


TD 1999/72 - 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?

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Taxation Determination

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

*This Taxation Determination is a 'public ruling' for the purposes of Part IVAAA of the **Taxation Administration Act 1953** and is legally binding on the Commissioner. Taxation Rulings TR 92/1 and TR 97/16 together explain when a Determination is a public ruling and how it is legally binding on the Commissioner.*

Date of effect

This determination applies to years commencing both before and after its date of issue. However, this Determination does not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of the Determination (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

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 first element of the cost base (indexed if applicable) or reduced 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)).

Commissioner of Taxation

15 December 1999

Previous draft:

Previously issued as TD 1999/D42

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

Case references:

ATO references:

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