

TD 1999/D41 - Income tax: capital gains: does section 118-190 of the Income Tax Assessment Act 1997 reduce your main residence exemption if part of your dwelling is used by someone else for an income producing purpose ?

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This document has been finalised by TD 1999/71.

Draft Taxation Determination

Income tax: capital gains: does section 118–190 of the *Income Tax Assessment Act 1997* reduce your main residence exemption if part of your dwelling is used by someone else for an income producing purpose ?

Preamble

Draft Taxation Determinations (DTDs) present the preliminary, though considered views of the Australian Taxation Office (ATO). DTDs should not be relied on; only final TDs represent authoritative statements by the ATO.

1. No.
2. Your main residence exemption is reduced under subsection 118–190(1) of the *Income Tax Assessment Act 1997* (ITAA 1997) and you only get a partial exemption if:
 - (a) the dwelling which was your main residence was used for the purpose of producing assessable income; and
 - (b) if you had incurred interest on money borrowed to acquire the dwelling, or your ownership interest in it, you could have deducted some or all of that interest.
3. If someone else uses part of your dwelling for income producing purposes and if you had incurred interest on money borrowed to acquire your dwelling, you could not deduct any of that interest under section 8–1 of the ITAA 1997 because it would not be incurred in gaining or producing your assessable income.
4. Therefore your main residence exemption is not affected by any use of your dwelling by another person for income producing purposes.
5. Section 118–190 is directed at reducing your main residence exemption and only allowing you a partial exemption if you use part of your dwelling for income producing purposes.
6. This draft Taxation Determination is inconsistent with paragraph 7 of Taxation Ruling IT 2673 which provides, in relation to subsection 160ZZQ(21) of the *Income Tax Assessment Act 1936* (which section 118–190 of the ITAA 1997 replaces) that the main residence exemption is reduced if the dwelling is used for income producing purposes by the taxpayer or by any other person. Paragraph 7 of IT 2673 will be withdrawn when this draft Determination is finalised.

Example

7. David owns a 6 bedroom home which he and his wife Sophie have used as their main residence since it was purchased in 1995. Sophie has a physiotherapy practice and the two front rooms of the home are used exclusively by Sophie for her practice. Sophie and David live in the remainder of the home. If David had incurred interest on money borrowed to acquire the home, he could not deduct any of that interest under section 8-1 because it would not be incurred in gaining or producing his assessable income. Because David would not be entitled to any interest deduction, section 118-190 does not apply to reduce David's entitlement to a main residence exemption when a CGT event happens in relation to the dwelling.

Your comments

We invite you to comment on this Draft Taxation Determination. We are allowing 4 weeks for comments before we finalise the Determination. If you want your comments considered, please provide them to us within this period.

Comments by Date:	25 August 1999
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Commissioner of Taxation
28 July 1999

Related Rulings/Determinations:
IT 2673

Subject references:
capital gains; dwelling; exemption; income; income producing; interest; main residence

Legislative references:
ITAA 1997 8-1; ITAA 1997 118-190; ITAA 1997 118-190(1); ITAA 1936 160ZZQ(21)

ATO references:
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