

# CGT when spouses have different main residences



*It can sometimes be the case that spouses can have different main residences at the same time. When this occurs, special CGT rules apply to in effect provide only one CGT main residence exemption over this period. However, important decisions and choices may need to be made to optimise the tax outcome in this case (or avoid an adverse outcome).*

While in most cases spouses will have a single main residence in which they live together, there may be times when they are separated, for example due to work commitments, where they have two different main residences over the same period. Where this is the case, the spouses have a choice of two options:

1. choose one of the dwellings as the main residence for both spouses for that period, or
2. nominate the different homes as each individual spouse's main residence for that period.

### HOW OPTION 2 WORKS

Where option 2 is chosen, the application of the main residence exemption is determined as follows:

- where a spouse's interest in the nominated dwelling is 50% or less, the nominating spouse will be entitled to an exemption on that interest for the whole period where the spouses have different homes
- where the relevant interest is greater than 50%, the nominating spouse will only be entitled to an exemption in respect of that interest for half the period where the spouses have different homes.

Put simply, the spouse will either get half an exemption for the full period or a full exemption for half the period. The same rules apply to their spouse. Namely, if they own 50% or less of the home they have nominated, they qualify for an exemption for their

### About this newsletter

Welcome to our monthly tax and superannuation update. We hope you find the content informative. Should you require further information on how any of the content could affect you, please do not hesitate to contact Ray or Neal on (03) 9428 1033 or

Ray Barrett | [Ray.Barrett@barrettwalker.com.au](mailto:Ray.Barrett@barrettwalker.com.au)  
Neal Patel | [Neal.Patel@barrettwalker.com.au](mailto:Neal.Patel@barrettwalker.com.au)

© Content in partnership with **Taxpayers Australia**

share. However, where their spouse owns more than 50% of the home, their share is exempt but for only half the period where the spouses have different homes.

As a result, the upshot will be that the partial exemption CGT rules will apply to reflect the period that each spouse's interest in the respective homes did, or did not, qualify as their "CGT main residence" over their period of ownership of their interest in the homes.

See "How the rules can play out" at the bottom of the page.

## OTHER THINGS TO NOTE

Other things to note about the application of the rule for spouses with different main residences at the same time include the following:

- a spouse need not have an interest in a dwelling nominated by both spouses as their main residence
- where spouses own a pre-CGT main residence, there is nothing to prevent them from nominating a post-CGT main residence as their main residence

to preserve the exemption on both main residences

- a nomination can be made in respect of a residence which is treated as a main residence by way of the "absence concession" being applied to it, and
- the choice made by the spouses is evidenced by the way the spouses complete their relevant tax returns (ie a nomination does not need to be lodged with the ATO).

Finally, and crucially for these purposes, a "spouse" includes another person of any sex who an individual was either married to or where they lived with on a "genuine domestic basis" in a relationship as a couple, even if they are not legally married — so the rule applies to de-facto relationships also.

However, this raises the often difficult issue of determining if, in fact, a "de-facto relationship" exists between the parties — and furthermore when such a relationship began (or ended) for the purposes of the application of this rule.



## HOW THE RULES CAN PLAY OUT

Karl and Kerry jointly own a house in Brisbane that they purchased in 2005. They lived in the house together as their main residence up until November 2016. At this time, they purchase a \$700,000 townhouse in Melbourne where Karl was transferred to for three years by his employer in order to set up a new branch of the business. Karl has an 80% ownership interest in the townhouse and Kerry a 20% interest.

At the end of the three-year period in November 2019, Karl moves back to Brisbane and the Melbourne townhouse is sold for \$740,000.

For the three-year period when they lived apart, Karl nominates the townhouse as his main residence while Kerry nominates the home in Brisbane.

According to the tax rules, because he owned more than 50% of the townhouse, Karl will treat his interest in the townhouse as his main residence for half the period that they lived apart (one and a half years of the three-year period).

For Kerry, because her interest in the Brisbane property was 50% or less, she will treat her interest in the Brisbane property as her main residence for the three-year period that they lived apart.

The result will be that the partial exemption rules will apply to reflect the period that Karl's and Kerry's interest in the homes did not qualify as their "CGT main residence" over their period of ownership of these interests.

**Important:** Clients should not act solely on the basis of the material contained in Client Alert. Items herein are general comments only and do not constitute or convey advice per se. Also changes in legislation may occur quickly. We therefore recommend that our formal advice be sought before acting in any of the areas. Client Alert is issued as a helpful guide to clients and for their private information. Therefore, it should be regarded as confidential and not be made available to any person without our prior approval.