TAX with Shukri Barbara

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DIVORCING INVESTMENT PROPERTY

Investing in rental properties jointly with your spouse or de facto partner can have tax implications in cases where the relationship ends, writes **Shukri Barbara**

Consider the situation from the perspective of someone who is facing this situation and is negotiating a 50 per cent stake of the net equity of the investment property (IP) portfolio purchased while together.

In this case, we'll assume the couple have no children, so there are no child maintenance issues. From a tax perspective, the basic principles remain the same. We'll also assume the couple are both professionally employed.

During the period in which the IP portfolio was acquired, one party contributed towards maintaining the domestic expenditures as well as the deposits to acquire the properties, while the other party generally covered the negative gearing losses of the properties and contributed towards the deposits.

Broadly speaking, family law will approach the facts from a contributions basis – how much each party contributed to the relationship. Value is given to the domestic contribution, whether in payments of living expenses or time and effort in keeping house or emotional support.

As such, records of contributions to deposits, interest maintenance and repairs become a very helpful resource in the process of measuring the pooled contributions and later negotiating the settlement. Domestic expenses may be more difficult to record, but estimates can be made. The lawyers would help with advice on approaches to these matters.

Capital gains tax (CGT) is the main concern when property is transferred, sold or deemed to be sold.

THE END OF A RELATIONSHIP CAN HAVE TAX REPERCUSSIONS FOR YOUR PROPERTY PORTFOLIO

Where the divorce settlement requires any jointly held properties to be transferred to one party, this would normally trigger a CGT event for the transferring party. The capital gain or loss would be based on the market value of the properties at the time of transfer.

However, there would be rollover relief from capital gains for the 'giving' party. For the CGT relief to apply, the settlement has to be made under a financially binding agreement, court order made by consent under the *Family Law Act*, or similar court-approved instrument. The rules also ensure that the party who receives the properties effectively 'inherits' the cost base of the properties from the transferring party. That is, the cost base of the properties for the receiving party will be based on the original purchase price of the property when it was acquired by the transferring party.

They also acquire the history of the property, including periods when the IP was held as a main residence.

For the party keeping the assets, receiving the 50 per cent they do not own will eventually trigger capital gains tax upon sale of those properties.

This is why the CGT liability should be incorporated into the settlement figures. I understand from the experts that, in its deliberations, the Family Law court is unlikely to include it where a sale is more probable in the distant future. Where an IP is sold prior to finalising the divorce, a CGT liability is likely to arise as a result of including the gain in their taxable income for that financial year.

Note that capital gains on assets held for longer than 12 months have the benefit of a 50 per cent discount, reducing the liability

To help with your decisions it is always best to discuss the situation with a property tax specialist for the tax implications and figures, and then with the specialist family law solicitor for the negotiating options available. ■

"CAPITAL GAINS TAX IS THE MAIN CONCERN WHEN PROPERTY IS TRANSFERRED, SOLD OR DEEMED TO BE SOLD"

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