

TD 93/D168 - Income tax: can a trustee of a deceased partner's estate be a party to a joint election for roll-over relief under subsection 59AA(2C) of the Income Tax Assessment Act 1936 where there has been a change in ownership or interest in depreciated property due to the death of the partner?

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This document has been finalised by TD 93/158.

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.

Draft Taxation Determination

Income tax: can a trustee of a deceased partner's estate be a party to a joint election for roll-over relief under subsection 59AA(2C) of the *Income Tax Assessment Act 1936* where there has been a change in ownership or interest in depreciated property due to the death of the partner?

1. Yes. The Commissioner considers that the opportunity to be a party to a joint election, in accordance with the conditions set out in subsection 59AA(2B), is to be available to the trustee of a deceased partner's estate where that partner's death is the reason for the change in ownership or interest in the depreciated property. This is provided that the change has occurred after 19 December 1991.
2. Subsection 59AA(2C) may suggest that the only time a trustee can be a party to a joint election on behalf of a deceased partner is when that partner dies after a change in ownership or interest of the depreciated property has occurred.
3. This view ignores the circumstance where a partner's death causes the subsequent change in ownership or interest of the depreciated property in the partnership business. A trustee of a deceased partner's estate may also be a party to a joint election in this circumstance.

Example 1

A, B, C & D are in partnership. D dies 1/12/92. As a result of D's death A, B & C form a new partnership to continue the existing business activities. The depreciated assets of A, B & C partnership at the date of D's death had a written down value of \$100,000 and a market value of \$200,000. Under subsection 59AA (2C) the trustee of D's estate may be a party to the election with A, B & C for roll-over relief under section 58. If the election is made, the depreciated asset would be brought into the new partnership at the written down value of \$100,000.

Example 2

A, B, C & D are in partnership. D leaves the partnership on 2/10/92. A, B & C form a new partnership to carry on the previous partnership activities. D dies 12/12/92 before an election under section 59AA is made. Under subsection 59AA (2C) the trustee of D's estate may be a party to the joint election for roll-over relief on D's behalf.

Commissioner of Taxation

24/6/93

FOI INDEX DETAIL: Reference No.

Related Determinations:

Related Rulings:

Subject Ref: balancing charge; depreciation; disposal of assets; rollover relief

Legislative Ref: ITAA 59AA

Case Ref:

ATO Ref: NEW TD41

ISSN 1038 - 8982