Murray Business Solutions

CPA

Monthly Client Update

May 2024

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 Murray Business Solution's client information newsletter, your monthly tax and super update keeping you on top of the issues, news and changes you need to know. Should you require further information on any of the topics covered, please contact us via the details below.

T: 08 8232 1274 | E: info@murraybs.com.au

© Content in partnership with IFPA

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.

Take care with contribution timing this financial year

Are you are planning to maximise your superannuation contribution caps this financial year? If so, it's crucial to get the timing right so your contribution is received by your superannuation fund in the current financial year.

Lessons from a recent court case

A recent court case[1] has confirmed that contributions are made on the date they are received by a member's superannuation fund, not when they are made. The member in this case had intended that his contributions be attributed in the year the payments were made (ie, in late June) rather than on the dates they were received (ie, in early July).

However the ATO and the Administrative Appeals Tribunal ruled that the contributions were made on the dates the funds were received by his superannuation fund, rather than the date of payment initiation. This meant that the member's contributions were deemed to be made in the next financial year which placed the transactions into the next financial year with other contributions the member made that year, causing the member to exceed his contribution caps.

ATO view on when a contribution is made

The timing of when a contribution is made is important for a number of reasons, particularly when this occurs close to 30 June. For example, the timing can impact when the contribution will count towards your contribution caps, whether your fund is able to accept your contribution(s) or whether a tax deduction may be claimed for your contribution(s).

The ATO's Taxation Ruling[2] on superannuation contributions confirms that a contribution is made when the capital of the fund is increased. This occurs when an amount is received, or ownership of an asset is obtained, or a fund otherwise obtains the benefit of an amount.

For example, a contribution of money via an electronic transfer is made when the amount is credited to your superannuation fund's bank account, not when you press the button to effect the payment.

The table overleaf summarises some of the common ways in which funds are transferred and when the contribution is deemed to be made. Please note this list is not exhaustive:

continued overleaf ⇨

1: *Mackie v Commissioner of Taxation* [2024] AATA 619, 3 April 2024
2: Taxation Ruling TR 2010/1

Take care with contribution timing this financial year cont

How contribution is made	When contribution is made
Electronic transfer	When the funds are credited to the superannuation fund's account.
Personal cheque	The date the cheque is received by the superannuation fund provided it is promptly presented and not dishonoured (and not post-dated). Note – similar rules apply for promissory notes.
In specie[3] transfer of listed shares	When the superannuation provider obtains a properly executed off-market share transfer in registrable form.
In specie transfer of real property	When the superannuation provider acquires the beneficial ownership of real property, which is when the fund obtains possession of a properly executed transfer that is in registrable form, together with any title deeds and other documents necessary to procure registration of the superannuation provider as the legal owner of the land.

Timing is key

This year 30 June falls on a Sunday (a non-business day), so leaving it to the last minute and making a contribution over the weekend may not provide enough time for your contribution to reach your superannuation fund as transfers typically happen on business days.

If you are a member of a large APRA-regulated superannuation fund, make sure you know when the cut-off day is as this is the date your fund will accept contributions so that they will be allocated in that same financial year. Otherwise, there is no guarantee that contributions received after this date will be allocated before the end of the financial year. In the end, a contribution received by your fund on 1 July 2024 is a contribution that will be treated as belonging to the 2024-25 financial year.

On the other hand, if you have an SMSF, electronic transfers between accounts with the same bank generally happen immediately which means contributions will be made instantaneously and therefore count towards your contribution caps this financial year. This can be helpful if you end up making contributions last minute. However, a transfer between different banks is likely to take longer to clear which could see your SMSF receiving the transfer of funds after it was initiated by you as the contributor.

Superannuation clearing house delays

You should also take extra care if your employer makes contributions to your fund by using a superannuation clearing house as there can be a time delay from when your employer's payment is made to the clearing house and when your superannuation fund receives the contribution. This is because contributions made by employers to a clearing house generally do not constitute the receipt of a contribution by a superannuation fund as a contribution cannot be recorded by the superannuation fund until it is received. This could see last minute 2023-24 superannuation contributions by employers not reach their employee's fund in time to be recorded as a contribution in 2023-24 and may end up being recorded in the 2024-25 financial year. This could cause you to exceed your concessional contribution cap if you are also planning on making a personal superannuation contribution and claiming the amount as a tax deduction.

Key takeaway

The bottom line is to allow plenty of time to make your superannuation contributions well before 30 June in order for your contribution to be received by your superannuation fund this financial year because in the end, a contribution is deemed to be made at the time it is received by your superannuation fund, not when you process the transaction.

