Death Tax may see Jodi Homeless!

I wonder if Anthony Albanese has considered how his attack on our CGT legislation is going to affect him? Maybe he will pay more attention to the detail instead of pushing legislation through parliament without professional consultation. If he considers his circumstances, which are not that unique and could in one way or another apply to Australians who have rented out their home at some time.

There are two primary problems, if you die with people relying on your home as a roof over their head, they will probably have to sell the home to pay the death tax. This is the real hidden death tax if your home has any CGT exposure before 1-7-2027 that CGT will be payable at your date of death. Further, you will lose indexation if you live overseas for a while to work and gain experience.

Consider Albanese's Copacabana $4.3mil home on the NSW central coast. Well, it is not really his home he can't cover it with his main residence exemption, he lives at the lodge. Similar to a minister of religion who lives in the church manse four days a week and is only in their home the minority of the week. Or a miner who doesn't aways go home between shifts because his sister's place is closer to the mine. Or the couple who the ATO decided spent too much time at their daughter's place so their home was empty most of the time. The main residence exemption is not a given, the ATO have a long history of taxing the only home taxpayers own even when it has not been used to produce income. They even examine how much electricity you use to estimate the time you spend there and whether the home is of a suitable standard for habitation.

So on 1st July, 2027 as the rules stand, Albanese will get a market value reset. The gain up to that date may be entitled to the 50% CGT discount and a new value that may be indexed from that date.

Let's say in July 2027 the property is worth $5mil and when Albanese dies the property is worth $10mil.

What if in 2028 Albanese losses office because of the outrage against these very poorly drafted changes that affect every day mum and dads much worse than the wealthy? He may retreat to Italy and buy a house there with the intention of living there indefinitely. He may still have the Copacabana house but he has never lived there. While he is a non resident for tax purposes he will not be entitled to indexation.

So Albanese and Jodi return to Australia in say 2038 and retire in Copacabana. Eventually he dies in 2050 when the house is worth $10mil.

Now if he bought the house after 1st July, 2027 it would just rollover to Jodi, no CGT event triggered, though one day she may have to pay the tax bill, only if she sells. Further, if the house was purchased after July, 2027 and Jodi lived there until she died then the rollover on death would actually work out that her heir would inherit this house with a cost base of market value at date of death. The fact that it was a rental and that they lived overseas will be forgotten if Jodi is living there when she dies but only if the house had been purchased after 1st July, 2027. The death tax problem only exists for properties purchased between 1985 and 2027. Here is some real intergeneration inequity. Family homes purchased between 20th September 1985 and 1st July, 2027 will be treated more harshly for CGT purposes than those purchased after that date. Another dampener on increasing housing supply. Better to wait a year before you buy.

The problem is there was a $700,000 capital gain up to July, 2027, modest really because they recently purchased the property. This is going to be far worse for a long standing family home. So, the $700,000 gets the 50% CGT discount and the estate has to pay tax on $350,000 in Albanese's date of death tax return. This is because the deferred pre 1st July 2027 gain is taxed on a realisation event ie a CGT event which will happen when the estate receives the property on Albanese's death. This realisation event does not allow deferred gains to get through to the rollover concessions normally available on death. This is a death tax, tax payable on the date of death on any capital gains made on assets acquired between 20th September, 1985 and 30th June 2027.

Jodi, now too old to borrow from the banks, may well be forced to sell their home to pay the tax. This then triggers tax on the $5mil gain since July, 2027 without indexation for a lot of that time so she will have to pay tax on inflation even though the price of a smaller house has also gone up. There are probably quite a few items that can be added to the cost base over the years so let's say the gain is $4.8mil. For approximately 11 years from 2027 to 2038 the house was not covered by their main residence exemption and approximately 12 years it was covered. Approximately half, so half of that $4.8mil is going to be taxable $2.4mil.

Jodi will have a tax bill of over $1mil, let's hope she has enough left to buy somewhere to live.

For many families the triggering of the deferred capital gain on death will force them to sell, triggering further tax and leaving them without enough money to buy elsewhere that is unless they are wealthy enough to have more than the basic home. The rest of us schmucks with normal basic family homes will be homeless because of this death tax. Consider premature death leaving behind a widow and young children. The surviving spouse may not be in a position to convince the bank to loan them money to pay the tax or refinance into a cheaper home. If they could stay on in the existing home with a mortgage the banks will generally wait and see how they go before foreclosing. They have a chance of holding on.

The government is aware of this. They stated on the 4th August, 2026 that they would make adjustments in the future. They also stated before the election they wouldn't change the capital gains tax discount or negative gearing. We need to keep up the pressure.