

December 2014

Capital gains tax issues in relationship breakdowns

Just as at any other time a Capital Gains Tax (CGT) eligible assets is dealt with you need to be aware of the impact a relationship breakdown may have on a CGT asset. This may be important whether or not the asset is transferred or sold at the time of the property settlement between the parties.

There are provisions under the *Income Tax Assessment Act* which allow for what is referred to as CGT roll-over relief when parties to a relationship, under a Court order or an agreement under the *Family Law Act*, transfer an asset from one spouse to another. This roll-over relief does not include transfer of real property or assets from a trust or company to a spouse or child of the relationship.

What is often ignored is the possibility that you may have had to spend money in defending your title to the asset in your settlement proceedings. If you retain an asset, such as an investment property, as an outcome of the property settlement but during the course of those proceedings your ex-spouse made a claim on that asset you might be able to recover some of your legal costs in defending and settling the claim.

Whilst you may not be able to recover those costs in your income tax return in the year in which it is expended, you may be able to recover it if you later dispose of the property and have incurred expenses in defending your title to the property. This property needs to be in your name only. As a result it is important to maintain records of expenses incurred in defending your title to a property.

If you are the holder of the investment property after any property settlement you will have picked up any capital gains tax lying dormant in the property when you subsequently dispose of it. You therefore need to receive from your partner all of their allowable capital gains tax deductions, including their costs of defending the title to the property. These are allowable deductions for that property in calculating capital gains tax payable by you.

Fox and Thomas has the expertise in matters involving significant commercial or rural assets to ensure the preparation of properly drawn orders and agreements in family law settlements.

For more information on capital gains tax issues in relationship breakdowns please contact any of the following:

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