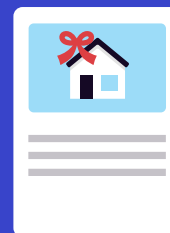




Australian Government
Australian Taxation Office

Capital gains tax on inherited property



The property you inherit is a capital asset you acquire on the day a person dies. Generally, capital gains tax (CGT) doesn't apply at the time you inherit the dwelling. However, CGT will apply when you later sell or dispose of the dwelling, unless an exemption applies.

This depends on whether:

- the deceased person acquired the property before or after 20 September 1985
- it was the deceased person's main residence immediately before they died, and wasn't being used to produce income at the time
- the deceased person was an excluded foreign resident at the time of death
- you were an Australian resident when you inherited the property
- it was your main residence, or
 - the main residence of anyone with the right to occupy it under the will
 - the main residence of the spouse of the deceased person immediately before their death
 - wasn't used to produce income
- you dispose of an inherited property within 2 years of the deceased person's death and either
 - the deceased acquired the property before 20 September 1985
 - this exemption applies whether or not you used the dwelling as your main residence or to produce income during the 2-year period
 - the deceased acquired the property on or after 20 September 1985

- the dwelling passed to you after 20 August 1996, and it was the deceased person's main residence and not being used to produce income just before the date they died.

Note: The 2-year limit is extended if disposal of the property is delayed by exceptional circumstances outside your control. Safe harbour in these circumstances provides for the 2-year limit to be extended for another 18 months.

i For more information, see [Extensions to the 2-year ownership period](#).

CGT main residence exemption rules when you sell a dwelling that was passed to you after 20 August 1996

1. Did the deceased person acquire the dwelling before 20 September 1985?

- Yes – continue to question 2
- No – continue to question 5

2. Did settlement of your contract to sell the dwelling:

- happen within 2 years of the person dying, or
- are you eligible for an extension?
 - Yes – dwelling is fully exempt
 - No – continue to question 3

CGT main residence exemption rules (continued)

3. From the deceased person's death until settlement, was the dwelling the main residence of either:

- you
- an individual who had a right to occupy the dwelling under the will
- the spouse of the deceased person
 - Yes – continue to question 4
 - No – CGT applies (you may qualify for a part exemption).

4. Was any part of the dwelling used to produce income, from the deceased person's death until settlement?

- Yes – CGT applies (you may qualify for a part exemption)
- No – dwelling is fully exempt.

5. Was the dwelling the deceased person's main residence just before they died?

- Yes – continue to question 6
- No – CGT applies (you may qualify for a part exemption).

6. Just before they died, was the dwelling being used to produce income?

- Yes – CGT applies (you may qualify for a part exemption)
- No – continue to question 2.

When the deceased person died before 20 September 1985

If the deceased person died before 20 September 1985, the property is exempt from CGT when you sell it (it is a pre-CGT asset). However, if you made a major capital improvement to the dwelling on or after 20 September 1985 the improvements are a separate asset and may be subject to CGT.

How to determine the value of an inherited property

The acquisition cost of the property is the market value of the property at the date of death, if any of the following apply:

- the property was acquired by the deceased before 20 September 1985
- the property was passed to you after 20 August 1996 (but not as a joint tenant), and
 - it was the deceased person's main residence just before they died
 - it wasn't used to produce income
- the dwelling was passed to you as the trustee of a special disability trust.

In all other circumstances, your acquisition cost is the deceased's cost base on the day they died. This means:

- the deceased's original purchase price, and
- any other costs incurred then and afterwards (by the deceased) – for example, legal fees on that purchase and any capital improvements.

You may need to contact the trustee or the deceased's tax advisor to get these details.

Joint tenants and tenants in common

If 2 or more people acquire a property together, it can be either:

- tenants in common
- joint tenants.

Tenants in common

If a tenant in common dies, their interest in the property becomes the asset of their deceased estate. This means it can be:

- transferred to a beneficiary of the estate (only)
- sold (or otherwise dealt with) by the legal personal representative of the estate.

How to determine the value of an inherited property (continued)

Joint tenants

For CGT purposes, if you are a joint tenant you:

- are treated as if you are a tenant in common
- own equal shares in the asset.

However, if you're a joint tenant and another joint tenant dies, on that date their interest in the asset is:

- taken to pass in equal shares to you and any other surviving joint tenants
- as if their interest is an asset of their deceased estate and you are beneficiaries.

This means, if the dwelling was the deceased's main residence, you may be entitled to the main residence exemption for the interest you acquired from them.

Inherited dwelling from, or as, a foreign resident

The law for foreign residents changed on 12 December 2019. This may affect your entitlement to claim the main residence exemption on an Australian residential property you inherit from a foreign resident.

The changes may also apply to you if:

- you inherit an Australian residential property
- you have been a foreign resident for more than 6 years when you [sell or dispose of the property](#).

