



Taxation Determination

Income tax and capital gains tax: what is meant by the phrase ‘to the extent that’ in subsection 118-120(1) of the *Income Tax Assessment Act 1997* where it refers to ‘land that is adjacent to a dwelling ... to the extent that you used the land primarily for private or domestic purposes in association with the dwelling as if it were a dwelling?’

Preamble

*The number, subject heading, date of effect and paragraphs 1 to 5, and 8 of this Taxation Determination are a ‘public ruling’ for the purposes of Part IVAAA of the **Taxation Administration Act 1953** and are legally binding on the Commissioner. The remainder of the Determination is administratively binding on the Commissioner. Taxation Rulings TR 92/1 and TR 97/16 together explain how a Determination is legally or administratively binding.*

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. This is a question of fact and degree to be determined having regard to all of the circumstances in each particular case. While the application of subsection 118-120(1) of the *Income Tax Assessment Act 1997* (‘ITAA 1997’) is to be determined at the time of any CGT event which happens to the dwelling, it is the extent to which you used the land ‘primarily for private or domestic purposes in association with the dwelling’ throughout the ownership period that is relevant.
2. The words ‘to the extent’ contemplate an apportionment if for some part of the ownership period the land has not been used ‘primarily for private or domestic purposes in association with the dwelling’.
3. We take the same view as that in paragraphs 1 and 2 above, adapted as necessary, in relation to the meaning of the phrase ‘to the extent that’ in paragraph 160ZZQ(3)(a) of the *Income Tax Assessment Act 1936* (‘ITAA 1936’).

Note 1

4. Whether you used the land ‘primarily’ for private or domestic purposes in association with your dwelling is also a question of fact and degree. It is a different, though related, question from the question of the extent to which you used the land for the required purposes.

Note 2

5. Subsection 118-120(1), in referring to the extent to which ‘you’ used the land and in referring to the purposes for which ‘you’ used the land, is not concerned with any use of the land by anyone else.

Example

6. *John buys a home on 2 hectares of land in October 1993. One hectare of land is used continuously to derive income from agistment for 4 years. For twelve months before John sells the home in October 1998, he ceases to use the land for agistment and uses it privately in association with the dwelling.*

7. *John is entitled to disregard 20% of any capital gain or capital loss made in respect of the one hectare of land previously used for agistment purposes. This is the extent to which the land has been used primarily for private or domestic purposes in association with the dwelling during the period of ownership.*

Previous ruling

8. This Taxation Determination rewrites and replaces Taxation Determination TD 92/115. It will have a future application and, to the extent that it is more favourable to taxpayers than TD 92/115, a past application (subject to the statutory limits of section 170 of the ITAA 1936).

Commissioner of Taxation

12 April 2000

Previous draft:

Previously issued as Draft TD 1999/D100

Subject references:

- adjacent;
- CGT event;
- dwelling;
- land;
- main residence;
- ownership period;
- primary use of land;
- to the extent;

Legislative references:

ITAA 1936 160ZZQ(3)(a); ITAA 1936 170.

ATO references:

NO 99/16032-2

BO CGT main residence summit

FOI Index Details: I 102598

ISSN: 1038-8982