RULES REGARDING CHANGING MAIN RESIDENCES

The main residence concession is one of the few opportunities where the profit you make on the sale of a capital asset is totally tax free – it is probably the most frequently used capital gains tax concession in Australia (apart from the general 50% discount). How do you maximise this concession when you want to purchase a new home?

Before we look at the rules surrounding changing residences, what are some of the factors that the Taxation Office takes into account in determining whether a home is your main residence:

- Length of time you occupy the residence – there is no minimum time in the legislation, but a rule of thumb is 3 months;
- Whether you family also lives there, and whether you have moved your belongings in;
- Whether you have connected the electricity and telephone, your mail is delivered there and you have entered yourself onto the electoral roll.

One of the key criteria that the Taxation Office looks at is whether it is your intention to use the home as your main residence. While intention is not bullet proof, it will certainly add support to your argument.

Also remember, if you home was purchased prior to 20 September, 1985, Capital Gains Tax (CGT) does not apply to the sale of your home (but if you have made significant renovations after this date, the renovations made be seen as a separate asset to which CGT may apply).

Following are some of the rules where a home that has been your main residence during the whole period of ownership can obtain a full or part main resident CGT exemption on sale:

1. **You can have two main residences at one time** where the old home is sold within 6 months of purchasing the new home – the time line is based on the signing of contracts that later settle. For this concession to apply:
    - **a)** Your old home had to be your main residence for 3 months in the last 12 months prior to sale;
    - **b)** You did not derive income from the home in the last 12 months during a time it is not your main residence;
    - **c)** The new home you purchase must become your main residence;

2. **You can choose to treat a home as your main residence, even after you have moved out of it**, but you can only have one main residence at a time. If you start to rent your old home, you need to determine the market value of that property at the time you start deriving income from it and you can then rent the home for 6 years and that home can retain the CGT main residence exemption, where you have no other main residence. If you don't rent the old home, it can retain the CGT main residence exemption indefinitely;

3. **You must move into your new main residence as soon as it is practicable** – if the home you purchase is tenanted, your main residence exemption will only commence from the time you move in, regardless of your intention to occupy the home when you purchased it. This means that a portion of the time you own the home will always be subject to tax (the longer you hold the home, the smaller this proportion will be as it is calculated on a time basis);

4. **If you intend to keep the existing home and rent it out, you need to determine the market value of that home at the time you move out** – the original cost becomes irrelevant and when you

eventually sell this home (where you don't move back in) will be the difference between the selling price and the market value at the time you moved out – this applies where you commence renting your main residence after 20 August, 1996;

5. **Where you are having a home built, or undertaking repairs or renovations, where you move in as soon as practicable and live there for at least three months** the main residence is also available. Vacant land can be treated as your main residence for 4 years prior to moving into a home that was renovated, repaired or constructed, and you measure the 4 years from the time your old home ceases to be your main residence to the time you move into your new home;
6. **You sell vacant land after your home is accidentally destroyed**. In this case, the main residence exemption is also available.

You must make a choice as to which home is your main residence in the year that the CGT event (usually the sale) occurs.

If we look at an example where you own an existing home and sign a contract to purchase a new home that you intend to make your main residence, before the old home is sold – what are the taxation implications.

- No problem if you sell the old home within 6 months of purchasing the new home – both properties are covered by the main residence exemption;
- If the changeover between the old and the new home takes more than 6 months, this concession will not apply. You will then have to decide which home should be treated as your main residence – the home that you are selling or the home that you are buying. If the gain on the home you are selling is large, you would nominate this home as your main residence, as no-one can predict what will happen in the future when your new home is sold – will the tax laws be the same? Will the property market be strong?. This means that there will be a period of time that you new home will always be subject to tax – the number of months between signing the contract and moving in/ over the total period of ownership. If you intend to hold you new home for a long time, this will end up being a very small number;
- If the new property is tenanted, the main residence will not be available on the new property until you move in and make it your home;
- If you move into the new home and then, after at least 3 months, you move (maybe you are transferred with work), as long as you don't have any other main residence, you can rent out your new home for up to six years and still maintain the exemption;
- If you are undertaking major renovations on the new home prior to moving in (assuming you move in as soon as is practicable and have no other main residence at the time), the new home is covered by the main residence exemption for up to 4 years;

From an asset protection perspective, accountants often try to minimise the properties owned in the name of an individual. The family home is often an exemption to this due to the main residence concession. If you are buying the property jointly with your spouse, you may choose to put the property in the name of the least 'at risk' individual, to reduce any chance of a claim by a creditor.

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