

TD 58 - 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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 This document has changed over time. This is a consolidated version of the ruling which was published on *15 December 2004*

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.

Note: The Addendum to this Determination that issued on 15 December 2004 applies on and from 15 December 2004.

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 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.

Note: (i) 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.

(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

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