


***TD 1999/D44 - Income tax: capital gains: in what circumstances does a trustee of a deceased estate acquire an ownership interest in a dwelling 'under the deceased's will' for the purposes of subsection 118-210(1) of the Income Tax Assessment Act 1997?***

 This cover sheet is provided for information only. It does not form part of *TD 1999/D44 - Income tax: capital gains: in what circumstances does a trustee of a deceased estate acquire an ownership interest in a dwelling 'under the deceased's will' for the purposes of subsection 118-210(1) of the Income Tax Assessment Act 1997?*

This document has been finalised by TD 1999/74.

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## Draft Taxation Determination

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### **Income tax: capital gains: in what circumstances does a trustee of a deceased estate acquire an ownership interest in a dwelling ‘under the deceased’s will’ for the purposes of subsection 118-210(1) of the *Income Tax Assessment Act 1997*?**

#### **Preamble**

Draft Taxation Determinations (DTDs) present the preliminary, though considered views of the Australian Taxation Office (ATO). DTDs should not be relied on; only final Taxation Determinations represent authoritative statements by the ATO.

1. In its context in subsection 118-210(1) of the *Income Tax Assessment Act 1997*, the preposition ‘under’ requires a connection between the trustee’s acquisition of an ownership interest in a dwelling and the deceased’s will. The connection required is not a strict one.
2. A trustee acquires an ownership interest in a dwelling under the will of a deceased person for the purposes of subsection 118-210(1) if the interest is acquired in accordance with the terms of the will, or in accordance with the terms of the will as modified by any court order.
3. The trustee also acquires an interest under the deceased’s will if they acquire it in pursuance of the will or under the authority of the will (*Evans v. Friedmann* (1981) 53 FLR 229 at 238).
4. The acquisition need not be in strict conformity with the will or expressly by force of the will but, if it is, the requirements of subsection 118-210(1) are, in any case, satisfied.
5. If a trustee acquires an ownership interest in a dwelling in the course of the administration of an intestacy, the trustee does not acquire the interest ‘under the deceased’s will’ for the purposes of subsection 118-210(1) because there is no will.

#### **Your comments**

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**We invite you to comment on this Draft Taxation Determination. We are allowing 4 weeks for comments before we finalise the Determination. If you want your comments considered, please provide them to us within this period.**

# TD 1999/D44

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FOI status: draft only - for comment

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## Commissioner of Taxation

28 July 1999

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### *Previous draft:*

Not previously released in draft form

### *Related Rulings/Determinations:*

### *Subject references:*

acquisition; capital gains; deceased; deceased estate; dwelling; interest; intestacy; ownership interest; trustee; under; will

### *Legislative references:*

ITAA 1997 118-210(1)

### *Case references:*

*Evans v. Friedmann* (1981) 53 FLR 229

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### ATO references:

NO 99/10480-5

BO CGT main residence summit 1999

ISSN: 1038-8982