



Taxation Determination

Income tax: capital gains: if you build a dwelling on land that you acquired before 20 September 1985 ('pre-CGT'), are you required to make a choice under section 118-150 of the *Income Tax Assessment Act 1997* (ITAA 1997)¹ to get the main residence exemption?

📌 This publication provides you with the following level of protection:

This publication (excluding appendixes) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

A public ruling is an expression of the Commissioner's opinion about the way in which a relevant provision applies, or would apply, to entities generally or to a class of entities in relation to a particular scheme or a class of schemes.

If you rely on this ruling, the Commissioner must apply the law to you in the way set out in the ruling (unless the Commissioner is satisfied that the ruling is incorrect and disadvantages you, in which case the law may be applied to you in a way that is more favourable for you – provided the Commissioner is not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any underpaid tax, penalty or interest in respect of the matters covered by this ruling if it turns out that it does not correctly state how the relevant provision applies to you.

Ruling

1. Unless you make a choice under subsection 118-150(2), the main residence exemption in Subdivision 118-B will not be available for a dwelling that is a separate CGT asset for any part of the dwelling's ownership period before it becomes your main residence.²

Example

2. *Erica owns pre-CGT land on which she started to build a dwelling on 1 January 2011. The dwelling was completed on 1 January 2016 and Erica moves in immediately. She lives in the dwelling until the settlement of the sale of the property on 1 April 2016.*

¹ All legislative references are to the ITAA 1997.

² The choice can only apply for a maximum of four years before the dwelling became your main residence: subsection 118-150(4).

3. *As the dwelling was Erica's main residence from 1 January 2016 to 1 April 2016, she will qualify for the main residence exemption for that period. She can also choose under subsection 118-150(2) to extend the main residence exemption for the four year period prior to 1 January 2016 as she has met the conditions; the dwelling became her main residence on completion and she resided in it for at least three months.*

4. *As the property was Erica's main residence for this three month period, and she makes a choice to apply section 118-150, she will qualify for the main residence exemption for the period from 1 January 2012 to 1 April 2016 (four years and three months). No other dwelling can be treated as Erica's main residence during this period.*

Date of effect

5. This Determination applies to years of income commencing both before and after its date of issue. However, this Determination will 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 this Determination (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10).

Commissioner of Taxation

17 May 2017

Appendix – Explanation

ⓘ *This Appendix is provided as information to help you understand how the Commissioner's view has been reached. It does not form part of the binding public ruling.*

6. Subsection 108-55(2) provides that a building that you construct on pre-CGT land is a separate CGT asset from the land if you entered into a contract for the construction of the building on or after 20 September 1985; or if there is no contract – the construction started on or after that day.

7. If the building becomes your main residence, you can apply the main residence exemption in Subdivision 118-B to any gain attributable to the building. However, you may not qualify for a full exemption if the building was your main residence for only part of the period when you had an ownership interest in it.

8. Broadly speaking, you will have an ownership interest in a dwelling if you have a legal or equitable interest in the land on which it is erected.

9. Section 118-150 applies if you build a dwelling on land that you own. It enables you to choose to treat the dwelling as your main residence during some or all of the period when the dwelling was being constructed (when you could not live there).

10. You can make the choice under subsection 118-150(2) only if the dwelling becomes your main residence as soon as practicable after it is completed and it continues to be your main residence for at least three months.³

11. There is a time limit during which the choice can operate. This is the shorter of four years before the dwelling becomes your main residence; and the period starting when you acquired your ownership interest in the land and ending when the dwelling becomes your main residence.⁴

12. Once you make the choice, no other dwelling can be treated as your main residence.⁵

³ Subsection 118-150(3).

⁴ Subsection 118-150(4).

⁵ Subsection 118-150(6).

References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 2006/10

Previous Rulings/Determinations:

TD 59

Legislative references:

- ITAA 1997
 - ITAA 1997 108-55(2)
 - ITAA 1997 Subdiv 118-B
 - ITAA 1997 118-150
 - ITAA 1997 118-150(2)
 - ITAA 1997 118-150(3)
 - ITAA 1997 118-150(4)
 - ITAA 1997 118-150(6)
-

ATO references

NO: 1-A61P118

ISSN: 2205-6211

BSL: TCN

ATOlaw topic: Income tax ~~ Capital gains tax ~~ CGT assets ~~ Separate CGT assets
Income tax ~~ Capital gains tax ~~ Exemptions ~~ Main residence

**© AUSTRALIAN TAXATION OFFICE FOR THE
COMMONWEALTH OF AUSTRALIA**

You are free to copy, adapt, modify, transmit and distribute this material as you wish (but not in any way that suggests the ATO or the Commonwealth endorses you or any of your services or products).