chartered accountants

Monthly Client Update

September 2022

The tax consequences of land subdivision

It's quite common for individuals to subdivide land they own, and then sell off one of the blocks. Depending on the circumstances, this can have capital gains tax (CGT) and GST implications.

About this newsletter

Welcome to the NCS Group client information newsletter, your monthly tax and super update keeping you on top of the issues, news and changes you need to know. Should you require further information on any of the topics covered, please contact us via the details below.

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Capital gains tax

If you subdivide a block of land, each resulting block is registered with a separate title. For capital gains tax (CGT) purposes, the original land parcel is divided into two or more separate assets.

The profit from selling subdivided land may be a capital gain or ordinary income, depending on the circumstances.

If you subdivide a block of land and sell the new block, any profit is generally treated as a capital gain subject to CGT.

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The tax consequences of land subdivision cont

However, any profit you make is treated as ordinary income (not a capital gain) if both of the following apply:

- your intention or purpose in subdividing was to make a profit
- the profit was made in the course of carrying on a business, a business operation or commercial transaction.

This is true even if you aren't in business (for example, if it's a one-off transaction by an individual).

Where the amount is treated as ordinary income, CGT concessions (such as the 50% discount) are not available.

If you sell any land separately from your home, it is invariably subject to CGT. Only land sold with the home that is your main residence can receive the main residence exemption. Land is adjacent to your home if it is close to, near, adjoining or neighbouring it.

> "If you sell any land separately from your home, it is invariably subject to CGT."

Goods and services tax

You may have GST obligations and entitlements if you sell with the intention of making a profit:

- in the course of carrying on a business, or
- as a business or commercial transaction.

If you're unsure whether your subdivision falls into the above categories, consult with us.

Even with a one-off transaction, you may still be required to register for GST because your transaction may have the characteristics of a business deal/ enterprise. Whether an enterprise is being carried on (and therefore whether you need to register for and charge GST) will depend on a range of factors.

If several of these factors are present it may be an indication that an enterprise is being carried on (as distinct from the land being sold as is):

- there is a change of purpose for which the land is held
- additional land is acquired to be added to the original parcel of land
- the parcel of land is brought into account as a business asset
- there is a coherent plan for the subdivision of the land
- there is a business organisation - for example a manager, office and letterhead
- borrowed funds financed the acquisition or subdivision
- interest on money borrowed to defray subdivisional costs was claimed as a business expense
- there is a level of development of the land beyond that necessary to secure council approval for the subdivision and
- buildings have been erected on the land.

Once registered for GST, you will:

- need to include GST in the price of goods you sell, including land that you've subdivided
- be able to claim credits for the GST included in the price of most of your business purchases (subject to the normal GST rules)
- report these transactions by completing an activity statement.

If you are considering subdividing and selling, or even just selling vacant land, we can advise you of both the CGT and GST consequences. ■

Hiring employees

With unemployment at historic lows, workers are in demand and are also switching jobs at record rates. There are a range of issues employers should be aware of when hiring.

KNOW THE LAW

Before hiring a new employee, make sure you know your rights and responsibilities.

The minimum terms and conditions of employment come from an award, registered agreement and contract of employment, and also the National Employment Standards (NES). An employment contract or registered agreement can't provide for less than what is in the NES.

To find the right award, and if an enterprise agreement applies, visit the Fair Work Commission website.

GETTING PAY RIGHT

To work out the right pay when hiring a new employee, you need to decide on the person's employment status – whether they will be a full-time, part-time or casual employee. Visit the Fair Work website or ask us for guidance.

On the Fair Work website, you can also locate the minimum pay rates, penalties and allowances that apply using their Pay and Conditions Tool.

EMPLOYMENT CONTRACTS

It's important that your employment contracts protect your business and your staff. To help you get things right, use the business.gov.au – Employment Contract Tool to create an employment contract that's tailored to your business needs and complies with workplace laws.

To use this tool, your employee must be full-time, part-time or casual, covered by an award, paid an hourly or weekly wage.

The Employment Contract Tool isn't for every worker. It can't be used for, employees who'll be paid a salary, apprentices and trainees, seasonal workers, independent contractors, or employees covered by registered agreements.

INDUCTION

Take the time to go through an induction with your new starter. Use this time to communicate your expectations and give them an opportunity to ask questions. It also helps employees feel informed, welcomed and prepared to do their job.

PRODUCTIVE WORKPLACES

During the first few weeks of employment, employers and employees should organise a time to set goals and expectations. You can use this opportunity to outline training needs and create a plan together to ensure these needs are met.

COMMUNICATION

Communication is an essential part of a good working relationship. Set up regular meetings to provide performance feedback and discuss any issues or concerns early, before they become workplace problems.

