



Unexpected CGT on the sale of house

For many people, the most valuable asset they will ever own is their own home. Because there is an exemption in the capital gains tax laws for a main residence, people do not usually have to pay any capital gains tax when they sell their house for more than they paid for it.

In some circumstances, a property can be considered a main residence even when the owners no longer live in it. For example, you can buy a house, live in it for a year, then move out and rent it out for up to six years and still claim it as your main residence, provided you did not claim any other property was your main residence for CGT purposes for the same period.

Care needs to be taken, however, to ensure that the main residence exemption does apply so that the owner is not faced with an unexpected tax bill.

In a recent case, a police officer and his wife bought a house in one town, but they were not able to move into it straight away because he was posted to another town for three years. They rented out the house during his posting and moved into the house when his posting finished, and eventually sold the house for around \$100,000 more than they paid for it. They thought they would not have to pay any capital gains tax on the sale because the legislation allows a house to be considered your main residence from the time you buy it so long as you move into the house "by the time it was first practicable for you to move into it". The owners argued that it was not practicable for them to move into the house until the husband's posting to another town was finished.

The Court, however, agreed with the ATO that the owners could have moved into the house when they bought it, but it was merely inconvenient for them to do so. This meant that the house was not considered their main residence for the time before they moved into it, and they had to pay tax on almost \$30,000 of the capital gain. This probably amounted to a \$10,000 tax bill (depending on their level of income).

Homeowners selling a property that they lived in for only part of the time they owned it should always carefully consider whether the main residence exemption will apply for the entire time they owned the property, especially if they have ever rented the property out.

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Everingham Solomons
SOLICITORS
Incorporating Thomas & Hargreaves and Creagh O'Brien & Co.

Consultant:

Ted Heazlett

Directors:

John Boag

Terry Broomfield

Ken Sorrenson

Terry Robinson

Mark Grady

Jennifer Blissett

Associate:

Lesley McDonnell

Level 3, Ray Walsh House,
437 Peel Street, Tamworth NSW 2340

Ph: 6766 1066 Fax: 6766 4803

Email: solicitors@eversol.com.au

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