



THE TAX INSTITUTE

30 April 2021

Assistant Secretary
Personal and Small Business Tax Branch
Individuals and Indirect Taxation Division
The Treasury
Langton Crescent
PARKES ACT 2600

By email: grannyflats@treasury.gov.au

Dear Assistant Secretary

Exempting Granny Flat Arrangements from CGT

The Tax Institute would like to make a submission to Treasury in relation to the Exposure Draft material designed to provide a targeted capital gains tax (**CGT**) exemption for certain granny flat arrangements. The Exposure Draft material includes the *Treasury Laws Amendment (Measures for Consultation) Bill 2021: Exempting granny flat arrangements from CGT (Bill)* and the accompanying Exposure Draft Explanatory Materials (**EM**).

Submissions

- The Tax Institute welcomes the measures in the Bill as they should remove the adverse CGT consequences which have discouraged the formal documentation of granny flat arrangements. Formally documenting such arrangements should offer those with granny flat interests more protection from elder abuse.
- The proposed legislation in the Bill applies only to CGT events that occur on or after the commencement of the enabling legislation irrespective of whether the arrangements the events relate to were entered into before, on or after that commencement. There is no reason to limit the legislation in this manner. The measures in the Bill should be made retrospective. At a minimum, the measures should apply retrospectively from the Federal Budget 2020–21 when the measures were announced.

- The Tax Institute welcomes the extension of the CGT exemption to those with a disability. However, the Bill does not define or properly explain what will satisfy the term 'disability'. Under the Bill, the term 'disability' takes its ordinary meaning. We submit that the term 'disability' should be more clearly defined. For example, a person subject to a disability could be defined as either a person with a disability in accordance with the ordinary meaning of the term **or** a person who is eligible for a disability support pension. For those eligible for a disability support pension, this would make determining whether they satisfy the conditions for the exemption more simplistic. Those not eligible for a disability support pension can continue to apply the test as presently proposed by the Bill.
- The Bill does not specifically state that there is a requirement for the person with the granny flat interest (**occupant**) to reside in the dwelling as their main residence. We assume that it is intended that the occupant is required to do so. This should be made clear in the Bill and the EM.
- It is our view that there should be parity between the treatment of a granny flat interest that involves a lump sum payment to the land owner and the provision of the granny flat interest for the same purpose which involves the payment of rent over time to the land owner. The proposed measures would provide CGT relief in the case of the former, but would result in a partial loss of the main residence exemption for the land owner due to the operation of section 118-190 of the *Income Tax Assessment Act 1997*. If the same CGT relief was afforded to the land owner in the case of payment of rent as for a lump sum payment, this would provide an incentive for the arrangement to be documented which would strengthen the protection for the occupant. This would not change the tax treatment of the rental income which would remain assessable, and expenses incurred in gaining or producing that rental income would remain deductible.

For example, if the occupant paid the land owner \$500,000 to acquire the granny flat interest, CGT event D1 would be taken not to happen by virtue of this Bill. When the land owner ultimately sells the property, any eligibility for the main residence exemption would be retained. However, if the occupant paid the land owner the same \$500,000 over 20 years (i.e. \$25,000 per year) in the form of rent, while the rent would be assessable, the land owner would lose access to a full main residence exemption on the eventual sale of the property. This treatment encourages behaviour outside the system whereby the arrangements may not be documented in order to preserve the CGT exemption of the property but could have the adverse effect of failing to adequately protect the occupant.

If the Bill remains in its current form, at a minimum, the EM should clarify that the Bill is not designed to cover this situation. However, we submit the Bill should be amended to provide for the above.

If you would like to discuss any of the above, please contact either myself or Tax Counsel, Angie Ananda on 02 8223 0000.

Yours faithfully,

A handwritten signature in black ink, appearing to read "Peter Godber", with a long horizontal flourish extending to the right.

Peter Godber
President