


***TD 94/D13 - Income tax: if a person and his/her family die at the same time, and an eligible termination payment (ETP) is paid after the death of the person to the trustee of the estate of the person, could the deceased person's family be considered to have benefitted from the person's estate for the purpose of applying subsection 27A(4) of the Income Tax Assessment Act 1936?***

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This document has been finalised by TD 94/69.

Draft Taxation Determinations (TDs) represent the preliminary, though considered, views of the ATO. Draft TDs may not be relied on; only final TDs are authoritative statements of the ATO.

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## Draft Taxation Determination

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**Income tax: if a person and his/her family die at the same time, and an eligible termination payment (ETP) is paid after the death of the person to the trustee of the estate of the person, could the deceased person's family be considered to have benefitted from the person's estate for the purpose of applying subsection 27A(4) of the *Income Tax Assessment Act 1936*?**

1. Yes. We consider the family members to have benefitted even though they may have died at the same time as the person, provided they were beneficiaries of the person's estate and their respective estates receive a share of the person's estate.
2. ETP's are defined to mean 'any payments made in respect of the taxpayer in consequence of the termination of any employment of the taxpayer' (ss 27A(1)), and include payments from superannuation funds and retirement or termination payments. Subsection 27A(11) provides that 'a reference to the termination of any employment includes a reference to the cessation of that employment by reason of the death of the person.' Subsection 27A(4) states that an ETP paid to the 'trustee of the estate of a deceased taxpayer shall be reduced by such amount (if any) as the Commissioner considers appropriate having regard to the extent to which the **dependants of the deceased taxpayer may reasonably be expected to benefit from the estate.**' In cases where the dependants benefitted from the deceased person's estate, the dependants would not be subject to income tax on the ETP received.
3. The word '**dependant**' is defined in subsection 27A(1) (in relation to applying ss 27A(4)) to mean any person who is or was a spouse of the person, and any child of the person, being a child who has not attained the age of 18 years.
4. The laws relating to survivorship and intestacy are relevant in determining whether the person's dependants are entitled to benefit from the person's estate.

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FOI INDEX DETAIL: Reference No.

Related Determinations:

Related Rulings:

Subject Ref: eligible termination payment, dependant, trust estate.

Legislative Ref: ITAA 27A(1); ITAA 27A(4); ITAA 27A(11).

Case Ref:

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