


***TD 1999/D43 - Income tax: capital gains: is land under a unit of accommodation subject to the main residence exemption under Subdivision 118-B in Part 3-1 of the Income Tax Assessment Act 1997 if the taxpayer sells the unit of accommodation separately from the land?***

 This cover sheet is provided for information only. It does not form part of *TD 1999/D43 - Income tax: capital gains: is land under a unit of accommodation subject to the main residence exemption under Subdivision 118-B in Part 3-1 of the Income Tax Assessment Act 1997 if the taxpayer sells the unit of accommodation separately from the land?*

This document has been finalised by [TD 1999/73](#).

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## Draft Taxation Determination

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**Income tax: capital gains: is land under a unit of accommodation subject to the main residence exemption under Subdivision 118-B in Part 3-1 of the *Income Tax Assessment Act 1997* if the taxpayer sells the unit of accommodation separately from the land?**

### 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 Taxation Determinations represent authoritative statements by the ATO.

1. No. The land does not qualify for the main residence exemption.
2. Paragraph (c) of the definition of 'dwelling' in subsection 118-115(1) brings within the definition 'any land immediately under the unit of accommodation'. It only does so, however, while the land remains immediately under the unit of accommodation.
3. If a unit of accommodation is removed from land and the land is then sold, the land does not come within paragraph (c) of the definition of 'dwelling' in subsection 118-115(1). This applies to land under all types of units of accommodation.
4. Land under a unit of accommodation qualifies for the main residence exemption only if the land and the unit of accommodation are sold together as a dwelling.

### Your comments

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**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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FOI status: draft only - for comment

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**Address:**                    **Australian Taxation Office**  
**GPO Box 800**  
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**Commissioner of Taxation**  
28 July 1999

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*Previous draft:*

Not previously released in draft form

*Related Rulings/Determinations:*

*Subject references:*

accommodation; capital gains; CGT exemptions; dwelling; land; main residence; unit of accommodation

*Legislative references:*

ITAA 1997 118-115(1)(c); ITAA 1997 Subdivision 118-B

*Case references:*

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ATO references:

NO                    99/10480-5

BO                    CGT main residence summit 1999

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