

Taxation Determination

Income tax: capital gains: does section 118-140 of the *Income Tax Assessment Act 1997* (about changing main residences) allow you to treat two dwellings as your main residence for a period of up to six months if you choose to apply:

- (a) **section 118-145 (about absences from your main residence); or**
- (b) **section 118-150 (about building, repairing or renovating a dwelling)?**

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.*

1. Yes. If the requirements of section 118-140 of the *Income Tax Assessment Act 1997* ('the 1997 Act') are satisfied, you can treat two dwellings as your main residence for a period of up to 6 months while you move from one dwelling to another.
2. Section 118-140 can apply in conjunction with either section 118-145 or section 118-150.
3. Section 118-145 allows you to choose that a dwelling continue to be treated as your main residence even if it ceases to be your main residence. Section 118-150 allows you to choose that a dwelling be treated as your main residence if you have an ownership interest (other than a life interest) in land and you build, repair, renovate or finish building a dwelling on this land.
4. If you choose to apply section 118-145 or section 118-150, no other dwelling can be treated as your main residence during the period of absence (section 118-145) or during the period of building, repairing or renovating (section 118-150) unless section 118-140 also applies and only then as in accord with section 118-140.

Example 1

5. Anne acquired a dwelling on 1 January 1986 where she lived until she went overseas on 1 January 1997. Anne did not rent the home during her absence.

6. She acquired another dwelling on 1 February 1998 and moved into that dwelling on her return from overseas on 1 March 1998. Anne disposed of the first dwelling on 1 August 1998.

7. In accordance with section 118-145, Anne chose to continue to treat the first dwelling as her main residence for the period 1 January 1997 until she disposed of it on 1 August 1998.

8. In addition, under section 118-140, Anne may treat the second dwelling as her main residence from when she acquired it on 1 February 1998. Under section 118-140, Anne is able to treat both dwellings as her main residence for up to six months, ending when she ceased to have an ownership interest in the first dwelling.

Example 2

9. David acquired his first dwelling on 1 July 1987. Before he disposed of it on 1 December 1998, he acquired a vacant block of land on 1 March 1994 on which he erected a new dwelling. The dwelling was completed on 31 October 1998. He moved in on 1 December 1998 (which was as soon as was practicable to do so) and continues to live there.

10. In accordance with section 118-150, David chose to treat the new dwelling as his main residence for the period 1 December 1994 to 30 November 1998 (see Note 1 below). As a result, David can treat his first dwelling as his main residence from 1 July 1987 to 30 November 1994 only. Additionally, as David owned two dwellings at the same time, he can apply both section 118-150 and section 118-140 to treat both dwellings as his main residence for the six month period from 2 June 1998 to 1 December 1998. This means that David cannot treat his first dwelling as his main residence for the period 1 December 1994 to 1 June 1998.

Note 1

11. There is a time limit during which the choice in section 118-150 can operate. This limit is the shorter of 4 years before the new dwelling becomes your main residence or the period starting when you acquire your ownership interest in the land and ending when the dwelling becomes your main residence.

Note 2

12. This Taxation Determination rewrites and replaces Taxation Determinations TD 53 and TD 96/20. Those Taxation Determinations, about subsections 160ZZQ(5), 160ZZQ(8) and 160ZZQ(11) of the *Income Tax Assessment Act 1936* ('the 1936 Act'), are being brought into line in this Determination with sections 118-140, 118-145 and 118-150 of the 1997 Act.

13. Several minor changes to the law are included in sections 118-140, 118-145 and 118-150. First, the period for which two dwellings can be treated as your main residence has been extended from three months to six months. Second, the four year period for which you can claim the main residence exemption during the building, repairing or renovating of a dwelling (provided other conditions of section 118-150 are satisfied) now includes the period from completion of the dwelling to when the residence becomes your main residence. Under the 1936 Act the four year limit did not always cover from when the building was completed until it was occupied. Third, there is no requirement for you to lodge an election under section 118-145 or section 118-150. Instead, you may choose to apply either section under the standard rule in section 103-25 for the making of choices.

14. Apart from changes made to reflect the 1997 Act, there are no material changes in this Determination from the views expressed in Taxation Determinations TD 53 and TD 96/20.

Date of effect

15. This Determination applies in working out whether you have a capital gain or capital loss from a CGT event that happens in relation to a dwelling in the 1998-99 income year or any later income year. 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). Note that TD 53 and TD 96/20 are hereby withdrawn. These Determinations apply, even after their withdrawal, to disposals of dwellings up to and including the 1997-98 income year.

Commissioner of Taxation

25 August 1999

Previous draft:

Previously released as TD 98/D14

Related Rulings/Determinations:

TD 53; TD 96/20

Subject references:

absences; capital gains; capital gains tax; capital gains tax exemptions; choices; dwellings; main residence; principal residence

Legislative references:

ITAA1936 160ZZQ(5); ITAA1936 160ZZQ(8); ITAA1936 160ZZQ(11); ITAA1997 103-25; ITAA1997 118-140; ITAA1997 118-145; ITAA1997 118-150

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