

An accountant client requested advice in relation to double tax issues in respect of Australian residents with UK rental income and / or UK pensions.

We provided brief guidance covering the UK Double Tax Convention (rent, alienation of property and Pensions articles) and general advice concerning the Foreign Income Tax Offsets (FITO) provisions.

Issue

The question asked is: whether or not there will be any tax payable in Australia on the sale of the shares and property?

Analysis

In accordance with sections 6-5 and 6-10 of the ITAA 1997 an Australian resident includes in assessable income ordinary income derived directly or indirectly from all sources, whether in or out of Australia, during the income year as well as particular amounts that are not ordinary income. In this regard capital gains from the disposal of foreign assets will be included in the calculation of assessable income.

Section 128-15 of the ITAA 1997 sets out the rules in relation to assets of deceased estates. It is understood that the Legal Personal Representative (Executor) held the assets of the deceased person and has now distributed them to the beneficiaries in accordance with the will. →

Under subsection 128-15(4) as the asset owner (the UK parent) was a foreign resident, Item 3A applies, with effect that the cost base of the assets (excluding trading stock when applicable) is the market value of the asset at the date of death of that person.

The distribution of the assets (shares and real estate) by the executor to the beneficiaries under the will does not itself constitute a CGT event generating tax issues in Australia.

However, a subsequent disposal of the shares by the Australian beneficiary will be subject to CGT in Australia on any capital gain made on disposal of the shares. In relation to the real estate, when it is sold the Australian beneficiary will be subject to CGT in respect of the capital gain on their portion of ownership if a capital gain is made.

Should a capital gain arise on the sale of the shares or the real estate, the capital gain will be calculated in the ordinary way including any applicable concessions such as the 50% discount.

It is noted that a resident who makes a capital gain from foreign sources may be entitled to a Foreign Income Tax Offset (FITO) for tax paid on the capital gain in the foreign jurisdiction. However this only applies in relation to foreign income taxes which are defined at section 770-15 to be taxes on income, or taxes on profits or gains, whether of an income or capital nature; or a tax covered by a Double Tax Agreement. As it is understood, the UK Inheritance Tax is a tax on the value of an estate rather than on income etc so it would not qualify as a foreign income tax. It is noted however there are no other UK taxes payable on disposal of these assets.

To Ask Your Question visit

taxticians.com.au

