

TD 59 - Capital Gains: Where a dwelling is erected on pre-CGT land, is an election required under subsection 160ZZQ(5) to get the principal residence exemption for the time during which construction takes place?

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⚠ This ruling contains references to repealed provisions, some of which may have been rewritten. The ruling still has effect. Paragraph 32 in [TR 2006/10](#) provides further guidance on the status and binding effect of public rulings where the law has been repealed or repealed and rewritten. The legislative references at the end of the ruling indicate the repealed provisions and, where applicable, the rewritten provisions.

⚠ This document has changed over time. This is a consolidated version of the ruling which was published on *29 November 2006*

CGT Cell Determinations do not have the force of law, but can be relied upon as being the considered view of the ATO. Unless otherwise stated, the view expressed may be applied to transactions entered into both before and after the date of issue of the Determination.

CGT Determination Number 59

Capital Gains: Where a dwelling is erected on pre-CGT land, is an election required under subsection 160ZZQ(5) to get the principal residence exemption for the time during which construction takes place?

Determination

1. Yes. Although the land is a pre-CGT asset, the building erected on the land is treated as a separate asset which is acquired post-CGT (subsection 160P(2)). The building is taken to be acquired at the time when the construction contract was made (subsection 160U(3)) or when construction commenced (subsection 160U(5)).
2. The principal residence exemption will not cover all or part of the period before the dwelling is completed, unless the election that subsection 160ZZQ(5) apply, is made.

COMMISSIONER OF TAXATION

21 May 1992

FOI INDEX DETAIL: Reference No. CGT 59

Subject Ref: Principal residence exemption; dwelling on pre-CGT land; election

Legislative Ref: 160ZZQ(5); 160P(2); 160U(3); 160U(5)

ATO Ref: CGT Cell PRE

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