Tax Insights

Capital gains tax changes for foreign residents introduced to parliament

On 2 July 2026, Australia's Federal Government introduced the Treasury Laws Amendment (Strengthening Accountability for Tax Adviser Misconduct and Other Measures) Bill 2026 ("the bill"), which seeks to introduce the previously announced changes to the capital gains tax (CGT) regime for foreign residents that were set out across two exposure drafts released in April 2026 ("exposure drafts").

This article summarises the key changes from the exposure drafts. At a high level, the changes:

- Make one fundamental change—removing the proposed retrospective changes to Australia's tax regime for foreign residents and ensuring there is one set of reforms that apply prospectively;
- Respond to feedback on the overly narrow renewable energy concession, providing marginally better access to the concession for existing projects but retaining the 30 June 2030 cut-off and other conditions that are likely to make its application limited; and
- Otherwise retain the key features of the exposure drafts, including:

- A broad definition of “real property” that has the potential to capture greenfield renewable energy projects and other licence-based structures such as public private partnerships;
- The new 365-day lookback test;
- A new objective test to be applied by a purchaser in accepting a declaration that a transaction is not subject to Australia’s foreign resident CGT withholding tax (FRCGTW); and
- Notification requirements when making a declaration that a transaction above $50 million should be exempt from Australia’s FRCGTW.

An improvement on the exposure drafts, although key issues remain

The following table summarises how the key features of the exposure drafts are reflected (or removed) in the bill:

Key feature of exposure draft legislation	**Adopted in legislation introduced to parliament?**	**Relevant changes from exposure drafts**	**Deloitte comments**
Retrospective amendments to the definition of taxable Australian property that affect historical transactions	No	The retrospective amendments have been removed Limitations have been placed on the Commissioner of Taxation’s (“Commissioner’s”) ability to amend prior returns that are outside their statutory review period, allowing the Commissioner to reject requests for refunds of historical tax. This is understood to have been a key basis for the prior retrospective application	Following a number of submissions and significant lobbying, the changes to division 855 should now only apply prospectively from the start of the first quarter after the legislation receives royal assent and historical transactions should not be affected by the changes
Prospective changes to the definition of taxable Australian property that apply to CGT events after the commencement date	Yes	The only change of significance is that assets fixed or installed on land are included, irrespective of whether they are, or are reasonably expected to be, situated on that (or any other) land for the majority of their useful life. In effect, this is a broader view than that reflected in the exposure drafts Some specific comments are made in the EM regarding certain asset classes:	A number of asset classes are specifically targeted by these changes, and the EM makes it clear that this includes operating concessions attached to major infrastructure. The broad definition includes “a licence or contractual right exercisable over or in relation to land,” which has the potential to capture broader licences and concession arrangements, as well as

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		• Mortgage-backed securities are noted as being intended to be outside the definition, as are licences or contracts to access premises to perform services on-site; and • Forestry and agricultural licences and infrastructure operating or maintenance licences or contractual rights (e.g., toll roads, bridges, car parks, ports, data centres, energy infrastructure such as pipelines) are all noted as being captured	greenfield renewable energy projects Whether it is the government's intention to capture greenfield renewable energy projects is not clear based on a reading of the EM to the bill
365-day lookback test	Yes	The only change is the inclusion of a ministerial discretion to determine that a different time period applies in certain circumstances Based on the EM, it appears this power is intended to support foreign residents who do not readily have access to sufficient information to test across 365 days (e.g., minority investors), and the default test is still expected to apply in most cases	The same practical concerns as previously identified remain
Renewable energy concession	Yes	The two key changes are: • Australian renewable energy assets must comprise at least 75% of all taxable Australian property assets, rather than the 90% threshold included in the exposure drafts; and	The same concerns previously outlined remain regarding the limited nature of relief However, where a disposal occurs on capital account on or prior to 30 June 2030 the changes from the exposure drafts increase the likelihood that a renewable energy investor can access the discount

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		• The definition of Australian renewable energy assets better incorporates storage assets, with the EM further elaborating that grid-scale energy storage systems that store both renewable and non-renewable electricity will be "good assets" for the purposes of the concession if the primary purpose is to store renewable energy from an eligible source. However, the previous reference to a CGT asset that facilitates directly the generation of renewable energy has been removed which may further limit some asset classes that can access the concession	
Notification requirements	Yes	Not applicable	While submissions suggested a number of practical improvements, including that the notification should only be needed where the non-taxable Australian real property outcome is under the principal asset test (and not where a vendor has a 10% or less associate-inclusive interest), these changes have not been included and the notification requirement will therefore capture a large range of transactions

Next steps

With the removed retrospectivity, the amendments will apply to CGT events happening on or after the start of the first quarter after the legislation receives royal assent, being 1 October 2026 at the earliest.

Parliament next sits on 11 August 2026, and it will be interesting to see whether the Greens and the Coalition send the bill to a Senate Committee inquiry, similar to what occurred in 2023/2024 with the thin capitalisation amendments.

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Contacts

Joseph Song
Partner
Tel: +61 3 9671 7287
joesong@deloitte.com.au

Amy Borrett
Partner
Tel: +61 7 3308 7565
aborrett@deloitte.com.au

Mark Hadassin
Partner
Tel: +61 2 9322 5807
mhadassin@deloitte.com.au

Craig Saunders
Partner
Tel: +61 3 9671 6812
crsaunders@deloitte.com.au

Andrew Saunderson
Partner
Tel: +61 2 9322 3083
asaunderson@deloitte.com.au

Andrew Young
Partner
Tel: +61 2 9322 5879
ayoung@deloitte.com.au

Cindy Perryman
Partner
Tel: +61 3 8486 1231
cperryman@deloitte.com.au

Richard Lambkin
Partner
Tel: +61 2 9322 5788
rlambkin@deloitte.com.au

Matthew Gould
Partner
Tel: +61 3 9671 8628
mgould@deloitte.com.au

Richard Buchanan
Partner
Tel: +61 3 6337 7113
ribuchanan@deloitte.com.au

Aaron Khoury
Partner
Tel: +61 3 9671 8657
aarkhoury@deloitte.com.au

Sharon Murray
Partner
Tel: +61 3 9671 7939
sharmurray@deloitte.com.au

Sue Ann Khoo
Partner
Tel: +61 2 9255 7628
sueannkhoo@deloitte.com.au

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