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Capital Gains Tax Planning and the family home – A New Year's resolution?

Joseph Lee on 9 January 2017

In the Henry Taxation Review (also known as Australia's Future Taxation System) of December 2009 it was contemplated that demographic changes in the form of an ageing population has structural consequences for Australia's budget position: 'if rising debt and reductions in government services are to be avoided, action will be needed to increase the amount of revenue raised from this or other tax bases'.

Since this time domestic politics overshadowed the tax reform agenda and as a result, Australia has adopted a reasonably minimalist approach in tackling the structural deficit associated with the anticipated demographic changes.

However, we did see passage of a number of significant superannuation measures through Parliament on 23 November 2016.

The passing of these superannuation measures is significant, as it is effectively an acknowledgement on both sides of politics that Australia has a revenue problem and, a possible precursor to further reviews of current tax concessions so as to address this problem.

As the current Liberal government have indicated in the context of discussions on tax reform, 'everything is on the table'. Reflecting on the more recent items on agenda, we have had an introduction of the Netflix (imposition of GST on digital products and imported services) and Google taxes (multinational tax avoidance law). Then there was an open-and-shut weekend discussion on the possible increase to the rate of GST and Labor pre-election proposals for a prospective limiting of negative gearing to only existing housing along with the halving of the current capital gains tax discount.

With the significant uncertainty surrounding possible changes to tax law together with the recent global backdrop of Brexit and the ramifications on the European Union, the playing out of a Trump presidency in the United States and the increase in the medium-term domestic fixed home loan rates, it may have crossed the mind of some property owners (depending on their respective circumstances) that a resolution for the New Year would be to realize and lock-in gains on their holding / interest(s) to avoid possible adverse changes in Australian Tax Law and / or monetary policy.

In the event that you decide to sell the family home due to the above or some other familial consideration, there are a range of events that may have taken place during the ownership period which, when taken as a whole, have relevance in determining your eligibility to the main residence capital gains tax exemption ("MR exemption").

For instance, you may have rented the property initially whilst on an overseas secondment. You may have built a granny flat on the same land (for say one of your children / relative living with you) where the primary dwelling is situated. Or, you may have subdivided the parcel of land connected with the original dwelling and built another house on the subdivided land. To what extent would you be eligible for the MR exemption in the event of a sale and, are there any special provisions that could be utilised to minimise taxes where applicable and maximise after tax gains.

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Over the next three articles we shall review the current law with respect to the MR exemption, with a focus on certain elements and special provisions that may be applied under specific circumstances.

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