Murray Business Solutions

CPA

Monthly Client Update

July 2024

Division 293 tax

Will you be caught?

If you're a high income earner, you may soon be asked to pay an extra 15% tax on the amount of concessional contributions that exceed the $250,000 threshold.

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.

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What is Division 293 tax?

Division 293 tax is an additional 15% tax that is payable when your income and concessional contributions exceed $250,000 in 2023/24.

To recap, concessional contributions are before-tax contributions and are generally taxed at 15% within your fund. This is the most common type of contribution individuals receive as it includes superannuation guarantee payments your employer makes into your fund on your behalf.

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Division 293 tax cont

Other types of concessional contributions include salary sacrifice contributions and tax-deductible personal contributions.

It's worth noting that the extra 15% Division 293 tax is payable in addition to the standard 15% tax that is paid on concessional contributions.

How does Division 293 tax work?

You will be liable for Division 293 tax on either your concessional contributions, or the amount of income that is over the $250,000 threshold – whichever amount is lower.

Income for the purposes of Division 293 includes taxable income from a range of sources, such as:

- Employment and business income
- Reportable fringe benefits
- Investment income
- Net financial investment losses, such as negative gearing losses where deductions attributable to an investment property exceed rental income
- Income you may receive due to a one-off event, such as making a capital gain, receiving a work bonus, or a redundancy or termination payment.

Purpose of Division 293 tax

The purpose of this extra tax is reduce the tax benefits that high income earners receive from the superannuation system and to level the tax playing field for average income earners.

Even though high income earners may pay tax on their concessional contributions at 30%, this is still less than the top marginal tax rate of 47% (including Medicare levy) that generally applies to high income earners who are liable for Division 293 tax. As such, making and receiving concessional contributions are still tax effective.

Liability to pay Division 293 tax

The ATO will determine if you need to pay Division 293 tax based on information in your tax return and data they receive from your superannuation fund(s). As a result, there is usually a delay between when the contribution is made and when Division 293 tax is payable.

The ATO will issue you with a notice of assessment stating the amount of tax payable and provide an authority to enable your superannuation fund to release the money. You also have the choice to pay the tax personally. Note that the tax is due within 21 days of the assessment being issued to you, and certain timeframes also apply if you elect to pay the amount from your superannuation fund.

Need more information?

Contact us today if you think you might be liable to pay Division 293 tax and want more information about your options.

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.

The fine line between property development and "merely realising an asset"

There can often be a fine line between whether a person is carrying on property development activities or is "merely realising an asset".

For example, it may not be clear whether the extent of a person's development activity in respect of, say, subdividing his or her backyard and building one or more units of accommodation and selling them either amounts to property development or merely realizing an asset – and one that has been used mainly for domestic purposes.

And a person may be considered to be carrying on property development activities if they are not in the business of property development and it is a one-off activity.

Suffice to say, the tax consequences between property development and "merely realising an asset" are entirely different.

In the case of carrying out property development activity, the gains are assessable as ordinary income (or as business income) – and, importantly, without the benefit of the capital gains tax (CGT) 50% discount which would otherwise reduce the assessable amount.

However, relevant expenditure incurred is generally deductible as it is incurred, ie, in the income year that it is incurred. And this may be of great benefit to the developer.

On the other hand, if a person is "merely realising an asset" then any gain is only accounted for under the concessionally taxed CGT regime (and with the benefit of the 50% CGT discount, if generally the land has been owned for more than 12 months).

Furthermore, in this case, if the property in question was acquired before 20 September 1985 then there will be no consequences (either CGT or ordinary income). And there are still quite a few pre-CGT properties around that are ripe for realisation.

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The CGT main residence exemption concessions are very useful

Probably the most overlooked reason for the housing affordability crisis in Australia at the moment is the capital gains tax (CGT) exemption for a person's home itself.

But not this alone.

Rather, it is probably the exemption *in conjunction* with all the various concessions a person can use to access the exemption.

And these concessions can be extraordinarily useful depending on a person's particular circumstances.

