
From: Sounding Board <noreply@ideascale.com>
Sent: Friday, 22 November 2019 10:15 AM
To: Ian Raspin
Subject: Thanks for submitting an idea to Sounding Board community



Thanks for submitting an idea to Sounding Board community!

Idea #89: Surviving joint tenant cost base.

Author: Ian Raspin

There is a defect in the way that cost base rules in section 128-50 of the ITAA 1997 apply where a dwelling that was the main residence of a joint tenant passes by survivorship to the other joint tenant(s).

For CGT purposes generally, joint tenants are treated as tenants in common: section 108-7 of the ITAA 1997. However that deeming does not override the operation of the 'rule of survivorship' that apply on death. That rule has the effect that when a joint tenant dies their interest in an asset passes to the surviving joint tenants, the interest does not form part of their estate.

As a joint tenant's interest does not form part of their estate, the rules in section 128-15 of the ITAA 1997 do not apply to determine the cost base etc of the deceased's interest in the hands of the surviving joint tenant(s).

But section 128-50 of the ITAA 1997 has rules that are intended to produce a similar outcome. The cost base rules in section 128-50 operate by apportioning the deceased's cost base (in the case of a post-CGT asset of the deceased) or market value (in the case of a pre-CGT asset of the deceased) among the surviving joint tenants.

However, one significant difference is the absence of a market value acquisition cost rule for an interest in a dwelling that was the deceased's main residence when they died and which was not being used to produce income (that is, there is no equivalent in section 128-50 to item 3 in the table in subsection 128-15(4) of the ITAA 1997). [There is also no equivalent to items 2, 3A or 3B.] This is an issue that Treasury was proposing be dealt with by way of legislative amendment: see item 5 in the table in Section 5.3 of Treasury Proposals Paper, Minor amendments to the capital gains tax law, May 2011. However, the proposed amendment was one of the unenacted measures that the government did not proceed with.

As a result of the defect, joint tenants are disadvantaged compared to those holding their interests as tenants in common. They face additional compliance costs in establishing the cost base of the interest of a deceased person. It can also mean that those who are better advised may end up in a worse tax position than those whose advisors are not aware of the issue.

Example

After the death of her husband in 1999, Gertie decided to move closer to her only child Sue. However she could not afford to buy a home near Sue with her own funds.

In April 2000, Sue and Gertie purchased a home as joint tenants for \$500,000 (of which they each contributed \$250,000). They agreed that Gertie would live in the house and meet all outgoings etc

and on her death the property would pass to Sue.

Over the years, Gertie paid all the rates and insurance and maintenance expenses. She also paid to have the property landscaped including the construction of a garage. However she did not keep any records of these amounts.

When Gertie died in 2015, Sue rented the property for a while and then decided to sell it in 2019. In working out her capital gain Sue had assumed that she would inherit Gertie's interest for market value at death (\$450,000) and she was alarmed to learn that she would have to establish all of the costs that Gertie had incurred in order to work out the cost base of the interest that she had inherited .

Solution

Amend subsection 128-50(3) to exclude interests covered by subsection 128-50(4)

Amend subsection 128-50(4) to include an interest in a dwelling that was the deceased's main residence at the date of death (and also an interest in a property that was not taxable property of a non-resident deceased)..

[Go to this idea now](#)