

Main Residence Exemptions – CGT & Land Tax

- Applies to personally owned residences
 - not available if owned by a company or the trustee of a trust (other than an absolute entitlement trust)



- Key differences between the 7 state & territory land tax exemptions & the CGT exemption

Main and Principal Residence Exemptions – CGT and Land Tax

Exemptions for the ownership of residences or dwellings that are the main or principal residence of the owner are a feature of the CGT provisions in Subdivision 118-B of *ITAA 1997* and of the land tax statutes in the 7 Australian states and territories that impose land tax, ie all states and territories bar Northern Territory. The main or principal residence exemptions apply both when the beneficial owner principally resides in the residence and in certain circumstances when the beneficial owner dies. The land tax exemptions are similar, but not identical between the state and territory jurisdictions. In ACT, the principal residence exemption is significantly wider than the 6 Australian states as it applies to all privately owned residential land that is not used to generate income, not just to principal residences.

The governing legislation for main or principal residence land tax exemptions in the 7 jurisdictions is:

- Subdivision 118-B of *ITAA 1997*
- ACT *Land Tax Act 2004*
- NSW *Land Tax Management Act 1956* and *Land Tax Act 1956*
- Queensland *Land Tax Act 1915*
- SA *Land Tax Act 1936*
- Tasmanian *Land Tax Act 2000*
- Victorian *Land Tax Act 1958*
- WA *Land Tax Act 2002* and *Land Tax Assessment Act 2002*.

Main Residence Exemptions – Special Rules

Special CGT rules for

- # Business use
- # Adjoining land
- # Temporary absences
- # Absolute entitlement trusts
- # Deceased estates



State & the ACT principal residence land tax rules only partly mirror CGT (& each other)

CGT Main Residence Exemption and Deceased Estates

When the owner of a main residence passes away, a CGT rollover applies when ownership of the dwelling is transferred from the deceased estate to the beneficiary for whom the property is also, or becomes, the main residence. The transfer can occur under the Will or via the laws of intestacy. The beneficiary effectively inherits the property and the cost base of the deceased.

An extension of the main residence exemption applies (section 118-95 of the *Income Tax Assessment Act 1997*) if the dwelling qualified as the main residence of the deceased and:

- Is sold within 2 years of the deceased's death; or
- From the deceased's death until the property is disposed of, the dwelling was the main residence of:
 - The deceased's spouse; or
 - Someone who had a right to occupy the property under the deceased's Will; or
 - The person who inherited the property.

Hence it can be very important to include a right of occupation in a Will, when dealing with a main residence, particularly if testamentary and protective trusts and life interests are to be created.

Some Other Points to Note

Generally, a person can only have one main residence unless they have purchased a new home but have not sold the previous one yet. In that case, the exemption may apply to both properties for a maximum of 6 months only.

If the property is partly used to produce income, for example to run a business, CGT is payable on the proportion of the home that is income producing, based on floor space.

If a property is an individual's main residence and then the individual moves overseas for work and rents out the property, the exemption will generally apply for up to 6 years assuming the individual has no other main residence during this period.

Main Residence Exemptions – CGT & Land Tax Further Reading

**Australian Master Estate
Planning & Succession
Guide – Chapter 17**

**You Can't Take It
With You –
Chapter 14**

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Further Reading

- The 1st edition of the ***Australian Master Estate Planning and Succession Guide*** by Allan Swan is scheduled to be published by **CCH** in 2011.
- The 1st edition of ***You Can't Take It With You*** by Andrew Simpson was published by **Wrightbooks** in 2009.
- The 5th edition of ***Tax Issues in Family Law Property Settlements*** – The Difference Between Hacking and Carving by Peter Szabo was published by **MOORESLEGAL** in 2008.

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In addition to his main role as a principal of the **MOORESLEGAL** estate planning team (working in the areas of **Asset Protection, Trusts, Superannuation, Tax and Estate Planning**) Allan is also the principal of **APTSTEP**, a provider of training and materials. Allan's current presentation topics are:

- Asset Protection Planning
- Blended Families (includes pages 1-2 of this Pocket Summary)
- Business Structures Overview
- Estate Planning – Key Cases and Rulings
- Estate Planning – Practical Case Studies for 2010
- Estate Planning – Tax and Strategic Issues (1-2)
- Funding Estate Planning
- Ruling from the Grave (1-2)
- SMSFs – Planning Issues
- Superannuation Death Benefits
- Superannuation Overview
- Testamentary Trusts (1-2)
- Trusts – Income and Capital Distributions
- Trusts – The A-Z.

Contact Allan 03 9843 2153 for further information regarding on the content of the topics, the fees charged and to schedule a presentation, workshop or seminar.