Take care if you sell your home after leaving Australia!

If you have lived in Australia for many years and bought yourself a home here but decide to leave and go and live elsewhere, and you wish to sell your home, you should do so before you leave Australia.

Otherwise, if you sell your home after you have left Australia (and have become a foreign resident for tax purposes) you will not get ANY capital gains tax (CGT) exemption on your home (subject to some limited circumstances).

It's a severe rule which can punish you harshly. And furthermore, you will be denied the full benefit of the 50% CGT discount on any assessable capital gain – broadly, to the extent that you have been a foreign resident during any period that you owned the home.

Furthermore, any capital gain will be taxed in your hands at the higher non-resident tax rates.

What about the case if you have signed the contract of sale while you are still in Australia, but the settlement does not take place until after you have left Australia?

In this case, you are off the hook. This is because the time at which you are judged to have sold the home for CGT purposes is the time at which you have "entered into the contract" of sale – and not at the time of settlement (or any other time).

So, if you are still a resident of Australia at this time, then you will not be denied a CGT exemption on the sale of your home – nor the CGT discount, as relevant (such as where a partial CGT main residence exemption may otherwise apply).

This rule has important practical implications – and offers various solutions to get around any potential problem. For example, you could offer a sufficient discount on the asking price to make sure the agreement is entered into before you cease to be a resident.

And no doubt there are more extreme steps that can be undertaken if necessary.

For example, you could return to Australia and become a resident again for tax purposes on a bona-fide basis – and then sell the home. But if the home is, say, jointly owned between spouses, then both spouses would need to return to Australia.

On the other hand, in the case that you may have a capital loss on the home, selling it while you are a foreign resident is a good way to realise it so that you can use it for other purposes.

Finally, the rule denying you a CGT main residence exemption on your home if you sell it while you are a foreign resident does not apply if you have been a foreign resident for less than 6 years and you are required to sell it because of divorce or separation or family illness or death, etc.

Suffice to say, the issue of losing your CGT exemption on your home is no small matter.

So, if you are thinking of leaving Australia and you wish to sell your home (or any other property) make an appointment to come and speak to us about the matter so you can avoid any unnecessary and unwanted liabilities down the track.