


***TD 1999/D42 - Income tax: capital gains: does the cost base modification in subsection 128-15(4) Item 1 of the Income Tax Assessment Act 1997 apply if a main residence acquired on or after 20 September 1985 is owned by joint tenants and one of them dies?***

 This cover sheet is provided for information only. It does not form part of *TD 1999/D42 - Income tax: capital gains: does the cost base modification in subsection 128-15(4) Item 1 of the Income Tax Assessment Act 1997 apply if a main residence acquired on or after 20 September 1985 is owned by joint tenants and one of them dies?*

This document has been finalised by TD 1999/72.

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## Draft Taxation Determination

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### **Income tax: capital gains: does the cost base modification in subsection 128-15(4) Item 1 of the *Income Tax Assessment Act 1997* apply if a main residence acquired on or after 20 September 1985 is owned by joint tenants and one of them dies?**

#### Preamble

Draft Taxation Determinations (DTDs) present the preliminary, though considered, views of the Australian Taxation Office (ATO). DTDs should not be relied on; only final Taxation Determinations represent authoritative statements by the ATO.

1. No. Section 128-50 rather than subsection 128-15(4) Item 1 of the *Income Tax Assessment Act 1997* applies.
2. Section 128-50 applies specifically if a CGT asset is owned by joint tenants and one of them dies. Subsection 128-15(4) provides a general rule which modifies the cost base (or reduced cost base, if applicable) of certain kinds of CGT assets in the hands of a legal personal representative or beneficiary, including an interest in a dwelling that was the main residence of an individual just before they died.
3. Section 128-50, being a specific provision, applies here rather than subsection 128-15(4) Item 1 which is more generally expressed.
4. In any event, section 128-15 only applies if a CGT asset owned by the deceased:
  - a) devolves to their legal personal representative; or
  - b) passes to a beneficiary in their estate (subsection 128-15(1)).
5. If joint tenants own a main residence and one of them dies, the surviving joint tenants are taken by subsection 128-50(2) to have acquired the deceased's interest in the main residence. So the interest in the main residence does not:
  - a) devolve to the deceased's legal personal representative; or
  - b) pass to a beneficiary in the deceased's estate.
6. The effect of section 128-50 applying is that the cost base of the interest of each surviving joint tenant is a proportion of the cost base of the deceased joint tenant's interest in the main residence (as calculated in subsection 128-50(3)).

## Your comments

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**We invite you to comment on this Draft Taxation Determination. We are allowing 4 weeks for comments before we finalise the Determination. If you want your comments considered, please provide them to us within this period.**

**Comments by Date:** 25 August 1999  
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**Commissioner of Taxation**  
28 July 1999

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*Previous draft:*

Not previously released in draft form

*Related Rulings/Determinations:*

*Subject references:*

asset; beneficiary; CGT asset; cost base; death; joint tenants; legal personal representative; main residence; market value; reduced cost base

*Legislative references:*

ITAA 1997 128-15; 128-15(1); 128-15(4); 128-50; 128-50(2); 128-50(3)

*Case references:*

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ATO references:

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