THE BEST CAPITAL GAINS ARE TAX FREE

Accessing a tax free Capital Gain is one of the best wealth creation strategies around.

For current home-owners, accessing a Capital Gain on the sale of their main residence tax free can be one of the most profitable decisions made.

For example : Sam is 68 and has just sold his home for $600,000, deriving a capital gain of $400,000. He has lived in the home for the last 10 years and is able to access the main residence exemption, formerly known as the "principal place of residence" or "PPR" exemption.

To derive an additional $400,000 for retirement, Sam would have had to work for quite a few more years or achieve incredible returns on investments in order to save this amount in "after tax dollars".

Main Residence Exemption

Under the Capital Gains Tax Main Residence Exemption, the term "residence" or "dwelling" includes a home, an apartment, a unit in a retirement village, a caravan, a houseboat and a mobile home.

Whether a dwelling is a person's main residence depends on the facts in each case. The Australian Taxation Office may consider the following relevant factors :

- whether the person has moved their personal belongings into the dwelling ;
- the address to which the person has their mail delivered ;
- the person's address on the electoral roll ;
- the person's address on their driver's licence, bank statements and other documents ;
- the connection of services such as telephone, gas and electricity ;
- the person's intention to occupy the dwelling ;
- the place of residence of the person's family ; and
- the length of time that the person has lived there.

It is recommended that if you stay less than twelve months in a residence, that you retain such documentation as invoices from the removalists and telephone records to prove that you did occupy the dwelling as your main residence, or "home" during a period of time.

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How long do you have to live in the property ?

1 Year or 2 Years ?
The Capital Gains Tax legislation does not specify a minimum time period in which the person is required to live in the dwelling in relation to the main residence exemption. Assuming that the person has satisfied the relevant factors, the main residence may be available for occupation for less than twelve months.

Transfer Duty/Stamp Duty Concession for principal residence
To access the concessional rates of transfer duty, however, a minimum period of twelve months occupation may be required.

Therefore, if you sell your home prior to twelve months, you may be required to pay back a pro-rata portion of stamp duty or transfer duty, even though the capital gain may be tax-free.

Case Study – First occupied as main residence
The tax savings of accessing the main residence exemption can be substantial.

For example, Adam purchases a property at Robina on the Gold Coast on 1 August 2004 for $380,000, including stamp duty. He lives in this property for 10 months and is posted to Sydney for work and then subsequently moves out.
He rents it out for the following 5 years and 2 months sells it on 1 August 2010 for net capital proceeds of $580,000. He has derived a $200,000 capital gain in the 2011 financial year.
Adam is able to access this capital gain tax-free as follows :

Capital Gain derived	$200,000
(Less) Main Residence Exemption	($200,000)
Net Assessable Capital Gain	nil
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Therefore, Adam is able to pocket the total sale proceeds received tax free.

The Six Year Exemption Rule
If a person first occupies a dwelling as their main residence, and then they subsequently rent it out, the dwelling may continue to be treated as a main residence for a maximum period of six years. The six year time period relates to the period in which the dwelling is rented out or derives income.

For example : Maria purchases and lives in her own house in Brisbane for two years.
She is then posted to Sydney for work for the next four years, during which time she rents out the house. On her return she decides to sell the house and derives a Capital Gain of $200,000.
Maria can apply the main residence exemption for 100% of the Capital Gain, even though she has rented the house out for four years, and will receive the $200,000 gain tax free.

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Moving from one main residence to another – Six Month Rule
If you acquire a new home before you dispose of your old one, both dwellings can be treated as your main residence for a period of up to six months under conditions, including a limitation on renting out the old home for a period prior to disposal.

For example : Ben and Eva bought their new home under a contract that was settled on 1 January 2010 and moved in immediately. They sold their old home under a contract that was settled 15 April 2010. Both the old and new homes are treated as their main residence for the period 1 January 2010 to 15 April 2010 even though they did not live in the old home during that period.

Pre September 1985 Acquisitions
Generally, you can disregard any capital gain you make on the sale of any property, (i.e. an investment property or your home), that you purchased before 20 September 1985.

Two houses can then in fact be tax free, if you own a "weekender" purchased pre 20 September 1985.

Questions to a seller/vendor, if concerned about Capital Gains Tax, as follows :
By the way, well done in achieving this capital gain.

1. When did you purchase the property ?

2. Did you ever occupy the property as your main residence ?

3. If the property was purchased post 1985 and only held as an investment property and you are looking at a large capital gain (well done again), do you have any carried forward or current realised capital losses from the sale of other assets such as shares, a business, other property or managed funds ? (If so you may be able to recoup/apply any prior or current year capital losses against this capital gain.)

4. Is the property owned for more than 12 months ? If so the 50% discount concession may be applicable to any remaining assessable capital gain, if any, to again reduce any tax potentially payable by half.

CONCLUSIONS AND RECOMMENDATIONS
Capital gains on real estate are excellent. The tax consequences of sale are generally not as adverse as they would appear in first instance, with the main residence exemption delivering a 0% tax rate. Whenever you are about to purchase a new property, it is also recommended that you confirm the best ownership structure with your accountant from a taxation perspective.

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