



TD 45 - Capital Gains: What are the CGT consequences of the acquisition by one of two tenants in common of the interest of the other tenant in common?

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CGT Cell Determinations do not have the force of law, but can be relied upon as being the considered view of the ATO. Unless otherwise stated, the view expressed may be applied to transactions entered into both before and after the date of issue of the Determination.

CGT Determination Number 45

Capital Gains: What are the CGT consequences of the acquisition by one of two tenants in common of the interest of the other tenant in common?

Determination

1. Where a taxpayer, being a tenant in common of land, acquires the interest of the other tenant in common, the co-ownership ceases. The CGT consequences will depend on the date on which the taxpayer's interest as tenant in common was originally acquired.
2. Whilst the taxpayer now has full ownership of the land, it is derived from the acquisition of two interests viz. the taxpayer's original 50% interest plus the 50% interest acquired from the other tenant in common.
3. Where the taxpayer acquired his or her interest as tenant in common before 20 September 1985, 50% of his or her interest in the land is considered to be a pre-CGT asset. The 50% interest acquired from the other tenant in common after 19 September 1985 is a separate post-CGT asset. Its cost base generally includes the amount paid to acquire that interest. This treatment is analogous with the way subsection 160P(3) applies to the acquisition of adjacent land.
4. Where both interests are obtained separately post-CGT, the cost base of the land will generally include the sum of the separate considerations paid for each interest.

COMMISSIONER OF TAXATION

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