So, let's run through a few of the main concessions:

The concession for changing houses. This applies if you buy a new home before you sell the old one. It allows you to treat both homes as your CGT-exempt home for a period of up to six months while you sell the old home. But there are important conditions that must be met in order to use it.

The concession for moving into a house. This allows you to treat your new home as your main residence for the entire period you own it, even though you may not have moved into it straight away. However, it is subject to important limits and restrictions – and generally requires you to move in "as soon as it is practicable" to do so.

The absence concession. This is an extraordinarily useful concession that allows you to treat your home as your "CGT exempt main residence" even though you may not be living in it for a lengthy period. In the case that you rent it in your absence this period lasts for six years, and if your home is not rented it lasts indefinitely. However, it is likewise subject to important conditions before you can use it – including that the residence must have been your home on a bona-fide basis. (And the ATO does track such matters!)

The building or renovation concession. This allows you to treat vacant land as your CGT-exempt home for a period of up to four years where you build a new home on it and move in as soon as it is completed and live in it as your home for a period of at least three months. This concession can also be used where you leave your existing home to do major renovations – or even in a knock-down, re-build situation.

Again, these and other concessions are extremely useful depending on your particular circumstances – and can actually be used to allow you to access a full (or at least partial) CGT main residence exemption in a way that was probably never originally envisaged.

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The CGT main residence exemption concessions *continued...*

And in the case of the absence concession, for example, it even allows you to negatively gear the property during the six-year period of absence that you rent it!

On the other hand, there are also some CGT rules that can expose your home to a partial CGT exemption in a number of circumstances.

For example, there is a rule that spouses (including de-facto spouses and same sex spouses) cannot each have a CGT exempt main residence on different residences for the same period that they are spouses. And this may apply in a variety of situations. However, it seems to be a rule that the ATO does not actively pursue – nevertheless it is there in the tax law.

Another rule that may limit your ability to claim a CGT exemption on your home is where you may subdivide some of it off and sell it or transfer it to another party (eg, typically on the subdivision and sale of part of a large backyard). And this rule may be highly relevant in the current housing market – especially given more flexible council regulations.

If you are considering buying or selling a home – or find yourself thinking that you may need to use any of these concessions – we can advise you on their applicability to your case and how you can use them most effectively.

The fine line between property development and "merely realising an asset" *continued...*

So, how does the Tax Office tell the difference between the two when it is not abundantly clear from the nature of the activity itself?

Well, several factors are particularly important (among the many that can be taken into account).

These include the intention with which the person originally acquired the land. To develop it and on-sell it for a profit? Or merely for some other non-profit purpose? For example, to live in it as their home (although this distinction is getting harder to tell in the current property market!).

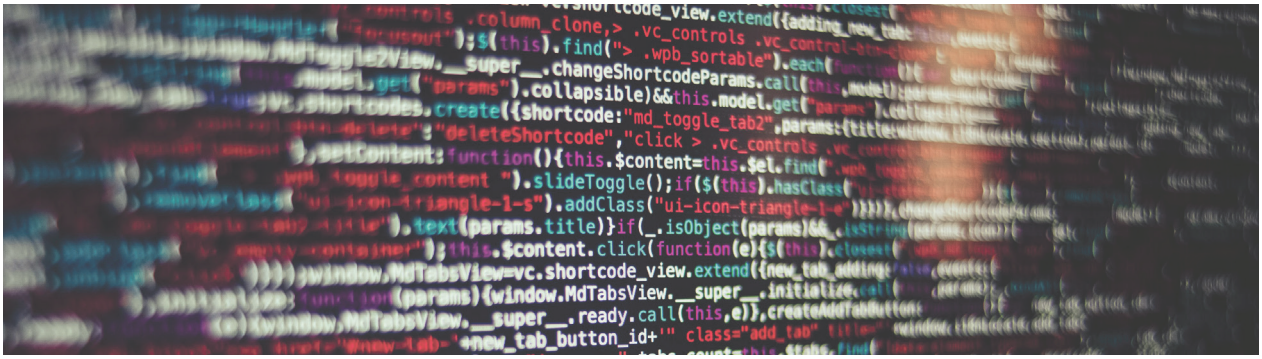
Another key factor is the extent to which the person gets involved in the activity. As a broad principle, where a person is less involved in the activity and merely acts passively it is generally considered to be "merely realising an asset". But this is not a hard and fast rule.

