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This edition seems to be all about traps like the differing capital gains tax treatment of the deceased's home being dependent on whether they are tenants in common or joint tenants. We also review a tax case where a receipt in her spouse's name was not acceptable.

A Bit About Estate Planning – The Family Home's Cost Base

Most couples own their house as joint tenants. This means that if one of the joint tenants dies their share of the property passes to the other joint tenant or tenants without being considered part of the deceased's estate. Simply put, in a Mum and Dad situation in the event of one spouse dying the property automatically becomes wholly owned by the surviving spouse. It cannot be dealt with under the will.

Tenants in common own their share of the property completely independently of the other owners. Who becomes the owner of that property when they die is determined by their will.

Wills are inclined to be challenged so couples like the piece of mind of joint tenancy, knowing that their spouse need only present the death certificate to the titles office to transfer the property into their name with no stamp duty cost, no necessity to go through probate and no risk of their will being challenged. Much more straight forward.

There is a down side with joint tenancy if the house has some CGT exposure. Interestingly tenants in common do not have the same problem. Traditional family arrangements such as this can push your spouse right into the ATO's trap.

The first point to understand is that the house is really two separate assets in the hands of the surviving spouse. One half they owned all along and the other half they recently inherited.

The trap is if you inherit a house as a joint tenant you do not get the concession under section 128-15 which resets the cost base of the deceased's home to market value at date of death. This reset is only available to tenants in common. This is a very handy section if the house was not completely covered by the main residence exemption. You see, as long as it is the deceased's home at date of death then any CGT liability that would have raised its ugly head had they sold within their lifetime disappears on death.

Note, the absence rule in section 118-145 can be used to cover the property with the main residence exemption if the deceased is not actually living there when they die but had previously lived there and is not covering another property.

A surviving joint tenant inherits the deceased's share of the property at the deceased's cost base probably going right back to when the property was first purchased. Though section 118-200 does work towards exempting the gain during the time it was owned by the deceased. Joint tenants are covered by section 128-50 which specifically says if you are the surviving joint tenant then the only way you get to reset the cost base to market value at date of death is if it was a pre CGT (20th September 1985) asset to the deceased.

If the surviving owner continues to live in the house as their home up until they die then the outcome is no different whether it was joint tenants or tenants in common. But not everyone's life goes that smoothly or maybe the property has development potential and the reset would come in very handy. Certainly, a topic worth discussing as part of your estate planning. It is easy to change from joint tenants to tenants in common. It will not trigger CGT as long as you continue to own the property in equal portions and there should be stamp duty concessions.

What is New from the ATO – Wrong Name On Receipt

The ATO had quite a win at the administrative Appeals Tribunal in Watts case 2017 2030. I can't really complain about most of the outcome of this case. The taxpayer could have done a lot more to save herself, please don't get yourself into this situation.

The taxpayer had very few records or receipts to substantiate her claim for various work related expenses. In fact, I don't understand how she expected to win and even why she decided to fight the ATO in court. While the case does not specifically say this, judging by the last names I think her tax agent was her husband and he represented her before the AAT. He even admitted she did not incur extra expenses over and above the travel allowance paid by her employer.

Watt's was denied a tax deduction for:

- The gap between the allowance paid by her employer and the ATO publicised reasonable allowance because it was clear she had not incurred anything over and above the allowance.
- Hospitality expenses as the taxpayer could not show how these related to earning income
- Clothing purchases and laundry were denied because it was conventional in nature, not a uniform.
- French lessons, while it was accepted that this was relevant to her job she had no receipts
- Body corporate fees for her rental property because she could not produce any evidence of the expense
- Insurance on her rental property because the receipt was in her husband's name!

It is this last point that does bother me. The ATO is suggesting that he incurred the expense not her, and of course he is not entitled to claim the expense because it is not a cost to him of earning income as the property is in her name only. We have had this sort of silly argument with ATO auditors before, just because the wife purchased the goods even though they were paid for by a joint credit card and the goods were clearly for the husband. Hopefully this is not a sign this sort of argument is going to be supported by the courts. I hope that in this case it was just because by this stage the taxpayer had lost all credibility.

Nevertheless, it is worth making sure if there is a name on the receipt it is the name of the owner of the property. This is probably another bonus in owning a property 99:1.

The taxpayer also coped a penalty of 50% of the unpaid tax.

This Week's Webinar

Owning a property 99:1 with your spouse. This webinar covers a few more reasons to own a property 99:1, in addition to the wrong name of the receipt caper in Watt's case above
https://youtu.be/DQXKwQglQNc

Best Askbantacs Question – Borrowing to afford P&I repayments.
http://taxquestions.com.au/affordpi Considering the lower interest rates available for principle and interest loans compared with interest only loans this issue is worth considering.

If you would like to ask a question of askbantacs go to http://taxquestions.com.au/