Inheriting a dwelling from someone who inherited it themselves

If you [inherit a deceased persons property](#), who also acquired the interest in the property on or after 20 September 1985 as a beneficiary (or trustee) of a deceased estate, you may be entitled to a partial main residence exemption. This is calculated on the number of days the property was your and the previous beneficiary's main residence.

Example: surviving joint tenant

In 2005, Ming and Lee buy a residential property for \$300,000 as joint tenants. Each one has a 50% interest in it. They live in it as their main residence.

On 1 May 2022, Lee dies. Ming acquires Lee's interest for an amount equal to Lee's cost base on that day (1 May 2022).

Ming continues to use the property as his main residence after Lee's death. He is entitled to the main residence exemption for the interest he acquired from Lee, as well as for his original interest.

Example: fully exempt – deceased acquired the dwelling on or after 20 September 1985 and beneficiary sold it within 2 years of death

Rodrigo was the sole occupant of a flat he bought in April 1990. He has only ever lived in it and not used it to produce income.

Rodrigo died in January 2021. He leaves the flat to his son, Petro. Petro initially rents out the flat and then sells it 15 months after his father died.

Petro is entitled to a full exemption from CGT. This is because Rodrigo lived in it when he died and Petro disposed of it within 2 years of his father's death.

Example: partial exemption – main residence of deceased but then rented out for more than 2 years after death by beneficiary

Lucy buys a home on 1 April 2000 for \$250,000. It's her main residence from the time she acquired it until her death on 31 March 2012 (a total of 4,383 days). The property passes on to her beneficiary, Amy.

Amy lets the home as a rental property throughout her ownership period. After 8 years she decides to sell. Amy sells the rental property for \$975,000 on 30 June 2020 (3,013 days after Lucy's death).

The acquisition cost of the property for Amy is its market value at Lucy's date of death, which was \$425,000. This is because it was:

- passed to Amy after 20 August 1996
- Lucy's main residence immediately before her death
- not producing income at Lucy's date of death.

Amy needs to declare the capital gain as follows:

- calculate CGT
 - sale price \$975,000
 - acquisition cost (total cost base) \$425,000
- deduct cost base from sale price
 - total capital gain \$550,000.

Amy's taxable portion of the capital gain is calculated as:

$$\text{Capital gain amount} \times (\text{Non-main residence days} \div \text{total days})$$

The non-main residence days is the number of days Lucy and Amy used the dwelling to produce income, which is 3,013 (0 for Lucy and 3,013 for Amy). Total days is the number of days Lucy and Amy owned it, which is 7,396.

Amy's capital gain is:

$$\$550,000 \times 3,013 \div 7,396 = \$224,060$$

Amy can use the CGT discount method to reduce her capital gain by 50%.

This reduces her capital gain to \$112,030.

Example: partial exemption – inherited rental property – main residence of beneficiary

Vicki bought a house for \$200,000 on 12 February 1998 and uses it as a rental property. She dies on 17 November 2001 (owning the home for a total of 1,375 days). The house passes on to her beneficiary, Lesley, who uses it as his main residence.

As the property was purchased by Vicki after 20 September 1985 and used solely for income producing purposes, Lesley's acquisition cost is Vicki's cost base on the day she died of \$208,000. The cost base includes \$200,000 plus legal fees and solicitor fees on purchase.

Lesley sells the property for \$650,000 on 27 November 2022. He owned it for a total of 7,681 days. As the house was not Vicki's main residence just before she died, Lesley can't claim an exemption from CGT for the period Vicki used the house to produce income.

However, Lesley is entitled to a partial exemption from CGT for the period he used the house as his main residence. This is throughout his ownership period of 7,681 days only.

Example: partial exemption – main residence deceased – rental property and main residence beneficiary

Mary acquired a dwelling on 1 June 2002 for \$650,000. It is her main residence until she dies on 31 August 2007 (a total of 1,918 days). Her son, Steve, inherits the dwelling and rents it out.

After renting the dwelling until 31 August 2010 (a total of 1,096 days), Steve begins living in it as his main residence. On 31 August 2022 he sells it for \$900,000 (owning it for a total of 5,479 days).

Mary acquired the main residence after 19 September 1985 and didn't use it to produce income. On her death, the house was passed to Steve as a beneficiary after 20 August 1996. This means, Steve acquired the dwelling at its market value of \$720,000 at the time he first used it to produce income.

The house was Mary's main residence just before she died and Steve used the property as his main residence as well as a rental property. Steve can't claim an exemption from CGT for the period he used the house to produce income. However, he can claim a partial exemption from CGT for the period Mary and Steve used the house as their main residence in their ownership period.

i This is a general summary only.

For more information, see ato.gov.au/deceasedestatesCGT

Download our Rental properties guide at ato.gov.au/rentalpropertyguide

Read our Capital gains tax guide at ato.gov.au/cgtguide

