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# Notice of Withdrawal

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## Taxation Determination

### Capital gains: what factors are taken into account in determining whether or not a dwelling is a taxpayer's sole or principal residence?

CGT Determination Number 51 is withdrawn with effect from today.

1. CGT Determination Number 51 (TD 51) explains some of the factors that the Commissioner considers are relevant to determining whether a dwelling is an individual's principal residence for the purposes of the CGT exemption.
2. TD 51 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. Subsequent to publication of TD 51, the matters with which it deals have been considered by the Administrative Appeals Tribunal in a number of cases. The decisions in those cases are consistent with the views expressed in the Determination. They include:
  - *Case 26/93 93 ATC 320* at page 322; AAT Case 8769 (1993) 26 ATR 1051 at paragraph 11 – ‘the Tribunal accepts as relevant, though not exhaustive, the considerations listed in the Determination’; and
  - *Couch & Anor v. FC of T* 2009 ATC 10-072; [2009] AATA 41 at paragraph 14 – the Tribunal is of the opinion that something that is only an intention by a taxpayer to occupy a property as a main residence is insufficient to give rise to the exemption in s 118-110’.
4. In addition, the factors listed in the Determination are included in the current *Guide to Capital Gains Tax 2008-09* (NAT 4151-6-2009) which is a source of the Commissioner's view.
5. Accordingly this Determination is no longer required and is withdrawn.

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**Commissioner of Taxation**  
19 May 2010

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ATO references

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