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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This document has changed over time. This is a consolidated version of the ruling which was published on 10 March 2010



TD 58

Page 1 of 1

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CGT Determination Number 58 is withdrawn with effect from today.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 Accordingly, TD 58 is no longer required and is withdrawn.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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