LEGAL MATTERS

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Foreign residents no longer able to avoid Aussie laws...

Under current laws, foreign residents have to pay capital gains tax on income sourced in Australia, such as those from residential real estate or shares. Compliance with these laws however, has been difficult to police.

To assist in the collection of foreign residents CGT liabilities, the government introduced new legislation which was passed on 22 February, 2016.

The new *Tax and Superannuation Laws Amendment (2015 Measures No. 6) Act 2016* will affect purchasers and foreign investors on properties exceeding $2 million from **1 July, 2016.**

The legislation intends to ensure that foreign investors pay the appropriate tax on any capital gains they make or lose in two ways.

First, it will require purchasers to confirm that the vendor they are buying a property off has a clearance certificate from the ATO. If the vendor does not have one, it will be the purchasers responsibility to withhold 10% of the purchase price at settlement and pay it to the ATO.

And, secondly, it will require persons selling a property over $2million to obtain an ATO clearance certificate to advise that they are an Australian resident.

Non compliance with the new laws would result in a penalty equal to the amount required to be withheld, in other words, an *additional* 10%.

As with all new legislation, any implications will become apparent over time. We will keep you updated on further developments!

It has been a big month for tax laws in Australia! Not only has there been political debate and speculation about the future of negative gearing but a capital gains withholding tax regime has just passed the senate too!

Negative gearing, negative outcome?

Opposition leader, Bill Shorten, caused some speculation about the future of negative gearing after he revealed Labor's outlook on the issue last month. Mr Shorten unveiled plans which, if Labor was to win the next election, could see negative gearing restricted only to new homes purchased after July 2017.

Negative gearing is a financial lever whereby the income generated by an investment property is less than the cost of owning the property, creating a taxable loss. This loss can then be offset against other income to provide a tax benefit.

The plans sparked great debate, with many commentators giving their opinions about the proposed changes. The main point of difference being whether the implications of the changes would be positive or negative for the property market and more broadly, for the economy.

Positive:

- Labor says the restrictions would have positive implications on the budget—raising a potential $7 billion each year by the end of the decade.
- Labor claims the restrictions would increase housing supply and produce an extra 25,000 jobs per year.

Negative:

- BIS Shrapnel has predicted that rent prices could increase by up to 10% (read the full report here).
- Others believe the changes would threaten the value of homes and remove one of the main incentives of investment (see, for example, an article by John McGrath here).

An issue which has been less considered in mainstream media is the wisdom of the timing of the proposed changes to negative gearing. Recent statistics show that housing is the biggest contributor to Australia's GDP—more so than mining! This reflects Australia's current transition from an economy which was once led by the mining industry, to one which now has the property industry at the forefront of providing jobs and significantly contributing to economic growth.

So we are left to wonder why the government would risk threatening the country's greatest income producer by the proposition of such a policy.

At this time, the only thing certain is that any change to negative gearing policy is likely to create **volatility and uncertainty** in the market. It is therefore important to remember that all discussions about negative gearing remain mere speculation. Until, of course, the next Liberal/Labor showdown – stay tuned!

Image from Storypad

Inspiration for the month:

We often are more afraid of making a mistake than we are of missing an opportunity.

Our door is always open to talk about these issues!

Come and visit, give us a call or send us an email We love hearing from you!

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