TD 58W - 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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Notice of Withdrawal

Taxation Determination

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

CGT Determination Number 58 is withdrawn with effect from today.

1. CGT Determination Number 58 (TD 58) explains that the principal residence exemption is not available to a so-called 'family company' or 'family trust' because paragraph 160ZZQ12(a) of the *Income Tax Assessment Act 1936* (ITAA 1936) requires that the dwelling be owned by a natural person.

2. TD 58 was issued prior to 1 July 1992 and is therefore not a public ruling for the purposes of Division 358 of the *Taxation Administration Act 1953*.

3. TD 58 involves a straight application of the law. Subsection 118-110(1) of the *Income Tax Assessment Act 1997* (ITAA 1997) makes it clear that in the general case, the main residence exemption is only available to an individual (defined in subsection 995-1(1) of the ITAA 1997 as a natural person). Subsection 960-100(4) of the ITAA 1997 goes on to provide that if a provision refers to an entity of a particular kind, it refers to the entity in its capacity as that kind of entity and not in any other capacity.

4. Section 118-195 of the ITAA 1997 indicates when the exemption will be available to trustees of deceased estates.

5. Accordingly, TD 58 is no longer required and is withdrawn.

Commissioner of Taxation
10 March 2010

ATO references
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