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Dear Sir or Madam

Strengthening the foreign resident capital gains tax regime – draft legislation

Thank you for the opportunity to provide comments to Treasury on the *Exposure Draft Legislation Treasury Laws Amendment Bill 2026: Strengthening the foreign resident CGT (ED)* and the draft explanatory memorandum (**EM**) relating to the proposed amendments of the definition of Taxable Australian Property (**TAP**) and therefore the scope of the non-resident capital gains tax exemption in Division 855 of the *Income Tax Assessment Act 1997 (Cth) (ITAA1997)*.

Pitcher Partners is a national association of professional service firms and the 9th largest provider of accounting and tax services in Australia. We are part of the Baker Tilly international network, being the 8th largest provider of accounting and tax services in the world and operating across 147 territories.

We have had the benefit of providing input into and reviewing the submission of CPA Australia dated 24 April 2026 and we concur with the contents of CPA Australia's submission.

We also make the following observations:

1. Division 855 was introduced at a time when Australia was aligning its position on taxing international investors in accordance with OECD and global norms following the Review of International Taxation undertaken by Treasury in 2002 to 2004 (refer to paragraph 4.127 of the explanatory memorandum to the *Tax Laws Amendment (2006 Measures No. 4) Act 2006 (Cth)*). It is therefore quite concerning that Treasury would state that the proposed measures "clarify" the existing law at paragraph 1.2 of the EM with a view to explaining why the amendments should be retrospective back to 2006. The definition of real property was always intended to take its ordinary meaning under general law. Put simply, alignment with OECD practice in 2006 necessarily contemplated alignment with generally accepted definitions of what real property is – which itself is generally aligned with internationally well understood distinctions between what is immoveable and what is moveable property in tax treaty practice.
2. As a net capital importer, and at this critical juncture where the conflict in the Middle East is generating significant energy uncertainty and impacting international capital flows and allocations, it is unhelpful for Australia to become a place where tax certainty is questioned and giving rise to sovereign risk, particularly around historic transactions dating back to 2006.
3. The practical difficulty in enforcing retrospective tax claims over non-residents will create significant technical uncertainty, risk and inequity – particularly where capital gains have been

distributed upstream to ultimate equity-holders at a historic time. The risk created for capital markets from such technical measures applying back to 2006 suggests that retrospectivity is not warranted nor practically enforceable. Of particular concern is technical exposure of intermediaries such as Australian resident purchasers and directors of relevant trustee companies given the retrospective nature of the amendments.

4. The proposed measures also create an unexplainable dichotomy between outside character and insider character of assets in that treatment of assets may be considered “land” for Division 855 purposes and yet be considered Division 40 plant for the purposes of the capital allowances regime – creating significant uncertainty and confusion for taxpayers and industry.
5. Concerns over the States and Territories passing “severance” legislation (not aimed at alienating the Commonwealth’s tax base) – but rather addressing State stamp duty issues ought to be addressed directly with the States and Territories as part of regular Commonwealth funding discussions – where the States and Territories should be urged to amend their own state taxes legislation in specific cases rather than amending real property law.

If you would like to discuss any aspect of this submission, please contact Dragan Mistic on (02) 9881 3680.

Yours sincerely

PPNSW Services Pty Limited



Dragan Mistic

Director