Principal Chris Chamberlain B.Bus., F.C.A.
Registered Liquidator & Official Liquidator
Registered Trustee in Bankruptcy
Mobile: 0412 931 178

Partner Steven Priest B.Bus.(Acc) C.A.
Registered Liquidator
Mobile: 0427 457 416

Manager Brett Dodson B.Bus.(Acc), ARITA
Mobile: 0417 691 356

Manager Graeme Brown ARITA.
Mobile: 0488 435 265

June 2014

CGT Liability & Bankruptcy

Commentary on ATO Position

It would appear that within the world of Corporate insolvency there is still an element of doubt as to whether the CGT liability that crystallizes on the sale of an asset post Winding Up falls on the appointed practitioner or arguably as the gain accrued pre Winding Up against the Company, however this appears is not the situation with personal insolvency i.e; that is where a Trustee in Bankruptcy sells an asset that results in a CGT liability, that liability remains with the bankrupt personally and not with the Trustee.

In a bankruptcy situation the ATO appears to rely on Section 106-30 of the ITAA 1997 which states in providing an example of the operation of this section.

"A CGT asset of an individual vests in the Trustee because of the bankruptcy of the individual, however no CGT event occurs as a consequence of that vesting therefore upon the Trustee later selling that asset any gain or loss is made by the individual and not the Trustee."

The ATO appears also to take the view that the liability for the CGT made on any gain is borne by the bankrupt (and not the Trustee) in the year of income in which the disposal occurs.

Whilst the writer makes no comment on the correctness of this position it could see a bankrupt having to file a petition a second time around to be relieved of this now post first bankruptcy CGT obligation.

Fortunately such circumstances in bankruptcy administrations are rarities.

Please contact us any time to discuss and note as always we at Chamberlains SBR are more than welcome to review any matter with you or your clients regardless of how trivial it may appear.

Chamberlains SBR, Chartered Accountants - Specialises in Personal & Corporate Business Reconstruction & Insolvency

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