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Family home: no death taxes, but avoid the CGT trap

While it might be widely known that selling the family home is capital gain tax (CGT) exempt, this might not be the case after you die - and your next of kin could potentially be facing a large tax burden.

Australia officially abolished death duties in 1979, but Equity Trustees Senior Manager Tax, Chris Holloway, explains it is a misconception that the main residence is also CGT tax exempt.

“If you or I sell our house that we live in there’s no tax. But if the main residence falls into an estate, that suddenly becomes conditional,” he notes.

“When it comes to passing on the family home, there needs to be a plan to ensure the next of kin doesn’t end up with a large tax bill. Part of this is knowing the purchase date of the property and the rules surrounding CGT.”

Mr Holloway explains that taxes for a house are based on the rules instated on 20 September 1985. If the deceased purchased the property before September 20, 1985, but you inherited it after this date, you generally have two years to sell the property if you want to qualify for the CGT exemption.

He notes there are some exemptions allowing next of kin to sell the property without facing a large tax burden. The main residence CGT exemption applies if:

1. The dwelling was the deceased’s main residence just before death, and was not being used to produce income, and
2. The dwelling was sold and settled within two years of the person's death (can be longer with Australian Tax Office discretion), or
3. From the deceased's death until disposal, the dwelling is not used to produce income and is the main residence of one or more of:
 - the spouse of the deceased immediately before the deceased's death,
 - an individual who had a right to occupy the dwelling under the deceased's will, and
 - a beneficiary, if disposing of the dwelling as a beneficiary.

Accordingly, “a will is key with respect to this,” he says.

Mr Holloway also warns home owners to make sure they track how they are using the property, as in some cases a partial CGT exemption can be applied.

“If the inherited property does not meet the criteria for a full exemption, a partial exemption may apply. This is determined by considering the time the property was used as the main residence versus other uses.”

Key factors that determine this include the deceased ownership period, and next of kin’s use.

“Despite the perceptions, main residence is not automatically CGT tax exempt. It is important to know the tax rules or speak to an industry expert who can help guide you through the nuances of main residence CGT exemptions,” concludes Mr Holloway.



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About Equity Trustees

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