



TD 94/69 - Income tax: if a person and his family die at the same time, and an eligible termination payment (ETP) is paid after the death of the person to the trustee of the estate of the person, could the deceased person's family be considered to benefit from the person's estate for the purpose of applying subsection 27A(4) of the Income Tax Assessment Act 1936 ?

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 This document has changed over time. This is a consolidated version of the ruling which was published on 4 August 1994

This Determination, to the extent that it is capable of being a 'public ruling' in terms of Part IVAAA of the *Taxation Administration Act 1953*, is a public ruling for the purposes of that Part. Taxation Ruling TR 92/1 explains when a Determination is a public ruling and how it is binding on the Commissioner. Unless otherwise stated, 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 a settlement of a dispute agreed to before the date of issue of the Determination (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

Taxation Determination

Income tax: if a person and his family die at the same time, and an eligible termination payment (ETP) is paid after the death of the person to the trustee of the estate of the person, could the deceased person's family be considered to benefit from the person's estate for the purpose of applying subsection 27A(4) of the *Income Tax Assessment Act 1936*?

1. Yes. We consider the family members to have benefited even though they may have died at the same time as the person, provided they were beneficiaries of the person's estate and their respective estates receive a share of the person's estate.

2. ETP's are defined to mean 'any payments made in respect of the taxpayer in consequence of the termination of any employment of the taxpayer' (subsection 27A(1)), and include payments from superannuation funds and retirement or termination payments. Subsection 27A(11) provides that 'a reference...to the termination of any employment ...includes a reference to the...cessation of that employment by reason of the death of the person'. Subsection 27A(4) states that an ETP paid to the 'trustee of the estate of the deceased taxpayer shall be reduced by such amount (if any) as the Commissioner considers appropriate having regard to the extent to which the **dependants of the deceased taxpayer may reasonably be expected to benefit from the estate**' (emphasis added). In cases where the dependants benefited from the deceased person's estate, the trustee of the deceased person's estate would not be subject to income tax on the ETP received.

3. The word **dependant** is defined in subsection 27A(1) (in relation to applying subsection 27A(4)) to mean any person who is or was a spouse of the person, and any child of the person, being a child who has not attained the age of 18 years. The word **dependant** also includes any person who is dependent (financially dependent) on the person at the time of the person's death.

4. The laws relating to survivorship and intestacy are relevant in determining whether the deceased person's dependants received any benefit from the deceased person's estate if they died at the same time as the deceased.

Commissioner of Taxation

4/8/94

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Related Determinations:

Related Rulings:

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