

TD 1999/74 - Income tax: capital gains: in what circumstances does a trustee of a deceased estate acquire an ownership interest in a dwelling 'under the deceased's will' for the purposes of subsection 118-210(1) of the Income Tax Assessment Act 1997?

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 This Ruling has been reviewed as part of a project to review public rulings. The ATO view expressed in this Ruling is current as of 8 January 2018.

Taxation Determination

Income tax: capital gains: in what circumstances does a trustee of a deceased estate acquire an ownership interest in a dwelling ‘under the deceased’s will’ for the purposes of subsection 118-210(1) of the *Income Tax Assessment Act 1997*?



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Preamble

*This Taxation Determination is a ‘public ruling’ for the purposes of Part IVAAA of the **Taxation Administration Act 1953** and is legally binding on the Commissioner. Taxation Rulings TR 92/1 and TR 97/16 together explain when a Determination is a public ruling and how it is legally binding on the Commissioner.*

Date of effect

This determination applies to years commencing both before and after its date of issue. However, this Determination does not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of the Determination (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

1. In its context in subsection 118-210(1) of the *Income Tax Assessment Act 1997*, the preposition ‘under’ requires a connection between the trustee’s acquisition of an ownership interest in a dwelling and the deceased’s will. The connection required is not a strict one.
2. A trustee acquires an ownership interest in a dwelling under the will of a deceased person for the purposes of subsection 118-210(1) if the interest is acquired in accordance with the terms of the will, or in accordance with the terms of the will as modified by any court order.
3. The trustee also acquires an interest under the deceased’s will if they acquire it in pursuance of the will or under the authority of the will (*Evans v. Friedmann* (1981) 53 FLR 229 at 238).
4. The acquisition need not be in strict conformity with the will or expressly by force of the will but, if it is, the requirements of subsection 118-210(1) are, in any case, satisfied.
5. If a trustee acquires an ownership interest in a dwelling in the course of the administration of an intestacy, the trustee does not acquire the interest ‘under the deceased’s will’ for the purposes of subsection 118-210(1) because there is no will.

Commissioner of Taxation

15 December 1999

Previous draft:

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Related Rulings/Determinations:

Subject references:

acquisition; capital gains; deceased; deceased estate; dwelling; interest; intestacy; ownership interest; trustee; under; will

Legislative references:

ITAA 1997 118-210(1)

Case references:

Evans v. Friemann (1981) 53 FLR 229

ATO references:

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