3: An in specie contribution is a transfer of non-monetary assets in and out of a superannuation fund without the need to convert them into cash. In specie is a Latin phrase meaning 'in the actual form'.

Rental properties: Traps and pitfalls

Following the ATO's claims that nine out of ten residential rental property investors who have been audited have been getting their returns wrong, it might be worth touching on some of the tax traps and pitfalls to be wary of. In no particular order, these include:

Apportionment of rental income and deductions

Where a rental property is jointly owned by two or more people, the income and deductions are split according to the owners' respective shares of the legal ownership of the property. Joint tenancy between spouses is the most common situation, meaning a 50:50 split. In those situations there is no legal basis for the spouse with the higher marginal tax rate claiming a disproportionate share of the deductions for mortgage interest, rates, land tax, insurances, repairs and maintenance in their own return – even where they fund the payments from their own bank account.

Private use

Interest and other outgoings are not deductible to the extent the property was used for private purposes – eg, while you or a relative or friend lived in it for no or nominal consideration.

Interest deductions

Where the acquisition of a rental property has been funded by way of debt, the associated interest costs will be deductible. However, where a loan (or part of a loan) that is secured over a rental property is used for private purposes, such as buying a car or renovating the house you live in, interest can only be claimed on a pro rata basis.

Care needs to be taken when refinancing debt to ensure the tax deductibility of interest attributable to the rental property is not jeopardised.

Repairs vs improvements

The cost of genuine repairs to fix something that is broken or worn down due to wear and tear that happened while the property was tenanted is immediately deductible. Work that involves replacing the entirety of an asset would be a capital improvement and is deductible at 2½ %.

For example, your rental property might have an original 1960s bathroom, with leaky pipes and tiles that are broken or coming away. Fixing the leaks and replacing the tiles (even with something a little more modern) would fall on the repairs side of the line and be deductible outright. On the other hand, gutting the whole bathroom and replacing all the fittings with something out of Home Beautiful would be a capital upgrade and deductible at 2½ % per annum.

Initial repairs

Any deductions for repairs to your rental property have to be attributable to the time you were earning rental income from the property. If you buy a property that requires initial repairs before you can put tenants in, the cost of those repairs will not be deductible. You should still keep track of the amount you've spent on initial repairs as it will trigger off a capital loss when you sell the property down the track.

Certain initial repair works may be unavoidable, but defer non-urgent work if possible. So if your newly acquired rental property is in need of a coat of paint, maybe wait two or three years before contacting a painter.

Travel costs

The cost of traveling to visit your rental property to attend to things is no longer deductible. This matters especially to investors who have bought property interstate. There is an exception where an investor is in the business of letting rental properties – but very few are.

Depreciation

Second-hand depreciating assets acquired as part of the rental property can't be written off against rental income, again unless you are in the business of letting rental properties. But the unclaimed depreciation can trigger off a capital loss on the eventual sale of the property. It's important to keep track of these amounts in the meantime.

continued on page 7 ⇨

Succession planning for family businesses

For most family businesses as well as private groups, succession planning (sometimes known as transition planning) involves considerations around the eventual sale of your business, or the passing of control of it to other family members when you retire. Depending on your circumstances, this may include realising assets and making other changes to ownership, but is certainly tied up with retirement planning and estate planning.

Adopting a sound tax governance framework can help you manage tax issues around succession planning before they present a problem. Though succession planning may not have an immediate tax impact, it's important to include tax considerations in your plan. This will avoid unexpected tax issues arising down the track when you implement your plan.

Transferring control of your business to family members may involve restructuring your business operations – changes to share structure, changes to the trustee and appointor of a trust, changes to partnership structures – or transferring assets to family members via the creation of trusts or other entities. Remember that these sorts of events can have legal and tax implications that need to be carefully considered. A common assumption with business owners is that the transaction being considered is a single "sale" — that of the business — whereas it is actually many sales of individual assets that need to be accounted for, possibly with different tax outcomes.

For example, when you dispose of or transfer your business assets there will likely be capital gains tax (CGT) consequences. The sale of a business can also trigger liabilities in relation to GST and, where applicable, wine equalisation tax, fuel tax credits and excise duty.

Where pre-CGT assets are involved, you should also understand and document the tax consequences for you and your beneficiaries. Issues for consideration include whether changes in the business operations may affect the pre-CGT status of the assets or shares and the availability of carried-forward losses.

