

Estate planning (australia)

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E planning The principle residence Sudden death of Gary means that there is no active will as his earlier will in his first marriage is out of date. This being a joint tenancy asset, which means that, none of the tenants can deal with the asset individually in their will. In the case Gary dies the principle of survivorship applies. Therefore all interest vested in the asset passes to Margaret. Regardless of the joint tenancy CGT rules will apply to the asset the same way as in tenant in common. She does not have tax liability on the property according to subdivision 118B ITAA97. The subdivision states that the beneficiary will have a CGT main residence exemptions in the case that the deceased main residence at time of death. Margaret deemed acquisition date and cost base is the original date and cost that applied to the assets. Any capital gain tax liability on the principle residence is subjected to 50% individual CGT discount.

Contents of the principal residence

All the contents of the principle residence are inherited by Margaret. Since the assets were under joint tenancy, therefore the principle of survivorship applies. Margaret deemed acquisition date and cost base will be the original date and cost that applied to the assets. The contents are treated as personal use; since they are valued above \$10, 000 therefore they are not exempted from CGT and any capital losses are ignored.

The investment property

Since the investment property is held as tenant in common the principle of survivorship does not apply. In case of Gary's death the property is inherited by Margaret as there is no will therefore his spouse that is Margaret becomes the sole beneficiary. CGT rules apply where all capital gains and losses are taxed. The property was acquired post-CGT therefore its acquisition date and <https://assignbuster.com/estate-planning-australia/>

cost base are same as the original. In the case of subsequent disposal by his wife, the capital gain will be deemed as the day contracts were exchanged.

The bank account

The bank account was held as a joint tenancy, this makes Margaret the sole beneficiary as she inherits the account and the money. She takes full control of the account and she can continue transacting through it unless she decides to close it. Since all assets under joint tenancy are assumed be tenancy in common, therefore CGT rules apply.

The shares

Since the shares are held as joint tenancy between Gary and his wife, his death entitles transfer of the shares to his wife because there is no will. For the shares that were acquired before 19 September 1989 (pre-CGT), they are deemed acquired for the market value of the shares on the date of death. For the shares acquired after 19 September 1989 (Post-CGT), Margaret will inherit the cost base of Gary's shares.

The term life insurance on Margaret

The insurance policy is owned by Gary himself therefore it is treated as a part of his estate assets upon his death. Since Gary's estate is the "beneficial owner" in relation to life insurance proceeds, the estate will be exempted from CGT. However, in accordance to CGT, the estate interest in the business will be deemed disposed off, at a deemed market value, therefore, it would have to settle CGT on capital gain upon disposal.

The motor vehicles

The motor vehicle is acquired by Margaret. This is in line with the law that in case of death and there is no will, the deceased's spouse acquires their assets unless there is a will stating otherwise. Since the car is personal it is

classified as personal use asset or CGT asset (section 108-5 ITAA97).

Because the vehicles are valued above \$10, 000 it means that Margaret is only capital loss on the vehicles are ignored (section 108-20 ITAA97), but any capital gain is not exempted CGT.

The best advice to Gary and his wife is first they should come up with a will that states out clearly who and what quantity are the beneficiaries of his estate. The assets owned as joint in tenant should be changed to joint in common in case he wants his children to be the beneficiaries instead of his wife alone.

Source:

Commonwealth consolidated acts. Income tax assessment act 1997.

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