Selling your home to a developer? Beware the tax consequences!

The NSW state Government is attempting to help with the housing affordability crisis by making areas around train stations and shopping centres eligible for rezoning for denser development. It will be important to see your tax adviser if you receive a generous offer from a property developer for your home (or rental property) as a result of this rezoning. And not just if you live in NSW.

This is because you will have to consider the capital gains tax (CGT) – or possible other income tax consequences – of selling your home or rental property in these circumstances – including where you may be forced to sell under some state compulsory acquisition rule (eg, in relation to strata units).

In relation to something that is your home you should be right as a home is exempt from CGT.

But if you have ever used your home to produce assessable income (eg, rented the whole or a part of it out or used it as a place of business) you will be subject to a partial CGT liability – and calculating the amount of this liability can be quite complex, depending on the exact situation.

For example, if you originally lived in the home and rented it for a period you will ordinarily be able to apply the "absence concession" to continue to treat it as your home and therefore sell it CGT-free. But if you can't, you will have to reset its cost for CGT purposes by reference to its market value at the time you first rented it and then recalculate its precise cost for the calculation of the partial gain. This includes knowing what range of expenses can be included in this cost!

Likewise, if you use part of your home as a place of business you will have to reset its cost for CGT purposes on the same basis – but in this case you may (and it's a big "may") be entitled to the CGT concessions for carrying on a small business. But this is an area ripe with confusion – and controversy (unbeknown to many).

And then of course, there is the issue of whether you qualify for the generous 50% CGT discount to reduce any assessable capital gain – and this is often not as simple as it looks.

It may even be the case that you could be assessed on any gain you make on the sale of your property on the basis that it is like taxable business income (and not a concessionally taxed capital gain). And this can potentially happen if you carry out activities in a business-like manner to increase the value of your home in order to fetch a higher price from developers. There is even recent case law on this matter which confirms this view (albeit, this case law is only at a lower tribunal level).

So, if for better or worse, if you find yourself being approached by a developer to sell your home (or other real estate), go see your tax practitioner. Their advice will be invaluable in perhaps this one-off chance to make a significant gain on your main asset. ■