Any significant changes to your business structures or operations (including any asset disposals) should be fully documented, along with their tax impact. Ensure information on your assets (such as acquisition dates and cost base) is properly documented. This will also ensure that any subsequent disposals of the assets can be treated correctly for tax purposes. Different strategies will have different tax consequences for the owner and beneficiaries.

continued overleaf

Succession planning cont

Consider each strategy and identify (and keep records of) significant transactions.

For example, say, as the owner of a successful family business, you prepared a basic succession plan many years ago, but since then your business has expanded and your children have grown up. One of them may work with you in the business and you would like to see them take over when you retire. The discussion you could have with this office would be how best to transfer the business and make the transition to retirement.

One option could be to restructure your business as a family trust, so you can still have some control of the business while reducing your involvement in the day-to-day operations. We can explain the tax consequences of this strategy, while also alerting you to other options and tax considerations. Once you decide on your strategy, you update your succession plan, which now includes a section detailing the tax treatment and tax payable on transfer.

Whatever strategies you use to transfer your business onto the next generation, make sure your plans are documented and you seek advice from professional advisers where needed. This will reduce the risk of incorrect tax treatment and outcomes, and possibly consequent penalties.

Rental properties cont

Cash jobs

It's not unheard of for the tradesperson offering the best quote for a repair or maintenance job on your rental property to ask for payment in cash. Before rushing in to accept such a quote, just make sure they're not keeping the job completely off the books and that you'll still be getting an invoice that satisfies the substantiation rules. Otherwise you could end up blowing your cost savings (and maybe more) because you won't be entitled to a tax deduction for the cash you've handed over.

What your tradie does in relation to his tax affairs is a matter between them and the Commissioner, but it shouldn't cost you a tax deduction. Always insist on getting an invoice.

Holiday homes

Own a holiday home? Great for family holidays, but if the property is also offered for short-term rentals there are a few wrinkles you need to be aware of.

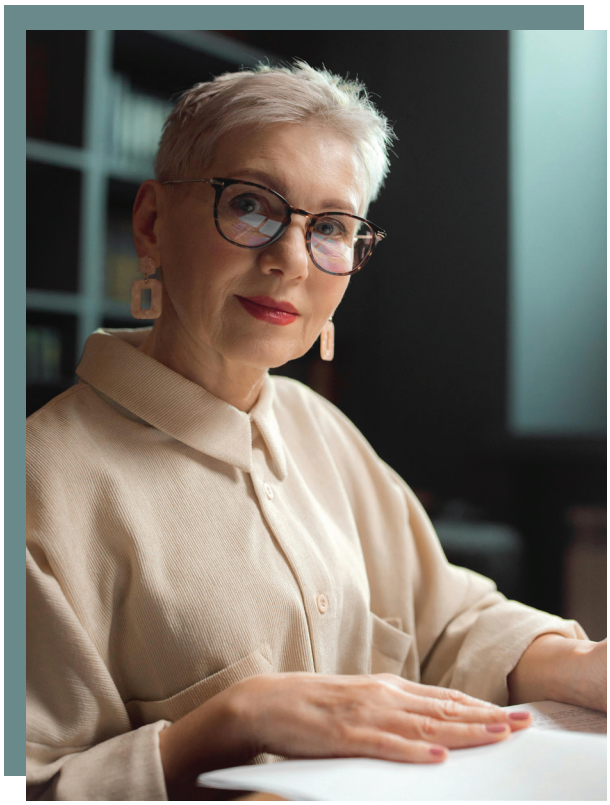
The main one is that the property needs to be genuinely available for rent, and not just at times when demand is seasonally low. So if you book the place out for yourself or family and friends for all or most of the school holidays and other peak times, the ATO will take the view that you're not seriously trying to make a profit from any rental income you receive and will limit your deductions for mortgage interest, rates and land taxes, repairs and maintenance, insurance etc to the amount of your rental income. Likewise if you only charge mates' rates when family and friends come to stay.

Some holiday house owners have even pretended to market their property by demanding excessive rents or imposing unrealistic conditions for short-term stays (eg, references, no pets, no kids). That is not likely to pass muster either.

Some limited personal use of the property is acceptable to the ATO, as long as you're genuinely trying to turn a profit. Where this is the case, the deductions claimed need to be pro-rated to reflect the time the property was let or was genuinely available for rent.

Any disallowed deductions won't be wasted entirely as they will create a capital loss on the sale of the property.

Please contact us if any of these issues raise concerns for you.



How myGov can help you track your super

Keeping track of your superannuation balance is key as it impacts how much you can contribute to superannuation and whether you are entitled to other superannuation concessions and measures.

Your total superannuation balance (TSB) is an important concept as it impacts your eligibility for up to six favourable superannuation-related measures, including the:

- Bring forward non-concessional contribution (NCC) cap
- Carry forward concessional contributions
- Superannuation spouse tax offset
- Government co-contribution, and more.

