Thinking about improving your pre-CGT buildings or land?

By Brett Marshall
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On 25 January 2017, the ATO released Taxation Determination 2017/1 regarding the taxation treatment of intangible capital improvements that are affixed or made to pre-CGT assets. The ATO has provided an example of the type of taxpayer that this determination is targeting:

A farmer, holding pre-CGT land, obtains council approval to rezone and subdivide land. Those improvements may be considered separate CGT assets from the land.

While the pre-CGT status of the original asset would be retained (and there would be no capital gains tax on its disposal), it is clear that the ATO believes that buildings, structures and other capital improvements made to pre-CGT land (including permits to develop the asset) may be regarded as a separate asset for tax purposes. In such cases, if the actions taken to create the separate asset were completed after 20 September 1985, there may be tax applicable when the asset is sold.

When could you be caught?

The devil is always in the detail, with the taxation determination specifying that capital improvements are deemed to be a separate CGT asset only if all the following conditions are met:

1. The improvement is to a pre-CGT asset
2. The improvement cost base is more than the improvement threshold for the income year in which the CGT event happened to the original asset (refer to threshold limit below)
3. The improvement cost base is more than 5% of the capital proceeds from the event

A practical example of how the determination could apply

During the 2014/15 financial year, you spent $160,000 in consulting fees to assist with obtaining a permit to subdivide land originally purchased before 20 September 1985. You then sell the land, and the capital proceeds from the sale are $2 million.

Original asset pre-CGT? Yes
Above improvement threshold? Yes
More than 5% of capital proceeds? Yes
Separate CGT asset? Yes

What are the tax consequences of a separate CGT asset?

Under the above example, the value of obtaining a planning permit to subdivide the land will be treated as a separate CGT asset.

As such, the $2 million total proceeds will need to be dissected between the value attributed to the land itself, and the value that the planning permit added to the land.

While the value of the land itself would not attract any capital gains tax, the value added by the planning permit would be taxed as a separate post-CGT asset (that is, if the planning permit added $1 million of value to the asset, this $1 million would attract capital gains tax).

It should be noted that a 50% CGT discount may be available on the taxable gain, depending on the type of taxpayer and whether it had been 12 months between the time the consulting expenditure was incurred and the time the asset was sold.

What should I do?

If you are considering selling a pre-CGT asset, please contact your Fordham Partner for further information regarding the impact of the new determination on the sale.

Improvement thresholds

- 1985–1986 income year $50,000 threshold
- 1986–1987 income year $53,950 threshold
- 1987–1988 income year $58,859 threshold
- 1988–1989 income year $63,450 threshold
- 1989–1990 income year $68,018 threshold
- 1990–1991 income year $73,459 threshold
- 1991–1992 income year $78,160 threshold
- 1992–1993 income year $80,036 threshold
- 1993–1994 income year $80,756 threshold
- 1994–1995 income year $82,290 threshold
- 1995–1996 income year $84,347 threshold
- 1996–1997 income year $88,227 threshold
- 1997–1998 income year $89,992 threshold
- 1998–1999 income year $89,992 threshold
- 1999–2000 income year $91,072 threshold
- 2000–2001 income year $92,802 threshold
- 2001–2002 income year $97,721 threshold
- 2002–2003 income year $101,239 threshold
- 2003–2004 income year $104,377 threshold
- 2004–2005 income year $106,882 threshold
- 2005–2006 income year $109,447 threshold
- 2006–2007 income year $112,512 threshold
- 2007–2008 income year $116,337 threshold
- 2008–2009 income year $119,594 threshold
- 2009–2010 income year $124,258 threshold
- 2010–2011 income year $126,619 threshold
- 2011–2012 income year $130,418 threshold
- 2012–2013 income year $134,200 threshold
- 2013–2014 income year $136,884 threshold

- 2014–2015 income year $140,443 threshold
- 2015–2016 income year $143,392 threshold

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