# TD 51W - Capital Gains: What factors are taken into account in determining whether or not a dwelling is a taxpayer's sole or principal residence?

This cover sheet is provided for information only. It does not form part of TD 51W - Capital Gains: What factors are taken into account in determining whether or not a dwelling is a taxpayer's sole or principal residence?

This document has changed over time. This is a consolidated version of the ruling which was published on 19 May 2010



### **TD 51**

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## Notice of Withdrawal

#### **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CGT Determination Number 51 is withdrawn with effect from today.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 Accordingly this Determination is no longer required and is withdrawn.

#### **Commissioner of Taxation**

19 May 2010

ATO references

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ATOlaw topic: Income Tax ~~ Capital Gains Tax ~~ main residence exemption