



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

 This cover sheet is provided for information only. It does not form part of *TD 58 - Income tax: capital gains: is a principal residence exemption available where a dwelling is owned by a family company or family trust?*

 This document has changed over time. This is a consolidated version of the ruling which was published on *21 May 1992*

CGT Cell Determinations do not have the force of law, but can be relied upon as being the considered view of the ATO. Unless otherwise stated, the view expressed may be applied to transactions entered into both before and after the date of issue of the Determination.

CGT Determination Number 58

Capital Gains: Is a principal residence exemption available where a dwelling is owned by a family company or family trust?

Determination

1. No. Paragraph 160ZZQ12(a) requires that a dwelling be owned by a natural person.
2. A family company or family trust is not a natural person for these purposes.
3. However, where a 'bare trust' exists (within subsection 160V(1)), an exemption may be available to the beneficiary where the beneficiary occupies the dwelling.

- Note:**
- (i) A bare trust exists where a trustee legally owns an asset, but the beneficiary is absolutely entitled to the asset as against the trustee. In such a case, the beneficiary is regarded as the owner of the asset for the purposes of the CGT provisions.
 - (ii) The principal residence exemption may be available to the trustee of the trust estate of a deceased person (subsection 160ZZQ(15)).

Example:

Due to injuries sustained in an accident, a person is placed under a legal disability. As a result, legal ownership of his or her sole or principal residence passes to a trustee.

Where the former legal owner (now beneficiary) is absolutely entitled to the asset as against the trustee, the principal residence exemption would continue to be available for the period that the beneficiary uses the dwelling as his or her sole or principal residence.

COMMISSIONER OF TAXATION

21 May 1992

FOI INDEX DETAIL: Reference No. CGT 58

Subject Ref: Principal residence exemption; bare trust; beneficiary

Legislative Ref: 160ZZQ12(a); 160ZZQ(15). ATO Ref: CGT Cell PRE

ISSN 1037 - 1419