosted compliance levels and resulted in significant revenues that may have been lost by the impact of non-lodgement.

The proposed change will have an adverse impact on the perception of Australia as it will distort the system and create a significant difference in the tax treatment of non-resident investors, foreigners and Australian expatriates alike.

Fairness

It appears that the proposed change shall apply to all non-resident taxpayers.

This will include Australian citizens working indefinitely abroad in expatriate positions.

Their valuable role in advancing Australia's interest will now see them penalised and taxed in a much more aggressive manner than their compatriots still in Australia.

This may well have been an oversight so we appeal to your sense of fairness to help restore the equality to all.

It is essential to ensure that Australia is seen as a fair and reasonable taxation destination to encourage investment, migration and return of our valued expatriate resource.

Compliance Cost

It has been proposed that the change shall only apply to profits after the 8th May 2012, and for anyone owning a property as at that date the current 50% Capital Gains Tax free allowance shall be protected through a valuation.

Approximately 4,000 properties have been acquired by Foreign Investors each year since 1989, which would suggest that there may be over 80,000 properties that require a valuation. Add to this our conservative estimate of another 120,000 properties owned by Australians living abroad as Non-Resident taxpayers and it means that approximately 200,000 individual properties shall require a valuation as at the 8th May 2012.

The sheer logistical impracticality of this is mind boggling in its own right, but when you consider a valuation is likely to cost anything from A$500 upwards, that would mean a once off compliance cost of A$100m. This alone is almost twice as much as the expected revenue of A$55m over 4 years and seems an unreasonable impost.

In addition to the cost of the valuation there will also be significant compliance cost for the individual owner and the Australian Taxation Office in trying to interpret and enforce the change.

It may also lead to a potential dispute on valuations and the possibility of abuse.

The proposed change may also create many levels of complexity in the tax system that may prove unwelcome including:

- Cross over with current laws such as the six year temporary residence cessation.
- Potential confusion and unfairness if the property was owned partially while resident and partially while non-resident. Will there be a pro-rata effect or just a penalty if sold during a period of non-tax residency?

There is likely to be many such issues that could potentially see any modest additional revenue completely absorbed by the higher compliance and administrative costs of the Australian Taxation Office.

We hope the Government sees fit to remove this change in full, however if that is not possible, then may we propose that the change only occurs to property acquired after the date of announcement, May 8th 2012, and that all property acquired prior to that date remains under the old system that had been promised to the buyer and rightfully entitled at the time of acquisition.

This would save great cost and confusion on this matter.

In conclusion, it is our great hope that the Government can reconsider this proposed change and keep the current 50% Capital Gains Tax concession for all Australian taxpayers including the valuable Non-Residents.

In doing so you will:

- Continue to protect and encourage the A$18.64bn of incoming annual foreign investment flows into the Australian residential property market, generating approximately A$1.5bn in annual GST revenue.
- Ensure continued increased supply of new housing stock to support and accommodate Australia's growing population.
- Maintain a level of fairness for Australians living abroad and foreign investors that play a valuable role in keeping housing supply in balance in Australia.
- Protect thousands of jobs in the Australia's property and construction industry that need the support of foreign investors who under FIRB regulations must buy newly constructed property.
- Ensure that the modest expected revenue gain of A$55m over 4 years, is not over shadowed by the potential billions of lost revenue as a result of reduced foreign investor activity.

This is not a request for lower taxes, rather a hope that the current taxation principles can be maintained to ensure a continued level of prosperity for Australia as we stand tall in international markets and show the world that are not only a safe and attractive investment choice, but also a fair one, respectful and appreciative of their decision to chose Australia to place their valued investment capital.

For all these reasons, it is sincerely requested that you, together with all members of Australia's Parliament, can join together to remedy this position and cancel the proposed change to Capital Gains Tax treatment of non-residents for the benefit of Australia as a whole.

Yours faithfully

Steve Douglas
Executive Chairman
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Specialist Mortgage
Australasian Taxation Services
Aussieproperty.com