



Taxation Determination

Income tax: capital gains: if a dwelling passes to you as a beneficiary or the trustee of a deceased estate and you make a capital gain or capital loss from a CGT event that happens to the dwelling, can you disregard the gain or loss despite your having used the dwelling since the deceased's death for income producing purposes if:

- **the deceased acquired the dwelling on or after 20 September 1985;**
- **the dwelling was the deceased's main residence just before their death and was not then being used for income producing purposes; and**
- **your ownership interest in the dwelling ends within 2 years of the deceased's death?**

Preamble

*This Taxation Determination is a 'public ruling' for the purposes of Part IVAAA of the **Taxation Administration Act 1953** and is legally binding on the Commissioner. Taxation Rulings TR 92/1 and TR 97/16 together explain when a Determination is a public ruling and how it is legally binding on the Commissioner.*

Date of effect

This determination applies to years commencing both before and after its date of issue. However, this Determination does not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of the Determination (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

1. Yes.

2. Paragraphs 118-195(1)(a) and 118-195(1)(b) of the *Income Tax Assessment Act 1997* provide that if a dwelling passes to you as a beneficiary or as a trustee of a deceased estate and you make a capital gain or capital loss from a CGT event that later happens to the dwelling, you can disregard the gain or loss if:

- (a) the deceased acquired the dwelling on or after 20 September 1985;
- (b) the dwelling was the deceased's main residence just before their death and was not then being used for income producing purposes; and
- (c) your ownership interest in the dwelling ends within 2 years of the deceased's death

3. Section 118-190, which applies to increase a capital gain or capital loss from the happening of a CGT event to a dwelling used as your main residence if you used it for purposes of producing assessable income, does not alter the position stated in paragraph 2. Section 118-190 does not operate in that situation to increase the capital gain or capital loss which subsection 118-195(1) disregards.

4. This outcome (namely, that any capital gain or capital loss from a CGT event which later happens to the dwelling is disregarded) applies whether or not the dwelling has been used for income producing purposes within 2 years of the deceased's death.

Note 1:

5. Section 118-190 operates to increase the capital gain or capital loss which subsection 118-195(1) otherwise disregards if, among other circumstances, the beneficiary or the trustee used the dwelling for more than 2 years after the deceased's death both for income producing purposes and as their main residence.

Note 2:

6. Subsection 118-190(4) provides that if the dwelling was the main residence of the deceased just before their death and it was not then being used for any income producing purpose, any use of the dwelling by the deceased person for income producing purposes before their death is ignored.

Commissioner of Taxation

15 December 1999

Previous draft:

Previously issued as TD 1999/D40

Related Rulings/Determinations:

Subject references:

beneficiary; capital gains; death; deceased; deceased estate; dwelling; exemption; main residence; trustee

Legislative references:

ITAA 1997 118-190; ITAA 1997 118-190(4); ITAA 1997 118-195(1); ITAA 1997 118-195(1)(a); ITAA 1997 118-195(1)(b) item 1

Case references:

ATO references:

NO 99/10480-5

BO CGT main residence summit 1999

FOI Index Detail: I 1021083

ISSN: 1038-8982