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Welcome to Newsflash 339, this edition deals with some little know issues around CGT and property.

It's been a while! This tax season was exceptionally busy, please be patient with us. Tax accounting is quite unique in that we receive most of the full years' work in the first couple of months! So even while we try to work on a first in first out basis, if you want your work completed by somebody who has the experience of a long-term employee, then it may take some time to receive your returns back.

The ATO gives us a lodgment program that spans the majority of the financial year. BASs need to be completed on a quarterly basis so can take priority. Further, exceptional circumstances such as refinancing and individuals facing cashflow issues can also take priority. To those clients who are still waiting for their work to be completed we do appreciate and love your patience, please know you are very important to us!

A Loop Hole to Keeping Receipts for CGT Purposes

I find myself constantly quoting section 110-25(4) ITAA 1997, which allows you to increase the cost base of a property you purchased after 20th August 1991 by the amount of any holding costs. For example; rates, insurance, interest and even cleaning materials. Upon hearing this most people despair, but we haven't kept any receipts!

The question here is, would under reasonable expectations you be required to keep receipts? If your property was always purchased with the intention to be your main residence but suddenly becomes subject to CGT through unforeseen circumstances, you may be able to use section 121-30(1) to estimate these costs rather than produce receipts.

This will be of particular importance to Australian Expats who will now completely lose their main residence exemption if they sell their home in Australia whilst living overseas. If this could apply to you, please see our Expats booklet for further detail.

This section is also very useful for executors of estates where records are scarce and it can be applied to other assets including shares.

If you always intended to keep a property as your home it might also be unreasonable for the ATO to have expected you to keep receipts, if through unforeseen circumstances it becomes exposed to CGT. For example, demolishing your home will exclude you from the main resident exemption no matter how long you lived there. Another trap is if you stop covering a property with your main residence exemption but do not rent it out. Not renting it out means you will forgo the benefits offered in the section 118-192 to reset the value of your property to market value. The capital gain will then need to be calculated for the whole period of ownership and then that gain apportioned between days covered by your main residence exemption and days not.

Don't give up without a fight. Your argument is that obviously the costs were incurred, it's just a matter of quantifying them. The ATO cannot deny you a deduction just because you don't have a receipt.

Learn More – Booklet

<https://www.bantacs.com.au/booklets/expats>

Holding Property in a Company

Recently I heard a spruiker suggesting that given the lower tax rates granted to companies it may be beneficial to purchase a property within a company. The advice being, that whilst companies cannot access the 50% CGT discount, if tax rates for companies drop as far as 25% it may be as beneficial as owning the asset in your personal name and only getting the 50% CGT discount on your marginal tax rate.

Ignore this suggestion! A company cannot qualify for the lower tax rate unless at least 20% of its assessable income is from a business which doesn't include passive income such as rent and capital gains.

A lot of decision making goes into the tax consequences of purchasing a property, so please ensure you discuss with your Accountant before entering into any contract. By working with you we can ensure you are protected against all common traps and pitfalls!

Learn More – Booklet https://www.bantacs.com.au/booklets/Buying_A_Rental_Property.pdf

When Your Home is on More Than 2 Hectares

Australia's main residence exemption for CGT only covers land of up to 2 hectares. If your main residence is on a block which exceeds these dimensions, CGT will apply to a portion of the capital gain. As a result, the costs associated with the property and the selling price will need to be apportioned. Whilst the land specifically under your dwelling must count towards your 2 hectare exemption, you are able to choose the what pieces of the property make up the rest of the exempt area, provided that it is used for private purposes.

This is where some planning comes in. You could have a segment of the property that is a flood prone swamp that may have been worthless when you purchased the property and still is. Put that in the area that is exposed to CGT. A valuer could find parts of the land that have gone up in value more than the rest because the neighbour has cleared their land and you now have views from there, consider that for your main residence exemption. Expose to CGT an area that you have wasted a lot of money on such as stables you built that have now fallen into disrepair, include these in the area exposed to CGT and add the cost of the stables to the cost base. If part of it was used in a business for 7.5 years or more than half the time you own it, which ever is the shortest period, then you may be able to eliminate the CGT with the small business concessions

If you purchased the property after 20th August, 1991 you will be entitled to increase the cost base by holding costs under section 110-25(4) ITAA 1997. This could even include slashing costs, rates, interest etc.

If you decide to subdivide to sell the property different problems will arise. Please seek advice from your accountant.

Learn More - Julia's Blog <https://bantacs.com.au/Jblog/cgt-when-your-home-is-on-acreage/>

Webinar https://www.youtube.com/watch?time_continue=7&v=uom7L69MWwE

Booklet https://www.bantacs.com.au/booklets/How_Not_To_Be_A_Developer_Booklet.pdf

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