HIRING AN APPRENTICE OR TRAINEE

If you're hiring an apprentice, use Fair Work's Guide to taking on an apprentice to help you understand your obligations. You can also find more information on Fair Work's Apprentices and trainees page.

These are just some of the issues to consider when hiring a new worker. If you have any questions around taxation, payroll, or whether the worker is a contractor or an employee, please contact us for assistance. ■

Super funds post lowest returns since GFC

Superannuation funds have recorded their worst performance since the global financial crisis, with the median balanced superannuation fund ending the 2021/22 financial year down 3.3% due to global market instability. This result is the third lowest return since the introduction of superannuation guarantee in 1992. So, what are your options if your superannuation balance has suffered a decline?

Sit tight and have faith

Although easier said, it is important not to panic about negative returns. Superannuation is a long-term investment, so if you are not approaching or in retirement, keep in mind that all market movements in the short-term can bounce back. Losses in superannuation are not crystalised until your superannuation is withdrawn or switched to another investment option. This means your superannuation balance will recover over the long-term if you sit tight and ride the market volatility wave.

Change superannuation funds

If you have a MySuper fund that is underperforming, you can use the ATO's YourSuper comparison tool to help you compare different MySuper products and choose a superannuation fund that meets your needs.

To recap, a MySuper fund is a low-cost superannuation product and is usually the default account for people who don't choose their own superannuation fund when they start a new job.

The YourSuper comparison tool can be accessed by logging in to ATO online services through myGov, then clicking on the Super drop-down menu and select Information, then select YourSuper comparison.

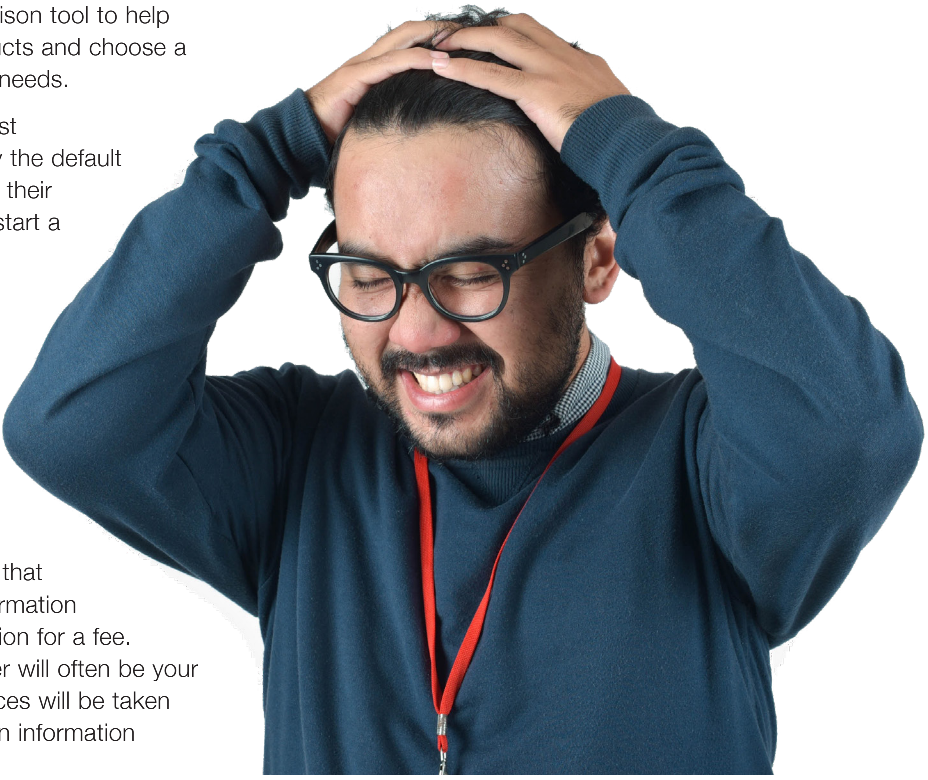
There are other non-government superannuation comparison websites that can be used which provide some information for free, but some offer more information for a fee. Seeking advice from a financial adviser will often be your best option as your entire circumstances will be taken into account to ensure the comparison information relates to your specific situation.

Start an SMSF

A further option may be to take charge of your own superannuation by setting up a self-managed superannuation fund (SMSF). There are a number of benefits of having an SMSF, for example, as trustee you can choose how to invest and manage your superannuation savings. Having greater investment control and flexibility can allow you to have a more hands-on approach to acquiring and selling your investments, which means you can respond quickly by adjusting your investment portfolio as market conditions change. But for all the benefits that come along with SMSFs, you must consider the risks (and the work that may be involved) as there are strict laws and regulations that govern SMSFs.

