

CAPITAL GAINS TAX AND MAIN RESIDENCE EXEMPTION

SELLING YOUR FAMILY HOME AND THE TAX IMPLICATIONS

Whenever you sell your family home, the proceeds are usually exempt from Capital Gains Tax (CGT). However, to be able to obtain such an exemption, it's necessary to first determine if the property is your main residence.

ABOUT CAPITAL GAINS TAX ON PROPERTY SALES

Generally, the sale of any property will cause a CGT event to occur. However, if the property is considered to be your main residence, one in which you have an ownership interest, you'll most likely be exempt from CGT.

Subdivision 118-B of the Income Tax Assessment Act 1997 (ITAA 1997) states that a capital gain or capital loss resulting from a CGT event that happens to a person's main residence can be ignored, subject to certain limitations.

ABOUT CAPITAL GAINS TAX ON LAND SALES

The CGT exemption extends to land adjacent to your property, if the land is used primarily for private or domestic purposes.

However, the maximum area of land that is covered by the exemption, including the area of land on which the property is built, cannot exceed two hectares. The adjacent land must also be sold with the property for the exemption to apply.

RUNNING A BUSINESS FROM HOME

If you conduct a business from your family home, there may be tax implications when you come to sell. This may include a CGT component on the proceeds of the sale.

GUIDELINES TO DETERMINE MAIN RESIDENCE STATUS

While the ITAA doesn't contain guidelines to help classify a property as your main residence, the Australian Tax Office outlines a number of factors it takes into account to determine sole or principal residence status. These factors include, but are not limited to:

- the place of residence of your family;
- whether you have moved your personal belongings into the property;
- the address your mail is delivered to;
- your address on the Electoral Roll;
- the connection of services such as telephone, gas and electricity; and
- your intention in occupying the property.

In order for the Main Residence CGT exemption to apply, the property being sold must include a dwelling. Examples of a dwelling are:

- a home or cottage;
- an apartment or flat;
- a strata title unit;
- a unit in a retirement village;
- a caravan, houseboat or other mobile home.

Once a property is established as your main residence, you cannot choose for the main residence exemption not to apply.

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OTHER CONSIDERATIONS

The mere intention to construct or occupy a property as a main residence will not attract the CGT main residence exemption. An issue that frequently surfaces is the period of time a property owner needs to reside in that property before it can be considered their main residence.

Relevant sections of the ITAA state that if a person builds, repairs or renovates a dwelling, they must live in the 'new' dwelling for a minimum of three months before it can be considered their main residence. If the person does not live in the 'new' dwelling for three months or longer, the dwelling still can be considered their main residence if that period was immediately succeeded by a period in which the owner treats the dwelling as a main residence under the 'six years rule'.

Under the six-year rule, a property can continue to be exempt from CGT if it is sold within six years of first being rented out – subject to certain conditions. The exemption is only available where no other property is nominated as the main residence.

A second requirement in determining main residence status is to move into the property when first practicable to do so. However, this requires consideration of situations where there may be a delay in moving in because of illness or other unforeseen circumstances. In these circumstances, the owner must move into the property as soon as the cause of the delay has ended.

In summary, the main residence exemption provides property owners with relief from having to pay CGT on the sale of their residence. However, the property must be classified as their main residence – this requires consideration of various factors and ensuring moving in when first practicable to do so.

If you're selling the family home and want to clarify your entitlement to the CGT main residence exemption, please contact us at The Peak Partnership on 07 3360 9888 or send an email to email@peakpartnership.com.au.



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