# SELLING REAL PROPERTY?

## DECLARE ANY GAIN IN THE RIGHT INCOME YEAR!

A recent Federal Court case showed the importance of the rule that a capital gain is assessable in the income year in which the contract for its sale is entered into, even if settlement occurs in a later income year (perhaps several years later).

This is typical of contracts for the sale of land, where the contract is entered into (or exchanged) at one point in time (eg in June of one income year) but settlement does not occur until another time (eg in the next income year or later).

In that case, the taxpayer made a capital gain of some $5m from the sale of a city unit. He had entered into the contract in the 2019 income year, but the contract was not due to settle until the 2023 income year.

In the interim he received the deposit of $500,000 in the 2020 year, and he (wrongly) declared part of the capital gain attributed to this deposit in that 2020 year. In the 2023 year, he received the balance of the sale price and (wrongly) declared the rest of the capital gain in that 2023 year.

When the ATO found out about it soon after, it amended his tax assessments to make sure all the capital gain was included in the correct 2019 income year. In this case, a special provision in the tax law enabled the ATO to go 4 years back to 2019 to amend the return for a capital gain arising from the sale of land under a contract.

The ATO also amended the 2023 year to remove the capital gain he had wrongly declared there. In this case, the basic rule that allows the ATO to go 2 years back to amend a tax return enabled this amendment.

However, the ATO could not amend the 2020 tax return to remove the capital gain that had been declared in the 2020 income year. There was no provision in the tax law to allow the amendment of that return in this case.

As a result, the taxpayer was subject to double taxation in respect of that $500,000. The Court said there was nothing it could do about it, as the tax law applied "according to its terms", and these terms prevented an amendment being made to the 2020 income year.

So, the moral of this story is that capital gains (and losses) must be accounted for in the income year in which the contract is made, even if the settlement of that contract does not take place until a later year (including many years later). This is often the case where land is sold to a property developer who does not pay the full price until each block is developed and then sold.

However, the ATO provides an important concession for taxpayers who are liable to pay tax on a capital gain in one income year but do not receive the sale proceeds to help pay that liability until a later year.

Under this concession, the ATO will allow the taxpayer to go back and amend their tax return to include the capital gain when the sale proceeds are actually received, without charging interest for late payment. But this is subject to strict conditions, including that the return be amended as soon as the sale proceeds are received.

If you are selling land or any other property and you find yourself in this situation, talk to us. We can also advise on legitimate planning to take advantage of this rule.

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.