Seek advice

A financial advisor can help review your superannuation to ensure that you are on the right track to meeting your retirement income goals. Contact us today if you are uncertain about your options and would like further information. ■



eInvoicing: Save time and money

The ATO is anticipating a significant upward spike in the number of businesses using eInvoicing over the coming 12 months. Already, more than 18,000 businesses are using eInvoicing to make their transactions faster, simpler and more secure.

eInvoicing is the new, standardised way to send and receive electronic invoices directly in software, via a secure network. With eInvoicing, suppliers no longer need to print, post or email paper-based or PDF invoices and buyers won't need to manually enter or scan invoices into their software.

ATO Deputy Commissioner Will Day says:

> *The pressures of running a business can often leave businesses with little time to focus on anything else. eInvoicing offers a streamlined way of managing invoices, allowing more time to focus on what is important to the business.*
>
> *Once connected with eInvoicing, businesses can immediately transact with everyone on the same network, meaning you can be paid faster, and ultimately improve your cashflow.*
>
> *With eInvoicing, you no longer need to manually enter or scan the invoices you receive, because that information is received directly through your accounting software, ready to be checked and paid.*

Mr. Day said eInvoicing also reduces the risk of fake or compromised invoices and email billing scams.

> *With eInvoicing, the invoice is delivered directly into the customer's software via a secure network, so there's less risk of lost or fraudulent invoices being paid.*

The Australian Small Business and Family Enterprise Ombudsman Bruce Billson said he enthusiastically encouraged small businesses to adopt eInvoicing.

> *It is a great way to enable faster payment, it cuts the administrative burden and is more secure than posted or emailed invoices, so it reduces the chance of invoice fraud or scams.*
>
> *About 1.2 billion invoices are exchanged in Australia every year but many are sent to the wrong person or with incorrect information. It costs around $30 to process a paper invoice while an e-invoice costs less than $10.*

> “The risks of fake or compromised invoices, email scams and ransomware attacks are lower compared with posted or emailed invoices.”

Aside from cost savings, there are also fewer errors. An eInvoice is accurate and complete. eInvoicing uses standardised data that is validated before the eInvoice is sent through the network to your software. With eInvoicing you don't need to:

- re-type or scan invoices
- make corrections
- chase missing information.

This new system is also reliable and secure in that:

- eInvoices are exchanged securely through the Peppol network by approved access points, using the buyer's and supplier's ABNs.
- The risks of fake or compromised invoices, email scams and ransomware attacks are lower compared with posted or emailed invoices.
- There is no risk of lost invoices.
- You keep control of invoice processing. This includes verifying and approving invoices. eInvoices can only be viewed by the supplier, buyer and digital software provider, where needed.
- eInvoices do not go through the ATO and they cannot view them.

Businesses can get started with eInvoicing by registering in their software or talking to us. To find out if your software is eInvoicing enabled, we can check with your software provider. ■

Estate Planning Explained

Estate Planning means different things to different people. Ultimately, it is about ensuring that you have the right mechanisms in place to ensure that in the event of your death, your assets pass in the manner you intend.

Broadly speaking, there are four key steps in the estate planning process:

Firstly, identify which assets are to be dealt with as part of your estate plan? This can be more extensive than you think and could involve:

- Savings accounts
- Shares
- Businesses
- Properties
- Vehicles
- Collectibles
- Items with sentimental value
- Superannuation savings.

Next, who owns those assets? Assets can be owned individually, jointly, within superannuation, or by a related entity such as a company or trust.

Third, how do you want those assets distributed on your death? This a question only you can answer: who should get what and when?

Finally, how do you bring about this outcome? An estate plan brings together the answers to the above questions. It will usually include Wills and Powers of Attorney but in many cases will also involve succession planning strategies to deal with related entities and superannuation balances. Additionally, steps may also be necessary to provide for children and blended families.

Another key step is choosing your Executor. This is the person who will carry out your final wishes after you die. An Executor should be someone you trust who has some financial knowledge as they will be responsible for paying off debts and managing your Estate according to the terms set out in your Will. An Executor can be a family member, close friend, a lawyer, Public Trustee or other corporate provider.

Here are a few questions to help you decide whether you might have some gaps that need filling in your estate planning:

- Do you have a Will?
- If you do, when was it last updated?
- Could you (or your spouse) locate your Will if you had to?
- Do you have a Power of Attorney in place in case you were unable to make your own decisions?
- If you and your spouse leave everything to one another in your Wills, have you considered what would happen in the event of your simultaneous death?
- Do you realise that superannuation and family trusts don't form part of your Estate and thus other strategies (besides a Will) are needed to properly deal with these?
- Do you know that special, tax-effective structures known as Testamentary Trusts can be used to pass wealth securely to family members, but they are most effective when documented in your Will?
- Have you properly considered who should be the Executor of your Will (sometimes the people closest to you, such as a spouse, may be in no fit state to play the role)?

Once in place, any good Estate plan should be reviewed and updated regularly. Major life events like marriages, divorces or deaths are a good opportunity to go back through your Estate plan and make sure the right people will be protected when you die.

