

**Q** *I have a property in Australia in just my name and I want to give half to my new wife. Is there any problem doing this?*

**A** In Australia there is no gift duty so the actual transfer of the value of a property from spouse to spouse does not attract a direct charge. This is true even when you transfer to your children, relatives or even friends.

What you need to be careful about though, is the taxation and stamp duty issues.

### Capital Gains Tax

Under our Federal Laws when an asset is transferred to another person for whatever reason. Where the transfer is done to a relative for little or no consideration, the law provides that a taxable sale has occurred at the market value of the asset regardless of what is paid.

So if you do transfer property to your wife (or family) then you will be taxed as if it was sold normally. This could be an expensive and unnecessary cost.

There is an exception if the property is the family home at the time of transfer and is transferred from spouse to spouse. This effectively eliminates the Capital Gains Tax on the transfer that would otherwise have been payable.

Note this is only if you are living in the house at the time and relates to the transfer of up to one half from the sole holder to their spouse, so the only time it is sensible to transfer a share of the property to your spouse is when you are actually living in it.

### Stamp Duty

Each State of Australia levies a transaction charge, referred to as Stamp Duty, on the transfer of property.

This includes real estate transfers and there is usually a fee of 2-6% of the value of the transaction. Similar to the Federal Capital Gains Tax, this will be levied at the market

value for related parties regardless of the amount of the actual transaction.

All states have a similar exemption from duty available when transferring from one spouse to the other, some even allowing a 100% share to be transferred, and they usually require the property to be the main residence at the time however some States do not require this to be a pre requisite.

You will need to have a solicitor or settlement agent handle the transfer and they should be able to confirm if any duty is payable in your situation.

You also need to remember to gain the approval of any lender that may have a mortgage on the property as they will need to give their consent and you will likely need to re apply for a new loan as the names will be changing from the original mortgagee which will incur additional costs and fees as well.

If you are considering transferring a portion of your property you should be sure to take professional advice as each case is different and may have inadvertent implications including the tax and stamp duty implications. In the great majority of cases the transfer would be unnecessary and should not be undertaken until at least you are living in the property as your home to ensure the exemptions are available.

Steve Douglas is the co-founder and Managing Director of Australasian Taxation Services (ATS), established in Singapore in 1995. ATS provides specialist taxation services to people of any nationality investing in Australian property, as well as Australian expatriates living overseas. Areas of specialisation include the Australian taxation aspects of property investment, as well as expatriate and migration planning.