

The 50% CGT discount: More than meets the eye



There is much in the media about how the 50% capital gains tax (CGT) discount has contributed to the housing affordability problem in Australia (although no doubt the problem is a lot more complex than attributing it mainly to any taxation measure or measures).

Nevertheless, the CGT discount looms large for anybody who owns assets that are subject to CGT (and note in this regard a passenger car of any sort – including a vintage car – is not subject to CGT).

However, the 50% discount may even have relevance to your otherwise CGT-exempt home because you may be subject to a partial exemption due to the way you have used it to produce income or in some other cases.

Also, you may inherit a home and not satisfy the requirements for a full CGT exemption!

But the rules for applying the discount are not as straightforward as you would think.

For example, in any case where you make a capital gain you must first apply any prior year or current year capital losses you have before you apply the discount – and this in effect dilutes the value of the discount.

And if the gain arises from the sale of a business asset and if you qualify for the CGT small business concessions, there are other rules to consider before applying the discount (if at all).

Importantly, the full 50% CGT discount is generally not available to foreign residents for assets they acquire after 8 May 2012 (but an apportionment may be applied for any period of residency before becoming a foreign resident).

Further, even if you are a resident when you sell an asset, the 50% discount may be lost to the extent you were not a resident during the period you otherwise owned it.

But these rules are very messy and need to be looked at closely if the need arises.

Note that not all taxpayers can use the discount. For example, a company does not get it (albeit, it has lower tax rate of generally 30%). And superfunds (including SMSFs) are only entitled to a 33¹/₃% discount.

Likewise, not all capital gains qualify for the discount. Typically, capital gains which arise from granting legal rights to another person or entity do not qualify for the discount – such as gains from granting a restrictive covenant to your employer or granting an easement over land.

Finally, in order to qualify for the CGT discount, you must have owned the asset that gave rise to the capital gain for at least 12 months – and the ATO takes the view that this does not include the day you legally acquired the asset nor the day you sold it.

So, it really means you need to have held the asset for 367 days – or 368 days in a leap year!

**i As with anything to do with tax, even the CGT discount is not straightforward.
So, as always, make sure you seek our advice on any such matters. 💰**

This information has been prepared without taking into account your objectives, financial situation or needs. Because of this, you should, before acting on this information, consider its appropriateness, having regard to your objectives, financial situation or needs.