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## IS CAPITAL GAINS TAX PAYABLE WHEN YOU DIE?

There is an old saying about death and taxes - that is, they are both certain. Does it apply to Capital Gains Tax? The answer is maybe.

Capital Gains Tax is a form of Commonwealth tax which is levied on taxable capital gains made in relation to certain events, called "CGT events".

If there is a CGT event and there is a taxable capital gain, then Capital Gains Tax may be payable.

The question often arises whether Capital Gains Tax is payable in relation to certain transactions which occur as a result of the death of a person, namely the passing of assets of the deceased person to the legal personal representative or to the beneficiary of the person's estate.

The general rule, subject to

exceptions, is that despite there being, naturally, a change in ownership of a person's assets as a result of that person's death, the death itself does not give rise to a disposal or other CGT event for the purposes of Capital Gains Tax.

However, the rules in this area are very complex and in certain circumstances, transactions or matters undertaken by legal personal representatives or beneficiaries of an estate may give rise to inadvertent Capital Gains Tax liabilities. For example, Wills often contain a power of sale that enables the legal personal representative of the deceased, in certain circumstances, to sell the assets of the estate. If, in exercising the power of sale, the legal personal representative sells an asset of the estate to a beneficiary then for Capital Gains Tax purposes, the beneficiary acquires the asset as a purchaser



and not in his or her capacity as a beneficiary of the estate. In these circumstances, the law provides that there is a disposal of the asset by the legal personal representative to the purchaser/beneficiary and CGT may be payable depending on whether there is a taxable capital gain.

Given the complexity in this area executors and/or beneficiaries should obtain advice from a qualified person.



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