Negative Gearing Changes

The changes announced in relation to negative gearing seek to band aid the wounds created by the original legislation. As originally announced, and made clear in the original explanatory memorandum, where an individual acquired an interest in a property (eg due to the death of a joint tenant), the negative gearing position would not be maintained.

The changes unwind this position and provide a continued exemption to the quarantining in the following four situations:

Inheritance from a spouse

Where an individual inherits an interest in a property (which was exempt from the quarantining):

- As the surviving individual of a joint tenancy; or
- As a beneficiary in the estate of the deceased (eg where the interest in the property was held as tenants in common or no interest was held by the surviving spouse);

Then the acquired interest in the property will retain the exemption from the quarantining requirements.

Inheritance from a co-owner

Where an individual inherits an interest in a property (which was exempt from the quarantining):

- As the surviving individual of a joint tenancy (and the individuals were not spouses); or
- As a beneficiary in the estate of the deceased (eg where the interest in the property was held as tenants in common and the individuals were not spouses);

Then the acquired interest in the property will retain the exemption from the quarantining requirements where the co-owner had an interest in the property as at 7.30pm on 12 May 2026 ("Budget night").

Acquisition from spouse under a family settlement

Where an individual acquires an interest in a property (which was exempt from the quarantining) as the recipient of a transfer from:

- Their spouse (or former spouse); or
- A trustee or a company;

Because of an order, agreement or award as part of a family settlement, then the acquired interest in the property will retain the exemption from the quarantining requirements.

Main Residence first used to produce income

Where an individual first uses their main residence to produce income (ie rent it out) then the pre-existing tax law deems an acquisition date. This meant that under the newly enacted changes taxpayers would need to quarantine losses from main residences which had been held for many years. The change removes the deemed acquisition for the purposes of the negative gearing changes.

Impact

As can be seen by reference to the above, the exemptions to the quarantining rules are deliberately narrow and can give different outcomes within a family. For example, if a child receives an interest in a property from a parent under a will compared to an asset going to the surviving parent. The parent could retain the exemption whether or not they held a pre-existing interest in the property, however, the child must have an interest pre Budget night.

Taxpayers may, as a result, wish to consider how their wills are structured between spouses and children.

If you have any questions, please contact your ESV Engagement Partner.