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## Taxation Determination

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### **Income tax: capital gains: is ‘adjacent’ land in terms of section 118–120 of the *Income Tax Assessment Act 1997* limited to land contiguous to 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.*

#### ***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. No. Land does not have to be contiguous to (that is, touching or in contact with) the land on which a dwelling is situated to be ‘adjacent’ to the dwelling for the purposes of section 118–120.
2. ‘Adjacent is not a word to which a precise and uniform meaning is attached by ordinary usage. It is not confined to places adjoining, and it includes places close to or near. What degree of proximity would justify the application of the word is entirely a question of circumstances ...’ (*Mayor of Wellington v. Mayor of Lower Hutt* [1904] AC 773 at 775-776).
3. *The Macquarie Dictionary* defines ‘adjacent’ as ‘lying near, close or contiguous; adjoining; neighbouring’.
4. For the purposes of section 118–120, land is adjacent to your dwelling if it is close to or near your dwelling.
5. The adjacent land must be used primarily for private or domestic purposes in association with your dwelling and the total area of land (including the land on which your dwelling is situated) must not exceed 2 hectares.
6. The further the distance between the relevant land and the land on which your dwelling is situated the less likely it is that the relevant land is ‘adjacent’ land in terms of section 118–120.

This is so not only because the word 'adjacent' has its limits but also because it is less likely that the land could be used primarily for private or domestic purposes in association with your dwelling.

7. The main residence exemption does not apply to a CGT event that happens in relation to adjacent land if the event does not happen in relation to the dwelling or your ownership interest in it: see section 118-165. If you dispose of adjacent land to the same person and at the same time as you dispose of your main residence, the exemption extends to the adjacent land. It does not extend to adjacent land, however, if you dispose of the land separately from the main residence, e.g., you dispose of the adjacent land to the same purchaser but at a different time from when you dispose of the main residence or you dispose of the adjacent land and the main residence to different purchasers even if the disposals happen at the same time.

#### **Example 1**

8. *Robert owns a 1.5 hectare property on which he has a house, swimming pool and tennis court. There is a public access laneway at the side of the house that separates the tennis court from the rest of the property. The land on which the tennis court is situated is considered to be adjacent land for the purposes of section 118-120.*

#### **Example 2**

9. *Bob and Lyn own a house in a country town. Lyn owns a horse which she rides in local horse competitions. There is no room for the horse in the backyard of the house, so Bob and Lyn bought a block of land some two street blocks away on which to run the horse. The total area of the land on which the house is situated and the horse yard is less than 2 hectares. The horse yard, which is used by Lyn primarily for private or domestic purposes in association with her house, is considered to be adjacent land for the purposes of section 118-120.*

### **Commissioner of Taxation**

15 December 1999

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*Previous draft:*

Previously issued as TD 1999/D38

*Related Rulings/Determinations:*

*Subject references:*

adjacent; adjacent land; capital gains; CGT event; contiguous; dwelling; exemption; main residence

*Legislative references:*

ITAA 1997 118-120; ITAA 1997 118-165

*Case references:*

Mayor of Wellington v. Mayor of Lower Hutt [1904] AC 773

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ATO references:

NO 99/10480-5

BO CGT main residence summit 1999

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