Through a deep understanding of the personal and business structures of our clients, we are well positioned to help in the estate planning process, bringing about tax-effective outcomes tailored to the specific requirements at hand. Contact us for further information. ■

Insurance: Inside or outside super?

Most people insure their personal assets, such as their house, contents and car, but when it comes to personal insurance, many overlook the importance of protecting their wealth because personal insurance is often seen as unnecessary, a luxury and an additional cost to pay for.

Unfortunately, we don't know what's around the corner but having the right level of protection in place will assist you and your family through sickness and injury and protect you and your family's lifestyle when times get tough.

Depending on your needs, insurance can be structured either inside or outside superannuation, with most superannuation funds offering insurance for their members.

Superannuation funds generally offer three types of life insurance for their members, including life insurance, total and permanent disablement (TPD) insurance and income protection insurance. This article briefly summarises these insurances and covers some common benefits and considerations when owning insurance in superannuation.

LIFE INSURANCE

Life insurance, also known as death cover, is a lump sum amount paid to your beneficiaries on top of the balance that's already in your superannuation account if you pass away. It may also be paid if you have a terminal illness.

TPD INSURANCE

Total and permanent disablement (or TPD) cover pays you a benefit if you become seriously disabled or are too sick to ever work again.

In addition to meeting the insurance policy definition of incapacity, you must also meet the permanent incapacity condition of release definition under superannuation law before the trustee can pay the TPD benefit to you.

Superannuation law defines permanent incapacity to mean:

"ill health (whether physical or mental), where the trustee is reasonably satisfied that the member is unlikely, because of the ill heath, to engage in gainful employment for which the member is reasonably qualified by education, training or experience".

To be 'reasonably satisfied', a superannuation fund trustee will usually request medical evidence in the form of two doctors' certificates to that effect. This is to also satisfy the requirement for the payment of a disability superannuation benefit.

It is also worth noting that the superannuation law definition of permanent incapacity is generally referred to as an 'any occupation' definition of permanent incapacity because it relates to gainful employment 'for which the member is reasonably qualified by education, training or experience'.

INCOME PROTECTION

Income protection (also called salary continuance insurance) helps replace your income if you can't work due to a temporary disability or illness. If your claim is approved, your superannuation fund will pay you a regular income as a percentage of your salary for a specified period of time (ie, the benefit period could be for 2 years, 5 years or up to a certain age, such as age 65).

WHAT ABOUT TRAUMA COVER?

Trauma cover (also known as critical illness cover) pays you a lump sum amount if you are diagnosed with a critical illness or injury as specified in the policy, such as cancer, stroke, coronary bypass or heart attack.

However due to changes in the law that came into effect on 1 July 2014, it is no longer possible to take out trauma insurance through your superannuation fund.

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Insurance inside or outside super? cont

FACTORS TO CONSIDER

The key benefits of insurance inside superannuation include:

- Premiums can be funded from your existing superannuation account balance, which can assist in managing your cashflow and affordability of premiums
- You may benefit from income tax savings if you claim a tax deduction for personal contributions or if you contribute via a salary sacrifice arrangement using pre-tax salary which may provide cost savings on premiums
- Insurance in employer superannuation plans may be cheaper than insurance outside superannuation as superannuation funds purchase insurance policies in bulk
- After joining your employer's default superannuation plan, you may be able to obtain automatic acceptance up to a set level of cover with no medicals required.

On the other hand, potential downsides of insurance inside superannuation include:

- The amount of cover you can get inside superannuation is often lower than the cover you can get outside superannuation. Further, default insurance through superannuation isn't specific to your circumstances and some eligibility requirements may apply. To avoid this risk, you can purchase a retail insurance policy through superannuation (or personally outside of superannuation). While retail cover requires a more detailed application process, underwriting your personal history and generally higher premiums than default group cover, retail cover can provide you with better quality cover and greater confidence that a payment is likely to be made at claim time
- Premiums can erode your retirement savings if you do not make extra contributions to negate the premium cost
- Contributions made to fund premiums count towards the contribution caps
- If you consolidate your superannuation accounts, you may lose any cover you have with the superannuation fund you close. Thus, you should always check that the new superannuation fund you're choosing can cover you for equivalent (or more) insurance cover
- Unless you actively opt-in to maintain your insurance, your cover may be cancelled if your superannuation fund becomes inactive for 16 months or more, the fund balance falls below $6,000 or you are under age 25.

THE LAST WORD ...

Wealth protection is considered to be the foundation of all good wealth creation plans, because without it, even the best laid wealth creation plans can go awry. Insurance is all about having peace of mind, so plan for tomorrow by obtaining advice on whether you need insurance cover and if so, the types of personal insurances you may need and how to best structure the cover. ■