


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.

Draft 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

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

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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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:

ATO references:

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BO CGT main residence summit 1999

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