



“The Bottom Line”

SIMMONDS LE-FEVRE

Tax & Super Information that's Important to You

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Selling your home? Beware of a partial capital gains tax liability!

With the temptation for homeowners to cash in on spiralling house prices around Australia, it is important to turn your mind to whether you may only have a partial capital gains tax (CGT) main residence exemption available to you, and not a full CGT exemption (because of the way you have used your home).

And while it seems that the ATO doesn't actively chase up partial CGT main residence exemptions that may have been overlooked by homeowners themselves, there may come a time when the revenue lost from this source may pique the ATO's interest.

But from the homeowner's point of view, they may not even realise that they have a possible partial CGT liability in respect of their home.

So, what are some common ways that such a partial CGT liability may arise?

continued overleaf ➡

About this newsletter

Welcome to your tax and super update from Simmonds Le-Fevre. This newsletter is aimed at keeping you on top of the issues you need to know about and changes as they happen. If you have any queries don't hesitate to contact us.

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Selling your home? Beware of a partial CGT liability! cont

DIDN'T MOVE IN "AS SOON AS PRACTICABLE"?

Firstly, when you bought your house you may not have been able to move into as "soon as practicable" (as required by the CGT main residence rules). And while in some cases this can be ignored, such as because of serious illness, in other cases it won't be.

For example, if you bought your home subject to an existing lease that still has to run its course, then you will be subject to a partial exemption because of the failure of your home to be your main residence throughout the entire period you owned it.

Likewise, the same rule will apply if for example you can't move into your new home as "soon as practicable" because of commitment to, say, an interstate job.

In these types of cases the partial exemption will apply on a pro-rata basis to reflect the period of time during which you owned the home that you did not live in initially as your home (or were not able to treat it as your home under a relevant concession).

And this pro-rata rate will be calculated by reference to the amount you bought your home for – and not any larger subsequent market value.

ABSENT FROM HOME AND RENTED IT

Another way that you can lose your full CGT exemption on your home is if you are absent from it for a period (such as if you rent it while you live or work overseas or interstate) and you cannot use (or fully use) the "absence concession" to continue to treat it as your home.

This may happen, for example, if you rent it for more than six years or if you use the full main residence exemption in respect of another home you own while you are absent from your current home.

In such a case, the pro-rata calculation will usually be calculated by reference to your home's market value when you first rent it – and thereby result in a lesser partial CGT liability.

However, the interaction of the "absence concession" rules and any rental use of your home can be complex (especially if you own another home at the time).

It therefore definitely requires good professional advice (if only to use the absence concession rules to the maximum effect, depending on your exact circumstances).

A partial exemption will also apply if you use part of your home to carry on a business (eg, consulting rooms or a shed for repair and maintenance works).

TWO HOMES OF SPOUSES AT SAME TIME

Finally, something that is often forgotten is the rule that prevents spouses (including de-facto and same sex spouses) from each being able to claim a separate main residence exemption on different homes they own and live in during a period when they are considered to be "spouses".

In this case, the couple will have to either nominate **one** of the homes as their CGT-free main residence for that period or, in effect, claim a half exemption on each home for that period.

This rule can apply in a variety of situations such as where two young people become de-facto partners but each retain their own home and either each continue to live in their own home – or they live together while retaining a prior home (which they continue to treat as their main residence).

Suffice to say the CGT rules in this area are quite complex in their own right – but even more complex depending on the circumstances to which they are applied (especially given the "choices" that can be made as to how to apply them in the particular circumstances).

Again, while this area may not be one that the ATO looks at closely (and probably for good reason), it is still one that you should at least always raise with your adviser.

CONCLUSION

So, all in all, if you are thinking of selling your home to cash in on spiralling house prices, it is important to get advice about whether you may have a partial CGT exemption floating around – because, if nothing else, maybe one day the taxman may look more closely at such issues. 🏠