

TD 58A - Addendum - Income tax: capital gains: is a principal residence exemption available where a dwelling is owned by a family company or family trust?

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Addendum

Taxation Determination

Income tax: capital gains: is a principal residence exemption available where a dwelling is owned by a family company or family trust?

This Addendum amends CGT Determination Number 58 to remove the reference to bare trust as being the test for determining whether a beneficiary is absolutely entitled to an asset of a trust for CGT purposes. The circumstances in which a beneficiary will be considered absolutely entitled to a CGT asset of a trust are now dealt with in Taxation Ruling TR 2004/D25. In particular, that Ruling states that bare trust is not the test for absolute entitlement.

TD 58 is amended as follows:

1. Delete paragraph 3 and substitute: 'However, where a beneficiary of a trust is absolutely entitled as against the trustee to the dwelling, an exemption may be available to the beneficiary if the dwelling is the principal residence of the beneficiary.'
2. Delete note (i) and substitute: 'A beneficiary that is absolutely entitled to a trust asset as against the trustee is regarded as the relevant taxpayer in respect of that asset for CGT purposes.'

This Addendum applies on and from 15 December 2004.

Commissioner of Taxation
15 December 2004

ATO references

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