In a nutshell, your TSB includes:

- Your superannuation accumulation account balance(s)
- Your superannuation pension account(s), and
- The outstanding limited recourse borrowing arrangement amount in your SMSF that you entered into from 1 July 2018 (in certain circumstances).

Your TSB for the current year is measured on 30 June of the previous financial year (ie, 30 June 2023) when determining your eligibility to make or receive certain types of superannuation contributions.

HOW TO CHECK YOUR TSB

There are two main ways you can track your TSB.

Firstly, you can either contact your superannuation fund or refer to your fund's statements and records for your TSB. When reviewing your annual statement, the TSB figure your fund reports to the ATO is generally referred to as 'exit value' or 'withdrawal benefit'. This may be different to the 30 June 'closing balance'.

The second way to check your TSB is by logging into your myGov account which will show your TSB for the previous 30 June as well as other helpful information, such as your:

- Eligibility to use the NCC (after-tax contribution) bring forward arrangement
- Concessional contribution cap
- Unused carry forward concessional contribution cap amounts that have accrued since 1 July 2018
- Employer contributions, and more.

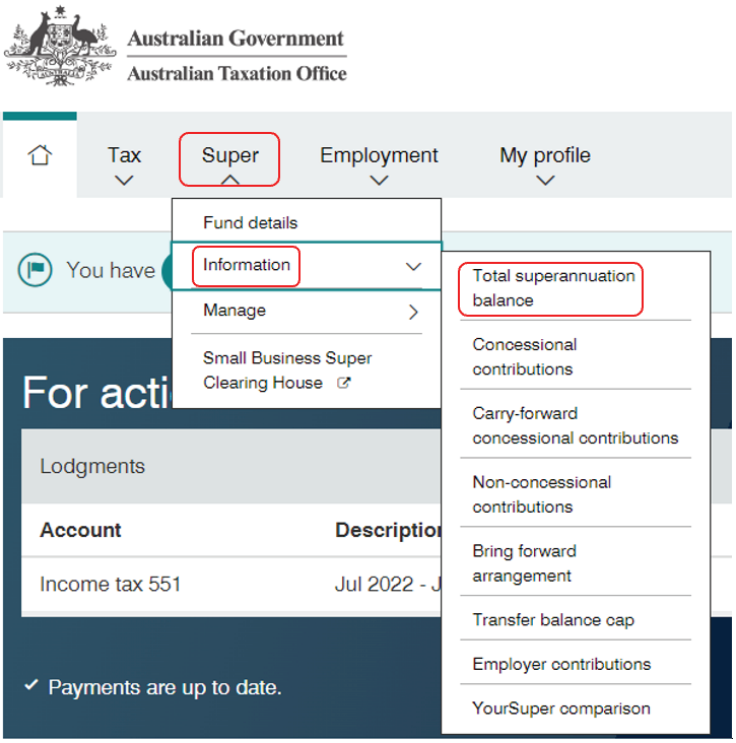
Checking this information can be beneficial before you make any further contributions prior to 30 June 2024 as it can help you avoid exceeding your contribution caps.

continued overleaf ⇨

How myGov can help you track your super cont

The following steps should be taken to track your TSB (and other related superannuation information):

1. Log into your myGov account by visiting my.gov.au. If you don't have a myGov account you can create an account. Alternatively, if you have a myGov account but have not linked the ATO service to it, you can also link it here too.
2. Select the super tab, then click on the information option and then click on 'total superannuation balance' (as shown in the image below). Here you will be able to see your current TSB as recorded by the ATO.
3. You will be able to see your current TSB for each superannuation interest you hold, including your prior year's 30 June TSB under the 'History' button.



NEED HELP?

Please contact us if you need more information on how to check your TSB or if you require further information about your superannuation account.

CHECK THE INFORMATION PROVIDED

You should take care when checking your TSB and other amounts displayed in myGov, as depending on the type of superannuation fund you have, your 30 June balance and contribution details may not have been reported to the ATO yet.

For example, SMSFs are not required to report their superannuation information to the ATO as regularly as large APRA-regulated funds so your contributions and your account balance may not be up to date in myGov. This is because the ATO obtains information about SMSFs from the annual return each year. This means any SMSF members will need to check their SMSF records to track their TSB and contribution caps if this information is not up to date in their myGov account.

This information has been prepared without taking into account your objectives, financial situation or needs. Because of this, you should, before acting on this information, consider its appropriateness, having regard to your objectives, financial situation or needs.