

# Let's chat

PPR and death – April 2021

With:

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*Information provided is general in nature; precise application depends on specific circumstances*

# Overview

- Main residence CGT exemption
- Death and exemption
- Right to occupy

# Main residence exemption

- No capital gains/losses from CGT events occurring to 'dwelling that was the main residence of an individual throughout the period they owned it'
- If only main residence for part of the time, then only a partial exemption
- Dwelling includes a 'building, caravan, houseboat or other mobile home'
- Exemption extends to up to 2 hectares of land adjacent to the dwelling provided land is used for private or domestic purposes
- Exemption only available for adjacent land if sold with the dwelling

# Main residence exemption

- No exemption for foreign residents
- From 9 May 2017
- Exception if person is a foreign resident for 6 years or less at the time of the CGT event if that person/spouse/minor child died or had a terminal medical condition or due to a family law matter
- Whether main residence depends:
  - Length of time resided
  - Where individual resides
  - Where personal belongings
  - Address mail delivered
  - Electoral role
  - Connection of services and utilities

# Death and MRE

An LPR or beneficiary to whom a dwelling passes disregards any capital gain or loss from the dwelling if:

- either of the following ‘dwelling conditions’ is satisfied:
  - the deceased acquired the dwelling prior to 20 September 1985; or
  - the deceased acquired the dwelling on or after that date and it was their main residence when they died and was not being used to produce income at that time; and
- either of the following ‘post-death conditions’ is satisfied:
  - ownership of the dwelling ends within 2 years of the deceased’s death (or such further period as the Commissioner allows); or
  - the dwelling was occupied by certain people after the deceased’s death.

However, for CGT events that happen after 7.30 pm on 9 May 2017, the exemption will not generally apply if the deceased person was an ‘excluded foreign resident’ when they died.

An individual is an excluded foreign resident at a particular time if, at that time, they have been a foreign resident for a continuous period of more than six years.

# Right to occupy

- To occupy or not
- Flexibility (knowing occupier v changing who can reside)
- Testamentary trust owner v individual acquirer
- Joint tenants and tenants in common
- Advance planning
- Continuous assessment
- Simpler to plan to just sell the property?

# Foreign residents and MRE

- From 9 May 2017, if a deceased had been a foreign resident for more than 6 years, then they will lose the MRE (and also the cost base uplift which impacts future potential sales)
- Consider if clients been overseas since 2015, in which case new rules and 6 year limit will apply to them

# Contact details

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