Removing the CGT Discount

International Tax Fact Sheet

BATES | COSGRAVE
CHARTERED ACCOUNTANTS

The Australian Government has released its draft exposure legislation for the removal of the 50% Capital Gains Tax (CGT) discount for non-resident taxpayers with an unexpected sting for expats on temporary resident visas.

Prior to 8 May 2012, non-resident individuals, partnerships and trusts could discount capital gains by 50%, allowing non-residents to pay income tax on half the capital gain derived from certain CGT assets.

However the Government sought to remove the ability for non-resident taxpayers to claim a discount for their capital gains as part of the May 2012 Federal Budget.

The draft legislation has, however, been extended to include:

- Temporary residents, such as expats on 457 visas, who are considered as non-residents for CGT purposes
- Non-resident individuals who previously claimed the discount on capital gains resulting from being a beneficiary from a trust or other CGT event.

As a result, temporary residents will also need to consider how the loss of the CGT discount will impact their tax position.

What does this legislation mean for non-resident taxpayers?

Broadly speaking, the change in legislation will mean that non-residents will not be able to discount CGT where an asset has been purchased or capital gains accrued after 8th May 2012. Assets that were purchased before 8 May 2012 but disposed after that date will also lose the CGT discount or part of it. The portion of capital gain accrued before 8 May will still benefit from the discount, however, which can be calculated by:

- The default approach, which reduces the discount on a straight line basis for days before and after 8 May.
- The market value approach, which requires an independent valuation of the asset as at 8 May 2012. The benefit of this approach is that even if the capital gain before the 8 May is bigger than the overall gain, the discount may still be applied; otherwise, the discount is reduced accordingly.

There are pluses and minuses to both approaches, which should be assessed in light of the non-resident taxpayer's specific circumstances. The same rules will apply where trusts dispose of an asset and distribute the capital gain to non-resident individuals including temporary residents.

What about individuals who have been both Australian and foreign resident for tax purposes?

The CGT discount will be apportioned for taxpayers who have been both Australian and foreign resident during the ownership of the asset, which allows individuals to benefit from the full 50% CGT discount for the time that they were an Australian resident.

How does the removal of the CGT discount affect trusts and tax planning?

Managing foreign assets and capital gain is complex. Non-residents will need to take the removal of the CGT discount into account when acquiring or disposing of capital gain assets in Australia and also the increased compliance costs that will come from additional disclosure of assets on investor statements.

Get advice

If you hold capital assets and would like to understand what the impact of this legislation will be or discuss how to assess your position, please contact us on 02 9957 4033 or via email to enquiry@batescosgrave.com.au.

Contact Us
Bates Cosgrave Chartered Accountants
Ground Floor, 123 Walker Street North Sydney NSW 2060
PO Box 497 North Sydney NSW 2059
Tel: 02 9957 4033 Fax: 02 9964 0610 email: enquiry@batescosgrave.com.au