There are also important GST consequences depending on the nature of the activity and the property involved.

Finally, it should be stressed that just because the nature of the activity is a one-off transaction it does not mean that the person is immune from being taxed on the profits as ordinary or business income.

If you are contemplating carrying out any such activity, come and have a chat to us first so we can help you do things with the best possible tax outcomes.

The secret life of TFNs



Tax file numbers (TFNs) are so much an everyday element when dealing with tax and the ATO that many taxpayers won't give it a second thought when tax return software responds with an "invalid" message when a TFN is entered.

The common thought will be that it's human error, so naturally one's first reaction will be to check the numbers you entered, followed by carefully re-entering them.

Most of the time the problem will be fixed and it's business as usual, but here's a passing thought — how does the tax return software know what is, and what is not, a valid TFN? Especially when you consider that its validity or otherwise is not dependant on matching those numbers with someone's name and/or birthday and/or address and so on. These identifiers are used to cross-check a person's identity of course, but the initial validity of a TFN is known via another factor — the "TFN algorithm".

This verification algorithm, also known as a check digit algorithm, is embedded in each unique TFN. As with a lot of these things, this is best explained using an example. However, you need to keep a number in mind, which in this case is the number 11.

To make the algorithm work, a fixed weighting is applied to each number of the TFN. In order from the left, these weightings are 1, 4, 3, 7, 5, 8, 6, 9, 10.

Example: 123 456 782

See table below: as 253 is a multiple of 11, the TFN is valid.

TFN	1	2	3	4	5	6	7	8	2
Weight	1	4	3	7	5	8	6	9	10
Sum	1	8	9	28	25	48	42	72	20
Validation	1 + 8 + 9 + 28 + 25 + 48 + 42 + 72 + 20 = 253								

To check for yourself, try the above with your own TFN.

Can I add to my super pension?

A common question that is often asked is whether amounts can be added to a superannuation pension account once it has commenced.

The short answer

Unfortunately, the answer is no. Although your pension account can continue to increase due to investment earnings, such as interest and dividends, any further capital cannot be added to the current pension account. As such, once a pension (usually an "account-based pension") has commenced, you cannot add any more contributions or money to that same pension account.

To recap, an account-based pension is a regular income stream bought with money from your superannuation when you retire. It is the most common type of superannuation pension as they offer regular, flexible and tax-effective income from your superannuation benefits.

The benefit of commencing an account-based pension is that investment earnings are tax free and once you turn 60, your pension payments will also be tax free. However the main trade-off for these tax concessions is that you have to withdraw a fixed amount of your pension balance each year based on your age.

The alternative solution

If you want to make additional contributions or consolidate an existing superannuation benefit with an account-based pension that you have already commenced, you will need to close your existing pension account and commence a new pension account.

Once you stop your pension, you can then add to it by making further contributions or combine it with any other existing superannuation benefits you may have in accumulation (ie, non-pension) phase. Once all amounts have been consolidated, you can then commence a new, larger account-based pension.

Alternatively, you can start another pension account with any new contributions that may come from your existing savings or from your existing account-based pension income that you haven't spent. Taking this approach will ensure that no changes occur to your existing pension account.

Be aware of the transfer balance cap

As the name suggests, the transfer balance cap (TBC) limits the total amount of superannuation that can be transferred into a pension where there is no tax on investment earnings. The current TBC limit is $1.9 million as of 1 July 2024.

However, if you started your pension before 1 July 2023, your personal TBC will be somewhere between $1.6 to 1.9 million, depending on your circumstances. So if you are thinking about transferring more money into a pension account, note that this amount will towards your personal TBC.

It's also worth noting that if you want to hold more than $1.9 million in your pension account, you will need to keep the remainder in accumulation phase. Penalties apply for exceeding your TBC and you will also be required to withdraw the excess amount from your pension account to bring it back within your TBC limit.

Last word

If you are considering adding more money to your pension account, or want to learn more about how to make the most of your pension account, let us know and we can help guide you in the right direction.